

# RECRUITMENT ADVISOR

**Analysis of recruitment reviews from migrant workers  
Perspectives from Kenya**

**By Caroline Khamati Mugalla  
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## **Acronyms/Abbreviations**

COTU- K	Central Organization of Trade Unions, Kenya
FKE	Federation of Kenya Employers
ILO	International Labour Organization
KLMIS	Kenya Labour Market Information System
NEA	National Employment Authority
NGOs	Non- Governmental Organisations
PEAs	Private Employment Agencies
MOL	Ministry of Labour
MRA	Migrant Recruitment Advisor
ITUC	International Trade union Confederation

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## Executive Summary

High levels of unemployment (about 7.4 per cent) with about 85 per cent being below 35 years remain a key development challenge in Kenya. Coupled with rapid population growth, labour market rigidities and other socio-economic challenges domestically, many Kenyans are pushed to look for employment in foreign countries as migrants. However, despite the existence of various institutional, legal and policy arrangements and instruments to facilitate and regulate labour migration and to ensure fair recruitment, Kenyan migrant workers continue to face fundamental and labour right violation during their migration process as well as during their employment. In fact, desperation to migrate abroad for employment on the premises of higher salaries and poor government oversight over recruitment practices and the activities of the private employment agencies make aspiring migrants vulnerable to fraud, extortion, and exploitation in the hands of labour recruiters, intermediaries and traffickers.

This report informs about the labour recruitment and recruitment agencies based on the reviews from 479 reviewers provided to Recruitment Advisor. The key findings from the analysis of the reviews are presented as follows:

**Key roles of friends and Sub Agents in hiring migrant workers.** Friends and Sub-agents/Brokers continue to play an important role in facilitating the migration of Kenyans seeking foreign employment. The study identified showed that 47 per cent of the total reviewers had learnt about the job abroad through friends while 41 per cent learnt from Sub Agents/Brokers.

**Migrant workers are paying recruitment and other related fees.** The result of the analysis shows that 76 per cent of the Kenyan migrants paid various fees related to recruitment. This implies that only 24 per cent did not meet the costs of recruitment and other related costs.

**Majority of the Kenyan migrant workers did undergo pre-employment orientation.** Notably, the study shows that about 65 per cent of the reviewers did undergo pre-employment orientation and therefore did have relevant pre-employment information. However, about 35 per cent did not undergo such trainings. Information received during the orientation included the rights and obligation of migrant workers, complain registration and useful contacts and services in the destination country.

**Migrant workers continue to be deceived about their contracts, jobs and salaries.** The study shows that 76 per cent of the Kenyan reviewers had not received a contract. Among those who received the contract, 75 per cent indicated that they could not understand the contract language. However, of the reviewers who mentioned to have understood the contract, the terms and conditions contained in such contracts were barely on salaries, job location and accommodation and in disregard of other benefits. On the same note, 71 per cent of the reviewers indicated that they did not receive the jobs they were promised while an overwhelming 82 per cent did not receive the salaries they were promised.

**Passports and other documents of the migrant workers were withheld by the employer.** Surprisingly, all the Recruitment Advisor reviewers indicated that they had not been able to retain possession of their passports and other documents while they were working abroad as they were withheld by the employers.

**Migrant workers were deprived of the freedom of association and right to return.** All the reviewers indicated that they neither had the opportunity to resign from their employment nor join a trade union or worker association to represent them in the foreign countries. Some indicated that they were not aware if trade unions existed in these countries of destination.

On the basis of the findings outlined, the study proposes the following actions by COTU-K to enhance the achievement of decent work for the Kenyan migrant workers:

Firstly, carry out intensive campaigns including during the tripartite consultations on:

- Promoting access to regular sources of information on foreign job opportunities for the migrant workers in Kenya. COTU-K could as well provide such information on their websites on links to such employment opportunities. A specific information desk for

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migrant workers can as well be set at COTU-K headquarters and also consider redesigning COTU-K website to in cooperate components of labour migration

- Abolishment of all costs related to recruitment being incurred by the migrant workers.
- Enhanced campaigns for mandatory Pre-employment orientation without which no deployment of the migrant workers.
- Enhanced campaigns for mandatory issuance of written understandable employment contracts with clear content and complete adherence to the contents thereof.
- Enhanced campaigns for intensive labour inspection in all workplaces of the migrant workers to deal with violations of rights, abuse and mistreatment
- Campaign for the right to possessing of Passports and other documents by the migrant workers during employment.
- Lobby for the establishment of rehabilitation centres of distressed migrant workers.

Secondly, carry out intensive advocacy for the improvement on legislation of migrant workers both locally and internationally to allow for transnational trade union representation so that the migrant workers could be represented by their domestic trade unions.

Thirdly continue advocacy and campaigns for fair recruitment practices, sensitization on the rights of migrant workers in collaboration with community leaders at the grassroots.

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## 1. Introduction and Methodology

The Central Organisation of Trade Unions – Kenya in Collaboration with ITUC – Brussels on the 29<sup>th</sup> October, 2018 launched the Migrant Recruitment Advisor (MRA) project at Solidarity Building, COTU-K Headquarters whose objective is to create awareness and collect information on Migrant Workers for the development of the Migrant Recruitment Advisor website launched by ITUC whose ultimate goal is to spear head fair recruitment and safe migration of migrant workers and reduced vulnerability to forced labour.

Recruitment Advisor is a global recruitment and employment review platform offering you easy access to information about recruitment agencies and workers' rights when you're looking for a job abroad. Recruitment Advisor is developed by a consortium of unions from different countries. Recruitment Advisor has coordination teams in different countries (currently in the Philippines, Indonesia, Nepal, Sri Lanka, Bangladesh, Kenya, Hong Kong, Bahrain, Jordan). Together with several other organizations in each country, the team reaches out to the workers with the mission to raise awareness on the workers' rights to be fairly recruited based on ILO General Principles and Operational Guidelines for Fair Recruitment and to encourage workers to share and learn about fair recruitment through Recruitment Advisor.

The ultimate goal of the global MRA website is to improve the recruitment process and to ensure the safe migration for migrant workers across the world.

The MRA website will provides the following:

Accurate information to migrant workers on their rights and obligations during the recruitment process based on their countries of origin and intended countries of destination.

Currently, listed countries on the MRA website include; Kenya, Nepal, Philippines, Indonesia, Hong Kong, Jordan, Sri Lanka, Bangladesh, Ghana, Saudi Arabia, Qatar, Taiwan, South Korea, Malaysia, Singapore, United Arab Emirates, Oman, Kuwait, Lebanon and Bahrain.

The webpages also refer [ILO's General Principles and Operational Guidelines for Fair Recruitment](#) which often goes beyond national legal requirements as well as ILO's definition of recruitment fees and related costs, after its adoption at a tripartite meeting of experts supported by the REFRAME programme in November, 2018.

Pooled reviews by migrant workers on the services provided by labour recruiters in both countries of origin and destination<sup>1</sup>. The reviews will cover the practices of private employment agencies as well as informal recruitment agents (when identified by migrant workers)<sup>2</sup>. Prospective migrant workers will be able to access these reviews and make a more informed decision on their own migration journey.

Information on existing support services for migrant workers who have been victim of deceptive and fraudulent recruitment practices in the countries covered by this implementation agreement and referral to effective support. The MRA website will be linked to a violation reporting mechanism run by Migrant Forum (MFA) in Asia and the Middle East which is connected to emergency response protocols of its members at the national level. For Kenya, the emergency response will be handled by COTU-K with their migrant desk officer.

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<sup>1</sup>The MRA website currently focuses on the following destination countries: Saudi Arabia, Qatar, Hong Kong, Taiwan, South Korea, and Singapore but will include more as soon as the volume of data entered for other countries of destination is sufficient.

<sup>2</sup> A pre-existing list of licensed/accredited private employment agencies (based on the government list when possible) will be available on the national webpages. In addition, workers can add a new agency which would not appear in the pre-defined list. This function is of particular importance as this will allow workers to identify informal agencies.

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Under this implementation agreement, the MRA website will focus only on providing information on labour recruiters, however ITUC may pursue in the next phase the expansion of the website to consolidate review data on employers involved in the recruitment process.

The study focused on literature review on the status of Labour migration in Kenya. The study then analysed data collected from 497 questionnaires online as attached in Annex 1. The weighing system was applied to all reviews posted in [www.recruitmentadvisor.org](http://www.recruitmentadvisor.org) with this weighing system, user's response to questions for "review an agency" were automatically calculated by the system according to the value defined for each question as shown in Annex 2.

## **Status of Labour migration in Kenya**

Unemployment and underemployment remain the key push factor for labour migration in Kenya. This has been caused by the rapid population growth, low economic growth as well as the structural rigidities within the labour market. However, some pull factors contributing have been the chase for better lives, decent wages, higher education and better health care.

It is also important to note that Kenya is mainly a destination and transit country for people migrating within and outside the East Africa region. These migrants include refugees, irregular and economic migrants, and trafficked persons<sup>3</sup>. It's a transit country with many of the of migrants trying to get to South Africa, the Gulf, North Africa, West Africa, Europe and as far as North America<sup>4</sup>. Kenya has also a significant of Labour migrants from Asia such as Bangladesh, India, and Pakistan<sup>5</sup>. Unfortunately, The Department of Immigration Services (DIS) collects data on regular labour migrants leaving behind those undocumented labour migrant hence the exact number of labour migrant in Kenya is not known<sup>6</sup>.

When it comes to refugees, it is the fourth-largest refugee hosting country in Africa<sup>7</sup>. With almost 60% of these refugees coming from Somali and the rest from South Sudan, Congo and Ethiopia.

Regular Kenyan emigrants are known to be skilled, educated and use formal channels to migrate abroad and mostly they go to the East Africa Community countries, Botswana, Lesotho, South Africa, US, Europe and the middle East. The UK, South Africa and USA receive the highest number of medical practitioners<sup>8</sup>.

Nevertheless, a huge challenge for Kenyan migrant workers has been in the Middle East Countries, where a majority of Kenyans going there are low and medium skilled workers and employed as domestic workers, cleaners, construction workers, hospitality, security services and taxi drivers and many of them go through Private Recruitment Agencies.

The government has tried to deal with these challenges by imposing labour migration bans, deregistering of Private Employment Agencies and signing of Bilateral Trade Agreements with Qatar, Saudi Arabia, and

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<sup>3</sup> Regional Mixed Migration Secretariat (RMMS). 2017. "Kenya country profile". Available at: <http://www.regionalmms.org/index.php/country-profiles/kenya>

<sup>4</sup> International Organization for Migration (IOM). 2015. Migration in Kenya: A country profile

<sup>5</sup> Maastricht Graduate School of Governance (MGSOG). 2017. Kenya migration profile: Study on migration routes in the East and Horn of Africa (Maastricht).

<sup>6</sup> Maastricht Graduate School of Governance (MGSOG). 2017. Kenya migration profile: Study on migration routes in the East and Horn of Africa (Maastricht).

<sup>7</sup> Betts, A.; Omata, N.; Sterck, O. 2018. Refugee economies in Kenya (Oxford, Refugee Studies Centre)

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

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the United Arab Emirates, and posted labour attachés to these three countries to ensure the protection of migrant workers. As the numbers of Kenyans migrating increases so is the challenge of their protection. There has been an influx also to Asia, Latin America, the Caribbean and Oceania and an increase of professionals migrating to Canada and Australia.

Kenyan labour migration issues are handled by multiple agencies including: Ministry of Labour; National Employment Authority (NEA); Directorate of Immigration; and the Ministry of Foreign Affairs. The fragmented and uncoordinated administration of labour migration coupled with inadequate resources inhibits effective synergy and coordination of labour migration management and implementation of programmes. The Government is therefore developing a comprehensive National Labour Migration policy to provide coordinated policy framework for implementation of programmes on labour migration and to reinforce other existing policies

Kenya has ratified and domesticated ILO Convention No. 143 on Migrant Workers, and Convention 97 on Migration for Employment. In addition, the country is a signatory to the East African Community Common Market Protocol and is also guided by the Inter-Governmental Authority on Development (IGAD) Revised Regional Migration Policy Framework. In order to enhance protection of Kenyan Migrant Workers, the country has signed three (3) Bilateral Labour Agreements (BLA); with the Kingdom of Saudi Arabia, State of Qatar and the United Arab Emirates 5 (UAE). Kenya has also initiated negotiations towards Bilateral Labour Agreements with Jordan, Kuwait, Oman and Bahrain.

The Constitution of Kenya advocates for decent work, promotes freely chosen productive employment, fundamental rights at work, adequate income from work, representation and social protection for workers. Other legal frameworks on labour migration in Kenya include: Immigration and Citizenship Act, 2011; Counter-Trafficking in Persons Act, 2010; National Employment Authority Act, 2016; the Employment Act, 2007; and the Labour Institutions Act, 2007.

Pre-departure Training and Orientation, Kenya developed and launched a Curriculum on Homecare Management in 2018 with special focus on Pre-Departure Training. In addition, country-specific Information Handbooks and a website have been developed to reinforce pre-departure training.

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## 2. Key Findings

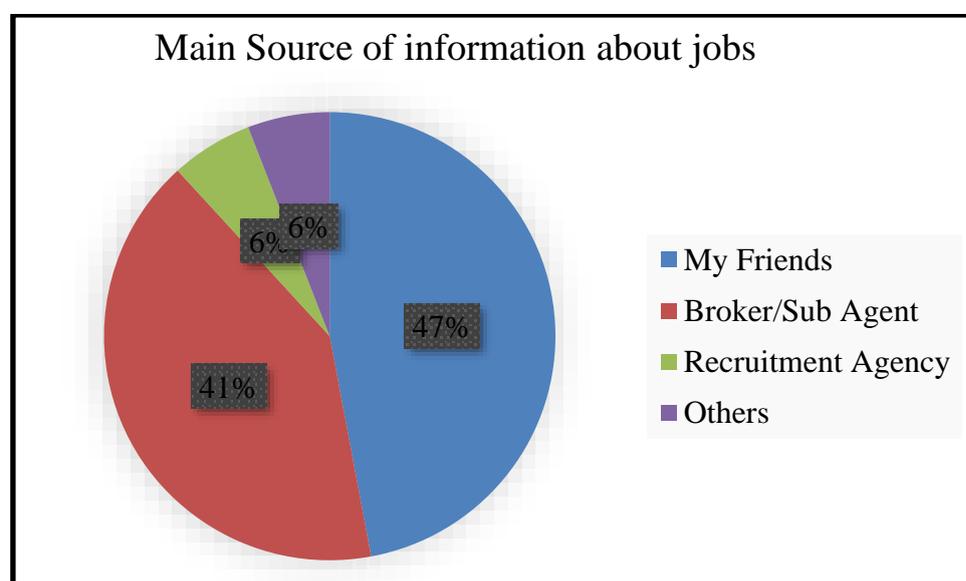
This section provides the key findings of the study.

### 2.1 Source of information about the job

Kenya provides information for admissions, employment and residence of migrant workers available online through the Kenya Labour Market Information System (KLMIS) so as to facilitate labour migration and mobility. Some potential migrants also receive information on opportunities for regular labour migration from the Central Organization of Trade Unions, COTU-K, trade union organisations and NGOs (ILO, 2020 pg 13-14)<sup>9</sup>

However, the findings from the study indicated that friends play significant role in providing information about migrant jobs in Kenya. The study shows that 47 per cent of the migrant workers from Kenya obtained information about those jobs from their friends as shown in figure 1. The other important sources of information about migrant jobs are the brokers/sub agents since about 41 per cent of the migrant workers from Kenya obtained information about such jobs from them. Furthermore, figure 1 shows that recruitment agencies are the least source of information about foreign jobs in Kenya as only about 6 per cent of the migrant workers obtained such information from them. The results present a move from the formal available sources of migrant labour information to more informal provision of such information to potential migrant workers. Perhaps this could lead to unregulated migrant employment making enforcement of migrant labour policies tricky as the government loses hold on the migrants given their sources of information about the migrant jobs. Furthermore, this could promote vulnerability to illegal and unethical recruitment practices and treatment by agents and employers.

Figure 1: Sources of Information about migrant jobs



Source: Recruitment Advisor

### 2.2 Costs of Recruitment

The ILO Multilateral Framework on Labour Migration provides that fees and other charges for recruitment and placement are not borne directly or indirectly by the migrant workers. However, in Kenya, the 2016 Private Employment Agency Regulations<sup>10</sup> of the Labour Institutions Act, 2007

<sup>9</sup> An assessment of labour migration and mobility governance in the IGAD region: Country report for Kenya. Accessed through [ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-addis\\_ababa/documents/publication/wcms\\_743315.pdf](http://ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-addis_ababa/documents/publication/wcms_743315.pdf)

<sup>10</sup> The Labour Institutions (Private Employment Agencies) Regulations, 2016. Accessed through [www.kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2016/110-Labour\\_Institutions\\_Act\\_Private\\_Employment\\_Agencies\\_Regulations\\_2016.pdf](http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2016/110-Labour_Institutions_Act_Private_Employment_Agencies_Regulations_2016.pdf)

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provides that employers will be charged a fee for the recruitment and placement of workers by the Private Employment Agencies and that additional costs related to deployment can be charged to a migrant worker, such as administrative costs and trade tests. However, these charges are capped at one month's salary of the migrant worker.

The findings from the study however show that the migrant workers met various costs as shown in table 1.

Table 1: Costs of Recruitment of Migrant Workers from Kenya

Cost	Per cent
No cost paid	23.53
Recruitment Fees	70.59
Medical costs	17.65
Insurance costs	0
Costs for orientation	5.89
Equipment costs	0
Administrative costs	0
Travel & lodging costs	23.53
Costs for skills and qualification test	17.65
Costs for skills training	11.76
Others costs	5.89

Source: Recruitment Advisor

As shown in table 1, apart from about 24 per cent of the migrant workers who did not pay any costs of recruitment, other migrant workers (76 per cent) paid various costs including Recruitment fees (71 per cent); Medical costs (18 per cent); Costs of orientation (6 per cent); travel and lodging costs (24 per cent); costs for skills and qualification tests (18 per cent); costs for special skills training (12 per cent) and other miscellaneous costs (6 per cent).

It is worth noting that the recruitment costs involved payments to the recruitment agency or to the employer for recruitment services including advertising, arranging interviews, submitting documents, confirming credential, organizing travel and transportation as well as placement into firms. On the other hand, medical costs included payments for medical examinations and tests as well or vaccinations while costs of orientation covered the orientation session before the migrant workers left for work after arrival in the foreign country. Similarly, travel and lodging costs included costs for travel, accommodation and food for training, interviews, return and relocation while costs for skills and qualification tests included costs of language tests, certification or licensing. Moreover, special skills training costs included costs for special skills training session before the migrant workers left for work and after arrival in the foreign country. Other costs incurred by the migrant workers were local bus fares while processing documents before travel. It is as well important that none of the migrant workers paid insurance, equipment and administrative costs during the recruitment process.

These costs notwithstanding, it is important that the employment of migrant workers be realigned to the provisions of the 2016 Private Employment Agency Regulations while moving towards the full realization of the ILO Multilateral Framework on Labour Migration that provides that fees and other charges for recruitment and placement are not borne directly or indirectly by the migrant workers. This could enhance the protection of migrant workers. Furthermore, Kenya should Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181).

## 2.3 Pre-Employment Orientation

In Kenya, the National Employment Authority (NEA) is tasked with ensuring that migrant workers must undergo pre-departure training. It is therefore expected that all migrant workers undergo pre-employment orientation and training before employment. Cognisant of this mandatory requirement, the results from the study shown in table 2 indicate that about 35 per cent of the migrant workers did not receive any information prior to their employment. This implies that, majority of the migrant workers (65 per cent)

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received various forms of pre-employment information. For example, table 2 shows that 41 per cent of the migrant workers received information about their rights and obligations while about 18 per cent of the migrant workers received information about what to do in case they had complaints. About 12 per cent of the migrant workers indicated to have received other pre-employment information including information about the rights of their foreign employers as well as the information on how to contact their recruitment agents back home in Kenya in case of work-related problems. The least pre-information received by the migrant workers was on useful contacts and services at destination in which case only about 6 per cent indicated that they received such pre-employment information.

In the foregoing analysis, the NEA should ensure that all migrant workers receive adequate pre-employment information to equip them for the job. COTU-K and the Federation of Kenya Employers (FKE) should be instrumental on this mandate of the NEA during their tripartite consultations on issues of migrant workers.

Table 2: Pre-employment information received by Migrant Workers in Kenya

Pre-Employment Information received	Per Cent
Information about rights and obligations	41%
Information about what to do if I have a complaint	18%
Information about useful contacts and services at destination	6%
Other information	12%
No information	35%

Source: Recruitment Advisor

## 2.4 Employment Contract

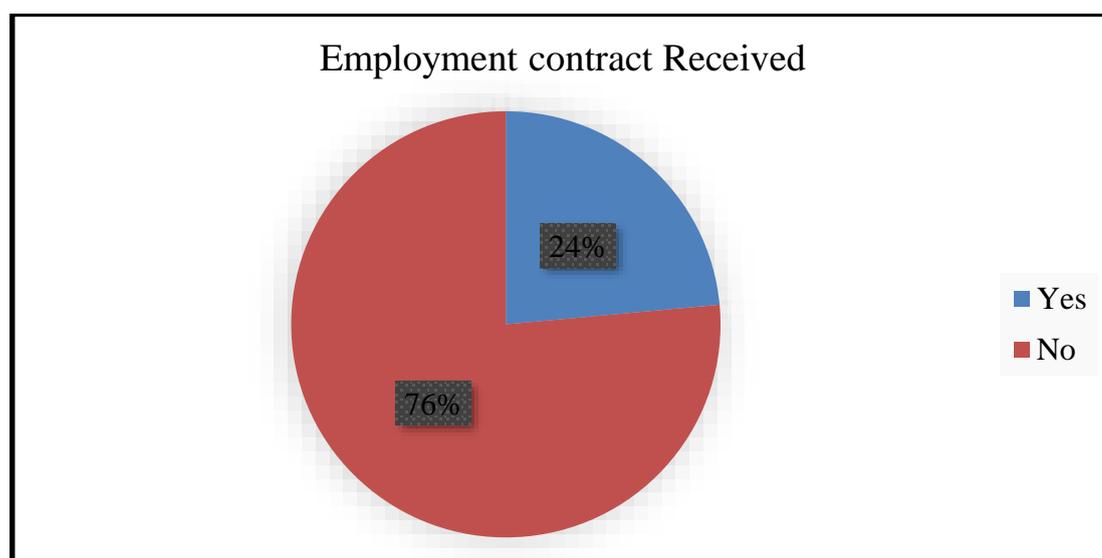
The ILO Multilateral Framework on Labour Migration promotes the establishment of written employment contracts to serve as the basis for determining obligations and responsibilities and a mechanism for the registration of such contracts where this is necessary for the protection of migrant workers. It further calls for ensuring that migrant workers receive understandable and enforceable employment contracts.

Domestically, Kenya promotes the issuance of written, understandable and enforceable employment contracts to migrant workers as a basis for the determination of the obligations and responsibilities of the migrant workers.

The findings of the study on the issuance, language and contents of the employment contracts are presented in figure 2, figure 3 and table 3 respectively.

### 2.4.1 Issuance of employment contract

Figure 2: Issuance of Employment Contract to Migrant Workers



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Source: Recruitment Advisor

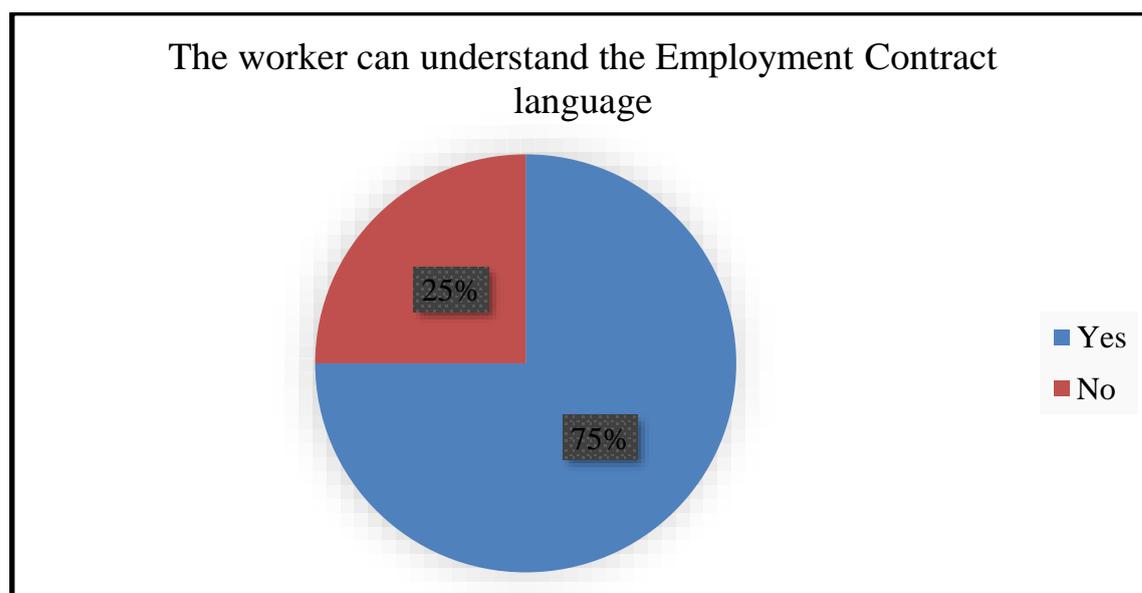
As shown in figure 2, majority of the migrant workers (about 76 per cent) did not receive their employment contracts while only 24 per cent received their employment contracts. This is contrary to the ILO Multilateral Framework on Labour Migration as well as the standards set up by Kenya. In this regard, it is important that the National Employment Authority ensures that no migrant worker is employed without a valid employment contract as guided by the ILO and set aside by Kenya through its regulatory frameworks.

## 2.4.2 Language of Employment Contract

Given that the ILO as well as Kenya promotes the establishment of a written understandable contracts, it implies that the language of the contract should be that which the migrant worker can understand. However, the findings from the study are contrary to this provision as shown in figure 3. This calls for the NEA to ensure enforceability of this regulatory framework for the protection of migrant workers. In fact, COTU-K and FKE need to advocate for the issuance of written contracts in a language that is understandable to the migrant workers during their tripartite consultations on issues of migrant workers.

Even the contracts are in the original foreign languages, the Ministry of Labour and NEA must ensure that there exists an official translation of the contract to an official language understandable by the migrant worker.

Figure 3: The worker can understand the employment contract language



Source: Recruitment Advisor

As shown in figure 3, out of the migrant workers who received their employment contracts, about 75 per cent indicated that the employment contracts were in a language that they could understand while only 25 per cent indicated that they could not understand the employment contract language.

## 2.4.3 Contents of Employment Contract

Kenya's Employment Act of 2007 covers regular migrant workers unless otherwise specified and provides that an employment contract state the particulars of employment including the description of employment, the place and hours of work, the remuneration and intervals at which remuneration is paid, conditions relating to annual leave, sick pay and leave, pension, the length of notice to terminate employment as well as the period of employment. On this basis, the findings of the study point out partial adherence to the provisions of the Act as shown in table 3.

Table 3: Contents of the Employment Contract

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Content	Per cent
Salary	66.67%
Job Description	0
Job Location	66.67%
Working time	0
Leave days	0
Accommodation	66.67%
Healthcare coverage	33.33%

Source: Recruitment Advisor

The study results show that of those migrant workers who received their employment contracts, about 67 per cent indicated that the contracts had information on their salaries, job location as well as their accommodation. Only about 33 per cent indicated that the contract provided information on their healthcare coverage. This implies that the contracts did not provide information on job description, working time and leave days. These findings make it difficult for Kenya to enforce the migrant workers as some of them work without any signed contracts that spell the level of engagement. In this regard, it is critical for COTU-K together with FKE to advocate for the issuance of employment contracts whose contents are in line with the provisions of the Employment Act 2007 to ensure enforceability.

## 2.5 Working Conditions

The ILO Multilateral Framework on Labour Migration provides for the adoption of legislations and policies including their implementation and enforcement to protect migrant workers from conditions of exploitation and forced labour, including debt bondage and trafficking and in accordance with the ILO instruments and standards of work. The framework also provides for continuous labour inspection of all workplaces where migrant workers work to ensure that the working conditions are not in violation of the fundamental rights and freedoms of the migrant workers but are compliant with the employment contracts. In this regard, the draft National Labour Migration Policy and Strategy for Kenya recognizes the abuse and exploitation of migrant workers including their exploitative working conditions and limited rights. Both the National Labour Migration Policy and Strategy and the 2014 Diaspora Policy proposed a number of mechanisms to protect the migrant workers abroad and to ensure that they work under favourable working conditions.

A cursory look at the findings of this study however reveals poor working conditions of the migrant workers part of which are presented in figure 4 and 5. This calls for urgent intervention by COTU-K during their tripartite consultations on issues of migrant workers to ensure that the migrant workers work in decent work conditions that recognize human dignity and adhere to the ILO Labour standards.

### 2.5.1 Retention of passport and other personal documents

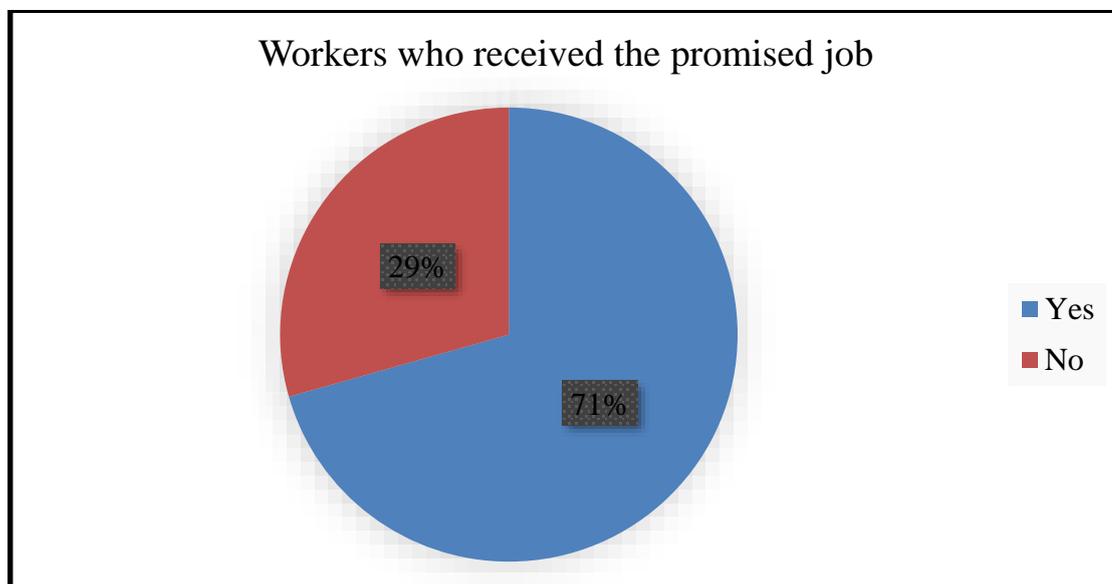
The findings from the study showed that all the migrant workers indicated that their passports and personal documents were taken and kept by their employers. This is a high level of the contravention of the ILO labour standards and an urgent call for COTU-K to intervene as the confiscation of passports and personal documents is a form of “slavery” on the migrant workers. Migrant workers should be allowed to possess their passports and other personal documents and provide copies of the same to the employers. Moreover, COTU-K should advocate for continuous labour inspection in workplaces of migrant workers to ensure that the migrant workers are in possession of their passports and other relevant documents.

### 2.5.2 Workers who received the jobs they were promised

Given that the Employment Act 2007 provides for issuance of an employment contract, it is important to note that the migrant workers should be given the jobs as defined in these contracts. However, the results from the study show that majority of the migrant workers are not given the jobs that they were promised prior to recruitment. In this case, COTU-K should take the lead during tripartite consultations and advocate for the deployment of the migrant workers in jobs that they are promised and contracts issued to them as appropriate. The per cent of workers who received the jobs they were promised are presented in figure 4.

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Figure 4: Per cent of workers who received the jobs they were promised



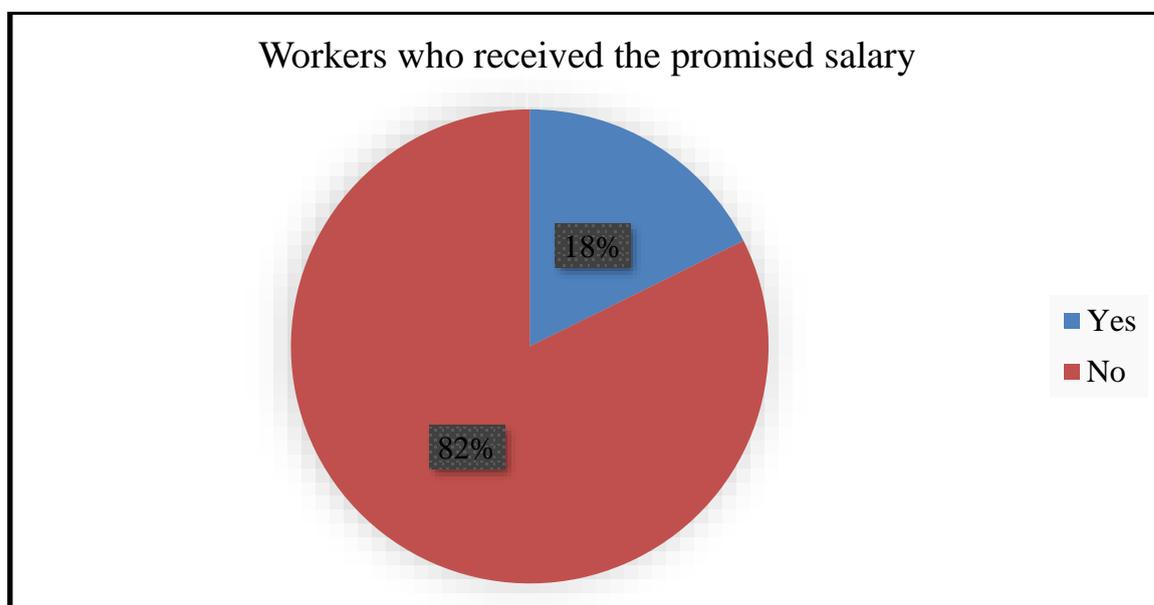
Source: Recruitment Advisor

The study showed that majority of the migrant workers (about 71 per cent) from Kenya received the jobs that they were promised while only about 29 per cent did not receive the jobs they were promised (see figure 4).

### 2.5.3 Workers who received the promised salary

The Employment Act of 2007 provides for the salary as one of the main contents of an employment contract. In this regard, it is envisaged that migrant workers should receive the salaries that they were promised during recruitment and contained thereof in their contracts. However, the findings of the study as shown in figure 5 show that majority of the migrant workers do not receive the salaries they were promised prior to their recruitment. This is another call for COTU-K to advocate during tripartite consultations for the prior agreements on salaries of migrant workers and such salaries indicated in the employment contracts and fully paid as indicated to the migrant workers.

Figure 5: Workers who received the promised salary



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Source: Recruitment Advisor

As shown in figure 5, majority of the workers (82 per cent) did not receive the promised salary. Only 18 per cent of the migrant workers from Kenya received the promised salary.

## **2.5.4 Ease of resignation from employment with reasonable notice**

The study results showed that all the migrant workers from Kenya indicated that it was at all extremely difficult for one to resign from their jobs even with reasonable notice issued to the employers. This is in contravention of the provisions of the Employment Act, 2007 that spells out that the employment contract must have a provision on resignation from employment. COTU-K should intervene on this matter and ensure compliance to protect the rights of migrant workers.

## **2.5.5 Presence of a trade union or workers association**

It was unfortunate that the results showed that all the migrant workers from Kenya indicated that there were neither trade union organisations or workers associations that they could join in the foreign lands to take care of their interests, rights and obligations. This calls for COTU-K to advocate for the promotion of transnational trade unionisation so that local trade unions can legally cover migrant workers registered with them domestically. Perhaps this would enhance protection and coverage of the rights of migrant workers.

## **2.6 Worker's Evaluation**

This section provides migrant workers own evaluation of the recruitment agency; the employer and country of employment. This evaluation is critical for policy changes that would improve the working conditions as well as the recruitment procedures of the migrant workers. This notwithstanding, a cursory look at the recruitment process and working conditions reveals that migrant workers go through costly recruitment process, experience violation of their rights by the employers as well as the recruitment agencies and would rather not use the same services in the near future. The specific findings are presented in hereunder.

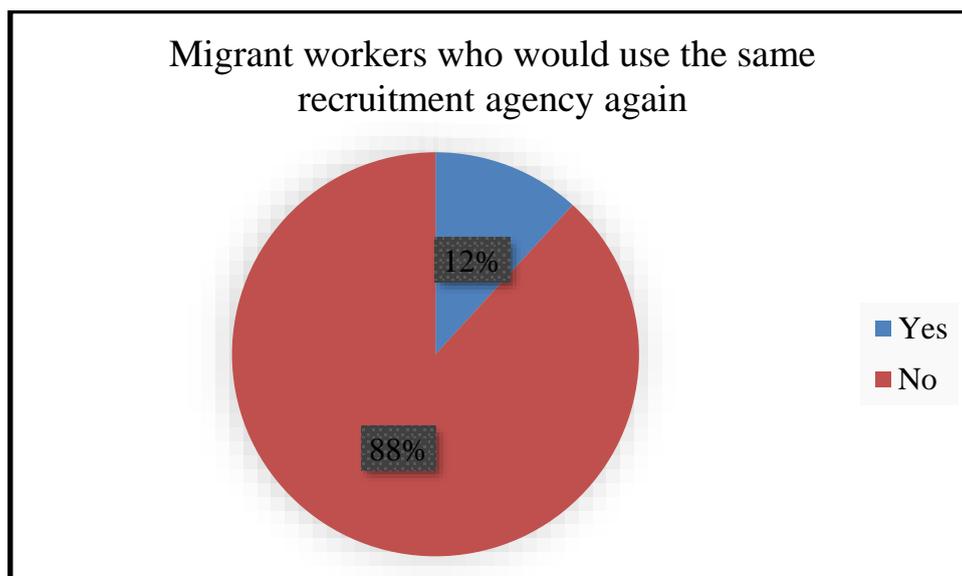
### **2.6.1 Use the same recruitment agency again**

Kenya recognises registered private employment agencies (PEAs) as authorised to assist in the recruitment and placement of migrant workers. The recruitment and placement are guided by labour standards set up by the government to safeguard migrant workers from violation of their rights and abuse during recruitment or at workplaces.

The results from the study however indicate that many of the migrant workers would not prefer to use the same recruitment agencies in future. This perhaps depicts existence of violations of the rights of the migrant workers during the recruitment process.

Figure 6: Migrant workers who would use the same recruitment agency again

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Source: Recruitment Advisor

When asked to indicate whether they would use the same recruitment agencies in future, 88 per cent of the migrant workers indicated that they would not while only 12 per cent preferred to use the same recruitment agencies again (see figure 6)

## 2.6.2 Return to the same employer

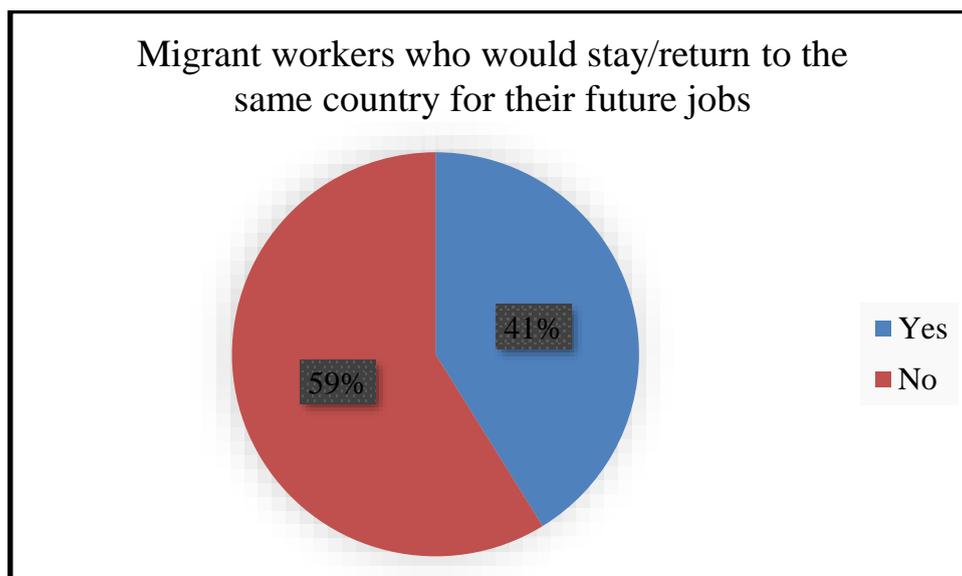
Migrant workers are expected to work in conditions of human dignity where their rights and fundamental freedoms are taken care of. In this regard, the working conditions and level of engagement should be as outlined in the employment contracts. On this basis, when asked if they would return to the same employers again in future, all the migrant workers indicated that they would not. This points out to the likelihood of violation of the rights of the migrant workers including but not limited to abuse. This should be a matter of concern for COTU-K to ensure that such would be violations and abuse of the rights and fundamental freedoms of the migrant workers by their employers are dealt with accordingly.

## 2.6.3 Return to/stay in the same country for my future job

Foreign countries play key roles in enhancing international labour migration. In this regard, the experiences of migrant workers in foreign countries would determine whether or not they would wish to return to the same country in their future jobs or stay in such countries for long. This notwithstanding, a review of the findings from the study shows that majority of the migrant workers would not prefer returning or staying in the same countries perhaps because of experiences of violations of the rights by the authorities and other institutions dealing with their employment in the foreign countries. The findings are presented in figure 7.

Figure 7: Migrant workers who would stay/return to the same country for their future jobs

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Source: Recruitment Advisor

The study outcome showed that majority of the migrant workers (59 per cent) would neither stay nor return to the same foreign country for their future jobs. However, 41 per cent of the migrant workers indicated that they would return or stay in the foreign countries for their future jobs (see figure 7).

## 2.7 Further Comments by Workers

A summary of the further comments by the migrant workers from Kenya shows that migrant workers experience violations of their rights during their employment in the foreign countries. Some of the experiences include:

- Some of the workers experienced long working hours
- Some employers abused the migrant workers
- Some employers mistreated the migrant workers
- Some workers experienced various forms of harassment in the hands their employers or recruiters, ranging from physical, sexual and psychological
- Some workers experienced challenges with consular/embassy services in host countries
- National law in both countries of origin and destination do not adequately address issues of labour migration.
- There are gaps in grievances and dispute handling process and mechanisms subjecting some workers to an anticipated stay in deportation centres or jail
- The need to establish migrant resource information centre
- The need to provide return and reintegration services
- The need to harness acquired skills from the host countries

## 3. Conclusion, Lessons, and Next Steps

This section concludes the report, draws lessons learnt and presents the Next Steps towards decent work among migrant workers.

### 3.1 Conclusion

Based on the findings of the study, we draw the following conclusions:

- Most of the migrant workers source information about foreign jobs from their friends and not from the regular sources of employment information provided by the government.

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- Migrant workers continue to meet various costs of recruitment despite the provisions by the Kenya Private Employment Agency Regulations that employers will be charged a fee for the recruitment and placement of workers by the Private Employment Agencies and that additional costs related to deployment (capped at one month's salary of the migrant worker) can be charged to a migrant worker, such as administrative costs and trade tests.
- Majority of the migrant workers undergo pre-employment orientation while others do not despite the existence of the National Employment Authority tasked with this mandate and the requirement that this training must be done prior to employment.
- Majority of the migrant workers are not issued with written contracts of employment as required by law. However, of the few that received the written contracts, they were in foreign languages not understandable by the migrant workers. The contents of such contracts were minimal and partially included the salaries, the job locations and the accommodation.
- Most of the migrant workers work under poor working conditions while others are met with violations of their rights including abuse and mistreatment by their employers. In fact, most of the migrant workers have their passports and other documents confiscated by their employers. Moreover, majority of the workers never received the jobs nor the salaries they were promised during the recruitment process. Furthermore, the workers did not find it easy to resign from their employment.
- The study revealed that there were no trade unions or workers organizations to safeguard their interests in the foreign countries
- Due to the frustrations experienced by the migrant workers, majority of them would neither use the same recruitment agencies again nor work for the same employer in the near future. Similarly, majority of the migrant workers would not wish to work or stay in the same countries because of such experiences as violations of their rights including abuse and mistreatment.
- Despite challenges encountered, majority of the returnee migrant workers are still willing to travel abroad again for employment. The major push factors particularly unemployment remains unaddressed and therefore need for continued advocacy and sensitization on safe labour migration to reduce vulnerability to forced labour and human trafficking.

## 3.2 Lessons Learnt

On the basis of the national legislations and standards guiding labour migration and the key findings of the study as outlined in the conclusion, we learn that:

- Friends are key informants on foreign job opportunities for the migrant workers in Kenya.
- Recruitment costs are mostly incurred by the migrant workers.
- Not all migrant workers undergo Pre-employment orientation prior to employment.
- Very minimal (if any) written contracts in foreign languages with limited contents are issued to migrant workers
- Most of the migrant workers work under poor working conditions coupled with abuse, violations of rights including mistreatment by employers.
- Passports and other documents of migrant workers are always confiscated by the employers of the migrant workers.
- Majority of the migrant workers neither receive the jobs nor the salaries they are promised during the recruitment process.
- Most migrant workers find it difficult to resign from their employment even if they wished to.
- There are no trade unions or workers associations to represent the migrant workers in the foreign countries.

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## 3.3 Next Steps

In view of the findings of the study and the lessons learned, the study proposes the following next steps for COTU-K in collaboration with regional and international trade union confederations:

1. Intensive campaigns by COTU-K on:
  - Promoting access to regular sources of information on foreign job opportunities for the migrant workers in Kenya. COTU-K could as well provide such information on their websites on links to such employment opportunities. A specific information desk for migrant workers can as well be set at COTU-K headquarters.
  - Abolishment of all costs related to recruitment being incurred by the migrant workers.
  - Enhanced campaigns for mandatory Pre-employment orientation without which no deployment of the migrant workers.
  - Enhanced campaigns for mandatory issuance of written understandable employment contracts with clear contents and complete adherence to the contents thereof.
  - Enhanced campaigns for intensive labour inspection in all workplaces of the migrant workers to deal with violations of rights, abuse and mistreatment
  - Campaign for the right to possessing of Passports and other documents by the migrant workers during employment.
2. Intensive advocacy for the improvement on legislation of migrant workers both locally and internationally to allow for transnational trade union representation so that the migrant workers could be represented by their domestic trade unions.

## Appendix 1 Questionnaire

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## Only five minutes of your time to help change recruitment practices

We need your help to complete the following quick Review of Recruitment Agency based on your experience in using the service of your agency.

It will be available online in [www.recruitmentadvisor.org](http://www.recruitmentadvisor.org) but totally anonymous. Your review is fully confidential!

Your sharing will help other workers to find the right recruiter who respects workers' rights. Your review really counts! Thank you for your time.

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### Personal Details

My name: (First name + last name)

Email address/Facebook: (e.g., [123ABC@gmail.com](mailto:123ABC@gmail.com))

*If your review is collected by MRA country coordinator/survey collector, you don't need to fill in email address, unless you want to receive our Newsletter.  
Our survey collector may ask for your mobile number to enable them double checking when your response is not clear.*

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Gender : (Female/male)

Age:

Sector: Please choose from below list

(Agriculture/Construction/Domestic Work/Fishery/Garment Textile/Health Service/Other : \_\_\_\_\_)

## Recruitment Details

I am from: (Write country)

My agency's name:

My agency sent to work in: (Write country)

I used the agency's service in the year: (Write the year)

I heard about the job from: (Choose from the list: radio; newspaper; TV; social media; my relatives; my friends; broker/sub-agent; recruitment agency; or please specify other)

## Recruitment Fees

---

1. I paid for the following costs during the recruitment process:

*Choose and tick the box below. If you did not pay anything, empty the answer.*

Recruitment Fees

payments to the recruitment agency or to the employer for recruitment services including advertising, arranging interviews, submitting documents, confirming credentials, organizing travel and transportation, placement into firms

Medical costs

Including payments for medical examinations and test, or vaccinations

Insurance costs

Including costs for enrolment in migrant welfare funds or health and accident insurance

Costs for orientation

Including costs for orientation session before you left for work and after arrival

Equipment costs

Including costs for tools, uniform, safety equipment

Administrative costs

Including costs for application and service fees such as obtaining employment contracts, passports, visas, background checks, work and residence permits, security and exit clearances

Travel & lodging costs

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Including costs for travel, accommodation and food for training, interviews, return, relocation

- Costs for skills & qualification test

Including costs language tests, skills tests, certification or licensing

- Costs for special skills training

Including costs for special skills training session before you left for work and after arrival

- Other : Please specify here how much you have paid for your recruitment process:

\_\_\_\_\_

\_\_\_\_\_

## Pre-Employment Orientation

2. I received the following information during the pre-employment orientation:

*Choose and tick the box below. If you did not receive orientation, empty the answer.*

- Information about my rights and obligations
- Information about what to do if I have a complaint
- Information about useful contacts & services at destination
- Please specify other: \_\_\_\_\_

## Employment Contract

No

Yes

3. I received the employment contract before employment  No  Yes
4. The employment contract was in a language I can understand  No  Yes
5. The employment contract contained clear information about:
- Salary
- Job description
- Job location
- Working time
- Leave days
- Accommodation
- Health care coverage
- Please specify other: \_\_\_\_\_

## Working Conditions

No

Yes

The agency sent me to work in: (Write Name of employer/company)

6. My passport and other personal documents were taken by: *Choose and tick the box below*

- My recruitment agency
- My employer

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Please specify other: \_\_\_\_\_

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 7. I received the job I was promised                            | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. I received the salary I was promised                         | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. I could resign from employment freely with reasonable notice | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. There was a union or workers' association I could join      | <input type="checkbox"/> | <input type="checkbox"/> |

## Worker's Evaluation

**No**

**Yes**

- |  |                          |                          |
|--|--------------------------|--------------------------|
| 11. I would use the same recruitment agency again                | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. I would return to the same employer                          | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. I would return to/stay in the same country for my future job | <input type="checkbox"/> | <input type="checkbox"/> |

## Comments

It is very important to tell other workers how your recruitment was so they can learn from your experience. Write your opinion at least in one sentence (e.g. fair/unfair, free of charge/expensive, reliable/unreliable)

**If you have an activity code, please write it here:** \_\_\_\_\_

- I agree with the [terms and conditions](#) of the website.
- Keep me updated on ITUC Migrant Recruitment Advisor.

Thank you very much for taking the time to complete this survey. Your feedback is valued and will help other workers to make the right choice! Don't forget to consult the rating of Migrant Recruitment Advisor before you choose a recruitment agency next time.

Visit [www.recruitmentadvisor.org](http://www.recruitmentadvisor.org) to:

1. Check the rating of recruitment agencies based on worker reviews.
2. Check your rights where you will work.
3. Ask for assistance when your rights have been violated

**Annex 2 Migrant Recruitment Advisor; Review's Weighing System**

### Migrant Recruitment Advisor; Review's Weighing System

Type of users is generated based on the status chosen in the beginning of the questionnaire i.e.:

- 1) Still in the country of origin but have used the agency's service
- 2) in the country of destination
- 3) back in the country of origin after working abroad

All the above type of users will be given 3 similar sections of questions, see below table:

Num	Question Section 1: Recruitment Fees	Weight for Yes	Weight for No
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1	I paid some amount of money for my recruitment <i>(If user answers No, he/she will be directed to question no 3)</i>	0	1
2	I paid for the following costs during the recruitment process:  a) Agency fee/service charge/placement fee b) Medical examination c) Insurance d) Pre-departure orientation e) Passport application/renewal f) Visa g) Flight ticket h) Accommodation during recruitment i) Skills training j) Please specify other	1 minus below points accumulated 0.1 0.1 0.1 0.1 0.1 0.1 0.1 0.1 0.1 0.1	0 0 0 0 0 0 0 0 0 0
	<b>Total Weight</b>	<b>If all items selected = 0</b>	<b>1</b>
<b>Question Section 2: Pre-departure Orientation</b>		<b>YES</b>	<b>NO</b>
3	I received a pre-departure orientation <i>(If user answers No, he/she will be directed to question no 5)</i>	1	0
4	I received the following information during the pre-departure orientation:  a) Information about my rights and obligations b) Information about what to do if I have a complaint c) Information about useful contacts & services at destination d) Please specify other	0.25 0.25 0.25 0.25	0 0 0 0

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		If all items selected = 1	
	<b>Total Weight</b>	<b>2</b>	<b>0</b>
	<b>Question Section 3: Employment Contract</b>	<b>YES</b>	<b>NO</b>
5	I received the employment contract before departure	1	0
6	The employment contract was in a language I can understand	1	0
7	The employment contract contained clear information about:	0.125	0
	a) Salary	0.125	0
	b) Job description	0.125	0
	c) Job location	0.125	0
	d) Working time	0.125	0
	e) Leave days	0.125	0
	f) Accommodation	0.125	0
	g) Health care coverage	0.125	0
	h) Please specify other	0.125	0
	<b>Total Weight</b>	<b>3</b>	<b>0</b>

User type 2 and type 3 are given extra question section 4; Conditions in the Country of Destination see below table:

Num	Question Section 4: Conditions in the country of destination	Weight for Yes	Weight for No
8	I was able to retain my passport and other personal documents in my possession during my stay in the country of destination ( <i>If user answers Yes, he/she will be directed to question no 10</i> )	1	0
9	My passport and other personal documents were taken by:	0	0
	a) My recruitment agency		
	b) My employer		
	c) Please specify other		
10	I received the job I was promised	1	0
11	I received the salary I was promised	1	0
12	I could return home if I needed or wanted to	1	0
13	There was a union or workers' association I could join	1	0
	<b>Total Weight</b>	<b>5</b>	<b>0</b>

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User type 3 gets another extra question section; On Return, see below table:

Num	Question Section 5: On Return	Weight for Yes	Weight for No
14	I would use the same recruitment agency again	1	0
15	I would return to the same employer	1	0
16	I would return to the same country	1	0
	<b>Total Weight</b>	3	0

Rating	User Type 1	User Type 2	User Type 3
★	≤ 1	≤ 2	≤ 2.5
★★	1.1 – 2	2.1 – 4	2.6 – 5.1
★★★	2.1 – 3	4.1 – 6	5.2 – 7.7
★★★★	3.1 – 4	6.1 – 8	7.8 – 10.4
★★★★★	4.1 – 5	8.1 – 10	10.5 – 13

## Ask for your rights! ★

Your recruitment agency doesn't comply with most of the labour regulations. Ask for your rights! Look for your local union here. If you have any questions or need further help, please fill in this form and we will get back to you shortly.

## You are entitled to more! ★★

Your recruitment agency complies with very few labour regulations. As a migrant worker, you are entitled to more! Find out more about your rights. Get in touch with your local union here. Click here to learn more about your rights as a migrant worker.

## Find out more about your rights! ★★★

Your recruitment agency complies with some labour regulations but it doesn't fully protect your rights as a migrant worker. Click here to learn more about your rights as a migrant worker. If you have any doubts, contact your local union here.

## Be aware of your rights in your country of origin and destination! ★★★★

Your recruitment agency complies with most of the existing national labour laws and policies. However, international labour standards are not always respected. Click here to learn more about your international rights as a migrant worker.

## Get ready for your job abroad! ★★★★★

Your recruitment agency complies with both national and international labour standards. [More info to be added]

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