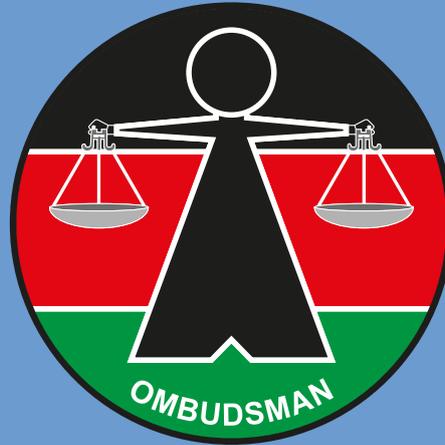
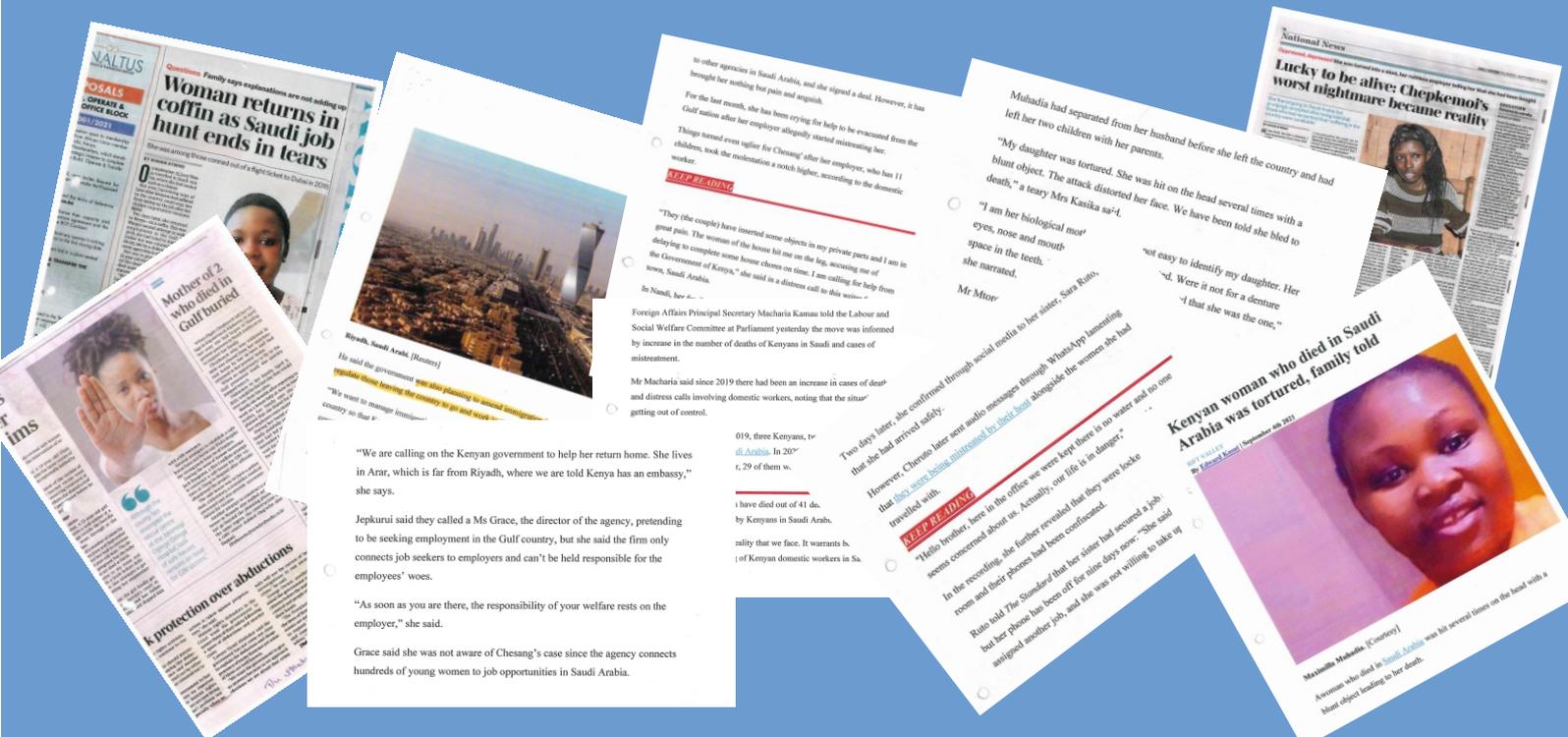


THE COMMISSION ON ADMINISTRATIVE JUSTICE (OFFICE OF THE OMBUDSMAN)



Hata Mnyonge ana Haki

A REPORT ON SYSTEMIC INVESTIGATION INTO THE PLIGHT OF KENYAN MIGRANT DOMESTIC WORKERS IN THE KINGDOM OF SAUDI ARABIA



SEPTEMBER 2022



Serial No. CAJ/68/2022

Foreword

The Commission on Administrative Justice (CAJ), pursuant to its mandate as stipulated under Section 8 of the Commission on Administrative Justice Act 2011, undertook an investigation into the predicament of Kenyan migrant workers in Saudi Arabia, alleged to be facing physical and psychological abuse meted on them by their employers.

The Commission notified the Cabinet Secretary, Ministry of Labour and Social Services of its decision to undertake the investigation vide a letter Ref: **CAJ/IE/6/102/21** dated 14th October, 2021.

The preparation of this report was informed by interviews held with officers from the Commissioner of Labour, National Employment Authority, National Industrial and Training Authority, Ministry of Foreign Affairs, Directorate of Immigration Services, Association of Private Employment Agencies, and former Kenyan migrant workers. Documents obtained were also examined and at the same time, desktop research was undertaken.

The Commission has made a raft of recommendations to the office of the President and all stakeholders involved in the recruitment and management of migrant domestic workers in order to enhance inter-agency collaboration among stakeholders, professionalise the industry while promoting and protecting the rights of Kenyan Migrant workers.

I reiterate our commitment as a Commission, to address maladministration in public institutions and endeavour to uphold administrative Justice while promoting access to information.



Signed this...^{23rd}... day of^{September}.....2022

HON. FLORENCE KAJUJU, MBS
CHAIRPERSON OF THE COMMISSION

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Definitions of Terms

Shaghala; a name of Arabic origin commonly used to refer to a house helper/servant

Kafala; an Arabic word meaning 'to guarantee' or 'to take care of'.



Acronyms

ASMAK	Association of Skilled Migrant Agencies of Kenya
BLA	Bilateral Labour Agreement
CS	Cabinet Secretary
CAJ	Commission on Administrative Justice
DCI	Directorate of Criminal Investigations
GOK	Government of Kenya
GCC	Gulf Cooperation Council
KAPEA	Kenya Association of Private Employment Agencies
KCPE	Kenya Certificate of Primary Education
KICD	Kenya Institute of Curriculum Development
KSA	Kingdom of Saudi Arabia
LMMB	Labour Migration Management Bill
MOU	Memorandum of Understanding
MFA	Ministry of Foreign Affairs
NEA	National Employment Authority
NITA	National Industrial Training Authority
NIS	National Intelligence Service
NPS	National Police Service
PEA	Private Employment Agency
SAR	Saudi Arabian Riyals
UAE	United Arab Emirates



Executive Summary

Following several media reports highlighting the mistreatment, injustice and oppression of Kenyan domestic workers in the Kingdom of Saudi Arabia, the Commission on Administrative Justice (CAJ) conducted a systemic investigation to interrogate the shortfalls in the measures put in place by the Kenyan Government to protect Kenyan migrant workers. Particularly, the investigation sought to examine the existing labour policies, processes and procedures relating to the recruitment and management of Kenyan migrant domestic workers in Saudi Arabia.

CAJ investigators conducted interviews with officers and gathered documents from the Ministry of Labour, National Employment Authority (NEA), National Industrial Training Authority (NITA), Commissioner of Labour, Ministry of Foreign affairs, Directorate of Immigration Services, Association of Private Employment Agencies and some domestic workers who were returnees from Saudi Arabia. Investigators analysed the documents gathered and also conducted extensive desktop research on the issue under investigations.

The Commission's investigations established that some Kenyan migrant domestic workers in Saudi Arabia experienced various forms of abuses, and that the recruitment and management of Kenyan migrant workers was undertaken in a disjointed manner by the stakeholders who work independent of each other. Investigations also found that there was no accurate data on migrant domestic workers in Saudi Arabia and that the legal framework currently available is weak.

In light of these findings, the Commission has proposed a range of recommendations that include the establishment of a multi-agency working platform for all the stakeholders and made additional suggestions to be included in the draft Labour Migration Management Bill that is meant to provide a national legal framework for the recruitment and management of migrant workers in Kenya.

CHAPTER 1: INTRODUCTION

1.1 Brief Background of the Case

Labour migration is a key contributor to the increasing worldwide labour Market. Foreign workers, especially from developing countries, make up a large majority of the Gulf's labour. Kenyan migrant workers driven by the high rate of youth unemployment which stands at 34.21%¹ continue to go beyond the borders in pursuit of employment opportunities. Labour Cabinet Secretary Mr Simon Chelugui reported² in July 2021 that since January 2019, the ministry had facilitated the employment of over 87,784 Kenyans in the Middle East.

The US remains the largest source of foreign remittance in Kenya, accounting for 55.9 percent of remittances in March 2021. The other top source countries were: UK (11.2 percent), Saudi Arabia (4.0 percent), Canada (2.9 percent), and Australia (2.9 percent)³. According to Kenyan wall street⁴ remittances from Asia in the twelve-month period leading up to February 2022 amounted to US\$42.5 million, with Saudi Arabia being the largest source (US\$19.2 million), followed by Qatar (US\$7.1 million) and the United Arab Emirates (US\$4.6 Million).

Kenya's ability to export labour to the Gulf Cooperation Council (GCC) countries provides a source of remittances and regional diplomatic relations important to its economic development. This is also beneficial to Gulf countries given increasing labour shortages and the domestic-worker deployment bans imposed by some labour sending countries in Asia.

For Kenyans, unemployment at home, and the difficulty of gaining entry to western countries, combined with the economic growth and proximity of the Gulf, has fuelled the exodus to the Gulf. Semi- and low-skilled workers have dominated

¹ Kenya National Bureau of statistics Economic survey 2021

² Appearing before the Labour and Social Welfare Committee in July 2021 to explain the circumstances that led to the death of Melvin Kang'ereha in Saudi Arabia in 2020.

³ CBK press release of individual country data on remittances in April 21,2021

⁴ A digital media business content platform providing in-depth business and financial news across Sub-Saharan Africa and the globe.



Kenyan migration to the Gulf, with many being recruited as domestic workers, construction labourers and hospitality servers.

Following the numerous complaints by domestic workers in Saudi Arabia and public outcry, the Government of Kenya (GoK) temporarily banned the recruitment of domestic workers to Saudi Arabia in 2014. Thereafter, the GoK formed a Multi-Agency Task force to inquire about what needed to be done to enhance the protection of domestic workers in Saudi Arabia. The task force recommended for de-registration of employment agencies and registering them afresh to weed out the unethical employment agencies to ensure recruitment and placement of Kenyans as domestic workers was done by only licensed offices and individuals.

The GoK and that of the Kingdom of Saudi Arabia (KSA) acknowledged that recruitment of domestic workers had faced a number of difficulties and needed some reforms to secure the interests of both the domestic worker and those of the employers. To address the emerging labour migration issues, officials from both Governments negotiated a Bilateral Labour Agreement in 2015 that stipulated the obligations of each implementing party.

Nonetheless, reports of Kenyan domestic workers in the KSA suffering from physical and sexual abuse, or dying under controversial circumstances have continued to appear in the press. Labour Cabinet Secretary Mr Chelugui reported⁵ that 93 died while working in the Middle East between 2019-2021. According to the Ministry, the causes of death were; Cardiac Arrest, Covid 19, Cancer, Childbirth, Respiratory Complication, Meningitis, tuberculosis, suicide and accidents. He also indicated that 1,908 distress calls were reported between 2019 and 2021, with 883 being reported in 2019-2020 and 1,025 in 2020-21.

Failure to offer sufficient consular assistance to victims of abuse, poor regulatory framework for private employment agencies, powerful and influential rogue

⁵ Ibid 1



agents and lack of a comprehensive labour migration legal framework have been alleged to be the major obstacles to reforming this sector. Despite the obstacles to reform, it is evident that a complete overhaul of the entire labour export industry is needed because unless substantive reforms are undertaken, Kenyan migrant workers, particularly women, will continue to return to their families abused, mistreated or dead.

In undertaking this investigation, the Commission established the following as part of the background. In the Gulf countries, there are two major systems used in employment of migrant domestic workers; The “*Kafala*” and the “*Musaned*” system.

1.1.1 The *Kafala* System

The *Kafala* or sponsorship system defines the relationship between foreign workers and their local sponsor (or *kafeel*, who is usually their employer). It is found in the GCC countries namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Jordan and Lebanon. Under this system, the state gives local individuals or companies sponsorship permits to employ foreign labourers (except in Bahrain—a government agency, rather than the employer, is the worker’s sponsor). The sponsor covers travel expenses and provides housing, often in dorm-like accommodations or, in the case of domestic workers, the sponsor’s home. Rather than hiring an individual directly, sponsors sometimes use private employment agencies in the countries of origin to find workers and facilitate their entry to the host country.

Since the system falls under the jurisdiction of interior ministries, rather than labour ministries, workers have no protection under the host country’s labour law. This leaves them vulnerable to exploitation and denies them rights such as the ability to enter a labour dispute process or join a union. Furthermore, workers’ employment and residency visas are linked and only sponsors can renew or terminate them, the system endows private citizens rather than the State with control over workers’ legal status, creating a power imbalance that sponsors can exploit.



In most situations, workers need their sponsor's permission to transfer jobs, end employment, and enter or exit the host country. Leaving the workplace without permission is an offence that results in the termination of the worker's legal status and potentially imprisonment or deportation, even if the worker is fleeing abuse. Workers have little recourse in the face of exploitation, and many experts argue that the system is akin modern slavery.

1.1.2 The *Musaned* system

Launched in 2015, "*Musaned*" is an integrated electronic website to facilitate procedures for the recruitment of domestic workers which processes around 90% of applications for domestic worker visas in Saudi Arabia. "*Musaned*" introduced regulations and processes to streamline recruitment procedures for employers in Saudi. Potential employers can hire domestic workers without the need to visit an employment agency. They can obtain a domestic worker e-visa from *Musaned* in no more than three days, provided they meet certain financial, social and legal criteria. For each visa, the costs involved include "*Musaned*" fees of SAR 150 (USD 40) and the e-visa costs SAR 2000 (USD 530).

The website contains a database of hundreds of profiles of licensed Saudi employment agencies. Each profile includes a list of countries from where domestic workers hail, the cost of recruitment, and the expected waiting period. "*Musaned*" allows a potential employer to submit preferences for age, religion, and previous work experience to the employment agency of their choice. In response, agencies provide potential employers with up to five CVs of domestic workers to choose from. Once a decision is made, the potential employer can proceed with paying recruitment fees and signing an e-contract with the employment agency. This e-contract is distinct from the contract between the employer and the domestic worker, which is often signed in the origin country between the Saudi agency (on behalf of the employer) and the domestic worker before s(he) arrives in the Kingdom.

The processing steps are as follows: Saudi agencies submit an application to the domestic worker's embassy in Riyadh for review; take for example Kenya. The



application specifies a counterpart employment agency in Kenya. If approved, the embassy sends the information to the employment agency in Kenya via the “*Musaned*” system. Once the Kenyan-based agency receives an application, it begins the training process for the domestic worker, prepares the paperwork, and facilitates his/her travel to Saudi Arabia.

1.1.3 Kenyan Migrant Domestic Workers Recruitment Cycle

The Kenyan recruitment process of domestic workers for Saudi Arabia involves a number of stakeholders including the Saudi Employer, the Saudi Arabia Employment Agencies, Ministry of Labour (Labour Department), National Employment Authority (NEA), National Industrial Training Authority (NITA), prospective domestic workers, Kenya Private Employment Agencies, Saudi Embassy and Immigration Department.

Interested Saudi employers (often sought by private agencies in Kenya or Saudi) upload signed contracts on the *Musaned*. NEA approves and activates the contract signed by the Saudi employer on the *Musaned* system after confirming the workforce's availability and that the terms in the contract are in line with the provisions of the Bilateral Agreement between Kenya and Saudi Arabia. After approval by NEA, employment agencies start recruiting prospective domestic workers by enrolling them in homecare management training and presenting the contract for them to sign. The Agents present the same to NEA, indicating they have matched the job offer with the required skills, and NEA approves.

The Agent takes the prospective domestic workers to hospitals in Kenya approved by the Saudi Embassy for medical examination. After that, the Agent presents the passport, signed contract, and medical records to the Embassy of Saudi Arabia for a Work Visa. The Embassy issues a work visa if the job order is active on the *Musaned* system, which is pegged on NEA approval.

Thereafter, the Labour department attests to all the travelling documents to re-confirm clearance by NEA, medical records, and work Visa. The domestic worker is cleared at the point of exit by the Immigration Department. Upon arrival at Saudi Arabia, recruited domestic workers are received at the airport by a Saudi-



based employment Agency responsible for connecting them to their respective employers.

1.2 Introduction to Investigation

According to various media reports, some domestic workers recruited to Saudi Arabia by private employment agencies have experienced abuses or mistreatment in the hands of Saudi Arabian employers. Deaths are alleged to have occurred to some of the domestic workers in Saudi, and those who manage to return to the country are left traumatised for the rest of their lives.

To ascertain the veracity of the above allegations contained in media reports, the Commission carried out a systemic investigation *suo moto* to interrogate why Kenyans working as domestic workers in Saudi Arabia were predisposed to abuse regardless of the measures that were adopted after the 2014 ban and the consequent Bilateral Agreement. The investigation aimed at identifying the existing systemic gaps/ shortfalls in the recruitment and management of Kenyan domestic workers in Saudi Arabia and recommending appropriate remedies.

1.3 Issues under investigation

- i. To find out specific agencies involved in the governance of labour migration and identify systemic gaps/shortfalls in the management of labour migration.
- ii. To establish the effectiveness of the available regulatory framework for employment agencies
- iii. To establish the legal gaps existing in the development and enforcement of labour migration policy
- iv. To explore best practices in the management of Labour Migration
- v. To establish the process involved in handling and management of distress calls by migrant domestic workers in the Kingdom of Saudi Arabia.

1.4 The Investigation Process

1.4.1 Notification

The Cabinet Secretary, Ministry of Labour and social services, was notified of the Commission's decision to undertake the investigation vide a letter Ref: **CAJ/IE/6/102/21** dated 14th October 2021.

1.4.2 Offices Visited

The following offices were visited during the investigation:

- i. Ministry of Labour
- ii. National Employment Authority
- iii. National Industrial Training Authority
- iv. Directorate of Immigration and Citizen Services
- v. Ministry of Foreign Affairs
- vi. Association of Skilled Migrant Agencies of Kenya.

1.4.3 List of Interviewees

- i. Ag. Director Labour Migration, NEA
- ii. Director, Industrial Training and Skills Development (NITA)
- iii. Senior Legal Officer, NITA
- iv. Commissioner of Labour/ Attestation Officers
- v. Deputy Director Immigration
- vi. Assistant Director, Diaspora and Consular Affairs Directorate
- vii. Two former Saudi Arabia domestic workers
- viii. Chairperson, Association of Skilled Migrant Agencies of Kenya
- ix. Trustee, KAPEA

1.4.4 Documents Obtained

- i. Media extracts.
- ii. Relevant Policies and Regulations.
- iii. Research Reports.
- iv. Recorded statements.
- v. Ministry of Foreign Affairs advice to prospective domestic workers.
- vi. The draft Labour Migration Management Bill.
- vii. NITA guidelines to training centres.
- viii. Standard employment contract for domestic workers bound for the Kingdom of Saudi Arabia.
- ix. The Bilateral Labour Agreement between GoK and KSA.

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- x. NITA homecare management curriculum.
 - xi. Guidelines for registration of training providers
 - xii. Code of conduct for registered training providers.
 - xiii. A guide on admission requirements for homecare management trainees
 - xiv. List of Accredited institutions offering pre-departure training
 - xv. The Constitution of the Association of Skilled Migrant Agencies of Kenya
 - xvi. Code of professional practice for the ASMAK (the code of conduct for private employment agencies).
 - xvii. The National Assembly Departmental Committee on Labour and Social Welfare report.

1.5 Legal Framework

The following international, regional and national legal documents provided a framework that guided the investigation.

1.5.1 International Legal Framework

i. **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted on 18 December 1990.**

Article 10; No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11: No migrant worker or member of his or her family shall be held in slavery or servitude.

Article 14; No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

ii. **International Covenant on Economic, Social and Cultural Rights, January, 1976**

Article 7; The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

b) Safe and healthy working conditions;

d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

iii. **International Covenant on Civil and Political Rights, 1996**

Article 8;

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

1.5.2 Regional labour Frameworks

African Charter on Human and Peoples' Rights

Article 15; every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

1.5.3 National Framework

Kenya has domesticated a number of Laws that governs labour migration, safeguards the rights of Kenyans and mandates the working of CAJ.

i. **The Constitution of Kenya, 2010.**

Article 2 (6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.

Article 25: Fundamental Rights and freedoms that may not be limited despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited:

(a) Freedom from torture and cruel, inhuman or degrading treatment or punishment;

(b) Freedom from slavery or servitude;

Article 41 (b): Every worker has the right to reasonable working condition

ii. **Commission on Administrative Justice Act, 2011.**

Section 8 of the CAJ Act provides that CAJ has a mandate, *inter-alia*, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

Sections 26-29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons and require that statements be given under oath, adjudicate on matters relating to administrative justice, obtain relevant information from any person or government authorities and to compel production of such information.

After undertaking its investigations, the Commission is required under **Section 42** of its constitutive Act, to prepare a report to the state organ, public office or organisation to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken and reasons whereof and recommendations the Commission deems appropriate.

According to **Section 46 (4)** of the Act, if there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit a report to the National Assembly detailing the failure or refusal to implement its recommendations, and the National Assembly shall take the appropriate action.

iii. **Employment Act, 2007**

PART XI—FOREIGN CONTRACTS OF SERVICE

Section 83: Form and Attestation

A foreign contract of service shall be in the prescribed form, signed by the parties thereto, and shall be attested by a labour officer

Section 84: Requirements before attestation

A foreign contract of service shall not be attested unless the labour officer is satisfied:

- (a) That the consent of the employee to the contract has been obtained;
- (b) of the absence of any fraud, coercion or undue influence, and any mistake of fact, or misrepresentation which might have induced the employee to enter into the contract;
- (c) that the contract is in the prescribed form;
- (d) that the terms and conditions of employment contained in the contract comply with the provisions of this Act and have been understood by the employee;
- (e) that the employee is medically fit for the performance of his duties under the contract; and
- (f) that the employee is not bound to serve under any other contract of service during the period provided in the foreign contract.

Section 85: security in foreign contract of service

(1) When the employer who enters into a foreign contract of service does not reside or carry on business within Kenya, the employer shall, or where the employer resides in Kenya, the labour officer may require the employer to give security by bond in the prescribed form, with one or more sureties resident in Kenya and approved of by the labour officer for the due performance of the contract in such sums as the labour officer considers reasonable.

Section 86: offence to induce person to proceed abroad under informal contract

A person who;

- (a) Employs, engages, or knowingly aids in the employment or engagement of, a person with the intention that when so employed or engaged that person shall proceed outside the limits of Kenya; or



(b) induces or attempts to induce an employee to proceed outside the limits of Kenya, unless he has under this Act, duly entered into a foreign contract of service with that person or employee, as the case may be, commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

iv. **The Labour Institutions Act, 2007**

Section 55: Registration of employment agencies

The Director Shall— (a) keep a register of employment agencies which have been registered under this Act.

Section 32: Delegation

The Commissioner for Labour may, in writing, delegate to any labour officer any of the Commissioner's powers, functions and duties. (He/she is in charge of the Labour Department and he/she oversees the activities of Labour Officers).

Section 56: Application for registration

An application for the registration of an employment agency shall be made to the Director in the prescribed form.

(2) Upon an application been made to the Director as specified in subsection (1), and after consultation with the Board, the Director shall grant the application and issue a certificate of registration to the applicant if satisfied that— (a) the applicant is qualified to own and manage an employment agency; and (b) the premises where the employment agency will carry out its business are suitable for use as an employment agency. (3) The Director may have regard to any other relevant matters in deciding whether the application should be granted. (4) The Director may refuse to grant an application made under this Act and give reasons for his refusal.

Section 57 Duties of persons operating employment agencies

Every person who operates or is in charge of an employment agency registered under this Act shall— (a) retain any record which, by regulations made under this

Act, he is required to keep for a period of three years subsequent to the occurrence of the event recorded;

v. **The labour institutions (Private Employment Agencies) Regulations, 2016**

Section 4: Procedure for application for registration

An application for registration to operate a private procedure for employment agency shall be submitted in writing to the Director together with:

- (a) The duly completed prescribed form;
- (b) A certified copy of a certificate of incorporation;
- (c) A certified copy of academic and professional certificates of the managers and directors;
- (d) A copy of operating licence from the relevant county authority;
- (e) A duly signed valid lease or tenancy agreement authenticated by a Commissioner for Oaths;
- (f) Copies of identity cards or passports for all directors;
- (g) Two recent passport size photographs of the directors; and
- (h) Valid Police Clearance Certificates from the Directorate of Criminal Investigations for the applicant and all directors.

Section 5: registration certificate

(l) If the Director is satisfied that an applicant qualifies to be registered, the Director shall issue the certificate of registration upon certificate' the payment of the fees specified in the Second Schedule.

Section 8: cost to be met by agents or employer

A foreign contract of employment shall specify the party responsible for the payment of the:

- (a) Visa fee;
- (b) Airfare; and
- (c) Medical examination:

Provided that reasonable administrative costs may be charged by the agent in respect of trade test, occupational test and the administrative fees shall not exceed the job seeker's proposed one month's salary.

vi. **National Employment Authority Act, 2016**

Section 8; Functions of the Authority;

(d) Conduct periodic surveys on labour market skills requirements and advise training institutions and job seekers appropriately to ensure that training and skills match the job market requirements;

(j) Facilitate the employment and placement of job seekers in formal and informal or any other form of employment, locally and internationally.

vii. **Industrial Training Act CAP 237**

Section 3; Establishment of the Authority

(1) There is established an Authority to be known as the National Industrial Training Authority.

3A: Powers and functions of the Authority

The Authority shall be responsible for—

(a) Industrial training;

(c) Regulating trainers registered under section 7C;

(d) Developing industrial training curricula;

(f) Harmonising curricula and certificates of competence;

(g) Assessing industrial training, testing occupational skills and awarding certificates including Government trade test certificates;

(i) Accrediting institutions engaged in skills training for industry;

7C: Registration of trainers

(1) A person who wishes to be registered as a trainer under this Act shall apply for registration to the Director-General in the prescribed form.

(2) No person shall be registered under subsection (1) unless the trainer satisfies the Director-General that he offers reasonable facilities and opportunities for proper training in the field specified in the application.

(3) For purposes of registration under this section, the Director-General may conduct such inspection or carry out such investigations as he may consider necessary.

(4) A person who:

(a) Having been registered as a trainer under this section contravenes any conditions subject to which the registration was granted;

(b) uses any unqualified persons for purposes of training under this Act;

(c) Issues a certificate to any person who has not completed training under this Act; or

(d) Issues any receipt, invoice or other document in respect of any training under this Act which contains any false particulars;

Shall be guilty of an offence.

Section 21: Training Schemes

(1) The Director-General may, after consultation with the Board and subject to the provisions of section 22 of this Act, make a scheme or schemes for regulating the training of persons undergoing training: Provided that no scheme shall revoke or vary any term of any contract of training registered before the date of making of such scheme. A scheme may, in respect of any trade or occupation to which it relates, specify:

a) The qualifications, including age and educational standard, required for the scheme;

b) The practical training which employers shall provide for persons undergoing training

c) The proficiency tests or examinations which persons undergoing training in that scheme shall be required to undergo from time to time

d) The type and mode of certification to be issued to a person who completes training under the scheme.

viii. The Kenyan Citizenship and Immigration Act, 2011

Section 24; Persons entitled to passports and other travel documents

(1) Every citizen is, subject to this Act, entitled upon application, in the prescribed manner, to be issued with a passport or other travel documents to facilitate international travel.

Section 48: Powers of immigration Officer.

(1) Subject to and for the purposes of this Act an immigration officer shall have the power to:

(c) Require any person seeking to enter or leave Kenya other than a refugee or any asylum seeker, to produce to him a valid passport or a valid travel document and any form of declaration that may be prescribed.

ix. **The Foreign Service Act, 2021(No. 12 of 2021)**

Section 2: Interpretation

“Attaché” means a public officer other than a Foreign Service officer deployed to a Kenya Mission abroad for specialised duties

Section 5: Functions of the Foreign Service

In addition to any other responsibilities designated in writing by the President to the Ministry, the Service shall:

(b) Conduct and coordinate the international relations and cooperation of the Republic at bilateral, regional and multilateral levels;

(h) Serve and promote the legitimate interests of Kenyans living abroad;

(q) Provide consular services as prescribed;

(r) Coordinate relevant agencies in emergency evacuation of distressed Kenyans abroad;

Section 46: Costs of emergency evacuation

The National Treasury shall, subject to the approval of the National Assembly, allocate funds from the Consolidated Fund or reimburse the Ministry for any expenses incurred in conducting the emergency evacuation of Kenyans abroad where the evacuation has been approved by the Cabinet.

x. **Kenya Foreign Policy, 2014**

The Diaspora Diplomacy Pillar



The Government of Kenya recognizes the huge and untapped potential of Kenyans Abroad which can contribute to the country's national development agenda. The Diaspora pillar aims to harness the diverse skills, knowledge, expertise and resources of Kenyans living abroad, and facilitate their integration into the national development agenda. This informs the Diaspora Pillar which seeks to harness the contribution of Kenyans living abroad through the implementation of the National Diaspora policy.

The objectives of this pillar are to:

1. Provide effective and responsive consular services;
2. Facilitate Kenyans Abroad to participate in national development;
3. Promote the access by Kenyans to the international labour market;
4. Utilise outstanding Kenyans, and
5. Tap into the skills and resources of the Kenyans Abroad for national development.

CHAPTER TWO: ANALYSIS AND FINDINGS

2.1 Kenyan Domestic Worker's Experiences in Saudi Arabia

2.1.1 Experiences shared by former domestic workers interviewed by the Commission

i. **Rebecca Chesang**

Through a virtual interview session held on 18/1/2022, Rebecca informed the Commission that she was procedurally recruited by *SHAJALA* Agent that took her for training and facilitated her passport and work Visa. On arrival in the Kingdom of Saudi Arabia, she was placed at her first employer, a family that welcomed her well. She said that she worked for four months after which her employer started overworking her by forcing her to work in the homes of her children and physically assaulting her. She could not bear the difficulties, and she requested to be allowed to go home. Her employer sold her to work for another family, where the abuse was worse since, at some point, the second employer inserted objects in her private parts. She sought the help of the agent in vain. She communicated to her family that approached the KTN media house that aired her story leading to her rescue and facilitation back to Kenya.

ii. **Catherine Murochia**

Catherine stated that she was recruited in Saudi Arabia in the years 2014-2016. She reported that her Agent applied for a passport on her behalf and that she presented herself to the Immigration Department, Nyayo House, for fingerprints and passport photos. The Agent also processed her birth certificate, applied for a Work Visa, and took her for medical examination at a hospital located at Yaya Centre. Then, it was not mandatory for prospective domestic workers to the Kingdom of Saudi Arabia to be trained in a homecare management program and the training was introduced around 2018.

She alleged she signed her contract at the airport and that the Agent did not allow her to read the content, so she did not know what she was signing. After



landing at the airport in Riyadh, they were received by a security team who took possession of the travel documents.

She was posted to Medina and luckily, she reports not having faced any problems during her contract period and that at the end of her contract of service, she was given two months' salary and a paid return ticket to Kenya.

2.1.2 Experiences by Former Domestic Workers gathered from Media Reports

i. Beatrice Waruguru

Beatrice Waruguru's body arrived at Jomo Kenyatta International Airport from Saudi Arabia where she worked as a housekeeper, almost a year after she was reported dead. Like many other young Kenyans seeking job opportunities in the Middle East, many of them women, her family says Waruguru left Kenya for Saudi Arabia in February 2021, and died under suspicious circumstances in December that year. The family maintains she was tortured as reported by Eliud Kibii of The Elephant in an article titled "'Poor Kenyans Sold into Modern-Day Slavery in the Middle East.'" dated 10 June 2022.

ii. Stella Nafula

The star, in an article titled, "Help us bring remains of our daughter home, family asks state" dated 14 February 2022 narrates the story of Stella Nafula Wekesa who left Kenya in August 2021 to work as a house help on a two-year contract. She died on 10 February 2022. A medical report from Saketa Hospital in Saudi Arabia indicates that Stella succumbed to cardiopulmonary arrest, but her family has said she died after her employer refused to take her to hospital, and alleges that she had suffered mistreatment under previous employers.

iii. Rose Chelagat

Rose Chelagat (not her real name) was reported to have left her home in Nandi County in February 2020 for domestic work in Saudi Arabia. According to media reports she had not disclosed to her family that she was being recruited to Saudi Arabia as a domestic worker, and the family came to know after her employer started mistreating her. It was alleged that she was mistreated by her first



employer whom she served for six months before switching to another family where it was alleged that she experienced more difficulties.

iv. **Selestine Musavakwa**

Elizabeth Christine Okwach of Zenger News in an article titled “‘They Call Us Slaves’: Plight Of Kenya’s Domestic Workers In The Middle East” dated 4 October 2021 narrated the story of Selestine Musavakwa, a 28-year-old mother of two who left for Saudi Arabia on the Christmas Day of 2019. The report indicates that, initially, Selestine’s employers, an elderly couple, were courteous and understanding at least for the first two months. As days progressed into months, her employer confiscated her passport, delayed her wages, and forced her to work for free. She was also sexually abused by the man of the house.

Selestine reported that the children and the woman of the house were good to her, but the husband was violent. She indicates that she gave in to his sexual advances. But became depressed and would bury her head into the freezer to suppress her anguish because what she was doing was a sin. She reported the issue to her agency and requested to be taken to another household but her agents declined.

She ran away in September 2020 after getting wind that the man of the house planned to abuse and kill her with the help of his male relatives during a family event. Her agency finally found her another employer, but the abuse was unrelenting. She indicates that she was poisoned for fear that she would reveal that their son a security officer—tried to rape her.

Eventually, the Saudi police connected her with her employment agency, which detained her demanding \$2,757.52 for breach of contract. Her employers confiscated most of her documents.

Selestine and 18 other Ugandan girls eventually ran away from the detention centre of their agency. She shared her story on social media, and a good Samaritan paid for her air ticket back to Kenya in February 2021.

v. **Shani Hassan**

An article on The Guardian titled, "They see us as slaves': Kenyan women head for the Gulf despite abuse fears" dated 29 October 2019, authored by Jillian Keenan and Njeri Runene narrates the story of Shani Hassan a former domestic worker in Saudi Arabia, who recounted how she ended up breaking her leg. Hassan alleged to have been thrown down the stairs by her employer's son following one year of abuse, before she got deported. Only a broken leg allowed Shani Hassan to escape to Kenya when she took a job in Saudi Arabia.

vi. **Faith Murunga**

Elizabeth Christine Okwach of Zenger news in an article titled "'They Call Us Slaves': Plight Of Kenya's Domestic Workers In The Middle East" dated October 4, 2021 narrated the story of Faith Murunga a 30-year-old who also left Kenya for Saudi as a domestic worker on the Christmas day of 2019. According to the article, faith alleged that she went through a harrowing ordeal from the first day of her arrival. She was allowed to sleep for only four hours at night and given nothing more than noodles to eat. Sometimes they denied her food. Faith went to Saudi Arabia as a domestic worker, but her employer, a caterer, allegedly forced her to do catering which was not in her contract. She purported that on the day after her arrival, she was forced to carry eight gas cylinders weighing more than 15 kilograms from the first to the third floor. She also alleged that she was once beaten thrice in a day, and her hand scalded despite being sick and taking a nap after working for 19 hours.

vii. **Wanjiku Njoki**

Joyce Chimbi of IPS news in an article titled "Kenyan Domestic Workers' Doomed Voyages to the Gulf " dated 14 January 2022 wrote the story of 28-year-old Wanjiku Njoki Who travelled to Jeddah in Saudi Arabia in 2018. Wanjiku alleged that her recruiting agent promised them employers who had no history of abuse. The agent allegedly promised her \$700 salary only for her to be paid \$180. Wanjiku reported that her employer would pay her, make her sign a document confirming the payment, and then steal the money back. When she allegedly told them about the missing money, the man and his wife would slap her and refuse to feed



her. Her passport and mobile phone were apparently confiscated by her employer, cutting her off from the rest of the world. She purports to have worked from 5 am to midnight every day, spoke only when spoken to, and was very depressed.

The above cases suggest that the ill-treatment and abuse of Kenyan workers in Saudi Arabia is not new. The problem does, however, appear to have worsened with the COVID-19 pandemic and the ongoing economic crisis. Nonetheless, it's also evident from Catherine Murochias' experience that not all domestic workers in Saudi experience ill treatment and abuse.

2.2 Major Forms of violations perpetrated against Domestic Workers in Saudi Arabia

Gikuru, Caroline Muthoni, in her Masters Research thesis on "The Plight of Kenyan Domestic Workers in Gulf Countries" (2013), found that the major forms of abuses experienced by domestic workers in Saudi Arabia were: passport confiscation, physical abuse, sexual abuse, sleep deprivation, food deprivation, labour exploitation, movement restriction, imprisonment prior to deportation, racism, religious intolerance and psychological abuse. Experiences shared above exemplify these categories of abuse as follows:

2.2.1 Passport Confiscation

Rebecca, Catherine and Selestine all report to have their travel documents taken by their employers. Wanjiku Njoki also reported that her passport and mobile phone were confiscated by her employer, cutting her off from the rest of the world.

2.2.2 Physical Abuse

Rebecca in her account alleges physical assault. Shani Hassan recounted how she was thrown down the stairs by her employer's son leading to her breaking her legs. Faith narrated that she was once beaten thrice in a day, and her hand scalded despite being sick and taking a nap after working for 19 hours. Wanjiku alleged that the man and his wife would slap her whenever she inquired about her missing salary. The families of the late Beatrice Waruguru and Stella Nafula



alleged that their death was a result of torture since their kin had reported mistreatment prior to their deaths.

2.2.3 Sexual Abuse

Rebecca alleged that her second employer whom she was sold to by the first employer inserted objects in her private parts while Selestine also alleged sexual abuse by the man of the house.

2.2.4 Sleep Deprivation

Rebecca alleged that her first employer only allowed her to sleep for one hour from 5am to 6 am. Shani Hassan also reported that she was allowed to sleep for only two hours a night, Faith alleged to have been allowed to sleep for only four hours while Wanjiku purports to have worked from 5 am to midnight every day.

2.2.5 Food Deprivation

According to Shani Hassan, she was given only noodles to eat while Faith recounted that sometimes, she was denied food all together. Wanjiku alleged the man and his wife would refuse to feed her whenever she inquired about her missing salary.

2.2.6 Labour Exploitation

Rebecca alleged being overworked by being forced to work in the homes of her employer's children as well. Selestine reported that her wages were delayed and finally she was forced to work for free. Faith went to Saudi Arabia as a domestic worker, but her employer, a caterer, allegedly forced her to do catering which was not in her contract. She recounted that on the day after her arrival, she was forced to carry eight gas cylinders weighing more than 15 kilograms from the first to the third floor. Wanjiku alleged that her recruiting agent promised her a \$700 salary only for her to be paid \$180. She reported that her employer would pay her, make her sign a document confirming the payment, and then steal the money back. When she allegedly told them about the missing money, the man and his wife would slap her and refuse to feed her.

2.2.7 Imprisonment prior to deportation

Generally, the movement of women outside their household in Saudi Arabia is restricted thus this limitation leads to the vulnerability to arrest once a fleeing



domestic worker is caught roaming along the streets alone. Imprisonment is justified as punishment for breaking the contract, which states that a worker should remain employed by her sponsor for two years. The inadequacy of imprisoning the workers prior to deportation is three-fold, first, the workers are automatically assumed to be at fault; second, the employers are not investigated for their role in triggering the worker to run away, third and most importantly, the worker is kept from going back home often times following some form of abuse, because the employer had previously confiscated the worker's passport. Selestine narrated how the Saudi police connected her with her employment agency, which detained her demanding \$2,757.52 for breach of contract. Her employers confiscated most of her documents. Selestine and 18 other Ugandan girls eventually ran away from the detention centre of their agency after sharing her story on social media, and a Good Samaritan paid for her air ticket back to Kenya in February 2021.

2.2.8 Religious Intolerance

Moving from Kenya which is predominantly a Christian country to Saudi which is a pure Islamic nation is bound to create some tensions between the employer and the domestic worker stemming from each person's belief.

2.2.9 Psychological Abuse

All of the above-mentioned abuses have their negative effects on the body, but just as important is how they affect someone emotionally. Their impact can change the way a person views themselves or responds to the world around them. Physical wounds can heal and allow a person to move on and forget about the pain once inflicted but psychological abuse can be hard to detect and treat. Selestine indicates that she gave in to the sexual advances of her violent male employer but became depressed and would bury her head into the freezer to suppress her anguish because what she was doing was a sin. Wanjiku Njoki also indicated that she worked from 5 am to midnight every day, spoke only when spoken to, and was very depressed.

2.3 The Role of Relevant Stakeholders in the Recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

The National Employment Authority (NEA), The Private Employment Agencies (PEAs), The National Industrial Training Authority (NITA), The Commissioner for Labour, The Ministry of Foreign Affairs and the department of immigration all have a direct role in the recruitment and management of migrant domestic workers. The role of each of the relevant departments is discussed below:

2.3.1 National Employment Authority (NEA)

Brief Background

The National Employment Authority plays a key role in licensing/registering and regulating private employment agencies responsible for recruiting prospective domestic workers for the KSA besides approving all job orders or demand letters in the *Musaned* system.

The NEA uses the National Employment Authority Integrated Management System (NEAIMS) to register/licence those who intend to recruit workers both locally and abroad where the agent uploads the required documents on the NEA portal. NEAIMS has the following functions;

- i. Where those seeking jobs locally and abroad can register,
- ii. Registration of private employment Agencies,
- iii. Emergency distress reporting for migrant workers and,
- iv. Provides information on registered private employment Agencies.

NEA is also required to approve all recruitments on the *Musaned* system to ascertain that the intended recruitment is through a licensed PEA, that the prospective domestic worker has undergone homecare management training, availability of workforce and the compliance of the contract terms with relevant labour laws by pre approving all job orders.

Officers from the Authority indicated that the Authority has in collaboration with NITA developed a homecare management curriculum used to train prospective domestic workers. It was noted that NITA submits reports to NEA on those who have undergone the homecare management training.

Investigations Findings

i. **Vetting process of Private Employment Agencies(PEA)**

NEA is the secretariat to the inter-ministerial vetting committee comprising representatives from; the Ministry of Labour, the Ministry of Internal Security (Directorate of criminal investigation (DCI) National Intelligence Service (NIS), National Police Service (NPS) and National Coordination Department, Department of Immigration, The Ministry of Foreign Affairs and The Office of the Attorney General.

The Committee which vets applications for registration of Private Employment Agencies (PEA) meets when there are enough files for vetting. NEA receives registration documents from PEAs via the NEAMIS and verifies the documents based on the requirements provided under the Labour Institutions Regulations. The Documents once approved by NEA are forwarded to NIS for a background check. A negative report from NIS automatically disqualifies the applicant. For applicants that pass the background check, NEA undertakes physical inspections of their proposed offices and drafts inspection reports. The following documents are then forwarded to the vetting Committee; Certified copies of the directors' Identity documents, Tax compliance certificates, Police Clearance certificates, NIS background check Report and NEA Inspections Reports. Applicants who are vetted successfully are given a greenlight to pay the required fee, execute the security bond and are licensed to operate for one year. Despite the fact that the vetting and licensing process appears fool proof, NEA still faces the following challenges;

- Some PEAs submit fake documents like police Clearance certificates, tax clearance, CR 12 and fake lease agreements.
- Some PEAs hire offices for the purposes of NEA inspections and then give them back rendering them untraceable whenever needed.
- Interference by politicians who use proxies to operate the agencies.
- Some Kenyans are being used by foreigners to open recruitment agencies.

- Some agents are opening new agencies after defrauding unsuspecting job seekers.
- Some agents change their office location after being licensed without notifying NEA hence making it difficult for NEA to conduct spot-checks.
- Unregistered recruitment agencies sending workers out of the country using visitor's Visa or Fake attestation documents.
- Though the contractual period for domestic workers is two years, the security bonds executed by PEAs that should cater for the repatriation of a domestic worker in case a need arises runs concurrently with the licence period which is one year so the bond may be expired by the time its needed for repatriation

From the analysis above, it was established that NEA lacks a sufficient legal and enforcement framework for dealing with rogue PEAs. The regulations do not assign expressed responsibility to PEAs such as reporting on the welfare of migrant workers throughout the contract period. The legal framework also lacks punitive measures to non-compliant agents or those who use forgery/fraud to obtain licences.

ii. **Management of Private Employment Agencies**

NEA employs the following ways in the monitoring and supervision of licensed PEAs:

- NEA requires PEAs to submit quarterly reports indicating the number of domestic workers recruited the country of destination, the period of work and the name of next of kin. The reports are the main source of data for NEA regarding the number of Kenyans who travel to foreign countries, the skills exported and the next of kin details in case of distress calls. However, NEA contends that the data provided by PEAs is never 100% correct and complete and thus NEA doesn't have accurate data of Kenyans currently employed in Saudi Arabia as domestic workers. NEA can only evaluate compliance of PEAs using its own independent accurate data to counter check the reports submitted by PEAs.

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- NEA conducts impromptu spot-checks to check whether an agent has changed location or whether they still have the manager that was vetted. The inspections are also meant to weed out unregistered employment agencies. However, NEA doesn't have the capacity to undertake inspections on all PEAs every year thus rendering this system of management inefficient and ineffective
 - NEA works with PEAs associations ASMAK (Association of Skilled Migrant Agencies in Kenya) and KAPEA (Kenya Association of Private Employment Agencies) to control the association members by ensuring their members maintain the code of conduct and as a main channel of complaints lodging and resolutions. The association though lack legal backing so their decisions are not binding to their members thus they can't self-regulate.

From the Analysis above, it is evident that NEA has put systems in place to assist in monitoring and supervision of licensed PEAs though not very effective.

iii. **Role of NEA in recruitment and management of migrant workers**

NEA approves job orders/demand letters uploaded in the NEAMIS. NEA also approves the list of prospective migrant workers and provides the list to Immigration for fast-tracking of their passports. NEA approves all recruitments in the *Musaned* system before agents can process work Visa and proceed to the Commissioner for Labour for attestation. NEA gets assessment results of pre departure training from NITA to guide in their approval. PEAs also inform NEA about migrant workers who have completed their contracts and want to return to Kenya. NEA also receives calls from distressed migrant workers and depends on the *Musaned* system to identify the agent that recruited the distressed migrant worker to ensure her repatriation in liaison with the ministry of foreign affairs.

From the above analysis, NEA is at the centre of the recruitment and management of migrant domestic workers. However, it is also clear that the NEA lacks sufficient legal muscle to hold rogue agencies accountable and to deal with migrant workers who irresponsibly flout the contractual terms. It is also

apparent that NEA depends on the Saudi-based *Musaned* system for data on Kenyan Migrant workers in Saudi Arabia.

2.3.2 National Industrial Training Authority (NITA)

Brief Background

The National Industrial Training Authority is a body established by the Industrial Training Act, Cap 237 Laws of Kenya. The main functions of NITA include; the conduct of Industrial Training, accreditation and regulation of institutions engaged in Skills training for industry, regulating trainers registered under the industrial training Act, Development of industrial training curricula, and Assessment and certification of industrial training. Industrial training refers to skill upgrading which is meant for people already in the industry while technical training refers to pre-skilling which is meant for people from schools or graduates.

Initially, homecare management training offered to prospective migrant domestic workers was regulated by NEA and was only offered for two weeks. When NITA took over it insisted that the syllabus as it was could not be covered in two weeks and required a minimum of 6 weeks for effective coverage. However, PEAs who are the major stakeholder contended that it would inflate the recruitment cost. As a result, a compromise of three weeks training period was reached.

Investigations Findings

i. Role of NITA in accrediting and Regulating Institutions offering Homecare Management Training

NITA got involved in the regulation of homecare (Pre-departure) training in the year 2020. Before then, NEA was responsible for accrediting training centres which would then train, assess and certify candidates.

NITA has a checklist (Application Form for Registration and Renewal of NITA registered Training Providers (NITA/IT/IBTA/G/2)) that contains all the requirements to be fulfilled before a prospective training centre is accredited. Some of the requirements include; the centre must be incorporated as a company in Kenya, Pin/VAT certificate, premises for operation (Lease Agreements/tenancy



agreements or evidence of ownership), must have resource persons/trainers, Inspection of health Service by County Government and for homecare training, home equipment.

NITA physically inspects the prospective training centres and verifies submitted documents to confirm compliance before issuing a certificate of registration valid for one year. Nonetheless, impromptu re-inspection is done from time to time. The capacity of trainees an accredited institution can have is dependent on the Equipment available, number of training personnel and the available space. It was noted that there are 104 accredited training institutions as per the NITA website.

ii. **Role of NITA in relation to training of Kenyan Migrant Domestic Workers destined for Saudi Arabia**

The Authority has developed a homecare management training programme that is used to equip domestic workers with the necessary skills to work in Saudi Arabia. NITA accredits private training institutions to provide homecare management training to prospective migrant domestic workers.

It was noted that more than 78,000 trainees in fourteen (14) cohorts have gone through the training and that the training takes 21 days. NITA examines, assesses and issues certificates to trainees of the homecare management program and submits the training records to NEA.

Also NITA partners with NEA in curriculum development and inspection of accredited training institutions.

iii. **The Homecare Management Course syllabus**

Homecare management course is packaged into five standalone units. Two are mandatory units: Home care and Life skills while the other two are optional Units: Childcare and Home nursing. The fifth unit which is pre-departure training is only mandatory for workers who have secured employment in foreign countries.



Homecare unit aims at equipping the domestic worker with relevant skills, knowledge and attitudes to perform duties as homecare assistants. The subunits offered are: Housekeeping, Laundry work, Cookery, Supplies control, Household waste disposal, pets, introduction to Childcare, Introduction to Home nursing and emerging trends in Homecare. The unit requires 80 hours, 16 Hours for theory and 64 hours for practice.

Life skills unit is intended to equip domestic workers with knowledge, skills, attitudes and values that empower them to manage the challenges they face in life and prepare them to cope with the constantly changing work environment. The subunits offered are; Ethics and values, personal Hygiene, Communication Skills, Health and safety in workplace, first aid, security within the home setting, Employment opportunities in homecare, Employer-Employee relationship, Personal financial management, personal development and emerging issues and trends in life skills. The unit requires 40 Hours, 13 hours for theory and 27 hours for practice.

The pre-departure training unit for migrant workers is aimed at assisting them to acquaint themselves with the new environment in the host country. The subunits offered are: Introduction to pre-departure training, travel document processing, destination Country, Travel processes, work ethics, Government and recruitment agencies in labour migration, support services for migrant workers, Return and re-integrations and emerging issues and trends in travelling. The unit requires 40 hours, 12 in theory and 28 in practice.

Currently, migrant workers destined for Saudi undertake the three mandatory units and a mandatory 40-hour work placement in 21 days plus an additional one week for assessment.

Challenges affecting effective implementation of the Homecare Management Curriculum

i. The course is offered under Crush Program

The three mandatory units require a total of 160 Hours in the institution and another 40 hours work placement in homes to gain practical experience thus a total of



200hrs is required to effectively complete the program. Currently, the course is done for 21 continuous days, 9 hours per day bringing the total 189 hours against the required 200 hours. Furthermore, the course takes 9 hours instead of the normal 8 hours per day and is conducted even on weekends.

ii. Insufficient Legal/policy Framework

According to the curriculum, Homecare management course targets those with a minimum KCPE or its equivalent. However, until January 2022, the minimum requirement was never a consideration for the homecare management course since stakeholders argued that it's an unnecessary requirement. Additionally, no policy or law apart from the Homecare management course curriculum makes KCPE a minimum requirement hence a challenge for NITA to enforce the same. However, NITA is currently enforcing the minimum requirement of KCPE for all trainees of homecare management. Additionally, apart from the international conventions, the need for homecare management training for migrant domestic workers is only captured in the Kenya- Saudi Bilateral Agreement only.

iii. Interference in the management of training centres

According to NITA, most training centres are owned by either influential persons or PEAs thus creating a conflict of interest and undue interference in their management. Additionally, it was reported that agents with a large number of trainees bully training centres into executing their demands some which are irregular like; changing trainees while in the middle of a training program, registering capacity beyond the accredited capacity, and using their centres as holding facilities for trainees who have finalised their training in the intervening period before they travel ostensibly to prevent them from changing their minds given that the agent has incurred cost in training them.

iv. Gaps in the curriculum

The pre-departure training does not encompass basic Arabic language and training in the understanding of the provisions and terms of the contract of service. Limited effective communication could be a major cause of strained relationships



between a Saudi employer and Kenyan employee. Lack of understanding of the contractual terms would lead a domestic worker to ignorantly violate the terms or fail to discover when the employer is violating the terms.

2.3.3 Commissioner for Labour

Brief Background

The Commissioner for Labour appointed under section 30 of the Labour Institutions Act, 2007 is in charge of the Labour Department in the larger Ministry of Labour and Social Services. He/she is the custodian and enforcer of all labour laws in Kenya. Section 32 of the Labour Institutions Act empowers the Commissioner for Labour to, in writing, delegate to any labour officer any of his/her powers, functions and duties.

Section 83 of the Employment Act, 2007 provides for attestation of foreign contracts by labour officers before travel to the country of employment. Additionally, The Commissioner of Labour is responsible for the implementation and the review of the Bilateral Labour Agreement between GOK and Kingdom of Saudi Arabia to enhance and ensure the welfare and safety of Kenyan migrant workers. It was also noted that the Ministry of Labour has deployed a Labour Attaché in the mission who is expected to provide assistance to the migrant domestic workers. That Labour officer handles distress calls whenever they are reported by the Migrant domestic workers.

Investigations Findings

i. **Attestation of Foreign Contracts of Service for Prospective Migrant Domestic Workers to Saudi**

It was established that no migrant worker can be allowed to leave the country without having their employment and travel documents authenticated by a labour officer. The role of the labour officer in attestation is to ensure:

- a) That the consent of the employee to the contract has been obtained
- b) That there is no fraud, coercion or undue influence that might have induced the employee to enter into the contract.

- c) That the contract is in the prescribed form.
- d) That the term and conditions of employment contained in the contract comply with the provisions of the employment Act and have been understood by the employee.
- e) That the employee is medically fit for performance of his duties under the contract.
- f) That the employee is not bound to serve under any other contract of service during the period provided in the foreign contract

The labour officer will only attest to the contract if he is satisfied that the terms and conditions of employment contained in the contract comply with section 83 of the Employment Act 2007 and other labour laws. The requirements for attestation are:

- a) Duly filled form of foreign contract of service. (Form LD.21)
- b) Duly filled form of bond (Form LD.22); the employer (PEAs) is required to give the Government of Kenya security by way of bond. The purpose of the bond is to ensure the government can hold the employer liable in case of breach of contract.
- c) Duly filled attestation details Forms (Signed by the next of kin to the employee due to travel.
- d) Duly filled list of employees and terms of employment form (Which is signed by the respective employee due to travel)
- e) Medical Certificate certified by a medical practitioner from the recommended medical facility.
- f) Originals of the travel documents (Passport and visa)
- g) For Migrant domestic workers destined to Saudi Arabia, the employment contract must be generated through the *MUSANED*.
- h) The PEA must be validly and up to date registered by NEA.
- i) The prospective migrant domestic workers must have undergone a homecare management training offered by NITA.

The Commission of Labour captures critical data of all prospective migrant domestic workers issued with work visas by the Saudi Embassy and approved for travel after attestation.

Challenges Faced By the Commissioner for Labour in the Attestation Of Employment and Travel Documents For Prospective Migrant Domestic Workers

- **Rogue PEAs migrating Domestic Workers with Unattested Foreign contract of Service;** Some PEAs provide inauthentic attestation to enable them facilitate prospective domestic workers to travel out of the country even after the labour office cancelled their documents or when they totally fail to present their documents for attestation. This is enabled by the fact that the contract remains active in the “Musaned” system upon approval of the demand letter by NEA and so with a valid work VISA, all an agent requires is a forged signature and stamp of a labour officer on the documents in order for an immigration officer to allow the migrant domestic workers to exit the country.
- **Medical Assessments by Private Hospitals:** The Saudi Embassy only accepts medical certificates from specific recommended private hospitals. However, it is the role of the Kenyan government to ensure it exports a medically fit workforce to foreign countries so its proper and common practice that such assessments should be done by public hospitals that are fully controlled by the government.
- **Overlap of roles between NEA and Commissioner for Labour in the facilitation of Migrant Domestic Workers.** Before approval of floated demand letters on the “Musaned”, it is NEA's responsibility to ensure the terms of the contracts are compliant with the provisions of the BLA and Employment Act. However, the Commissioner for Labour is also tasked to authenticate whether the terms and conditions of the employment contracts for migrant domestic workers comply with the provisions of the Employment Act. Failure of a labour officer to attest to a contract originally approved by NEA puts the PEAs in a precarious situation. Additionally, the Commissioner for Labour holds all the data of migrant workers approved to travel out of the country whose data is not readily accessible to NEA.
- **Manual Attestation System,** Labour officers manually review, validate and clear documents during attestation. This system is not only labour intensive but also susceptible to human errors and promotes forgery by unsuccessful

applicants. It also makes it difficult to capture, maintain and share correct and verifiable data with other stakeholders.

ii. **Management of Labour Attachés**

The Labour attaché in Saudi Arabia is an Assistant Commissioner for Labour seconded to the Kenyan Mission Office through the Ministry of Foreign Affairs with requisite wide knowledge in employment matters. The ministry of labour provides financial support for the labour attaché to enable him undertake his duties.

The major function of the labour attaché is to attend to complaints of Kenyan migrant workers in that country and to facilitate repatriation of Kenyan migrant workers in distress in the course of employment in that country.

Challenges faced by the Labour Attachés in the Management of Kenyan Migrant Workers in Saudi Arabia

- **Shortage of staff which hinder effective supervision and service delivery to migrant workers in distress;** investigations established that the labour attaché office is managed by one labour attaché with a skeleton staff. Saudi Arabia is quite expansive and therefore one attaché may not adequately resolve distress from the many Kenyan domestic workers in that Country.
- **Inadequate funding of the Labour Attaché' Office;** it was established that in the last two years, there has been a consistent and sustained reduction of budgets on operation and maintenance (O&M) items which has also affected the allocation of funds to the labour attachés office, thus constraining the labour attachés ability to adequately support the programs and expected operations of the office. It was reported that the quarterly allocation through AIEs in the foreign mission averages KSH.1, 300,000 against a requirement of KSHS.5,000,000 net off personal emoluments, utilities and rent.
- **Lack of Safe Houses in Saudi Arabia for Kenyans in distress;** most migrant workers in distress are housed in deportation centres where the conditions are deplorable. The ministry of labour plans to establish a safe house to



address the plight of distressed workers but lack of budgetary allocations has hampered the plans.

- **Lack of comprehensive complaints handling and dispute resolution mechanisms:** Labour disputes emanating from contracts of service between the labour migrants in Saudi and their employers are handled through the applicable laws of the host countries. The labour attaches intervene through the available diplomatic channels to assist the complainants. The disputes are either reported directly to the relevant authorities of the host countries or received at the Kenyan embassy directly from the complainants or through existing email enquiries which have been opened and shared with the migrant workers. However, this elaborate dispute settlement mechanism does not always translate into expedient and amicable settlement of complaints.
- **Processing of complaints both at the conciliation and court** levels are characterised by long delays which are costly in terms of time and resources for the affected migrants. Further, increased awareness by migrants on their rights has translated into more complaints that the Ministry of Labour and the Kenyan Embassy whose capacity to effectively address them is lacking.
- **Lack of a Legal framework for dealing with Rogue migrant workers;** the law does not define the roles of the migrant workers in terms of keeping to the terms of the contract and there is no code of ethics that binds them. The labour attachés and PEAs have no way of holding accountable migrant workers who abscond/desert duty (runaways), feign illness, change employers without informing their agents, engage in employment without work visa (i.e travel abroad with a tourist visa and engage in employment) and those who refuse to return upon expiry of their contracts. These categories of rogue migrant workers when distressed are most difficult to offer assistance or even repatriate.

iii. **Responsible for the Bilateral Labour Agreement between the Government of Kenya and the Kingdom of Saudi Arabia**

Brief Background

A Bilateral Labour Agreement (BLA) between the Government of Kenya (GOK) and the Government of the Kingdom of Saudi Arabia (KSA) on recruitment of domestic workers for KSA was developed and adopted in January 2016. The aim of the BLA is to secure the interests of both domestic workers and employers. The Ministry of Labour of the Kingdom of Saudi Arabia and the Ministry of Labour of the Government of Kenya were designated as the implementing agencies of the agreement.

The GOK was obligated to: take measures to provide qualified and medically fit workers needed by the KSA according to the job specifications and credentials; Ensure prospective workers have no criminal record; ensure that prospective workers are trained on housework in specialised institutions and have the necessary orientation on the Saudi customs and traditions, lifestyle and costs of living as well as nature and terms of the contract; ensure that domestic workers sign the standard employment contracts prior to departure and the contract to be signed by the employer, domestic worker and recruitment agencies; take the necessary action to facilitate departure of prospective workers to the kingdom within a period not exceeding one month from the date of receipt of Visa among others; ensure domestic workers complete their contractual duration and, ensure that deported workers from Saudi Arabia are not recruited to work in Saudi Arabia.

On the other hand, the KSA was obligated to: take measures to ensure that the welfare and rights of employers and domestic workers employed in the Kingdom of Saudi Arabia are promoted and protected in accordance with the applicable laws, rules and regulations; Take measures to ensure implementation of the employment contract; endeavour to establish mechanism which will provide 24 hour assistance to the domestic worker; endeavour to facilitate expeditious settlement of contractual dispute and ,ensure that workers are permitted to remit their savings derived from their wages.

Investigations Findings

a) **Analysis of the level of implementation of the Bilateral Labour Agreement**

It was established that some provisions of the BLA have not been fully implemented by the Government of Kenya and that of the Kingdom of Saudi Arabia. Specifically:

- **Establishment of a Joint Technical Committee;** that since the adoption of the BLA in 2016, a Joint Technical Committee has never been constituted. There are no deliberations from the required yearly meetings by the Joint Technical Committee. The BLA has never been reviewed in line with Article 7 (ii), although the Commissioner of Labour stated that they had initiated the review of the BLA.
- **Minimum Wage:** It was also noted that though the negotiated minimum wage in the BLA was SR.900 (Ksh. 28,819) per month, there are still some migrant domestic workers recruited formally via *Musaned* who earn less. A case in the example was the interviewed former Migrant Domestic worker Rebecca Sang who was offered SR.850 (ksh.27, 218) in 2019 (ibid pg.17)
- **Rest Hours:** The standard employment contract stipulates that the domestic worker be provided with continuous and undisturbed nine (9) hours of rest per day and is entitled to one rest day per week. However, accounts of a majority of returnee migrant workers indicate that there are no rest days for a domestic worker in Saudi and some are not allowed to sleep for more than 4 hours especially during the Ramadhan festivities.
- **Identity Documents:** The standard contract also stipulate that the passport and work permit of the migrant domestic worker shall remain in his/her possession yet the accounts from a number of former domestic workers outlined in in section 2.1 of this report indicate that their travel documents (passport and work visa) were confiscated from them at the point of arrival.
- **Site of Employment;** it's also a provision of the standard contract that a domestic worker shall work solely for the employer and his/her immediate household. It was established from domestic workers' returnee accounts

that some employers force their domestic workers to work for their relatives in different households and also work in their business premises.

- **Sickness;** Even though the standard employment contract stipulates that a domestic worker shall be allowed to rest for medical reasons and that the employer shall bear all medical expenses, cases of being punished for resting while sick and being denied medical attention have been reported.

b) **Gaps identified in the BLA**

- According to the BLA, the GOK proposed a **minimum wage** of between 1200 riyals and 1500 riyal while KSA proposed 900 Riyal as minimum wage. There was no conclusive figure they agreed on. It was noted that since there is no agreed figure on minimum wage, employers take advantage of this gap and pay Kenyan Domestic workers 900 Riyals equivalent to Kshs. 28,819 which is a lower amount as compared to their counterparts from other countries like Philippines yet they all perform the same nature of work.
- According to clause 14 on **Termination of Contract**, an Employer has 30 days' notice, and the domestic worker has to give a notice of two months to the Employer, which is a contrast to the standard Labour Practices where there are equal timelines for both the Employer and the Employees. The clause does not provide the need to notify a third party, including the Saudi Recruitment Office, Labour Attaché, and the Kenyan Embassy.
- The BLA only mentions recourse without further elaborating on channels to be followed including who and how dissatisfied Kenyan Domestic workers should communicate and the hierarchy of appeal.
- According to Clause 13 of the standard employment Contract, in case the Domestic Worker runs away from or refuses to work without valid cause, the Kenyan employment agency shall be responsible in having him/her replaced or in returning the accrued cost of recruitment to his/her employer, as per agreement between the employer, Saudi Employment Agency and the Kenyan Employment Agency. This responsibility should not

be placed on PEAs since they have no control over migrant domestic workers once she/he reports to work. The BLA should define unacceptable conduct from Domestic workers and stipulate punitive measures against runaways' domestic workers who don't go back to the agents' offices, Kenyan Embassy, safe houses or police station.

- The BLA does not clearly provide sanctions for rogue domestic workers, rogue employers and rogue private employment agencies. There is no clear provision for domestic workers' protection especially from abusive employers

2.3.4 Ministry of Foreign Affairs/Kenya Embassy

Brief Background

The Ministry of Foreign Affairs (MFA) role concerning the Kenyan diaspora as guided by the Foreign Service Act, 2021 is to serve and promote legitimate interest of Kenyans living abroad as well as provide consular services as prescribed.

The MFA, through its missions abroad facilitates and coordinates the provision of consular services to Kenyan diaspora. These services include: Registration of Kenyans, procession of personal documents such as passports, national identity cards, birth and death certificates, marriage certificates, emergency travels documents; Regaining and renunciation of citizenship or dual citizenship; Authentication of documents, Support of Kenyans in distress; Burial, cremation and repatriation of deceased Kenyans; Consular access and deportation.

Investigations Findings

Role of the Kenya Embassy in Riyadh concerning Migrant Domestic Workers in Saudi Arabia

Upon arrival in Saudi Arabia, Kenya Domestic workers are encouraged to voluntarily register at the Kenya Embassy and the Ministry has data of all Kenyans who have willingly registered. Additionally, MFA has provided a link for Kenyans in the Diaspora to register. The roles of the Kenyan embassy towards the migrant workers include;

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- a) The Kenyan Embassy in Riyadh Collaborates with the Saudi ministry of Human Resource and Social Development(Labour) in Complaint Management through their dispute settlement department where aggrieved parties file labour complaints for settlement between employers and employees. The mission makes written complaints or writes referral letters for Kenyan migrant workers directly to the ministry.
 - b) The Embassy also offers consular services to migrant domestic workers including processing of personal documents like replacing lost identity cards, passports, maintains records of all Kenyans in Saudi Arabia and houses the Labour Attaché'.
 - c) The mission collaborates with the Ministry of interior of Saudi especially when Kenyan migrant workers' rights are violated, when they are arrested and have no legal status requiring the mission to issue emergency travel documents to enable deportation. The police department assists in providing rescue services to migrant workers who have run away from employer's houses or from their workplaces.
 - d) The Mission collaborates with the Ministry of Health of Saudi Arabia whenever the Kenyan migrant workers require emergency attention, cases of bereavement, medical reports, death certificates and support for those in hospitals.
 - e) The Mission collaborates with the recruitment offices under their umbrella body the Coordination Council for Recruitment Companies who are responsible for the migrant workers.

It was established that in cases of serious concerns from family, Kenyan Private Employment Agencies or domestic workers, the Embassy normally acknowledges receipt and directs the complaints to either NEA or Commissioner of Labour depending on the nature of complaints and appropriate corrective action sought. On the other hand, when the Embassy gets information on death affecting a domestic worker they notify the registered next of kin and channel the same to the Ministry of Labour or National Employment Authority.

Records concerning deaths and distress calls are made to the Kenya Embassy. The Ministry through the embassy facilitates procedures of body identification,



embalming, and issuance of the police, medical and post-mortem reports. According to the Assistant Director Diaspora and Consular Affairs Directorate, in case of death in Saudi Arabia, the Ministry informs the family of the deceased and requests the family to appoint representatives who will receive the body upon arrival in the country.

It was established that in the year 2019 three Kenyans died in Saudi Arabia out of which two were domestic workers. In 2020, forty-eight Kenyans died in Saudi Arabia twenty-nine were domestic workers and in the year 2021 forty-one Kenyans working died out of which eighteen were domestic workers.

Challenges faced by the Ministry of Foreign Affairs/Kenyan Embassy in the Management of Kenyan Migrant Workers in Saudi Arabia

- a) **Irregular Transfer of Sponsorship**; Some employers transfer employees to another employer without being sanctioned by the Ministry of Human Resources and social Development.
- b) **Lack of Shelter/Safe Houses**; The Mission does not have safe houses to offer temporary accommodation to distressed workers awaiting completion of their cases for re-engagement or repatriation
- c) **Poor Accessibilities to Authorities**; Most of the migrant workers do not know what, where, when and how to report their cases of human rights violation or contact authorities or the Embassy.
- d) **Vastness of the Kingdom**; Besides the kingdom of Saudi Arabia being very vast in Size, settlement patterns are found in far apart cities only and that's where most of the Kenyan migrant workers are working. This calls for long distance travels for the purpose of offering consular services. The labour attaché's office is understaffed and suffers delays in disbursement of funds which are already insufficient.
- e) **Rogue Migrant Workers**; Cases of runaways (contract abandonment) by migrant workers

2.3.5 Directorate of Immigration and Citizen Services

Brief Background

The Directorate of immigration is responsible for issuing Kenyan passports to prospective domestic migrant workers and clearance of recruited domestic workers with duly attested employment documents before departure to Saudi Arabia or other foreign countries.

Investigations Findings

It was noted that during the online application for issuance of passport to prospective migrant domestic workers, the PEAs uploads; a letter from the Ministry of Labour, the signed contract of service, letter from KAPEA or ASMAK, birth certificate and National Identification Cards of the prospective migrant domestic worker.

According to the Deputy Director Immigration, after application, the agencies are given slots depending on the branch where applications were done for the domestic workers to present themselves for (Biodata) fingerprints and passport photos, for example applications at the Headquarters are given 50 slots. This was confirmed by the Chair of ASMAK and KAPEA. The Immigration Department has designated a special desk and specific officers in all branches to fast-track the processing and printing of their passports which takes one week.

It was noted that at the point of exit, immigration officers' checks the agent list of recruited domestic migrant workers against a list obtained prior from the Commissioner of Labour sent through the official email of prospective domestic workers whose documents were successfully attested.

Gap identified

That apart from the normal clearance at the airport including production of a passport for one to be cleared to move to foreign countries for work, there are no legal guidelines to guide on clearance of domestic workers to Saudi Arabia. The Commissioner of Labour stated that there is disconnect between the Labour Department and clearance done at the airport since those not attested are cleared at the airport.

2.3.6 Private Employment Agencies (PEAs)

Brief Background

PEAs facilitate the recruitment and processing for travel of prospective migrant domestic workers to the Kingdom of Saudi Arabia. They act as a link between domestic workers and Saudi employers. To facilitate domestic workers, the agencies: Applies for and picks required travelling documents; takes prospective migrant domestic workers to approved training centres for homecare management training; and takes prospective domestic workers to hospitals approved by Saudi Embassy for medical examination.

It was noted that most private employment Agencies are registered as members of Association of Skilled Migrant Agencies of Kenya (ASMAK) and Kenya Association of Private Employment Agencies (KAPEA) which is a key requirement during registration for licensing. Further, it was established that there are 743 duly registered Private Employment Agencies as per the NEA website.

Investigations Findings

Issues raised by Private Employment Agencies on the recruitment and management of Domestic Workers

- i. **Citing by NEA:** The Chair of Association of Skilled Migrant Agencies in Kenya (ASMAK) indicated that complaints channelled directly from domestic workers to their families are mostly reported to NEA. However, he alleges that NEA lacks proper or adequate procedures for investigation and follow-up on such complaints. As a result, NEA fails to inform the respective PEAs of such complaints but keeps a record of such complaints in the file of the accused PEAs which negatively impacts their request for renewal of licences.
- ii. **Issues with regards to licensing:** Both KAPEA and ASMAK states that the NEA licence to PEAs is valid for one year yet the job contract period between the domestic worker and the Saudi Employer is two years. Chair ASMAK, said that it makes it difficult for PEAs to assist the domestic workers when issues arise in



the period after expiry before renewal of the licence considering that renewal takes more than three months. They both proposed that the validity period of the NEA licence should match the contract period and that the renewal of the NEA licence be automatic in cases where the agencies have no issues pending resolution.

The Chairperson of ASMAK, proposed that vetting at the time of renewal should only be done when given agencies have issues. He further stated that it's a waste of time for directors of PEAs to keep on providing information in regards to their education during every renewal since such information does not change. He also alleged that background checks conducted before registering or renewing prospective PEAs by the National Intelligence Service as part of the vetting is a duplication of duties since directors of private recruitment Agencies present certificates of good conduct.

iii.

Management of the Associations: The Chairperson of ASMAK further alleged that there are internal conflicts within KAPEA where some members are denied membership certificates which affect their operations. He also indicated that it is challenging to hold into account any PEA which engages in unethical recruitment practices since some shift their membership from one association to another to evade accountability. He also stated that there are proxy recruiters hiding in between the two associations making it difficult for KAPEA and ASMAK to control their members since it becomes hard to ascertain the genuine ones as some PEAs have two membership certificates.

He recommended formation of one umbrella national association recognized by NEA for the control of PEAs to come from one end or to make it easy to discipline errant PEAs who keep on shifting from one association to another. He proposed that NEA, being the regulator of all the registered PEAs, should be in-charge of elections of the membership to the Committee or registrar of Societies in Kenya to watch elections by NEA. NEA also proposed the need for the associations to self-regulate.



iv Homecare Management Training: The Chairperson of ASMAK and representative of KAPEA stated that one does not need basic education (KCPE) to perform domestic work in Saudi Arabia. The two representatives said that as long as one is able to communicate in both English and Kiswahili they should be allowed to engage in domestic work if they are willing (literacy and suitability). However, it was noted that the homecare curriculum set KCPE as its minimum requirement. This means that it's only people with the basic education certificate who can effectively benefit from the content of that curriculum.

According to the Chairperson of ASMAK, allocation on the number of trainees at a given homecare training centre should be based on number of staff and capacity of training venue and not on accommodation or bed capacity (as is the practice now) since he opines that one can study and sleep at home. According to NITA, the capacity of each training centre is informed by the available office space, accommodation and training personnel.

The Chairperson of ASMAK proposed that homecare management curriculum should be given a shorter period than one month. According to him, delivering the content in one month is unnecessary delay. However, it was noted that the content in the homecare management is expansive and the duration of its coverage needs to be added.

v. Rogue Migrant Workers: Both KAPEA and ASMAK said that some employment agents have incurred financial losses since some prospective migrant workers change their minds or refuse to travel to Saudi Arabia after the agent has paid for their homecare training, medical assessment and acquired their passports. Also, some domestic workers recruited to Saudi Arabia get influenced by other Kenyan workers in Saudi Arabia to run away from their employers by promising them higher salaries while some have poor attitude and therefore fail to take instructions from their employers. This leads to disagreements whereby PEAs find it challenging to get a replacement. There is therefore a need to develop policies that govern Migrant domestic workers and penalties for rogue migrant workers.



vi. Handling of distress calls: According to the Chairperson of ASMAK, PEAs are accused of failure to protect domestic workers recruited in Saudi Arabia yet they do not have control of the employers. Further, he indicated that domestic work is done in closed homes or unseen workplaces which is beyond their control and therefore cannot fully assure safety of those they recruit. Both the Chairperson of ASMAK and the representative of KAPEA indicated that some complaints raised by domestic workers arise as a result of being away from their home in a foreign country and unfamiliarity with the culture thereby making them desire to go back without considering the binding nature of the contract they have signed. They said that they assist/attend to complaints of domestic workers by addressing/resolving some basic issues they receive from them and forward/escalate complex issues beyond their control to the Commissioner of Labour for resolution. They alluded that continued blame on their part has tainted the image of ethical employment Agents.

vii. Bureaucratic Clearance of recruited domestic workers: Both the Chairperson of ASMAK and KAPEA stated that the attestation done by the Commissioner of Labour is a duplication of clearances given that it happens after NEA has given its approval of the contract and the Saudi Embassy has issued VISA for the prospective domestic worker to travel to their Country. Chair ASMAK Proposed for attestation services to be at the County Labour offices to avoid unnecessary travelling.

viii. Challenges on the *Musaned*: According to the Chair ASMAK, some Kenyan employment agencies are sometimes blocked from accessing the *Musaned* system when the Saudi employment agents make a complaint without according them a fair hearing. This frustrates them especially in cases where they had already initiated the recruitment processes. However, it was noted that the *Musaned* system is a Saudi Based system and Kenya (Ministry of Labour) has no control on it.

2.4 The Draft Labour Migration Management Bill, 2022 (LMMB)

Brief Background

This is a bill for an Act of the parliament to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya, to safeguard the rights and welfare of job seekers and migrant workers and for connected purposes.

Investigations Findings

From the analysis of the Labour Migration Management Bill, it was noted that it will address some of the systemic gaps identified in this investigations as follows:

No.	Identified Gaps in the existing recruitment practice	Solutions Captured in the Bill
1.	NEA weak and ineffective enforcement structure	Additional enforcement powers
2.	Use of Brokers in recruitment of domestic workers from the villages	Registration of branch offices for PEAs
3.	The existing laws and regulations do not assign responsibility and liabilities to PEAs.	Under the draft bill, PEAs have been assigned clear responsibilities and tough penalties
4.	Lack of funds to protect and assist Migrant Workers	Establishment of Migrant Workers fund
5.	Lack of a national legal framework for pre departure training.	Captures pre departure training as requirement for any person who intends to travel to another country for employment



Review of the Labour Migration Management Bill shows that some of the gaps identified have not been addressed in the bill, and thus the Commission has made proposals under its recommendations for consideration in order to correct the identified systemic gaps and streamline the recruitment process for the good of both the employer and the employee.

2.5 Best Practices from Other Countries Sending Migrant Domestic Workers to the Kingdom of Saudi Arabia

Employment of domestic workers in Saudi Arabia is currently allowed from the Philippines, Indonesia, Niger, India, Pakistan, Bangladesh, Sri Lanka, Vietnam, Mauritania, Uganda, Eritrea, South Africa, Madagascar, Uzbekistan, Cambodia, Mali and Kenya. In their report, “Domestic workers across the world: global and regional statistics and the extent of legal protection” ILO identifies The Philippines, Sri Lanka and Indonesia as the major sending countries of female migrant workers. The following are some of the practices undertaken by these countries to protect their domestic migrant workers:

i. Enactment National Labour Migration Laws

The Philippines has enacted an Act (Philippine Overseas Employment Administration (POEA).) amending the migrant workers and overseas Filipinos Act of 1995 to further improve the standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress, and for other purposes.

The Sri Lankan government has developed a framework for labour migration enshrined in the Sri Lanka Bureau of Foreign Employment Act, 1985. This was done through the formulation of the National Ministry of Foreign Employment Promotion and Welfare. Its aim is to articulate the State Policy regarding Sri Lankan citizens engaged in employment in other countries

ii. Adoption /Ratification of multilateral conventions, declarations or resolutions relating to the protection of workers

The Philippines government has adopted the United Nations General Assembly Resolution against Violation of the Rights of Women. The convention advocates for the Elimination of All Forms of Discrimination against Women. The Philippines



has also ratified two most important international conventions for the protection of migrant domestic workers: ILO C189 which states that every domestic worker has the right to a safe and healthy working environment and the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. Further The State allows the deployment of overseas Filipino workers only in countries that are a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers.

iii. **Establishment of Overseas Labour Offices**

The Philippine Overseas Labour Office undertakes activities facilitating workers' employment and promoting the welfare of Filipino workers. The POLO (Philippine Overseas Labour Office) is directly under the Office of the Secretary of Department of Labour and Employment. It acts as the operating arm of Department of Labour and Employment for the administration and enforcement of its policies and programs applicable to the Overseas Filipino Workers (OFWs).

iv. **Establishment of Safe Houses**

Migrant Workers and other Overseas Filipino Resource Centres (MWOFRCS) are established in countries with large concentrations of migrant Filipinos. MWOFRCS serve as central hubs of welfare and assistance. These Centres are also used as temporary shelters for overseas Filipinos in distress as well as areas for developmental activities.

v. **Negotiation of Bilateral Agreements with Host Countries**

The Philippines government has entered into BLAs with countries where there are many domestic workers from their country and have made sure that before sending domestic workers to that country, the host country promotes the rights of migrant workers and is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers.



There is a Memoranda of Understanding between Indonesia and Saudi Arabia on placement and protection of Indonesian domestic workers that lays responsibility on what each governments is supposed to do in honour of the MOU.

vi. **Expansion of Consular Services to Migrant Workers**

Philippines provides a best practice benchmark for the expansion of consular services, with its Philippines Overseas Labour Offices that serve as an extension of the Department of Labour and Employment) in protecting the rights and promoting the welfare of overseas Filipino workers.

Sri Lanka provides mechanisms to protect migrant workers from exploitation and abuse by ensuring that Sri Lankan Diplomatic Missions in host countries have adequate systems and services to assist all migrant workers in each country and work towards their protection and welfare in a proactive manner

vii. **Empowerment of prospective Migrant Workers**

The Sri Lankan government established minimum requirements to qualify for labour migration pertaining to age, literacy and suitability for selected work categories. It also offers training programmes to equip workers with skills for decent work language proficiency and awareness of rights and remedies.

Pre-departure training in Indonesia has fostered the dissemination of information to potential migrant workers and strengthened their ability to protect themselves. Financial education and other economic empowerment activities have had a significant impact on migrant workers' lives and those of their families

viii. **Multi Agency Approach in Management of Labour Migration**

In Indonesia, Support for stakeholder cooperation has promoted alliances between government agencies, trade unions, NGOs, and migrant and domestic worker organisations. These have enabled more effective and sustainable efforts at promoting policy development and policy implementation that protects the rights of migrant workers. Capacity building and training efforts has also proven effective in helping organisations to internalise these important issues and to incorporate them into their own programming efforts.



The Philippines also implements a one-country-team Approach where all government Ministries, directorates, and agencies involved in Labour migration work together in order to build synergy and enhance co-ordination.

CHAPTER 3: CONCLUSIONS

From the investigations the following conclusions were arrived at:

i. Kenyan Domestic Worker's Experiences in Saudi Arabia

Investigations established that the major forms of abuses experienced by domestic workers in Saudi Arabia were: Passport Confiscation, Physical Abuse, Sexual Abuse, Sleep Deprivation, Food Deprivation, Labour Exploitation, Movement Restriction, and Imprisonment prior to deportation, racism, Religious intolerance and Psychological Abuse. Nonetheless, it's also evident from Catherine Murochias' experience that not all domestic workers in Saudi experience ill-treatment and abuse.

ii. The Role of NEA in the recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

The National Employment Authority plays a key role in licensing/registering and regulating private employment agencies responsible for recruiting prospective domestic workers for Saudi Arabia besides approving all job orders or demand letters in the *Musaned* system.

From the investigation's findings, it can be concluded that NEA lacks a sufficient legal and enforcement Framework for dealing with rogue PEAs. The Regulations do not assign expressed responsibility to PEAs such as reporting on the welfare of migrant workers throughout the contract period. The legal framework also lacks punitive measures to non-compliant agents or those who use forgery/fraud to obtain licenses. It was also established that though available, the systems put in place by NEA to assist in monitoring and supervision of licensed PEAs are not very effective.

iii. The Role of NITA in the recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

NITA offers homecare management training to prospective migrant domestic workers which include pre-departure training which is a mandatory requirement



for Migrant domestic workers. The Authority has developed a homecare management training program that is used to equip domestic workers with the necessary skills to work in Saudi Arabia. NITA accredits private training institutions to provide homecare management training to prospective migrant domestic workers.

Investigations established that the course is offered under a crush program for 21 continuous days, 9 hours per day bringing the total 189 hours against the required 200 hours, and is conducted even on weekends. It was also noted that no policy or law apart from the Homecare management course curriculum itself makes KCPE a minimum requirement hence a challenge for NITA to enforce the same given that it's been a contentious issue among stakeholders.

Additionally, investigations revealed that apart from the international conventions, the need for homecare management training for migrant domestic workers is only captured in Kenya- Saudi BLA and that it's not entrenched in our national legal framework.

It was further established that NITA experienced interference in the management of training centres which are mostly owned by either influential persons or PEAs thus creating a conflict of interest and undue political interference in their management. Further it was noted that the Homecare curriculum does not encompass basic Arabic language and training in the understanding of the provisions and terms of the contract of service which was flagged as an enabling factor for abuse of migrant workers

iv. The Role of Commissioner for Labour in the recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

The Commissioner for Labour is the custodian and enforcer of all labour laws in Kenya. S (he) undertakes attestation of foreign contracts before migrant workers travel to the country of employment, is responsible for the implementation and the review of the Bilateral Labour Agreement between GOK and the Kingdom of Saudi Arabia, and is in charge of the Labour Attaché deployed to Saudi Arabia by the Ministry of Labour.



Investigations revealed that the Commissioner for labour faces some challenges in the attestation process including: Rogue PEAs migrating domestic workers with unattested(fake) Foreign contracts of Service; Medical assessment being done majorly by private hospitals approved by the Saudi Embassy; overlap of roles between NEA and Commissioner for Labour in the facilitation of migrant domestic workers and the use of manual systems to attest travel documents which is labour intensive, susceptible to human errors promotes forgery by the unsuccessful applicants and makes it difficult to capture, maintain and share the accurate data with other stakeholders.

The major function of the labour attaché is to attend to complaints and facilitate the repatriation of Kenyan migrant workers in distress in the course of employment in that country. Investigations established that the labour attaché faces the following challenges: Shortage of staff which hinders effective supervision and service delivery to migrant workers in distress; inadequate funding; lack of safe houses for Kenyans in distress; lack of comprehensive complaints handling and dispute resolution mechanisms and lack of a legal framework for dealing with rogue migrant workers.

v. The Role of Ministry of Foreign Affairs in the recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

The Ministry of Foreign Affairs (MFA) role concerning the Kenyan diaspora is to serve and promote the legitimate interest of Kenyans living abroad as well as provide consular services as prescribed.

In undertaking its role concerning Migrant Domestic Workers in Saudi Arabia, the Kenyan Embassy in Riyadh faces the following Challenges: Irregular Transfer of Sponsorship; Lack of Shelter/Safe Houses; Poor Accessibilities to Authorities by domestic migrant workers; Vastness of the Kingdom and rogue migrant domestic workers.

It was established that in the year 2019 three Kenyans died in Saudi Arabia out of which two were domestic workers. In 2020, forty-eight Kenyans died in Saudi



Arabia out of which twenty-nine were domestic workers, and in the year 2021 forty-one Kenyans working died out of which eighteen were domestic workers.

vi. The Role of the Department of Immigration in the recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

The Directorate of immigration is responsible for issuing Kenyan passports to prospective domestic migrant workers and clearance of recruited domestic workers with duly attested employment documents before departure to Saudi Arabia or other foreign countries.

Investigations revealed that the directorate has put in measures to Fast Track the processing of passports for prospective domestic migrant workers. However, it was established there is a disconnect between the Labour Department and clearance done at the airport given that those not attested are sometimes cleared at the airport for exit.

vii. The Role of the PEAS in the recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia

Investigations established that PEAs facilitate the recruitment and processing for travel of prospective migrant domestic workers to the Kingdom of Saudi Arabia. They act as a link between domestic workers and Saudi employers.

It was established that there are 743 duly registered private Employment Agencies and most of them are registered as members of the Association of Skilled Migrant Agencies of Kenya (ASMAK) and Kenya Association of Private Employment Agencies (KAPEA)

PEAs raised issues around licence validity period, vetting before renewal and background check before registration. PEAs also did not support the need for KCPE as a minimum requirement to undertake home care management training. Further, PEAs opposed the use of the accommodation capacity of homecare training centres as a criterion used by NITA to determine the number of trainees



and also recommended that the homecare curriculum should take lesser time than the current 4 weeks. Equally, PEAs also raised issues with the duplicate nature of attestation that happens after NEA has already approved the contract.

It was established the two registered associations found it challenging to self-regulate because; of internal fights, members shifting membership to avoid accountability and proxy recruiters hiding in between the two associations

Investigations noted that PEAs were unhappy with the continued blame on their part in handling of distress calls which they allege has tainted their image yet most of the issues complained about are beyond their control. They indicated that they assist/attend to complaints of domestic workers by addressing/ resolving some basic issues they receive from them and forward/escalate complex issues beyond their control to the Commissioner of Labour for resolution. PEAs also indicated that they lacked mechanisms for governing Migrant domestic workers and dealing with rogue migrant workers. Similarly, PEAS reported that some Kenyan employment agencies are sometimes blocked from accessing the “Musaned” system when Saudi employment agents make complaints without being accorded fair hearing.

viii.

The Labour Migration Regulatory Framework in Kenya

From the analysis of the legal framework, it was established that Kenya has many labour laws, but the relevant ones don't refer directly to labour exportation, which means they can't protect migrant workers. However, it was also established that the drafting of a Labour Migration Management Bill is underway and once enacted will address some of the systemic and legal gaps identified by investigations as follows: NEAs weak and ineffective enforcement structures; Use of brokers in the recruitment of domestic workers; Lack of accountability by PEAs; Lack of funds for the protection and helping Migrant Workers; and Lack of a national legal framework for pre-departure training. Recommendations have been made for inclusion of some of the gaps identified but not included in the draft labour Migration and Management bill.



A BLA between GoK and KSA on the recruitment of domestic workers for the KSA was developed and adopted in January 2016. The aim of the BLA is to secure the interests of both domestic workers and employers. Investigations noted that the following provisions in the BLA have not been fully implemented: constitutions of a joint technical committee; Payment of minimum wage; provision for rest hours; non-confiscation of travel documents; compliance to the site of employment; and provisions of sick offs. Investigations also revealed the following gaps in the BLA: Kenyans are paid lower wages in comparison to their counterparts doing the same kind of work from other countries; unequal timelines for notice of termination of employment; and a lack of clear sanctions for rogue domestic workers.

ix. **Best practices in the management of Labour Migration of Domestic Workers**

Some of the best practices in migrant domestic worker labour management identified from the Philippines, Sri Lanka and Indonesia include; the enactment of national labour migrations laws, adoption or ratification of multilateral conventions, declarations or resolutions relating to the protection of workers, establishment of overseas labour Offices, establishment of Safe houses, negotiation of a bilateral agreement with host countries, expansion of Consular services for migrant workers, empowerment of Migrant workers through the setting of minimum requirements to qualify for labour migration, pre departure trainings and a multi Sectoral approach in management of labour migration.

CHAPTER 4: RECOMMENDATIONS

From the systemic interrogation of the recruitment cycle of migrant domestic workers to Saudi Arabia, the Commission proposes the following recommendations and actions to bridge the gaps identified Pursuant to section 42 (2) (b & c) of the CAJ Act:

a) Recommendation to the Office of the President

- i. The office of the President to initiate a multi-agency working platform by establishing an electronic single window integrated system for all stakeholders. This will not only ensure digitalization of the recruitment process but also reduce bureaucracy and promote credibility of the recruitment and management of migrant domestic workers while enhancing inter-agency collaboration, coordination, and cooperation. This will also ensure that the country has accurate and verifiable data regarding migrant workers without relying on the *Musaned* which is a Saudi Arabia-based system.
- ii. Government of Kenya to consider ratifying International Labour Organisation (ILO) Domestic Workers Convention, 2011 (No. 189) and the Private Employment Agencies Convention, 1997(No. 181)

b) Recommendations to the Ministry of Labour

- i. The Cabinet Secretary for labour to fast-track the review of the BLA between GOK and KSA to adequately cover identified gaps and emerging issues specifically renegotiate for; wages for migrant Kenyan domestic workers in Saudi, equal timelines for notice of termination of employment, clear sanctions for rogue domestic workers and employers. The BLA should also provide comprehensive complaint handling and dispute resolution mechanisms for migrant workers and their employers. Further, CS labour should ensure full implementation of the current BLA specifically in the constitution of a joint technical committee, payment of minimum wage, provision for rest hours, non-confiscation of travel documents, compliance to the site of employment, and provisions of sick-off.

- ii. To deploy additional labour attaché in Saudi Arabia and sufficiently fund their offices to cater for the needs of distressed migrant workers who are spread in the expansive size of the Kingdom of Saudi Arabia.
- iii. The Ministry of Labour to sensitise prospective domestic workers to register with the Kenya Embassy upon arrival in Saudi Arabia .Registered details to include: their home areas, their agent (Kenya and sister Agent in Saudi), the name of the employer and the exact location of employment
- iv. To facilitate the establishment of safe houses for accommodating those in distress awaiting repatriation
- v. The GOK to seek alternative sources of employment for the Kenyan growing labour force.
- vi. The Cabinet Secretary for labour to fast-track the finalisation of the draft Labour Migration Management bill that is believed to consolidate all labour migration issues, incorporate emerging issues and cure the existing loopholes or gaps. Further, the CS Labour is to consider including recommendations by CAJ on gaps identified and not included in the draft LMMB as per the table below

No	Gaps Identified and Not covered under the LMMB	Proposals or solutions to address the identified gaps/challenges
1	Mismatch between the NEA Licence validity period, security bond and contract period	Adjust NEA licence and security bond to match the two year period of the contract or whichever period is appropriate
2	Lack of accurate data on Kenyan domestic workers working in Saudi Arabia	To develop a Multi-Agency system for all approvals to be done from one platform (Integrated Data Management System)
3	Liability of PEAs	A requirement for the Kenyan PEA to have a sister recruitment agency in the country of destination for accountability.
4	The associations of PEAs lack legal backing so their decisions are not binding to their members thus they can't self-regulate.	Legally establish one association and empower it to enforce a code of conduct among its members under the regulation of NEA

5	Minimum Level of Education for pre-departure training	Should be included as basic primary Education (to be proved by KCPE certificate)
6	The duplicity of roles between NEA and Commissioner of labour in Approval of Job orders and attestation of Foreign Contracts of Service creating two centres of decision making that PEAs use to navigate the system	Only one institution should be responsible for confirming that job orders and contracts of foreign services meet the terms and conditions of employment provided for in the Law.
7	Lack of Mechanisms of Proof of employee consent.	Area Chiefs and next of kin to be used as witnesses to employee consent. Prospective Migrant workers to appear in person before attesting labour officer
8.	Use of Saudi Accredited Hospitals for medical Examination of prospective Migrant Workers	Medical examination for prospective domestic workers to be conducted by GoK hospitals for credibility and accountability
9	Clearance of prospective migrant domestic workers at the point of exit	Clearance by the Immigration department at the point of exit to be based on or informed by the list of those duly attested by the Commissioner of Labour to help deal with instances of human trafficking.
10	Lack of a return and reintegration framework for migrant workers who return to the country	Regulations to give the procedure for return and reintegration. Return procedure to include mandatory medical check-up to prevent organ trafficking.

c) Recommendations to the National Employment Authority

- i. NEA to conduct public awareness and sensitization on the need for those who intend to seek job opportunities in any foreign Country to visit the Authority website to check the legal status of the given PEAs that intends to recruit them in Saudi Arabia.
- ii. NEA to cause all licensed PEAs to file accurate and updated returns through the NEAIMS system at the beginning of each year and quarterly indicating the number of migrant domestic workers they have recruited and dispatched to Saudi Arabia, their next of kin and the period of work for easy of supervision, monitoring and accountability purposes.

- iii. NEA to develop a policy or manual on complaints management for migrant domestic workers that stipulates clearly the roles or responsibilities of each relevant department in so far as distress handling is concerned.

d) Recommendation to the National Industrial Training Authority

- i. NITA to offer homecare management courses as per its curriculum by ensuring learners cover 200 hours in the normal 8 hours per day for 5 working days. Further, NITA to ensure that the minimum requirement of basic education for trainees is strictly adhered to.
- ii. The Homecare management course to include a unit in basic Arabic language for those going to Saudi Arabia, an understanding of the contractual terms, Complaints and distress handling channels and the procedure of registration with the Kenyan embassies at the host countries upon arrival.
- iii. NITA to develop an online portal where prospective migrant Domestic workers can apply for training then NITA to place them in training centres based on capacity of the centre and adherence to requirements. This will aid NITA in management of training centres and eliminate the opportunity for PEAs with large numbers of trainer bulldozing training institutions.
- iv. NITA to liaise with the relevant Government departments to ensure training institutions adhere to the required health and safety guidelines and specifically to deal with the use of training centres as detention facilities for prospective migrant workers awaiting work Visa and attestation of their documents.

e) Recommendations to the Commissioner for Labour

- i. Digitalize the attestation process to be system based in order to eliminate faking of attestation by rogue PEAs, improve the turnaround time and provide accurate data on attested prospective migrant domestic workers.
- ii. Formulate policies that will ensure Labour Attachés register migrant workers upon arrival at the host country and avail to them a complaints reporting channel for easy reporting in case of distress and evacuation when a need arises. This will also enable GOK to have solid data on its labour exports.



f) Recommendation to the Ministry of Foreign Affairs

- i. The Kenyan embassy in the KSA to increase awareness of the need for migrant domestic workers to register with the embassy upon arrival.
- ii. The Embassy to consider negotiating with the KSA during diplomatic engagements to set up structures for use when a distress call or a complaint is made by a Kenyan Migrant domestic worker.
- iii. The Embassy to continuously engage or take diplomatic initiatives to have adequate systems and services that can protect the welfare and interests of domestic workers in regard to all arising contractual issues in a proactive manner.
- iv. The Kenyan Embassy to consider facilitating the establishment of a formal Welfare Association of Migrant Workers whose goal is to help those in distress.
- v. Ministry of Foreign Affairs to ensure that the Kingdom of Saudi Arabia adheres to its responsibility in the execution of the Bilateral Labour Agreement between the government of Kenya and the Kingdom of Saudi Arabia.
- vi. Ministry of Foreign Affairs in collaboration with the Ministry of Labour to facilitate the establishment of safe houses for accommodating those in distress awaiting repatriation.

g) Recommendations for the Department of Immigration

The department to only use the list officially provided by the Commissioner of Labour to clear prospective domestic workers to Saudi Arabia.

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