

REPUBLIC OF KENYA

NATIONAL ASSEMBLY PAPERS LAID

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THE NATIONAL ASSEMBLY

TABLED BY: Chair, DC on Social Labour & Welfare

CLERK-AT-THE-TABLE: Getrude Chebet

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - THIRD SESSION

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

**REPORT OF THE COMMITTEE'S VISIT TO RIYADH, SAUDI ARABIA
ON A FACT FINDING MISSION ON THE WELFARE OF MIGRANT
KENYAN WORKERS IN THE KINGDOM OF SAUDI ARABIA**

FEBRUARY 27TH TO 3RD MARCH, 2019

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Directorate of Committee Services
Clerk's Chambers
National Assembly
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1.0 INTRODUCTION

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Labor and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in Standing order 216(5) is to *inter-alia*:-

- i. Oversight over the day to day running and administration of Ministries, Departments and Agencies under its purview;*
- ii. Consider Estimates of the said Ministries, Departments and Agencies;*
- iii. Consider relevant legislation and recommend enactment of laws; and,*
- iv. Carry out vetting of State/Public Officers as required by law.*

The Committee is mandated to consider the following subjects:-

- i. Labor,
- ii. Labor relations,
- iii. Manpower or Human resource Planning,
- iv. Gender,
- v. Youth,
- vi. Social Welfare and Security,
- vii. Children`s Welfare,
- viii. And Persons Living With Disabilities.

1.2 Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. Ministry of Labour
- ii. The State Department for Social Security and services
- iii. The State Department for Gender
- iv. The State Department for Youth
- v. The State Department for Arid and Semi- Arid Lands

1.3 Committee Membership

1.	The Hon. Ali Wario, MP	- Chairperson	Jubilee Party
2.	The Hon. Joyce Korir, MP	- Vice Chairperson	Jubilee Party
3.	The Hon. Gladys Wanga, MP		Orange Democratic Movement Party
4.	The Hon. Janet Marania Teyiaa, MP		Jubilee Party
5.	The Hon. Janet Nangabo Wanyama, MP		Jubilee Party
6.	The Hon. Ronald Kiprotich Tunoi, MP		Jubilee Party
7.	The Hon. James Onyango Koyoo, MP		Orange Democratic Movement Party
8.	The Hon. Rose Museo, MP		Wiper Democratic Party
9.	The Hon. Alfred Kiptoo Keter, M.P		Jubilee Party
10.	The Hon. Charles Kanyi Njagua, MP		Jubilee Party
11.	The Hon. Catherine Wambilyanga, MP		Ford Kenya Party
12.	The Hon. Fabian Kyule Muli, MP		Independent
13.	The Hon. Ole Sankok David, MP		Nominated (Jubilee Party)
14.	The Hon. Abdi Mude Ibrahim, MP		Jubilee Party
15.	The Hon. Michael Mwangi Muchira, MP		Jubilee Party
16.	The Hon. Safia Sheikh Adan, MP		Jubilee Party
17.	The Hon. Tom Odege, MP		Orange Democratic Movement Party
18.	The Hon. Wilson Sossion, MP		Nominated (O.D. M Party)
19.	The Hon. Omboko Milemba, MP		Amani National Congress Party

1.4 Committee Secretariat

1. First Clerk Assistant	Mr. Adan Gindicha
2. Clerk Assistant	Mr. John Mugoma
3. Senior Legal Counsel	Ms. Doreen Karani
4. Research & Policy Analyst	Mr. Said Osman
5. Fiscal Analyst	Ms. Amran Mursal
6. Media Relations	Ms. Noelle Chelagat

2.0 FOREWORD

Hon speaker,

It is my great pleasure to forward this report to the House for consideration. Unemployment remains one of the key challenges facing our country today. Indeed, unemployment especially among the youth has often been described as a ticking time bomb, with potentially negative repercussions for the nation. Every year, the country's training institutions at various levels continue to churn out millions of new entrants into the Labour market, who unfortunately cannot be absorbed. The country must find ways of addressing this challenge as a matter of priority. One of the ways of addressing this challenge Mr. Speaker, is to find suitable destinations for our excess labour. One key characteristic of our labour force is the flexibility and dynamism of the Kenyan workers which has seen millions of Kenyans securing jobs in all the continents of the world. The country can therefore leverage on this potential to export both skilled and unskilled labour to countries that have severe shortage of human resource. Mr. Speaker, Saudi Arabia is one such country, where much of the labour force is migrant.

It is based on this recognition that my Committee identified Saudi Arabia as its first destination in establishing the welfare of Kenyan workers in the Middle East in general. Close to 55000 Kenyans are working in the Kingdom. Majority of these workers are Domestic servants, though there are a number of professionals such as teachers and bankers. The concern of the Committee is the welfare and safety of the workers while ensuring Kenya competes favorably with other source countries such as India, Ethiopia, Sri Lanka, Sudan and Pakistan. The Committee on Labor and Social Welfare was represented during the visit by:

- 1) Hon Ali Wario, MP
- 2) Hon Ibrahim Mude, MP
- 3) Hon Omboko Milemba, MP
- 4) Mr. Adan Gindicha – Delegation Secretary



3.0 BACKGROUND TO THE VISIT

1. One of the key challenges the country has faced over the past decades is that of unemployment. However unemployment is not just a Kenyan challenge but a global challenge. International Labour Organization (ILO) in its 2018 report on Global Unemployment indicated that 192 million people worldwide remain out of work, translating to a global unemployment rate of 5.6 per cent.
2. Kenya's Unemployment, according to ILO stands at over 18.4 per cent, among the highest in the world. In comparison, the US unemployment rate was 3.6 per cent, Germany 3.1 per cent and the United Kingdom 3.8 per cent over the same period.
3. In Kenya the challenge is aggravated by the fact that about 1 million new entrants enter the Labour market annually. The youth remain the largest part of unemployed persons in the country constituting a huge potential for social and political conflict.
4. All key actors from the Government, the industry and training institutions have a collective duty to create opportunities that translate to meaningful participation of the youth in the development of their communities and nation.
5. The Committee recognizes the need for the country to explore foreign employment opportunities as a panacea to the challenge of unemployment that is currently facing the country.
6. The Committee fact finding visit had the following objectives:
 - i) To establish the welfare of Kenyan workers in the Kingdom of Saudi Arabia, in the face of widespread media reports of mistreatment and even deaths of Kenyans arising from their employment.
 - ii) To ascertain the implementation of the Bi-lateral Labour agreement between Kenya and the Kingdom of Saudi Arabia in order to participate in the promotion of the Kingdom as a destination country for migrant Kenyan workers.

7. To attain the stated objectives, the Committee held meetings with Kenya's Ambassador to Riyadh Amb. Peter Oginga Ogego; The Labour Attache, representatives of the Kenyan Migrant workers in Saudi Arabia and Saudi Ministry of Labour officials from Wednesday 27th February 2019 to Monday 4th March, 2019.

3.1 Committee findings

8. The Kingdom of Saudi Arabia hosts approximately eleven (11 No.) million foreigners as employees in various job categories. Out of the above figure, Kenya has approximately 55,000 migrant workers in the Kingdom, which translates to minimal percentage as compared to what other countries have exported to the Kingdom.

However, to accommodate 11million migrant workers, the Kingdom has undertaken various measures ranging from legal to social frameworks. These measures are meant to guarantee the welfare of migrant workers in the Kingdom.

9. Measures undertaken by the government of the Kingdom of Saudi Arabia to address the welfare of workers.

a) Wages

In an effort to address unpaid or delayed salaries, the Saudi Government through the Ministry of Labour and other State Authorities enacted legislation to control employers and employees in terms of wages. According to the provisions of labour laws currently, an employer must pay wages earned by an employee by 5th of the following month. Any Employer who fails to pay wages by 5th risks a fine of not less than Saudi Riyals (SAR) 5, 000 and being blocked from transacting any business including freezing his/her account. This is already being enforced. The wages to employees are fixed by Agents and their clients based on the ability of employer to pay far above the minimum wages fixed by the joint technical team whichever is greater.

The employer must open an account in the name of an employee to deposit wages before 5th of the following month and the same reflects at the Ministry of Labour through an automated system called MUSANED managed by the sameMinistry. The Kenyan mission will be granted access to the system to enable monitoring.

b) Employment Contracts

To address the numerous complaints of unscrupulous agents drafting fake contracts, The Ministry of Labour of the Kingdom has developed standard contracts through the MUSANED system for domestic workers which are observed by both employers and recruitment agents. On hiring an employee an employer must issue a copy of the contract to an employee otherwise he/she risk a fine not less than SAR 5,000. According to standard contracts, no employer can transfer an employee to work for another family member as the same is considered violation of the contract.

c) Work Permit/Iqama

The work permit is issued for five years renewed annually by the employer. This permit is only issued to employees who enter the Kingdom on contract. Employees who violate the contracts are deprived of their right to ownership of the work permit/Iqama. Such employees loose medical covers, right to rent housing facilities, free food, security and any other privileges that are enjoyed under contract. These employees are referred to as runaways or stateless illegal migrant workers. These types of employees in Saudi Arabia normally are exposed to all sorts of illegal activities and which are from time to time escalated in the social media. This group of employees is likely to fall into the hands of unscrupulous employers who are not monitored through the recognized MUSANED system and are the source of the negative publicity employment in the Middle East has received.

d) Hours of Work

The Saudi Labour laws require that Domestic workers are expected to work not more than 9 hours per day. Those working in hazardous areas are expected to work for 7 hours per day. This is in accordance with the provisions of Saudi labour laws under article 98, 99 and 100.

e) Annual Leave

Under article 109 of the Saudi labour laws a worker is entitled to a prepaid 21 working days leave in a year of not less than twelve months. Under article 110 of the Saudi labour laws a worker may with the approval of the employer postpone his annual leave to the following year thereof, but the employer cannot postpone for more than 90 days in aggregate. A

worker is entitled to accrue leave days' pay if not taken at the time of separation with the employer. This is in accordance with article 111 of the Saudi labour laws.

f) Rest and Off Days.

An employee is entitled to one rest day on Fridays every week with full pay. Any rest day worked is not compensated by cash, but by one other extra rest day. This is in accordance with article 104 of the Saudi labour laws.

g) Service Pay

A worker is entitled to half salary for every complete year during the first two years, but less than 5 years of service. Any employee who works for more than 5 years is entitled to one-month salary for every complete year of service. This is for employees who earn their salaries at the end of the month. This is in accordance with article 84 of the Saudi labour laws. For employees who earn their wages in a period less than one month, are entitled to one third of their wages for every complete year in a period less than five year of service, to two thirds of wages in a period more than five year but less than ten years of service and to full salary for a period more than ten year of service.

All terminal benefits are to be paid within a period less than two week from the date of separation. This is in accordance with article 85 of the Saudi labour laws. Please note that all the payments are calculated on the basis of the final wage rates paid to employees.

During termination, either party is expected to issue one month notice in writing or pay cash in lieu to the other party.

h) Other measures

In an effort to alleviate the challenges faced by workers who for one reason or the other terminate their contracts before censuring other jobs, the Kingdom of Saudi Arabia has set up newly constructed centres equipped with all house hold facilities, with labour, immigration and security offices. These centres are serving as call centres for domestic workers to make reports whenever their employers deny them their rights. Through these

centres, where disputes are concluded, and the employer is unable to settle, the Government pays an employee and is left to follow up with the employer who is temporarily blocked from transacting any business until the Government recovers its money.

Similarly, the Government established regional social offices to handle cases associated with adultery, prostitution and also follow up cases of unpaid salary, alcoholism and rape. These offices are of crucial importance since majority of the ladies are victims of the same offences. The centres also perform guiding and counselling. They similarly serve as deportation centres where if a female employee has no case with the employer can only stay for less than ten days to exit the Kingdom.

The other changes in Saudi labour laws, have been on employee personal documents. No employer should confiscate employee documents which include passport, Work permits (iqama) and mobile phones. The employer who confiscates such documents risks a fine not less than SAR 5,000.

4.0 COMMITTEE OBSERVATIONS

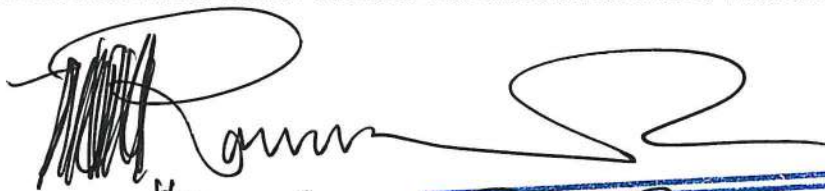
4.1) Kenyans have been finding their ways into the Kingdom of Saudi Arabia illegally. These Kenyans are being facilitated by either unregistered agents or are individual Kenyans who acquire visiting visas directly to Saudi Arabia, Qatar and Bahrain, but later on find themselves in the Saudi Arabia labour market. Such Kenyans, who go to Saudi outside the recognized channel for migrant labour often find themselves in the hands of unscrupulous agents and employers who subject them to untold suffering.

4.2) In line with the bilateral Labour agreement between Kenya and Saudi Arabia, several measures have been initiated to protect Kenyan workers from exploitation. These measures have been entrenched into Saudi Labour laws. They cover such key issues as wages, hours of work, employment contracts, termination of employment, confiscation of travel documents, work permits and mobile phones and labour dispute resolution mechanism.

4.3) there is great potential for labour export to Saudi Arabia. Saudi Arabia has a total of over 11 million foreign employees out of which only slightly over 50,000 are Kenyans. Other countries such as India, Pakistan, Sudan and Sri Lanka have over 600,000 workers in the Kingdom

4.4) opportunities in Saudi Arabia are not limited to just domestic workers. There are opportunities in teaching, medical field, drivers, artisans and hospitality.

4.5) A number of Kenyans in Saudi Arabia have suffered various forms of culture shock due to the huge difference in the social economic set up of the two countries. Some have not been able to fit into the strict social-cultural conditions associated with Islam.


8th Aug 2019

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5.0 COMMITTEE RECOMMENDATIONS

5.1 The Ministry of Labour and Social Protection and the National Employment Authority must ensure thorough vetting of employment agencies to ensure Kenyans travel to Saudi Arabia and other destinations through officially recognized channels. The immigration Department must be equally vigilant on movement of persons to these countries to ensure only Kenyans with *MUSANED* (an automated system through which the Saudi Ministry of Labour monitors compliance of employers of domestic workers with established employment practices) compliant employment contracts are permitted to travel.

5.2 The Ministry of Labour and Social Protection and that of Foreign Affairs must continuously monitor the implementation of the bilateral Labour agreement to ensure that the measures initiated to protect Kenyans working in Saudi Arabia are fully adhered to. The office of the Labour Attaché must be strengthened and allocated adequate resources in order to fully monitor employment trends in the Kingdom.


5.3 The National Employment Authority and the Directorate of Diaspora Affairs, Ministry of Foreign Affairs should embark on a rigorous campaign to market Saudi Arabia as an important destination country for foreign employment. The current notion that foreign workers in Saudi Arabia go through suffering need to be corrected and the citizens sensitized on the correct procedure of travel to Saudi Arabia.

5.4 The National Employment Authority should as a matter of priority seek for more opportunities, other than for domestic workers, in Saudi Arabia. The Authority should use the Labour attaché office to solicit for opportunities in conjunction with both Kenyan and Saudi Employment agencies.

5.5 The Ministry of Labour should initiate and strengthen pre- departure training to prepare Kenyans travelling to Saudi Arabia for the challenges expected in Saudi Arabia as a way of assisting them fit in well into the Saudi social economic system.

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