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Labor Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Dilemmas in Saudi Arabia and the United Arab Emirates

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Abstract

In recent years, the Kenyan government has increasingly developed labor export policies to secure employment for its nationals in the Gulf countries. Between 100,000 – 300,000 Kenyan migrants—mostly unskilled laborers – are represented in the Gulf countries’ population, and this number is expected to grow given the high demand for inexpensive foreign workers in the Gulf countries. Kenya’s labor export policies facilitate important economic strategies that enable the government to address the Gulf countries’ labor shortages, while easing the growing unemployment problems in Kenya. However, the Kenyan government has not formed a comprehensive protection policy nor developed bilateral labor arrangements and institutional/diplomatic capacity to safeguard Kenyans from labor violations and exploitation. This paper examines the Kenyan government’s complex role in and its challenges with protecting its nationals in the Gulf countries, while analyzing the emerging contemporary migration flow between Kenya and the Gulf countries, mainly in Saudi Arabia and the United Arab Emirates. We argue that the power asymmetry between the Kenyan and Gulf governments directly affects bilateral migration policymaking, particularly labor protection and migrant welfare. This paper further asserts that macro-factors - the Gulf countries’ bilateral trade with Kenya, humanitarian aid assistance as “soft-power”, and open immigration systems - have constrained the Kenyan government’s ability to protect its nationals in the host countries.

Keywords

Kenya, labor protection, Saudi Arabia, United Arab Emirates, migrants, trade, unemployment

Comments

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Labor Protection in the Gulf Countries:
A Comparative Analysis of Kenyan Governmental Dilemmas in Saudi Arabia and the
United Arab Emirates

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Executive Summary

In recent years, the Kenyan government has increasingly developed labor export policies to secure employment for its nationals in the Gulf countries. Between 100,000 – 300,000 Kenyan migrants—mostly unskilled laborers — are represented in the Gulf countries’ population, and this number is expected to grow given the high demand for inexpensive foreign workers in the Gulf countries. Kenya’s labor export policies facilitate important economic strategies that enable the government to address the Gulf countries’ labor shortages, while easing the growing unemployment problems in Kenya. However, the Kenyan government has not formed a comprehensive protection policy nor developed bilateral labor arrangements and institutional/diplomatic capacity to safeguard Kenyans from labor violations and exploitation. This paper examines the Kenyan government's complex role in and its challenges with protecting its nationals in the Gulf countries, while analyzing the emerging contemporary migration flow between Kenya and the Gulf countries, mainly in Saudi Arabia and the United Arab Emirates. We argue that the power asymmetry between the Kenyan and Gulf governments directly affects bilateral migration policymaking, particularly labor protection and migrant welfare. This paper further asserts that macro-factors - the Gulf countries’ bilateral trade with Kenya, humanitarian aid assistance as “soft-power”, and open immigration systems - have constrained the Kenyan government's ability to protect its nationals in the host countries.

Major Findings

- The Kenyan government has not developed a comprehensive labor protection strategy (i.e. absence of bilateral labor agreement, labor/welfare offices, orientation campaigns) to protect their nationals from labor exploitation.
- The Kenyan government finds it difficult to protect the labor rights of its nationals in the Gulf countries due to a perceived fear that Gulf countries would cut trade, rescind humanitarian aid, and limit immigration with Kenya.
- The Kenyan government’s regulations have remained ineffective (as indicated by massive corruption, ineffective policing of unethical recruiters, illegal labor deployment, and the growth of labor violations and exploitations, specifically among domestic workers), making Kenyans vulnerable in the Gulf countries.
- The Kenyan government continues to aggressively pursue higher deployment rates, particularly youth workers, despite the absence of labor cooperation.
- Kenya’s labor export policy will continue to be a long-term feature of Kenya’s foreign labor policy, as it offers significant economic opportunities, like remittances, and helps to reduce the Kenya’s unemployment problems.

Recommendations

- The Kenyan government should consider a Task Force Committee to review the labor governance issues faced by its nationals—including but not limited to corruption, unethical recruitment, dispute resolutions, human trafficking – which undermine the government’s capacity and authority.
- The Kenyan government should examine and adopt some of the Asian labor-sending countries’ labor governance strategies and institutions (i.e. bilateral labor agreements, labor/welfare offices, contract verification, migration orientation services) to enforce and safeguard workers’ rights.
- The Kenyan government should develop a strong migrant database and research system to inform Kenya’s labor migration policymaking process.

Introduction

"That [illegal recruitment] problem actually involves a criminal network. We have engaged the Saudi ambassador in Kenya and he has advised us that there are some members of staff at the embassy who work in cahoots with those crooked recruitment agents" (Wandera 2015).

Kenyan Foreign Minister, Moses Wetang
quoted in 2012, *International Business Times*

"Between January and August 2015, a total of 1125 Kenyans were deported. It is unfortunate that these returnees will claim all sorts of mistreatment including torture, denied food, held hostage, kept in concentration camps, modern-day slavery" (Mutambo 2015).

Kenyan Ambassador to Saudi Arabia,
quoted in 2015, the *Daily Nation*

Over the past years, the labor demand in the Gulf countries, the largest non-Western migrant destination globally, has increased significantly. The Dubai Expo 2020 alone is expected to create more than 275,000 employment opportunities across the region. In Qatar, however, a recent policy study estimated that the World Cup 2020 would be required between 500,000 and one million semi-skilled and unskilled migrants to work in construction, hospitality, domestic work, and other related unskilled industries (Morgan et.al 2012). Also, it is projected that the Pan-GCC rail—a railway system that will begin in Kuwait and pass through Saudi, Bahrain, Qatar, the UAE, and Oman—will generate more than 80,000 jobs (Al Anazi 2016). Thus, the demand for foreign migrant labor will increase and be governed by the Gulf countries' *Kafala* sponsorship system—a state policy used to organize, govern, and control the migrant population—which is characterized by restrictive labor and mobility rights, particularly for unskilled workers (Jureidini 2010, 2014; Naufal and Genc 2013; Shah 2004; Ruhs 2013). While Asian labor migrants have traditionally filled these shortages, recent African labor migrants, specifically from Kenya, have increasingly filled these labor shortages due to the ongoing diplomatic disputes between the governments of

Asia and some Gulf countries, involving the migrants' labor rights and welfare.² The diplomatic tensions between Asian and Gulf countries, combined with the deepening of Gulf labor shortages, have prompted Gulf governments to encourage other migrant labor flows, particularly from the African continent.

Recently, African labor-sending countries like Kenya have intensified the deployment of their nationals to the Gulf countries. The Gulf Labor Markets and Migration (GLMM) data suggests that the Kenyan migrant population is one of the fastest growing unskilled labor migrant populations in the Gulf countries. These migrants often work as domestic workers, cleaners, servers, taxi drivers, construction workers, and, in some cases, related administrative-related jobs. International labor rights organizations claim that these Kenyan migrants, particularly domestic workers, have very limited protection in the Gulf labor market (Begum 2015). This problem raises complex regulatory and institutional challenges, making it difficult for the Kenyan government to protect their nationals in the Gulf countries.

This paper examines the Kenyan government's challenges in extending labor protection to unskilled Kenyan migrants in Saudi Arabia and the UAE. This paper is divided into five sections. The first section investigates the emerging contemporary Kenyan migration to the Gulf countries, highlighting the key trends and migration policy issues in the region. The second section analyzes the Kenyan government's labor export model and its current policies and institutions that address Kenyan migration issues in the Gulf countries. The third section examines the Kenyan government's current state actions and challenges in the Gulf countries. The fourth section highlights various factors that appear to constrain the Kenyan government's ability to

² In recent years, Asian labor-sending governments of India, Philippines, and Indonesia have diplomatically asserted migrants rights' in the Gulf countries, particularly on minimum wage laws, standard working hours/conditions, and other safety nets.

develop or enforce labor protection in the Gulf countries. The concluding section discusses areas where migration policy research is needed for the Africa-Gulf migration corridors.

Historical and Contemporary Migration Pathways and Trends

Kenyan Population Data in the Gulf Countries

Since the 1950s, many high-skilled Kenyan migrants have emigrated to Western countries and, in some cases, within neighboring African countries, in search of higher education or advanced training (Migration Policy Institute 2015). After Kenya's decolonization in 1963, many Kenyans moved to Western countries to pursue higher education. However, due to weak internal economic conditions during the 1980s and 1990s, Kenyan's circular migration trends changed from temporary to a permanent migration. The violent political conflicts that triggered amidst national elections and corruption in Kenya prompted many Kenyans to settle in Western countries, where they continue to live even today. Available data stock suggests that the United Kingdom (UK) has been a top destination for Kenyan migrants - the population of Kenyan nationals in the UK reached 152,999 during 2010. In Tanzania, there were 91,146, in the United States 85,123, in Uganda 41,063, and in Canada there were 26,164. These particular migration trends reflect the contemporary migration trends of Kenyans, as well as the growing emigration rate globally.

[INSERT FIGURE 1 ABOUT HERE]

However, with the increasing immigration restrictions (i.e. visa requirements) in the West, many Kenyan migrants—mostly semi- and unskilled—and other African migrants have been increasingly pressured to move to the Gulf countries in search of economic opportunity (Flahaux and de Haas 2016; Malit, Jr. and Oliver 2014). Because of the government's inconsistent data collection of migrant population, there

are no accurate official figures of the number of Kenyan migrants in the Gulf region (Shah 2008; Naufal and Genc 2014). However, the Kenyan government estimated that at least 100,000 Kenyan migrants are currently living and working in the Gulf region. However, Trace Kenya (a charity which rescues Kenyan workers trapped in the Middle East) reported that in Saudi Arabia alone, 80,000 Kenyans are already presently working in the country, while others estimated that at least 300,000 Kenyans are currently present in the Gulf countries (Ngugi 2014; Migiro 2015). As Table 2 indicates, the GLMM database states that 40,000 Kenyan migrants have migrated to the Gulf states, mostly to the UAE, making the UAE the top destination for Kenyan migrants in 2014.

In Saudi Arabia, approximately 6,800 Kenyan migrants have been identified, while other experts indicated at least 80,000 are living and working in the Kingdom. In Qatar, conversely, the government hosts 9,300 Kenyan migrants, and this figure is projected to increase given the demand for Kenyans for Qatar's World Cup 2022. Other Kenyan migrants were also deployed to other Gulf countries, including Kuwait, Oman, and Bahrain (see Table 2), and more recently to Lebanon, Iraq, and Jordan. While these figures appear to be small, they pose the most significant governance and financial challenges to the Kenyan government due to a high level of vulnerability face by these unskilled migrants. The Kenyan government has firmly expressed grave concern over the growing labor abuses and violations faced by Kenyan migrants in the Gulf region. As the Kenyan Ambassador to the UAE acknowledges, "between January and August, 2015, a total of 1,125 Kenyans were deported. It is unfortunate that these returnees will claim all sorts of mistreatment including being tortured, denied food, held hostage, and kept in concentration camps like modern-day slavery" (Mutambo 2015). The growing precarious status of Kenyan migrants concentrated in

unskilled sectors, poses serious migration governance issues and limits the government's capability to develop protection measures to address migrants' labor problems.

[INSERT FIGURE 2 ABOUT HERE]³

Kenyan Diasporas and their Remittance Contributions

Remittances from the Kenyan diaspora, including those from labor migrants, have played an increasingly vital role in the country's socioeconomic development. The growth of Kenyan migrant population globally has contributed to the overall remittance increase, which has proven to be an important foreign reserve source in Kenya.

[INSERT FIGURE 3 ABOUT HERE]

Table 3 indicates that in 2015 the Central Bank of Kenya (CBK) acknowledged that the Kenyan diaspora remitted US \$1.55 billion (excluding unofficial remittances), representing 3% of the country's gross domestic product. While the CBK does not provide a country-specific breakdown of remittance sources, it highlights that nearly 50% of remittance shares came from North America. Remittances from Europe totaled 32.2%, while 18.2% represented the rest of world, including the Gulf countries. Given the increasing migration of Kenyan migrants to the Gulf region, the remittance flows from the Gulf countries are expected to rise. The relative economic growth in the Gulf countries, combined with Kenya's proximity to the area, will certainly make the Gulf countries' markets an important source of employment for the Kenyan government to reduce the country's high unemployment rates.

³ The estimates exclude those migrants' dependents, tourist visa holders, or undocumented migrants.

The Kenyan Government's Emigration Policy Approach and Initiatives

To regulate and harness the flow of economic contributions from Kenyan migrant populations, the government has expanded its foreign diplomatic missions, policies, and programs (see Table 4). This state strategy has indeed facilitated the emergence of Kenya's labor-export program to the Gulf region. While the government drafted and implemented a diaspora policy in 2015, it has not developed a comprehensive strategy to address labor violations faced by Kenyans in the Gulf countries. The lack of an official labor and welfare office, safe shelter house, and other protection initiatives in various Kenyan diplomatic missions—similar to the ones that Asian laborers have in the Gulf countries—directly contributes to the vulnerability of Kenyan migrants (Mutai 2015). Although the government recently set-up a team to visit Saudi Arabian and study the administration of foreign employment and management of labor migration, no actual policy development has been reported to specifically address Kenyan migrant labor problems in the Gulf countries.

Between 2007 and 2011 Kenya increased its diplomatic presence by establishing embassies and consulates to engage with the Gulf countries (see Table 4 below). The Gulf countries also opened (or reopened) their diplomatic missions in Kenya to boost bilateral trade cooperation and investments, which signifies the deepening of bilateral relations among these countries over the past years.⁴ In fact, the Kenyan government has installed Kenyan diplomatic missions in all the Gulf countries except Bahrain to identify employment opportunities, verify requirements, and market Kenyan migrant workers in the Gulf countries.

⁴ The Gulf countries are considered a critical “transit hub” between the East and West, and Kenya also intends to position itself as the main transit hub for the Eastern part of Africa.

[INSERT FIGURE 4 ABOUT HERE]

Also, the Kenyan government has forged various policies to address the broader diaspora issues among Kenyans abroad. As Table 5 highlights, Kenya Vision 2030 is the government's most comprehensive national strategy to “transform Kenya into a newly industrializ[ed], middle-income country providing a high quality of life to of its citizens by the year 2030.” This vision, however, does not address emigration issues. Instead, it focuses more on “remittances from Kenyans abroad” and the need to develop a “comprehensive remittances strategy” to engage with the Kenyan diaspora.

[INSERT FIGURE 5 ABOUT HERE]

Other government planning and policy documents, including the Kenya Diaspora Policy in 2015, prioritized the integration of the Kenyan diaspora into the country's development process. The plan specifically develops measures and mechanisms to enhance protection of Kenyans abroad. In addition, the Kenya Foreign Policy addresses Kenyan diaspora issues, including the promotion and protection of Kenyan interests' abroad. While both governments' efforts focus on general diaspora interests and concerns, they do not have detailed implementation strategies. Moreover, the Kenyan government has drafted both the National Migration Policy and the National Labor Migration Policy, which encompass migration management, reintegration, labor rights, and protection. These policies focus on both regulating and organizing the emigration deployment and monitoring and protecting Kenyans abroad. The government remains ineffective in its capacity to regulate its policies, particularly in the Gulf countries.

The Kenyan government has developed labor-export programs to deploy Kenyan workers, including youths who want to obtain foreign employment opportunities abroad. The Ministry of Labor, Social Security and Services (MOLSS), a government

agency responsible for the temporary labor migration of Kenyans abroad, acknowledges that between January 2011 and June 2013 it formally placed 14,516 Kenyans in all Gulf countries (except Oman) through private employment agencies (IOM 2015). In 2013, Kenya's Ministry of Devolution and Planning's Youth Employment Scheme Abroad (YESA) specifically placed youths to work in the Middle East region, particularly in the Gulf countries. In 2013, under the YESA program, 11,495 Kenyan youths were deployed, of which 61.9% obtained employment in the Gulf countries, mostly in Saudi Arabia, United Arab Emirates, Qatar, and Bahrain. The inconsistent and discrepancy of data on the official total number of Kenyan migrants in the Gulf countries between Kenyan and the Gulf governments' estimates, imply critical governance issues. Therefore, the Kenyan government's labor export programs indicate its growing focus on the deployment of labor to Gulf countries to compete against Asian labor-sending countries to secure foreign employment opportunities for Kenyan migrant workers abroad, despite weak labor protection in place for their nationals.

Kenya and the GCC *Kafala* Sponsorship System

The Kafala sponsorship program is a government policy used to organize and control GCC-based migrant populations. *Kafala* requires all migrants to have an official local sponsor responsible for their immigration, visa, and residency status in the country (Malit, Jr. and Al Youha, 2013; Gardner 2010). The *kafeel* (Arabic for sponsor) controls and regulates the movement of the migrants and has the absolute discretion on the migrants' legal and mobility status in the country. In addition, private sector migrants (construction workers, professionals) are mainly governed by the country's labor laws, while domestic workers were excluded from legal provisions within the labor laws and are administered by the Ministry of Interior (Malit, Jr and Ghafoor, 2014). Within the GCC countries' legal framework on domestic work sector, domes-

tic workers are placed into a more vulnerable legal position because they have no access to the dispute resolution or mediation provided by government labor ministries. Within a more international legal context, unlike the many major labor-receiving countries in Asia and the West, all GCC governments have not ratified the major ILO conventions, particularly the ILO Convention 189 on Domestic Workers adopted in 2011 and most of the major ILO conventions (Fernandez 2014). Therefore, the Gulf countries tend to offer foreign migrant workers, specifically domestic or other unskilled workers, relatively fewer labor rights and protection in the Gulf countries. In the case of Kenyans in the Gulf countries, the Kenyan government is structurally and legally constrained due to both its lack of jurisdictional legal authority to impose regulations on the Gulf countries and its limited bargaining power in the region. These constraints place Kenyan migrants in a legally precarious position.

Comparative Analysis of the Kenyan Government's Experience in Saudi Arabia and the UAE Corridors

Given the Kenyan government's migration governance approach, the following section highlights some of the critical challenges the Kenyan government faces while trying to protect migrants in the Gulf countries.

Illegal and Unethical Recruitment Practices

Recruitment practices—specifically illegal ones—have posed critical policy challenges for Kenya and the GCC governments. Currently, the Kenya-GCC recruitment model is principally run by private sector agents, operating in both origin and destination countries to facilitate the placement of foreign workers abroad. In Kenya's case, however, while there is no official data on the number of illegal recruitment agencies, existing anecdotal reports suggest that the irregular or unlicensed recruitment agencies in Kenya have significantly outnumbered the official ones. Often, the

large presence of illegal recruitment—typically perpetrated by agents or acquaintances—trigger the unlawful recruitment or trafficking of Kenyans to the Gulf countries, often charging exorbitant fees to migrant workers in exchange for foreign job placement abroad. Martin (2015) notes that “high migration costs and pre-migration debts make migrant workers vulnerable to exploitation, reduce remittances and pro-development impacts of international labor migration, and encourage some migrants to overstay their time abroad to achieve savings targets.” Given the relatively easy job placement in the Gulf countries, many Kenyan workers continuously pay recruitment fees to recruitment agents, including illegal ones, to secure employment. This type of recruitment act negatively impacts the Kenyan government's institutional and administrative capacity to protect Kenyan migrants' from unethical hiring practices both in Kenya and in the Gulf countries.

In Saudi Arabia, the Kenyan government has reported that Kenyan migrant workers are often concentrated in low-skilled occupational sectors. The Kenyan Ambassador, Mr. Mohammad Abdi Mohamud, said non-skilled laborers (household workers, farm and construction workers), who form the bulk of Kenyan migrants, face serious challenges in protecting their nationals. For example, Kenyan government officials found it difficult to protect those Kenyan migrants runaways who violate the residency status and illicit activities such as alcoholism, pimping, drug trafficking, human trafficking, theft, forgery, and prostitution, which tarnish the country's reputation (Mutai 2015). In 2010, at least 3,000 Kenyans travelled to visit the Mecca in Saudi Arabia using a *hajj* visa (Jamah 2010). The problem, however, is that agents and brokers utilize this type of *hajj* visa to facilitate the entry of Kenyan workers, who overstay their visas and become illegal by working in Saudi Arabia. There are no accurate figures on the total number of illegal migrants, mainly Kenyans, in the Gulf

region since sending countries - like Kenya - and other Gulf countries do not accurately record the number of illegal populations (Fargue et.al 2015).

Similar to Saudi Arabia, the UAE hosts a large proportion of unskilled Kenyan migrants, often concentrated in service-based sectors and hold jobs as cleaners, hospitality workers, domestic workers, or in other low-paying sectors in the UAE labor market (GLMM 2014). However, the Kenyan government in the UAE faces challenges in controlling recruitment malpractice due to the relatively flexible nature of the UAE's immigration policy. Unlike Saudi Arabia's immigration process, the UAE's more flexible immigration process enables Kenyan migrants to enter the UAE on a tourist visa; eventually these visas become employment visas. This "soft" immigration policy strategically permits recruitment agents and brokers, who have connections in Kenya, to deploy Kenyan migrants as tourists, bypassing any Kenyan government regulations or other related travel warnings. Kenyan migrants who enter on tourist visas often face labor abuse and exploitation from recruiters or agents. Our UAE-based fieldwork suggests that many Kenyan visitors/migrants have paid exorbitant fees, between US \$1,200 and US \$2,000 or more, to secure foreign job placement in the UAE. John, a Kenyan migrant in the UAE, notes, "I came on a tourist visa to the UAE. I paid almost \$2,500 to come to the UAE and I sold our small business in Kenya so I could pay my agent. When I arrived in the UAE, I didn't get what I was promised. The company in the UAE told me that I'd be a cleaner and said that they paid the entire recruitment cost to the agent already." This type of illegal and unethical practice violates UAE government's recruitment regulations and makes workers vulnerable to abuses, debt bondage, and servitude in the labor market.

Our fieldwork findings revealed that Kenyan agents often forced migrants to sign initial contractual arrangements upon arrival in the UAE that provided false

information (HRW 2013). Mark, another Kenyan tourist visa holder, noted, "When I came here, there was no job for an administrative position, only for the cleaner. I was put in a room with 12 other foreigners, and I had no money. I thought I was going to achieve my dream here, but I had no choice but to take the lower offer. I couldn't go back home." When migrants arrive in the UAE, many recruitment agents and some employers force Kenyans to accept the employment contract even though they are inconsistent with their initial agreement signed in Kenya. The lack of a pre-departure program has provided limited legal and rights awareness to Kenyan migrants, making them more vulnerable in the UAE labor market (IOM 2011). This recruitment operating structure has created significant financial opportunities for brokers/agents to exploit migrants. It has also posed regulatory challenge for the UAE-based Kenyan consulates and embassies and the UAE government, as they attempt to combat unethical recruitment practices.

Contract Substitutions

Many Kenyan migrants often face contract substitution in either origin or destination countries, whereby agents – both legal and illegal – deliberately provide false contract information to prospective applicants to lure them to accept their employment offer. Often, Kenyans were promised to work as domestic workers but then turned to work in domestic servitude, brothels, massage parlors, or in forced manual labor (Migiro 2014). Malit, Jr. and Naufal (2016) argue that recruitment agents often play a deliberate role in providing false information to migrants, often giving them discretionary power to take advantage of workers' income and employment status. This asymmetric information has generated labor abuses within the market and negatively affected the wages, employment status, and, in some cases, triggered the early departure of the migrant in the Gulf countries.

In Saudi Arabia, the Kenyan government has increasingly continued to deal with the consequences of contract substitutions on migrant workers' behavior and decision-making. Because of the false promises provided to Kenyan migrants, they often run away from their sponsors/employers due to labor abuses and contract violation, particularly on wages, hours of work, and benefits that were not provided by the employer. In 2013, the Kenyan government rescued 800 Kenyan workers in Saudi jails for various violations; many of these workers had employers who violated their contracts (Migiro 2014). These contract substitutions also put significant administrative, financial, and diplomatic constraints on the frontline Kenyan and Saudi labor authorities who have to deal and negotiate with the Saudi government.

In the UAE, however, the Kenyan government has also continued to face serious regulatory challenges in protecting Kenyan migrants, particularly domestic workers in the UAE labor market. As Camille, a Kenyan migrant acknowledges, "I came to the UAE as a domestic worker, and I was promised to earn US \$400 by my agent, and I signed a contract. When I came here, I only received about half. I tried to run away but I could not because I didn't know anyone. I finally ran away and was reported to the Kenyan authorities." In Camille's case, the Kenyan government has no capacity to enforce a contract signed by Camille with her agent because the UAE government does not honor unofficial contracts signed by migrants with agents (HRW 2013). Furthermore, the Kenyan government has no capacity to extend dispute resolution to Camille because, as a domestic worker, she is excluded from the UAE national labor law's dispute resolution mechanisms to appeal for an employee's rights. This case indicates the Kenyan government's limited capacity and power to both protect its nationals and impose its regulations on the host country.

Moreover, while some Kenyan migrants report abuses to the Kenyan consulate in Dubai or embassy in the capital city of Abu Dhabi, others do not report the problem to the Kenyan authorities due to perceiving "long process" and "inability" of the government to extend protection for them. Because of these particular challenges, the Kenyan government finds it difficult to understand and address the critical challenges faced by Kenyan migrants in the UAE.

Bureaucratic Corruption

The corruption issues, particularly among state officials and agents, have also undermined the legitimacy of Kenyan institutions and policymaking, which, to a large extent, has serious policy implications for Kenyan migrants' welfare in the Gulf countries. As echoed in the UAE case, Kenyan migrants in Saudi Arabia often report perceived inadequacy and corruption of state officials who are mandated to assist Kenyan migrants in the country. The Kenyan labor minister acknowledged that Kenyan staff embassies often are in "cahoots" with recruitment agents to capitalize on growing interests of Kenyan migrant workers to find employment in Saudi Arabia (Wandera 2015). The presence of these illegal recruitment agencies, operating jointly with some government authorities, actively forced the government to investigate corruption and malpractice by revoking 930 recruitment agencies on September 29, 2014, due to the ongoing labor exploitations reported by Kenyan workers in the Middle East (Ngugi 2014). This "internal" regulatory struggle within the Kenyan bureaucratic government poses a critical threat to the government's legitimate role as a state protector of the entire Kenyan migrant population in the Gulf countries.

In the UAE, the Kenyan community has discussed the perceived massive corruption among Kenyan foreign diplomatic missions. In fact, the Kenyan government has subtly highlighted its significant presence within foreign diplomatic missions,

which has critical implications for Kenyan diaspora relations (see an introductory quote from the Kenyan labor minister). Many interviewed Kenyan migrants often do not seek welfare support and assistance from the governing consulate due to the perceived corruptions in place, which reduces their institutional trust in governing officials. As one Kenyan migrant, James, says, "Many Kenyans don't really go there because they [officials] don't care. Even if we ask for help, they will not help us. They only care about themselves, and they are not welcoming people. Because of this, many Kenyans don't go there to ask for help. It's not going to do us good." This lack of trust impacts the officials' ability to engage with Kenyan nationals and foster good diplomatic relationships with the diaspora community living and working in the UAE.

Absence of bilateral labor agreements

The Kenyan government has not formalized bilateral labor cooperation agreements with any Gulf governments, therefore placing Kenyan migrants in a more vulnerable legal position in the host country. In Saudi Arabia, the Kenyan government has continued to export unskilled laborers who are often vulnerable to labor abuses and exploitation due to the lack of protection mechanisms. In fact, HRW reports suggest that employers of Kenyan domestic workers often illegally deduct their wages, and in some cases, do not pay them at all, violating the Kenyan domestic workers' contractual rights. This lack of bilateral labor agreement makes it difficult for the Kenyan government to assert workers' rights and places the workers and their families in Kenya in a legally and financially precarious position.

Similarly, the Kenyan government has not signed a labor agreement with the UAE government, which makes Kenyan migrants vulnerable in the host country. Given the increasing number of Kenyan domestic workers in the UAE, no existing bilateral agreements have been signed publicly to address Kenyan migrants' labor pro-

tection problems. The lack of an established bilateral labor agreement, particularly for domestic workers, presents a critical gap that the Kenyan government needs to reconsider.

The Kenyan Government's Policy Interventions and Limitations

Given the Kenyan government's complex challenges in the Gulf countries, it has actively pursued various policy measures—often temporary and with limited mechanisms—to address the growing labor violations faced by Kenyan migrants. The following section highlights several recent attempts by the government to address labor abuses reported by Kenyans in the Gulf countries.

Deployment Policy Ban

In June 2012, the Kenyan government banned the deployment of Kenyan domestic workers to all countries in the Middle East because of the growing pressure from local and international Kenyan civil society groups (Hiraan Online 2016). However, in November of 2013, the government lifted the deployment policy ban. As the Kenyan Ambassador to Saudi Arabia acknowledges, “As a way forward, if there are no watertight protections for female workers to the kingdom, the government should ban exportation of women workers to the kingdom due to their vulnerability and strict conditions for women in the kingdom” (Mutambo 2015). In response to the growing abuses reported by Kenyans abroad, on September 29, 2014, the Kenyan government also revoked 930 licenses of recruitment agencies that recruit Kenyans working in the Middle East, particularly in the Gulf countries. While this government effort is a significant symbolic step toward addressing labor violations, the recruitment and reported abuse of Kenyan migrants have remained. In fact, illegal deployment of Kenyan

domestic workers to Saudi Arabia has continued due to the growing corruption embedded in the recruitment industry (IOM 2015).

Shelter Houses and an Assistance Fund

Because of the growing presence of runaway, abused domestic workers, the Kenyan Parliament has recommended that the government's Treasury needs to set up a fund, whose proceeds will be used to rescue Kenyan migrant workers stranded in the Middle East (Mutai 2015). The National Assembly Committee on Labor and Social Welfare acknowledges, "The Ministry of Foreign Affairs and International Trade and the National Treasury should provide a special fund to the missions in the Middle East, especially Saudi Arabia, to enable them to deal with the numerous migrant labor challenges, including setting up a safe house." This safe house, similar to other Gulf-based Asian labor-sending countries, is a protection strategy by the Kenyan government that practically would serve as a temporary housing for domestic and other-related workers who are awaiting for their labor, immigration, and police cases prior to their repatriation to Kenya. While these proposals have already been highlighted, no actual policy programs or mechanisms have been developed or implemented to address the growing vulnerability of Kenyan migrants in the Gulf countries.

Macro- Factors that Constrain the Kenyan Government's Protection Ability

Growing Bilateral Trade Between the Gulf Countries and Kenya

The Kenyan government's economic relationship with the Gulf countries constrains the government's ability to protect its nationals and address labor abuses faced by Kenyan migrants. Given the Gulf countries' economic relevance – both in the labor market, trade, and investment opportunities – the Kenyan government has prioritized critical trade relationships with the Gulf countries to maximize its national economic interests abroad. In 2011, the Kenyan and UAE governments signed (but

have not yet ratified) an agreement to increase trade relations by preventing double taxation in each country and finalizing customs administrative support agreements to promote and protect investments (Odhiambo 2011). Their effort aims to boost UAE investor relations with Kenya and facilitate longer and friendlier diplomatic ties in the long run. Similarly, on September 13, 2014, the Kenyan government signed an important agreement with Qatar to increase bilateral maritime cooperation by creating a direct shipping route between Mombasa and Doha. In accordance with the agreement, Kenyan seafarers would obtain employment priority in Qatari shipping lines. The agreement is expected to increase ongoing trade in energy, transport, construction, labor, tourism, and agriculture. These particular trade agreements suggest that the Kenyan government's diplomatic and economic interests significantly prevail over the labor protection rights for its nationals in the Gulf countries.

Humanitarian Aid as a Soft Power

The Gulf countries also utilize humanitarian assistance to Kenya as a *soft power* to improve economic diplomacy relationships and affect bilateral migration policymaking. One of Saudi Arabia's humanitarian programs, "Saudi Fund for Development" has implemented multi-million dollar projects in Kenya, providing aid for the Nairobi Water Supply, Kenya-South Sudan Road, Thika-Garissa-Liboi Road, Mombasa Sewage, Kiambere Hydro Electricity Power, Agriculture Sector Support, and the Garissa Water Supply (Kenyan Embassy in Riyadh, Unknown date). More recently, the Saudi government approved US \$ 4.26 million for the construction of the 146km Nuno-Modagashe road and other assistance to improve the development of infrastructure, water, irrigation and agriculture (Amran 2011).

In the UAE, a civil society group Dar Al Bern, runs 80 charity programs in Kenya, offering services such as building mosques, digging wells, and sponsoring or-

phan children and Quranic teachers in the local community (UAE Interact 2008). Private sector entities, such as the UAE's national airline Etihad, partnered with Kenyan-based organizations, such as Dream Children's Home, and the Children in Freedom organization, to provide blankets and school supplies to underprivileged communities. This humanitarian assistance deepens and contributes to the ongoing economic relationships between the Gulf countries and Kenya and subtly impacts Kenya's ability to negotiate or assert labor rights for their nationals in the Gulf countries. By exerting more labor protections for its nationals in the Gulf countries, the Kenyan government holds an inherent fear that they could affect their diplomatic relationships with Gulf governments, and therefore lose market competitiveness for their nationals in the region. Humanitarian aid is therefore covered by the Gulf countries' foreign policy instruments, which limits the Kenyan government's ability to assert itself with the Gulf countries when it comes to labor migration and protection issues.

Gulf as an Open Market for Unskilled Workers

Recently, the Kenyan government has fostered stronger amicable diplomatic and trade relationships with the Gulf countries to secure employment opportunities for Kenyan migrants. Through the establishment of diplomatic missions in Kenya (except Bahrain), the Kenyan government has forged deeper economic links with the Gulf countries, which have been able to exert their economic interests—both through investment and labor cooperation—helping them maximize Kenya's development potential. In particular, the Gulf countries' current labor shortage has compelled them to consider Kenyan labor supply and developed broader trade relations on agriculture and other critical investments in raw materials. More importantly, Kenyan migrants in the Gulf countries have helped diversify or act as cheaper, labor substitutes to the Gulf labor market, and provided an access to low-cost labor to the Gulf-based em-

employers. The continuing inflow of Kenyan migrants, particularly domestic workers, has symbolically reduced the bargaining power of Asian labor-sending countries (particularly domestic workers from the Indonesia and the Philippines) and inadvertently prolonged the ongoing silent dispute between Gulf countries and Asian sending countries in the labor market. This ongoing dispute, however, has therefore become an opportunity for the Kenyan government to replenish the labor shortage that once Asian labor-sending countries have dominated, particularly domestic work in the UAE and Saudi Arabia, and almost all unskilled jobs in the GCC labor market.

Conclusions

This paper has examined the Kenyan government's complex challenges in extending institutional, legal, and diplomatic labor protection to Kenyan migrants in Saudi Arabia and the UAE. This paper offers the following conclusions. First, the power asymmetry between the Kenyan and Gulf governments limits the Kenyan Government's ability to bargain for stronger labor protection for Kenyan migrants. This power asymmetry is a result of the imbalance of resources each country possesses and the Gulf governments increasing use of *soft power* to potentially exert influence over the Kenyan government. In fact, the Gulf countries' ability to serve as a labor outlet for low-skilled Kenyan labor—and, in most cases, act as an economic financier—not only eases Kenya's economic problem, but also offers a critical source of remittances crucial to Kenya's economic development. Moreover, given the increasing Gulf countries' labor shortage, along with current labor bans on other Asian sending countries' domestic workers, access to Kenya and other Sub-Saharan African countries is key to the Gulf's economic development.

Secondly, the lack of bilateral labor cooperation agreements and unified contracts with the Gulf countries puts Kenya in a difficult position to assert their territori-

al right to more labor protection, particularly in regard to enforcing contractual rights in the region. Third, the lack of comprehensive priority for labor protection, combined with the limited institutional, administrative, and resource capacities, makes it principally difficult to protect Kenyan migrants from labor abuses and exploitation. Fourth, because of all of these political dynamics, Kenyan migrants, particularly domestic workers, have become both legally vulnerable and susceptible to more labor abuses and exploitation from recruitment brokers/agents, and state bureaucrats.

Fifth, the highly unregulated nature of Kenya's recruitment industry, combined with the bustling informal agents and brokers operating in Kenya and GCC, allow for opportunities for recruitment brokers. This particular context, however, poses direct regulatory challenges to the governments of Kenya and the Gulf countries, and simultaneously makes Kenyan migrants more vulnerable during the migration process. The demand and inflow of Kenyan migrants to the Gulf region is likely to increase in the long run. If the Kenyan government does not act accordingly, the likelihood that more Kenyans will be violated will increase over time. This governance gap not only generates practical challenges for the Kenyan government, but also poses threats to their country's long-term foreign labor policy approach and their responsibility towards Kenyan migrants living in the Gulf countries.

On a more broader regional context, the case of Kenya is part of a broader trend among many labor-sending African governments, including those of Ethiopia and Uganda, that aim to address their growing unemployment problems by developing labor export-based programs (i.e. Uganda signed in 2014 an agreement with Saudi to deploy Ugandan domestic workers) to high-income destination countries, including the Gulf countries. However, despite the known limited or weak institutional and regulatory protections in place, many African labor-sending countries have continued to

deploy workers aggressively, often competing against Asian labor-sending countries in the Gulf countries. As the growing tension between the Asian and Gulf countries has ensued, African migrants, particularly domestic workers, have increasingly flowed into the Gulf countries, replacing Asian workers in various unskilled jobs. This governmental dilemma of Kenya and other African labor-sending countries has not only generated profoundly impacted the labor rights and welfare of migrants, but will also serve as a critical migration policy discourse between the Africa-GCC corridor that needs further global scientific inquiry in the future.

References

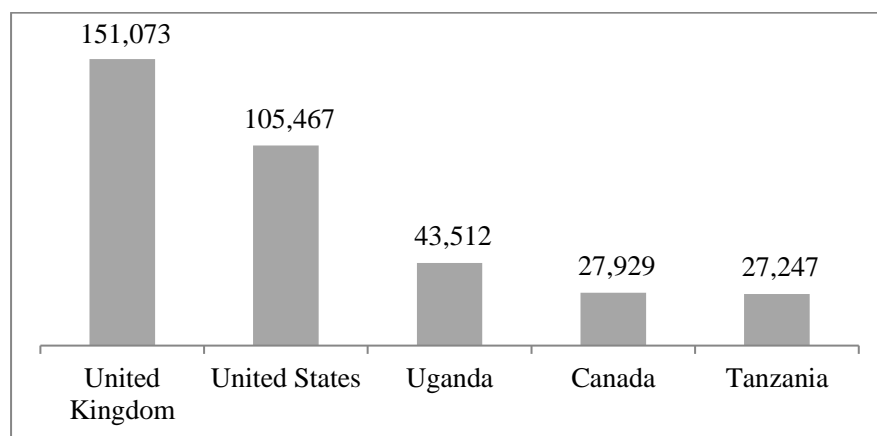
- Al Anazi, Mohammed. 2016. "Gulf railway to create 80, 000 jobs," *Saudi Gazette*. April 26. <http://saudigazette.com.sa/saudi-arabia/gulf-railway-create-80000-jobs/>.
- Begum, Rothna. 2015. "Working abroad—and facing abuse." *Huffington Post*. December 18. <https://www.hrw.org/news/2015/12/18/working-abroad-and-facing-abuse>.
- Central Bank of Kenya. 2016. "Diaspora Remittances." Retrieved date: 29 May 2016. <https://www.centralbank.go.ke/index.php/diaspora-remittances>.
- Embassy of the Kingdom of Saudi Arabia. 2016. <http://embassies.mofa.gov.sa/sites/Kenya/EN/Pages/default.aspx>.
- Fargue, Philippe, De Bel-Air, Françoise, and Shah, N. 2015. Addressing Irregular Migration in the Gulf States. *GLMM Policy Brief – No.1/2015*. <http://gulfmigration.eu/media/pubs/briefs/GLMM%20Policy%20Brief%20-%20No.%201%20-%202015%20-%20Gulf%20Irregular%20Migration%20-%20Final.pdf>.
- Fernandez, Bina. 2014. Essential yet Invisible: Migrant Domestic Workers in the GCC. *An Explanatory Note GLMM No. 4/2014*. http://gulfmigration.eu/media/pubs/exno/GLMM_EN_2014_04.pdf.
- Flahaux, Marie-Laurence and De Haas, Hein. 2016. "African migration: trends, patterns, drivers." *Comparative Migration Studies*. 4:1.
- Gulf Labor Markets and Migration (GLMM). 2014. *UAE: Estimates of population residing in the UAE by country of citizenship (selected countries, 2014)*. <http://gulfmigration.eu/uae-estimates-of-population-residing-in-the-uae-by-country-of-citizenship-selected-countries-2014/>.
- Hiraan Online. 2016. "Despite abuses, Saudi Arabia aims to recruit 15,000 Somali maids." *Hiraan Online*. January 30. http://www.hiraan.com/news4/2016/Jan/103860/despote_abuses_saudi_arabia_aims_to_recruit_15000_somali_maids.aspx.
- Human Rights Watch (HRW). 2013. 'I already bought you': Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates. Retrieved date: 23 May 2016. <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>.
- International Organization for Migration (IOM). 2015. *Migration In Kenya: A Country Profile 2015*. https://publications.iom.int/system/files/pdf/migration_profile_kenya.pdf.
- 2011. Pre-departure orientation programme in Kenya.

<https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/kenya/Pre-Departure-Orientation.pdf>.

- Jureidini, Ray. 2010. Trafficking and contract migrant workers in the Middle East. *International Migration*, 48(4), 142-163.
- Jureidini, Ray. 2014. Arab Gulf States: Recruitment of Asian Workers. *Explanatory Note No. 3/2014*, Gulf Labour Market and Migration (GLMM) <http://gulfmigration.eu>
- Kenyan Embassy –Saudi Arabia. Unknown date. “Kenya-Saudi Arabia: Deepening of Bilateral Relations.” <http://kenyaembassyriyadh.com/kensaudia.html>.
- Malit, Jr. Froilan and Naufal, George. 2014. “Asymmetric Information under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers’ Income and Employment Status in the GCC Countries.” *International Migration (forthcoming)*
- Malit, Jr. Froilan and Ghafoor, Safa. 2014. “Domestic Work Legislation in the GCC Countries: A Comparative Policy Review.” *International Gulf Organization Policy Brief Series No. 01*. Retrieved date: 20 May 2016. <http://www.igogcc.org/wp-content/uploads/2014/07/Policy-Report-Final-English-1.pdf>
- Malit, Jr. Froilan and Tchiapep, Oliver. 2014. “Labor Migration and Deskilling in the United Arab Emirates: Impacts on Cameroonian Labor Migrants.” Retrieved date: 31 May 2016, from Cornell University, ILR School site: <http://digitalcommons.ilr.cornell.edu/workingpapers/171/>
- Martin, Philip. 2015. “Reducing Worker-Paid Migration Costs.” *International Training Center – International Labor Organization (ITCILO)*. <http://courses.itcilo.org/A358214/speakers-and-lectures/module-2/the-effects-of-labour-immigration-reducing-and-measuring-migration-costs-dr-phil-martin-professor-of-agricultural-economics-university-of-california-davis-chair-of-the-university-of-californias-comparative-immigration-and-integration-program/paper-reducing-worker-paid-migration-costs-philip-martin>
- Migiro, Katy. 2015. “Desperate Kenyan maids abused in Middle East despite ban.” *Reuters*. May 26. <http://www.reuters.com/article/us-rights-domesticworkers-kenya-idUSKBN0OC02K20150527>.
- 2014. “Kenyan domestic worker stabbed, burned by Saudi employer-report.” *Thomson Reuters Foundation*. September 2. <http://news.trust.org//item/20140902142724-oget4/?source=dpMostPopular>.
- Migration Policy Institute. 2015. *The Kenyan Diaspora in the United States*. www.migrationpolicy.org/sites/default/files/publications/RAD-KenyaII.pdf
- Morgan, Guy, Lim, Lindsey, Xie, Lewis, and Beier, Julia. 2012. *Migrant Workers and*

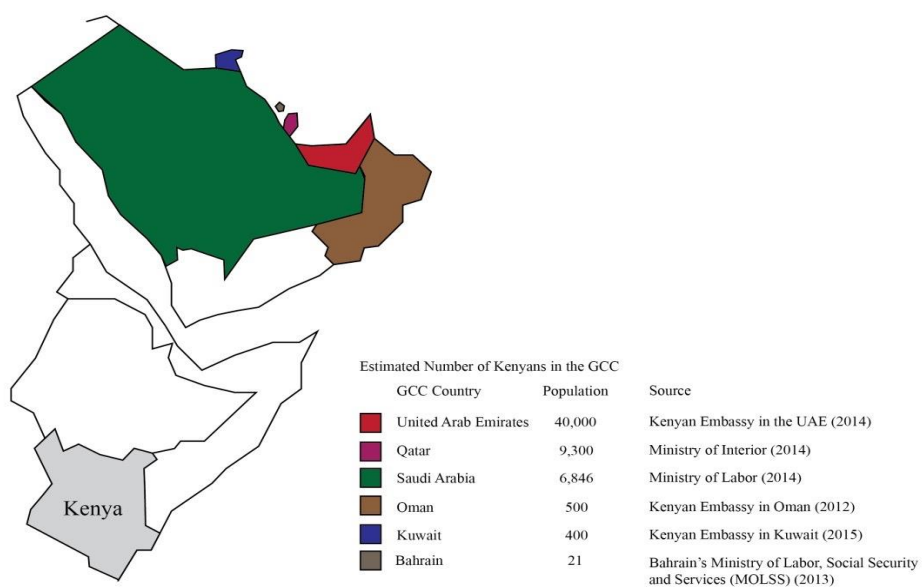
- the FIFA World Cup 2022 in Qatar: Actions for Business*. Business for Social Responsibility. <http://www.ilo.org/dyn/migpractice/docs/177/FIFA.pdf>.
- Mutai, Edwin. 2015. "MPs plan safe haven for Kenyan workers in Saudi." *Business Daily Africa*. December 14. <http://www.businessdailyafrica.com/MPs-plan-safe-haven-for-Kenyan-workers-in-Saudi/-/539546/2995322/-/yiemf/-/index.html>.
- Muttambo, Aggrey. 2015. "Envoy wants Kenyan women barred from taking jobs in Saudi Arabia." *Daily Nation*, September 8. <http://www.nation.co.ke/news/Envoy-wants-Kenyan-women-barred-from-taking-jobs-in-Saudi-Arabia/-/1056/2863124/-/qwj3bhz/-/index.html>.
- Naufal, George and Ismail Genc. 2012. *Expats and the Labor Force: The Story of the Gulf Cooperation Council Countries*. New York: Palgrave Macmillan.
- Ngugi, Brian. 2014. "Kenyan government moves to combat migrant worker abuse in the Gulf." *Equal Times*. October 13. http://www.equaltimes.org/kenyan-government-moves-to-combat?lang=en#.VxM_nNR94dV.
- Odhiambo, Allan. 2011. "Kenya frees more trade partners from double tax." *Business Daily*. November 23. <http://www.businessdailyafrica.com/Corporate-News/Kenya-frees-more-trade-partners-from-double-tax/-/539550/1278270/-/yln380z/-/index.html>.
- Ruhs, Martin. 2013. *The Price of Rights: Regulating International Labor Migration*. Princeton University Press.
- Shah, N. M. 2004. "Gender and labor migration to the Gulf countries." *Feminist Review*. (77): 183-185.
- UAE Interact. Unknown date. "Dar Al Bern runs 80 charity projects in Kenya and Tanzania." *UAE Interact*. Unknown date. http://www.uaeinteract.com/docs/Dar_Al_Ber_runs_80_charity_projects_in_Kenya,_Tanzania/73666.htm.
- United Nations Department of Economic and Social Affairs. 2015. "Trends in International Migrant Stock: Migrants by Origin and Destination." <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>.
- Wandera, Steven. 2015. "Ugandan graduates to get jobs as maids in Saudi Arabia." *Sunday Monitor*. July 9. <http://www.monitor.co.ug/News/National/Ugandan-graduates-to-get-jobs-as-maids-in-Saudi-Arabia/-/688334/2780290/-/fu7h7w/-/index.html>.

Table 1: Top 5 Kenyan Migrant Destinations



Source: United Nations Department of Economic and Social Affairs

Table 2: Kenyan Migrants in the Gulf Countries



Source: Migration Policy Institute 2016

Table 3: Kenyan Diaspora Remittances (2004-2016)

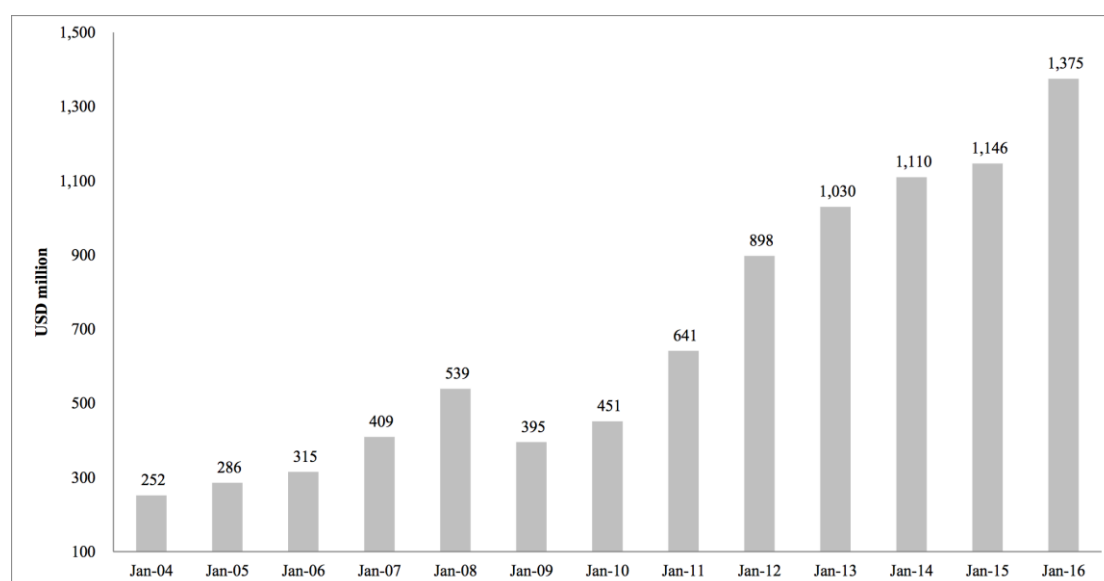


Table 4: Kenya and GCC Establishment Years of Foreign Diplomatic Relationships

GCC Country	Type of Diplomatic Mission	Location	Kenya's diplomatic mission in the GCC	GCC country's diplomatic mission in Kenya
Bahrain	NA	NA	NA	NA
Kuwait	Embassy	Kuwait City	2007	1965
Oman	Embassy	Muscat	2011	1977 (opened); 1986 (closed); 2013 (re-opened)
Qatar	Embassy	Doha	2010	2012
Saudi Arabia	Embassy	Riyadh	Unknown	Unknown
UAE	Embassy	Abu Dhabi	1982	2012
	Consulate	Dubai	2010	

Source: Migration Policy Institute 2016

Table 5: Kenyan Migration Policy

Year	Policy	Content
2007	Kenya Vision 2030	<ul style="list-style-type: none"> ▪ Highlights the country's development program covering the three pillars, which are economic, social, and political. ▪ Focuses on the link between remittances and diaspora development
2009	Draft Kenya National Migration Policy	<ul style="list-style-type: none"> ▪ Prepared in 2009 and the current status and content unknown.
2010	Kenya National Labor Migration Policy	<ul style="list-style-type: none"> ▪ Addresses comprehensive migration topics, including labor migration management, individual and social security rights, reintegration, labor protection, labor market opportunities, and formalization of foreign labor market partnerships.
2014	Kenya Foreign Policy	<ul style="list-style-type: none"> ▪ Promotes and protects the interests of Kenyans abroad and the enhances partnerships with the Kenyan diaspora and their descendants as critical elements of Kenya's foreign policy priorities.
2014	Kenya Diaspora Policy	<ul style="list-style-type: none"> ▪ Focuses on engaging, organizing, and mobilizing with the Kenyan diaspora; extends protection measures for the diaspora, while fostering coordination and dialogues to enhance state-diaspora partnerships.

Source: International Organization for Migration 2015