

**INFLUENCE OF LABOR MIGRATION ON FOREIGN RELATIONS: A CASE OF
KENYA - MIDDLE EAST RELATIONS**

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requirement for the award of Masters of Arts Degree in International Studies**

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DECLARATION

This Research Proposal is my original work and has not been presented for a degree in any other university or institution.

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This Project has been submitted for examination with my approval as the University Supervisor.

Signature..... Date.....

Dr. Rosemary Anyona

DEDICATION

I dedicate this study to my late sister Salome Karembu Mwambire

ACKNOWLEDGEMENT

I would like to acknowledge my supervisor Dr. Rosemary Anyona, for her constant and invaluable guidance, support, and encouragement that helped me in all the stages of the research and writing of this project. I really appreciate the tough but friendly and constructive criticism.

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To my classmates with whom we worked together sharing information and braving all the challenges of adult learning, I appreciate you all.

ABSTRACT

The problem of labour migration is well documented within the field of international relations. Nonetheless, it is a fluid and highly dynamic area that is likely to impact on different states in different ways. Motion of people from their native nations to different international locations in search of employment and better livelihoods is an age-vintage practice that predates the contemporary state system. In earlier times, however, most of such labour migration was forced and involuntary. Emigration estimations for the number of Kenyan immigrants vary; however, a trend of increased movement of Kenyan citizens to the Arabic world in the Middle East has been noted. Most of these movements are characterized by exploitation in domestic servitude, with some Kenyan working in brothels and massage parlours, or even being forced into manual labour. This has dilapidated the relations between Kenya and Middle East countries. However, the extent of influence has not yet been established. In recent times, the Government of Kenya has embarked in facilitating the movement of its citizenry to other countries as they seek to harness the employment opportunities as well as training in those countries. Empirically, very little is systematically documented as valid, relevant and reliable research information concerning these experiences; save for the largely journalistic accounts of mistreated, fatally injured and/or otherwise abused and/or enslaved Kenyan workers abroad in countries such as Saudi Arabia, Dubai, Jordan among others. It is on the backdrop of this that the study sought to assess the influence of labour migrations on Kenya's foreign relations, by seeking for answers to the following research questions: What are the key drivers for labour migration that influence foreign diplomatic relations between Kenya and Middle-East countries? How do existing foreign policies influence foreign relations between Kenya and Middle East countries? How does domestic policy influence foreign diplomatic relations between Kenya and the Middle East nations? And what are the challenges for labour migrants that influence foreign diplomatic relations between Kenya and the Middle East nations? The study employed descriptive and causal research designs. From the study findings, it was noted that labour migration is a key driver to foreign relations between two nations, significant influence on the foreign relations between Kenya and Middle East countries at 5% significance level. Bilateral trade agreements were associated with significant growth of foreign relations between Kenya and Middle East countries at 5% significance level. On the other hand, challenges of labour migrations were associated with a lowering the likelihood of experiencing better foreign relations between Kenya and Middle East countries. The study recommends that nations or states create employment opportunities for both nationals and internal communities; The study also recommends that Middle East nations review the Kafala recruitment system to be more friendly and humane to migrants. It was also recommended all labour migrant-receiving countries ratify all available ILO conventions for protection of workers and safeguarding their human rights.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACP	African Caribbean and Pacific
AIR	African Institute for Remittances
AU	African Union
CAJ	CAJ news Africa
CEACR	Committee of Experts on the Application of Conventions and Recommendations
COMESA	Common Market for Eastern and Southern Africa
COTU	Central Organization of Trade Unions
CRD	Civil Registration Department
CSOs	Civil Society Organizations
DHRME	Department of Human Resource Management and Employment
DRC	Development Research Center
EAC	East African Community
EU	European Union
FBI	Federal Bureau of Investigations
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GMOD	Global Migrant Origin Database
GNP	Gross National Product
HDI	Human Development Index
HR	Human Resource
HRC	Human Rights Council
HRW	Human Rights Watch
ICMSW	International Convention on the Protection of All Migrant Workers
IGAD	Inter-governmental Authority on Development,
IGAD-RCP	Intergovernmental Authority on Development, Regional Consultative Process

ILO	International Labour Organization
IOM	International Organization for Migration
IPRS	Integrated Population Registration Database System
ITUC	International Trade Union Confederation
KANU	Kenya Africa National Union
KAPEA	Kenya Association of Private Employment Agencies
KNBS	Kenya National Bureau of Statistics
LMRA	Labour Market Regulatory Authority
MENA	Middle East and North Africa
MFAIT	Ministry of Foreign Affairs and International Trade
MIO	Migration Information Source
MIRP	Ministry of State for Immigration and Registration of Persons
MOU	Memorandum of Understanding
MOYAS	Ministry of Youth Affairs and Sports
MPI	Migration Policy Institute
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governmental Organizations
NRB	National Registration Bureau
NRK	Non-Resident Kenyans
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
OXFAM	Oxfam International Organizations
PEA	Private Employment Agency
PEACCM	Private Employment Agency Contracted Case Management
PKO	Persons of Kenyan Origin
RCP	Regional Consultative Process on Migration
SADC	Southern African Development Authority
SIDA	Swedish International Development Cooperation Agency
STDs	Sexually Transmitted Diseases
TIP	Trafficking in persons
UAE	United Arab Emirates

UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
UoN	University of Nairobi
US	United States America
WB	World Bank
WTO	World Trade Organization
YEDF	Youth Enterprise Development Fund
YESA	Youth Employment Scheme Abroad

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Background

The movement of persons from countries of habitual residence to various countries in search of employment and higher livelihoods is an old apply that predates the fashionable state system. In earlier times, however, most of such labour migration was forced and involuntary. Empire builders, sultanates and different ancient rulers from the Nothern Africa, the Middle East, Europe, and the Far East heavily relied on slavery, bondage and varied varieties of political and economic domination, that concerned forceful transfer of populations for functions of exploitation of "cheap" and "free" labour¹. However, it had been not till the early nineteenth century with the arrival of the industrial age, that international labour migration within the modern trendy sense took shape in Europe and later in the Northern America.²

As the twentieth century set in, international labour migration took a worldwide perspective, catapulted by the advanced technology in transport and communication, with increased international interaction amongst folks, ensuing from the First and Second World Wars. The inter-war period was epitomized by the Great Depression of the Ninteen Thirties, and also the post-war perioded was characterized by an increase in global Foreign Direct Investments (FDI) as well as massive industrialization processes in Europe, North America, and Japan among other parts of the globe.³ These events catalyzed the mass movement of people round the globe, and with this came the urge to migrate for higher livelihoods and “greener pastures” in close countries and

¹ Baldwin-Edwards, (2011). *Labour immigration and labour markets in the GCC countries*

² UNHCR, *Note on Refugee Children* (1987).

³ UNHCR (1924). Principle 3, *The Geneva Declaration of the Rights of the Child*.

generally in lands distant. Throughout the latter half the twentieth century, states began to ascertain policies regarding the governing and regulation of migrant labour.⁴ Such policies fashioned a part of broader agreements between supply and recipient states.⁵ Today, in the second decade of the twenty first century, the development of international labour migration remains a core feature in international diplomatic relations across the world. As a consequence, this has attracted increased attention from policy makers because of its universal impact and increased linkages to development in this era of increased cooperation and interdependence among countries.⁶

Globally, the diaspora numbers have full-grown exponentially. Gordon and Anderson outline the diaspora as a group of voters living outside their country, though individually or collectively willing to contribute to the growth and development of their state.⁷ In keeping with the definition by International Organisation for Migration (IOM), the diaspora is made up of immigrants and their descendants who live outside their country of ancestry, either temporarily or on a permanent basis, but nonetheless maintain affectional, emotional and material ties to their countries of origin.⁸

The diaspora community has a huge impact on public diplomacy and national development.⁹ They will have either a positive or negative influence on peace processes in their home countries. It is common for diaspora teams to propagate conflicts, mainly by funding and the

⁴ Clarkson, A. (2014). *Belonging: The Paradox of Citizenship*.

⁵ Ibid

⁶ Allen & Hamnett, *Uneven Worlds* (1995).

⁷ Gordon, Edmund T. and Mark Anderson. "The African Diaspora: Toward an Ethnography of Diasporic Identification." *The Journal of American Folklore*: "Theorizing the Hybrid," vol. 112, no. 445 (Summer 1999): 282-296.

⁸ Dovelyn Rannveig Agunias and Kathleen Newland (2012). *Developing a Road Map for Engaging Diasporas in Development A Handbook For Policymakers And Practitioners In Home And Host Countries* International Organization for Migration 17 route des Morillons 1211 Geneva 19 Switzerland pg 15

⁹ IOM International Dialogue On Migration Follow-Up and Review Of Migration In The Sustainable Development Goals Pg 19

disposition to compromise to succeed in a settlement, despite the will of those within the country to compromise and end the conflict.¹⁰ However, inward formal remittances from the Kenyan community living abroad is one of the positive effects of the diaspora community. KNBS statistics reveal that inward formal remittances from the Kenyan diaspora community stood at Ksh. 113 billion in 2013, which was equivalent to 2.98% of the country's Gross Domestic Product (GDP).¹¹ Further, there exists monumental potential in skills, knowledge, and experience by the Kenyans abroad, that isn't being utilised within the country. This is always a sign that the country's diaspora community has a huge and untapped potential to necessitate the growth and development of the Kenyan economy positively.

Majority of Kenyans in the diaspora spend more time and money on maintain contact with their families and friends, and more often than not, seek for opportunities to visit.¹² It is on this premise that the study therefore seeks to assess the state of labour migration of Kenyans to the middle East, establish challenges faced by Kenyans operating within the Middle East.

1.2 Statement of the Research Problem

Lack of employment opportunities and unattractive wages reception are cited as key factors that result in high levels of migration from Kenya. It's calculable that in 2016, about 1.43 million Kenyans were residing abroad, that is roughly a pair of 2.78% of the country's total population. per

¹⁰ Crush, Jonathan & McDonald, David A. (eds.). — *Transnationalism and New African Immigration to South Africa* Toronto-Kingston, Southern African Migration Project (SAMP) & Canadian Association of African Studies (CAAS), 2002, 184 p.

¹¹ Central Bank of Kenya, (2015). Diaspora Remittances. <https://www.centralbank.go.ke/diaspora-remittances/>

¹² Kalechi A.K, (2004), *The Impact of Leadership on Public Policy in Africa: The Problems and Opportunities*, Edwin Mallen Press, New York, USA.

the planet Bank reports, the u. s., UK, Canada, Germany, Tanzania, Uganda, Australia, and UAE were the foremost most well-liked residences for Kenyans abroad.¹³

A significant proportion of the Kenyan diaspora community comprises of well qualified professionals that migrate in search of better job opportunities and well paying slary packages, as statistics from the KNBS discovered.¹⁴ According to the World Bank reports, the speed at which tertiary educated people were moving out of their countries of origin hit 33% in 2012, with occupations like physicians and nurses being notably affected. For instance, it was noted that 51% of locally trained physicians and 8% nurses were thought to be residing outside Kenya.¹⁵ However, the diaspora community from Kenya isn't solely made up of well qualified, but is a mixture of the highly skilled as well as the low and semi-skilled Kenyans.¹⁶ Lawful movement of skilled Kenyans to developed countries is regurlary prohibitive, therefore making majority of them to seek alternative irregular routes.¹⁷ A number of the Kenyans who travel on temporary labour migrant permits end up spending the rest of their lives in their host countries, eventually becoming members of the diaspora community with none legal movement status.

With the Kenyan diaspora community growing in numbers each passing day, the discouraging task of making certain protection and therefore the eudaemonia of those Brobdingnagian numbers scattered everywhere the planet falls on the shoulders of the Kenyan government. per the Ministry of Foreign Affairs, it's the government's perquisite to have interaction and facilitate the protection of its voters domestically and abroad as stipulated within

¹³ World Bank (2017). Migration and Remittances: Recent Developments and Outlook. World Bank Group.

¹⁴ KNBS (2017). Kenya Economic Survey, 2017. Nairobi: Government Printers

¹⁵ World Bank (2015). Migration and Development Brief. World Bank Group.

¹⁶ World Bank (2016). Migration and Remittances

¹⁷ United States Department of State, 2011 Trafficking in Persons Report-Kenya, 27 June 2011

the Constitution of Kenya.¹⁸ The foreign and diaspora policies were thus developed to safeguard the interests of the Kenyan diaspora community. It's evident that Kenya's migration policies have developed through the formation of a diaspora policy and board of directors at intervals the Ministry of Foreign Affairs in recent years showing the government's disposition to formalize a policy framework to regulate and manage movement of its citizens out of the country. Despite this, there still exist regulatory gaps that need to be addressed if the country is to streamline migration into development plans and policies to safeguard the rights of citizens. Kenya has been a significant supply country of migrant labor in several parts of the world key among them being the Middle-East.¹⁹ Little or no is consistently documented as valid, relevant and reliable analysis information regarding these experiences, except the for the most part print media accounts of battered, fatally injured and/or otherwise abused Kenyan staff abroad in Middle-East countries like Saudi Arabia, Dubai, Jordan among others. It is on this premise that the study seeks to examine the trends in labour migration and its impact on Kenya-Middle East relations.

1.3 Objectives of the Study

The following are the study's objectives:

- i. To determine how labour migration influences foreign relations between Kenya and Middle-East countries.
- ii. To determine the significance of the Kenyan Diaspora policy on Kenya – Middle East relations.

¹⁸ MFA (2017). *New Dawn*. Diplomacy Bulletin: The Official Bulletin of the Ministry of Foreign Affairs Kenya. Government Printers: Nairobi.

¹⁹ Gikuru, C. M. (2013). *The Plight of Kenyan Domestic Workers in Gulf Countries*.

- iii. To establish the influence of labour migrant challenges on the foreign relations between Kenya and Middle-East countries.

1.4 Research Questions

This study will be guided by the following research questions:

- i. What labour migration factors influence Kenya - Middle East relations?
- ii. How does the existing diaspora policy affect foreign relations between Kenya and Middle Eastern countries?
- iii. What challenges influence diplomatic relations between Kenya and the Middle-East countries?

1.5 Literature Review

In this section, the study reviews literature associated with the nexus between labour migration and foreign relations. The literature review in this study will be divided into four sections with the view to establishing key drivers of labour migration followed by migration policies and challenges associated with labour migrations, and lastly how they influence foreign relations.

1.5.1 Labour Migration and Foreign Relations

International Organization for Migration (IOM) defines migration as the movement of an individual or a bunch of persons, either across a global border or at intervals a State. it's a population movement, encompassing any reasonably movement of individuals, no matter its length, composition and causes; it includes migration of refugees, displaced persons, economic

migrants, and persons moving for alternative functions, as well as family jointure however excludes tourists, business travelers, and pilgrims.²⁰

Migration increases bilateral trade, that successively affects foreign relations.²¹ Powerful states have an extended tradition of economic statesmanship. Trade relations provide a method of influence, and alliances support favorable economic agreements.²² A review of the theoretical literature shows that almost all economists believe that the direct impact of a high quantity of brain-drain reduces the economic growth of the sending country.²³ What very little research that exists seems to indicate, of course, that the direct impact of a drain is to considerably slow gross domestic product growth.²⁴ Few comparative studies done on the sociology of the development demonstrate that the losses of tertiary-educated persons may be really vital.²⁵ Seriously affected countries like Asian nation, Ghana, Central American country, or South American country lost nearly a third of their educated elite to OECD countries within the pre-1990 amount. It appears clear that the outflow of extremely educated elites has accelerated and has particularly been remarked upon throughout the late Nineties boom in info, communications, and technology (ICT).²⁶

²⁰ IOM, Key Migration Terms <www.iom.int/key-migration-terms>

²¹ King, R. (1995) Migrations, globalization and a place in the world

²² Long, A. G., & Leeds, B. A. (2006). Trading for Security: Military Alliances and Economic Agreements*. *Journal of Peace Research*, 43(4), 433-451.

²³ Lowell, B. Lindsay, 2001. *Some Developmental Effects of the International Migration of the Highly Skilled*, Paper for the International Labour Organization, Geneva.

²⁴ Straubhaar, Thomas. 2000. International Mobility of the Highly Skilled: Brain Gain, Brain Drain, or Brain Exchange,. *HWWA Discussion Paper* No. 88, Hamburg, ISSN 1432-4458.

²⁵ Carrington, W. J., and Enrica, D. (1999). How Extensive is the Brain Drain? *Finance and Development*, 36(2)

²⁶ Haque, Nadeem Ul, and Se-Jik Kim, 1995. .Human Capital Flight: Impact of Migration on Income and Growth, *IMF Staff Papers*, 42(3), 577-607.

While international migration may be a positive expertise for migrant staff, several suffer poor operating and living conditions, as well as low wages, unsafe operating environments, a virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia.²⁷ Migrant integration policies in several destination countries leave a lot of to be desired. Despite a incontestable demand for staff, various immigration barriers move destination countries. As a result, associate degree increasing proportion of migrants area unit currently migrating through irregular channels, that has clearly been a explanation for concern for the international community.²⁸ As giant numbers of staff, notably youngsters migrate to a lot of developed countries wherever legal avenues for immigration area unit restricted, several fall prey to criminal syndicates of smugglers and traffickers in men, resulting in gross violations of human rights.²⁹ Despite international standards to shield migrants, their rights as staff area unit too typically undermined, particularly if their standing is irregular.

International Labour Organization, as the UN specialised agency on labour problems, has been handling labour migration since its foundation in 1919. It is the sole administrative unit with a constitutional mandate for the “protection of the interests of workers once employed in countries apart from their country of origin.” Since the Nineteen Thirties, it has pioneered international Conventions to shield migrant workers and guide migration policy.³⁰ The 1944 Declaration of Philadelphia (incorporated into the UN agency Constitution in 1946) confirmed the constitutional

²⁷ ILO, (2009).

²⁸ Portes, A. (1997). *Globalization from below: The rise of transnational communities*, WPTC -98-01, Princeton, NJ, Princeton University Press.

²⁹ Ramirez-Machado, J.M. 2003. *Domestic work, conditions of work and employment: A legal perspective*, conditions of Work and Employment Series No. 7 (Geneva, ILO).

³⁰ Sander, C. & Maimbo, S.M. (2003). *Migrant labor remittances in Africa: Reducing obstacles to developmental contributions*,

mandate of the ILO on labour migration. The 1998 Declaration on Fundamental Principles and Rights at Work reaffirmed ILO's mandate on labour migration and migrant staff.

The available proof suggests that the general economic impact of migration is positive for each countries of origin and countries of destination. Migration will play a vital role in economic process and development, as well as by serving to to fill labour market shortages and by providing jobs and sources of revenue for individual migrants and their families. In 2016 alone, migrants sent \$429 billion in remittances to low and middle-income countries.³¹ This is more than triple the world official development help or ODA. China, India, Mexico, and therefore the Philippines were among the biggest recipients of payment inflows in 2016. a lot of individuals area unit on the move currently than ever. the amount of international migrants reached 258 million in 2017, a rise of eighty five million, or forty nine per cent, compared to 2000.³² This increase resulted primarily from the rapid increase in the number of migrants coming from countries of the global South.

Economic and social factors are the main reasons why individuals migrate.³³ In addition, global migration trends are also influenced by political instability and conflict. Today, the number of persons forcibly displaced globally is the highest since the aftermath of World War II, with the number of refugees and asylum seekers reaching nearly 26 million.

Moreover, the current promotion of temporary migration programmes is often associated with a misplaced discourse of trading off rights in exchange for increased access to job

³¹ United Nations (2016). International Migration Policies

³² Chen, R. & Madamba, M. (2000). Migrant labour - An annotated bibliography

³³ "Root Cause Analysis," *Washington State Department of Enterprise Services*, <http://www.des.wa.gov/services/risk-management/about-risk-management/enterprise-risk-management/root-cause-analysis>

opportunities in destination countries.³⁴ Yet lower protection and inferior working conditions for temporary migrant workers will result in unfair competition for native workers, and thereby undermine both their employment opportunities and general social cohesion. The Multilateral Framework on Labour Migration has clearly stated the need to ensure that temporary work schemes respond to established labour market needs and that these schemes respect the principle of equal treatment between migrant and native workers, as well as other workplace rights.³⁵

Bilateral labour migration agreements have seen a revival since the 1990s.³⁶ They have evolved in essentially two distinct stages, the "first generation" and the "second generation." The "first generation" made its mark in Europe in the late 1940s and focused mainly on labour recruitment for the reconstruction of post-war European economies, and includes attention to refugees and forcibly displaced persons affected by the war. However, the oil crisis and recession in Europe in the 1970s put a stop to labour migration flows, including those taking place under bilateral agreements. The post-1990 period has seen a resurgence of a "second generation" bilateral labour migration agreements across the world, including in new countries of origin and destination, with a peak observed between 2005 and 2009.³⁷ The subsequent global economic crisis has resulted in a decline in the conclusion of new bilateral agreements since 2010.³⁸ Interest is especially evident in Asia and African migration corridors to the Arab States and within Asia, in response to the continuing economic growth and demand for migrant workers in the destination

³⁴ Allen, J. & Hamnett C. (1995) Uneven worlds, in Allen, J. and Hamnett, C. (eds.) *A shrinking world?*, The Open University/Oxford

³⁵ Long, A. G., & Leeds, B. A. (2006). Trading for Security: Military Alliances and Economic Agreements*. *Journal of Peace Research*, 43(4), 433-451.

³⁶ OECD: *Migration for employment: bilateral agreements at a crossroads*, Paris, 2004

³⁷ ILO–KNOMAD: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, Research Brief, 2015, pp. 1–2.

³⁸ ILO: Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013.

countries concerned.³⁹ This reflects a desire to facilitate new labour migration flows and also to regulate existing flows.

In its 2016 General Survey, the CEACR posits that bilateral agreements can play an important role in ensuring that migrant workers at all skill levels benefit from the protections contained in Conventions Number 97 and 143.⁴⁰ Convention No. 97 requires Members' competent authorities, whenever necessary or desirable, to conclude agreements for the purpose of regulating matters of common concern "in cases where the number of migrants going from the territory of one Member to that of another is sufficiently large"⁴¹ The accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86), contains a model agreement which applies to both temporary and permanent migration for employment, including the migration of refugees and displaced persons. ILO member States, including those that have not ratified the ILO migrant worker instruments, have widely used the model as a blueprint for concluding their own arrangements.⁴²

1.5.2 Labour Migration by Kenyans

The last decade has witnessed Kenya's recovery, in which the Kenyan emigrants and Diaspora have made an increasingly significant financial contribution to the national economy, inducing the Government of Kenya to reorient its development policy to include the positive

³⁹ Allen, J. and Hamnett C. (1995) Uneven worlds, in Allen, J. and Hamnett, C. (eds.) *A shrinking world?*, The Open University/Oxford

⁴⁰ ILO (2016). *Promoting fair migration*, General Survey concerning the migrant workers' instruments, Report of the CEACR, ILC, 105th Session, Geneva, 2016.

⁴¹ " ILO: *Towards a fair deal for migrant workers in the global economy*, Report VI, ILC, 92nd Session, 2004, Geneva, para. 427.

⁴² Skalnes, L. S. (2000). *Politics, markets, and grand strategy: foreign economic policies as strategic instruments*. University of Michigan Press.

dimensions of migration, including formulating a Diaspora policy and dual citizenship as enshrined in the Immigration and Citizenship Act 2011.⁴³ Diaspora remittances have had leverage on homeland investments, including boosting the growth of the real estate sector, transportation, and ICT, for instance. Thus, the prevailing political environment has been conducive to the engagement of Kenyan emigrants in activities emanating from the national development plans and policy frameworks, including the Kenyan Constitution, which was promulgated in 2010.⁴⁴

In addition, the improvement of the political environment has encouraged the return of emigrants and the retention of skilled immigrants⁴⁵ The Government of Kenya has made policy initiatives to enhance the Kenyan Diasporas' contribution to national development, mainly in Europe and North America. The initiative would similarly need to be applied to Kenyan emigrants in the EAC and southern Africa.

According to the African Union (AU), the impact on continent development by the Diaspora cannot be overlooked. In their February 2003 meeting, the Extra-Ordinary Summit of the Assembly of Heads of State and Governments of the AU branded the African Diaspora the phrase 'the sixth region of the continent.' According to this summit, the African Diaspora is a crucial contributor to continental development requiring full exploitation for the growth of Africa as a continent. This declaration pushed Kenya into their ratification of the Amendment to the AU Constitutive Act Article 3(q). The article advocates for full contribution by the African Diaspora towards the development of the continent and growth of the African Union.⁴⁶

⁴³ Hornsby, C. (2012). *Kenya: A history since independence*. I.B. Taurius Publishers.

⁴⁴ MFA (2015).

⁴⁵ — International Organization for Migration 2004 Migration for development in Africa. General Strategy Paper. IOM, Geneva. International Organization for Migration (IOM).

⁴⁶ Cyril, R. (2012). Migration and musical remittances from Latin America and the Caribbean to Africa.

The regional treaty concerning the establishment of the East African Community (Article 104) advocated for the free circulation people, goods, labour, services and the right to settle and reside within the community by the citizens from the countries forming the East African Community⁴⁷. Another pillar of the same is the Common Market for East and Southern Africa (COMESA) advocacy for free labour movement.

1.5.3 Migrant Workers in the Middle East

Studies show that the leading demanders of migrants are wealthier Asian and Middle Eastern countries, mainly Saudi Arabia, the United Arab Emirates, Malaysia, and Kuwait. Combined, these countries demanded 13.5 million migrant workers. Dubai, with a population that is only 20 percent Emirati and 80 percent foreign-born, with nearly 50 percent of the total population originating in South Asia.⁴⁸ A growing phenomenon found in Asia and the Middle East is labor trafficking through legal recruitment. Migrant workers under this category are not documented. Rather, they are legitimately recruited in their own country and transported to wealthy “demand” countries, after which they are coerced into situations of forced labor or bond labor.⁴⁹

Hundreds of Kenyan women are recruited each year for employment in Gulf Countries as domestic workers. Many of them seize this opportunity because they see it as a chance to lift themselves out of poverty. These women migrate to enter into an unregulated and informal work

⁴⁷ Deacon, B., De Lombaerde, P., Macovei, M. C., & Schröder, S. (2011). Globalisation and the emerging regional governance of labour rights. *International Journal of Manpower*, 32(3), 334-365.

⁴⁸ Caplin, J. (2009). Mirage in the Desert of Oasis: Forced Labor in Dubai and the United Arab Emirates. *Havard International Review*, 28-31.

⁴⁹ Wangui, J. (2015). Kenyan Migrants Treated like “Trash” in Saudi. *Africa News*. Retrieved on 4th November 2018 from http://www.africanews.com/site/list_message/378921

sector where domestic workers are not protected by local laws in the destination countries and to work in the private sphere where the abuse they might be subjected to remains hidden from the public eyes. While employed in Gulf Countries, some women are overworked which leads to lack of sufficient sleep, and they are denied of their rightful wages; furthermore, they are mistreated and deprived of food which makes being a productive worker a challenge.

Saudi Arabia, a Kingdom situated in the Middle East, has been in the spotlight for unlawful human trafficking that is characterized by the mistreatment of laborers, including women and children.⁵⁰ The Kingdom has been named as a Tier 3 country by the United States Department of State in its 2005 Trafficking in Persons Report required by the Victims of Trafficking and Violence Protection Act of 2000. Tier 3 refers to those countries whose governments do not fully comply with the minimum standards of Trafficking of Victims Protection Acts.

The most prevalent cases of the growing employment of migrant workers are in the Middle East and Gulf countries. In the Middle East, an estimated 2.1 million workers were employed as domestic workers in 2010, nearly double the 1.1 million found in 1995. Migration of foreign domestic workers to the Middle East started in the 1970s as a result of increasing wealth and living standards due to the oil boom in the region. Domestic work accounts for 5.6 per cent of total employment in the region, but this share is far exceeded in some countries, such as Bahrain (12.8 per cent in 2009), the United Arab Emirates (12.8 per cent in 2008) and Kuwait (21.9 per cent in 2005).⁵¹

⁵⁰ International Labour Organization, (2013). *Domestic workers across the world: global and regional statistics and the extent of legal protection*. Geneva: International Labour Organization, p.45.

⁵¹ United Nations Department of Economic and Social Affairs (UNDESA, 2012), the United Nations' Trends in Total Migrant Stock: The 2012 Revision, (New York: UNDESA).

According to the International Labour Organization, in the Middle East is one of the largest employers of domestic workers. The estimation of the number of women domestic workers in the Middle East varies between 1.5 million and 876,596.⁵² In absolute terms, the Middle East is one of the largest employers of domestic workers, with approximately 784,500 persons engaged in domestic work in 2009 (of whom two-thirds were women). As in neighboring countries, the number of domestic workers has increased steeply by more than 40 per cent since the beginning of the decade.⁵³ Paid domestic work now accounts for almost half (47.1 per cent) of total female employment. This high share is partly due to the low female employment to population ratio in the Middle East; according to ILO estimates, only 18.1 per cent of all women above the age of 15 years were employed in 2009 (compared to 75.6 percent of men). As in most countries, the educational attainment of domestic workers in the Kingdom is concentrated at the lower end. In 2009, only 83,700 domestic workers had secondary education or above (or 10.7 per cent of the total), while 203,000 (25.9 per cent of the total) had only completed primary school, and 301,000 (or 38.4 per cent) had obtained no formal educational qualifications.⁵⁴

1.5.4 Key Drivers of Emigration from Kenya

Key drivers of emigration as suggested include access to employment and education opportunities. Top destinations are the United Kingdom, the United States of America, and other African countries, particularly the United Republic of Tanzania and Uganda. However, Kenyans

⁵² United Nations Department of Economic and Social Affairs (UNDESA, 2014), the United Nations' Trends in Total Migrant Stock: The 2014 Revision, (New York: UNDESA).

⁵³ World Bank, (2012). Remittances Data: Migration and Development Brief 15 (Washington DC: World Bank)

⁵⁴ World Bank (2014). World Bank's Migration and Development Brief: Migration and Remittance Trends 2014.

can be found in most regions of the world, including Asia, the Middle East, Latin America, and the Caribbean, and Oceania. Migration to the Middle East for employment appears to be trending upwards, particularly to Saudi Arabia. Departures of citizens exceed arrivals of foreigners, meaning that Kenya has a net emigration rate. As of 2014, this net emigration rate was -0.22 per 1,000 persons.⁵⁵ However, the skilled emigration rate is estimated to be 35 per cent, raising concerns about the loss of skilled personnel in key sectors. The health sector is a particular concern, with estimates of the emigration rate of health professionals reaching as high as 51 percent.

There is very limited data available regarding the skills, and professional profiles of most of the Kenyan migrants living abroad and the information available is largely comprised of persons with professional, technical and business skills such as business people, doctors, nurses, engineers, and accountants among other highly recognized careers.⁵⁶ About 198,100 Kenyans live in the Organization for Economic Co-operation and Development (OECD) countries with 32.7% of them having secondary school education while 26% of them only having primary education qualifications (OECD, 2009). In 2010, Kenya reported remittances of over USD 1.8 billion (5.4% of her total GDP), making it among the top ten (10) highest remittance recipients with.⁵⁷

Kenya is also affected by internal displacements as a result of conflict, natural disasters, climate change, and environmental degradation, and forced evictions. In general, there is a paucity

⁵⁵ Kisiangani, E. (2015). *Kenya's Regional Relations: Between Principle and Practice*. (Policy Briefing, 2015).

⁵⁶ Ghai, D. (2004) *Diasporas and development: the case of Kenya*, Global Migration Perspectives, No. 10, Global Commission on International Migration, Geneva.

⁵⁷ World Bank (2011) *Migration and Remittances Fact Book 2011*, 2nd Edition, Washington: USA

of data on internal displacements, with most of the available information focused on the post-election displacements of 2007. Displacements due to political violence have occurred following every election held in the country (in 1992, 1997, 2002 and 2007) with the most recent post elections displacements being the most severe, with over 650,000 persons displaced. New instances of violence-related displacement continue to occur regularly, although on a much smaller scale.⁵⁸

In 2013 alone, 182,282 persons were displaced as a result of disasters. However, there is lack of sufficient data on the number of persons displaced as a result of climate change and environmental degradation, which particularly affects pastoralists, but anecdotal evidence suggests that pastoralists have to move further from traditional grazing areas and for longer periods of time in order to find pasture and water for their livestock. Development and environmental protection projects have also resulted in forced evictions.

The changing political environment and economic fortunes have triggered emigration from Kenya to migration to Europe and the Americas. In the decade 1980–1990, political repression and economic instability led to a massive emigration of highly educated and highly skilled Kenyans⁵⁹. From a political and economic perspective, some of these conditions changed after the introduction of multiparty politics in Kenya, as well as the improved economic growth since 2003 as a result of regime change. Several studies have covered topics related to labour migration in

⁵⁸ Macharia, K. (2003). Migration in Kenya and Its Impact on the Labour Market, American University, United States of America. Paper prepared for Conference on African Migration in Comparative Perspective, Johannesburg, South Africa, 4 -7 June.

⁵⁹ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – 'Building Trade Union Solidarity and Action for Workers on the Move.' Ferney Voltaire. Public Services International.

Kenya and East Africa at the onset of the third millennium, giving special attention to highly-skilled workers as a major concern for policymakers, researchers and civil society in Kenya.⁶⁰

1.5.5 Labour Migration Policies (Domestic and International Policies)

The number of workers around the globe has been gradually increasing. The world migration report that was released in 2010 stated that there were over two hundred and fourteen (214) million immigrants, which is a sixty four (64) million rise from the one hundred and fifty (150) million immigrants reported in 2000. The number of immigrants is projected to escalate to four hundred and five (405) million within the next thirty four (34) years.⁶¹ A recent analysis of international migration relating to Kenya provides extremely useful insights into the country's labour migration policies. There are a number of policies by the Government of Kenya regarding the free movement of people for employment, a dramatic shift from the previous restrictive policies. Kenya's current National Development Plan promotes an ambitious employment programme that involves the free movement of capital and labour, considered as factors of production, and that permits the export of skilled labour migrants to other countries in the region. Strategies to realize this includes strengthening the capabilities of the ministry responsible for labour and human resources. The Kenya Vision 2030 aims to develop a Diaspora and labour

⁶⁰ Makoffu, M. (2010). The Global Migration Group Symposium on "Overcoming Barriers: Building Partnerships for Migration and Human Development." East African Community Secretariat, Arusha, Tanzania, May Migration Policy Institute.

⁶¹ IOM & UNHCR. (2010). Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa Dar es Salaam, Tanzania, 6-7 September 2010 Action Plan. Geneva: International Organisation for Migration and United Nations High Commissioner for Refugees.

export policy where recent developments demonstrate the seriousness of the Government of Kenya to transform the migration situation for the better.⁶²

The Ministry of State for Immigration and Registration of Persons (MIRP) rolled out a Strategic Plan for the period 2008–2012, identifying migration as the major policy for developing strategic objectives, programmes, and projects to address migration issues. Such measures that were put in place include the reorganization of the Ministry by establishing departments with crucial portfolios: the Immigration Department, the National Registration Bureau (NRB), the Civil Registration Department (CRD), the Department of Refugee Affairs (DRA) and the Integrated Population Registration Database System (IPRS).⁶³ In addition, the Ministry of Foreign Affairs has established a strong Diaspora Division which, working with the Ministry of Labour, oversees emigrant Kenyan labour and Diaspora matters in general. The Ministry of Labour has the Department of Human Resource Management and Employment (DHRME) which houses the National Employment Bureau.

Recently, there has been an aggressive development of migration and regional development policies through the International Job Office of the Ministry of Foreign Affairs, mainly to take advantage of globalization and international legal migration aimed at facilitating the employment of Kenyans abroad⁶⁴. In the Ministry of Youth and Sports, the Youth Enterprise Development Fund (YEDF), among other things, facilitates emigrant youth employment. Efforts

⁶² Kenya Vision 2030 (n.d.)Development and Implementation of a Diaspora Policy. www.vision2030.go.ke/index.php/pillars/project/Social/63

⁶³ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – ‘Building Trade Union Solidarity and Action for Workers on the Move.’ Ferney Voltaire. Public Services International.

⁶⁴ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – ‘Building Trade Union Solidarity and Action for Workers on the Move.’ Ferney Voltaire. Public Services International.

to mainstream migration policy in Kenya's development programme including transnational migration-related policy initiatives inherent in the Dual Citizenship Act of 2011; the draft diaspora policy and bilateral agreements with the Southern African countries (Botswana, South Africa and Namibia) where huge numbers of Kenyan workers reside, as well as the Seychelles and the new African state of South Sudan.

In the EAC, Kenya, alongside the other Partner States, has acceded to the Private Employment Agency Contracted Case Management (PEACCM) which, among other things, provides for uninhibited labour migration. The wave of engaging the diaspora in Kenya's development and in investment opportunities led to increased diaspora engagements and remittances. Among the main drivers of internal and cross-border migration in the country is high youth unemployment in rural areas, as well as social and economic inequalities. Several positive developments have taken place in terms of policy and programmatic initiatives to promote youth employment in Kenya in recent years. For example, the Ministry of Youth Affairs and Sports (MOYAS) as well focused at organizing recruitment procedures of young people for employment abroad; the Youth Enterprise Development Fund (YEDF) facilitated entrepreneurship among the youth, and the Youth Employment Scheme Abroad (YESA) has become a vibrant programme in the country.

Empirical studies available investigated how these initiatives are working in the country in relation to countries in the South.⁶⁵ The country is an innovative example of how to link counter-trafficking and labour migration issues by addressing the issue of trafficking by fostering legal

⁶⁵ Muthee, M. W., & Scholar, A. P. P., (2010). Hitting the target, missing the point: youth policies and programmes in Kenya. *African Public Policy Scholar*. Woodrow Wilson International Centre for Scholars.

opportunities to work abroad. A notable development has been the Kenya Association of Private Employment Agencies (KAPEA), which has developed a Code of Conduct and a Constitution that the affiliate Private Employment Agencies (PEAs) adopted on in 2006 to guide the process. This is the first initiative of its kind in the region.⁶⁶

In particular, Kenya has signed almost all ILO Conventions that relate to migrant labour. Unfortunately, the country is yet to sign the 1990's United Nations (UN) international convention on the protection of all migrant workers and Members of their families. This foreign policy holds a higher binding power of protecting emigrants.⁶⁷ In line with this, Kenya's emigrant workers do not always get the protection they deserve despite the host country's international legal obligations. The country is also a party to the Inter-Governmental Authority on Development, Regional Consultative Process on Migration (IGAD-RCP), which was established in 2008. The domestic policies adopted in Kenya are anchored on several new initiatives that are underway and newly established in Kenya's labour migration framework. The new Dual Citizenship entitlement granted by the 2010 Constitution highlights the extent of the enhancement of labour laws in Kenya pertaining to the rules, regulations, and administration of labour migration with a South-South perspective. The established government procedures for the review of foreign employment contracts, minimum overseas work standards, due registration of private recruitment agencies, and recruitment procedures.⁶⁸

⁶⁶ KNBS, 2007. Kenya Economic Survey, 2007. Nairobi: Government Printers

⁶⁷ Oxfam (2002). *Rigged Rules and Double Standards: Trade, Globalization, and the Fight Against Poverty*. Oxford: Oxfam International.

⁶⁸ Pillinger, J. (2011). *International Migration and Women Health and Social Care Workers Programme – 'Building Trade Union Solidarity and Action for Workers on the Move.'* Ferney Volataire. Public Services International.

1.5.6 Challenges that face international migrants in foreign countries

Certain state and federal laws discriminate between citizens and immigrants, or between documented and undocumented immigrants. Immigrants may experience discrimination and intimidation in the workplace and in society at large. As one report concludes, most domestic law protects migrants against violence and intimidation, but in recent years, the extreme and often racist rhetoric surrounding immigration issues has increased the threats migrants face to their personal safety.⁶⁹ For example, according to the Federal Bureau of Investigation (FBI), U.S. hate crimes against Latinos increased by 34% between 2003 and 2006.⁷⁰ In particular, migrant women were more susceptible to domestic violence and sexual assault than citizen women, since factors such as language barriers, social isolation, lack of financial resources, and fear of deportation prevent them from reporting the abuse to police.

Some laws create arbitrary infringement on these individual's civil liberties and deny them their fundamental right to due process. Although the law states that all suspects have the right to due process regardless of their race, color, gender, or country of origin, this right is usually overlooked when dealing with migrants. For example, the U.S. 14th Amendment guarantees that all people living in the United States, regardless of race, nationality, or citizenship status, have a right to due process and equal protection under the law. In reality, however, migrants are frequently stripped of these basic human rights, especially in the post 9/11 era.⁷¹ It is reported that since September 11, 2001, over one thousand migrants were detained for minor immigration violations

⁶⁹ Steiner, H. J., Alston, P., & Goodman, R. (2008). *International human rights in context: law, politics, morals: text, and materials*. Oxford University Press, USA. <http://data.worldbank.org/indicator/SM.POP.NETM>.

⁷⁰ Hammond, J. L. (2016). Teaching Human Rights: Confronting the Contradictions. *Radical Teacher*, (104), 13.

⁷¹ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – 'Building Trade Union Solidarity and Action for Workers on the Move.' Ferney Voltaire. Public Services International.

while also being questioned and investigated about terrorist activities. During these investigations, immigrants in our communities were detained in abusive conditions, denied access to attorneys, and detained for months without ever actually being charged with a crime. In that case, detaining migrants without probable cause until they are cleared by a criminal investigation denied them the presumption of innocence to which all persons are entitled under the U.S. justice system.⁷²

1.5.7 Kenya-Middle East Relations

Kenya enjoys warm diplomatic relations with the Middle-East as demonstrated by the number of fully-fledged missions Kenya operates in this region, and the reciprocal missions the Middle East countries operate in Nairobi. Kenya has a total of 10 missions in this region: Abu Dhabi, Ankara, Doha, Dubai, Islamabad, Kuwait, Muscat, Riyadh, Tehran, and Tel Aviv.⁷³ In a statement delivered to the Middle East Ambassadors resident in Nairobi, the Cabinet Secretary Ambassador Monica Juma underscored the importance of the Middle East region to Kenya and the World Economy. The Middle East region is home to 65.5% of proven world oil reserves and holds 40% of the world's conventional natural gas reserves. Kenya values the cordial ties with the Middle East countries highly and is represented by seven Resident Diplomatic Missions and on a non-residential basis in the rest of the countries. These bonds of friendship have witnessed exchanges of high-level visits. The region is a leading source of fossil fuels (oil, petroleum, and gas); has huge funds for development projects; provides employment opportunities for Kenya's expanding Diaspora and is an important partner for trade and investment. The region is also critical

⁷² Hammond, J. L. (2016). Teaching Human Rights: Confronting the Contradictions. *Radical Teacher*, (104), 13.

⁷³ <http://www.mfa.go.ke/?p=1728#>

due to other issues of common concern, including security, religious extremism, and youth radicalization.⁷⁴

The Middle East is generally of strategic importance to the Horn of Africa Region. Strategic waterways for the Middle East countries include The Indian Ocean, Red Sea, Mediterranean Sea, the Gulf of Aden, Strait of Hormuz and Bab-el Mandep. These waterways are a crucial link between the region, the Horn of Africa, and the globe. Kenya can learn from the example of the Middle East in managing development in a situation of conflict and political instability. The Middle East Region is in the midst of an oil-bust coming after oil booms of 1973 and late 1990s. Kenya acknowledges advanced technologies in the region in oil and gas prospecting, mining, processing, and exportation and looks forward to cooperating with the region in the development of Kenya's recently discovered oil.

The role played by the Middle East region in international development cannot be understated. The Arab aid, which is predominated by The Kingdom of Saudi Arabia, Kuwait, and the United Arab Emirates, plays a significant part in international development. Currently, Arab aid equals up to 13% of OECD-DAC aid and up to 75% of non-OECD members. Kenya has benefited from Arab Development Funds up to the tune of USD 244 million. Among the key projects include Construction of KMTC in Chwele, Bungoma County; Nuno-Modogashe Road Project in Garissa County; Sultan Hamud hospital in Makuweni County and the Construction of a Burns and Pediatric Centre at Kenyatta Hospital among others. Kenya appreciates development cooperation with the Arab Development partners: OPEC Fund for International Development

⁷⁴ Cabinet Secretary, Amb Monica Juma, Statement to Middle East Ambassadors Resident in Nairobi on February 27, 2018. Accessed on 26 March 2019 on <http://www.mfa.go.ke/?p=1728#>

(OFID); The Arab Bank for Economic Development in Africa (BADEA); The Saudi Fund for Development (SFD); The Abu Dhabi Fund for Development (ADFD); The Kuwait Fund for Arab Economic Development (KF).⁷⁵

The Middle East is also key in the delivery of the ‘Big 4 Agenda’. Concerning Agenda one, food security, most countries in the Middle East are net importers of food, and thus the science and politics of food security in the region is a critical issue. The GCC countries have purchased or leased huge tracts of land for food production in various parts of the world including Africa, Asia and in the Indian sub-continent in a quest to alleviate food deficiency in their countries. In engaging the Middle East, Kenya could take advantage of the food deficiency in the region to enhance trade on food items.

On Affordable Housing, Kenya seeks to identify, study, and cooperate in the transfer of technologies used in the Middle East that has made the cost of housing affordable to its citizens. Similarly, Kenya invites prospective investors in real estate and financing construction of affordable houses. In the third Agenda, Manufacturing and Value Addition, Kenya invites investors from the Middle East to invest in the manufacturing sector. The government has put in place attractive incentives that will guarantee protection on investments and lucrative returns. Numerous opportunities exist where investors can come in on a joint venture arrangement or on Public-Private Partnerships. On Universal Health care, Kenya has an existing cooperation framework in the health sector with several Middle East countries.

⁷⁵ Cabinet Secretary, Amb Monica Juma, Statement to Middle East Ambassadors Resident in Nairobi on February 27, 2018. Accessed on 26 March 2019 on <http://www.mfa.go.ke/?p=1728#>

On Labour and Employment, the Cabinet Secretary lauded the Middle East countries for hosting over 200,000 Kenyans who live and work in the region, whose remittances play a central role in our economic development and affording their families to live decent lives. Ambassador Juma notes that the economies of the regional countries depend to a significant extent on foreign (expatriate) labour and the deficient labour needs by all the countries in the region present Kenya with opportunities to be harnessed. Kenya can offer both skilled and semi-skilled staff to most countries in the Middle East. To guarantee the welfare and rights of the workers, Kenya has concluded labour agreements with several countries in the region and will seek to initiate and conclude the same with those countries not yet on board. Kenya is committed to upscaling its labour export to the Middle East from the unskilled and semi-skilled to professional cadres.⁷⁶

In matters Peace and Security, Kenya has concluded several cooperation frameworks with Middle East countries that facilitate information sharing on security matters and training of security personnel. Kenya supports all efforts to peacefully and amicably solve disputes in the Middle East. Kenya has concluded a number of instruments of cooperation with the majority of the Middle East countries. Like Kenya, the majority of Middle East countries are members of the Group of 77, which plays a central role in enhancing joint negotiating capacity in the United Nations. Therefore, cultivating cordial relations with this region forms crucial platforms for mutual and reciprocal support on various issues and candidatures in international positions.

⁷⁶ Cabinet Secretary, Amb Monica Juma, Statement to Middle East Ambassadors Resident in Nairobi on February 27, 2018. Accessed on 26 March 2019 on <http://www.mfa.go.ke/?p=1728#>

1.5.8 Gaps in Literature

There exist extensive research and studies on various facets of migration. The reviewed scholarly works and other relevant writings on the migration of labor predominantly focus on harms and abuses of migrant workers. These exploitative tendencies are believed to be emanating from poor state policies and partly cultural differences. However, there has been no comprehensive study of how the movement of the unskilled, skilled or professional labour from Kenya to the Middle East has, in return, influenced their international relations. This study, therefore, seeks to contribute to labour migration discourse and establish the extent of its influence on the foreign policy of Kenya towards the Middle East.

1.6 Justification of the Study

This study will be helpful in increasing the knowledge on the effects of labour migration on the foreign policy of countries. The importance of the protection of domestic workers in the Diaspora stem from Article 6 of the provisions of the General Conference of the International Labour Organization which passed that each member of the organization shall take measures to ensure that domestic workers, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy. The International Labour Organization provides that national laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment hitherto referred,

prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.⁷⁷

A common gap throughout the literature review on international labour migration is the lack of adequate research on its influence of international relations. Theories of international migration pay remarkably little attention to state interventions, while the literature on international relations says relatively little about population movements, except insofar as the refugee phenomenon is described as an outcome of conflicts.⁷⁸ How state actions shape population movements, when such movements lead to conflicts and when they lead to cooperation, and what Governments do in their policies to adjust to or influence population flows are questions that have received far too little attention, especially between East Africa - Middle East relations. This study, therefore, sought to evaluate the extent to which labour migration has influenced the foreign policy of the Republic of Kenya towards the Middle East countries.

1.7 Theoretical Framework

International relations theories help shed light on why people nations trade with or maintain ties with each other. The simplest relationship between domestic and systemic variables is independence. Older International Relations research often focused on the effects of domestic variables independently from any effects of systemic influences. This study is anchored on the international relations theory of Complex Interdependence to understand the reason for complex relationships between sovereign nations.

⁷⁷ International Labour Organization. *Domestic Workers Convention*, June 2011, p. 4 - 52

⁷⁸ Myron Weiner, *Population and Development Review*, Vol. 11, No. 3 (Sep., 1985), pp. 441-455 Published by: Population Council

1.7.1 Theory of Complex Interdependence

One of the of the uncertainties of modern international relations is the degree of interdependence among states.⁷⁹ Some theorists have asserted that interdependence is high and/or growing, while others have maintained that it is low and/or declining. Essentially, the debate among IR scholars about interdependence is to use theoretical knowledge about the microfoundational relationships among units and empirical data about agents' actions to examine arguments about how agents and systems interact.⁸⁰ The different categories of models are underlain by different characterizations of the beliefs and behavior of agents, and how relationships among them affect outcomes of interest. The models differ in how they conceive and treat systemic factors. In the most basic model, the system plays virtually no role; some internal characteristic(s) of the agent is critical to the outcome and states can ignore the context of other states' behavior and interactions.⁸¹ This situation would seem to be a rare case in the modern world where communications, transport, and technology have brought all states into closer contact with one another.⁸²

Many scholars have attempted to clarify the concept of interdependence and explain its causal importance in international politics. Some follow Robert Keohane and Joseph Nye, defining the components of interdependence as "sensitivity" and "vulnerability." Sensitivity is the

⁷⁹ Finnemore, Martha, and Kathryn Sikkink. 1998. International Norm Dynamics and Political Change. *International Organization* 52 (4):887—917.

⁸⁰ List, Christian, and Kai Spiekermann. 2013. Methodological Individualism and Holism in Political Science: A Reconciliation. *American Political Science Review* 107 (4):629-43.

⁸¹ Milner, Helen V., and Bumba Mukhejee. 2009. Democratization and Economic Globalization. *Annual Review of Political Science* 12:163-81.

⁸² Baldwin, David A. (1980). Interdependence and Power: A Conceptual Analysis. *International Organization* 34:471-506.

extent to which one country is affected by the actions of another, whereas vulnerability is the extent to which a country can insulate itself from the costly effects of events that occur elsewhere. Interdependence then means mutual dependence, a condition in which countries are both highly sensitive and vulnerable to each other.⁸³ Keohane and Nye's "mutual dependence" is very similar to David Baldwin's definition of interdependence, which is distilled from a review of many earlier works; defining interdependence as the international relationships that would be too costly to break.⁸⁴ Put another way; interdependence means that the opportunity costs of autonomy are prohibitively high. Even though economic interdependence enlarges a country's economic possibilities, it creates a matrix of constraints that most countries can influence only slightly, if at all. Thus, the country can abandon the tacit international code of good behavior unilaterally only if it is prepared to accept the adverse reaction of other countries.⁸⁵

Interdependence should be distinguished from interconnectedness, where countries are joined by interactions that do not involve significant costs.⁸⁶ An excellent example of interconnectedness is traded in luxury goods such as jewelry. Trade of this kind is not important enough to consumers to serve as the basis for an effective embargo. The flexibility of the term interdependence and its refusal to be captured by any specific political ideology is illustrated by the fact that US Republican Henry Kissinger made interdependence a central concept of his 1974 speech to the United Nations on the international oil price crisis. Yet the concept was also

⁸³ Keohane, Robert O., and Joseph S. Nye. (1977). *Power and Interdependence: World Politics in Transition*. Boston: Little Brown.

⁸⁴ Baldwin, David A. (1980) *Interdependence and Power: A Conceptual Analysis*. *International Organization* 34:471-506.

⁸⁵ Cooper, Richard N. (1968) *The Economics of Interdependence: Economic Policy in the Atlantic Community*. New York: McGraw-Hill.

⁸⁶ Keohane, Robert O., and Joseph S. Nye. (1977). *Power and Interdependence: World Politics in Transition*. Boston: Little Brown.

formative in the Interdependence Days organised in the wake of the terrorist attacks in the US on 11th September 2001 (Civworld).⁸⁷ According to Reed William, these events and publications 'seek alternatives to terrorism and the war on terrorism, solutions rooted in cooperation and pooled sovereignty rather than national hegemony and unilateralism'.⁸⁸ The term has also been deployed in a steady stream of speeches by a range of mainstream politicians in the UK and USA. The hazards implicit in the use of the term are nicely expressed in former US President Bill Clinton's opaque, but engaging, suggestion that 'interdependence is both the great promise and the defining paradox of the twenty-first century'⁸⁹

Globalization has increased attention to the importance of systemic factors. Some scholars argue that increasing globalization has profoundly changed international relations systemic forces, making them exert a dominant influence on states.⁹⁰ The debate over trade interdependence and its political implications have grown in the last three decades. As data concerning the levels of trade between nation/states become more accessible, as estimation methods advance and as large data sets have become easier to analyze and manage, empirical research concerning the influence of trade flows on interstate relations has dramatically increased.⁹¹ There is little room, for individual states to maneuver given powerful international pressures that have led to heightened interdependence among states. This produces a convergence toward similar domestic politics and

⁸⁷ Franzese, Robert J., and Jude C. Hays. 2008. Interdependence in Comparative Politics. *Comparative Political Studies*, 41 (4-5):742-80.

⁸⁸ Reed, William. 2003. "Information and Economic Interdependence." *Journal of Conflict Resolution* 47(1): 54–71.

⁸⁹ Gartzke, Erik. 2000. "Preferences and the Democratic Peace." *International Studies Quarterly* 44(2): 191–212.

⁹⁰ Baron, Reuben M., and David A. Kenny (1986). The Moderator-Mediator Variable Distinction in Social Psychological Research: Conceptual, Strategic, and Statistical Considerations. *Journal of Personality and Social Psychology* 51 (6): 1173–82.

⁹¹ Uchitel, Anne, (1993). Interdependence and Instability. In *Coping with Complexity in the International System*, edited by Jack Snyder and Robert Jervis. Boulder: Westview

institutions. Some argue that states are now so deeply intertwined that they exist within a complex system or network that is not decomposable into individual units.⁹²

1.7.2 Critique of the Complex Interdependence Theory

In a recent critique, Oatley argues that International Relations (IR) researchers too often conduct reductionist research that emphasizes domestic factors to the exclusion of systemic analysis, potentially generating incorrect conclusions in this globalized system.⁹³ Of course, not all IR scholars agree that economic interdependence is ensued by peaceful foreign relations. Indeed, quite a few scholars are cautious about the beneficial effects of economic interdependence because of the possibility of conflicts arising from interdependence itself.⁹⁴ Using interdependence an analytical concept in their study of changing world politics, Keohane and Nye, for instance, aver that international conflict will not disappear when interdependence prevails, rather, on the contrary, conflicts will take new forms and may increase as a result.⁹⁵

In contrast to complex interdependence proponents, realists do not view interdependence as a source of peace or a deterrent to conflict. Rather, increasing trade can serve as a potent source of stress and conflict between states.⁹⁶ Albert Hirschman's classic work also points out that the concept of interdependence has both beneficial and potentially costly components. Theoretical frameworks linking interdependence to the conflict have difficulty dealing with this dual aspect of

⁹² Waltz, Kenneth N. (1993). The Emerging Structure of International Politics. *International Security* 18 (2):44-79.

⁹³ Gasiorowski, Markj, (1986). Economic Interdependence and International Conflict: Some Cross-National Evidence. *International Studies Quarterly*, 30: 23-38.

⁹⁴ Polachek, Solomon W., (1992). Conflict and Trade: An Economics Approach to Political International Interactions. In *Economics of Arms Reduction and the Peace Process: Contributions from Peace Economics and Peace Science*, edited by Walter Isard and Charles Anderton. Amsterdam: North-Holland.

⁹⁵ Gilpin, Robert. (1981). *War and change in world politics*. New York: Cambridge University Press

⁹⁶ Richard Cooper, (1986). *Economic Policy in an Interdependent World: Essays in World Economics*, Ed. Cambridge, MA: MIT Press.

interdependence.⁹⁷ This is because theoretical causal mechanisms tend to focus on either the positive (mutual benefits) or negative (asymmetric or costly) aspects interdependence. Hirschman argued that the gains from trade may not be proportional across all states and that this disparity in relative gains can be a source of leverage of one state over another.⁹⁸ If one partner depends on a trading relationship much more heavily than another partner, the latter state faces fewer costs associated with severing the relationship.

1.8 Hypotheses

The following are the study's hypotheses:

1. Labour migration stimulates policy formulation activities and motivates the trajectory of the foreign policies of countries.
2. Labor migration patterns are likely to impact on relations between countries both negatively as well as positively.
 - a) Labor migrant challenges are likely to impact on Kenya-Middle-East relations negatively.

1.9 Methodology

1.9.1 Target Population and Sample Size

The study target population comprised of all missions in the Middle East region and in Kenya, as well as Kenyans working in the Middle East and Kenyans who used to work in the

⁹⁷ Hirschman, Albert, (1945). National power and the structure of foreign trade. Berkeley: University of California Press.

⁹⁸ Hirschman, Albert, (1945). National power and the structure of foreign trade. Berkeley: University of California Press.

Middle East but are now back in the country. The target population of the study was selected from workers in Kenyan embassies, and consular offices in the Middle East, staff members from Middle East countries' embassies in Kenya, Kenyans who have at one point lived and worked in the Middle East, as well as Kenyan citizens employed and working in the Middle East. The list of Middle East missions in Kenya and the Kenya missions in the Middle East region that constitute the sample frame of the study was sourced from the ministry of foreign affairs. According to the list in appendix 3, there are seven operational missions in the Middle East region and eleven (11) fully operational missions in Kenya for Middle East countries. On the other hand, each Kenyan mission in the Middle East has an average of six (6) staff members, while it is estimated that Middle East missions in Kenya have an average of four (4) staff members. This makes the study target population be approximately 180 respondents, as shown in Table 1.1. The study employed both purposive and simple random sampling to select respondents, which is in line with the nature of the study objectives.

Because of the multidimensional nature of the population involved, purposive sampling was used in conjunction with simple random sampling to get the target population. Simple random sampling employed the Yamane (1967) formula to calculate the sample size since it is simple, scientific, and it can be applied to a large population.⁹⁹

Table 1. 1: Target Population and Sample Size

Cluster/Category	Sample Frame	Sample Size
1 Kenyan Embassy staff in the Middle East	42	29

⁹⁹ Neuman W.L., (2006). *Social Research Methods: Qualitative and Quantitative Approaches*. Allyn and Bacon, Boston, Massachusetts, USA. p. 560.

2	Middle East embassy staff in Kenya	44	31
3	Kenyans who formerly worked in the Middle East	48	33
4	Kenyans working in the Middle East	46	32
	Total	180	125

Collecting data from a huge population seems impractical and equally cumbersome; hence, the study adopted a simplified target population that equally possesses all the attributes of the entire sets of units termed as population. This study, therefore, employed the statistically accepted 95% confidence level and 5% margin of error.¹⁰⁰

1.9.2 Data Collection

The study employed both primary and secondary data where primary data was gathered through in-depth interviews administered through semi-structured open-ended questions/interview guide. The interview guide was based on major themes relevant to the respondent's knowledge of the field and included the most relevant and vital themes in the study. Respondents were randomly selected and asked specific questions regarding their areas of expertise. The general interview guide was included to show the most critical themes covered. A semi-structured interview guide creates more flexibility in the process of questioning the respondent as the interview guide is not absolute.¹⁰¹ The order of the questions varies, and follow up questions are asked if there is a need to clarify specific issues or matters. The flexibility of the

¹⁰⁰ <http://research-advisors.com> Retrieved on 26 November 2018

¹⁰¹ Bryman, A. "Social research methods" (Oxford university press), 2008

semi-structured interview allows for the interviewer to ask questions that may arise during the interview.¹⁰²

Open-ended questions are useful for collecting qualitative data for the study to get an in-depth overview and if possible, enable a more insightful and better analysis of the results generated from the research. Moreover, open-ended questions allow respondents to include more information, including feelings, attitudes, and understanding of the issues.¹⁰³ This is conducted through the distribution of questionnaires and cooperation of the respondents. Interviews for this study are personally administered to ensure consistency and uniformity in the data, which includes: facts, opinions, and unexpected insights.

Secondary data in this study was obtained from print materials and online documents with relevant information on the subject matter of the study. The print materials used was mainly accessed from the respondents' organizations and included: annual labour reports, minutes of agency and interagency meetings, employment records of Kenyans in the Middle East, as well as any other relevant documents related to the application of legal instruments that protects rights and needs of labour workers in the Middle East.

1.9.3 Data Analysis

The study relied on content analysis, which involves detailed explanation and observation of things, items, or objects that make up the study. Content analysis is a method for establishing the content of recorded, published, or written communication through a quantitative, objective as well

¹⁰² Ibid

¹⁰³ A Bryman et al., *Business Research Methods* (2nd edition, England: Oxford University Press, 2007).

as a systematic process.¹⁰⁴ Content analysis is a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use.¹⁰⁵ As a technique, content analysis involves specialized procedures. It is learnable and divorceable from the personal authority of the researcher. As a research technique, the content analysis provides new insights, increases a researcher's understanding of particular phenomena, or informs practical actions. The phrase "or other meaningful matter" is included in parentheses to indicate that in content analysis works of an images, maps, sounds, signs, symbols, and even numerical records may be included as data that is, they may be considered as texts-provided they speak to someone about phenomena outside of what can be sensed or observed.¹⁰⁶ The crucial distinction between text and what other research methods take as their starting point is that a text means something to someone, it is produced by someone to have meanings for someone else, and these meanings, therefore, must not be ignored and must not violate why the text exists in the first place. The reading of the text, the use of text within a social context, as well as analysis of text serves as a convenient metaphor in content analysis.¹⁰⁷

1.10 Study Outline

The study is divided into five chapters. Chapter one outlines the introduction to the study. It contains the background, the statement of the research problem, the study objectives, the literature review, the justification of the study, the theoretical framework, hypotheses, and the

¹⁰⁴ Texas State Auditors Office, (2018). *Analyzing Data through Content Analysis: Methodology Manual*, Retrieved 3rd May 2018 from <http://www.Preciousheart.net/chaplaincy/auditors-manual/iucontent.pdf>

¹⁰⁵ Krippendorff, K. (2004). *Content Analysis: An introduction to its methodology*, 2nd Edition. Thousand Oaks, CA: Sage.

¹⁰⁶ Neuendorf, Kimberly A. (2002). *The content analysis guidebook*. Thousand Oaks, CA: Sage.

¹⁰⁷ Vaismoradi, M., Turunen, H., & Bondas, T. (2013). *Content analysis and thematic analysis*.

methodology. Chapter two explores and reviews the literature on Labour migration and international relations, with a greater emphasis put on the relations between Kenya and the Middle East countries. Chapter three covers the current labour situation in the Middle East, as well as the migration trends by Kenyan workers to the Middle East. Chapter four looks at a critical analysis of how migration to the Middle East by Kenyans impacts Foreign Relations of the two countries. Chapter five, the final chapter outlines the study summary, conclusion, and recommendations of the research study. Finally, the study suggests possible areas for further research related to the study.

CHAPTER TWO

LABOUR MIGRATION AND INTERNATIONAL RELATIONS

2.1 Introduction

Migration increases bilateral trade, which in turn affects foreign relations. Powerful states have a long tradition of economic statecraft. Trade relations form a means of influence, and alliances support favorable economic agreements.¹⁰⁸ During the Cold War, trade patterns closely reflected political relations. Governments today, however, have less leeway for using trade as carrot and stick in foreign policy. Global trade rules restrict the ability of governments to discriminate among trading partners, and transnational production further complicates efforts to link trade to foreign policy.¹⁰⁹ The point of this chapter is to create a clear understanding of the influence of labour migration on the international relations between Kenya and the rest of the world.

2.2 Labour Migration and Foreign Relations Nexus

Trade facilitation migration applies to both imports and exports, while the 'home preference' effect applies only to imports. The balance of these effects could, therefore, boost imports more than exports, if the trade facilitation effect would be 'symmetric'¹¹⁰ However, if migrants play a key role in expanding exports to their home country, while there are import barriers in the form of tariffs in

¹⁰⁸ Long, A. G., & Leeds, B. A. (2006). Trading for Security: Military Alliances and Economic Agreements*. *Journal of Peace Research*, 43(4), 433-451.

¹⁰⁹ Markusen, J. R. (1995). The boundaries of multinational enterprises and the theory of international trade. *The Journal of Economic Perspectives*, 9(2), 169-189

¹¹⁰.' A Allen, J., & Hamnett, C. (1995). *A shrinking world?: Global unevenness and inequality*. Milton Keynes: Open University.

place in the host country, the impact of immigration on host country exports may exceed that on imports. Most studies to date have focused on developed host nations. It is clear that, bilaterally, the increase in trade due to immigration applies to the migrant home country as well, whereas the balance of trade effect would be the opposite of that in the host country. Estimated magnitudes of the effects of international migration on trade vary considerably across the globe.

In 2014, the United States and the European Union (EU) announced a range of economic penalties to punish Russian intervention in Ukraine, and Russia retaliated with its own boycotts of agricultural products from Europe. Politically-motivated trade disruptions, however, are not limited to formal sanctions.¹¹¹ In 2012, Telam, Argentina's official news outlet, reported that ministry officials had asked some twenty (20) companies to cease importing materials from the United Kingdom (UK) in response to diplomatic tensions over the Falkland (Malvinas) Islands. In Vietnam, the government encouraged manufacturing firms to diversify their imports away from China, partly in response to tensions in the South China Sea.

The exercise of economic statecraft has distributional consequences both at home and abroad. The objective is to punish or reward another state for its policy position.¹¹² Denying key resources or market opportunities harms the target state, while preferential access offers benefits. Using economic policy to achieve foreign policy goals, however, can produce negative externalities for the domestic market as firms are forced to move away from the market equilibrium. Indeed, the domestic cost of intervention in trade enhances the credibility of economic sanctions and underlies

¹¹¹ Long, A.G., Leeds, B.A. (2006). Trading for security: Military alliances and economic agreements. *Journal of Peace Research*, 43(4), 433-451

¹¹² Allen, J., & Hamnett, C. (1995). *A shrinking world?: Global unevenness and inequality*. Milton Keynes: Open University.

theories that portray economic interdependence as a tool for states to signal resolve in conflict bargaining.

Despite possible foreign policy gains, economic decisions dictated by geopolitical interests may not coincide with the best economic outcomes. Several studies find that harm to economic actors at home limits the use of economic statecraft.¹¹³ Even when retaliation occurs in the context of WTO-authorized enforcement against a violation by a trade partner, the decision to raise tariffs encounters opposition from home industries that would suffer from the actions. As the United States and European governments debated sanctions against Russia for its actions in Ukraine in 2014, the harm to business interests loomed as a major concern. State ownership of enterprises addresses this problem by lowering domestic opposition to letting foreign policy influence business decisions. Close integration with the state in terms of personnel, funding, and goals hardwires business actors to follow government interests.¹¹⁴ Market competition pushes for decisions on a commercial basis, but state intervention introduces additional decision criteria that call on economic actors to incorporate non-commercial goals.

One clear relationship is that between trade and migration, which leads to strengthened relationships between nations. This relationship is based on the assumption that areas will capitalize on their comparative advantage in the supply of tradable commodities.¹¹⁵ However, despite stated commitments to the principles of free trade, in reality, countries rarely respond to strictly economic criteria. Tariff barriers erected by rich countries to protect primarily their

¹¹³ Skalnes, S. S. (2000). *Politics, Markets, and Grand Strategy: Foreign Economic Policies as Strategic Instruments* (ed.), Michigan: University of Michigan Press.

¹¹⁴ Skalnes, S. S. (2000). *Politics, Markets, and Grand Strategy: Foreign Economic Policies as Strategic Instruments* (ed.), Michigan: University of Michigan Press.

¹¹⁵ Allen, J. & Hamnett C. (1995) *Uneven worlds*, in Allen, J. and Hamnett, C. (eds.) *A shrinking world? The Open University/Oxford*.

agricultural sector, but also manufacturing, produce distortions that are likely to be prejudicial to the alleviation of poverty in developing countries and yet further complicate the complex relationship between migration and trade.¹¹⁶ In this regard, linkages as a result of migrations, and particularly those between internal and international population movements, are as yet poorly understood and remain a priority area for research into trade and international development policies, poverty reduction and population migration.

Against these changes, the last decade has witnessed Kenya's recovery, in which the Kenyan emigrants and Diaspora have made an increasingly significant financial contribution to the national economy, inducing the Government of Kenya to reorient its development policy to include the positive dimensions of migration, including formulating a Diaspora policy and dual citizenship as enshrined in the Immigration and Citizenship Act 2011. Diaspora remittances have had leverage on homeland investments, including boosting the growth of the real estate sector, transportation, and ICT, for instance.¹¹⁷ Thus, the prevailing political environment has been conducive to the engagement of Kenyan emigrants in activities emanating from the national development plans and policy frameworks, including the Kenyan Constitution, which was promulgated in 2010.

In addition, the improvement of the political environment has encouraged the return of emigrants and the retention of skilled immigrants (IOM, 2004). The Government of Kenya has made policy initiatives to enhance the Kenyan Diasporas' contribution to national development,

¹¹⁶ Allen, J. & Hamnett C. (1995) *Uneven worlds*, in Allen, J. and Hamnett, C. (eds.) *A shrinking world? The Open University/Oxford*.

¹¹⁷ Gilpin, Robert. (1981). *War and change in world politics*. New York: Cambridge University Press

mainly in Europe and North America. The initiative would similarly need to be applied to Kenyan emigrants in the EAC and southern Africa.¹¹⁸

2.3 Kenyan Labour Migration Policies

A recent analysis of international migration relating to Kenya provides extremely useful insights into the country's labour migration policies. There are several policies by the Government of Kenya regarding the free movement of people for employment, a dramatic shift from the previous restrictive policies. Kenya's current National Development Plan promotes an ambitious employment programme that involves the free movement of capital and labour, considered as factors of production, and that permits the export of skilled labour migrants to other countries in the region. Strategies to realize this includes strengthening the capabilities of the ministry responsible for labour and human resources. The Kenya Vision 2030 aims to develop a Diaspora and labour export policy where recent developments demonstrate the seriousness of the Government of Kenya to transform the migration situation for the better (Kenya Vision 2030).

In addition, the Ministry of Foreign Affairs has established a strong Diaspora Division which, working with the Ministry of Labour, oversees emigrant Kenyan labour and Diaspora matters in general. The Ministry of Labour has the Department of Human Resource Management and Employment (DHRME) which houses the National Employment Bureau.

Recently, there has been an aggressive development of migration and regional development policies through the International Job Office of the Ministry of Foreign Affairs, mainly to take

¹¹⁸ Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85, available on the Office of the United Nations High Commissioner for Human Rights (OHCHR) website, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, Accessed on 6th September 2018

advantage of globalization and international legal migration aimed at facilitating the employment of Kenyans abroad.¹¹⁹ In the Ministry of Youth and Sports, the Youth Enterprise Development Fund (YEDF), among other things, facilitates emigrant youth employment. Efforts to mainstream migration policy in Kenya's development programme including transnational migration-related policy initiatives inherent in the Dual Citizenship Act of 2011; the draft diaspora policy and bilateral agreements with the Southern African countries (Botswana, South Africa and Namibia) where huge numbers of Kenyan workers reside, as well as the Seychelles and the new African state of South Sudan.

In the EAC, Kenya, alongside the other Partner States, has acceded to the Private Employment Agency Contracted Case Management (PEACCM) which, among other things, provides for uninhibited labour migration. The wave of engaging the diaspora in Kenya's development and in investment opportunities led to increased diaspora engagements and remittances. Among the main drivers of internal and cross-border migration in the country is high youth unemployment in rural areas, as well as social and economic inequalities. Several positive developments have taken place in terms of policy and programmatic initiatives to promote youth employment in Kenya in recent years.¹²⁰ For example, the Ministry of Youth Affairs and Sports (MOYAS) as well focused at organizing recruitment procedures of young people for employment abroad; the Youth Enterprise Development Fund (YEDF) facilitated entrepreneurship among the youth, and the Youth Employment Scheme Abroad (YESA) has become a vibrant programme in the country.

¹¹⁹ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – 'Building Trade Union Solidarity and Action for Workers on the Move.' Ferney Voltaire. *Public Services International*, 43(15), 345-367.

¹²⁰ Mwaniki, D., and C.O Dulo 2008 'Migration of Health Workers in Kenya: The Impact on Health Service Delivery.' Equinet Discussion Paper 55.

Empirical studies available investigated how these initiatives are working in the country in relation to countries in the South.¹²¹ The country is an innovative example of how to link counter-trafficking and labour migration issues by addressing the issue of trafficking by fostering legal opportunities to work abroad. A notable development has been the Kenya Association of Private Employment Agencies (KAPEA), which has developed a Code of Conduct and a Constitution that the affiliate Private Employment Agencies (PEAs) adopted on in 2006 to guide the process. This is the first initiative of its kind in the region.

In particular, Kenya has signed almost all ILO Conventions that relate to migrant labour. Unfortunately, the country is yet to sign the 1990's United Nations (UN) international convention on the protection of all migrant workers and Members of their families. This foreign policy holds a higher binding power of protecting emigrants.¹²² In line with this, Kenya's emigrant workers do not always get the protection they deserve despite the host country's international legal obligations.

The country is also a party to the Inter-governmental Authority on Development, Regional Consultative Process on Migration (IGAD-RCP), which was established in 2008.¹²³ The domestic policies adopted in Kenya are anchored on several new initiatives that are underway and newly established in Kenya's labour migration framework. The new Dual Citizenship entitlement granted by the 2010 Constitution highlights the extent of the enhancement of labour laws in Kenya

¹²¹ Muthee, M. W., & Scholar, A. P. P., (2010). Hitting the target, missing the point: youth policies and programmes in Kenya. *African Public Policy Scholar. Woodrow Wilson International Centre for Scholars.*

¹²² Oxfam (2002). *Rigged Rules and Double Standards: Trade, Globalization, and the Fight Against Poverty.* Oxford: Oxfam International.

¹²³ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – 'Building Trade Union Solidarity and Action for Workers on the Move.' Ferney Voltaire. *Public Services International*, 43(15), 345-367.

pertaining to the rules, regulations, and administration of labour migration with a South–South perspective. The established government procedures for the review of foreign employment contracts, minimum overseas work standards, due registration of private recruitment agencies, and recruitment procedures (Pillinger, 2011).

2.4 The International Labour Organization (ILO)

The International Labour Organization (ILO) was created in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice.¹²⁴ The driving forces for ILO's creation arose from security, humanitarian, political, and economic considerations. The ILO's literature on Decent Work agenda points out that work which is central to people's well-being by providing income, paving the way for broader social and economic advancement, and strengthening individuals, their families, and communities, hinges on decent work. According to the ILO, putting the Decent Work Agenda into practice is achieved through the implementation of its strategic objectives. These are: guaranteeing rights at work – to obtain recognition and respect for the rights of workers.¹²⁵ All workers, and in particular disadvantaged or poor workers, need representation, participation, and laws that work for their interests; Extending social protection – to promote both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare;

¹²⁴ International Labour Convention, (2003). The employment and conditions of domestic workers in private households: an ILO survey. *International Labour Review*, 391-401.

¹²⁵ Human Rights Watch, (2013). World Report 2013: Events of 2012. New York: Seven Stories Press.

and Promoting social dialogue – Involving strong and independent workers’ and employers’ organizations is central to increasing productivity, avoiding disputes at work, and building cohesive societies.¹²⁶

In 1965, the ILO, through the International Labour Conference, took a fresh look at the migrant worker situation and adopted a resolution which drew attention to the urgent need to provide for domestic workers the basic elements of protection that would assure them a minimum standard of living, compatible with the self-respect and dignity which are essential to social justice.¹²⁷ This is because statistics indicate that more than 30% of all migrants are employed as domestic workers in foreign countries. A number of decades later, delegates nominated by governments, trade unions and employers’ organizations worked towards international standards in the Committee on Domestic Workers during the International Labour Conference in 2010 and 2011, motivated by the pressing need to better protect domestic workers and the desire to give domestic workers recognition as workers and respect and dignity as human beings.¹⁶³ In essence, the ILO convention demands that countries enact rules that see domestic workers receive annual leave, maternity leave, social security cover and a minimum wage to protect over an estimated 100 million domestic workers, the majority who are women.¹⁶⁴

In June 2011, the International Labour Organization passed Convention 189 which sets out salary schemes and benefits through the provision of better pay and enhanced benefits for domestic workers, a landmark progress which has since gained international status.¹²⁸ It was a

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Albin, E. & Mantouvalou, V. (2012). The ILO Convention on Domestic Workers: From the Shadows to the Light. *Industrial Law Journal*, 1-16. p2

landmark moment for domestic workers whose participation in the paid labour market and specific working conditions were recognized for the first time in a holistic manner within a legal document. It was also a landmark moment for the international labour law regime that incorporated within the ILO documents a human rights approach, which is sectorally based, stemming from the view that although domestic work is 'work like any other,' it should also be treated as 'work like no other.'¹⁶⁶ It is considered a historic agreement because domestic workers have been calling for such protections for decades, and because this was the first time that the ILO agreed on standards which cover a group of informal workers.¹²⁹ To date, more than thirty countries have ratified the Convention.¹⁶⁸ The Convention, which came into force in September 2013, is binding for countries that have ratified it.

2.5 Ratification of ILO Provisions on Protection of Migrant Workers

Ratification of relevant international Conventions regarding labour migration by countries of origin reveals that they are taking care of the protection of their citizens and represents an important step towards such protection. Wider ratification by home countries may raise their ethical status when attempting to persuade destination countries that the latter should tolerate by the standards of protection set out in these instruments.

The ILO was founded in the year 1919 by labour organizations across Europe and became the first specialized agency of the UN in 1946. It is the only United Nations Agency with the primary obligation of protecting migrant workers with its mandate stretching way back from the year of its inception. ILO does so in line with its fundamental goal of achieving decent work for all

¹²⁹ International Labour Organization. *Snapshot ILO in Action: Domestic Workers*.

workers.¹³⁰ Unlike other specialized agencies of the UN, it brings together governments, employers and workers representatives of the 187 States to achieve its overall objective or goal by setting standards, developing policies, and various relevant programmes. Migrants are less vulnerable when they are not moving out of necessity but out of choice.¹³¹ To ensure that migration for work is not driven by desperation and lack of opportunities at home, the ILO provides assistance in formulating national employment policies and promotes skills and enterprise development, youth employment and job creation. Local economic development initiatives include building skills and skills-training capacity and supporting business start-ups and microfinance services.¹³² The ILO pioneered international standards on migration, which provide a framework for cooperation between States at either end of the migration process and for national legislation, policy, and practice.

The ILO is also unique in that it is a tripartite organization representing governments and workers' and employers' organizations. It thus can help build consensus among the social partners in countries of origin and destination to develop the policies and programmes that will allow them to govern labour migration best. In this way, migrant workers will be less likely to displace national workers or less subjected to unfair treatment or abuse. The ILO offers a wealth of information and technical assistance to countries on many aspects of international migration, from

¹³⁰ ILO (2004). 'Towards a fair deal for migrant workers in the global economy.' International Labour Conference, 92nd Session, 2004.

¹³¹ Piyasiri Wickramasekara, (2015). *Bilateral agreements and memoranda of understanding on the migration of low skilled workers: a review*.

¹³² ILO (2011), Asian Decent Work Decade Resource Kit: Protecting Migrant Workers.

skills recognition to the regulation of recruitment practices to improved labour protection mechanisms.¹³³

The key functions of ILO include collection and dissemination of information, setting internationally accepted norms, fostering, and engaging in technical co-operation activities. Although ILO's Convention sets out the international labour standards for all workers, including migrants; there are two sets of Conventions that are of particular interest to migrant workers, namely: The Migration for Employment Convention (Revised) 1949 (No. 47) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). However, the majority of Middle East countries, especially Saudi Arabia, Qatar, and UAE, have not yet ratified these key conventions.¹³⁴ The ILO has also promoted multilateral dialogue around the issues affecting migrant workers. In 2004, the 92nd Session of the International Labour Conference undertook a General Discussion on Migrant Workers and adopted an ILO Plan of Action on Migrant Workers.¹³⁵ Pursuant to the Plan of Action, the ILO convened a tripartite meeting of experts in Geneva in November 2005. The Meeting adopted a multilateral framework called Non-Binding Principles and Guidelines For a Rights-Based Approach to Labour Migration.¹³⁶

The International Labour Organization's independent Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated in its observations with regard to the Forced Labour Convention, 1930 (No. 29) that *kafala* ties migrant workers to

¹³³ ILO, (2009). The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration.

¹³⁴ Jureidini, Ray. (2014). *Migrant labour recruitment to Qatar: Report for Qatar Foundation Migrant Worker Welfare Initiative*, Bloomsbury Qatar Foundation Journals.

¹³⁵ ILO, (2004). 'Towards a fair deal for migrant workers in the global economy.' International Labour Conference, 92nd Session, 2004.

¹³⁶ ILO. (2010b). *International labour migration: A rights-based perspective*, Geneva: International Labour Office.

particular employers, limiting their options and freedoms. The CEACR noted that the so-called visa ‘sponsorship system’ (or ‘*kafala*’ system) in certain countries in the Middle East may be conducive to the spread of forced labour and urged governments to adopt legislative provisions specially tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices. This should be done by taking necessary measures in law and practice to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour.

When the International Convention on Migrant Workers entered into force in July 2003, it was considered the most comprehensive international treaty addressing the issues affecting migrant workers. The Convention set the standards required when formulating and implementing laws as well as judicial and administrative acts that directly or indirectly affects migrants within the individual State parties to the Convention. In addition, State parties to the Convention are required to reform their laws, administrative procedures and regulations governing migrant workers to conform to the provisions of the Convention. Further, States are also required to adopt relevant measures necessary to safeguard migrant workers' rights. The ICMW aims at protecting the rights of both documented and undocumented immigrants. This is reaffirmed in the preamble to the Convention, which *inter-alia* recognized the fact that irregular migrants are frequently exploited and face serious human rights violations. States were, therefore, encouraged to prevent and eliminate clandestine movements and trafficking in migrant workers while ensuring the protection of their human rights.

Despite the conventions and ILO worker articles having noble initiatives, they have generally not been effective in ensuring full protection of the rights and interests of the migrants.

This can mainly be attributed to the fact that relevant member States have been slow in ratifying ICMW. A 2003 United Nations Educational, Scientific and Cultural Organization (UNESCO) study in, researchers from Asia Pacific Migration Research Network set out to investigate why seven (7) countries in Asia-Pacific were not willing to ratify the ICMW. The findings showed that migrant labor-sending countries feared that the ratification would lead to loss of labour markets in destination States to their non-ratifying counterparts. It was also noted that the receiving States faced sensitive political obstacles in that they may be required to admit irregular migrants and their families.

It was also noted that despite their comprehensive nature, these Conventions provide inadequate protection since the labour migration landscape has so far changed from the period they were first adopted. Some of the key changes and contemporary challenges include the decreasing significance of the State in recruiting migrant labor and the increasing importance of private agents and intermediaries; the increasing short-term nature of labor migration; as well as the considerable growth in irregular migration and the need for states to balance control measures with measures that facilitate labor migration and protect migrant workers.

2.6 Conclusion

This chapter has discussed the issues of labour migration and international relations around the world. The literature depicts employers of immigrant workers in the diaspora as perpetrators who take advantage of the plight of their subjects to mistreat them. The chapter has reviewed the domestic and international instruments put in place to ensure improved working conditions for the owners of labour. This is aimed at reducing the slave-like working conditions, the constant threat

of sexual abuse from employers and beatings, injuries, and death reported among migrant workers in the diaspora. The chapter has further highlighted the role of the International Labour Organization and the recent development that manifest in the adoption and ratification of the ILO conventions.

In this chapter, it has been noted that Kenyan labour workers in the Middle East are particularly disadvantaged because they are infrequently protected by the host country's national laws. The review has revealed that in the Middle East particularly, legislation catering for foreign workers are largely non-existent and the paternalistic culture that has characterized the domestic work sector enables the perpetuation of human rights abuse meted against migrant workers in the Middle East. This underscores the role of the government towards addressing the plight of Kenyan workers in these countries, as it constantly puts strain to the relationship between Kenya and the Middle East nations, as has been witnessed in the past decade.

CHAPTER THREE

MIGRATION TO THE MIDDLE EAST BY KENYAN WORKERS

3.1 Introduction

Despite the fact that globalization has created opportunities for integration of labour markets, complex national immigration and labour market regulations have continued to stifle any attempts made at liberalization or integration of labour markets to increase trade and services. The assessment of the migrant situation in the Middle East exposes the violation of the labour rights of migrants that ought to be addressed. Various sovereign states determine the extent of their immigration and labour laws with minimal international intervention. Cross border labour migration or mobility has not been effectively liberalized in a multilateral scale as countries still retain higher levels of sovereignty or control, especially as regards migration governance within and around the State borders. This chapter, therefore, examines the promotion and protection of rights of the Kenyan workers in the Middle East. The chapter begins by presenting an overview of the issues of Kenyan workers in the Middle East, both domestic and skilled labourers, before analyzing the employment conditions Kenyan workers in the Middle East go through in the hands of their employers.

3.2 The Situation of Kenyan Workers in the Middle East

The Middle East is a region of intense mobility, both voluntary and forced. It hosts some of the largest and most enduring refugee populations in the world, namely Afghans in Iran and Pakistan, Palestinians in Lebanon, Jordan, Syria and more or less every Arab state, and, more

recently, Syrians in Jordan, Lebanon, and Turkey.¹³⁷ It is also home to the largest recipients of labour migrants in the world, the six Gulf Cooperation Council countries (GCC). Since the beginning of the oil era, GCC countries have been powerful magnets for both regional and international migration. Arab, Asian and European migrants, have converged on the Gulf, bringing their skills but also their social, gender, cultural, religious and political identities to sparsely populated countries like Qatar and the United Arab Emirates (UAE) and larger societies like Oman and Saudi Arabia.¹³⁸ In those less-populated GCC countries, migrants have ended up representing up to 90 per cent of the local population and 98 per cent of the labour force; with Qatar a case in point where migrants make up 99.8 per cent of the private-sector labour force.¹³⁹

Research shows that the leading demanders of migrants are wealthier Asian and Middle Eastern countries, mainly Saudi Arabia, the United Arab Emirates, Malaysia, and Kuwait. Combined, these countries demanded 13.5 million migrant workers. Dubai, with a population that is only 20 percent Emirati and 80 percent foreign-born, with nearly 50 percent of the total population originating in South Asia¹⁴⁰. A growing phenomenon found in Asia and the Middle East is labor trafficking through legal recruitment. While employed in Gulf Countries, some women are overworked which leads to lack of sufficient sleep, and they are denied of their rightful wages; furthermore, they are mistreated and deprived of food which makes being a productive worker a challenge. Once in their destination countries, some domestic workers are subjected to

¹³⁷ Chalcraft, J. (2011). 'Migration and popular protest in the Arabian Peninsula and the Gulf.' *International Labor and Working Class History* 79 (1): 28–47.

¹³⁸ Fargues, P. (2011) 'Immigration without Inclusion: Non-nationals in Nation-Building in the Gulf States.' *Asian and Pacific Migration Journal* 20 (3–4): 273–92.

¹³⁹ Gardner, A. (2011) 'Gulf Migration and the Family.' *Journal of Arabian Studies* 1.1: 3–25.

¹⁴⁰ Caplin, J. (2009). Mirage in the Desert of Oasis: Forced Labor in Dubai and the United Arab Emirates. *Harvard International Review*, 28-31.

various forms of abuse by their employers, leaving the worker without recourse due to the lack of legal structures outlining the rights of domestic workers.¹⁴¹

The systems of sponsorship in the Middle East are composed of various legal requirements, administrative regulations, and socio-cultural practices that tie a migrant worker's immigration and employment status to one specific sponsor.¹⁴² As there is some variation amongst countries in the Middle East, this paper proposes an analysis framework covering five core elements in the employer-migrant worker relationship that may impede internal labour market mobility and fair migration. In order to enter the destination country, a migrant worker must be sponsored by a *kafeel* and mostly remain tied to this same *kafeel* throughout their stay.¹⁴³ The *kafeel*'s name is typically written inside the migrant worker's entry visa, as well as in the residence and work permits. During the contract period, migrant workers in most countries in the Middle East are commonly unable to resign or terminate their employment without the explicit written consent of the employer. If migrant workers decide to leave a job before the end of their contracts without first securing their employer's approval, even when responding to situations of abuse, they will automatically become 'irregular' (still called 'illegal' in countries in the Middle East).

Saudi Arabia, a Kingdom situated in the Middle East has been in the spotlight for unlawful human trafficking that is characterized by the mistreatment of laborers, including women and children¹⁴⁴. The Kingdom has been named as a Tier 3 country by the United States Department of

¹⁴¹ Amnesty International (2014). *Qatar: Bitter harvest: Exploitation and forced labour of migrant agricultural workers in Qatar*, Amnesty International Publications, London, 20 October 2014.

¹⁴² Vora, N. (2013) *Impossible Citizens: Dubai's Indian Diaspora*. Durham, NC: Duke University Press.

¹⁴³ Thiollet, H. (2011b) 'Kafala revisited: public and private actors of migration policies in Saudi Arabia' Middle Eastern Studies Association, Annual Meeting, 1–4 Dec.

¹⁴⁴ International Labour Organization, (2013). *Domestic workers across the world: global and regional statistics and the extent of legal protection*. Geneva: International Labour Organization, p.45.

State in its 2005 Trafficking in Persons Report required by the Victims of Trafficking and Violence Protection Act of 2000. Tier 3 refers to those countries whose governments do not fully comply with the minimum standards of Trafficking of Victims Protection Acts. Despite the benefits of domestic work to migrant workers, many become victims of exploitation by employers, the government, and recruiting agents. Workers routinely experience humiliation and xenophobic behaviour. At times abuse can reach the level of basic violations of human rights. Even when workers are not victims of sexual or physical violence, treatment of domestic workers that have become accepted as normative, such as the lack of freedom of movement, violates basic labour and human rights.¹⁴⁵ The exploitation of workers is in large part a result of the legal structures of the receiving Arab states, which have been crafted to ensure the temporary nature of domestic work contracts and the resulting lack of protection of these workers under the law.

Kenya is a source of outward migration as migrants leave in search of improved economic opportunities. The country is also located on a route for irregular migrants and human smuggling. In addition, Kenya is a destination country for both regular and irregular migrants and hosts a large population of asylum seekers and refugees.¹⁴⁶ Kenya's economy remains the regional leader within the East African Community (EAC) and among East African countries at large. However, political instability incidences such as the 1992 political upheavals and the 2007 post-election violence, as well as the region's social and political instability trickling into Kenya, have negatively affected the country's economic growth.¹⁴⁷ To bridge the economic gap, many Kenyans are seeking for employment in the in the Asian Gulf Countries, with Saudi Arabia being the most

¹⁴⁵ Otterman, 'Islam: Governing Under *Shari'ah*,' *Council on Foreign Relations*, 14 March 2005

¹⁴⁶ International Organization for Migration (IOM), *Kenya Country Profile* (2015)

¹⁴⁷ UNHCR, *Kenya Factsheet* (April 2016).

popular destination. Hundreds of Kenyan women are recruited each year for employment in Gulf Countries as domestic workers.¹⁴⁸ Many of them seize this opportunity because they see it as a chance to lift them out of poverty. These women migrate to enter into an unregulated and informal work sector where domestic workers are not protected by local laws in the destination countries and to work in the private sphere where the abuse they might be subjected to remains hidden from the public's eye. Migrant workers under this category are not documented. Rather, they are legitimately recruited in their own country and transported to wealthy “demand” countries, after which they are coerced into situations of forced labor or bond labor¹⁴⁹.

Although not unique to Kenyan domestic workers, transnational domestic workers in the Middle East are subjected to various forms of abuse. These include physical, sexual and psychological abuse, non-payment of wages, food and sleep deprivation, and involuntary debt bondage.¹⁵⁰ Oftentimes workers are unable to overcome these challenges in order to seek an indemnification or injunction because of the language barrier, or lack of knowledge of local laws, and restriction from moving freely. Even when language is not a barrier to seeking refuge from these cruelties, domestic workers are reluctant to do so because their residential status is tied to their employment. This leaves the workers afraid of reprisal if they seek outside help, or being unemployed, which would then trigger a deportation process because employment is the anchor for residential status.¹⁵¹

¹⁴⁸ UN-Women and ITUC (2013). *Domestic Workers Count Too: Implementing Protections for Domestic Workers*.

¹⁴⁹ Wangui, J. (2015). Kenyan Migrants Treated like “Trash” in Saudi. *Africa News*. Retrieved on 4th November 2018 from http://www.africanews.com/site/list_message/378921

¹⁵⁰ International Labour Organization (ILO), *The Domestic Workers Convention, 2011 (No. 189)*, (Geneva: International Labour Organization, 2011),

¹⁵¹ Human Rights Watch (2012). *For A Better Life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda*. USA: Human Rights Watch.

Due to growing concerns about abuses, the Kenyan government banned its citizens from migrating to the Middle East for domestic work, in June 2012. Though it seemed a proactive step at the time, it the ban did not come about solely due to the benevolence of the Kenyan government.¹⁵² The decision was made after Kenya's Central Organization of Trade Unions (COTU) voiced concerns and asked the Government to outlaw foreign recruitment and employment bureaus.¹⁵³ This, however, turned out to be a short term solution because it did not outline protection measures for domestic workers who remain in the Gulf following the implementation of the ban.

Furthermore, Kenyans who are desperately seeking employment continue to migrate despite the ban, because their ability to relocate and the higher pay associated with the demand for migrant workers always perpetuate migration, particularly because it is up to receiving countries to control migration through visa issuance. Unless the Kenyan government can create more jobs to respond to local demand for work, banning travels may not serve as a solution to globalization need for people to migrate to where the jobs are.

3.3 Labour Reforms to Improve Migrant Labourers Living Conditions in the Middle East

Although it is important to recognize that many sponsors do strive to provide decent and respectful working conditions, the modern functioning of *kafala* is inherently ripe with opportunities for employers to violate the fundamental human rights of the migrant workers under

¹⁵² Kerbage, C. & Esim, S. 2011. "The Situation of Migrant Domestic Workers in the Arab States: A Legislative Overview." Draft Paper, prepared for ESCWA, ESCAP & ILO, unpublished.

¹⁵³ Dito, M., 2015. "*Kafala*: Foundations of Migrant Exclusion in GCC Labour Markets," Bahrain, unpublished.

their sponsorship.¹⁵⁴ Through *kafala*, migrant workers are placed in a position of vulnerability and have very little leverage to negotiate with employers, given the significant power imbalance embedded within the employment relationship. Common grievances expressed by migrant workers include restrictions on free movement, confiscation of passports, delayed or non-payment of salaries, long working hours, untreated medical needs, and violence – all conditions that can give rise to situations of forced labour and human trafficking.¹⁵⁵

Arguably, the most problematic feature of *kafala* is the delegation or ‘outsourcing’ of responsibility by the state to the private employer to oversee both a migrant worker’s immigration and employment status. Through the linking of residence and work permits, a migrant worker’s immigration status is dependent on the contractual relationship with the sponsor. If the employment relationship is terminated, there is no longer a legal basis for the migrant worker to stay in the country. As ‘owner’ of the permit, the sponsor is given the authorization to exert far-reaching control over the lives of migrant workers employed by them, making this employer-worker relationship much more asymmetrical than is common in a normal labour market situation. It also hinders internal labour market mobility and hence negatively affects the functioning of labour markets

Following the international outcry on the living conditions of migrant workers in the Middle East as a result of *kafala* laws, several labor-receiving countries in Asia and the Middle East have begun to acknowledge the precarious situation of domestic workers and to enact

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Valenta, M. & Jakobsen J. (2018), “Nexus of armed conflicts and migrations to the Gulf: Migrations to the GCC from war-torn source countries in Asia, Africa, and the Arab neighbourhood”

¹⁵⁵ Bakewell, O. (2009). *South-South Migration and Human Development: Reflections on African Experiences*, Human Development Research Paper 2009/07, UNDP, New York.

reforms. These reforms typically take the form of a standard employment contract that outlines the monthly wage and arrangements over repatriation costs, but that falls short of providing the comprehensive protections provided under national labor laws, such as limits to hours of work, overtime pay, benefits including maternity leave, and social security. While such standard contracts are usually legally binding, measures to publicize the requirements or enforce the provisions often remain limited.

Jordan amended its labor laws in 2008 to include domestic workers, and the United Arab Emirates, Saudi Arabia, Kuwait, Bahrain, Lebanon, and Malaysia are considering either reform to existing labor codes or drafting new legislation. The dynamic policy environment provides optimism about increased protections for domestic workers, but despite active debates, these proposed legislative changes have moved slowly, often stalling for years.¹⁵⁶ The points of greatest contention typically involve establishing weekly rest days in which domestic workers have the freedom to leave the workplace, a limit on working hours, and classification of private homes as workplaces subject to government inspection and intervention.

3.4 Rights of Kenyan Migrant Workers in the Middle East

The rights and interests of migrants continue to be violated within the receiving countries. The key issue is whether multilateral institutions in the field of trade and labour rights have fully embraced the linkage between labour and trade in order to establish effective mutual strategies for

¹⁵⁶ Migrant Forum in Asia. (2014). *Reform of the kafala (sponsorship) system*: Policy Brief No. 2, Migrant Forum in Asia, Manila.

protection of migrant workers.¹⁵⁷ Even though there is a wide consensus on the need to secure or obtain certain minimum but concrete labour standards to protect migrant workers at multilateral levels, achieving uniform global governance has been slow and difficult.¹⁵⁸

The interrogation of the status of migrant workers in the Middle East cannot be complete without an examination of the legislative, policy and institutional frameworks pursued by Kenya, as a sending State, in safeguarding the rights of migrant workers either en route or already within the Middle East and other migrant-receiving States. Kenya has been alive to the situation of Kenyan migrants in the Middle East and other migrant-receiving States. It has sought to enact various legislations, policies, and practices to manage the outflow of migrant workers into various States and bolster protection mechanisms.¹⁵⁹ These intervention mechanisms have included effecting a ban on labour migration in order to effectively minimize the risk of human rights abuses within the receiving States.

The key institutions concerned with migrant issues in Kenya are the Ministry of Foreign Affairs and International Trade and the Ministry of East Africa Community (EAC), Labour, and Social Protection. Some of the functions of the Ministry of Foreign Affairs and International Trade include management of Kenya's foreign policy, bilateral and multilateral relations, management of joint commissions and joint trade committees with other countries, international trade affairs, and acts as a trade representative/special advisory/negotiation services. The Ministry of East African Community (EAC), Labour and Social Protection, on the other hand, is tasked with *inter-*

¹⁵⁷ Human Rights Watch, "Detained, Beaten, Deported: Saudi Abuses against Migrants during Mass Expulsions," May 2015.

¹⁵⁸ Human Rights Council, 2013.

¹⁵⁹ Atong, K., Mayah, E., & Odigie, A. (2018). Africa Labour Migration to the GCC States: Case of Kenya, Uganda, Ghana, and Nigeria.

alia formulation, review, and implementation of employment and social policy, national human resource planning and development, facilitating and tracking employment creation, workplace inspection, and workman's compensation. The following are the key sources of legislation and policies:

3.4.1 Employment Act, 2007 (Revised 2012)

The Kenyan Employment Act contains various provisions directly aimed at labour migration governance. According to chapter 226 of the 2007 Employment Act (revised in 2012) of the 2010 constitution, every Kenyan citizen is protected from poor working conditions and mistreatment. The employment act establishes minimum terms and conditions of employment in Kenya, defining a number of common terms such as probationary contract, migrant workers, worst forms of child labour, dependant, forced or compulsory labour, and handling HIV at work.¹⁶⁰ Part XI of the Act expressly provides for the foreign contract of service. Section 83 of the Act provides that a foreign contract of service must be in prescribed form attested by a labour officer to ensure it satisfies certain set criteria. Section 86 thereof makes it an offence to induce or attempt to induce an employee to proceed outside the limits of Kenya without entering into a foreign contract of service. On conviction, the offender is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

Practical difficulties arise in the enforcement of the law requiring entering into a contract of service before departure to a foreign country. First, the trans-boundary nature of migration makes it harder to arrest and arraign suspects in law courts within the Republic of Kenya. Secondly; the

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penalties for breach is very low and disproportionate to the commercial benefits of illegal migration. Thirdly; the legislation is weak given the fact that majority of low skilled migrants find their ways into the Middle East through various routes and means and the Kenyan Court or enforcement agencies will have no control once the migrants cross over to the Middle East.

3.4.2 Regulations of Recruitment Agencies in the Country

Recruitment agencies in Kenya have a recent history. They first emerged in the 1990s as a private sector initiative to address local and foreign employment promotion.¹⁶¹ However, the number has grown significantly from 5 in 1998 to over 700 in 2013. Unscrupulous agencies have constantly exploited unsuspecting but desperate Kenyan job seekers by not only extorting money from them but also linking them to exploitative employment in the Arab countries. By circumventing legal procedures, these agencies have contributed significantly to irregular migration patterns which have led Kenyan labour migrants into abusive employment relations in the hands of private employers in the Middle East. However, the Kenyan government has a residual function of not only taming these rogue agencies but also protecting the rights and interests of Kenyan labour migrants already in the Middle East irrespective of their mode of entry.

While only a few countries are regulating their nationals working abroad through public employment agencies, as a minimum they have the power to review and approve employment contracts, accuse violators of recruitment regulations, and arbitrate in disputes between migrant workers and foreign employers or recruitment agents. Most of these authorities also have the

¹⁶¹ ILO. (1997). *Sending workers abroad: A manual for low- and middle-income countries*: ILO, Geneva.

power to enter into agreements with foreign employers or to recruit nationals for employment abroad.¹⁶² For instance, when Kenya banned the recruitment of domestic workers to the Middle East from mid-2012, respective Middle East consular offices in Kenya had to come up with standard contracts that minimize conflicts and mistreatment of Kenyans in the diaspora. The authorities in origin countries must, therefore, ensure that migrants fully comprehend their rights and obligations before signing contracts, them, and can require all contracts are approved by a competent authority.

In 2007, the ILO formulated a guide to private employment agencies. The guide effectively incorporates *inter-alia* government regulatory responsibilities, including the legal requirements for establishing and operating private employment agencies. However, Kenya has not enacted a specific law that governs recruitment agencies within its borders. It was not until 3rd November 2014 that a Task Force was established with terms of references listed as: considering the existing framework for the management and regulation of recruitment agencies and assess its effectiveness in protecting Kenyans recruited to work outside the country; reviewing existing framework and recommend how it can be strengthened to ensure effective protection of Kenyans, and developing a policy direction and advice the government of Kenya on whether to maintain or lift the existing ban on export of Kenyan workers to the Middle East and Gulf Region.

The task force was formed after the government had previously revoked all accreditation certificates of private employment firms, including imposing a ban on the export of domestic workers to the Middle East and the Gulf region. The task force delivered its final report to the

¹⁶² Ghosheh, N. (2009). 'Protecting the Housekeeper: Legal Agreements Applicable to International Migrant Domestic Workers', *The International Journal of Comparative Labour Law and Industrial Relations*, 25(3), 301-325.

government on 15th September 2015 where they *inter alia* made concrete recommendations for regulation of private recruitment agencies, training of recruits before departure, co-ordination of migrants abroad and formulation of national policy on labour migration. The government is yet to adopt the report or order the end of the recruitment freeze.

3.4.3 Formulation of Kenya Foreign Policy 2014

In June 2014, the Kenya Foreign Policy was enacted. The policy was developed in recognition of the urgent need to mainstream the Kenyan Diaspora into the national development process in line with the aspirations and goals of the Kenya Vision 2030. The broad objective of the policy is to mainstream and empower Kenyans abroad to effectively make significant contributions to the development of the country.¹⁶³ The key objectives of the policy, therefore, is to harness and maximize the potential of Kenyans abroad to contribute to Kenya's transformation Agenda while at the same time meeting their needs and expectations through a mutually beneficial and lasting partnership. Key specific objectives of the policy include:

- i) Developing and implementing strategies to empower, engage, and mainstream Kenyans abroad into the national development process.
- ii) Mobilizing Kenyans abroad to form town, city or country-specific umbrella associations as well as regional and global umbrella associations for effective representation and engagement.
- iii) Developing measures to enhance protection of Kenyans abroad

¹⁶³ MFA, (2014). Kenya Foreign Policy

- iv) Establishing a necessary institutional mechanism for co-operation and administration of issues of Kenyans abroad.¹⁶⁴

Under the Policy, among the strategies include the enhancement of mechanisms for protecting Kenyans abroad. Under this strategy, the government seeks to negotiate and sign bilateral labour agreements with host countries; strengthen regulatory framework for employment agencies; conduct pre-departure training for migrant workers and students going for further studies abroad; conduct awareness creation for Kenyans going abroad through travel advisories and registration of Kenyans abroad through the Kenya Missions, as well as revamping labour recruitment system to make it more professional and accountable.

The policy further seeks to establish a National Diaspora Council of Kenya whose mandate shall include advising the Government on issues of Kenyans abroad and conducting research into ways and means of improving policies, programmes and institutional arrangements for the mutual benefit of the country and Kenyans abroad. Further, the Council in consultation with the Ministry of Foreign Affairs and other stakeholders will be charged with the responsibility of organizing annual home-coming conferences by Kenyans abroad, organizing an award scheme for the recognition of outstanding Associations of Kenya and individuals and any other activities within and outside the country. This Council is intended to operate under the Ministry of Foreign Affairs and International Trade.

While the policy has indeed contextualized the trade-related benefits of labour migration, it has not effectively addressed the actual measures or framework for the interplay between trade and

¹⁶⁴ Government of Kenya, 'Kenya Foreign Policy'

protection of the rights of migrant workers in various receiving States. It has instead emphasized negotiation and signing of bilateral labour agreements.

3.5 Bilateral Agreements between Kenya and the Middle East Countries

A significant means of providing minimum standards and rights for migrant workers can be ensured by bilateral agreements between origin and destination countries. Origin countries can negotiate for better-protected rights that complied to international standards with the pledge of observance by the agreements.¹⁶⁵ These agreements can also decrease illegal migration by providing more access to regular migration and the formal labour market. Provisions of these agreements can comprise the mutual management of pre-departure and return policy, social security, and pension scheme, dispute settlement procedures, and remedies for violation of rights.¹⁶⁶ Even though there is no consensus achieved on the question of whether to include labour rights in WTO, there is a wide consensus or trend that favours inclusion of such rights by trade partners in either Bilateral Agreement, Free Trade Agreements or International Investments Agreements. It is significant bilateral agreements operate within a multilateral context of international standards and that the bilateral and multilateral levels are mutually supportive.¹⁶⁷ In recent international relations, looser framework agreement, memoranda of understanding (MOUs) is used often. It has many practical benefits to compare with treaties. Within the legal sense, it can

¹⁶⁵ SDC. (2014). *Report of the Proceedings: Sub-Regional Training Workshop on Bilateral Agreements and Memoranda of Understanding on Labour Migration*, Swiss Agency for Development and Cooperation (SDC), Kathmandu, March 2014.

¹⁶⁶ United Nations. (2012). *Treaty Handbook*, Revised edition, Treaty Section of the Office of Legal Affairs, United Nations, New York. <https://treaties.un.org/doc/source/publications/THB/English.pdf>

¹⁶⁷ OECD. (2004). *Migration for employment: bilateral agreements at a crossroads*: Organization for Economic Cooperation and Development, Paris.

be kept confidential when dealing with sensitive issues. Also, it can be put effect more rapidly than treaties because it does not require ratification.

In these days, there has been increasing acknowledgment that advantages of labour mobility can be optimized through developing an effective agreement between the governments of sending and receiving countries. Particularly, in order to eliminate the exploitation and abuse of workers by recruitment agents, it is increasingly recognized the necessity of cooperation between home as well as the host country. In this respect, Memoranda of Agreement has been signed by the UAE with six Asian countries, including Bangladesh, China, India, Pakistan, Sri Lanka, and the Philippines to protect the rights of workers recruited by agencies. Within this mechanism, migrant workers would be brought in through the public labour agency, to avoid private agents charging exorbitant fees from job seekers.

In various countries nowadays, there are several ministries concerned with migration, and also responsible for international cooperation agreements. A large number of agreements have been signed between the Ministries of Labour in origin and destination countries.¹⁰ Among destination countries, Ministries of Labour have been responsible in the GCC countries, Jordan, the Republic of Korea, Thailand, Germany, and Italy. Among origin countries in Asia, Ministries of Labour in Cambodia, Lao PDR, Nepal, Indonesia, Philippines, and Vietnam can be mentioned. Where migration is handled by ministries other than labour, the agreements are signed by those ministries. For example, in South Asia, foreign employment is handled by the Ministry of Labour only in the case of Nepal. Bangladesh, India, Pakistan and Sri Lanka have all established separate dedicated ministries to deal with emigration, which have signed recent agreements. In Spanish agreements, three Ministries have been mentioned: Foreign Affairs, the Interior, and Labour and

Social Affairs, in accordance with their respective areas of competence in immigration matters. In Brazil, Ministries of Justice and Foreign Affairs are responsible for signing the agreements. In the case of France, the French Office for Immigration and Integration (OFII) is responsible for bilateral agreements.

Kenya remains the largest economy in the EAC, with an estimated GDP of about \$85.98 billion in Financial Year 2017/18. Oil products account for most of the imports from the Middle East, while Kenyan exports to the region are largely confined to agricultural products to which it has a comparative advantage over the Middle East countries, with the products enjoying a sizeable market share. Within the Middle East, Kenya and UAE have expressed the desire to further enhance trade relationship through the signing of various bilateral agreements amongst themselves. Kenya, itself being a member of various multilateral and bilateral trade treaties and systems, key among them being WTO, EAC, COMESA, ACP/Cotonou Partnership Agreement, AGOA, and GSP. In addition, Kenya has signed various bilateral agreements with several countries worldwide. Even though the majority of these agreements lack of labour standards clauses or agreement, it is still possible to correct the bilateral agreements signed between Kenya and the Middle East states such as UAE. The relevant clauses that relate to migrant workers can be negotiated and incorporated before or after the conclusion and signing of bilateral trade agreements. Studies have shown that these labour provisions or clauses can still lead to significant changes in labour legislation and practices in the respective countries.

The Kenyan government has set the tone by the enactment of the Kenya Foreign Policy 2014. One of the key pillars of the policy is to enhance protection of Kenyans abroad. The trade agreements currently existing between Kenya and the Middle East states provide a convenient

starting point for incorporation of labour issues of concern to the Kenyan migrants in the Middle East. Even though Kenya recently announced to the public that more than 10,000 employment opportunities had been secured in UAE for the benefit of the Kenyan population, it is not clear the legal mechanisms that were adopted to set and secure migrant workers' labour rights while in UAE.

CHAPTER FOUR

CRITICAL APPRAISAL OF THE IMPACT OF MIGRATION BY KENYANS ON THE FOREIGN RELATIONS OF KENYA AND THE MIDDLE EAST

4.1 Introduction

Labour migration from African countries to the Gulf Cooperation Council (GCC) states has been on the increase. This is largely perceived but less captured statistically, through various studies show that the perception is supported by increasing reported cases of abuses and maltreatment of African labour migrants.¹⁶⁸ The abuses have on various occasions led to labour migration bans to the GCC states notably Saudi Arabia and the United Arab Emirates, with the Kenyan ban in June 2012 lasting a few months before being lifted in October 2012. While this phenomenon remains largely undocumented, majority of those who end up in the GCC states are mostly young, unskilled and less educated Africans.¹⁶⁹

Every nation desires to have its citizens enjoy full human rights and labour rights in the diaspora wherever they migrate to in search of employment. At least, and especially in destination countries, concrete and mutually reinforcing legislations and policy mechanisms and their effective implementation are key to empower and protect migrants from abuse and maltreatment.¹⁷⁰ However, past and current experiences in terms of the protection of the labour rights of emigrants during the recruitment process and working in destination countries especially

¹⁶⁸ Flahaux, M.L and De Haas, H. (2014). "African Migration: Exploring the role of development and states."

¹⁶⁹ Omar Al-Ubaydli (2015), "The Economics of Migrant Workers in the GCC" Issue Paper No.10 Arab Gulf States Institute in Washington.

¹⁷⁰ ITUC, Migrant Workers in the Middle East December 2007, 8.

in the Arab Gulf region and the GCC states have not measured up to international standards. The respect for human and labour rights of African migrants to the GCC states worsen where sending countries have weak policies and practices concerning labour migration.¹⁷¹

There are a number of international, regional and national legal, normative and institutional structures that exist and recognized to govern and provide protection focusing specifically on labour migration. The challenge, however, has been the lack of policy measures at country levels and non-adoption or respect of global standards and/or their effective implementation. This section of the study presents a critical analysis of the key legislation as well as the bilateral trade agreements and policy institutional frameworks relevant to the international relations between Kenya and the Middle East. It focuses on the international relations between Kenya and the Arab Gulf countries and the GCC, citing some of the significant trade agreements and as well as conflicts between these countries as a result of the infringement of rights of Kenyan immigrants in the Middle East.

4.2 International Relations between Kenya and the United Arab Emirates (UAE)

Since the early 1990s, Kenya has enjoyed a cordial relationship with the United Arab Emirates (UAE). With the UAE identified as the rising star and a key economic player in the Middle East, and Kenya strategically position as a gateway to the larger East and Central Africa region, the two countries stand to gain a lot in the economic and trade relations between them.¹⁷²

Kenya and the UAE enjoy warm and cordial relations. Kenya opened a diplomatic Mission in Abu

¹⁷¹ BSR, (2011). 'International Labour Migration: A Responsible Role for Business' 5.

¹⁷² Global Forum on Migration and Development. 2012

Dhabi in 1982, and in April 2014, a passport issuance office was established at the Kenyan Embassy in Abu Dhabi. The UAE opened its Embassy in Nairobi in 2012 while UAE set camp in Nairobi on November 17, 2014, by opening its Consular Section and Visa Issuance Centre in Nairobi. In the past three decades, the UAE has been a lure for both low and high skilled immigrant workers from countries all over the world, Kenya is no exception. The Gulf Labor Markets and Migration (GLMM) data suggests that the Kenyan migrant population is one of the fastest growing unskilled labor migrant populations in the Gulf countries.¹⁷³

Various reports show that the United Arab Emirates (UAE) is a major destination for migrant workers, with domestic workers identified as the leading career choice for most labour migrants entering UAE. Domestic workers are brought into UEA as cheap labour through means that promote trafficking and propagates violation of their rights. Although the immigration laws in UAE are against trafficking, loose federal and tribal structure of United Arab Emirates society could play a role in easing the way to possible traffickers.¹⁷⁴ The relations between the two countries first came into limelight when the UAE imposed sanctions on Kenyans traveling to the UAE for work or residence to have a degree or qualification, a move that triggered anxiety to the large Kenyan expatriate community in the UAE. The move was thought to be in retaliation after Kenyan authorities arrested and deported four UAE citizens on suspicions of being terrorists; even though various news outlets speculated that some of those deported were from a royal family in the UAE.¹⁷⁵ Approximately 20,000 Kenyans are living and working in the UAE. A majority of this

¹⁷³ Sönmez, Apostopoulos, & Rentrope, (2011). "Human rights and health disparities for migrant workers in the UAE." *Health and Human Rights*, 13(2):17-35.

¹⁷⁴ Sabban, R. United Arab Emirates: Migrant Women in the United Arab Emirates.

¹⁷⁵ Shah, N. M. 2014. "Labor migration conflicts between Kenya and the Gulf countries." *Feminist Review*. (77): 183-185.

number, work in hospitality, aviation and security sectors. Other sectors include medical, construction, engineering, and telecommunications.

4.2.1 Bilateral Relations and MoU's between Kenya and the United Arab Emirates (UAE)

The past three decades has seen the United Arab Emirates sign MoU's and trade agreements with Kenya, with the latest memorandum being in April 2018 when Nasser bin Thani Al Hamli, Minister of Human Resources and Emiratisation, and Ukur Yatani Kanacho, Minister of Labour and Social Protection of Kenya signed an MoU on Kenyan labour migrants working in UAE, complemented by a cooperation agreement on domestic workers.¹⁷⁶ The MoU regulates the recruitment of Kenyan domestic workers as part of efforts to implement transparent procedures in all phases of the contractual work. The MoU stipulates that an employer has to present an offer that contains detailed information about the rights and duties of the employer and employee, and terms and conditions. The relevant Kenyan Government body then ensures that the employee approves of the contractual terms and signs the contract. The offer should contain a work permit application, which is to be submitted by the employer to the ministry.¹⁷⁷ The offer is only extracted from the ministry's database once the employee arrives in the UAE. Once both parties sign the contract, it should be registered officially as a legal contract in the ministry's database. An original copy each of the contract should be provided to the employer and employee.

¹⁷⁶ MFA (2018).

¹⁷⁷ Ngugi, (2014). "Kenyan government moves to combat migrant worker abuse in the Gulf." *Equal Times*. October 13.

Following numerous contractual complaints from immigrant labourers working in the UAE, contractual agreements were amended to allow migrant workers to transfer to new employers and be issued a new work permit without the permission of their current employers when their current employers fail to meet legal or contractual obligations. The contracts were also tailored to enable workers to transfer to new businesses when the business has closed down; when a worker has brought a successful labour complaint against their current employer; or when the worker settles indemnities with the first employer in line with contract termination clauses (up to three months' salary).¹⁷⁸ In addition, any worker who completes the first two-year contract may be transferred to the new employer without conditions, and without their current employer's approval (Decree 766).

In 2017 The contract cannot be altered or changed unless it serves the interest of the employee and is approved by the ministry. In the case of a dispute between the employee and the employer, the complaint will be registered at the ministry's specialized department, which will seek a friendly settlement between both parties within a specific time frame. If a friendly settlement is not reached, the department will refer the complaint to the judicial authorities.

As per the cooperation agreement, the process for accepting and recruiting Kenyan domestic workers to the UAE will be easier, and they will be employed according to the bylaws of the UAE's domestic workers law, as well as Kenyan legislation and regulations on foreign recruitment. The two legislative frameworks will ensure legal protection for Kenyan domestic workers from the moment they are recruited and until their arrival in the UAE.

¹⁷⁸ Hamill, K., 2012. "Policy Paper on Reforming the 'Sponsorship System' for Migrant Domestic Workers,"

The agreement also stipulates that only private recruitment agencies that are licensed and registered in the UAE can submit the employers' requests for recruiting Kenyan domestic workers. Likewise, only licensed agencies in Kenya will be able to submit the names and information of domestic workers who are eligible for approved and available job opportunities.

Additionally, the new regulation on visa acquisition for female domestic workers where the visa is sponsored by a third party who is usually the employer perpetuates violence and abuse against female domestic workers e.g., withholding of their passports. Irregularities and deception in the recruitment of female domestic workers, especially in the UAE also subjects female migrants to abuse and exploitation.

4.2.2 Labour Migration between Kenya and the United Arab Emirates

The past two decades have seen an upsurge in the number of Kenyan immigrants going to the Middle East. Statistics show that more than 60,000 Kenyan immigrants are living and working in the UAE. This is because labour demand in the Gulf countries, the largest non-Western migrant destination globally, has increased significantly. For instance, the Dubai Expo 2020 alone is expected to create more than 275, 000 employment opportunities across the region.¹⁷⁹ It is also projected that construction of Pan-GCC railway line system that runs from Kuwait, through Saudi, Bahrain, Qatar, the UAE, and then Oman, will generate more than 80,000 jobs.¹⁸⁰ This clearly points to an expected increase in demand for the foreign migrant labor force in the Middle East.

¹⁷⁹ Jureidini, Ray. 2010. Trafficking and contract migrant workers in the Middle East. *International Migration*, 48(4), 142-163.

¹⁸⁰ Anazi, Mohammed. 2016. "Gulf railway to create 80, 000 jobs," *Saudi Gazette*. April 26.

Various studies reveal that by the year 2013, UAE had the fifth-largest international migrant stock in the world with 7.8 million migrants (out of a total population of 9.2 million). However, the immigration laws have made it extremely difficult for Kenyans and other foreign people to settle permanently in the UAE, leaving the majority of them to be temporary migrant workers.¹⁸¹ Even though the migrant workers have contributed to the economic improvement of the UAE, they face various forms of exploitation, human trafficking, and other labour rights violations. Various scholarly works have discussed the foregoing situation such as Nicholas Cooper who wrote that, in the past two decades, the city of Dubai within UAE has experienced exponential growth, made possible by vigorous foreign investment and its robust tourism industry. It is argued from a human rights perspective that beneath the glossy visage of the city lies a foundation of pervasive human rights violations; primarily slavery, and that many migrants arrive willingly and signing contracts to become domestic workers or work in Dubai businesses, only to have employers confiscate their passports and force them to work as prostitutes.¹⁸² The existing *Kafala* sponsorship system only works to fuel the tribulations of immigrant workers in the UAE. This is because nearly all Gulf countries embrace the *Kafala* system, which is a state policy used to organize, govern, and control the migrant population, usually characterized by restrictive labor and mobility rights, particularly for unskilled workers.

Various news agencies have carried reports giving chilling accounts of how Kenyan migrant workers undergo various human rights abuses in the UAE. It is reported that some of these

¹⁸¹ Froilan T. Malit, Ali Al Youra, "Labor Migration in the United Arab Emirates: Challenges and Responses" <<http://www.migrationpolicy.org>>

¹⁸² Cooper Nicholas, (2013). 'City of Gold, City of Slaves: Slavery and Indentured Servitude in Dubai.' *Journal of Strategic Security*, 6(5), 65-71.

migrants have been trafficked to UAE through various human trafficking rings clinically carried out on the back of the Kenyan government while others have been recruited to work in UAE without the involvement of the Ministry of Labour thereby threatening their labour rights.¹⁸³ For instance, a report sanctioned by the US State Department shows that Kenyan men, women, and children voluntarily migrate to other East African nations, Europe, Middle East-particularly UAE, and Saudi Arabia in search of employment, where they are trafficked into domestic servitude, massage parlours brothels, and forced manual labour especially in the construction industry.¹⁸⁴ These findings are similar to those of a study conducted by the Human Rights Watch in 2011. The report further depicts various reported abuses as non-payment of wages, unsafe work environments, and squalid living conditions in labour camps and withholding of travel documents all of which go on to show that labour rights of migrant workers are not adequately protected.

Following the public outcry that normally follows reports on the mistreatment of Kenyan immigrants in UAE, the Kenyan government has enhanced surveillance of the local and international recruitment agencies within its borders. In an unprecedented move to curb the increased rates of migration to the UAE, the Kenyan Government on 29th September 2014 suspended the licenses of over 900 agencies recruiting and sending Kenyans to the Arabian Gulf countries.¹⁸⁵ A task force was thereafter formed to among other things consider the existing framework for the management and regulation of recruitment agencies and assess its effectiveness in protecting Kenyans recruited to work outside the country; develop a policy direction, as well as

¹⁸³ Joe Kiarie, "Tears as Kenyans Suffer in Slavery in Saudi Arabia" 11th September 2015, Standard Newspaper, <<http://www.standardmedia.co.ke/article/2000042568/tears-as-kenyans-suffer-in-slavery-in-saudi-arabia>>

¹⁸⁴ United States Department of State, (2011). Trafficking in Persons Report-Kenya, 27 June 2011, available at <<http://refworld.org/docid/4e12ee6ec.html>>

¹⁸⁵ Human Rights watch Country Summary, United Arab Emirates, 2011. <http://www.hrw.org/sites/default/files/related_material/uae_3.pdf>

advising the government on whether to maintain or ban the exportation of Kenyan workers to the Middle East and Gulf Regions. In addition to this, it was mandated to recommend considerations to be taken into account in vetting and accreditation of recruitment agencies.¹⁸⁶ Even though the task force has completed its work and forwarded the report to the Cabinet Secretary for Labour, Social Security, and Services, the report has neither been made public nor implemented.

4.3 International Relations between Kenya and Saudi Arabia

Since the discovery of oil, Saudi Arabia has been a destination country for professional, technical, and medical personnel from across the Western world. However, increasingly low-, semi- and unskilled workers from across Asia and the Horn of Africa have become the dominant population of workers in the country, fulfilling demand for low-skilled staff in the service sectors, such as cleaners, cooks, janitors, gardeners, domestic workers, retail staff and waiters, as well as workers in the agricultural and construction sectors.¹⁸⁷

Kenya and Saudi Arabia continue to enjoy longstanding warm and friendly relations spanning several decades. Both countries are keen to ensure that the long-running relationship between them is not soiled by issues which can be solved through dialogue.¹⁸⁸ The Gulf Labor Markets and Migration (GLMM) data suggests that the Kenyan migrant population is one of the fastest growing unskilled labor migrant populations in the Gulf countries, with figures showing

¹⁸⁶ The Kenya Gazette, Vol CXVI-No. 126, 24 October 2014 Pg. 2888

¹⁸⁷ S. Irudaya Rajan and KC. Zachariah, Kerala's Gulf Connection 1998–2011: *Economic and Social Impact of Migration* (Orient Blackswan, New Delhi, 2012), p. 12.

¹⁸⁸ Ulrichsen, K. C. (2016). Foreign policy in Iran and Saudi Arabia: economics and diplomacy in the Middle East. By Robert Mason. *International Affairs*, 92(2), 485-486.

that more than 40,000 Kenyans currently reside and work in various sectors in Saudi Arabia.¹⁸⁹ Since the turn of the century, terrorism has become such a menace in the Middle East and the world over. Saudi Arabia has not been spared, as it fights hard against internal dissent groups, eliminating many of the terrorist cells such as local Al Qaeda leadership. Through the intervention and pressure from the United States, Saudi Arabia has closed many of its charity organizations and closely monitors its banking institutions to prevent the flow of funds to terrorist organizations and sympathizers.¹⁹⁰ The Saudi government, in turn, introduced new regulations and mechanisms to ensure that its financial systems and charities are not exploited by terrorist groups, which include freezing financial assets of suspected financiers of terror. To this end, the Kenya-Saudi Arabia diplomatic relations revolve around the latter, helping Kenya to fight terrorism, and this has been possible through the sharing of intelligence.¹⁹¹

The government of Saudi Arabia established and maintained political links with Kenya since the colonial era with Kenya's then British administration, and today is one of the several nations with a diplomatic presence in Nairobi. The rising unemployment rates in Kenya, combined with the difficulty of gaining entry to Western countries has resulted in many Kenya citizens heading to Saudi Arabian in pursuit of jobs and employment and proximity.¹⁹² This is aided by the Saudi foreign policy, which is based on the principles of strengthening relations with foreign countries in the Gulf, in Africa, the rest of Asia, and the rest of the world. Moreover, the foreign policy is pegged on strengthening relations with the Gulf States through Gulf Cooperation Council

¹⁸⁹ United Nations Department of Economic and Social Affairs. 2015. "Trends in International Migrant Stock: Migrants by Origin and Destination."

¹⁹⁰ Blanchard, C. M. (2010). *Saudi Arabia: Background and US Relations*. DIANE Publishing.

¹⁹¹ Malmquist, H. (2015). *The Foreign Policy of the Kingdom of Saudi Arabia*.

¹⁹² Kenya-Saudi Arabia Bilateral Relations (2006) *Deepening of Bilateral Relations*.

(GCC) and the other Arab countries and Islamic countries, as well as pushing for Islamism rather than Arabism Non-interference in the internal affairs of other countries.¹⁹³ Additionally, Saudi Arabia plays an effective role in the international and regional organizations by offering development assistance to Islamic countries and developing nations through institutions such as the Saudi Fund for Development (SFD), the Arab Bank for Economic Development for Africa (BADEA) and the OPEC Fund for International Development.

4.3.1 Bilateral Relations and MoUs between Kenya and Saudi Arabia

Saudi Arabia has had long historical relations with Kenya, and these historical relations include the bilateral ties, which the two countries have maintained for a considerable amount of time. Kenya and Saudi Arabia have longstanding cultural relations that date back during the period of Indian Ocean trade when the Oman Arabs settled in Mombasa. Since then, a big Saudis community has settled in Kenya, but Kenya seems not to have taken full advantage of this to advance its economic and security relations with Saudi Arabia.¹⁹⁴ President Moi was the first Kenyan head of state to visit Saudi Arabia in 1979, with a follow-up visit in 1983, as Kenya tried to create a cordial relationship and trade partnership with the oil-rich Gulf nation. In 2005, President Kibaki sent a delegation led by Foreign Affairs Minister Ambassador Chirau Ali Mwakwere to attend an international conference on Counter-Terrorism in Riyadh, as well as

¹⁹³ Ulrichsen, K. C. (2016). Foreign policy in Iran and Saudi Arabia: economics and diplomacy in the Middle East. By Robert Mason. *International Affairs*, 92(2), 485-486.

¹⁹⁴ Oded, O. (2000). *Islam and Politics in Kenya* (London: Lynne Rienner Publishers).

delivering condolence and a congratulatory message from President Mwai Kibaki to the new Custodian of the Two Holy Mosques Abdullah bin Abdulaziz upon the death of King Fahd.¹⁹⁵

Exchange visits between Government officials, people in business, cultural and religious groups of the two countries have also taken place. In the year 2004, Kenya Tea delegations visited the Kingdom to explore the possibility of penetrating the Saudi and Middle East markets.¹⁹⁶ In 2005, two labour employment opportunity-seeking delegations visited the Kingdom during the course of the year to explore ways and means of creating employment for Kenyans. A Ministry of Labour and Manpower delegation led by Mrs. Rachel B. Dzombo visited Saudi Arabia from 15-18 May to look at the possibility of posting a labour attaché in the Middle East to enhance job opportunities; while another delegation from the office of the President led by Dr. Isayia Onyango and Principal Counsellor BHO. Ogutu from the Ministry of Foreign Affairs visited the Kingdom from 3-5 July 2005 to explore employment opportunities for Kenyans.¹⁹⁷

Saudi Arabia has funded various development projects in Kenya through the Saudi Fund for Development. The projects include Nairobi Water Supply which cost 55.84 million Saudi Riyal (SR), Kenya-South Sudan Road at SR34.59 million, Thika-Garissa-Liboi Road at SR55.84 million, Mombasa Sewage SR45.95 million, Kiambere Hydro Electricity Power at SR39.96 million, Agriculture Sector Support at SR15 million, as well as Garissa Water Supply at SR31.41million. In 2011, the Saudi government approved a Ksh.1.6 billion loan to Kenya for the construction of the 146km Nuno-Madogashe road that runs between Garissa and Mandera

¹⁹⁵ Kenya-Saudi Arabia, 2006. *Deepening of Bilateral Relations*. Obtained from www.kenyaembassyriyadh.com

¹⁹⁶ Mahmud, K. A. (2013). *Kenya and Saudi Arabia Relations: Trade and Security Implications* (Doctoral dissertation, Institute Of Diplomacy And International Studies, University Of Nairobi).

¹⁹⁷ Kenya-Saudi Arabia, 2006. *Deepening of Bilateral Relations*. Obtained from www.kenyaembassyriyadh.com

towns.¹⁹⁸ Saudi also approved Ksh.1.2 billion to fund five power projects in different parts of the country. With substantial investment interests in the country spanning from the hotel industry to transport and logistics, the Saudi Prince Al-Walid bin Talal bin Abdul Aziz Al-Saud makes the Kenya-Saudi Arabia ties even stronger.

Saudi Arabia offers ample employment opportunities to foreigners, and currently hosts about 7-10 million expatriates, both skilled and unskilled. Job opportunities exist in industries, hospitals, education, research, agriculture, including the dairy industry, shipping and commerce, telecommunication, and IT industry.¹⁹⁹ With more than 28,000 Kenyans working and living in Saudi Arabia, coupled with the potential for more jobs in the Kingdom of Saudi Arabia for professionals particularly in the field of teachers, nurses, engineers, computer experts, technicians and domestic workers, the Kenyan government is always formulating policies to protect its citizens from rampant abuse cases. Following the 2012 government ban on Kenyans working in the Middle East as domestic workers, the Saudi government and their Kenyan counterparts signed bilateral agreements in 2014 to come up with measures to protect Kenyan domestic workers from abuse by their employers.²⁰⁰

4.4 International Relations between Kenya and Qatar

Kenya and Qatar enjoy cordial diplomatic relationship dating back to 1963 when the Emir congratulated the Kenyan President during Kenya's Independence Day. This was further enhanced

¹⁹⁸ Mahmud, K. A. (2013). *Kenya and Saudi Arabia Relations: Trade and Security Implications* (Doctoral dissertation, Institute Of Diplomacy And International Studies, University Of Nairobi).

¹⁹⁹ Migrant Rights, "Kenyans in Saudi: Modern Day Slavery," Sept. 12, 2014, <http://www.migrantrights.org/research/Kenyans-in-Saudi-modern-day-slavery/>

²⁰⁰ International Organization for Migration (IOM). 2015. *Migration In Kenya: A Country Profile 2015*.

in 2003 when President Mwai Kibaki sent a delegation to Doha to sign trade agreements between the two countries.²⁰¹ In April 2014, President Uhuru Kenyatta made a state visit to Qatar and met with the Emir of Qatar, Tamim bin Hamad Al Thani. The two leaders held talks on regional stabilization, security and youth radicalization.

Despite the constant procession of African leaders (presidents as well as ministers) to Doha, relations between the African authorities and those in Qatar are still new and bound by popular misconceptions on both sides. This is because the decision to open a diplomatic mission in a new country is the result of a variety of factors and representations by actors present in the region.²⁰² It can be a choice driven by geographical proximity, or a desire to establish relations with a growing power or an already established one, which has become increasingly important. The opening of an embassy may also be motivated by the economic factors, with Qatar having had no embassy in Kenya until 2012 when one was opened in Nairobi, due to deepening economic and bilateral relations between the two countries. Developing relations between two countries necessarily involves better bilateral understanding, which is promoted by opening a direct and rapid diplomatic channel, in this case, an embassy.²⁰³ Kenya, for instance, opened its embassy and diplomatic offices in Doha in 2010. It is therefore for such reasons that only 21 African countries have an embassy in Doha, even though reasons for these diplomatic relations vary from one country to another.²⁰⁴

²⁰¹ *ibid*

²⁰² *ibid*

²⁰³ African Development Bank (2016). *African Economic Outlook 2016*.

²⁰⁴ *ibid*

4.4.1 Bilateral Relations between Kenya and Qatar

Even though Kenya and Qatar have enjoyed a warm relationship since Kenya's independence in 1963, it was not until 2003 that bilateral diplomatic relations were established between the two countries. Both countries have signed cooperation agreements in trade, industry, energy, communications, transport, construction, labour, tourism, and agriculture. In April 2014, during President Kenyatta's state visit to Qatar, the two leaders signed multiple trade agreements and deals. In the deals, it was agreed that Qatar would train Kenyan port officials and employ more people in the transport and aviation sectors.²⁰⁵ The agreements also led to the direct shipping routes from Mombasa to Doha and direct flights from Nairobi to Doha. Qatar Airways has also shown interest in starting direct Mombasa (Kenya's second largest city) to Doha flights, a deal that has already received the green light to be implemented.²⁰⁶ In 2008, Kenya and Qatar signed a deal that would allow Qatar to lease 100,000 hectares of Kenyan land. The deal would pave the way for the Qatari government to fund a significant portion of the LAPSSSET projects. Qatar intended to use the land to grow food, as less than 1% of the Gulf country is arable. However, the lease deal never went through, and Kenya sought to source financing of the LAPSSSET projects from multiple financiers, which could also include Qatar.²⁰⁷

In 2014, a section of the Qatari Businessmen Association visited Nairobi as a trade delegation from Qatar to Kenya. In 2017, Qatar and Kenya signed several agreements and memoranda of understanding following a round of official talks chaired by HH the Emir Sheikh

²⁰⁵ Gulf Times (2018). *Qatar and Kenya sign pacts to boost bilateral relations*. GPCC, Doha.

²⁰⁶ *ibid*

²⁰⁷ Kennedy, S. (2016), 'Why Investors in Oil and Gas are Moving Capital out of East Africa' *The East African*, 3 September 2016.

Tamim bin Hamad al-Thani and Kenyan President Uhuru Kenyatta. The meeting reviewed bilateral relations between the two countries across all levels and means of developing them in the different areas of cooperation that could benefit the two countries and peoples. The two sides also discussed regional and international developments, stressing in this regard the need to denounce terrorism in all forms and manifestations and reject violence and extremism regardless of their source.²⁰⁸

In 2017, when the Emir of Qatar visited Kenya, the two leaders signed a cooperation agreement in the field of education, higher education, scientific research and technology; a cooperation agreement in the cultural field; and a memorandum of understanding in tourism.²⁰⁹ During the same visit, the Emir also met a number of businessmen, investors, owners and heads of major trade companies in Qatar and Kenya, who were taking part in the Qatari-Kenyan Business Forum, which was organized by the Ministry of Economy and Commerce and Qatar Chamber of Commerce and Industry, in cooperation with Kenyan Ministry of Foreign Affairs and International Trade, Kenya Investment Authority and Kenya Private Sector Alliance, in conjunction with the Emir's visit to Kenya. The Emir exchanged views with the participants on general economic topics and opportunities to strengthen trade and investment between both countries.²¹⁰

Besides the oil investments, Qatar is also trying to become an energy power in electricity production abroad with its company, Nebras Power, a joint venture founded in 2013 between Qatar Petroleum, Qatar Holding, and Qatar Electricity and Water Company with a capital of \$1

²⁰⁸ *ibid*

²⁰⁹ Lall, S, Henderson, J., & Venables, A. (2017). *Africa's Cities: Opening Doors to the World*, The World Bank.

²¹⁰ Gulf Times (2018). *Qatar and Kenya sign pacts to boost bilateral relations*. GPCC, Doha.

billion. One of the first projects Nebras has committed to fund in Kenya. The Qataris want to invest in a 500 MW gas power station around the port city of Mombasa in partnership with the Kenya Electricity Generating Company.²¹¹ It appears that the visit by the President Uhuru Kenyatta on April 2014 was the determining factor to interest the Chairman of Nebras, Fahad Hamad Al-Mohannadi, who is also the Managing Director of QEWC. In the meantime, negotiations are still ongoing on the revenue shares between the two states, as the Qatar government is reluctant to commit to lower gas revenues. Even though this mega project is only at the announcement stage, if turned into actions will correspond to Kenyan needs and the requests of all the non-stop Kenyan delegations to Doha.²¹² At the end of President Kenyatta's state visit in 2014, Qatar became the first Persian Gulf country to establish a double tax agreement with Kenya, which is considered an excellent achievement for Kenyan migrants working in Qatar.

²¹¹ ibid

²¹² De Waal, A. (2016). *The Real Politics of the Horn of Africa: Money, War, and Power*. Cambridge Polity Press.

CHAPTER FIVE

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

5.1 Introduction

This chapter discusses summary findings established in the entire study in line with the broader objectives of analyzing the influence of labour migration on foreign relations between Kenya and the Middle East. Moreover, it summarizes lessons learnt and knowledge established concerning the nexus between legal instruments in place to promote and protect Kenyan migrants in the Middle East, and the effect this has on the international relations between Kenya and the countries in the Middle East. This study summary is grounded on the objectives which seek determine how labour migration influences foreign relations between Kenya and Middle-East countries; determine the significance of the Kenyan diaspora policy on Kenya–Middle East relations; as well as establishing the influence of labour migrant challenges on the foreign relations between Kenya and Middle-East countries. The section then makes conclusions based on the empirical evidence established by the study, before finally providing policy recommendations tailored to suit specific areas of strengthening bilateral relations between Kenya and the Middle East.

5.2 Summary of Findings

This part outlines the summary of findings from the study, giving an overview of the findings for chapters two, three, and four.

5.2.1 Domestic and International Legal Instruments for the Protection of the Emigrant Workers in the Middle East

Kenya's legal system plays a dynamic and vital role in making make part of or accommodating the international legal system as part and parcel of its laws. Key among legal instruments available is the Revised 2012 Employment Act in Chapter 226 of the Kenya Constitution 2010; hence Kenya as a State has an obligation to effectively apply the legal instruments adopted both domestically and internationally. The Kenyan Employment Act contains various provisions directly aimed at labour migration governance. According to chapter 226 of the 2007 Employment Act (revised in 2012) of the 2010 constitution, every Kenyan citizen is protected from poor working conditions and mistreatment. The employment act establishes minimum terms and conditions of employment in Kenya, defining a number of common terms such as probationary contract, migrant workers, worst forms of child labour, etc.²¹³ However, although Kenya's national laws cater for fundamental rights of all her citizens within and outside the boundaries, there still exist keyholes, prominently in mainstreaming and adhering to the applications of effective laws to protect the rights of Kenyans in the Diaspora.²¹⁴

International regimes assemble under the United Nations to effectively pass laws that cater to the rights of human beings of all races in the world. The international community under the ILO umbrella recognizes the rights of workers across the globe which they have enacted, the laws which have continued to guide both non-state and states players in the effective applications

²¹³ Jackton B. Ojwang, (2013). *Labour Laws in East Africa*. Nairobi: Strathmore University Press, p. 26.

²¹⁴ MFA (2017). *New Dawn*. Diplomacy Bulletin: The Official Bulletin of the Ministry of Foreign Affairs Kenya. Government Printers: Nairobi.

thereby ensuring that people live and work anywhere without fear.²¹⁵ Kenya, in particular, has signed almost all ILO Conventions that relate to migrant labour. Unfortunately, the country is yet to ratify the 1990's United Nations (UN) international convention on the protection of all migrant workers and Members of their families. This foreign policy holds a higher binding power of protecting emigrants.²¹⁶ In 2007, the ILO formulated a guide to private employment agencies to *inter-alia* facilitate the government regulatory responsibilities, including the legal requirements for establishing and operating private employment agencies. However, Kenya has not enacted a specific law that governs recruitment agencies within its borders, making it difficult for Kenya's emigrant workers to get the protection they deserve as the host country's international legal obligations. Article 22 on the CRC is the sole provision in an international human rights pact, which clearly refers to refugee protection. Whereas this standard should not lead to the giving of refugee status to individuals that fail to meet the immigrant working standards, the code must be respected in all the phases of the displacement cycle and is a significant principle towards the enhancement and protection of the migrant workers.²¹⁷

The importance of the protection of Kenyan workers in the Diaspora stems from Article 6 of the provisions of the General Conference of the International Labour Organization which passed that each member of the organization shall take measures to ensure that migrant workers,

²¹⁵ African, Caribbean and Pacific (2010). Observatory on Migration 2010 Overview on South-South Migration and Development Trends and Research Needs in Kenya. (ACP).

²¹⁶ Oxfam (2002). *Rigged Rules and Double Standards: Trade, Globalization, and the Fight Against Poverty*. Oxford: Oxfam International.

²¹⁷ Dawson, L. R. (2013). Labour Mobility and the WTO: The Limits of GATS Mode 4. *International Migration*, 51(1), 1-23

like workers generally, enjoy fair terms of employment as well as decent working conditions. Notably, the International Labour Organization provides that national laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment hitherto referred, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies

Kenya is also a party to the Inter-governmental Authority on Development, Regional Consultative Process on Migration (IGAD-RCP), which was established in 2008. The domestic policies adopted in Kenya are anchored on several new initiatives that are underway and newly established in Kenya's labour migration framework. The new Dual Citizenship entitlement granted by the 2010 Constitution highlights the extent of the enhancement of labour laws in Kenya pertaining to the rules, regulations, and administration of labour migration with a South-South perspective. The established government procedures for the review of foreign employment contracts, minimum overseas work standards, due registration of private recruitment agencies, and recruitment procedures.²¹⁸

5.2.2 The Promotion of Labour Laws and Protection of Kenyan Workers in the Middle East

The UN humanitarian agencies, together with host governments, are required to continue spearheading the protection of labour migrants within their regions. The international

²¹⁸ Pillinger, J. (2011). International Migration and Women Health and Social Care Workers Programme – 'Building Trade Union Solidarity and Action for Workers on the Move.' Ferney Voltaire. Public Services International.

humanitarian agencies also need to be committed to working together with governments and other players to strengthen national comprehensive labour protection systems that serve all workers universally. Various studies show that there is a growing demand for the migrant labour force in the Middle East following the end of the Gulf wars and the discovery of oil fields.²¹⁹ The strategic shift to non-Arab migrant labour workforces in the GCC has resulted in the increasing employment of African and Asian emigrants, with Kenya leading the way in Africa.²²⁰ Temporary foreign contract employees are the preferred migrants to Middle Eastern countries, as there are no expectations of permanent settlement or citizenship rights. Most countries do not cover such employees under local labour laws, and no UN or ILO conventions that offer national or international protection are in force or ratified, particularly for unskilled labourers.

The systems of sponsorship in the Middle East are composed of various legal requirements, administrative regulations, and socio-cultural practices that tie a migrant worker's immigration and employment status to one specific sponsor.²²¹ Following the international outcry on the living conditions of migrant workers in the Middle East as a result of *kafala* laws, several labor-receiving countries in Asia and the Middle East have begun to acknowledge the precarious situation of migrant workers and to enact reforms. This has led to various countries reforming their labour laws, with Jordan amending its labor laws in 2008 to include domestic workers, while the United Arab Emirates, Saudi Arabia, Kuwait, Bahrain, Lebanon, and Malaysia have all considered reforms to existing labor codes or even drafting new legislation. Even though some of these

²¹⁹ Aziz, T. C. (2015). Legislating the Counter-Trafficking in Persons Act: The Advocacy Role of Civil Society. *CMI Report, 2015(4)*.

²²⁰ Kinuthia, A.K. 2013 Spotlight on the Young and Skilled: Exploring the Potential Contribution of Kenya's Diasporas In the South. ACP Migration Observatory. Brussels

²²¹ Vora, N. (2013) *Impossible Citizens: Dubai's Indian Diaspora*. Durham, NC: Duke University Press.

reforms take ages to be effected, Kenyans in the Middle East are hopeful that once implemented, the proposed legislative changes will make their lives in Diaspora more bearable and friendly.²²²

5.2.3 Influence of Kenya's Foreign Policy Framework on Relations between Kenya and the Middle East

The study findings show that Kenya unveiled its first foreign policy framework in November 2014, and since then, the framework has had an influence on the relations between Kenya and the rest of the world. The document lays out the general terms of Kenya's engagement with the international community and the principles behind its foreign dealings, with the main aim of projecting, promoting and protecting Kenya's interests and image globally through innovative diplomacy for a just, peaceful and equitable world.²²³ This has been well captured in President Uhuru's increased engagements with leaders from the oil-rich Gulf nations, most notably the visit to UAE in August 2013, Kuwait state visit in November 2013, Qatar visit in April 2014, Jordan visit in April 2015, Israel state visit in February 2016, etc. Founded on the premise of fast-tracking regional, continental, and global integration to boost trade, the policy framework has seen Kenya sign multiple trade agreements and agreements with Middle East countries as highlighted in the previous section. The overarching objective is the improvement of Kenya's competitiveness for foreign direct investments through export products, an increase of market access, and developing its attractiveness as a leading tourist destination. Key among the bilateral trade agreements include

²²² Migrant Forum in Asia. (2014). *Reform of the kafala (sponsorship) system*: Policy Brief No. 2, Migrant

²²³ Machayo, J.A. and V.N. Keraro (2015). 'Brain drain among health professionals in Kenya: A case of poor working conditions? A critical review of the causes and effects'. *Prime Journal of Business Administration and Management*, Vol. 3(6): 1047-1063.

bilateral trade agreement between Kenya and the United Arab Emirates, signed in April 2018 by Nasser bin Thani Al Hamli, Minister of Human Resources and Emiratisation, and Ukur Yatani Kanacho, Minister of Labour and Social Protection of Kenya. The agreement mainly touched on social protection of Kenyan labour migrants working in UAE, with both governments agreeing to cooperate in regulating the recruitment of Kenyan domestic workers as part of efforts to implement transparent procedures in all phases of the contractual work.²²⁴

The foreign Policy framework has also had an impact on the relations between Kenya and Saudi Arabia, as well as Qatar. For instance, Kenya has signed more bilateral agreements with Saudi Arabia in the last decade than it had in the previous three decades. All this is down to the reformation and formalization of the foreign policy framework.

5.3 Conclusion

People on the move are entitled to universal human rights under any circumstance, just like everyone else. International law provides special protections to migrant workers and asylum seekers to ensure they can exercise such rights in countries of origin, transit or destination alike. In practice, however, their rights are often violated, and they are subjected to discriminatory and arbitrary treatment. This has been the case with migrant workers and domestic workers in the Middle East for the greater part of the last decade. The practice of holding migrant workers at ransom or confiscating their travel documents against their will is one example of human rights violations happening worldwide.

²²⁴ MFA (2018).

Sharia laws and *Kafala* employment system discriminate between citizens and immigrants or between documented and undocumented immigrants in the Middle East and the entire Arab world. Immigrants may experience discrimination and intimidation in the workplace and in society at large. As one report concludes, most domestic law protects migrants against violence and intimidation, but in recent years, the extreme and often racist rhetoric surrounding immigration issues has increased the threats migrants face to their personal safety.²²⁵ The maltreatment of migrants has led to public outcry time and again, with Africa and South Asian countries being at the forefront to condemn the barbaric treatment of their sons and daughters in the Gulf nations. The UN, ILO, and other humanitarian organizations have not been left behind in advocating for better treatment of labour migrants in the Diaspora. This has led to many labour-sending countries to enter into bilateral agreements and treaties with receiving nations to ensure their citizens are handled with dignity and humanity, and at the same time ensuring the relationship between the two countries remains cordially mutual.

5.4 Recommendations

The study made the following recommendation on enhancing foreign relations between Kenya and the Middle East. Recommendations are anchored on three key areas, primary drivers of migration, foreign policy framework, and international and domestic labour laws in place to safeguard migrant workers.

²²⁵ Steiner, H. J., Alston, P., & Goodman, R. (2008). *International human rights in context: law, politics, morals: text, and materials*. Oxford University Press, USA.

- i) Having theoretically considered the role of nations, geographical proximity, institutions, social networks, and cultural and historical factors in creating new migration patterns and foreign relations. Based on the study findings, first, the study recommends that both Kenya and Middle East nations should:
- Create employment opportunities for both nationals and internal communities,
 - Improve academic or further their education both at local and international levels,
 - Develop policies to counter terrorism and youth radicalization,
 - Ensure conducive political environment to enhance trade and economic development
- ii) The study also, the study recommends that the following be implemented by the Middle East nations receiving labour migrants from Kenya and the rest of the world:
- Review the *Kafala* recruitment system to be more friendly and humane to migrants
 - All labour migrant-receiving countries should ratify all available ILO conventions that ensure the protection of workers and the safeguarding of their human rights
 - United Nations (UN), International Convention on the protection of all migrant workers and Members of their families which many countries are a party to, should be implemented

5.5 Limitations of the study

The main objective of this study was to establish the influence of labour migrations on foreign relations. However, the study was limited to Kenya-Middle East region relations. Secondly, the study mainly explored the key drivers of emigration, foreign policies, domestic policies, and challenges of labour migrations on foreign relations. Other factors were not explored as revealed

in the literature, for example, cultural believes, religious faith that dominates nations, political ideology, and even geographical location as well as the economic power.

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APPENDICES

Appendix I: Introductory Letter

Benjamin S. Mwambire,
P.O Box
Nairobi

2nd February, 2019.

P.O Box

Dear Respondent,

RE: ACADEMIC INTERVIEW REQUEST

I am a Masters of International Studies student at University of Nairobi. I am conducting a research study on the **influence of labour migration on foreign relations: a case study of Kenya-Middle East relations.**

It is my humble request to schedule an interview with you. The interviews conducted will be solely for fulfilling the study objectives of this paper.

During and after the interview, I the researcher assures you utmost confidentiality of the information shared.

Yours sincerely,

Benjamin S. Mwambire

Appendix II: Interview Guide

Appendix III: Missions in Kenya and in Middle East

Country	Missions in Kenya	Missions Abroad
Bahrain		
Cyprus		
Egypt	✓	
Iran	✓	✓
Iraq	✓	
Israel	✓	
Jordan	✓	✓
Kuwait	✓	
Lebanon	✓	✓
Oman	✓	✓
Qatar	✓	✓
Saudi Arabia	✓	✓
Syria		
Turkey	✓	
United Arab Emirates	✓	✓
Yemen	✓	