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The new slavery

Kenyan workers in the Middle East

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Summary

In September 2014 Kenya banned the exportation of labour to the Middle East because workers were being trafficked by criminal networks offering them jobs. This policy brief focuses on the criminals who continue to drive this market and examines attempts by the government and other stakeholders to outlaw the practice. While the measures in place are commendable, they are inadequate. Many gaps still enable criminals to continue operating in a lucrative, quasi-regulated market. The field study conducted revealed that human trafficking persists in Kenya.

Key findings

- Kenyans trafficked to the Middle East are often exposed to inhumane conditions that many reports describe as 'modern slavery'.
- Despite reforms intended to prevent this, the trafficking of Kenyans to the Middle East continues.
- Stakeholders approach the issue mainly as a human rights concern rather than as a human-trafficking crime.
- The interventions in place are inadequate and the exclusive focus on rights has diverted attention from the criminality involved.
- Reassessing the problem as human trafficking will shift attention to Kenya's ability to both protect its workers abroad and combat transnational crime.

Introduction

After Kenya gained its independence in 1963, historical ties governed the movement of its citizens, mainly those living in coastal communities, seeking economic opportunities in the Middle East. These ties, which included kinship and closed social networks, were responsible for a growing stream of Kenyans migrating to Saudi Arabia, the United Arab Emirates (UAE), Qatar, Oman, Bahrain and Kuwait.

The nature of this migration changed over time as the wealth of the oil states attracted more and more young Kenyans and offered more opportunities to citizens of traditional labour-exporting countries. Another factor that contributed to the labour-export boom was the fact that unskilled labour from Kenya was inexpensive and unregulated by the government. In addition, labour-exporting nations in Asia began imposing new restrictions on the practice.¹

The start of the millennium saw economic conditions in Kenya deteriorate, and migration became a survival strategy. The decline in economic opportunities led to a boom in unregulated employment agencies recruiting Kenyans to work in the Middle East. Kenyans in search of foreign employment became easy targets for these traffickers.

The start of the millennium saw economic conditions in Kenya deteriorate, and migration became a survival strategy

In September 2014, in response to complaints by trafficked workers, returnees, unions, civil society and the media, the Kenyan government banned employment agencies from recruiting its citizens to work in foreign countries.

Yet despite this legislation criminalising human trafficking and new regulations on labour migration, regional trafficking markets headquartered in Kenya remain active and expanding. The markets are driven by well-connected security, business and political elites with links to the continental trafficking economy. The high rate of premature returnees and runaways indicates

that human trafficking and attendant rights abuses continue in Middle Eastern countries.²

The benefits of labour migration should be reviewed and carefully controlled through coherent responses that restore the Kenyan public's confidence in the practice. The illegal trafficking, exploitation and human rights abuse aspects of the industry can be dealt with by implementing measures that target the operations of transnational organised crime. Labour-exporting countries such as the Philippines have proven that this can be done.

Migrants constitute 3% of the world's labour force and migration has become one of the defining elements of the global economy.³

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There is a strong case to be made for countries to support labour migration as a resource for developmental transformation,⁴ but shifts in the global economy and technological advances are eroding the comparative advantage of reserves of inexpensive labour.⁵ It is thus critical that Kenya use the present window of opportunity to develop a strategy that stabilises the industry, controls exploitative elements, and enables citizens to harness the potential for earnings abroad and resulting remittances.

Methodology

Literature review

The research process comprised a literature review of broader issues of transnational organised crime, specifically law enforcement and the protection of victims. It also looked into the legal framework of labour exportation and the efforts made to protect victims. At a pre-research roundtable, experts explored the key research questions, made recommendations and observations and offered methodological insights that informed the field research.

Field research

A mixture of qualitative and quantitative data was used in this study. The aim was to probe the motivation for engaging in human trafficking and to document the experiences of trafficked labourers, understanding the negative impacts on their lives.

A field study was conducted in areas understood to be most affected by human trafficking to the Middle East. Key findings of the report were validated by a workshop of experts in human trafficking and labour exportation.

Sample population and regions

In the pre-research discussions participants said most of the employment agencies involved are in the urban areas of the Coast and Nairobi regions. Victims are not concentrated in urban counties, as many also come from semi-rural counties. A total of 90 people from three regions – the East (Isiolo county), the Coast (Mombasa, Kwale and Kilifi counties) and Nairobi (Nairobi city county) – participated in interviews.

The regions offered different perspectives on the problem from both victims and employment agencies. Snowball or chain-referral sampling was applied. This proved a useful technique for accessing hidden populations of victims and employment agencies.

Sixty victims⁶ (32 women and 28 men), 20 from each of the three regions, were sampled. They included returnees and families whose relatives were still in the Middle East. A focus group discussion with 10 victims was conducted in each of the three regions, with the remaining 10 interviews conducted using a one-on-one format. Some of the questions were covered in a questionnaire, included the victim's age, gender, previous and current occupation, level of education and specific questions relating to trafficking experiences.

Twenty employment agencies were sampled. These included foreign, licensed and unlicensed agencies from the Mombasa and Nairobi regions. A one-on-one interview was conducted with each agency by means of a questionnaire with both open-ended and closed questions. Some of the questions asked included: period for which the agent had been working, the status of registration, the number of Kenyans recruited and their job categories. Other questions were about to which countries they normally sent the job seekers

and if they worked with other local agents, brokers or foreign agencies.

A further sample of 10 key respondents from government institutions, the legal profession, civil society and the media in the three regions were interviewed. These interviews focused on understanding the state's preparedness and ability to respond to human trafficking. They also added to the understanding of the criminals and market data sets.

To understand the experiences of trafficked persons in context, and the shortcomings in the responses to date, the research first outlines the scope of Kenya's foreign labour export sector.

Kenyan at risk

It is not known exactly how many Kenyans are in the diaspora, but the government estimates it to be 3 million.⁷ Kenya exports labour to the Middle East, Europe, the United States (US), Canada, Australia and, to a lesser extent, other countries in Africa. Mainly skilled labour is exported to Europe, the US, Canada and Australia, comprising professionals working in mid- to senior-level job categories.

It is not known exactly how many Kenyans are in the diaspora, but the government estimates it to be 3 million

The majority of Kenyans who work abroad, however, do so in the Middle East.⁸ In 2015 it was estimated that about 200 000 Kenyans were working in that region, with 130 000 in Saudi Arabia, 22 000 in the UAE and the rest in other countries.⁹ Most of the male migrants work in construction, the oil industry, transport and other jobs requiring manual labour. Most of the women, whose salaries are lower than those of the men, work in domestic positions and the nursing sector.¹⁰

The lack of reliable data makes it difficult to estimate how many Kenyans are trafficked. What is apparent is that unskilled labourers¹¹ are most vulnerable to trafficking and that most of the victims are young.¹²

The definition of exploitation in the Kenya Counter-Trafficking in Persons Act of 2010 includes forced labour, which is defined as ‘the extraction of work or services from any person for the purpose of exploitation’.¹³

The government lifted the labour export ban in 2017 but prohibited recruitment to Middle Eastern countries unless an agency had been vetted and granted new licences.¹⁴

The government then began building a database of the number of Kenyans taken abroad for work by the licensed agencies. It estimates that 9 000¹⁵ workers migrated to the Middle East between 2018 and 2019. However, the government notes that this figure is inconclusive as agents have found different ways of bypassing the ban and vetting process, using visitor visas instead of work visas to send employees abroad.¹⁶

The literature reviewed for this policy brief confirms that the trafficking of Kenyans, especially to Saudi Arabia, continues, state reforms notwithstanding.

The criminal value chain

The trafficking market operated openly before the government adopted the new registration process for employment agencies. This study shows that after the ban and adoption of the registration process criminals

went underground, creating an organised criminal economy that is still active – as illustrated in this section.

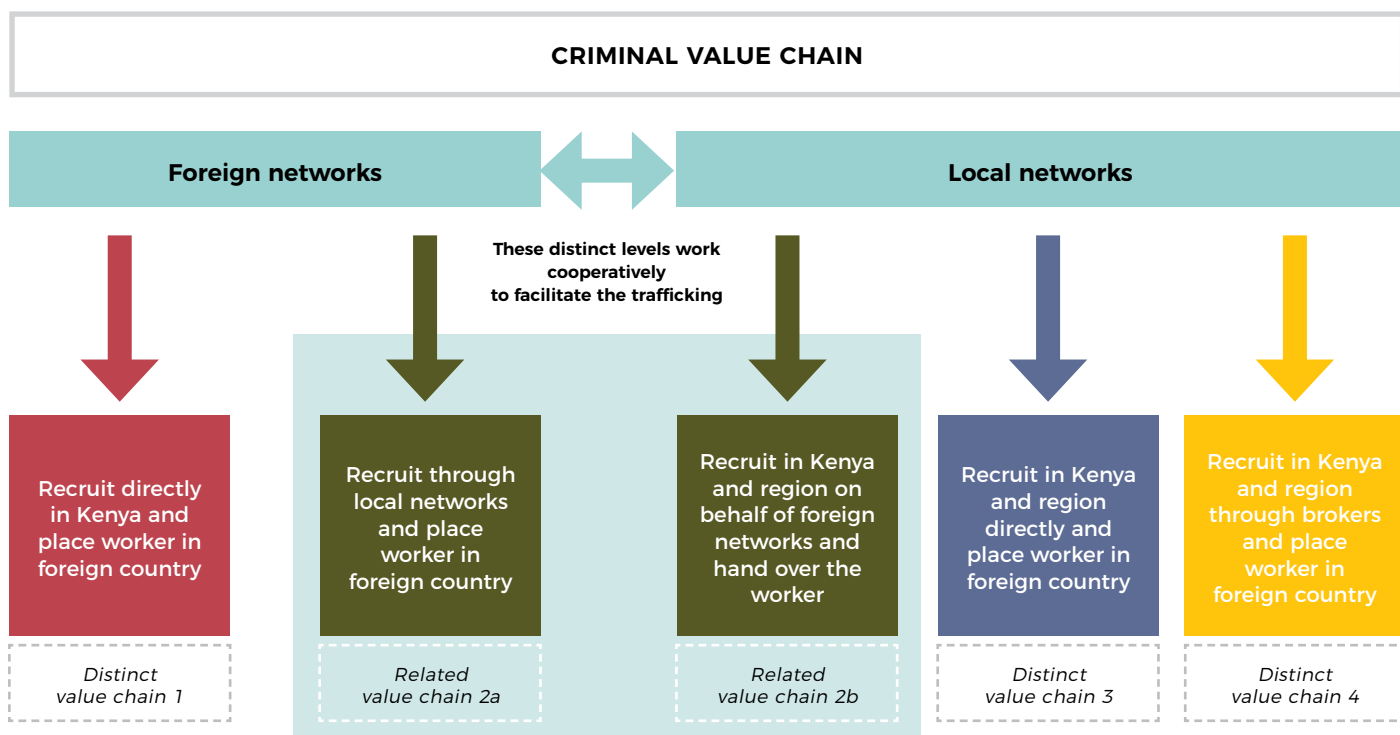
Respondents said that significant numbers of people are still being trafficked under the guise of legal employment. This supports the perception that criminal networks are pervasive, both in Kenya and other countries in the East and Horn of Africa, and in Central and West African countries such as Cameroon and Nigeria.¹⁷

After the ban and adoption of the registration process criminals went underground

The criminal value chain is driven by foreign and local networks. These networks are distinct, working cooperatively to facilitate the trafficking.

Foreign networks

Foreign criminal networks posing as employment agencies and recruiting in Kenya comprise a diversity of nationalities. These groups are highly organised and have a horizontal structure, indicating that different groups work separately, but, importantly, also work in concert with local organised criminal networks.



Before the 2014 ban on exporting labour, employees of unlicensed foreign employment agencies from Saudi Arabia and Qatar flew to Nairobi and Mombasa and openly recruited Kenyans in local hotels, interviewing applicants in a room, restaurant or conference area.¹⁸

Local agents and brokers enticed vulnerable Kenyans with promises of employment abroad. A commission of US\$1 000 was paid to an agent or broker for each person recruited. The costs of the visa, flight and, in some cases, medical examinations, were covered by the foreign recruiter.¹⁹

Although applying for a passport is a lengthy bureaucratic process for most Kenyans, if the job seeker needs a new passport it is issued within three working days, on average. Cartels that bypass Kenya's immigration controls speed up the process.²⁰ Once the job seeker presents his/her passport to the recruiter the work visa is issued within a day. Within a week the worker is in the destination country, but without an employment contract.

On arrival the job seeker's passport is confiscated by the employer/sponsor, in line with the *kafala* system. *Kafala* is a Middle Eastern system that gives the employer the right to confiscate the travel documents of migrant workers in order to 'monitor' them.

The Kenyan government, the International Labour Organization (ILO), the United Nations (UN) and other rights protection groups say that the system facilitates conditions amounting to modern-day slavery.²¹ The UN has called for the system to be abolished.²² Almost all (91%) of the victims interviewed confirmed that their passports were confiscated by the employer when they arrived.

Although there is no data on foreign labour export between 2012 and 2014, the Kenya Association of Private Recruitment Agencies (KAPEA) estimates that more than 100 000 Kenyans were recruited during that period. This amounted to about 60% of all Kenyans recruited to work in the Middle East.²³

An international employment agency based in Nairobi, interviewed on condition of anonymity, confirmed that unlicensed foreign agencies are still recruiting and trafficking Kenyans.

The agency reported that between January and February 2019 the names of 30 recruits, contacted through direct calls and WhatsApp messaging, had been forwarded to it by Saudi contacts. It described the

recruitment requests as 'wishy-washy', with no disclosure of employment contracts or the names of the foreign agencies. The agency was only asked to facilitate the movement of the workers to different Saudi cities.

The bilateral agreement between Saudi Arabia and Kenya now calls for recruitment through the *Musaned* system,²⁴ a Saudi electronic platform that facilitates the legal recruitment of workers. But illegal recruitment by foreign agencies continues to take place clandestinely in the country.²⁵

Knowing the extent of foreign networks with certainty is impossible, but this description and the anecdotes from sources indicate that recruiters appear to operate with little risk. Legal frameworks and even bilateral arrangements seemingly are not an impediment to the trafficking of people. This trade is greatly enhanced by the associations that the foreign networks have with local criminal networks.

Local criminal network

Foreign operators cooperate with the local market, which is controlled by criminal networks posing as employment agencies.

As at 16 June 2020, 320 local employment agencies were licensed to recruit workers for placement abroad.²⁶ It is not known how many unlicensed agencies are still functioning, but it is estimated that more than 1 000 members of the local criminal network were operating before the 2014 ban.²⁷ The network comprises highly organised criminal entrepreneurs who work with foreign employment agencies involved in trafficking.²⁸

Of the 20 agencies reviewed eight were licensed. Three of the eight admitted that they relied on unlicensed agencies as brokers to bring them recruits. The remaining five said they avoided using brokers because of the trafficking allegations.

Twelve were unlicensed, and of these nine had been investigated by the police after victims complained of being trafficked. These 12 agencies had recruited more than 2 000 Kenyans between 2017 and 2019, despite being unlicensed. They worked from home or changed the location of their offices frequently, making it difficult for victims and the government to trace them.

Once workers recruited by the local network arrive in the country they are placed to work, the foreign agencies take over. At this point it becomes impossible to trace

them, as they leave Kenya without being registered by the Kenyan government. Having no choice, they become submissive and vulnerable, accepting any work they are offered.²⁹ Without their passports they have neither the means nor the technical know-how to return home. Many of them are arrested and end up in jail for being in the country illegally with no documentation. Others work in illegal jobs such as sex work.³⁰

Recent cases³¹ are starting to show a shift in the links of this local trafficking value chain, with evidence that the trafficking is increasingly being carried out by East Africans. According to some victims, they were received in the Middle Eastern country by what they described as 'familiar faces'.

In February 2020, 50 Kenyans, who had each paid approximately US\$2 000, were trafficked to the UAE and enslaved in a house by a person they describe as a 'Mombasa agent'³² based in both Mombasa and Dubai. The victims said there were many such 'trafficking houses' run by Kenyans in Dubai, one of which housed other East African nationals such as Ugandans and Tanzanians.

In another case³³ a Ugandan girl was trafficked to Kenya by a Ugandan family friend, then to Oman by a Kenyan national. She was picked up at the airport by an Ethiopian national before being driven to her Omani employers.

This indicates that local organised criminal operators interact closely with foreign organised criminal actors, either in Kenya or abroad. So too, the foreign operators operate in Kenya and abroad. These inter-connections create a lucrative value chain for criminal operators and those facilitating the trafficking of people to the Middle East.

Experiences of trafficked victims

Human Rights Watch studies of domestic workers in the UAE and Oman found exploitation in the workplace rife and sexual violations commonplace. The studies also showed that employment agencies in the host country substituted new contracts for those signed before workers left their home countries. They noted that reforms in host and exporting countries

EXPERIENCES OF TRAFFICKED VICTIMS



often failed to curtail the trafficking problems responsible for the abuses.³⁴

Recruitment and contracts

The majority of the contracts viewed during the field study included employee details such as height, weight and number of children, but no information about the terms of employment such as salary, working hours and leave. In some cases the name of the recruiting agency was absent and the contract in Arabic, a language with which few of the interviewees were conversant.

Once they returned, most of the victims followed up with the agency that had recruited them.³⁵ None of the agencies took responsibility for the forced labour to which the victims had been subjected. In addition, more than 90% reported that the terms of their employment contracts were changed when they arrived. The changes included salary reductions, new job locations and more working and shift hours.

Of the 60 trafficking victims who responded to the field survey, 23 alleged that the local agencies used deceptive, manipulative, aggressive and high-pressure tactics for recruitment. These included reaching out to family members and friends of recruits to influence their decision. Such societal and peer group pressure pushes women, in particular, towards these activities.

Of the 60 victims, 35 said they had been promised a specific job but for a long time had had no job offer at all. Most of them³⁶ had paid an 'agency fee' of between US\$500 and US\$1 000 to local criminal networks that then disappeared, taking with them important original documents such as national identification cards and birth and education certificates. Those who were placed in jobs were not paid the salary they had been promised.

Exploitation, maltreatment, failure to protect

More than 90% of the workers interviewed were exploited in various ways, including physical and verbal abuse, threats and intimidation, and all were denied medical attention. Some worked for long hours (26%), were restricted in their movement and communication (29%), faced sexual harassment (19%) and were poorly fed and accommodated (29%).

Employers usually refuse to compensate the employee for any expenses. Most victims said their employers constantly reminded them that they had 'bought' them for a particular amount and they would have to 'refund' the employer before being released from their contracts. Employers said they had paid the employment agency as much as US\$3 500³⁷ in recruiting costs and were unconcerned about the fate of the workers.

Some victims escaped by jumping over walls, breaking limbs in the process;³⁸ others stayed beyond the expiry of their visas until they were caught by police and taken to deportation centres, or ended up engaging in illegal activities such as theft, prostitution or drug trafficking.³⁹ Still others found their way to the Kenyan embassy to seek assistance with repatriation.

The Kenyan embassy does not help with repatriation costs. Most employees had to rely on relatives and friends at home to raise the necessary funds. When they returned they were indebted and unemployed. Economic conditions in Kenya mean there is little hope of their finding employment and they have no savings with which to start a business.

These responses indicate that most of the trafficking victims undergo ongoing abuse throughout their trafficking ordeal with little protection from their employers or the foreign and Kenyan governments. Their rights are abused from the onset of recruitment up to the abuse they face as workers and on their return.

Legal recourse, compensation and accountability

Most of the victims were unaware of their legal rights.⁴⁰ They did not report their problems to the police or the embassy for fear of arrest or deportation; an indication that legislation on its own fails to mitigate Kenyans' vulnerability to exploitation.

Most of the victims were unaware of their legal rights, an indication that legislation fails to mitigate vulnerability to exploitation

Few interviewees had any idea what process to follow should they find themselves a victim of trafficking. For example, the survey shows that 44 of the 60 surrendered their communication devices to their employers. Yet Section 8 of the Counter-Trafficking in Persons Act prohibits confiscation of and interference with a person's travel documents and personal effects.

The victims interviewed in Kilifi, Kwale and Isiolo counties came from rural areas and most had not heard about the problems experienced by compatriots working in some Middle Eastern countries. Of the 60 interviewed, 51 said their employment conditions had worsened over the period of their employment and all had worked for one year or less before returning to Kenya. The rest returned in less than three years.

Government response

This section looks at how the government is addressing labour trafficking by scanning its legal framework and the gaps that exists. It also analyses the practical approach Kenyan authorities have taken to look into the trafficking industry.

Kenya still does not have a foreign employment policy that oversees labour exportation. Despite the many laws⁴¹ governing the practice, the authorities have largely failed to protect vulnerable migrant workers. In addition, the fact that different state agencies, among them the ministries of Labour, Foreign Affairs and the Interior, are responsible for implementing different laws has led to a lack of coordination.

Kenya still does not have a foreign employment policy that oversees labour exportation

Kenya has signed key international instruments that have been pivotal in protecting its migrant workers. These include the ILO Convention 97 on Migration for Employment (Revised) 1949; Convention 143 on Migrant Workers (Supplementary Provisions) 1975; bilateral labour agreements; the ILO Multilateral Framework on Labour Migration; the AU Migration Policy Framework for Africa; and the East African Community (EAC) Common Market Protocol on Free Movement of Persons and Labour.

However, it would be of benefit if it ratified instruments such as the Private Employment Agencies Convention, 1997; the Employment Policy Convention, 1964; and the International Migration Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

Ratifying these instruments and putting in place the country's much-anticipated foreign employment policy would offer workers protection from trafficking. Such a move would inform strategy and result in a better coordinated process regulating citizens' recruitment, departure, transit, remuneration, stay in foreign country and return to Kenya.

In October 2014 the government set up a multi-agency task force to investigate labour migration management and diaspora engagement. The aim was to curb the activities of 'briefcase employment agencies' and make recommendations about protecting migrant workers.⁴²

The views of unions and employment associations were solicited, generating 17 recommendations, many of which have not been fully implemented. This is largely because the task force focused more on the mistreatment of Kenyans on arrival in foreign countries than on the process they underwent before leaving.

For example, the task force made no recommendations about mapping, investigating and sentencing unlicensed foreign and local employment agencies. There were also no recommendations about returnees who had either been trafficked before the ban or who were currently being trafficked.

Its call for the establishment of an inter-ministerial committee to vet the registration of new employment agencies led to a change in the Labour Institutions Act of 2007 by means of articles 42 and 43 of the Security Laws (Amendment) Act of 2014.

Five agencies interviewed, including foreign ones, claimed that some members of the vetting committee demanded bribes to 'speed up' the process. One licensed foreign employment agency was denied registration even though it does not export unskilled labour. The registration of other local agencies was delayed because they were unwilling to offer bribes.

The Kenyan government also capped the monthly salary of a domestic worker at 850 Saudi Arabian riyals (SAR) (about US\$220). Victims, returnees and licensed employment agencies interviewed stated

that this salary is less than what workers received before the ban.⁴³

Employment unions had proposed a minimum salary for a beginner worker of SAR2 000 (about US\$500) and for those with experience SAR4 000 (about US\$1 000). Low salaries are a major reason that workers leave the country and seek better-paying jobs.⁴⁴

In addition, the National Employment Authority (NEA), established in 2016, is mandated to develop a comprehensive institutional framework for employment management, especially for youth, minorities and marginalised Kenyans. Every employment agency is now required to seek and obtain government approval before sending Kenyan citizens to work abroad. But the fact that some use visitor rather than work visas makes it difficult for the NEA to keep track of them.

Law enforcement support to disrupt and prosecute trafficking draws on the Counter-Trafficking in Persons Act. The Act defines human trafficking as recruiting, transporting, transferring, harbouring or receiving another person for the purpose of exploitation by using fraud and deception among other means.⁴⁵

Importantly, the Act also states that the 'consent' of a victim to the intended exploitation is irrelevant in cases of forced labour and deception. However, it is deficient in several aspects regarding the protection of workers.

Despite its having been in force for almost 10 years and providing for penalties of between five years and life imprisonment, problems persist. The Office of the Director of Public Prosecutions Kenya is currently handling 30 cases of human trafficking, yet none of them involves Middle Eastern countries.⁴⁶

These responses indicate that criminals take advantage of existing gaps in the legal frameworks to continue driving the trafficking industry. Corrupt practices in the relevant government departments are an enabling factor that sustains the trafficking along the criminal value chains.

To address some of these challenges, there should be more focus on viewing and addressing the trafficking problem as one of organised crime with transnational linkages, rather than as a human rights concern.

Conclusion

There have been multiple approaches in Kenya to the issue of human trafficking, especially to the Middle East. The intention has been to establish a human- and labour-rights approach rather than an anti-criminality one. But the multiplicity of views has led to a lack of coherence in crafting interventions. As a result, Kenya's anti-trafficking reform agenda is failing both legislatively and operationally.

The government and labour stakeholders recognise the importance of strengthening the anti-criminality approach to the issue, but they are yet to prioritise and respond to the transnationality of the criminal networks embedded in the labour exportation business. A key supportive and additional measure in the reform agenda must, to a large degree, be dealing with this criminal element.

While migration to the Middle East has benefited other labour-exporting nations, lapses in sectoral oversight and governance in Kenya have led to the exploitation of workers and abuse of their human rights. Labour recruitment for Middle Eastern markets has transferred the burden of responsibility for procuring safe employment and enforcing fair conditions in the host countries to the workers themselves.

Traffickers are adept at finding new ways of evading measures designed to curb their activities

Conventional methods of ensuring workers' rights and welfare through collective action do not apply to multinational migrant labour, especially for those contracted through the *kafala* system.

The government has taken steps to address the criminalisation of labour migration, but the fact that the trafficking of Kenyans continues indicates it will be difficult to control the criminal networks that sustain it. Traffickers are adept at finding new ways of evading measures designed to curb their activities. Legal reforms and vetting alone are not enough to combat the trafficking market.

There are several ways in which the findings in this report can be translated into supportive measures, but the cooperation of sectoral stakeholders, including workers' unions, employment agencies, civil society and the media, is crucial.

Recommendations

Better communication and coordination among stakeholders is necessary to implement reforms. These stakeholders are government, workers' unions, employment agencies and civil society organisations involved in the rescue and rehabilitation of victims and advocacy on their behalf.

Trafficking should be regarded as a transnational organised crime, with the focus on the victim. Traffickers are able to operate because of two gaps: legal protection and operational hindsight, and the socio-economic challenges Kenyans face that make them vulnerable to trafficking networks. Thus, a robust regulatory framework is needed. This research suggests that addressing these gaps will reduce the vulnerability of workers and constrain the operating space of criminal networks.

Policy framework

Closing the gaps

- Setting in place a foreign employment policy will close the gaps in the state's policy and operational responses, both in Kenya and in the destination countries. Central to such a policy should be targeting the criminals. Thus far no unlicensed local employment agency has been prosecuted or

criminals involved in trafficking sentenced. The response of the transnational organised crime unit of DCI Kenya should be strengthened by working with the prosecution office to present admissible evidence in court. This will also enhance judicial capacity in the prosecution of this crime.

- The foreign contract of service form contained in the Employment Act of 2007, which records data about employees working abroad, should be amended.⁴⁷ Article 84 of the Employment Act and Article 8 of Legal Notice 110 of the Labour Institutions Act list requirements for such forms. Useful clauses could cover working hours, nature of employment, leave, pay and benefits, including mandatory basic medical cover.

Bilateral agreements

- The Philippines, which exports 1 million workers annually, has 23 bilateral agreements, two bilateral maritime agreements and bilateral social security agreements with seven countries.⁴⁸ Kenya currently has only one bilateral agreement, with Saudi Arabia, and that needs to be reviewed as the provisions do not favour Kenya.⁴⁹ Kenya should have carefully considered bilateral agreements with the UAE, Qatar, Kuwait, Bahrain, Jordan and Oman. The 2013 bilateral agreement with Qatar was not implemented by either country, and is currently under review.

The agreements should include certain key points:

- An unskilled Kenyan worker who signs an employment contract should receive a designated foreign employment visa. The receiving country should confirm entry and exit with its own seal. Both



countries should keep identical visa records. Such a system might restrain trafficking.

- Agreements should focus on temporary employment. This will enable contractual rather than permanent employment. Labour-exporting models like that of the Philippines show that contractually securing the rights of workers discourages permanent immigration.
- Receiving countries should be held responsible for the protection of Kenyan workers. For example, the Kenyan government should be able to suspend exporting labour if it receives reports of gross violations of workers' rights. Foreign employers should be compelled to pay the salary due to a worker who is leaving, and possibly pay damages if the employment has been terminated unfairly.

Political guidance from leaders would go a long way towards reducing human trafficking

- There should be ways to prosecute perpetrators of crimes that take place in foreign countries. For example, if a worker is raped by an employer, how does she report the crime? What procedures should govern the situation of a worker escaping or committing a crime against an employer?
- Kenya should ban the export of unskilled labour to Middle Eastern countries that are at war or experiencing protracted conflict.⁵⁰
- Data shows that most of the 9 000 workers who went to work in the Middle East in 2018–2019 are doing domestic work. Apart from the bilateral agreements there is a need to have a memorandum of understanding specifically related to domestic workers.

Change the focus

- The violation of workers' rights is the end result of a crime. The cause is the human-trafficking process. Instead of approaching the issue mainly as a human rights concern, stakeholders such as government, civil society and workers' unions should focus on it as a human-trafficking crime.
- Advocating the issue as a trafficking crime will allow victims to seek legal redress in criminal regulatory frameworks. In practice, this will also make law

enforcement agencies aware of the legal gaps present in the guiding regulatory frameworks.

- Kenya's political class should take a public stance on the plight of trafficked citizens. Political guidance from the leadership would go a long way towards reducing the incidence of human trafficking. This kind of public representation would ensure that the government has the concerns of the victims at heart, and this kind of assurance bolsters the confidence of the Kenyan public. Leaders should explain why it is important to protect citizens working abroad. This would also help sensitise the public to issues of labour exploitation and human trafficking.

Police human trafficking

- Training police officers to deal with criminal elements in labour recruitment processes will aid in mapping the regional criminal market in human trafficking. Regional immigration law enforcement, intelligence and investigations officers require training. The immigration department at airports should institute measures to enforce the clearance of all unskilled labourers before their departure. This will go a long way towards preventing the misuse of visitor visas.
- Currently, Kenya has only three labour attachés – one each in Saudi Arabia, the UAE and Qatar. Their functions include checking on the welfare of Kenyan migrant workers by visiting them at their workplace; dealing with labour complaints; and monitoring the implementation of labour agreements. Given the large number of Kenyans working in the Middle East,⁵¹ one labour attaché in each country is insufficient. Labour attachés should maintain a database of all Kenyans working in the country by liaising with the NEA to receive copies of employee contracts and making it mandatory for all workers to register with the embassy within 30 days of their arrival. They should also work with local institutions such as churches⁵² and with Kenyan volunteers⁵³ involved in issues of trafficking.

Regulate employment agencies

- The research confirms that unskilled labourers are most vulnerable to human trafficking. Foreign employment agencies operating in Kenya should only recruit skilled labour through the formal regulated process or face a ban if they recruit unskilled labour directly.

- There is a need to create, maintain and make public a database of all licensed and banned foreign and local employment agencies. Currently only licensed local employment agencies are listed on the NEA website.⁵⁴ It is also necessary to carry out regular inspection visits to both foreign and local agencies. Only four of the 20 agencies interviewed had been inspected by the government. Most of them were unlicensed but bribed officers not to arrest them. In addition, most did not have the physical address required by Article 3f of the Legal Notice 110 of the Labour Institutions Act.
- Owing to the regional recruitment of East African workers by Kenyan employment agencies, countries in the region should work together to address problems that arise in specific countries abroad. For example, the EAC Common Market Protocol on Free Movement of Persons and Labour could be amended to reinforce regional efforts to address the trafficking of East Africans to Middle Eastern countries.

Provide for workers' long-term welfare

- The government should consider introducing a welfare administration. Establishing such a system for workers abroad would allow for the provision of pension plans based on contributions paid by both the worker and the government. The pension plans could be modelled

on the Kenya National Social Security Fund. This would help workers whose salaries abroad are too low to allow them to save for their return home.

- Some returned workers suggested that the establishment of a Savings and Credit Co-operative Society (SACCO) would encourage them to save in a foreign country. Unions could establish such a system to assist workers who decide they want a certain amount of their pay to be banked with the SACCO. Other welfare options could include life insurance, an education fund and a medical aid fund for family members.
- The government should actively promote ways of enabling workers to send money home by subsidising remittance costs. For example, the Philippines issues each worker an identification card that doubles as a credit card linked to a dollar or peso savings account with almost all banks. The transaction cost per remittance is less than US\$3. Kenya could establish such a system using mobile money platforms such as M-Pesa, Airtel Money and Equitel.
- There is also a need for the government to provide counselling support and safety nets for returnees. All those interviewed had been traumatised by their experience. The development of support mechanisms such as counselling services and trauma centres would help them reintegrate. Such services could be provided in collaboration with the unions.

Notes

- 1 F Malit and A Al Youha, Kenyan migration to the Gulf countries: balancing economic interests and worker protection, Migration Policy Institute (MPI), 18 May 2016, www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection.
- 2 Of the 60 trafficked victims interviewed, 51 had worked for one year or less before returning to Kenya.
- 3 University of Oxford Citi GPS: Global Perspectives & Solutions, *Migration and the economy: economic realities, social impacts & political choices*, September 2018, www.oxfordmartin.ox.ac.uk/downloads/reports/2018_OMS_Citi_Migration_GPS.pdf#page=12
- 4 A Shimeles, Migration patterns, trends and policy issues in Africa, African Development Bank (AfDB), Working Paper 119, December 2010, www.afdb.org/fileadmin/uploads/afdb/Documents/Procurement/Project-related-Procurement/WORKING%20119%20word%20document%20AA.PDF#page=5.
- 5 *Financial Times*, Benefits of cheap labour force eroding as global trade patterns shift, 22 February 2019, www.ft.com/content/c9a3b7ec-346a-11e9-bd3a-8b2a211d90d5?sharetype=blocked
- 6 Both those trafficked and their families are referred to as victims, particularly in reference to families:

Their family members were still in foreign countries. The families interviewed were the voices of the trafficked victims. An example of this was a single mother whose three daughters were stuck in Qatar. She was the point of contact for the girls. Similarly, a woman whose husband was in Saudi Arabia shared her journey to report what had been happening to her husband to authorities in Kenya.

The families are also traumatised as they are directly affected by the abuses their family members experience. It is important to hear their perspectives, as they are usually the liaison between their members and Kenyan authorities, CSOs and trauma centres in Kenya.

It was difficult to access information directly from victims who are currently in foreign countries, as they either do not have regular communication channels like phones or are at repatriation centres. Their families played an intermediary role in this.
- 7 Task force report on matters relating to administration of foreign employment and management of labour migration, September 2015.
- 8 Of the trafficking victims interviewed, 56% worked in Saudi Arabia, 20% in Qatar, 9% in the UAE and 6% in Oman. The remaining 9% worked in Bahrain, Jordan, Lebanon, Yemen and Iraq.
- 9 Task force report on matters relating to administration of foreign employment and management of labour migration, September 2015.
- 10 Ibid.
- 11 Of those interviewed, 85% worked as domestic workers and in childcare, 11% in the transport sector, mainly as drivers and mechanics, 2% in the construction sector and 2% in the hospitality industry.
- 12 81% of those interviewed were between 21 and 40 years old.
- 13 Kenya Law Reports, Counter-Trafficking in Persons Act, No. 8 of 2010, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf#page=6.
- 14 A Mutambo, State clears way for Kenyans to work in Saudi Arabia, *Daily Nation*, 2019, www.nation.co.ke/news/State-clears-the-way-for-Kenyans-to-work-in-Saudi/1056-4945078-7kotwb/index.html.
- 15 Interview, Joseph Njue, foreign employment officer, National Employment Authority, 12 May 2019.
- 16 The requirements for a work visa involve providing the immigration department with proof of employment. The visitor visa does not require any employment documents. Most Middle Eastern countries issue them for up to three months and they are renewable.
- 17 A Ebo'o and PR Oyono, Human trafficking: young Cameroonians end up enslaved in the Gulf, ENACT, 9 July 2019, <https://enactafrica.org/research/trend-reports/young-cameroonians-end-up-enslaved-in-the-gulf>; Human Rights Watch, 'You pray for death': trafficking of women and girls in Nigeria, 27 August 2019, <https://www.hrw.org/report/2019/08/27/you-pray-death/trafficking-women-and-girls-nigeria>
- 18 Interview, Mwalimu Mwaguzo, national chairperson, Kenya Association of Private Recruitment Agencies (KAPEA), 11 April 2019.
- 19 Interview, Abubakar Maunguja, managing director, Al-Faizin Agencies Limited, 10 April 2019.
- 20 An unlicensed agent said he would process up to 10 passports in two days at the Mombasa passport control office and that in Nairobi the process was even faster.
- 21 Migrant-rights.org, Understanding *kafala*: an archaic law at cross-purposes with modern development, 11 March 2015, www.migrant-rights.org/2015/03/understanding-kafala-an-archaic-law-at-cross-purposes-with-modern-development/; International Labour Organization (ILO), Employer-migrant worker relationships in the Middle East, White Paper, March 2017, https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_552697.pdf; ILO, Reform of the

- kafala* (sponsorship) system. Policy Brief 2. www.ilo.org/dyn/migpractice/docs/132/PB2.pdf; Amnesty International, *End kafala: justice for migrant domestic workers in Lebanon*. www.amnesty.org/en/latest/campaigns/2019/04/lebanon-migrant-domestic-workers-their-house-is-our-prison/
- 22 United Nations Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 23 April 2014, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-35-Add1_en.doc.
 - 23 Interview, Mwalimu Mwanguzo, national chairperson KAPEA, 11 April 2019.
 - 24 www.musaned.com.sa/en/about.
 - 25 Interview, Joseph Njue, foreign employment officer, National Employment Authority, 7 May 2019.
 - 26 National Employment Authority (NEA), Accredited agencies, https://nea.go.ke/web/?page_id=11
 - 27 IOM UN Migration, Kenya labour inspectors in preventing trafficking in persons, 25 March 2019, <http://kenya.iom.int/article/kenya-labour-inspectors-preventing-trafficking-persons>.
 - 28 Interview, William Onger, liaison officer, National Employment Authority, 7 May 2019.
 - 29 According to Angelo Izama, who volunteers at a church in Dubai that is working on a human trafficking project that receives information from Kenyan, Ugandan and other victims recruited by criminal networks posing as employment agencies, all those who reported had overstayed the period set out in their visas and were living and working illegally in the UAE (Interview, 8 May 2019).
 - 30 Two Kenyan sex workers interviewed in Al Barsha, Dubai on 19 December 2018, reported that they were victims of sex trafficking. One, a woman, had been recruited by an employment agency based in Kenya for a non-existent office receptionist job in the UAE. The other, a man, said he had been recruited by the local network to work as a driver but had ended up working for sex-trafficking brothels run by the same networks. Abu Dhabi and Dubai are the two major cities in which trafficked men who work in such brothels distribute business cards advertising massage services. The location of the brothels is secret as prostitution is illegal in the UAE.
 - 31 B Otieno, More Kenyans swindled millions with fake promises of jobs in the Middle East, *The Star*, 8 February 2020, <https://www.the-star.co.ke/counties/coast/2020-02-08-more-kenyans-swindled-millions-with-fake-promises-of-jobs-in-middle-east/>; Muslims for Human Rights, Kenyans swindled out of their millions, sexually exploited in Dubai, Twitter, 8 February 2020, <https://twitter.com/MUHURIkenya/status/1226057690847334400>
 - 32 *Daily Nation*, Kenyans lose millions in Dubai jobs scam, 13 February 2020, www.nation.co.ke/counties/mombasa/Kenyans-lose-millions-in-Dubai-jobs-scam/1954178-5449416-fmvp30z/index.html.
 - 33 Interview, Lucia Bird, senior analyst at Global Initiative Against Transnational Organized Crime, 13 February 2020.
 - 34 Human Rights Watch, *'I already bought you': abuse and exploitation of female migrant domestic workers in the United Arab Emirates*, 22 October 2014, <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers>; Human Rights Watch, *'I was sold': abuse and exploitation of migrant domestic workers in Oman*, 13 July 2016, <https://www.hrw.org/report/2016/07/13/i-was-sold/abuse-and-exploitation-migrant-domestic-workers-oman>.
 - 35 A total of 40% of the victims said the agencies were still operational and 35% did not know whether or not they were.
 - 36 See a similar figure on *BBC*, How fake job ads in Africa exploit the young, 13 March 2019, www.bbc.co.uk/programmes/p073c5s8.
 - 37 Interview, international employment agency based in Nairobi.
 - 38 Elizabeth Wahu (35), from Isiolo county, worked in Dammam in Saudi Arabia in 2017. She jumped over the boundary wall of the house she was working in, breaking her elbow and leg. Her left side has been paralysed for two years. Mercy Kendi (33), from Isiolo county, worked in Doha, Qatar in 2018. She came to the interview in a wheelchair – both her legs were paralysed after she had jumped over a boundary wall to escape her employer. Dyna Kinoti (27), from Isiolo county, worked in Jeddah, Saudi Arabia in 2019. She had broken her hand while attempting to run from her employer.
 - 39 Interview, Zamzam Mohamed, As-shamsy agencies.
 - 40 Thirty-six interviewees only had a primary school education, 17 secondary, five a college/diploma certificate and only two had Islamic madrasa education.
 - 41 The Employment Act 2007; the Labour Institutions Act 2007; the Counter-Trafficking in Persons Act 2010; the Constitution of Kenya 2010; the Kenya Citizenship and Immigration Act 2012; Security Laws (Amendment) Act 2014; and the National Employment Authority Act 2016.
 - 42 Chairperson's summary of Task force report on matters relating to administration of foreign employment and management of labour migration, September 2015.
 - 43 Interviews, returnees, KAPEA and licensed local employment agencies.

- 44 Interview, Zamzam Mohamed, who said some of the workers she recruited were runaways.
- 45 Other means include: threats or use of force or other forms of coercion; abduction; abuse of power or of position of vulnerability; giving payments or benefits to obtain the consent of the victim of trafficking in persons; or giving or receiving payments or benefits to obtain the consent of a person having control over another person, 29 June 2020, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf#page=6.
- 46 Interview, source at the Office of the Director of Public Prosecutions, 18 February 2019.
- 47 Kenya Law Reports, Employment (Foreign Contracts of Service) Rules, 1977, www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf#page=67.
- 48 Task force report on matters relating to administration of foreign employment and management of labour migration, September 2015.
- 49 Interview, Hussein Khalid, Executive Director of Haki Africa, Mombasa, 11 April 2019.
- 50 Interview, Joselyn Ruwa, who returned from Iraq, 2 April 2019.
- 51 Two Kenyans interviewed said the embassy and consulate in Abu Dhabi and Dubai, UAE, do not offer much help with labour-related issues, and the same applied to the embassy in Riyadh, Saudi Arabia. They also said there were many Kenyans in Jeddah and there was a need to open a consulate there with a labour attaché to cater for their concerns.
- 52 Churches are places of refuge for Christian workers in Muslim-majority Middle Eastern countries. Churches collect vast amounts of information about victims of trafficking. It is also easy to coordinate with them as there are only a few of them (Interview with Angelo Izama, 8 May 2019).
- 53 Two Kenyan volunteers, one in Dammam, Saudi Arabia and the other in Dubai, UAE, help Kenyans by guiding them through the process if they find themselves victims of trafficking.
- 54 NEA, Accredited agencies, www.nea.go.ke/web/?page_id=11.



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About ENACT

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