

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**MA RESEARCH PROJECT**

**IMPACT OF RECRUITMENT PROCESS IN PROMOTING RIGHT BASED  
OVERSEAS EMPLOYMENT: A CASE OF KENYA PRIVATE RECRUITMENT  
AGENCIES**

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Master's Degree in International Studies at the Institute of Diplomacy and International  
Studies (IDIS), University of Nairobi.**

**OCTOBER 2021**

## DECLARATION

This project proposal is my original work and has not been presented before to any university for academic award

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## **DEDICATION**

I dedicate this paper to my family who supported me during my studies at the University of Nairobi.

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## **LIST OF ABBREVIATION**

ASMAK -Association of Private Agencies of Kenya

BLA- Bilateral Labour Agreement

COTU- Central Organization of Trade Unions,

GCC- Gulf Cooperation Council

GoK- Government of Kenya

IOM- International Organization for Migration,

ILO- International Labour Organization,

KAPEA - Kenya Association of Private Agencies of Kenya

KNCHR- Kenya National Commission on Human Rights

KRA- Kenya Revenue Authority

NCM- National Coordination Mechanism on Migration

NEA- National Employment Authority

PRAs- Private Recruitment Agencies

UAE – United Arab Emirates

SPSS- Statistical Package for the Social Sciences

## ABSTRACT

With key focus on assessing the impact of recruitment process in promoting right based overseas employment: a case of Kenya private recruitment agencies, the study sought to, examine the existing gaps in the recruitment process that jeopardize the rights of Kenyan migrant workers. Assess the measures GoK (Government of Kenya) has taken to regulate the operations of PRA's in promoting the rights of Kenyan migrant workers and analyze the impacts of unethical foreign recruitment on Kenyan migrant workers. The study used a mixed method research design to allow the researcher to collect data, summarize it, present it, and analyze it for clarifying purposes. The employment of a mixed approach, or a combination of qualitative and quantitative methodologies, ensured that all experiences or associations are fully represented. Furthermore, a mixed method approach assured the validity of inferences drawn while also encouraging a diversity of viewpoints on the same events. The study found that several gaps exist in Kenya that prevents ethical recruitment practices by the private recruitment agencies. For instance, the high prevalence of corruption in the Kenyan government has created loopholes that allow the survival of illegal and unregistered recruitment agencies. These agencies recruit Kenyans using fraudulent and unlawful means, leading to the exploitation of Kenyan migrant workers. These illegal recruitment practices have prevailed despite the creation of the NEA that regulates recruitment agencies. Similarly, there is little transparency during the recruitment process, especially when the contracts are drafted in Arabic, hence leading to the substitution of contracts and other forms of exploitation. Also, Kenyans seeking jobs in the Gulf region are forced to pay high agency fees and end up being underpaid by their employers. Another challenge is the highly coordinated network of human trafficking that has prevailed in Kenya for years. Many Kenyan youths are trafficked to the Arab world, where they are sexually abused and exploited. Thus, to ensure ethical practices in foreign recruitment, all these gaps must be closed. The government of Kenya and the destination governments must formulate policies and regulations to protect migrant Kenyans abroad from dishonest agencies and exploitative employees. Several examples of abuse and human trafficking have been reported as a result of mass labor migration, according to the study. As a result, Kenya's government has taken steps to solve these issues, including regulating private recruitment agencies and implementing bilateral labor agreements (BLAs) with destination nations. In Kenya, all PRAs must be approved and accredited by the Ministry of Labor and Social Protection through the National Employment Agency (NEA). Despite these measures, unethical recruitment techniques continue to exist in Kenya, posing a hurdle to foreign recruitment. Unethical recruitment practices that Kenyan migrant workers experience include improper documentation, charging exorbitant agency fees, and deception on the nature and conditions of the jobs. These practices expose them to the problems of human trafficking and smuggling by their foreign employees. The impacts on the origin and destination countries are mixed. For instance, the positive impacts include increased remittances to the home country and economic development in the destination countries. On the contrary, unethical recruitment can interfere with the diplomatic relationship between Kenya and the destination countries. This is due to the challenges Kenyans face in the destination countries.

## CHAPTER ONE

### 1.0 Background

Kenya has a population of 47.6 million people; 49.5% male and 50.5% female.<sup>1</sup> Unemployment rate is at an all-time high as 85 per cent of the unemployed are below 35 years. Unemployment and underemployment remain major development challenges in the country mainly due to rapid population growth, low economic growth as well as the structural rigidities within the labour market. Kenyans are increasingly seeking work possibilities abroad as a result of these and other issues.<sup>2</sup>

Kenyan labor migration to the Gulf Cooperation Council (GCC) has expanded dramatically in recent years. Kenya exports semi-skilled and low-skilled labor primarily to the Middle East, but also to Europe, North America, and Africa to a lesser level. Around 200, 000 Kenyans work in countries in the Middle East. The Kingdom of Saudi Arabia has 130, 000, the United Arab Emirates has 22, 000, and the rest are in Qatar, Oman, Bahrain, Jordan, Lebanon, Yemen, and Iraq.<sup>3</sup> These countries are attempting to fill labor shortages in industries such as construction and other service-related occupations. Kenyans are recruited as domestic workers, construction laborers, cleaners, hospitality servers, security officers, and taxi drivers due to a lack of job possibilities at home. PRAs (Private Recruitment Agencies) are commonly used for recruitment (PRA).

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<sup>1</sup> Ingabi, Terry. "2019 Census : Kenya's Least and Most Populous Counties." Parents Magazine. Parents Magazine, November 4, 2019. <https://parentsafrika.com/2019-census-kenyas-least-and-most-populous-counties/>

<sup>2</sup> "Private Employment Services Industry." World Employment Confederation, February 22, 2021. <https://wecglobal.org/private-employment-industry/>

<sup>3</sup> "Kenya's Reforms Aren't Protecting Its People from Trafficking - Kenya." ReliefWeb. Accessed April 16, 2021. <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking> .

In labour-source nations, PRAs and their sub-agents play an essential role in linking employees with employers in other countries. They assist with contract negotiations and pre-departure tasks. The Middle East's demand for low-skilled workers has driven a surge in the number of PRAs that function as middlemen, connecting recruited migrants with third-party employers in their destination countries.<sup>4</sup> The PRAs undergo thorough vetting and are accredited by NEA to promote foreign employment for Kenyans.

Given the growing number of Kenyans looking for work in the Gulf Cooperation Council (GCC), managing safe, orderly, and regular migration has unavoidably become one of Kenya's and the GCC's major concerns, notably in the area of labor migrant rights. Migrants laboring in the region are frequently targeted by human traffickers and subjected to illegal and immoral treatment by PRA agents and employers. The majority of Kenyan migrant workers heading to the Middle East are low-skilled, with only a primary or secondary school education and no knowledge of their basic rights. This increases the chances of being a victim of modern slavery and other forms of exploitation. Unfortunately, the recruiting market is rife with unscrupulous agents who exploit people as part of a multi-billion dollar enterprise that is both dishonest and illegal.<sup>5</sup> Typical examples of these abuses include misrepresenting to prospective migrant workers about the true nature of the job, changing contracts, and demanding astronomically high and unlawful recruitment fees. Workers who are unable to pay their fees in cash are forced to repay hefty loans with exorbitant interest rates.

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<sup>4</sup> ENACTAfrica.org. "The New Slavery: Kenyan Workers in the Middle East." ENACT Africa, June 30, 2020. <https://enactafrica.org/research/policy-briefs/the-new-slavery-kenyan-workers-in-the-middle-east>.

<sup>5</sup> Ngugi, Brian. "Kenyan Government Moves to Combat Migrant Worker Abuse in the Gulf." Equal Times. Accessed April 16, 2021. <https://www.equaltimes.org/kenyan-government-moves-to-combat#.YHnueiXitPY>

The GoK launched a screening process on rogue PRAs in an attempt to curb the exploitation and abuse of its migrant workers in Gulf countries, such as forced domestic servitude and sexual exploitation, in response to an alarming number of cases involving the mistreatment of Kenyan domestic workers abroad. The Government of Kenya withdrew the licenses of 930 agencies that recruit Kenyans for work in the Middle East in September 2014, and barred Kenyans from travelling to the Gulf for employment until suitable systems for effective labor migration management and migrant worker protection were in place.<sup>6</sup>

In 2018, GoK designed and launched a Homecare Management Curriculum, with a focus on pre-departure training. To supplement pre-departure training, country-specific information pre-departure handbooks and a Kenya Migrant Worker website have been developed. These initiatives have been beneficial in delivering basic information to potential and leaving migrants, easing their transfer into their destination countries and assisting them in maximizing the benefits of their foreign job.<sup>7</sup>

The Government of Korea has also dispatched three Labour Attachés to the Kingdom of Saudi Arabia, the State of Qatar, and the United Arab Emirates, via the Ministry of Foreign Affairs. The attachés are in charge of problems such as the welfare of Kenyan migrant workers, the identification of job possibilities, and the supervision of labor agreements, among other things. Kenya has also signed three BLAs with the Kingdom of Saudi Arabia, the State of Qatar, and the United Arab Emirates in order to improve the protection of migrant workers. BLAs have also been discussed with Jordan, Kuwait, Oman, and Bahrain. Finally, the Ministry of Labour and Social

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<sup>6</sup> Ibid, p,2.

<sup>7</sup> Ibid,p,1.

Protection has established processes for vetting PRAs, and PRAs have been encouraged to form self-regulatory bodies.<sup>8</sup>

Kenya clearly has laws, legal, and institutional structures in place to regulate labor migration. The policies seek to harness and exploit the potentials of Kenya migrant workers and positioning them in the mainstream of national economic development grid. The legislative and institutional framework have also aimed to make labour migration safe, responsible, respectful and mutually rewarding.

With the existing policies, laws and institutional frameworks, the country is still grappling with the challenge of maintaining foreign ethical recruitment practices and establishing an informed demand to sustain them. While there exist over 900 PRAs involved in recruitment of migrant workers, less than half (40%) are registered with the NEA. This is the government institution charged with the responsibility of registering and regulating the operations of PRAs. The implication is that a vast majority of the PRAs are operating outside the regulatory framework. Furthermore, most PRAs use services of sub-agents who are equally unregulated, thereby perpetuating unethical recruitment practices. It is therefore important for PRAs to adopt ethical recruitment practices that promote employer pays principle, greater transparency within the international recruitment cycle and protect the rights of migrant workers. Failure to do so could result in the PRAs incurring significant financial, legal, and reputational costs.

### **1.1 Statement of the Research problem**

Migrant workers are frequently exploited during the recruitment process, when they are charged recruitment fees or deceived about the job on offer. Most of the existing labor policies in Kenya

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<sup>8</sup> Ibid,p,7.

are geared towards addressing the protection needs of migrant workers once they have already been deployed in the destination country. Little has been done to monitor the recruitment process of PRAs in the initial stages of recruitment. Although we believe there are compelling reasons to focus on labor as the variable of moral interest in economic interactions, exploitation is inextricably tied with some sort of labor exchange in many economic circumstances.

This project investigated the existing gaps in the recruitment process that jeopardize operations of PRAs in promoting ethical foreign recruitment. Illegal and unethical international recruitment of domestic workers continues to be widespread, causing problems for governments in both the source and destination nations. According to the NEA website, there are 320 licensed recruitment agencies. Although PRAs have tried to implement some regulations laid by the GoK collectively<sup>9</sup>, there are still more than 600 PRAs that are unlicensed and recruiting Kenyan workers not to mention subagents, including family members, community leaders, and other private-sector actors who are often engaged in unethical recruitment processes.<sup>10</sup>

Unscrupulous recruitment practices are prevalent among both licensed and unlicensed recruitment agencies and contribute to high cases of human trafficking among migrant workers who leave Kenya for various countries around the world, including the GCC countries. Recruiters often charge illegal recruitment fees and costs to migrant workers. In addition, migrant workers are often deceived about employment terms and conditions sometimes contracts are in a foreign language, with no translation, and are provided with fraudulent employment and immigration documents, leaving them unprotected in destination countries. Migrant workers often find themselves with

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<sup>9</sup> Ibid

<sup>10</sup> Ibid,p,67.

employment terms that are contrary to what was promised to them, further exacerbating their exposure to modern slavery.

High migration costs force prospective migrant workers to take loans to fund their migration. Due to the lack of access and affordability of formal financial services, most migrant workers depend on informal money lenders or the PRAs themselves who charge high interest rates. Any earnings of the migrant worker are fed back into loan repayments, causing a vicious cycle of debt. Kenyan migrant workers reveal they sometimes have to work for several months without pay to overcome debt bondage.

Contract substitution is also a way PRAs operate unethically. Migrant workers often find themselves with employment terms that are contrary to what was promised to them, further exacerbating their exposure to modern slavery. Lack of due diligence from recruiters on overseas employers puts migrant workers at risk of being placed with abusive or exploitative employers, and limited access to remedy prevents migrant workers from quickly escaping exploitative situations.

Businesses wishing to hire migrant labor should employ ethical recruitment procedures, such as using reputable recruitment agencies, to combat these abuses. Failure to do so could have serious legal, reputational, and human rights implications. As a result, this research looks into the link between overseas recruiting and human rights promotion. The study focuses on Kenya as a case study.



## **1.2 Research questions**

- 1) What are some of the existing gaps in the recruitment process that jeopardize the rights of Kenyan migrant workers?
- 2) To what extent are the GoK labour migration policies regulate operations of PRA's in promoting the rights of Kenyan migrant workers?
- 3) How does unethical foreign recruitment process impact Kenyan migrant workers?

## **1.3 Objectives of the research**

**Broad objective** of the study is to strengthen the capacity of PRAs to promote ethical foreign recruitment of Kenyan migrant workers.

### **Specific objectives of the study are:**

- 1) Examine the existing gaps in the recruitment process that jeopardize the rights of Kenyan migrant workers.
- 2) Assess the measures GoK (Government of Kenya) has taken to regulate the operations of PRA's in promoting the rights of Kenyan migrant workers.
- 3) Analyze the impacts of unethical foreign recruitment on Kenyan migrant workers.

## **1.4 Literature Review**

This section examines the work done by other scholars with regards to the subject matter. It focuses on the available and reviewed literature on the impact of recruitment process in promoting ethical foreign recruitment. This review enabled the researcher to identity the knowledge gaps that have been ignored or scarcely explored. It is therefore important to appraise the existing work that has been written about the Kenyan PRAs in promoting ethical foreign recruitment.

### 1.4.1 Theoretical Literature Review

Migration encompasses a wide range of theoretical perspectives and controversies due to its complexity and cross-disciplinary nature. The functionalist and historical structural theories are the two basic paradigms that the theories are divided under.<sup>11</sup> Migration is viewed by functionalists as a decision made by an individual to increase their income. Migration, in their opinion, is a beneficial event that improves the quality of life for both migrants and the host community. Structurealism, on the other hand, blames migration for society's unequal disequilibrium. People migrate from poor to more developed states, according to them, not because they choose to, but because their living situations force them to.

The Marxism theory is based on a set of political and economic principles aimed at better understanding class relations.<sup>12</sup> It is based on the writings of German intellectuals Karl Marx and Friedrich Engels in the nineteenth century.<sup>13</sup> The core principles are that the world is divided into two classes: workers, also known as proletariats, and rich capitalists, also known as bourgeoisies, who exploit workers. A class war exists between the bourgeoisie, who own the means of production, and the proletariat, who produce products and services.<sup>14</sup> In this context, PRAs can be represented as the rich capitalist and the prospective migrant workers are the exploited workers.

The term "exploitation" is most commonly connected with Marxist philosophy, which states that profit is the result of wage employees being exploited by their employers. It is based on the labor theory of value, which states that a product's inherent value is determined by the quantity of labor

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<sup>11</sup> Stephen Castles, Mark J. Miller and Herin De Haas, "Theories of Migration," in *The Age of Migration* (New York, N.Y: Guilford, 2014) p.27

<sup>12</sup> [Hobsbawm, Eric](#). On the Communist Manifesto. *How To Change The World*. ([Little, Brown](#),2011) pp. 101–120

<sup>13</sup> Wolff, Richard, and Stephen Resnick . *Economics: Marxian versus Neoclassical*. (The Johns Hopkins University Press, 1987) p. [130](#)

<sup>14</sup> [Chambre, H. and McLellan, . David T.](#) "Marxism. (Encyclopedia Britannica, *March 24, 2020*). <https://www.britannica.com/topic/Marxism>.

invested in its creation. As a result, the worth of a thing is determined by the workers who created it and reflected in its final price. The profit from this finished price is then split between labor, capital, and raw material charges. Workers' salaries do not reflect the full worth of their effort since the employer takes a portion of that value in the form of profit. As a result, creating a profit effectively entails taking away some of the value created by the workers' labor.

The most general definition of exploitation in political philosophy states that A exploits B if and only if A takes unfair advantage of B. Despite its intuitive attractiveness, this definition fails to address two important difficulties that require further clarification. These are the types of unfairness involved, as well as the structure of A and B's relationship that permits A to take advantage of B. Both topics are the subject of heated dispute in the economic and philosophical literature. Despite the importance of both components of exploitative relationships, the analytical focus is on unfairness or more particularly, the economic inequities inherent in the idea of exploitation.

Furthermore, dependence theory assumes that resources move from a periphery or underdeveloped state to a core state, a wealthy state, enriching the latter at the expense of the former. According to dependency theory, the way poor states are incorporated into the global system impoverishes them while enriching the rich.<sup>15</sup> Poor countries give natural resources, inexpensive labor, a home for old technologies, and markets to wealthy countries, without which the latter would not be able to maintain their current quality of living. Economics, media control, politics, banking, finance,

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<sup>15</sup> Ahiakpor, James C. W. "The Success and Failure of Dependency Theory: The Experience of Ghana". (*International Organization*, 1985): 535–552

education, culture, sport, and all aspects of human resource development, including worker recruitment and training, are all used by wealthy nations to maintain a state of reliance.<sup>16</sup>

In regards to Dessler's justice theory, he believes that organizational justice consists of three components: distributive justice, procedural justice, and interpersonal justice. Interpersonal justice refers to how managers treat their employees in interpersonal situations, specifically how they treat them with dignity rather than abuse or disrespect. Treating people fairly and equally is what it means to treat them justly. This theory's proponent, Adams, distinguished between distributive and procedural justice.<sup>17</sup> Distributive justice, he claimed, refers to how benefits are allocated. People will believe they have been treated fairly if they believe their rewards have been dispersed in proportion to their contributions, that they have received what was promised to them, and that they have received what they require, according to him. Procedural justice, on the other hand, refers to how managerial choices and human resource procedures are handled. People will feel treated fairly if management choices and procedures are fair, consistent, transparent, and nondiscriminatory, and take into account employees' opinions and needs. Just decisions necessitate justice, equity, and impartiality on the side of decision makers, especially when it comes to the decision's final obligations and advantages.<sup>18</sup>

Eugen von Böhm-Bawerk, for example, argued against the thesis in his work "*History and Critique of Interest Theories*." He claims that capitalists do not exploit their workers, but rather support

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<sup>16</sup> Ibid,p,24.

<sup>17</sup> Adams, J.S. Inequity in Social Exchange. In Berkowitz, L. (ed). *Advances in Experimental Social Psychology*. Vol.2 (New –York: Academic Press. 1965). Pp267-299

<sup>18</sup> Christopher, C. O. *Promoting Ethical Human Resource: Management Practices in Work Organizations in Nigeria: Roles of HR Professionals* (2012)

them by paying them well ahead of the money from the things they produce, claiming that labor cannot grow its share at the expense of capital.<sup>19</sup>

## **1.4.2 Empirical Literature Review**

### **1.4.2.1 Existing gaps in the recruitment process that jeopardize the operations of PRAs to promote foreign ethical recruitment.**

Thousands of Kenyan citizens are recruited annually by PRAs to go and work overseas as domestic workers in a variety of sectors including manufacturing, construction and agriculture. In recent years, the demand for low and semi-skilled migrant labourers have increased particularly in the Middle East countries prompting an increase in the number of PRAs that act as intermediaries linking recruited migrants with third party employers in destination countries. Cases of unethical recruitment by PRAs have also emerged and it is believed that existing gaps in legislations and policies are responsible for such practices. While the Labour Regulations Act of Kenya has charged the Ministry of Labour and Social Protection through NEA with the oversight of PRAs at the national and county level and the Ministry of Foreign Affairs with the oversight of overseas branches of Kenyan registered PRAs, the act fails to specify what oversight entails and what mechanisms are to be put in place for the inspection of PRAs records or premises. Additionally, neither the regulations nor the act prohibits individuals involved in previously deregistered PRAs from involvement in new PRA's seeking registration. An applicant for the registration of a PRA is also not obliged by regulations to provide character references and no provision exists for the Ministry of Labour and Social Protection to seek additional information from an applicant or to place additional conditions on a license other than what is specified in the regulations. The

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<sup>19</sup> Böhm-Bawerk, Eugen von, *History and Critique of Interest Theories* (1884), (Libertarian Press, South Holland, Ill, 1959).

regulations also do not provide for the possibility of filing of an objection against a PRA receiving a license.<sup>20</sup>

Omolo reports that the GoK has not put in place a monitoring or evaluation system to track down activities of PRAs, nor is there a rating mechanism that collects information and evaluates the activities and operations of locally registered PRAs abroad. Further, a standard employment agreement for use by PRAs in recruiting migrant workers has not been developed.<sup>21</sup> Even though the Employment Act 226/3 sets out the minimum required provisions for an agreement to include name, age, permanent address and sex of the employee; the name of the employer; the job description of the employment, the date of commencement of the employment; the form and duration of the contract; the place of work; the hours of work; the remuneration, scale or rate of remuneration; and other conditions including hours, holidays and pensions, the Act does not require an agreement to be in a language that a migrant worker understands and is therefore usually subject to manipulation by PRAs. This gap has in the past brought up a number of transnational legal issues owing to the fact that one party to the employment agreement, that is the employer, is usually in an overseas country and PRAs act as their agents.

Betcherman also notes that individual brokers/agents that usually identify potential workers and connect them with PRAs are not subject to direct regulation by the government.<sup>22</sup> They are not subjected to any licensing scheme and are not mentioned in the Labour Institutions Act 12/2007. Under certain circumstances, they may be considered agents of PRAs and therefore indirectly subject to regulation. Omolo additionally contends that the lack of any government regulation or

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<sup>20</sup> Ibid,p,17.

<sup>21</sup> Omolo, O.J. *The Dynamics and Trends of Employment in Kenya*, IEA Research Paper Series, No. 1/2010, (Nairobi: Institute of Economic Affairs, 2010)

<sup>22</sup> Betcherman, G, Susana, P., Antoneta, S.A *Review of Interventions to Support Migrant Workers in Kenya*. Social Protection Discussion Paper No. 0715. (Washington, DC: The World Bank, 2011)

oversight of brokers/agents has contributed to frequent fraud and systemic problems for which migrant workers have had limited to no avenues for redress.<sup>23</sup> These existing gaps in regulation and oversight therefore makes it extremely difficult for PRAs to promote foreign ethical recruitment.

#### **1.4.2.2 Measures the government of Kenya has taken to regulate the operations of PRA's in promoting ethical foreign recruitment.**

In an effort to promote foreign ethical recruitment by PRA's, the GoK primarily regulates the operations of PRAs through licensing. A PRA may receive its license from the PRA under the Ministry of Labour and Social Protection after payment of a licensing fees and the submission of incorporation documents from the registrar of companies. The directors of PRAs must have at least an O-level certificate or its equivalent; the managers must have at least a bachelor's degree in a business related field from a university recognized in Kenya and relevant experience of at least three years; the PRA must have a minimum share capital of five million shillings; it must be licensed to conduct business within the country of intended operation; and it must have a registered fully equipped premise, All directors have valid Police Clearance Certificates from the Directorate of Criminal Investigation that must be renewed every twelve months from the date of issuance; is a member of a PRAS association recognized in Kenya; has executed a guarantee of one million five hundred thousand shillings with a reputable bank or insurance agency in Kenya to be used for the purpose of repatriation, paying wages and other entitlement in the event of default by the employer or agent.<sup>24</sup>

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<sup>23</sup> Omolo, O.J. *The Dynamics and Trends of Employment in Kenya*, IEA Research Paper Series, No. 1/2010, (Nairobi: Institute of Economic Affairs, 2010)

<sup>24</sup> Republic of Kenya *.Labour Institutions Act.2007*

Kenya's Ministry of Labour and Social Protection has been charged with the oversight of PRAs at the national and county level and the Ministry of Foreign Affairs has been charged with the oversight of overseas branches of Kenyan registered PRAs. The Ministry of Foreign Affairs through its Directorate of Diaspora and Consular Affairs and Labor attaches is also responsible for Kenyan citizens welfare abroad and primarily implements these tasks through consulates and embassies in destination countries. The specific responsibilities of the Ministry of Foreign Affairs for Kenyan migrant workers includes the assessment of the quality of employers and PRAs recruitment partners in destination countries who are seeking Kenyan workers; based on its assessments, the approval of placement documents including employment contracts and placement agreements before the issuance of workers with permits to travel to destination countries; and recording migrant worker's arrival in destination countries, the address, and the date of departure, following the worker reporting their presence in destination country to Kenyan embassy/high commission staff.<sup>25</sup>

The assessment of PRA's overseas recruitment partners by the Ministry of Foreign Affairs is based on whether the PRA's are legally constituted and are operating according to the law. Kenyan embassies, high commissions and consulates must compile and publish a list of problematic PRAs every twelve months.<sup>26</sup> According to the Labour Institution Act 12/2007, in order for PRAs to renew their accreditation, they must demonstrate proof they have been submitting returns to the director of employment; have audited financial statements and accounts; and made an application for the replacement of a certificate of registration.<sup>27</sup>

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<sup>25</sup> International Labour Organization. *Employment Policy and Programme for Kenya, East Africa Multidisciplinary Advisory Team*, (Addis Ababa, Ethiopia, 2015)

<sup>26</sup> Ibid.

<sup>27</sup> Republic of Kenya. *Labour Institutions Act. 2007*



The government has made it mandatory under the Labour Institutions Act 12/2007 for the purchase of comprehensive insurance to all migrant workers before departure. The onus of arranging for insurance has been placed on the PRAs for all the workers they wish to place. The insurance covers illness, accident, death and deportation back to Kenya in case of any eventuality. It also covers medical treatment and hospitalization both abroad and up to 30 days upon the return of a migrant worker. Under article 8 identical coverage is to be provided to all migrant workers notwithstanding individual risk factors or where they are travelling to work. The policy finds its basis from the Insurance Act 487 which sets the premiums an insurance firm can charge, the amount of coverage for different risks, the risks it can cover and the duration of coverage. Insurance coverage is currently divided into three phases and each phase has separate premiums. The phases are pre-departure, placement, and post-placement and return.<sup>28</sup>

#### **1.4.2.3 The impacts of promoting foreign ethical recruitment of Kenya migrant workers.**

Promoting foreign ethical recruitment can help alleviate some of the problems encountered by Kenyan migrant workers in overseas countries. Certain specific circumstances and concerns as regards to the recruitment of Kenyan migrant workers by PRAs can be addressed when ethical recruitment is promoted through the implementation of policies that defends and extends the rights of workers who opt to pursue work opportunities overseas. When ethical foreign recruitment is promoted, it deters the flouting, sidestepping or the disregard of work applicable rights that may otherwise be subject to abuse or exploitation by employers or employment agencies.<sup>29</sup>

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<sup>28</sup> Republic of Kenya. *Economic Recovery Strategy for Wealth and Employment Creation, 2007-2017*. (Nairobi: Government Printer, 2007)

<sup>29</sup> International Labour Organization. *Employment Policy and Programme for Kenya, East Africa Multidisciplinary Advisory Team*, (Addis Ababa, Ethiopia. 2015)

According to the GoK, a key issue in foreign ethical recruitment has been ensuring that the PRAs involved in worker migration contribute positively to Kenya's economic development and the overseas destination countries of migrant workers by encouraging decent work.<sup>30</sup> PRAs have to strike a balance in reconciling the labour market demands and the rights of migrant workers including respect for labour legislations and equal treatment. Omolo reports that for some migrant workers recruited through PRAs, their destiny in overseas countries has improved because some PRAs have ensured the workers enjoy comparable rights to those in the destination countries.<sup>31</sup> The scholar adds that even though the rights of migrant workers differs from one country to another, the minimum period for entitlement to rights has afforded many migrant workers an opportunity to work under conditions where their rights are observed.<sup>32</sup>

### **1.5 Research Gap**

Based on the reviewed literature, a research gap is found to exist on whether a long term plan exists that could drive better oversight mechanism to monitor PRAs recruitment management system both in Kenya and the overseas countries. Generally, weak structures exist to track and monitor the recruitment policies and procedures of PRAs and their respective subagents in their recruitment process cycle. This is evident having reviewed literature on the existing gaps in the recruitment process that jeopardize the operations of PRAs to promote foreign ethical recruitment, measures taken by GoK to regulate the operations of PRAs in promoting foreign ethical recruitment and the impacts of the recruitment process in promoting foreign ethical recruitment.

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<sup>30</sup> Republic of Kenya. *Key Gender and Employment Issues. Kenya Country Study*. (Ministry of Labour and Human Resources Development: Nairobi. 2012)

<sup>31</sup> Omolo, O.J. *The Dynamics and Trends of Employment in Kenya*, IEA Research Paper Series, No. 1/2010, (Nairobi: Institute of Economic Affairs, 2010)

<sup>32</sup>Ibid.

## **1.6 Hypotheses of the study**

- 1) The more Kenyan PRAs fail to address the existing gaps in the foreign recruitment process, the more the rights of Kenyan migrant workers will be violated.
- 2) The more GoK fail to create an enabling environment for PRAs to promote ethical foreign recruitment, the more PRAs will be exposed themselves to legal fines.
- 3) The more Kenya PRAs facilitate unethical business practices, the more they will lose their client base both in Kenya and the destination countries.

## **1.7 Justification of the Study**

Through assessing the impact of recruitment process in promoting foreign ethical recruitment for Kenyan migrant workers, this research is set to transform the international recruitment industry to promote greater transparency in the recruitment process and protect the rights of migrant workers. A well-managed recruitment process that complies with the law shall be fair for workers, recruiters and employers. PRA's will be able to attract new customers, avoid legal fines, avoid losing customers due to poor quality workers and reduce costs of reputational damage due to negative media reports as more workers will demand for PRAs that promote ethical recruitment.

### **1.7.1 Academic Justification**

At the academic level, the study makes two contributions: first, while this study agrees with previous research on some of the related issues related to creating an enabling environment for PRAs to promote ethical recruitment, this research is important because it will contribute to academic work and advance the work of previous scholars on the topic. Second, the study identified topics for further research in the area of evaluating the impact of the recruitment process on foreign ethical recruitment. Additionally, the literature review demonstrates scarcity on whether a long term plan exists that could drive better regulation and create mechanisms that could promote

PRAs oversight to monitor the recruitment management systems of PRAs both in Kenya and the overseas countries. As a result, the goal of the research is to help close that gap

### **1.7.2 Policy Justification**

Many policy makers have made significant contributions towards addressing the protection needs of labor migrants. Most of the existing labor policies in Kenya are geared towards addressing the protection needs of migrant workers once they have already been deployed in the destination country. Literature appears to predominantly focus on the harms and abuse of migrant workers. The exploitative tendencies are believed to be emanating from lack of creating an enabling environment for PRA to promote ethical recruitment both at the policy and institutional level. Little has been done to strengthen the capacity of PRAs to promote ethical recruitment especially in the initial stages of recruitment process.

The significance of this study at the policy level shall look into the gaps that exist in Kenya's government policies, laws and institutional frameworks that jeopardize the activities of PRAs to promote foreign ethical recruitment. This work will narrow the disconnect between the Kenyan labour migration policies and the realities on the ground that PRAs face in promoting foreign recruitment. Some of the issues have been ignored and not clearly stated by policy makers in the Ministry of Labour and Social Protection. This is because some of the civil servants are not conversant with the challenges that the PRAs face since most of them are not directly involved in the foreign labour migration industry. The study's policy impact is solely dependent on how the findings are implemented. The outcomes of this study will serve as the foundation upon which policymakers will formulate, coordinate, and implement their policies.

### **1.7.3 General public Justification**

If the findings of this study are taken into account by policymakers in the formulation of policies, it will eventually lead to a safer society that protects the rights and dignity of migrant workers and contributes to the achievement of Kenya's Vision 2030 development agenda, the BIG 4 agenda, the global development blueprint of Sustainable Development Goals, and the global migration blueprint of the Global Compact for Safe, Orderly, and Regular Migration, all of which will ensure a prosperous future for migrant workers.

## **1.8 Theoretical Framework**

### **1.8.1 Marxism Theory**

The present study adopts Marxist theory under its theoretical framework. The theory recognizes an existing tension between the requirements of social reproduction and the demands of capitalist accumulation. According to the theory, the accumulation of profits demands the displacement of certain costs outside of economic accounting units of capitalism. This includes parts of the natural world that have been chartered by current and previous generations. In geographic terms, this phenomenon manifests itself in the form of search for capital for an increase in profit through the spatial division of labour that utilises low cost locations for low-value added activities and the continuous redeployment of the acquired profits to the original low cost locations. The resulting temporal and spatial unevenness of economic development is usually problematic for social institutions and people that are attached from the low cost locations.<sup>33</sup> Jessop modelled trade and economic location based on path dependence and increasing returns, and came to the conclusion that as transportation costs decline, an increase in local specialization is witnessed in the centres that have developed requisite infrastructure, institution and supporting services. Places that lack

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<sup>33</sup> Cain, M. *Marxism and Law*, International Encyclopedia of the Social & Behavioural sciences. (2001)

these external economies register lower returns on investment despite their lower costs and are therefore forced to seek alternatives.<sup>34</sup>

In the context of the present study, Marxist theory can be linked to it on the basis that migrant workers usually originate from low cost locations (third world countries) to those centres of developed requisite infrastructure (overseas countries) in search of capital that they redeploy to their original low cost location (third world country). Ethical foreign recruitment comes to play when temporal and spatial unevenness of economic development that exist between the migrant workers' country of origin and the destination country where they supply their labour results in the exploitation and abuse of migrant workers because inter-jurisdictional enforcement of legislations is non-existent.

## **1.9 Research Methodology**

This section discusses the research methodology that was employed to conduct the study. This section will cover the following topics: research design, study location, target population, study sample, data sources, data collection methods, research validity, research reliability, data analysis, and research ethical considerations.

### **1.9.1 Research Design**

According to Burns, a research design serves as a template for performing a study with greatest control so as not to tamper with the findings' validity. The organization of conditions or collections, as well as the set of methodologies and procedures utilized in collecting and evaluating measures of the variables stated in the research problem, is referred to as research design. This study used a

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<sup>34</sup> Jessop, B. *State Theory*, International Encyclopedia of Human Geography. (2009)

mixed method research design to allow the researcher to collect data, summarize it, present it, and analyze it for clarifying purposes. The employment of a mixed approach, or a combination of qualitative and quantitative methodologies, ensured that all experiences or associations are fully represented. Furthermore, a mixed method approach assured the validity of inferences drawn while also encouraging a diversity of viewpoints on the same events.

### **1.9.2 Study Location**

The research site for this study took place in Kenya's capital city Nairobi. Most government agencies, UN agencies, international development agencies, international organization, NGO's, academic institution, CSO's and PRAs associations are headquartered in Nairobi. It is the center where key offices that deal with labour migration matters are located. This made it cheaper and easier to retrieve information.

### **1.9.3 Target Population**

The target population, according to Orodho, is the collection of all elements that contain the information sought by the researcher.<sup>35</sup> The study targeted PRAs that have been registered by NEA to facilitate overseas employment. Other stakeholders who have interest and influence on matters labour migration shall also be targeted for this research study. These included; Directorate of Immigration Services, NCM, NEA, State Department of Labour, KAPEA, IOM, ILO, Interpol, COTU , KNCHR, Ministry of Foreign Affairs, labour court , ASMAK .

### **1.9.4 Study Sample**

Kenya has a population of 47,564,296 people, according to the 2019 census.<sup>36</sup> Conducting a research study on this entire population by delivering questionnaires and interviews is extremely

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<sup>35</sup> Orodho, A.J., & Kombo, D. K. Research Methods. (Nairobi: Kenyatta University , 2005)

<sup>36</sup> Ingabi

difficult, expensive, time-consuming, and inefficient. As a result, the use of a study sample is required. When the population is greater than 10,000, this formula from Mugenda & Mugenda was used to determine the number of respondents for this study.<sup>37</sup>

$$n = \frac{Z^2 pq}{d^2}$$

Where:+

n = the desired sample size

z = the standard normal deviate at the required confidence level

p = proportion in the target population estimated to have characteristics being measured.

q = 1 - p

d = level of statistical significance set

$$\begin{aligned} n &= \frac{(1.96)^2 (.50) (.50)}{(0.5)^2} \\ &= 384 \end{aligned}$$

The study sample is represented by the following table.

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<sup>37</sup> Mugenda and Mugenda. *Research Methods: Qualitative and Quantitative Approaches In Research*. (Published by Research Gate, 1999) p. 12.



**Table 1.1: Research Population and Sampling Technique**

<b>Respondents</b>	<b>Number of Respondents</b>	<b>Sampling Technique</b>
Directorate of Immigration Services	10	Purposive sampling
NCM	30	Random sampling
NEA	30	Purposive sampling
State Department of Labour	20	Purposive sampling
KAPEA	145	Simple random
IOM	5	Random sampling
ILO	4	Random sampling
COTU	50	Simple random
KNCHR	10	Random sampling
Ministry of Foreign Affairs	10	Purposive sampling
ASMAK	70	Simple random
<b>TOTAL</b>	<b>384</b>	

**Source: Researcher, 2020.**

The sample was made up of the three categories listed in table 1.1. As seen in the table above, different sample approaches were used for each category.

### **1.9.5 Data Sources and Data Collection Methods**

Both primary and secondary data was used in the investigation. Primary data was collected using open-ended questionnaires and interview guides, while secondary data was found in academic books, journals, magazines, reports, and on the internet. Print media, publications, and conference

proceedings reports from major nonprofit organizations should all be taken into account. Questionnaires were used as the primary instrument for gathering primary data. A questionnaire is a data collection technique in which a group of people are asked to answer the same set of questions in a specific order.<sup>38</sup> According to Kothari, using a questionnaire as a data collection instrument allows a researcher to collect a big number of data in a reasonable amount of time while also assuring confidentiality of the source of information through anonymity and standardization.<sup>39</sup>

### **1.9.6 Validity and Reliability of Data Collection Methods**

The degree to which research tools have produced consistent study outputs after repeated trials is referred to as reliability.<sup>40</sup> In this project, the questionnaires were piloted on a control population that is not part of the sample selected for the main study, which increased the dependability of data collection instruments. The pilot surveys were analyzed using Cronbach's reliability coefficient in SPSS 21.0, with an alpha value of 0.7 or above, which Mugenda believes is adequate for arriving to group inferences with more precise percentages.<sup>41</sup>

### **1.9.7 Data Analysis**

The information gathered should be both quantitative and qualitative. Data analysis, according to Zikmund, is the entire process that begins immediately after data collection and ends at the point of result interpretation.<sup>42</sup> To ensure completeness and correctness, it entails coding, classifying, and analyzing obtained data. The questionnaire's primary data was coded and placed into a computer for descriptive statistics computation. The data was analyzed using SPSS to generate

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<sup>38</sup> Sekaran, U. *Research Methods for Business: A skill-building approach* (6th ed.). Third Revenue, (New York: John Wiley & Son, 2006)

<sup>39</sup> Kothari, C. R. *Research methodology: Methods and techniques*. \*New Delhi: New Age International (P) Ltd. Publishers, 2004)

<sup>40</sup> Mugenda

<sup>41</sup> Ibid

<sup>42</sup> Zikmund, W. G. *Business research methods* (7 th Edition). Cincinnati Publishers, OH : Thomson/South-Western, 2003)

frequencies, means, and percentages, which were then displayed in the form of pie charts, graphs, and tables. The analysis of secondary data must be descriptive. Descriptive study design is a scientific method that entails describing a subject's behavior without changing it in any manner in order to identify existing circumstances, relationships, impacts, or emerging trends.<sup>43</sup>

### **1.9.8 Ethical Considerations**

The study took great care to protect the confidentiality of the records and the identity of the participants. The study sought a suitable research license from the National Commission for Science, Technology, and Innovation, a GoK organization that is responsible for issuing research licenses that allow people to do research. As a result, the research was guided by Kenyan regulations governing the conduct of research. In addition, the study maintains academic integrity and objectivity by identifying the authors, sources of all materials, and references listed throughout.

### **1.10 Chapter Outline**

**Chapter one:** Introduces the topic and gives the background of the research project. It also sets a broad context of research study, statement of the problem, research questions and objectives, literature review, research gap, hypothesis of the study, justification of the study, theoretical framework and methodology of the study.

**Chapter two:** This chapter is anchored on objective one of the study which is to examine the existing gaps that jeopardize the operations of PRAs to promote foreign ethical recruitment.

**Chapter three:** This chapter endeavored to assess the measures GoK has taken to regulate the operations of PEA's in promoting foreign ethical recruitment

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<sup>43</sup> Best, M. & Kahn, A. Research methods for business students. Harlow: (Pearson education limited, 2009)

**Chapter four:** This chapter focused on analyzing the impacts of promoting foreign ethical recruitment of Kenya migrant workers

**Chapter Five:** This chapter covers the summary of the finding, conclusions and recommendations of the study.

## CHAPTER TWO

### GAPS IN THE RECRUITMENT PROCESS THAT JEOPARDIZE THE HUMAN RIGHTS OF KENYAN MIGRANT WORKERS

#### 2.0 Introduction

A PRA is an organization that links employers to employees.<sup>44</sup> There are various private businesses in developed and developing countries that act as recruitment agencies. The officials in charge of selecting the successful applicants should possess adequate data upon which they base their choices.<sup>45</sup> PRAs are tasked with the responsibility of finding jobs for Kenyans in foreign countries such as the (GCC) countries. The Kingdom of Saudi Arabia, the State of Qatar, and the United Arab Emirates are among them (UAE). The high incidence of unemployment in Kenya, as well as the desire to fill labor gaps in some of these countries, are major motivators for labor migration. As a result, Kenya has approximately 400 registered PRAs.<sup>46</sup> In Kenya, unethical recruitment techniques are frequent and continue to pose a hurdle to overseas recruitment. Among the most common challenges that expose labor migrants to exploitation and human trafficking are deception about the conditions and nature of work, charging unapproved and exorbitant fees, confiscation of employees' identity documents in order to control them, and changing a candidate's qualification. These practices are carried out by unregistered and unauthorized recruitment agencies. There is a great need, therefore, to protect Kenyan labor migrants and promote ethical recruitment. Ethical recruitment ensures safe and orderly labor migration, which benefits both countries of origin and destination, employers and migrants. This chapter addresses the gaps in the recruitment process

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<sup>44</sup> Frade, Carlos, and Isabelle Darmon. "New modes of business organization and precarious employment: towards the recommodification of labour?." *Journal of European Social Policy* 15, no. 2 (2005): 107-121.

<sup>45</sup> Okusanya, A.O.; Oseji, A.S. Empirical Analysis of Sound Recruitment and Selection Criteria as a Tool of Organizational Efficiency. *J. Res. Natl. Dev.* 2012,14, 1.

<sup>46</sup> "Ethical Recruitment: A Priority for Kenya | International Organization for Migration." International Organization for Migration - Nairobi. Last modified 4, 2021. <https://kenya.iom.int/article/ethical-recruitment-priority-kenya>.

that hinder the operations of the private recruitment agencies in promoting foreign ethical recruitment in Kenya.

## **2.1 Existing Gaps in the Foreign Recruitment Practice**

### **2.1.1 Charging Exorbitant Fees**

A key challenge to ethical foreign recruitment by the PRAs is the presence of unscrupulous middlemen who charge unethical charges to the labor migrants even before starting to work. Dishonest charges lead to high debt bondage that makes workers vulnerable to slavery and other labor abuses. There are multiple cases where detailed regulations about the fee charged are not available; thus, workers end up paying more than the required amount in national laws.<sup>47</sup> According to international labor organization (ILO), where workers are required to pay recruitment fees, the chances are that they ended up in forced labor.<sup>48</sup> Migrant workers are more vulnerable as a result of high recruitment costs because they are obliged to repay their debts over a long period of time. They are overly reliant on their foreign employers during this repayment period, who deduct recruitment expenses directly from their earnings at exorbitant rates. Until they have fully repaid these advances, migrant workers remain bonded to their employees for the entire contract hence exposing them to risks of exploitation.<sup>49</sup>

Reputable recruiters with proven track records of success do not charge their clients. Their good reputations are enough to enable them to make enough placements with their candidates to earn a comfortable living because they hold them as valuable assets. On the contrary, unscrupulous

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<sup>47</sup> ILO: The cost of coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour, 98rd Session, (Geneva 2009), p. 27.

<sup>48</sup> International Labour Organization. Accessed Conference June 7, 2021.  
[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf).

<sup>49</sup> Ibid,p,3.

agencies charge job seekers for job placement services, leading to the recruitment of unqualified candidates.

### **2.1.2 Trafficking and Exploitation**

Labor migration is a positive development, but it comes with costs if not adequately regulated. Globally, there is a growing number of cases of exploitation and misuse of migrant workers by unscrupulous labor recruiters and illegal and abusive employment agencies.<sup>50</sup> These abuses may amount to human trafficking for the purpose of forced labor. There is a correlation between fraudulent recruitment practices by unregistered recruitment agencies and forced labor. Currently, much recruitment for temporary laborers portrays serious deficiencies. In Kenya, this is caused by loopholes in the existing labor laws, which fail to articulate the respective duties and responsibilities of the recruiting agencies and the foreign employers in safeguarding the migrant workers from any form of abuse, including forced labor.

Migrant workers are cheated on as what is stated in their labor contracts is different from what they receive when they reach the destination countries.<sup>51</sup> The actual payment is way lower than what the contract states, and there are no allowances for overtime work. For instance, Henry, a plumber who secured a contract in Qatar, signed an agreement for earning<sup>52</sup> 1200 Qatari riyals (\$329) a month plus additional allowances and overtime payments. Later he learned that the employer was going to pay him only 830 Qatari riyals (\$228) working 14 hours a day and no overtime payments.<sup>53</sup> This did not happen to him alone, as his other 13 Kenyan colleagues went through the same.

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<sup>50</sup> ILO Office Beijing, based on data of the National Office of Statistics.

<sup>51</sup> "How can we work without wages?". (2020, November 12). Human Rights Watch. <https://www.hrw.org/report/2020/08/24/how-can-we-work-without-wages/salary-abuses-facing-migrant-workers-ahead-qatars>

<sup>52</sup> Ibid

<sup>53</sup> Ibid

Henry's story illustrates the wage abuses that migrant workers face at the hands of their employers. The Qatar economy relies on over 2 million migrant workers from Kenya and other countries. These workers are responsible for constructing infrastructure to host the 2022 FIFA World Cup in exchange for a minimum wage of 750 Qatari riyals per month, which is an underpayment and not enough to cater for the high recruitment debts, take care of their families at home, and afford basic needs while abroad.<sup>54</sup> For a significant time now, human traffickers have exploited Kenyans.

Kenyans are unlawfully recruited to work in the Gulf Cooperation Council (GCC) through unregistered and illegal recruiting companies, where they are exploited in forced manual or domestic labor.<sup>55</sup> Ugandan and Nigerian human traffickers lure Kenyan women into sex trafficking in Thailand, whereas young Kenyan men and women are lured with fraudulent promises of lucrative employments to join terrorist and criminal groups in Somalia.<sup>56</sup> Traffickers are now utilizing online platforms, and relative referrals after recruitment agencies increased oversight, and the government enforced labor regulations in 2019.<sup>57</sup>

Human Rights Watch reports that Kenyan migrant workers in the Gulf countries are exploited in the workplaces and others sexually violated. The report also notes that PRAs in the foreign countries substituted new contracts for the original ones signed before the migrant workers left Kenya.<sup>58</sup> Many migrant workers are exposed to bodily and verbal abuse, threatened and intimidated, and denied access to medical services. They are overworked and denied freedom of

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<sup>54</sup> Ibid

<sup>55</sup> Kenya. (2020, December 1). United States Department of State. <https://www.state.gov/reports/2020-trafficking-in-persons-report/kenya/>

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Human Rights Watch, 'I already bought you': abuse and exploitation of female migrant domestic workers in the United Arab Emirates, October 22 2014, <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domesticworkers>.



movement and communication, are sexually harassed, and given poor food and accommodation.<sup>59</sup> Also, the employees deny compensating the migrant workers for any expenses and constantly remind them that they have bought them. The only possible way to end their contracts is by refunding the amount they claim to have purchased them.

### **2.1.3 Corruption**

#### **2.1.3.1 by State Officials**

Looting of Kenyan resources among government officials is a common phenomenon. Politicians pocket funds that could have been used to set up job opportunities in the country for the youths suffering in the Gulf countries.<sup>60</sup> With enough jobs in the country, the Kenyan youths would not have fallen into the traps of unscrupulous recruitment agencies that lure them with false promises of lucrative jobs in the Gulf region. Corruption in the Kenyan government and fraud in the recruitment agencies challenge ethical recruitment by PRAs. As a result, young Kenyans in the Arab world fall victims to terror where they are tortured and mysteriously murdered without the Kenyan government taking action.<sup>61</sup>

For many years now, some Kenyan immigrant workers in the gulf have lost their lives from beatings, torture, and murder in the watch of the Kenyan government as officials loot public funds that would scale up the legal and international capacity to govern overseas labor migration. Kenya is an impoverished nation, with a GDP of \$2,129.31 as of 2021, an unemployment rate or 3.0% in 2021, and thus young Kenyans fall victims to the corrupt recruiting agencies with a lot of ease.<sup>62</sup>

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<sup>59</sup>RESPECT | The Responsible and Ethical Private Sector Coalition against Trafficking. <https://respect.international/wp-content/uploads/2021/04/The-new-slavery-Kenyan-workers-in-the-Middle-East.pdf>

<sup>60</sup> DergiPark. Accessed June 7, 2021. <https://dergipark.org.tr/tr/download/article-file/712416>.

<sup>61</sup> Migiro, Katy. "Desperate Kenyan Maids Abused in Middle East Despite Ban." U.S. Last modified May 27, 2015. <https://www.reuters.com/article/us-rights-domesticworkers-kenya-idUSKBN0OC02K20150527>.

<sup>62</sup> "Unemployment, Total (% of Total Labor Force) (modeled ILO Estimate) - Kenya." World Bank Open Data | Data. Accessed June 7, 2021. <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=KE>.

These recruitment agencies are corruption scandals extracting exorbitant amounts of money from each particular recruit in the name of registration fees, and are therefore interested in linking up as many recruits with international employees as possible without caring about the plight of the immigrant workers in the hands of the foreign employees. The Kenyan government is essentially to blame for the suffering of Kenyan migrant workers in the Arab world since it is its duty under the State Department of Labor to monitor and oversee the activities of the PRAs.

In a report that featured in *The Star* on February 15, 2020, Cotu boss Francis Atwoli called for the banning of bogus recruitment agencies that subjected Kenyans to modern slavery in the gulf.<sup>63</sup> He lamented that agencies are fraudulent and only take advantage of millions of vulnerable Kenyan youths desperate for jobs to exploit millions of money from them. Atwoli called for the State Department of Labor in conjunction with the NEA to enact and enforce stricter rules for Kenyan migrant workers traveling to the Middle East.<sup>64</sup> Also, the unionist revealed that senior officials own these recruitment agencies in the Kenyan government hence operate with a lot of impunity.

### **2.1.3.2 Among The Recruitment Agencies**

Illegal foreign enterprises operating in Kenya without adequate documentation, according to Kenyan recruiting agencies, are on the rise.<sup>65</sup> Most of these fraudulent agencies are run by Arabs from the gulf that use tourist visas to enter the country then set up temporary offices with the help of the locals. Others operate in hotels and restaurants without proper work permits, mainly preying

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<sup>63</sup> <https://www.the-star.co.ke/authors/brianotieno/>. (2020, February 15). *Atwoli: Cane evil foreigners, ban recruitment agencies*. The Star. <https://www.the-star.co.ke/counties/coast/2020-02-15-atwoli-cane-evil-foreigners-ban-recruitment-agencies/>

<sup>64</sup> Ibid

<sup>65</sup> <https://www.the-star.co.ke/authors/martinmwita/>. (2020, June 22). *Locals raise red flag over illegal foreign recruiting agencies*. The Star. <https://www.the-star.co.ke/business/kenya/2020-06-22-locals-raise-red-flag-over-illegal-foreign-recruiting-agencies/>

on desperate domestic workers seeking jobs abroad.<sup>66</sup> Through corruption, these illegal agencies breach accreditation requirements. It is a requirement that any recruitment agency must belong to an association before its accreditation, but through corruption, Kenyan authorities overlook that. The National Employment Authority (NEA) has accredited around 320 recruiting companies, but only 100 of them are members of the two recognized recruitment associations, the Kenya Association of Private Employment Agencies (KAPEA) and ASMAK.<sup>67</sup>

For accountability, discipline, and compliance purposes, the recruitment Act that established NEA require that a recruitment agency must belong to an association before it is registered. However, it is the concern of the Kenyans that NEA has been accrediting agencies not affiliated with any association. These agencies, the majority of which are operated by Arabs breach critical requirements about recruitment practices, such as the mandatory two weeks of training for recruits before traveling to foreign counties.<sup>68</sup> This is meant to prepare the recruits for the destination countries' culture, job, and environment. The agencies use Kenyan proxies to register the companies on their behalf, then take over later and evade paying taxes to the Kenyan government or remitting any money.<sup>69</sup>

#### **2.1.4 Lack of Transparency**

When contracts are drafted in Arabic, there is a lack of transparency, and therefore Kenyan migrant workers end up falling victims to exploitation.<sup>70</sup> As a result, migrant workers fall victims to contract substitution by employers or agents when they arrive in foreign countries. The recruitment

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<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> International Labour Organization. Accessed June 7, 2021. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf).

<sup>69</sup> Ibid

<sup>70</sup> Verité and IOM facilitate Kenya private employment agencies study on ethical recruitment in Qatar | International organization for migration. (2021, May 17). International Organization for Migration - Nairobi. <https://kenya.iom.int/article/verit%C3%A9-and-iom-facilitate-kenya-private-employment-agencies-study-ethical-recruitment-qatar>.

agencies may also alter the job description to lure recruits. Such alterations may include inflation of the salaries and other compensations. Also, they lie about the job's responsibilities, making it seem more prestigious than it is in the real sense. The dishonest recruiters also advertise non-existing jobs to harvest candidate's resumes and contact them in the future when actual jobs arise. Likewise, recruiting agencies alter candidate's resumes without their knowledge to make them more appealing and increase the chances of recruitment.<sup>71</sup>

Many victims of trafficking claim that they were deceived by the local agencies who employed aggressive and manipulative techniques to recruit them. Also, they claim to have been promised a job which they went for an extended period without receiving despite having to pay high agency fees.

### **2.1.5 Illegal Recruitment Practices**

Illegal recruitment practices make it hard to estimate the exact number of trafficked Kenyans working abroad. Unskilled laborers are the primary victims of illegal trafficking. To curb illegal recruitment practices, the government adopted a new registration process for recruitment agencies which requires the accreditation of all employment agencies before they are registered. This led to the creation of underground organized criminal recruitment channels that are still in operation.<sup>72</sup>

The channels are run by foreign and local networks that work in cooperation to facilitate human trafficking.<sup>73</sup> The foreign networks pose as employment agencies and carry out recruitment practices in Kenya. They are organized with a horizontal structure where each group works distinctively in collaboration with local organized criminal channels. Unregistered foreign

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<sup>71</sup> Ibid

<sup>72</sup> RESPECT | The Responsible and Ethical Private Sector Coalition against Trafficking. <https://respect.international/wp-content/uploads/2021/04/The-new-slavery-Kenyan-workers-in-the-Middle-East.pdf>

<sup>73</sup> Ibid

recruitment agencies from the gulf, particularly Saudi Arabia and Qatar, operate in Nairobi and Mombasa, interviewing recruits in hotels and restaurants. They are aided by local agents who lure vulnerable Kenyans with job offers abroad in exchange for a recruitment commission of \$1000 per recruit.<sup>74</sup> The visas, freight, and other travel documents are arranged for within a very short period. Upon arrival to the foreign country, the employer confiscates the visa and other documents according to the *kafala* system to monitor the employee.<sup>75</sup>

### **2.1.6 High Unemployment Rates in Kenya**

In Kenya, there are limited economic opportunities, high rates of unemployment, and low wages.<sup>76</sup> This is the critical driver for labor migration among Kenyan youths. Unemployment and lack of livelihood opportunities for the youths expose them to vulnerability and risk of exploitation.<sup>77</sup> This is a significant challenge to the PRAs in ensuring ethical foreign recruitment. Embracing ethical recruitment practices by the PRAs is beneficial as it opens up more opportunities other than in the GCC for them and the Kenyan labor migrants, thus their profitability and credibility.<sup>78</sup>

## **2.2 Conclusion**

Ethical practices in foreign recruitment have various benefits to the recruitment agencies, employers, employees, host governments, and home countries. Transparent practices ensure the smooth running of the contract for the benefit of all parties. However, several gaps exist in Kenya that prevent ethical recruitment practices by the private recruitment agencies. For instance, the

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<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Promoting international ethical recruitment through private employment agencies | International organization for migration. (2021, May 17). International Organization for Migration - Nairobi. <https://kenya.iom.int/article/promoting-international-ethical-recruitment-through-private-employment-agencies>.

<sup>77</sup> Ibid

<sup>78</sup> Ibid

high prevalence of corruption in the Kenyan government has created loopholes that allow the survival of illegal and unregistered recruitment agencies. These agencies recruit Kenyans using fraudulent and unlawful means, leading to the exploitation of Kenyan migrant workers. These illegal recruitment practices have prevailed despite the creation of the NEA that regulates recruitment agencies. Similarly, there is little transparency during the recruitment process, especially when the contracts are drafted in Arabic, hence leading to the substitution of contracts and other forms of exploitation. Also, Kenyans seeking jobs in the Gulf region are forced to pay high agency fees and end up being underpaid by their employers. Another challenge is the highly coordinated network of human trafficking that has prevailed in Kenya for years. Many Kenyan youths are trafficked to the Arab world, where they are sexually abused and exploited. Thus, to ensure ethical practices in foreign recruitment, all these gaps must be closed. The government of Kenya and the destination governments must formulate policies and regulations to protect migrant Kenyans abroad from dishonest agencies and exploitative employees.

## CHAPTER THREE

### MEASURES TO REGULATE THE OPERATIONS OF PRIVATE RECRUITMENT AGENCIES (PRAS) IN PROMOTING THE RIGHTS OF KENYAN MIGRANT WORKERS

#### 3.0 Introduction

Over the last decade, the government of Kenya has faced many challenges in handling the operations of PRAS. Kenya's constitution defines PRAs as the institutions registered by the director of employment to recruit employees on behalf of the employers. For an institution to be considered as a PRA, it should be: registered as a limited liability company under the Companies Act whereby there should be no less than one Kenyan citizen owning the shares, the directors should possess O level certificate or its equivalent, the manager involved must have a bachelor's degree in field of business studies, Kenyan shareholders in the PRA should have a share capital of at least five million shillings, and a tax compliance certificate from the Kenya Revenue authorities.<sup>79</sup>

On meeting such requirements, the agency is issued with a certificate by the NEA to link the employees with the employers, whether in Kenya or foreign countries. In the last five years, there have been many cases of Kenyans working in foreign countries having been abused by their employers. Most of the victims are said to have not used the right channels or PRAs to work abroad. This means that the government of Kenya has not been taking adequate necessary measures to control PRAs in the past. As a result, Kenya's foreign ethical recruitment can be said

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<sup>79</sup> The Constitution of Kenya, 2010.

to be in an amoral position. In response to this, the government of Kenya has come up with different measures of regulating the operations of PRAs and promoting ethical recruitment. This chapter, therefore, addresses the measures such as; training the PRAs, monitoring activities, assessment of the penalties, administering complaints procedure for the workers, reporting information to responsible authorities, and legislation.

### **3.1 Training Private Recruitment Agencies**

Kenya's government has started training programs for more than thirty PRAs in partnership with the International Organization for Migration. According to Kerwin, the training aims at creating sustainable recruitment models for foreign or migrant workers which align with the international ethical recruitment standards<sup>80</sup>. Vittin-Balima argues that the major training areas are; the voluntary process of certification that promotes foreign workers' rights, how the International Recruitment Integrity System (IRIS) works, accountability and transparency of the recruitment process, regulation and enforcement activities, and strengthening public policies.<sup>81</sup> Most recruitment agencies in Kenya connect the employees with the employers from the Gulf region, such as; the State of Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates. Due to the high unemployment rate in Kenya, some individuals and PRAs are conducting unethical recruitment practices. The Kenya's constitution stipulates that when found on the wrong side of the law, some agencies argue that they were not aware of the existence of some law stipulations.<sup>82</sup> That is why the government of Kenya is doing all it takes to enlighten and teach the PRAs about unethical practices, including; deceiving the worker about the conditions and nature of the job,

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<sup>80</sup> Kerwin, Donald. "International Migration and Work: Charting an Ethical Approach to the Future." *Journal on Migration and Human Security* 8, no. 2 (2020): 111-133.

<sup>81</sup> Vittin-Balima, Cecile. "Migrant workers: The ILO standards." *Labour Education (Geneva, ILO)* 4, no. 129 (2002): 5-11.

<sup>82</sup> Kenya, LAWS OF. *The Constitution of Kenya: 2010*. Chief Registrar of the Judiciary, 2013.



improper documents, charging exorbitant fees, and unapproved charges and trafficking of migrant workers. Generally, the government of Kenya is trying to make it compulsory for the PRAs to undergo IRIS training and be issued with the certificates of proving, which contain its seven principles in their management system.<sup>83</sup> Such principles include; professional and ethical conduct, respecting the law and fundamental rights, prohibiting the cost of recruitment to migrant workers, data confidentiality and protection and access to remedy, respecting the freedom of movement, and openness and transparency on terms and conditions of employment. For that matter, the government of Kenya aims to promote orderly, safe and regular labor migration and discourage any kind of exploitation and trafficking. To date over 90 PRAs have been sensitized on IRIS.

### **3.2 Monitoring of PRAs Activities**

Monitoring the activities conducted by the PRAs is one of the most effective measures of promoting foreign ethical recruitment if properly enforced. According to the 2010 constitution of Kenya, the government of Kenya has developed a monitoring and enforcing system that makes sure that all the PRAs meet the operation requirements.<sup>84</sup> All PRAs in Kenya must be validated and certified by the Ministry of Labor and Social Protection through the National Employment Agency (NEA). In this scenario, the NEA is responsible for ensuring that all PRAs comply with the law throughout their activities. To protect the migrant workers from Kenya and promote ethical recruitment, the NEA has put in place measures on the renewal and issuance of licenses of operation. Hagerman argues that upon issuance of the license of operation, NEA has gone ahead to develop clear standards and benchmarks against which the PRAs performance would be

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<sup>83</sup> Kenya, LAWS OF. The Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

<sup>84</sup> Hagerman, Jennifer L. "Navigating the waters of international employment law: Dispute avoidance tactics for United States-based multinational corporations." *Val. UL Rev.* 41 (2006): 859.

evaluated. In this case, through NEA, the government of Kenya applies two main techniques of monitoring PRAs, including; desk audit and regular inspection.<sup>85</sup> A desk audit is conducted during the time of application. Here, PRAs are obliged to provide all legal documents required and any additional information demanded by NEA. When NEA suspects that the agency under consideration has taken part in fraudulent recruitment, the additional information demanded is justified. Additionally, the authority inspects all the premises of the recruitment agency. The constitution of Kenya holds that, there is a stipulated agreement for the NEA to inspect the agency premises available in the application procedure. Regular auditing is mostly conducted unannounced. In Kenya, such inspections are conducted when there is a complaint from a migrant employee upon the violation of recruitment law and regulations. Here, the government of Kenya through NEA ensures that it has detailed follow-up information about the complaint presented<sup>86</sup>. Due to increased cases of exploitation of migrant employees from Kenya, the government is planning to have annual auditing of all PRAs to ensure that they are working within ethical standards and law. The final way of monitoring the activities of PRAs is through the presentation of photocopies of their operations to the Ministry of Labor and Social Protection. The monitoring activities on PRAs ensure that such institutions observe the law and work within the accepted codes of conduct.

### **3.3 Penalty Assessment for Non-Compliances**

When the PRAs are not complying with the law, the government of Kenya is required by the law to impose sanctions. The main aim of imposing sanctions or penalties is to ensure fair recruitment practices and prevent and trafficking or any other form of exploiting the migrant workers. Vittin-

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<sup>85</sup> Kenya, LAWS OF. The Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

<sup>86</sup> Kenya, LAWS OF the Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

Balima writes that the ILO, 1997 (181) article 10 provides that all the countries, through their governments, should impose penalties or sanctions on the PRAs involved in abuses and fraud.<sup>87</sup> Kimosop adds that in Kenya, penalties are imposed based on the extent of PRAs misconduct. Andrees concludes that the minor misconducts like a late renewing of a license with one day face fewer penalties like paying some negligence.<sup>88</sup> On the other end, when the PRAs have major misconduct like human trafficking, exploitation, lack of transparency, or money laundering, they face major administrative sanctions. Such sanctions may include; withdrawing the operational license, imprisonment, and prohibit the agency from holding any business related ventures with foreign entities. The Kenya's constitution holds that these penalties and sanctions have seen a lot of PRAs in Kenya become careful with their operations.<sup>89</sup> The government of Kenya is also trying to tighten the penalties to send a warning to all the illegal PRAs. For instance, any PRA in Kenya found guilty of violating the recruitment law like human trafficking must face not less than ten years' imprisonment or pay the stipulated amount.<sup>90</sup> In summary, the government of Kenya has come up with new sanctions and penal policies to discourage the PRAs from being involved in fraudulent activities.

### **3.4 Complaint Procedures for Abused Workers**

For the last ten years, Kenya has had many complaints from migrant workers having been abused by their employers, especially in the Gulf region. In such instances, the government of Kenya has set up the complaint procedures for identifying and examining recruitment violation allegations.

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<sup>87</sup> Vittin-Balima, Cecile. "Migrant workers: The ILO standards." *Labour Education* (Geneva, ILO) 4, no. 129 (2002): 5-11.

<sup>88</sup> Kimosop, Damaris J. "Labour turnover in private security firms in Kenya: a case study of future force security firm." Ph.D. diss., 2007.

<sup>89</sup> Andrees, Beate. "Combating criminal activities in the recruitment of migrant workers." *Merchants of labor* (2006): 175.

<sup>90</sup> Kenya, LAWS OF. *The Constitution of Kenya: 2010*. Chief Registrar of the Judiciary, 2013.

Vittin-Balima writes about Article 10 of Convention no 181 that gives the victims of trafficking emanating from unscrupulous PRAs the right to seek remedies through filing complaints. In Kenya, the complainants file the case in labor courts with proof of violation.<sup>91</sup> Additionally, according to the constitution of Kenya, the complainants present their grievances to the specific administration, the NEA, that would later be analyzed and justice given.<sup>92</sup> Upon receiving complaints from the victims, the government of Kenya, through the NEA, commences monitoring activities. Here, if the authority finds enough evidence of misconduct, sanction or penalties are imposed. In addition to that, Vittin-Balima argues that the complainant should be compensated for the loss he or she incurred due to the PRAs negligence. Other sanctions may include; forfeiting the deposit and performance bonds, withdraw or revoking the license, fines, seizing the assets, and imprisonment.<sup>93</sup>

To ensure that the truth behind the victims' complaint is known, the government monitors the recruitment agency operations by reviewing the reports from PRAs concerning the status of employment for those deployed, job placement, or any other information as required by the authority, periodic visits and inspections by NEA to find if the victims complain align with the PRAs practices, campaigning against the recruitment agencies to be blacklisted for violating the law, and constant reviewing of the migrant workers.

As it is stipulated in the constitution of Kenya, through complaint procedures for the abused workers, PRAs and employers have been working within the law to protect their institutions from

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<sup>91</sup> Vittin-Balima, Cecile. "Migrant workers: The ILO standards." *Labour Education* (Geneva, ILO) 4, no. 129 (2002): 5-11.

<sup>92</sup> Kenya, LAWS OF. *The Constitution of Kenya: 2010*. Chief Registrar of the Judiciary, 2013.

<sup>93</sup> Vittin-Balima, Cecile. "Migrant workers: The ILO standards." *Labour Education* (Geneva, ILO) 4, no. 129 (2002): 5-11.

losing their licenses to the authorities.<sup>94</sup> The government of Kenya also takes every complaint seriously and imposes penalties as is required by the law. Additionally, the government encourages migrant workers to ensure that they have their lawyers who would advise them about the actions to take when their rights are violated. For that matter, the government is using the complaints from the migrant workers to regulate the actions of PRAs and so promoting foreign ethical recruitment.

### **3.5 Reporting PRAs Information to Responsible Authorities**

Currently, in Kenya, it is a must for the PRAs to report information periodically to NEA. The constitution of Kenya holds that these reports are very important because they provide an overview of the agencies' shortcomings in practices and trends. In addition to that, the government of Kenya has put it as a policy to publicize the authorized PRAs in Kenyan Gazette.<sup>95</sup> This makes it simple for the people willing to work abroad to choose legit PRAs and report to the governing bodies. When PRAs in Kenya are involved in misconduct, the Ministry of Labor and Social Protection through the NEA, publicizes it in a national gazette or any other media to warn the people about entering into a contract with it. Samantroy writes that, through the respective bodies, the government of Kenya also uses the PRAs information to rank them based on how they adhere to foreign employment laws.<sup>96</sup> This strategy motivates the PRAs across the country to work within the accepted ethical standards for their agencies to be ranked in convincing. In summary, the government of Kenya periodically publicizes the list of PRAs based on the newly registered, banned, canceled, or delisted. From this perspective, it can be argued that the government of Kenya is acting transparency by ensuring that Kenyans have the right information about the PRAs they

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<sup>94</sup> Kenya, LAWS OF. The Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

<sup>95</sup> Kenya, LAWS OF. The Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

<sup>96</sup> Kenya, LAWS OF. The Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

are willing to enter into a contract with<sup>97</sup>. In addition to that, it would be simple for the Kenyans to choose the best company based on the ranking by the NEA. This has seen most of the PRAs in Kenya work within the ethical standards, promoting foreign ethical recruitment.

### **3.6 Legislation and Prosecution of Unfair Recruiters**

In cases where the PRAs are highly abusing the migrant workers and job seekers, the constitution of Kenya allows for the parliament to formulate the respective laws. According to Karimi, the common laws formulated to handle the issue of unfair recruiters are; anti-trafficking laws, administrative laws, criminal laws, and fraud laws. Human trafficking in Kenya is becoming a serious problem recently.<sup>98</sup>. In this case, the government, through the National Assembly, has come up with anti-trafficking laws. When a PRA is found guilty of human trafficking in the name of job placement, its license would be revoked, and those involved get imprisoned based on the judgments. The constitution of Kenya holds that, before the anti-trafficking laws are implemented, all Kenya's National Assembly members are given a chance to view the matter from wider perspectives to ensure that the law would serve fairly to all. Agunias writes about another common form of PRAs misconduct is the PRAs being involved in criminal activities.<sup>99</sup>. We have heard of the cases whereby the PRAs recruit criminals in the name of workers. For that matter, Kenya's National Assembly has come up with criminal statutes, including laws concerning gang offenses or participation in the organized criminal groups.<sup>100</sup>. The government of Kenya ensures that the laws implemented by the National Assembly are enforced, and the offenders face the

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<sup>97</sup> Samantroy, Ellina. "ILO Convention 181: Issues and Challenges in the Context of Private Placement Agencies in India." NLI research studies series 109 (2013).

<sup>98</sup> Kirimi, Gakii F. "A survey of organizational learning in private recruitment agencies in Nairobi." Ph.D. diss., University of Nairobi, 2006.

<sup>99</sup> Kenya, LAWS OF. The Constitution of Kenya: 2010. Chief Registrar of the Judiciary, 2013.

<sup>100</sup> Agunias, Dovelyn Rannveig. "What we know about regulating the recruitment of migrant workers." Policy Brief 6 (2013).

consequences. The unfair recruiters are prosecuted based on the extent of crime or misconduct they do. Through the court system, the government of Kenya is very strict with the cases concerning private recruitment agencies.<sup>101</sup> This has seen most PRAs work within the laws to fear being prosecuted hence promoting foreign ethical recruitment. In summary, the abuse recruitment practices in Kenya are prosecuted in the laws such as criminal laws, anti-trafficking laws, administrative laws, and fraud laws like tax evasion.

### **3.7 Conclusion**

The high employment rate in Kenya is increasing the demand for PRAs. Private recruitment agencies connect job seekers with employers either locally or abroad. In the last decade, Kenya has had many workers in foreign countries such as Qatar, Saudi Arabia, and the United Arab Emirates, among others. Recently, there have been many cases of private recruitment agencies violating the rights of job seekers and migrant workers by overcharging them, trafficking them in the name of connecting them with employers, etc. This has seen Kenya's foreign ethical recruitment image tarnished. To handle this, the government of Kenya has come up with the strategies such as; training private recruitment agencies, close monitoring of PRAs Activities, penalty assessment for non-compliance, complaint procedures for abused Workers, reporting PRAs Information to responsible authorities, and legislation and prosecution of unfair recruiters. These measures seem to be working since the cases of PRAs misconduct are going down. To ensure that the problem associated with the PRAs is solved once and for all, every Kenyan citizen should take it as their responsibility. In this case, we should report to the NEA any private PRA violating the rights of job seekers and migrant workers. The PRAs should also act responsibly in

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<sup>101</sup> Kirimi, Gakii F. "A survey of organizational learning in private recruitment agencies in Nairobi." Ph.D. diss., University of Nairobi, 2006.

that they do not give the government of Kenya a hard time doing follow-ups. Here, they should ensure that they work within the law and ethical standards. Through this, the foreign ethical recruitment of Kenya would be promoted and enjoy the migrant employment and other services.



## CHAPTER FOUR

### IMPACTS OF ETHICAL FOREIGN RECRUITMENT ON KENYAN MIGRANT WORKERS, ORIGIN AND DESTINATION COUNTRIES

#### 4.0 Introduction

Migration in search of better working opportunities is on the rise globally. For instance, in 2018 alone, over ten million workers shifted to the G20 countries either permanently or temporarily searching for jobs.<sup>102</sup> The International Labor Organization (ILO) has reported an approximate 235 million international migrants as of 2019, among which 18 million are migrant workers. The high global migration of workers is mainly fueled by various factors such as income disparities, labor market demands, and instabilities in the countries of origin. These migrants move specifically for work and may migrate permanently or temporarily depending on the nature of work and the host country.<sup>103</sup>

In mixed migration flows, Kenya is a nation of origin for migrant workers. Others go to the United States, Europe, the Arabian Peninsula, and the Middle East, while others go to the United States, Europe, the Arabian Peninsula, and the Middle East.<sup>104</sup> PRAs facilitate the migration of low-skilled Kenyan migrant workers to the Middle East and Gulf region in search of jobs. These migrants are driven towards the Middle East and the Gulf region by the high unemployment levels in Kenya, the comparatively higher wages and salaries in the destination countries, as well as the complexities and proximity involved in accessing employment in the developed countries. Migrants from Kenya and other Sub-Saharan African countries work in the GCC countries as

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<sup>102</sup> Czaika M, *High skilled migration: Introduction and synopsis, drivers and policies*, (2018). USA: Oxford press.

<sup>103</sup> ILO report, 2019.

<sup>104</sup> Regional Mixed Migration Secretariat (RMMS). 2017. "Kenya country profile". Available at: <http://www.regionalmms.org/index.php/country-profiles/kenya> [8 May 2018].

housemaids, cleaners, construction workers, and taxi drivers, which exposes them to unethical recruitment practices and labor exploitation.<sup>105</sup>

The Gulf Cooperation Council (GCC) has emerged as a major destination for migrant workers, and as of 2016, the region had approximately 25.3 million international migrant workers. Labor demands in the GCC countries have increased job opportunities. For instance, the preparation for Qatar World Cup 2022, the preparation for The Dubai Expo 2020 in UAE, and the construction of the Pan GCC railway across State of Kuwait, Kingdom of Bahrain, Sultanate of Oman, Kingdom of Saudi Arabia, UAE, and Qatar.

Concerning widespread worker migration, some incidences of abuse and trafficking have been documented. As a result, Kenya's government has taken steps to solve these issues, including regulating private recruitment agencies and implementing bilateral labor agreements (BLAs) with destination nations. In Kenya, all PRAs must be approved and accredited by the Ministry of Labor and Social Protection through the National Employment Agency (NEA). Despite these measures, unethical recruitment techniques continue to exist in Kenya, posing a hurdle to foreign recruitment. Unethical recruitment practices that Kenyan migrant workers experience include improper documentation, charging exorbitant agency fees, and deception on the nature and conditions of the jobs. These practices expose them to the problems of human trafficking and smuggling by their foreign employees.

On the other hand, ethical recruitment practices are beneficial to the migrant workers, the foreign employees, the country of origin, and the destination countries. They represent safe and orderly

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<sup>105</sup> Froilan T. Malit, Jr. and Ali A. Youba, Labor protection in the gulf countries: A comparative analysis of Kenyan governmental dilemmas in Saudi Arabia and the UAE,

labor migration which is beneficial to all parties involved. For instance, in 2021, the total diaspora remittances were 290.8 million US dollars representing Kenya's highest foreign earner.<sup>106</sup> Ethical foreign recruitment can support the growth of these remittances, which will translate into economic growth.

This chapter addressed the impacts that unethical recruitment of Kenyan migrant workers has on the individuals and the origin and destination countries. It also sought into the diplomatic implications these unethical practices have on the reputation and image of Kenya and the destination countries in the international arena.

#### **4.1 Impacts on the Migrant Workers**

According to the available literature, migrant workers in the Gulf region experience various challenges. Unethical recruitment exposes them to human rights-violating practices that arise from disagreements with their employers. A wide gap exists between the identification of such human rights violations and the coordination towards their address. Nongovernmental organizations based in Kenya have reported that unaccredited recruitment agencies in Kenya continue to recruit Kenyan migrant workers to the Gulf region.<sup>107</sup> This has been happening despite the Kenyan government imposing restrictions on recruitment towards these countries.

Reports indicate that these unlicensed recruitment agencies charge prospective recruits exorbitant agency fees ranging between the US \$1,225 and \$2,200. These charges cater to air tickets, visas, temporary accommodation, medical assessments, pre departure training and food. Compared to the Asian countries which Charge between US \$ 850 and \$ 1,100 these charges are inflated in

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<sup>106</sup> Ibid,p,23.

<sup>107</sup> Froilan Malit, Jr. and Ali Al Youha. 2021. "Kenyan Migration To The Gulf Countries: Balancing Economic Interests And Worker Protection". *Migrationpolicy.Org*. <https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>.

Kenya. In addition, Kenyan migrant workers in the Gulf sometimes face contract substitutions in Kenya or at the destination countries. The contract substitutions are deliberate actions by both legal and illegal recruitment agencies where they provide false contract information to lure and manipulate potential recruits to sign the employment contract. The information asymmetry results in labor abuses adversely impact wages and trigger early departure from the Gulf region before the expiry of the employment contracts.<sup>108</sup>

Reports indicate that migrant workers in the Gulf states are forced to work for many months without pay. The employers refund themselves the costs incurred in facilitating the workers' travel.<sup>109</sup> Human Rights Watch in 2010 reported a case where a Kenyan female migrant worker by the name Fatma Athman was deported seven days after employment after sustaining serious injuries, which she claimed happened after her employer intentionally pushed her from a third-floor balcony in a murder attempt.<sup>110</sup> News about the killing of migrant workers by their employees is common. For instance, reports indicate that in 2011, seven Kenyan migrant workers were killed by their employees in Saudi Arabia.<sup>111</sup>

Kenyan migrant workers go through various forms of discrimination such as discriminative recruitment practices, poor working conditions, biased remuneration, or contract termination. The discrimination can go to the extremes of physical and psychological abuse, intimidation by authorities in the destination countries, stereotyping, and violence met to the migrants individually

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<sup>108</sup> Ibid, p,29.

<sup>109</sup> Kithi, Ngumbao. Even at home, they are slaves of poverty. Standard Digital. Retrieved on 12<sup>th</sup> September 2021 from <http://www.standardmedia.co.ke/?articleID=2000057582>

<sup>110</sup> Human Rights Watch. Saudi Arabia: Domestic Worker Brutalized. Human Rights Watch. Retrieved on 13<sup>th</sup> September 2021 from <http://www.hrw.org/news/2010/09/02/saudi-arabia-domestic-worker-brutalized>

<sup>111</sup> Ibid

or collectively. The legal systems in the destination countries, such as the Kafala system, provide environments that justify these discriminatory behaviors.<sup>112</sup>

A review of the empirical literature shows that labor migration from Kenya and Africa at large to the Gulf states is faced with various abuses and exploitations. Most Kenyan migrants go through deception and exploitation even before leaving the country by unethical recruitment agencies and human trafficking groups. Other migrants go through many days of dangerous and life-threatening journeys. In addition, illegal practices such as trafficking and smuggling expose Kenyan migrant workers to vulnerabilities and challenges even before they reach their destination.<sup>113</sup>

A report by ILO in 2017 exposed cases of Kenyan migrant workers traveling to the Gulf countries without proper travel documents.<sup>114</sup> Unlicensed PRAs take advantage of the desperation of prospective Kenyan migrant workers and exploit them by conspiring with sponsors.<sup>115</sup> Lack of a clear orientation before departure to the GCC countries has been a significant challenge for migrant workers. As a result, the migrant workers are not aware of their rights and responsibilities. For example, Kenyan migrant workers in UAE were unaware of their rights and legal capacities due to pre-departure preparation, hence being extremely vulnerable.

Many Kenyan migrant workers are exposed to inhuman working conditions and human rights abuse. For instance, confiscation of passports and other identification documents, long working

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<sup>112</sup> Patrick T. and August Gachter, "Discrimination against Migrant Workers: Global Trends, Responses, Challenges and Ways Forward Today and Tomorrow"

<sup>113</sup> Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*. [https://www.ituc-africa.org/IMG/pdf/ituc-africa\\_study-africa\\_labour\\_migration\\_to\\_the\\_gcc\\_states.pdf](https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf).<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>

<sup>114</sup> ILO, 2017 The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya

<sup>115</sup> Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*. [https://www.ituc-africa.org/IMG/pdf/ituc-africa\\_study-africa\\_labour\\_migration\\_to\\_the\\_gcc\\_states.pdf](https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf).<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>

hours, unpaid wages, underpaid wages, and sexual harassment for women migrant workers are common. According to an ILO research, women working as domestic workers in GCC countries work an average of 115 hours per week, while men in the construction industry work an average of 70 hours.<sup>116</sup> When compared to the usual 40-hour work week, this constitutes exploitation. Gender-based violence, overworking, underpayment, and human trafficking are all more common among Kenyan women working as domestic workers in the Gulf.<sup>117</sup> This is because they are low-skilled hence end up being employed in unregulated private sectors, which exposes them to vulnerabilities of inhuman working conditions and various forms of human rights violations.

Differences in literacy levels, work experience or expertise, and kind of occupation may explain wage disparities between Kenyan migrant workers and those in the Gulf region. This is not the case in the GCC states, where discriminatory labor practices against migrants account for a major portion of salary disparities between Kenyan migrant workers and locals.<sup>118</sup> Also, it is difficult to obtain data on the wage gap among domestic migrant workers from different countries or between Kenyan migrant domestic workers and local domestic workers in the GCC states. However, empirical studies reveal that Kenyan migrant domestic workers and those from Africa at large are the least paid in the Gulf countries compared to those from Asian countries such as the Philippines, Sri Lanka, and Indonesia.<sup>119</sup> These wage gaps result from discrimination against African migrant workers in the GCC countries and the Middle East.

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<sup>116</sup> ILO, 2017 The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya

<sup>117</sup> Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*. [https://www.ituc-africa.org/IMG/pdf/ituc-africa\\_study-africa\\_labour\\_migration\\_to\\_the\\_gcc\\_states.pdf](https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf).<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>

<sup>118</sup> ILO, 2017 The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya

<sup>119</sup> Flahaux, M.L and De Haas, (2016), African migration: trends, patterns and drivers, Comparative migration studies.

The Kafala system in the GCC states, which manages migrant domestic workers, exposes them to labor abuse. The Kafala system gives employers and the governments of the GCC states absolute control over the legal status of the migrant workers, controlling their entry, residence, and exit. The employers are linked with the migrant workers through intermediaries such as PRAs. The Kafala System and the recruitment process render the migrant domestic workers vulnerable to all forms of physical and labor abuses and exploitations by their sponsors and employers. For instance, they cannot change their jobs or travel to their countries of origin without their employers' permission.<sup>120</sup>

The Kafala system, which governs migrant workers' residence and employment conditions, was formed and implemented into the national legal frameworks of Gulf states.<sup>121</sup> These states' legislative system excludes migrant domestic employees from their labor laws. Domestic employees are not covered by the regulations that govern migrant workers in the GCC states, rendering them more vulnerable to exploitation and abuse.

#### **4.2 Impacts on the Country of Origin (Kenya)**

The activities associated with PRAs in Kenya for migrant jobs abroad have been an issue of concern for a long. Their unethical practices in Kenya have exposed Kenyan migrant workers to various forms of mistreatment by employers in the GCC countries, including contract substitution, deception about the nature and conditions of the job, charging migrant workers exorbitant agency fees, and improper travel documentation. This forced the Kenyan government to undertake

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<sup>120</sup> Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*. [https://www.ituc-africa.org/IMG/pdf/ituc-africa\\_study-africa\\_labour\\_migration\\_to\\_the\\_gcc\\_states.pdf](https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf).<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>

<sup>121</sup> [http://www.ilo.org/beirut/publications/WCMS\\_211214/lang—en/index.htm](http://www.ilo.org/beirut/publications/WCMS_211214/lang—en/index.htm).

restrictive measures on the PRAs in 2014 to curb these challenges and banned the industry.<sup>122</sup> A task force to review foreign recruitment and labor migration management was also established and develop viable solutions to the challenges.

The challenges that unethical recruitment practices expose to Kenyan migrant workers have revealed the reluctance of the Kenyan government to intervene in their plight. According to Trace Kenya, the Kenyan government does not seem concerned about the welfare of the people interested in working abroad.<sup>123</sup> This is due to the fact that the government does not have any rigorous regulations in place to oversee the business. The government has no idea how many migrant workers there are in the Gulf, but it is keen in keeping track of remittances.<sup>124</sup> The local communities seem unaware of the evils of illegal labor migration, and it remains the government's responsibility to protect them from exploitative and abusive PRAs. But the government is not doing so, leaving PRAs to engage in unscrupulous recruitment practices that expose migrant workers to exploitation abroad.

The Kenyan government is undertaking policies and programs to respond to the labor migration to the GCC states and the Middle East. This is in response to the challenges of unregulated and unethical recruitment practices have imposed on Kenyans seeking employment abroad. In these efforts, key institutions and stakeholders are government ministries, civil society, trade unions, nongovernmental organizations, and the international community. Some of the regulatory frameworks established are the Labor Institution Act, Employment Acts, Trafficking in Persons

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<sup>122</sup> Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*. [https://www.ituc-africa.org/IMG/pdf/ituc-africa\\_study-africa\\_labour\\_migration\\_to\\_the\\_gcc\\_states.pdf](https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf).<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>

<sup>123</sup> Ibid

<sup>124</sup> Ibid



Act. Kenya lacks a National Migration Policy and National Labour Policy. This causes a gap in promoting effective labor employment abroad.

The study reveals challenges in Kenya concerning the institutions in place to implement and enforce these frameworks. Some of the legislation has gaps that give room for migrant exploitation, while others lack the institutional structures to implement. Various state actors also lack coordination and collaboration in enforcing the labor migration policies. This has led to the emergence of non-state actors who have realized the relevance of labor migration and have engaged in various roles to promote safe migration and protect the migrant workers in the origin and destination countries. These include trade unions such as COTU, return migrants associations, and pro-migration NGOs. However, they have limited capacities in participating actively in addressing and achieving fair migrant recruitment.

Unethical recruitment practices have prompted the Kenyan government to take practical steps to manage domestic workers migration to the Gulf states. Following complaints of inhumane working conditions, human rights violations, and exploitation of Kenyan migrant workers, the government imposed a blanket prohibition on labor migration to the Gulf region in 2014. The state also withdrew the licenses of 930 PRAs, and a task team was formed to examine the foreign employment and labor migration framework and come up with realistic solutions to the industry's problems. To vet the registration of PRAs, an Inter-Ministerial Vetting Committee was formed.

Unethical recruitment practices have also affected the departure of migrant workers in Kenya. A mandatory pre-departure training has been established to impart skills to migrant workers based on a skills curriculum developed by NITA.<sup>125</sup> The training is meant to empower migrant domestic

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<sup>125</sup> Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*. <https://www.ituc-africa.org/IMG/pdf/ituc->

workers and promote their integration in the Gulf States. Kenya has also signed various bilateral agreements with Gulf States to protect and promote the human and labor rights of Kenyan migrant workers in these countries. The Kenyan government has also placed labor attachés in the Gulf States to monitor the residence and work conditions of migrant workers in these states. The impacts of these interventions are yet to come to fruition due to the lack of awareness of their existence and the challenges of accessing them. The attachés are not well known to most of the migrant workers in the Gulf States.

The realities of unethical labor migration have turned out to be negative, with many Kenyan migrant workers falling victims to human trafficking, abuse, discrimination, and modern-day slavery.<sup>126</sup> These challenges impact the origin country in that it must source ways of protecting its migrant workers. This is an added burden to the state, which has other already existing problems to solve.

On the contrary, unethical recruitment practices may positively impact the Kenyan government in the form of remittances. Migrants send remittances to their countries of origin, whether formally or informally, forming an important external financing source.<sup>127</sup> These remittances have a profound impact on the household and the state. Returning migrant workers are also sources of information on work conditions in the destination countries, which creates awareness among the native locals.

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africa\_study-africa\_labour\_migration\_to\_the\_gcc\_states.pdf.<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>

<sup>126</sup> World Bank Group, “Impact of Migration on Economic and Social Development: A review of evidence and emerging issues,” World Bank.

<sup>127</sup> World Bank Group, “Impact of Migration on Economic and Social Development: A review of evidence and emerging issues,” World Bank.

### **4.3 Impacts on the Destination Countries**

Migrant workers have a significant impact on the job market in destination countries. Countries in the Gulf region have benefitted from the unethical recruitment of migrant workers, increasing the workforce by filling up unpleasant jobs to the local nationals. As a result, they have enhanced the fast-growing sectors and saved the declining ones from closure due to labor scarcity. Labor migration to the Gulf states has increased labor supply, thus improving productivity and Gross Domestic Product (GDP).

On the flip side, unethical recruitments and reported cases of Kenyan migrant workers abuse and exploitation in the Gulf states negatively affect these states' international relations. The Gulf states, particularly Saudi Arabia, have been portrayed as unsafe destinations for foreign labor migration. This tarnishes their brand and image in the global arena and might negatively impact bilateral agreements with other states. For instance, the 2014 banning of Kenyan migrant workers from traveling to Saudi Arabia came due to this.

### **4.4 Conclusion**

The objective of this chapter has been met. The chapter has successfully analyzed the various impacts of unethical recruitment practices on Kenyan migrant workers, their origin, and destination countries. It has been established that migrant workers experience various abuses and exploitations and violations of their labor and human rights. These impacts include physical abuses such as being beaten, sexually abused, or even killed by their employees. The labor abuses include contract deception and substitution, long hours, underpayment, and contract termination. Under the Kafala system, migrant workers have no freedoms, and they are under the absolute control of their bosses.

The impacts on the origin and destination countries are mixed. For instance, the positive impacts include increased remittances to the home country and economic development in the destination countries. On the contrary, unethical recruitment can interfere with the diplomatic relationship between Kenya and the destination countries. This is due to the challenges Kenyans face in the destination countries. The study recommends that both Kenya and the destination countries enter into bilateral agreements to protect migrant workers and legitimize recruitment practices so that all parties benefit from labor migration.

## CHAPTER FIVE

### DATA ANALYSIS AND PRESENTATION

#### 5.0 Introduction

Strengthening the capacity of PRAs often entails a series of deliberate actions and the implementation of a mix of complementary strategies, such as assessment, strategic planning, information sharing, training, technical support, coaching, resource development, and evaluation, to help them achieve their goals of ethical foreign recruitment of Kenyan migrant workers.<sup>128</sup> This section is responsible for analyzing, presenting, and interpreting the findings of the study. The findings are in line with the objectives of the study, including its broad objective of strengthening the capacity of PRAs for purpose of promoting ethical foreign recruitment of the Kenyan migrant workers. This broad objective of the study is the umbrella of three other specific objectives; to examine the existing gaps in the recruitment process that jeopardize the rights of Kenyan migrant workers, to assess the measures GoK has taken to regulate the operations of PRA's in promoting the rights of Kenyan migrant workers, and to analyze the impacts of unethical foreign recruitment on Kenya migrant workers, origin and destination countries. The analysis involves a primary and secondary of 384 respondents, while the analysis is done using Microsoft Office Excel and SPSS version 26 with a presented in form of tables, pie charts, columns, and other statistical output tools.

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<sup>128</sup> Stillman, S.B., Stillman, P., Martinez, L., Freedman, J., Jensen, A.L. and Leet, C., 2018. Strengthening social-emotional learning with the student, teacher, and schoolwide assessments. *Journal of Applied Developmental Psychology*, 55, pp.71-92.

## 5.1 The Existing Gaps in the Recruitment Process That Jeopardize the Rights of Kenyan Migrant Workers

The study sought to examine the existing gaps in the recruitment process, jeopardizing the rights of Kenya migrant workers. To examine this, the study delivered a questionnaire to the 384 respondents as a study population. It is found that 276 out of 384 respondents responded to the existing gaps, implying 71.9% which is acceptable in the study. The table below shows the distribution of the respondents who responded and those who did not respond.

**In your understanding, what are some of the existing gaps in the recruitment process that jeopardize the operations of private recruitment agencies (PRAs) in promoting foreign ethical recruitment?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Responded	276	71.9	71.9	71.9
	Not Responded	112	28.1	28.1	100.0
	Total	384	100.0	100.0	

**Source: Researcher (2021)**

The study focused on the existing gaps provided by 276 respondents while providing secondary information of such gaps. The students agreed with Geiger and Koch that Kenya's International Organization for Migration (IOM) has expanded knowledge of 30 PRAs in Nairobi through a Range of Ethical Recruitment Practices Workshops, which were funded by the Global Fund to End Modern Slavery (GFEMS) and carried out under a collaboration agreement with the US

Department of State.<sup>129</sup> According to the responders, a series of trainings is part of a bigger effort aimed at developing long-term business models for hiring migrant workers that correspond to worldwide ethical recruitment standards. They also stated that ten agencies in the International Recruitment Integrity System, as well as a voluntary certification procedure that promotes migrant worker rights, increased transparency and accountability in hiring while enhancing employer payments in a workshop. According to the respondents, the recruitment process begins and enhances public policies, laws, and compliance, as stated by Weiss and Jacobson.<sup>130</sup>

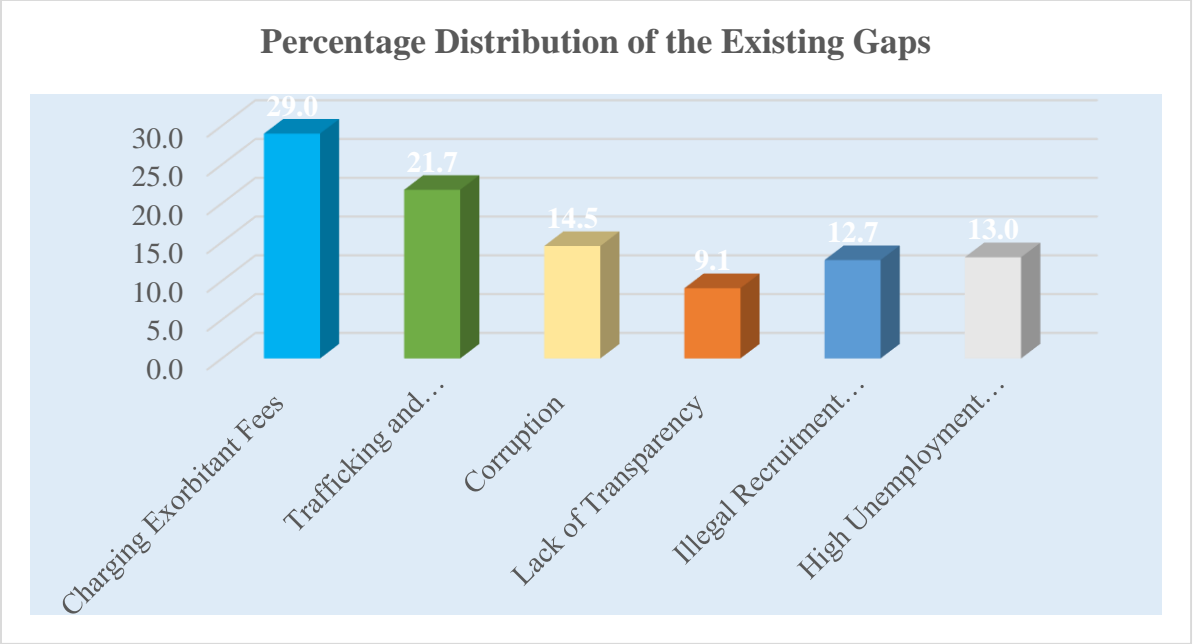
PRAs position Kenyans in the Gulf Cooperation Council (GCC) countries of Saudi Arabia, Qatar, and the United Arab Emirates, according to several replies (UAE). Kenya's high unemployment rate, closeness to the GCC, and the need to bridge job shortages in some sectors, according to Brew, are all factors driving labor migration.<sup>131</sup> In Kenya, there are around 400 PRAs registered. In Kenya, unethical recruitment techniques are very pervasive and continue to be a problem. Deception regarding the nature and circumstances of employment, the collecting of exorbitant and unauthorized fees, and insufficient documentation are all common practices that expose migrants to human trafficking and exploitation. Unscrupulous recruitment agencies, according to the interviewees, are the main perpetrators of these acts. All PRAs in Kenya must be examined and accredited by the Department of Labor and Social Protection through the National Employment Authority, which is a legal requirement (NEA). The following figure shows the distribution of respondents based on the existing gaps;

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<sup>129</sup> Geiger, M. and Koch, M., 2018. World Organizations in Migration Politics: The International Organization for Migration. *Journal of International Organizations Studies*, 9(1), pp.25-45.

<sup>130</sup> Weiss, E.B. and Jacobson, H.K. eds., 2000. *Engaging countries: strengthening compliance with international environmental accords*. MIT press.

<sup>131</sup> Brew, E.R., 2019. *Economic Migration to the Gulf States: The Case of Ghanaian Women Migrants* (Doctoral dissertation, University of Ghana).



**Figure 5.1 Percentage Distribution of the Respondents' Existing Gaps**

**Source: Researcher (2021)**

The government is implementing tight rules for the issuance and renewal of operating licenses for recruiting agencies to protect Kenyan migrant workers and encourage ethical recruitment. Without NEA certifications, unscrupulous private employment agencies exploit vulnerable foreign labor. According to the respondents, ethical recruitment leads to safe and orderly labor migration, which benefits nations of origin and destination, companies, and migrants.<sup>132</sup> The respondents pointed out that individual brokers/agents that usually identify potential workers and connect them with PRAs are not subject to direct regulation by the government has remained an existing gap. In addition, they agreed with Njoka, Muriithi, and Rware that GoK has not put in place a monitoring or evaluation system to track down activities of PRAs, nor is there a rating mechanism that collects

<sup>132</sup> Kerwin, D., 2020. International Migration and Work: Charting an Ethical Approach to the Future. *Journal on Migration and Human Security*, 8(2), pp.111-133.



information and evaluates the activities and operations of locally registered PRAs abroad.<sup>133</sup> The table below summarizes the existing gaps as provided by the respondents

**Table 5.1 Existing Gaps in The Recruitment Process That Jeopardize the Rights of Kenyan Migrant Workers**

<b>Existing Gaps in The Recruitment Process That Jeopardize the Rights of Kenyan Migrant Workers</b>	
<b>i.</b>	<b>Charging Exorbitant Fees</b>
<b>ii.</b>	<b>Trafficking and Exploitation</b>
<b>iii.</b>	<b>Corruption</b>
<b>iv.</b>	<b>Lack of Transparency</b>
<b>v.</b>	<b>Illegal Recruitment Practices</b>
<b>vi.</b>	<b>High Unemployment Rates in Kenya</b>

Source: Researcher (2021)

## **5.2 The Measures GoK Has Taken to Regulate the Operations of PRA’s In Promoting the Rights of Kenyan Migrant Workers**

The study sought to find out the measures that the government of Kenya has taken in regulating Private Recruitment Agencies' operations, especially in the promotion of ethical foreign recruitment. Different respondents responded to this by highlight various measures. This was based on the existing relationship between ethical recruitment and human rights practices. About the relationship between ethical recruitment and human rights practices 322 out of 384 respondents

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<sup>133</sup> Njoka, J.T., Muriithi, A. and Rware, H., 2003. Stakeholders and organizations are relevant for environmental monitoring and management in FITCA areas of Kenya. S2.

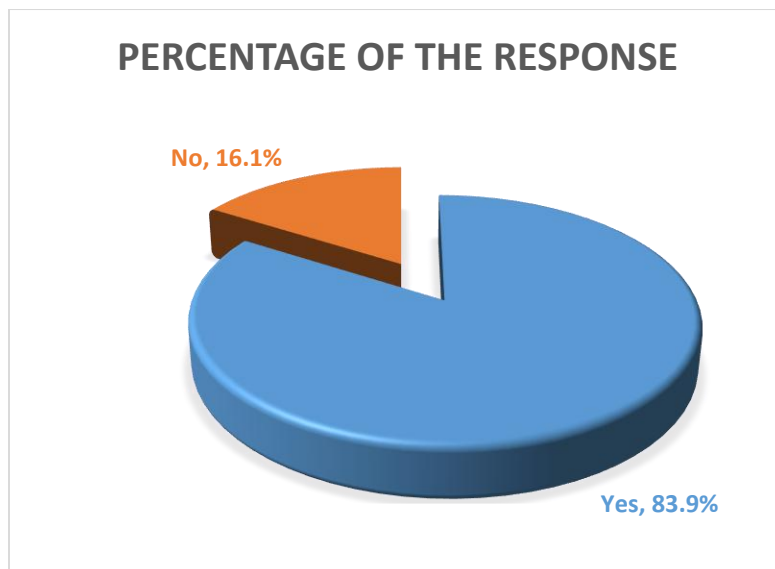
responded “Yes” on the connection between the two, while 62 out of 384 respondents said “No” on their answer shown in the table below;

**Table 5.1 Connection of Ethical Recruitment with Human Rights Practices**

**In your opinion, is ethical recruitment connected to human rights practices?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	322	83.9	83.9	83.9
	No	62	16.1	16.1	100.0
	<b>Total</b>	<b>384</b>	<b>100.0</b>	<b>100.0</b>	

From the table, the percentage of the respondents who said "Yes" is 83.9% while the percentage of those who said “No” is 16.1% as can be presented in the following pie chart.



**Figure 5.1 Percentage of the Response**

**Source: Researcher (2021)**

Given the existing relationship between ethical recruitment and human rights practices, 322 out of 384 respondents mentioned some of the GoK measures. According to the respondents the measures include licensing, where PRAs receive are registered and licensed by the Ministry of Labour and Social Protection upon payment of fees and submission of Business Registration Certificate, PIN certificate, copy of ID, and other important documents as stipulated in the Labour Institution Act 2007.<sup>134</sup> The respondents further stated that PRAs are required to maintain state licenses for legal operations, depending on their location. Another GoK measure is the maintenance of state privacy where PRAs are obliged to adhere to state regulations on their operations. They highlighted important examples such as maintaining the rights and privacy of children, consumers, credit reporters, employees, and financial services.

According to Diphoom, elements of labor is another GoK measure that regulates the PRAs. It involves regulation on wage and working hours, safety, employee benefits, and family leaves. The GoK also regulates the labor of PRAs by encouraging the need for health insurance and governing the way employees and contractors are classified.<sup>135</sup> Another important GoK measure is seen in employment where the government prevents discrimination from occurring in the PRA's workplace. In this case, the respondents pointed out the need to have equal pay, anti-discrimination, accommodation, reporting data, and anti-retaliation of PRAs.

The GoK regulates the operation of PRAs by enhancing environmental regulations. As pointed by the respondents, the GoK through National Environmental Management Authority (NEMA) requires that PRA meets the environmental standards during its recruitment process based on the

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<sup>134</sup> Tyce, M., 2020. Unrealistic expectations, frustrated progress, and an uncertain future? The political economy of oil in Kenya. *The Extractive Industries and Society*, 7(2), pp.729-737.

<sup>135</sup> Diphoom, T., 2016. "Surveillance of the surveilled": Regulation of the private security industry in South Africa and Kenya. *African studies review*, 59(2), pp.161-182.

industry of operation through effective training. One of the respondents provided an excellent example of recruitment in the automotive industry that needs to comply with pollution and waste management regulations. Finally, in the recruitment of the media industry, GoK calls for the regulation of PRAs through advertisement and marketing regulations. These GoK measures are table as follows;

**Table 5.2 Measures Taken by GoK In Regulating the Operations of Private Recruitment Agencies**

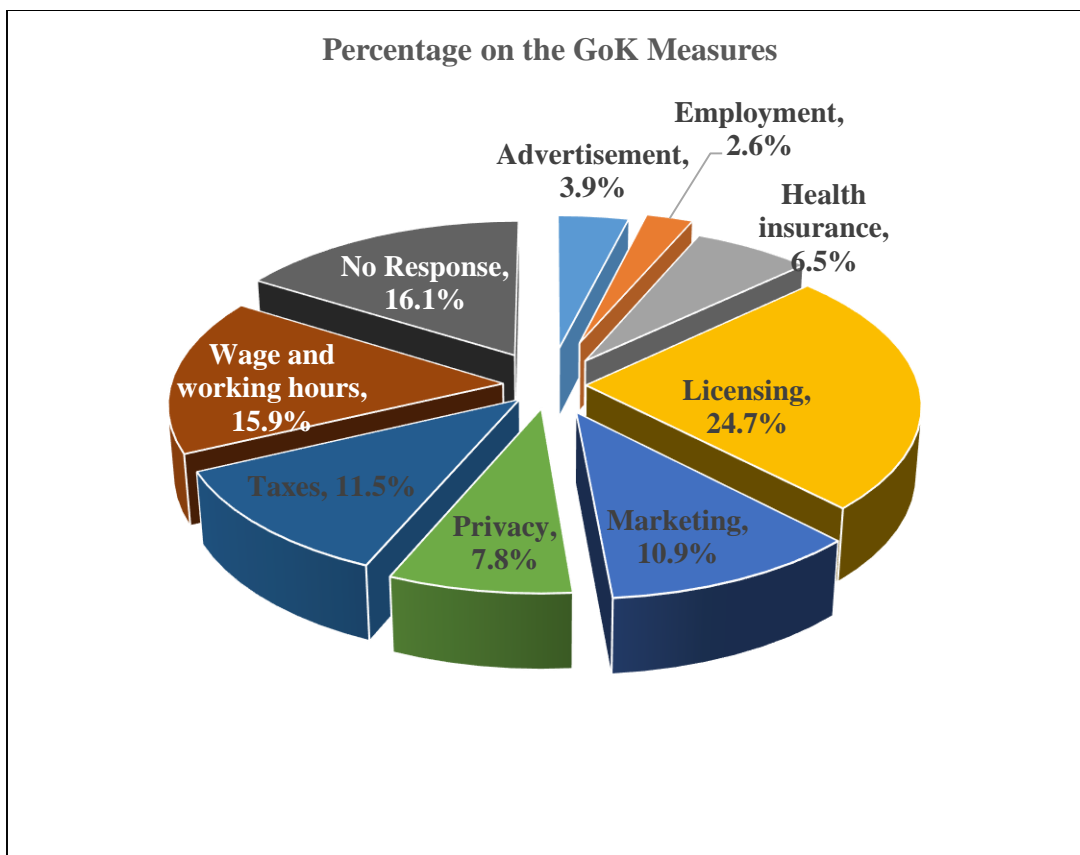
**Measures Taken by GoK In Regulating the Operations of Private Recruitment Agencies in promoting ethical foreign recruitment?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Advertisement	15	3.9	3.9	3.9
	Employment	10	2.6	2.6	6.5
	Health insurance	25	6.5	6.5	13
	Licensing	95	25.7	25.7	37.7
	Marketing	42	10.9	10.9	48.6
	Privacy	30	7.8	7.8	56.4
	Taxes	44	11.5	11.5	67.9
	Wage and working hours	61	15.9	15.9	83.8
	No Response	62	16.1	16.1	100

<b>Total</b>	<b>384</b>	<b>100.0</b>	<b>100.0</b>	
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**Source: Researcher (2021)**

Licensing is the most widely used GoK measure in regulating the operations of PRAs. 95 out of 384 respondents responded to this translating to 25.7% of the respondents who said “Yes” on the connection between ethical recruitment and human rights practices as summarized in the pie chart below;



**Figure 5. 2 Percentage on the GoK Measures**

**Source: Researcher (2021)**

Furthermore, such measures include and are not limited to Training Private Recruitment Agencies

monitoring of PRAs activities, Penalty Assessment for Non-Compliances, Complaint Procedures for Abused Workers, Reporting PRAs information to responsible authorities, and legislation and prosecution of unfair recruiters. The respondents agreed with Kerwin that the government of Kenya has initiated training programs of more than thirty PRAs in Kenya. According to Kerwin, the training aims at creating sustainable recruitment models for foreign or migrant workers which align with the international ethical recruitment standards.<sup>136</sup> Secondly, respondents pointed out that the government of Kenya has developed a monitoring and enforcing system that makes sure that all the PRAs meet the operation requirements. As if that is not enough, the GoK imposes sanctions or penalties is to ensure fair recruitment practices and prevent and trafficking or any other form of exploitation of the migrant workers. According to the respondents, GoK sets up the complaint procedures for identifying and examining recruitment violation allegations, while reporting PRAs information to responsible authorities among legislation and prosecution of unfair recruiters as summarized in the table below;

Measures GoK Has Taken to Regulate the Operations of PRA's In Promoting the Rights of Kenyan Migrant Workers	
i.	Training Private Recruitment Agencies
ii.	Monitoring of PRAs Activities
iii.	Penalty Assessment for Non-Compliances
iv.	Complaint Procedures for Abused Workers
v.	Reporting PRAs Information to Responsible Authorities
vi.	Legislation and Prosecution of Unfair Recruiters

<sup>136</sup> Kerwin, Donald. "International Migration and Work: Charting an Ethical Approach to the Future." *Journal on Migration and Human Security* 8, no. 2 (2020): 111-133.

**Source: Researcher (2021)**

### **5.3 The Impacts of Ethical Foreign Recruitment on Kenyan Migrant Workers, Origin and Destination Countries**

The study sought to find out the impacts of ethical foreign recruitment on Kenyan migrant workers, origin, and destination countries. In this case, the respondents highlighted several impacts of ethical foreign recruitment in Kenya. The impacts are categorized into migrant workers, those of Kenyan origin, destination countries. All the 384 respondents responded to the categorization of these impacts as seen in the following distribution table.

#### **Categories of Impacts**

	Frequency	Percent	Valid Percent	Cumulative Percent
Destination countries	119	31.0%	31.0%	31.0%
Kenyan origin	150	39.1%	39.1%	70.1%
Migrant workers	115	29.9%	29.9%	100.0%
<b>Total</b>	<b>384</b>	<b>100.0%</b>	<b>100%</b>	

**Source: Researcher (2021)**

In terms of migrant workers' impacts, the respondents agreed with the available literature, where migrant workers in the Gulf region experience various challenges. They pointed out that unethical recruitment exposes them to human rights-violating practices that arise from disagreements with their employers. Secondly, unlicensed recruitment agencies charge prospective recruits exorbitant agency fees. They agreed with Atong, Mayah, and Odigie that the Kenyan migrant workers in the

Gulf sometimes face contract substitutions in Kenya or at the destination countries.<sup>137</sup> Here, the contract substitutions are deliberate actions by both legal and illegal recruitment agencies where they provide false contact information to lure and manipulate potential recruits to sign the employment contract. The table below provides a summary of the migrant workers' impacts.

**Table 5.3 Impacts on Migrant Workers**

<b>Impacts on Migrant Workers</b>	
i.	Exposure to human rights violations
ii.	Unlicensed recruitment agencies charge prospective recruits exorbitant agency fees.
iii.	Migrant workers are forced to work for many months without pay.
iv.	Discriminative recruitment practices, poor working conditions, biased remuneration, or contract termination.

**Source: Researcher (2021)**

Based on the impacts of the country of origin, the respondents pointed out that the activities associated with PRAs in Kenya for migrant jobs abroad have been an issue of concern for a long. They agreed with Rop and Sang that unethical practices in Kenya, such as contract substitution, deception on the nature and conditions of the job, charging migrant workers exorbitant agency fees, and improper travel documentation, have exposed Kenyan migrant workers to various forms of maltreatment by the employers in the GCC countries.<sup>138</sup> Secondly, the respondents said that the challenges that unethical recruitment practices expose to Kenyan migrant workers have revealed the reluctance of the Kenyan government to intervene in their plight. They agreed with Trace

<sup>137</sup> Atong, K., Mayah, E. and Odigie, A., 2019. Africa Labour Migration to the GCC States.

<sup>138</sup> Rop, W. and Sang, H.W., 2019. Effect of Unethical Recruitment and Selection Practices On Organizational Sustainability: A Case Study of Selected Organizations in Kericho and Nakuru County, Kenya. *International Journal of Mathematics and Statistics Invention*, 7(1), pp.83-90.



Kenya that the Kenyan government does not seem concerned about the welfare of the people interested in working abroad. This is because there are no strict measures in place within the government to regulate the industry. The table below provides a summary of Country of origin (Kenya) impacts as described by the respondents.

**Table 5.4 Impacts on Country of Origin (Kenya)**

<b>Impacts on Country of Origin (Kenya)</b>	
i.	Maltreatment by the employers in the GCC countries
ii.	The Kenyan government does not seem concerned about the welfare of the people interested in working abroad
iii.	Migrant exploitation
iv.	Lack of coordination and collaboration in enforcing the labor migration policies

**Source: Researcher (2021)**

According to the respondents, migrant workers have a significant impact on the job market in destination countries. As a result, countries in the Gulf region have benefitted from the unethical recruitment of migrant workers, increasing the workforce by filling up unpleasant jobs to the local nationals. This has enhanced the fast-growing sectors and saved the declining ones from closure due to labor scarcity. The respondents agreed with Azizi that labor migration to the Gulf states has increased labor supply, thus improving productivity and Gross Domestic Product (GDP).<sup>139</sup> In addition, the respondents highlighted that unethical recruitment and reported cases of Kenyan migrant workers' abuse and exploitation in the Gulf states negatively affect these states'

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<sup>139</sup> Azizi, S., 2018. The impacts of workers' remittances on human capital and labor supply in developing countries. *Economic Modelling*, 75, pp.377-396.

international relations. The table below provides a summary of impacts based on destination countries as described by the respondents.

**Table 5.5 Impacts on Destination Countries**

<b>Impacts on Destination Countries</b>	
i.	Increases the workforce by filling up unpleasant jobs to the local nationals
ii.	Enhanced fast-growing sectors and saved the declining ones from closure due to labor scarcity.
iii.	Increased labor supply
iv.	Drug abuse and exploitation

**Source: Researcher (2021)**

## **CHAPTER SIX**

### **SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

#### **6.0 Introduction**

The study sought to examine the existing gaps in the recruitment process that jeopardize the rights of Kenyan migrant workers, assess the measures taken by the Government of Kenya to regulate the operations of PRA's in promoting the rights of Kenyan migrant workers, and analyze the impacts of unethical foreign recruitment on Kenya migrant workers. As a result, this chapter includes a review of the significant findings, as well as conclusions and recommendations derived from the study's three main objectives.

#### **6.1 Summary of the Findings**

This section covers key findings from each objective of the study.

##### **6.1.1 Existing gaps in the recruitment process that jeopardize the rights of Kenyan migrant workers**

The study found that several gaps exist in Kenya that prevents ethical recruitment practices by the private recruitment agencies. For instance, the high prevalence of corruption in the Kenyan government has created loopholes that allow the survival of illegal and unregistered recruitment agencies. These agencies recruit Kenyans using fraudulent and unlawful means, leading to the exploitation of Kenyan migrant workers. These illegal recruitment practices have prevailed despite the creation of the NEA that regulates recruitment agencies. Similarly, there is little transparency during the recruitment process, especially when the contracts are drafted in Arabic, hence leading to the substitution of contracts and other forms of exploitation. Also, Kenyans seeking jobs in the Gulf region are forced to pay high agency fees and end up being underpaid by their employers.

Another challenge is the highly coordinated network of human trafficking that has prevailed in Kenya for years. Many Kenyan youths are trafficked to the Arab world, where they are sexually abused and exploited. Thus, to ensure ethical practices in foreign recruitment, all these gaps must be closed. The government of Kenya and the destination governments must formulate policies and regulations to protect migrant Kenyans abroad from dishonest agencies and exploitative employees.

### **6.1.2 The measures GoK has taken to regulate the operations of PRA's in promoting the rights of Kenyan migrant workers and analyze the impacts of unethical foreign recruitment on Kenya migrant workers**

The study noted that there have been many cases of private recruitment agencies violating the rights of job seekers and migrant workers by overcharging them, trafficking them in the name of connecting them with employers, etc. This has seen Kenya's foreign ethical recruitment image tarnished. To handle this, the government of Kenya has come up with the strategies such as; training private recruitment agencies, close monitoring of PRAs Activities, penalty assessment for non-compliance, complaint procedures for abused Workers, reporting PRAs Information to responsible authorities, and legislation and prosecution of unfair recruiters.

### **6.1.3 The impacts of unethical foreign recruitment on Kenya migrant workers**

Several examples of abuse and human trafficking have been reported as a result of mass labor migration, according to the study. As a result, Kenya's government has taken steps to solve these issues, including regulating private recruitment agencies and implementing bilateral labor agreements (BLAs) with destination nations. In Kenya, all PRAs must be approved and accredited by the Ministry of Labor and Social Protection through the National Employment Agency (NEA).

Despite these measures, unethical recruitment techniques continue to exist in Kenya, posing a hurdle to foreign recruitment. Unethical recruitment practices that Kenyan migrant workers experience include improper documentation, charging exorbitant agency fees, and deception on the nature and conditions of the jobs. These practices expose them to the problems of human trafficking and smuggling by their foreign employees. The impacts on the origin and destination countries are mixed. For instance, the positive impacts include increased remittances to the home country and economic development in the destination countries. On the contrary, unethical recruitment can interfere with the diplomatic relationship between Kenya and the destination countries. This is due to the challenges Kenyans face in the destination countries.

## **6.2 Conclusion**

In a nutshell, the study concludes that, while the Kenyan Labour Regulations Act has charged the Ministry of Labour and Social Protection through NEA with oversight of PRAs at the national and county levels, and the Ministry of Foreign Affairs with oversight of overseas branches of Kenyan registered PRAs, the act fails to specify what oversight entails or what mechanisms are to be put in place for the inspection of PRA records or premises. Additionally, neither the regulations nor the act prohibits individuals involved in previously deregistered PRAs from involvement in new PRA's seeking registration. An applicant for the registration of a PRA is also not obliged by regulations to provide character references and no provision exists for the Ministry of Labour and Social Protection to seek additional information from an applicant or to place additional conditions on a license other than what is specified in the regulations. The regulations also do not provide for the possibility of filing of an objection against a PRA receiving a license. Lack of any government regulation or oversight of brokers/agents has contributed to frequent fraud and systemic problems for which migrant workers have had limited to no avenues for redress. These existing gaps in

regulation and oversight therefore make it extremely difficult for PRAs to promote foreign ethical recruitment. Hence this confirms the hypothesis that the more Kenyan PRAs fail to address the existing gaps in the foreign recruitment process, the more the rights of Kenyan migrant workers will be violated.

In an effort to promote foreign ethical recruitment by PRA's, the GoK primarily regulates the operations of PRAs through licensing. The directors of PRAs must have at least an O-level certificate or its equivalent; the managers must have at least a bachelor's degree in a business related field from a university recognized in Kenya and relevant experience of at least three years; the PRA must have a minimum share capital of five million shillings; it must be licensed to conduct business within the country of intended operation; and it must have a registered fully equipped premise (KRA). However due to unethical recruitment by PRAs Many Kenyan migrant workers are exposed to inhuman working conditions and human rights abuse. For instance, confiscation of passports and other identification documents, long working hours, unpaid wages, underpaid wages, and sexual harassment for women migrant workers are common. This confirms the hypothesis of the study that stated that the more GoK fail to create an enabling environment for PRAs to promote ethical foreign recruitment, the more PRAs will be exposed themselves to legal fines.

### **6.3 Recommendations**

To ensure that the problem associated with the PRAs is solved once and for all, the study recommends that every Kenyan citizen should take it as their responsibility to report unscrupulous practices of PRAs. In this case, we should report to the NEA any PRA violating the rights of job seekers and migrant workers.

The PRAs should also act responsibly in that they do not give the government of Kenya a hard time doing inspections. Here, they should ensure that they work within the law and promote ethical standards.

The study also recommends that both Kenya and the destination countries enter into legally binding bilateral labour migration agreements to protect rights of migrant workers and legitimize recruitment practices so that all parties benefit from labor migration.

Using the ILO definition of recruitment fees as a reference, governments should take steps to prevent the charging of recruiting fees and related costs to workers and job seekers.

Migrant worker empowerment is also a critical step in ensuring that migrant workers rights are respected at all phases of the recruitment and migration process. This includes the availability of grievance and other forms of dispute resolution, which should be extensively disclosed.

Kenya's governments should explore designing and implementing relevant, globally recognized, and evidence-based evaluations, rankings, and incentive schemes for labor recruiters, with the aim of rewarding adherence to applicable national laws and policies, as well as ethical recruitment standards.

Governments at relevant levels should also adopt programmes, laws, policies and intuitional frameworks to promote fair and ethical recruitment in compliance with international standards.

Also strengthen labor recruiter inspections, which will be aided by the commissioning of a global study of best inspection procedures to better understand how they may be carried out.

#### **6.4 Areas of Further Study**

1. Further study should be conducted to establish the efficacy of government regulations in effort to promote ethical foreign recruitment among PRAs in Kenya.

2. A study should be conducted to establish the role of PRAs in enabling human trafficking and violation of human rights in Kenya.



## REFERENCES

- "Ethical Recruitment: A Priority for Kenya | International Organization for Migration."  
International Organization for Migration - Nairobi. Last modified 4, 2021.  
<https://kenya.iom.int/article/ethical-recruitment-priority-kenya>.
- "How can we work without wages?". (2020, November 12). Human Rights Watch. <https://www.hrw.org/report/2020/08/24/how-can-we-work-without-wages/salary-abuses-facing-migrant-workers-ahead-qatars>
- "Unemployment, Total (% of Total Labor Force) (modeled ILO Estimate) - Kenya." World Bank Open Data | Data. Accessed June 7, 2021.  
<https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=KE>.
- Adams, J.S. Inequity in Social Exchange. In Berkowitz, L. (ed). *Advances in Experimental Social Psychology*. Vol.2 (New –York: Academic Press. 1965). Pp267-299
- Ahiakpor, James C. W. "The Success and Failure of Dependency Theory: The Experience of Ghana". *International Organization*. **39** (1985). 535–552
- Atong, K., Mayah, E. and Odigie, A., 2019. Africa Labour Migration to the GCC States.
- Atong, Kennedy, Emmanuel Mayah, and Akhator Odigie. 2018. "Africa Labour Migration to The GCC States: The Case of Ghana, Kenya, Nigeria and Uganda". *Ituc-Africa.Org*.  
[https://www.ituc-africa.org/IMG/pdf/ituc-africa\\_study-africa\\_labour\\_migration\\_to\\_the\\_gcc\\_states.pdf](https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf).<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>
- Azizi, S., 2018. The impacts of workers' remittances on human capital and labor supply in developing countries. *Economic Modelling*, 75, pp.377-396.

- Best, M. & Kahn, A. Research methods for business students. Harlow: (Pearson education limited, 2009).
- Betcherman, G, Susana, P., Antoneta, S. *A Review of Interventions to Support Migrant Workers in Kenya*. Social Protection Discussion Paper No. 0715. (Washington, DC: The World Bank, 2011)
- Betcherman, G, Susana, P., Antoneta, S. *A Review of Interventions to Support Migrant Workers in Kenya*. Social Protection Discussion Paper No. 0715. (Washington, DC: The World Bank, 1985).
- Böhm-Bawerk, Eugen von, *History and Critique of Interest Theories* (1884), (Libertarian Press, South Holland, Ill, 1959).
- Brew, E.R., 2019. *Economic Migration to the Gulf States: The Case of Ghanaian Women Migrants* (Doctoral dissertation, University of Ghana).
- Cain, M. *Marxism and Law*, International Encyclopedia of the Social & Behavioural sciences. (2001)
- Chambre, H. and McLellan, . David T.. "Marxism." *Encyclopedia Britannica*, March 24, 2020. <https://www.britannica.com/topic/Marxism>.
- Christopher, C. O. Promoting Ethical Human Resource: Management Practices in Work Organizations in Nigeria: Roles of HR Professionals (2012)
- Czaika M, *High skilled migration: Introduction and synopsis, drivers and policies*, (2018). USA: Oxford press.
- DergiPark. Accessed June 7, 2021. <https://dergipark.org.tr/tr/download/article-file/712416>.

Dessler, G. Human Resource Management (11th ed). (New Delhi: Prentice-Hall of India Private Ltd, 2008)

Diphoom, T., 2016. "Surveillance of the surveilled": Regulation of the private security industry in South Africa and Kenya. *African studies review*, 59(2), pp.161-182.

ENACTAfrica.org. "The New Slavery: Kenyan Workers in the Middle East." ENACT Africa, June 30, 2020. <https://enactafrica.org/research/policy-briefs/the-new-slavery-kenyan-workers-in-the-middle-east>.

Flahaux, M.L and De Haas, (2016), African migration: trends, patterns and drivers, Comparative migration studies.

Frade, Carlos, and Isabelle Darmon. "New modes of business organization and precarious employment: towards the recommodification of labour?." *Journal of European Social Policy* 15, no. 2 (2005): 107-121.

Froilan Malit, Jr. and Ali Al Youha. 2021. "Kenyan Migration To The Gulf Countries: Balancing Economic Interests And Worker Protection". *Migrationpolicy.Org*.  
<https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>.

Froilan T. Malit, Jr. and Ali A. Youba, Labor protection in the gulf countries: A comparative analysis of Kenyan governmental dilemmas in Saudi Arabia and the UAE.

Geiger, M. and Koch, M., 2018. World Organizations in Migration Politics: The International Organization for Migration. *Journal of International Organizations Studies*, 9(1), pp.25-45.

Hobsbawm, Eric . "On the *Communist Manifesto*". *How To Change The World*.( Little, Brown, 2011). pp. 101–120

[http://www.ilo.org/beirut/publications/WCMS\\_211214/lang—en/index.htm](http://www.ilo.org/beirut/publications/WCMS_211214/lang—en/index.htm).

<https://www.the-star.co.ke/authors/brianotieno/>. (2020, February 15). *Atwoli: Cane evil foreigners, ban recruitment agencies*. The Star. <https://www.the-star.co.ke/counties/coast/2020-02-15-atwoli-cane-evil-foreigners-ban-recruitment-agencies/>

<https://www.the-star.co.ke/authors/martinmwita/>. (2020, June 22). Locals raise red flag over illegal foreign recruiting agencies. The Star. <https://www.the-star.co.ke/business/kenya/2020-06-22-locals-raise-red-flag-over-illegal-foreign-recruiting-agencies/>

Human Rights Watch, 'I already bought you': abuse and exploitation of female migrant domestic workers in the United Arab Emirates, October 22 2014, <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers>.

Human Rights Watch. Saudi Arabia: Domestic Worker Brutalized. Human Rights Watch. Retrieved on 13<sup>th</sup> September 2021 from <http://www.hrw.org/news/2010/09/02/saudi-arabia-domestic-worker-brutalized>

ILO Office Beijing, based on data of the National Office of Statistics.

ILO, 2017 The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya

ILO: The cost of coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 98rd Session, (Geneva 2009), p. 27.

Ingabi, Terry. "2019 Census : Kenya's Least and Most Populous Counties." Parents Magazine.

Parents Magazine, November 4, 2019. <https://parentsafrica.com/2019-census-kenyas-least-and-most-populous-counties/>

International Labour Organization. Accessed June 7, 2021.

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf).

International Labour Organization. *Employment Policy and Programme for Kenya, East Africa* Multidisciplinary Advisory Team, (Addis Ababa, Ethiopia, 2015)

Jessop, B. *State Theory*, International Encyclopedia of Human Geography. (2009)

Kenya. (2020, December 1). United States Department of State. <https://www.state.gov/reports/2020-trafficking-in-persons-report/kenya/>

Kenya's Reforms Aren't Protecting Its People from Trafficking - Kenya." ReliefWeb. Accessed April 16, 2021. <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking>.

Kithi, Ngumbao. Even at home, they are slaves of poverty. Standard Digital. Retrieved on 12<sup>th</sup> September 2021 from <http://www.standardmedia.co.ke/?articleID=2000057582>

Kothari, C. R. *Research methodology: Methods and techniques*. (New Delhi: New Age International (P) Ltd. Publishers (2004).

Migiro, Katy. "Desperate Kenyan Maids Abused in Middle East Despite Ban." U.S. Last modified May 27, 2015. <https://www.reuters.com/article/us-rights-domesticworkers-kenya-idUSKBN0OC02K20150527>.

Mugenda and Mugenda. *“Research Methods: Qualitative and Quantitative Approaches In Research”*. (Published by Research Gate, 1999) p. 12.

Mugenda O.M & A.G. Mugenda, *Research methods: Quantitative & qualitative approach* (Nairobi: ACTS press, 1999). Pp. 36-39

Ngugi, Brian. “Kenyan Government Moves to Combat Migrant Worker Abuse in the Gulf.” Equal Times. Accessed April 16, 2021. <https://www.equaltimes.org/kenyan-government-moves-to-combat#.YHnueiXitPY>

Njoka, J.T., Muriithi, A. and Rware, H., 2003. Stakeholders and organizations are relevant for environmental monitoring and management in FITCA areas of Kenya. S2.

Objective 3:

Okusanya, A.O.; Oseji, A.S. Empirical Analysis of Sound Recruitment and Selection Criteria as a Tool of Organizational Efficiency. *J. Res. Natl. Dev.* 2012,14, 1.

Omolo, O.J. *The Dynamics and Trends of Employment in Kenya*, IEA Research Paper Series, No. 1/2010, (Nairobi: Institute of Economic Affairs, 2010)

Orodho, A.J., & Kombo, D. K. *Research Methods*. (Nairobi: Kenyatta University, 2005)

Patrick T. and August Gachter, “Discrimination against Migrant Workers: Global Trends, Responses, Challenges and Ways Forward Today and Tomorrow”

Private Employment Services Industry.” World Employment Confederation, February 22, 2021. <https://wecglobal.org/private-employment-industry/>

Promoting international ethical recruitment through private employment agencies | International organization for migration. (2021, May 17). International Organization for Migration -

- Nairobi. <https://kenya.iom.int/article/promoting-international-ethical-recruitment-through-private-employment-agencies>.
- Regional Mixed Migration Secretariat (RMMS). 2017. “Kenya country profile”. Available at: <http://www.regionalmms.org/index.php/country-profiles/kenya> [8 May 2018].
- Republic of Kenya. *Economic Recovery Strategy for Wealth and Employment Creation, 2007-2017*. (Nairobi: Government Printer, 2007)
- Republic of Kenya. *Key Gender and Employment Issues. Kenya Country Study*. (Ministry of Labour and Human Resources Development: Nairobi, 2007)
- Republic of Kenya. *Labour Institutions Act.2007*
- RESPECT | The Responsible and Ethical Private Sector Coalition against Trafficking. <https://respect.international/wp-content/uploads/2021/04/The-new-slavery-Kenyan-workers-in-the-Middle-East.pdf>
- Rop, W. and Sang, H.W., 2019. Effect of Unethical Recruitment and Selection Practices On Organizational Sustainability: A Case Study of Selected Organizations in Kericho and Nakuru County, Kenya. *International Journal of Mathematics and Statistics Invention*, 7(1), pp.83-90.
- Sekaran, U. *Research Methods for Business: A skill-building approach* (6th ed.). Third Revenue, (New York: John Wiley & Son, 2006)
- Stephen Castles, Mark J. Miller and Herin De Haas, “ Theories of Migration, “ in *The Age of Migration* (New York, N.Y: Guilford, 2014) p.27)
- Stillman, S.B., Stillman, P., Martinez, L., Freedman, J., Jensen, A.L. and Leet, C., 2018. Strengthening social-emotional learning with the student, teacher, and schoolwide assessments. *Journal of Applied Developmental Psychology*, 55, pp.71-92.

- Tyce, M., 2020. Unrealistic expectations, frustrated progress, and an uncertain future? The political economy of oil in Kenya. *The Extractive Industries and Society*, 7(2), pp.729-737.
- United Nations Office on Drugs and Crime. The role of recruitment fees and abusive and fraudulent recruitment practices of recruitment agencies in trafficking in persons, (2015) p.1 [https://www.unodc.org/documents/human-trafficking/2015/15-05035\\_ebook-Recruitment\\_Fees.Agencies.pdf](https://www.unodc.org/documents/human-trafficking/2015/15-05035_ebook-Recruitment_Fees.Agencies.pdf)
- Verité and IOM facilitate Kenya private employment agencies study on ethical recruitment in Qatar | International organization for migration. (2021, May 17). International Organization for Migration - Nairobi. <https://kenya.iom.int/article/verit%C3%A9-and-iom-facilitate-kenya-private-employment-agencies-study-ethical-recruitment-qatar>.
- Weiss, E.B. and Jacobson, H.K. eds., 2000. Engaging countries: strengthening compliance with international environmental accords. MIT press.
- Wolff, Richard, and Stephen Resnick. *Economics: Marxian versus Neoclassical*. (The Johns Hopkins University Press 1987) p. 130
- World Bank Group, “Impact of Migration on Economic and Social Development: A review of evidence and emerging issues,” World Bank.
- Zikmund, W. G. Business research methods (7 th Edition). (Cincinnati Publishers, OH : Thomson/South-Western, 2003)



## QUESTIONNAIRES

Issue of discussion	Theme/Concepts to be Explored	Annex I: Questions for Private Recruitment Agencies: Online questionnaire to be found in this below link: <a href="https://forms.office.com/Pages/ResponsePage.aspx?id=LSaIFfsjtEO9brzknI5hpx0pLUfS_dNvqavFxf-vKVUMe0Ssk1LSkZHM0oyTTNMQ1c5T083UUZE0C4u" style="color: white;">https://forms.office.com/Pages/ResponsePage.aspx?id=LSaIFfsjtEO9brzknI5hpx0pLUfS_dNvqavFxf-vKVUMe0Ssk1LSkZHM0oyTTNMQ1c5T083UUZE0C4u</a>
<p>Migration governance is connected to national security theoretically</p>	<p>a) Ethical recruitment is connected to practicing rights</p> <p>b) Identify gaps that exist in the initial stages of overseas employment</p>	<p>1) In your opinion, is ethical recruitment connected to human rights practices? Yes[ <input type="checkbox"/> ] No[ <input type="checkbox"/> ]</p> <p>a) Please explain the connection _____</p> <p>2) In your understanding, what are some of existing gaps in the recruitment process that jeopardize the operations of private recruitment agencies (PRAs) in promoting foreign ethical recruitment? _____</p> <p>3) Are there serving government officials who own PRAs in Kenya? Yes[ <input type="checkbox"/> ] No[ <input type="checkbox"/> ]</p> <p>a) Please elaborate your response to question (3) above. _____</p> <p>4) Are there any illegal foreign Private Recruitment Agencies (PRA) who operate in Kenya? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No</p> <p>a) Please elaborate your response to question (4) above. _____</p> <p>5) Do PRAs sub contract services of sub agents to assist in carry out foreign recruitment of domestic workers? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No</p> <p>b) If your answer is yes to the above question 5, are the sub-agents registered by the National Employment Authority? _____</p> <p>6) Do PRAs charge migrant workers any recruitment fees to facilitate the overseas employment?[ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No</p> <p>a) If your answer to question 6 above is yes, how much do PRAs normally charge the migrants worker on average in Kenya shillings? _____</p> <p>4) Could you give some examples of governance frameworks that regulate overseas employment of Kenyan migrant workers?</p>

		<p>(i.e ) laws, policies, treaties, declarations ? _____</p> <p>5) Please describe the benefits Private Recruitment Agencies can accrue from promoting ethical recruitment? _____</p> <p>9) Do you share further suggestions on how to strengthen capacity of private recruitment in promoting ethical recruitment? _____</p>
<b>Issue of Discussion</b>	<b>Concepts/ Themes for Discussion</b>	<b>Annex 2: Online questionnaire to be found in this below link: <a href="https://forms.office.com/Pages/ResponsePage.aspx?id=LSaIFfsjtEO9brzknI5hnpX0pLUfS_dNvqavFxf-vKVUUNTBUNTRJRkxXNUJYQ1BPT0g5RURMVkJNVy4u">https://forms.office.com/Pages/ResponsePage.aspx?id=LSaIFfsjtEO9brzknI5hnpX0pLUfS_dNvqavFxf-vKVUUNTBUNTRJRkxXNUJYQ1BPT0g5RURMVkJNVy4u</a></b>
Role of government of Kenya in promoting ethical recruitment	a) Understanding measures government of Kenya has put in place to regulate activities of PRAs.	<p>1) In your opinion, is ethical recruitment connected to human rights practices? Yes[ <input type="checkbox"/> ] No[ <input type="checkbox"/> ] a) Please explain the connection _____</p> <p>2) In your understanding, what measures has the government of Kenya taken to regulate the operations of Private Recruitment Agencies in promoting ethical foreign recruitment? _____</p> <p>3) In your own opinion, are policies addressing labour migration fragmented in various policy documents and implemented by different government agencies? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No a) If your answer is yes to question (3) above, does it lead to un-coordinated implementation of labour migration activities? _____ —</p> <p>4) Does the Government of Kenya have a labour migration policy? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No a) Please elaborate your response to question (4) above? _____</p> <p>5) Is there a law or policy prohibiting PRAs from charging workers any recruitment fees to facilitate overseas employment? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No a) Please elaborate your response to question (5) above if your answer is yes _____</p>

		<p>6) In the Memorandum of Understanding Kenya has signed with the State of Qatar, United Arab Emirates, Kingdom of Saudi Arabia and the United Kingdom, is the employers pay principle stipulated as a clause? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No</p> <p>7) In your own understanding, are the labour Memorandum of Understanding the Government of Kenya has signed with the State of Qatar, United Arab Emirates, the Kingdom of Saudi Arabia and United Kingdom legally binding? [ <input type="checkbox"/> ] Yes [ <input type="checkbox"/> ] No</p> <p>a) Please elaborate your response to question (7) above.</p> <p>_____</p> <p>—</p> <p>8) Could you give some examples of governance frameworks that regulate overseas employment for Kenyan migrant workers? (i.e ) laws, policies, national laws, treaties, declarations ? _____</p> <p>9) In your own opinion, what benefits will government of Kenya accrue from creating an enabling environment to promote ethical overseas employment for Kenya migrant workers? _____</p> <p>10) Any further suggestions on how one can strengthen the capacity of PRAs in promoting ethical recruitment?</p>
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