

## **Ombudsman Investigation Reveals Systemic Gaps in Existing Labour Policies, Processes, and Procedures Relating to Recruitment and Management of Kenyan Migrant Domestic Workers in Saudi Arabia**

The Commission on Administrative Justice has recommended that the Office of the President to initiate a multi-agency working platform in form of an electronic single window integrated system for all stakeholders. This will not only ensure the digitalisation of the recruitment process, but also reduce bureaucracies in the process and promote the credibility of the recruitment and management of migrant domestic workers by enhancing interagency collaboration, coordination, and cooperation. It's also a sure way of ensuring the country has accurate and verifiable data regarding migrant workers. The Commission is also recommending that the Government of Kenya ratify the International Labour Organization (ILO) Convention adopted by the General Conference of ILO in 2011 that requires the Member States to take measures to ensure the effective promotion of human rights of all domestic workers.

The Commission lodged an investigation following several media reports highlighting the unfair mistreatment, injustice, and oppression of Kenyan domestic workers in the Kingdom of Saudi Arabia, the Commission conducted a systemic investigation to interrogate the shortfalls in the measures put in place by the Kenyan Government to protect Kenyan migrant workers. Particularly, the investigation sought to examine the existing labour policies, processes, and procedures relating to recruiting and managing Kenyan migrant domestic workers in Saudi Arabia.

The investigations established that;

- i. The major forms of abuses experienced by Kenyan migrant domestic workers in Saudi Arabia were: Passport Confiscation, Physical Abuse, Sexual Abuse, Sleep Deprivation, Food Deprivation, Labour Exploitation, Movement Restriction, Imprisonment prior to deportation, racism, Religious intolerance and Psychological Abuse.
- ii. The National Employment Authority (NEA) lacks a sufficient legal and enforcement framework for dealing with rogue Private Employment Agencies (PEAs) and rouge migrant workers.
- iii. The time allocated for the pre-departure training is not sufficient. The training is allocated 189 hours which is conducted even on weekends against the recommended 200 hours, the content is equally not detailed

enough to empower the prospective migrant domestic workers. Additionally, the National Industrial Training Authority experiences interference in the management of training centres which are mostly owned by either influential persons or Private Employment Agencies (PEAs) thus creating a conflict of interest and undue political interference in their management.

- iv. The Commissioner for Labour faces some challenges in the attestation process including; Rogue Private Employment Agencies migrating domestic workers with unattested (unauthentic) Foreign Contracts of Service, Medical assessment being done majorly by private hospitals approved by the Saudi Embassy, overlap of roles between The National Employment Authority and Commissioner for Labour in the facilitation of migrant domestic workers and the use of manual systems to attest travel documents
- v. The Labour attaché faces the challenges of shortage of staff which hinders effective supervision and service delivery to migrant workers in distress, inadequate funding, lack of safe houses for Kenyans in distress, lack of comprehensive complaints handling and dispute resolution mechanisms and lack of a legal framework for dealing with rogue migrant workers. There is only one Labour attaché in a vast country which covers two million square kilometers.
- vi. The Kenyan Embassy in Riyadh faces the challenges of; irregular transfer of sponsorship, lack of shelter/safe houses, poor accessibilities to authorities by domestic migrant workers, vastness of the kingdom and rogue migrant domestic workers.
- vii. Kenya has many labour laws, but the relevant ones do not refer directly to Labour exportation, thus cannot protect migrant workers. Additionally, there are provisions in the Bilateral Agreement between GoK and the Kingdom of Saudi Arabia on the recruitment of domestic workers which have not been fully implemented, they include; the constitution of a joint technical committee, payment of minimum wage, provision for rest hours, non-confiscation of travel documents, compliance to the site of employment, and provisions of sick offs. Further, the Bilateral Agreement was not negotiated to the advantage of the Kenyan Migrant Workers.
- viii. There are gaps in the Bilateral Agreement including; Kenyans being paid lower wages in comparison to their counterparts doing the same kind of work from other countries, unequal timelines for notice of termination of employment, and a lack of clear sanctions for rogue domestic workers.

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

In light of these findings, the Commission has proposed a range of recommendations to various agencies as follows;

### **Recommendations to the Ministry of Labour**

- I. The Cabinet Secretary for Labour to fast track the review of the Bilateral Agreement between the Government of Kenya and the Kingdom of Saudi Arabia to adequately cover identified gaps and emerging issues; specifically renegotiate; wages for migrant Kenyan domestic workers in Saudi, equal timelines for notice of termination of employment, and clear sanctions for rogue domestic workers and employers. The Bilateral Agreement should also provide comprehensive complaint handling and dispute resolution mechanisms for migrant workers and their employers.
- II. The Cabinet Secretary for Labour to fast track the finalization of the Draft Labour Migration Bill and consider including the recommendations by CAJ on gaps identified but not included in the bill.
- III. To deploy additional labour attaches in Saudi Arabia and sufficiently fund their offices to cater for the needs of distressed migrant workers who are spread in the expansive size of the Kingdom of Saudi Arabia and to facilitate the establishment of safe houses for accommodating those in distress awaiting repatriation

### **Recommendations to the National Employment Authority**

- I. National Employment Authority to cause all licensed Private Employment Agencies to file accurate and updated returns through the NEAIMS system at the beginning of each year and quarterly indicating the number of migrant domestic workers they have recruited and dispatched to Saudi

Arabia, their next of kin, the period of work for ease of supervision, monitoring and accountability purposes.

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

### **Recommendation to the National Industrial Training Authority**

- I. National Industrial Training Authority (NITA) to offer homecare management courses as per its curriculum by ensuring learners cover 200 hours in the normal 8 hours per day for 5 working days. Further, NITA to ensure that the minimum requirement of basic education for trainees is strictly adhered to.
- II. The Homecare management course to include a unit in basic Arabic language for those going to Saudi Arabia, an understanding of the contractual terms, Complaints and distress handling channels and the procedure of registration with the Kenyan embassies at the host countries upon arrival.

### **Recommendations to the Commissioner for Labour**

- I. Formulate policies that will ensure Labour Attachés register migrant workers upon arrival at the host country and avail them a complaint reporting channel for easy reporting in case of distress and evacuation when a need arises. This will also enable GOK to have solid data on its labour exports.

### **Recommendation to the Ministry of Foreign Affairs**

- I. The Embassy to consider negotiating with the Kingdom of Saudi Arabia during diplomatic engagements to set up complaint resolution mechanisms arising from migrant domestic workers and their employers.
- II. Ministry of Foreign to ensure that the Kingdom of Saudi Arabia adheres to its responsibility in the execution of the Bilateral Labour Agreement between the government of Kenya and the Kingdom of Saudi Arabia.

### **Recommendations for Immigration**

- I. The Immigration Department to only use the list officially provided by the Commissioner of Labour to clear prospective domestic workers to Saudi Arabia.