

UNIVERSITY OF TARTU  
Faculty of Social Sciences  
Johan Skytte Institute of Political Studies

Fiona Waithira Nduati

**GOVERNING PRIVATE EMPLOYMENT AGENCIES IN EMERGING MARKETS:  
THE CASE OF LABOR MIGRATION GOVERNANCE IN KENYA**

Master's Thesis

Supervisor: Kristina Muhhina, PhD

Tartu 2024

## **Authorship Declaration**

I have prepared this thesis independently. All the views of other authors, as well as data from literally sources and elsewhere, have been cited.

Word count of the thesis: 22, 886 words

Name, date: Fiona Waithira Nduati, 20 May 2024

## **Abstract**

There has been a steady increase in labor migration globally. This movement, facilitated by private employment agencies, is fueled by the need to find new opportunities for a better life and to improve overall well-being. However, for many unskilled and low-income migrant workers in emerging markets, their mobility is marked by many vulnerabilities that make them prone to exploitation, impeding their well-being. My thesis adopts a policy study approach to analyze the role of private employment agencies, focusing on the case of Kenya as an example of emerging markets and how their activities threaten the rights of low-income migrant workers. Further, this policy study proposes policy options for the case of Kenya on the governance of PEAs on safe labor migration governance of low-income migrant workers.

Various arguments and studies have been conducted on low-income migrant workers in the context of emerging markets. However, these studies have focused on these workers' economic rights, primarily because of their economic value to home and destination countries. Others have taken a rights-based approach, which is primarily developmental. This policy study reframes the approach to the rights of low-income migrant workers by considering their human and labor rights while also leaning on the migration rights provisioned by the Global Compact for Migration.

Using interviews and documents as my key methods, this policy study shows that the policy options for the governance of PEAs in Kenya should be applied in plurality and tandem. The findings in Kenya are positioned similarly to scholarly findings of PEAs in emerging markets. This study produces insights that indicate that approaches for the governance of PEAs in emerging markets lean towards hierarchical and network-based modes of governance. This policy study highlights the interconnectedness of structural factors of the labor market that pave the way for the exploitation of low-income migrant workers and how the proposed policy options for the governance of PEAs address those issues, leading to the ultimate protection of the rights of these workers.

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## List of Abbreviations

|          |   |
|----------|---|
| AMADPOC  | Africa Migration and Development Policy Centre  |
| ASEAN    | Association of Southeast Asian Nations  |
| BMET     | Bureau of Manpower, Employment, and Training  |
| BLA      | Bilateral Labor Agreement   |
| CBA      | Collective Bargaining Agreement   |
| COTU-K   | Central Organization for Trade Unions – Kenya   |
| DoFE     | Department of Foreign Employment  |
| FKE      | Federation of Kenya Employers   |
| GAATW    | Global Alliance Against Traffic in Women  |
| HRW      | Human Rights Watch  |
| ILO      | International Labour Organization   |
| IOM      | International Organization for Migration  |
| ITUC     | International Trade Union Confederation   |
| KAPEA    | Kenya Association of Private Employment Agencies  |
| KUDHEIHA | Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers |
| MoU      | Memorandum of Understanding   |
| NEA      | National Employment Agency  |
| NEAIMS   | National Employment Agency Integrated Management System                                 |
| NHIF     | National Hospital Insurance Fund  |
| NLB      | National Labour Board   |
| PEA      | Private Employment Agencies   |

|     |  |
|-----|--|
| RCP | Regional Consultative Process            |
| REC | Recruitment and Employment Confederation |
| UAE | United Arab Emirates                     |

## **Introduction**

The labor movement in emerging markets is fueled by high unemployment rates and is concentrated in the informal sector (Rutkowski, 2006). Workers in the informal sector in these markets are primarily low-skilled, low-income earners. Moving with a desperate desire to earn a better wage in the destination country, these workers are prone to having little knowledge of the best practices of safe labor migration. This desperation opens avenues for abuse and exploitation of these workers as they leave their home countries and long after they, settle into their destination countries. These low-income migrant use private employment agencies to facilitate their movement by offering information on available opportunities in the destination country, recruitment, and eventual placement. However, these agencies are reported to engage in a myriad of fraudulent activities that expose low-income migrant workers to vulnerabilities that lead to the violations of their rights (International Labour Organization & International Training Centre, 2021).

This policy study aims to assess this policy issue in Kenya, as an emerging market, to understand how private employment agencies work as labor intermediaries and the implication of their functions to the rights of low-income migrant workers. There will be a close evaluation of migrant experiences, policy expert views, and legislation to contextualize the governance mechanisms for private employment agencies in Kenya. This assessment of the lived experiences of migrant workers, policy expert views, and assessment of scholarship and reports will inform the policy options to remedy the established policy issue in Kenya. The proposed policy options will be evaluated to improve private employment agencies' governance in Kenya to protect the rights of low-income migrant workers.

Overall, this policy study will aim to understand how private employment agencies work in Kenya and how they are governed. This study will illustrate the governance mechanisms' impact on the rights of low-income migrant workers and provide feasible policy options and recommendations that Kenya can adopt to achieve safe migration for low-income migrant workers. Two research questions will guide this study: a) How do private employment agencies function as labor intermediaries in Kenya? What are their effects on low-income migrant workers? b) What are the options for governing private employment agencies to achieve safe labor migration governance in Kenya?

This paper will adopt a framework of analysis that focuses on migrant well-being. This framework will merge the human and labor rights of migrant workers. Other frameworks have only taken a linear approach to the economic value of migrant workers. In contrast, a rights-based approach focuses on human rights while overlooking the labor rights of migrant workers. This framework of analysis will focus on the well-being of migrant workers by considering both their human and labor rights. From this framework of analysis, I will derive my evaluation criteria for the proposed policy options.

This study will conduct an in-depth qualitative case study of Kenya. This will seek to understand how private employment agencies function, their implications, and how they are governed to provide a better context for policy options and recommendations. This will be achieved through interviews with low-income migrant workers – domestic workers, security guards, farmhands, carwash laborers, and small traders - representatives of private employment agencies, and policy experts and migration consultants in Kenya. This will be complemented by a thorough document analysis of the legislature in Kenya, reports and assessments by the International Labor Organization, Migrant Forum in Asia, and others. A thematic content analysis will be conducted to find common themes. This data analysis will be done manually in Excel and Mural.

The structure of this paper will be as follows: Chapter one (1) will introduce private employment agencies in emerging markets by showcasing the functions and features of these agencies and their effects on low-income migrant workers. This chapter also qualifies as my literature review. Chapter two (2) presents my framework of analysis, which will derive my evaluation criteria for later evaluation of policy alternatives. This chapter provides the conceptual framework of my study. Chapter three (3) presents my policy study methodology, guided by Patton et al. (2012). Chapter four (4) presents my empirical study. This chapter will focus on the policy issue of private employment agencies in Kenya, their functions, and their effects on low-income migrant workers. It will also present the proposed policy options and the evaluation of policy alternatives along the established evaluation criteria derived from the framework of analysis. Chapter five (5) will discuss findings in Kenya, their contextual relationship to emerging markets, and recommendations to Kenya on improving private employment agencies' governance to protect the rights of low-income migrant workers. Lastly, I shall provide a conclusion for this study with recommendations for Kenya.

## **1 Private Employment Agencies in Emerging Markets**

### **1.1 Labor Demand in Emerging Markets**

Labor is crucial for the economic development of countries. Productive economies are sustained by labor markets that produce higher goods and services with fewer resources. These markets capitalize on human capital to drive their economies. Human capital refers to the knowledge and skills that support the generation of wealth for an economy (Srivastava & Das, 2015). It constitutes the cumulative labor productivity of a country. Increased labor productivity is linked with economic development (Zulu & Banda, 2015). This economic development is measured in the total output of Gross Domestic Product (GDP). In countries with high labor productivity, the GDP is also noted to be high (Shahid, 2014).

Analysis of the impact of labor productivity on GDP indicates that developing countries have low labor force participation, which leads to low productivity and, ultimately, lower GDP (Shahid, 2014). In contrast, developed countries have a much higher labor force participation than developing countries, yielding high labor productivity and an eventual higher GDP (Shahid, 2014). Developed and developing countries seek to increase labor productivity to increase their GDP. As labor productivity and GDP increase, a job demand is created. This increases opportunities for workers in the economy (Avdiu et al., 2023)

Labor markets are pivotal in emerging markets' economic growth and development. However, emerging markets are characterized by high unemployment rates with features of underemployment and informality. Informal workers in the context of emerging markets include minority groups such as women, youth, and migrants (Duman, 2024). High unemployment rates in these countries have ushered in social inequities and poverty that propel people to move from their countries for better opportunities. The search for better opportunities is often aimed at improving the workers' well-being and that of their families in their home country. Well-being is attributed to the achievement of needs and the ability to pursue goals that produce fulfillment and improve the quality of life (Gough & McGregor, 2007). In the context of labor, well-being also refers to fair wages that contribute to achieving a satisfactory life. Despite the high unemployment rates, emerging markets have burgeoning economic growth characterized by a rise in businesses and, hence, a demand for labor - cheap labor (Cazes & Verick, 2013).

The concept of Emerging Markets rose in the late 1990s, coined by an economist from the International Financial Corporation, Antoine Van Agtmael (Nielsen et al., 2018). The emergence of this term was to substitute and shift perspectives of Third World countries associated with poverty and persuade an attitude toward progress (Nielsen et al., 2018). Emerging markets may be broadly defined as ‘rapidly growing and volatile economies.’ (Bwalya & Zulu, 2012). The definition and identification of emerging markets are primarily drawn from their characteristics. These countries portray high political, economic, and social volatility with transitional demographic features such as mortality rates and policymaking (Mody, 2004). Other characteristics associated with emerging countries include rapid growth – emerging countries average 6-7% of annual economic growth and high productivity levels attributable to cheap labor (Corporate Finance Institute, n.d).

However, the definition of emerging markets has remained vague, attracting many definitions from different strands of studies, from economics to political science. At the emergence of the concept, ‘emerging markets’ were evaluated solely by their Gross Domestic Product (GDP). A wide range of countries fall under this category because of the broad definition and the encompassing characteristics of emerging markets. This includes Kenya, with a per capita income of \$2,099 in 2022 (The World Bank, 2022), and larger economies like China, with a per capita income of \$12,720 in the same year (The World Bank, 2022). Other emerging markets include Saudi Arabia, India, Taiwan, Singapore, Tunisia, and Morocco.

Emerging markets constitute about 80% of the world's population (Corporate Finance Institute, n.d). Despite their prevalence, emerging markets face challenges in their policy-making process, such as weak enforcement as they seek to resolve their high volatility and transitional features. Ranciere et al., 2003 note that the policy-making process in emerging markets may work to address these challenges, but they may also work conversely. Some of these countries have more stable, established institutions than others but portray distinct defining characteristics of emerging markets.

## **1.2 The Functioning of Private Employment Agencies in Emerging Markets**

Private Employment Agencies (PEAs) provide labor market flexibility by offering labor as a commodity from the worker to the employer. PEAs are popular in emerging markets to bridge the demand and supply of labor where there is high unemployment but a need for affordable

labor. About 720,000 PEAs operate worldwide (Andersen et al., 2015), with Asia having the largest concentration of PEAs. The activities of PEAs are driven by a country's economic and legislative setting. In market-driven economies like the UK, PEAs operate freely with minimal supervision by the State, with individual agencies abiding by the codes of conduct (Eichhorst et al., 2013). In emerging markets, however, the regulatory landscape for PEAs is still developing. This has paved the way for unethical practices by PEAs. When the regulatory landscape is grey, PEAs are more likely to exploit migrant workers, thereby exposing them to a myriad of vulnerabilities, including trafficking. (International Organization for Migration, 2016).

PEAs are indispensable in emerging markets since they work as labor market intermediaries, connecting low-income migrant workers to otherwise inaccessible jobs abroad (Juliawan, 2010). With a grey regulatory landscape for PEAs, many emerging markets are establishing laws and policies to protect labor migrants. Despite their crucial role in the labor market, PEAs have been reported to aid in human rights violations and participate in fraudulent activities, including forging documents such as passports and contract substitution for migrant workers (International Labour Organization & International Training Centre, 2021).

Below, I discuss the features and functions of PEAs in emerging markets. I showcase how these features cut across the board across these countries and highlight some of their effects on migrant workers.

### ***Licensing***

Many emerging markets have set up statutory requirements for the registration and licensing of PEAs. Increasing the entry barriers for PEAs is often viewed as a step toward protecting migrant workers. However, the statutory frameworks still fail to protect migrant workers as they are process-focused rather than migrant-centered (Farbenblum, 2017). While the erection of entry barriers aims to regulate PEAs in these markets, it has also promoted the rise of unregistered PEAs. Unregistered PEAs function in the same manner as registered PEAs do, only without a license. South Africa was reported to have approximately 2,000 unregistered PEAs in 2009 (Budlender, 2013). Similarly, in 2018, the Government of Uganda closed the operations of 80 unregistered PEAs who were suspected to have engaged in human trafficking activities. (U.S. Department of State, 2014).

The licensing frameworks for PEAs in emerging markets do not endorse accountability or promote migrant worker protection (Farbenblum, 2017). PEAs work without any legal obligations to the migrant workers, which exonerates them from any liabilities when migrant workers are exposed to dire circumstances. At the same time, without any legal obligations, PEAs have the leeway to business closure when they come under scrutiny, which creates an outright gap in accountability. In Indonesia, for example, the licensing framework requires that PEAs demonstrate financial insolvency (Ministry of Law, Justice and Parliamentary Affairs, 2007). Unfortunately, PEAs in Indonesia are not required to demonstrate the extent to which they have complied with worker protection to obtain or renew their license.

Additionally, there is no direct contact or communication between PEA licensing authorities and complaints by migrant workers about the infringement of their rights by PEAs. Low-income migrant workers often do not report violations and abuse of their rights because of the irregular and undocumented nature of their labor migration. (Migrant Forum in Asia, 2013). This lack of direct contact between licensing authorities and migrant workers allows PEAs to continue with their exploitative and unscrupulous practices without recourse.

### ***Recruitment***

To augment licensing, emerging markets seek to regulate recruitment fees to protect migrant workers from extortion. Recruitment fees include the costs associated with vetting candidates, processing of legal documents, and travel costs. The United Nations, through the Global Compact for Migration, guides against recruitment fees, outlined that recruitment fees act as a breeding ground for debt bondage, abuse, and exploitation among low-income migrant workers. (Global Compact for Migration, 2018).

Most emerging markets allow for the charging of recruitment fees but lack a guiding framework for the imposition of the fees onto migrant workers. The lack of a clear structure is attributable to the fact that many emerging markets have not ratified the ILO convention on recruitment fees, and their national policies on recruitment fees are still in their infancy, making them difficult to enforce. For example, Ghana allows PEAs to impose recruitment fees on migrant workers. The fees are expected to be “appropriate,” but no guideline or definition for “appropriate” is provided (International Labour Organization, 2020).

Conversely, the Taiwanese government has set a cap on recruitment fees starting at NT\$1,800 (approximately USD 55.74 as of 2024) monthly for the first year of work, NT\$1,700 (approximately USD 52.64 as of 2024) monthly for the second year of work, and NT\$1,500 (approximately USD 46.45 as of 2024) in the third and last year (Yu-Chen, 2023). However, PEAs offer services to migrant workers at inflated prices of between NT\$20,000 and NT\$90,000 (approximately USD 619.35 – 2787.08 as of 2024) for services (Yu-Chen, 2023). This grey landscape on recruitment fees has allowed PEAs to inflate costs and push migrant workers into bondage before securing the job. When the costs for recruitment are set so high, low-income migrant workers are pushed into debt bondage to PEAs and employers to finance their mobility as they push migration costs on them (Endo & Afram, 2011).

In countries where recruitment fees have been scrapped, such as Saudi Arabia, employers must process work visas and other legal documentation for their migrant workers (Jureidini, 2016). Employers rely on the illegal fees charged by PEAs to facilitate processing these documents. However, PEAs in Saudi Arabia have been known to impose charges on low-income migrant workers solely because they expect workers to pay the amount to secure the job (Jureidini, 2016). The snowballing effect of this is that employers in Saudi Arabia have the leeway to exploit low-income migrant workers because of their debt burden, thereby pushing these workers to poor working conditions (Jureidini, 2016).

PEAs also engage foot soldiers, commonly known as PEA agents/brokers, to recruit potential workers. PEA agents, even though they work with PEAs, work as separate entities, attracting their fees. These agents are pivotal in recruiting workers and the overall operations of PEAs, especially for low-income roles in destination countries. (International Labour Organization, 2017). They are critical in information dissemination. Nepal has many agents who act as middlemen in the villages to spread information about available opportunities and efficiently recruit candidates (Kern & Müller-Böker, 2015). A study undertaken in Nepal indicated that most migrant workers received all information through a PEA agent (Farbenblum, 2017).

### ***Contracts***

Employment contracts are pivotal in any employer-employee. The International Labour Organization Convention No. 181 is the guiding benchmark for PEAs worldwide (Private Employment Agencies Convention, 1997). The Convention provides guidelines on how PEAs

should operate to protect workers. It outlines the rights and freedoms of workers. However, many countries have not ratified this Convention. In its absence, PEAs, especially those with a niche for low-income migrant workers, such as domestic workers, do not facilitate the provision of employment contracts (Sayres, 2005). For example, male migrant domestic workers in South Africa, often workers from Zimbabwe, have no written work contracts with their employers (Toit, 2023). The lack of contracts is rationalized by arguing that work contracts should be reviewed and renewed often. This does not align with the labor market for low-income workers as they are more likely to be unskilled.

PEAs negotiate the terms of engagement for low-income workers by mouth, often leaving the migrant worker out of the discussion. This opens a pathway of exploitation because the workers remain blinded in terms of engagement, ranging from the nature of work to wages and living conditions. Many PEAs and prospective employers justify this by arguing that low-income migrant workers may be illiterate or semi-literate (Krueger & Posner, 2018). For many low-income migrant workers, contracts are technical; the most crucial element is wages. For this reason, these workers are not compelled to demand and sign a contract.

Contract substitution, another aspect, leaves migrant workers vulnerable as they receive lower wages than promised and accept poorer working conditions, such as long hours and other forms of exploitation. Contract substitution has been a common phenomenon among migrant domestic workers recruited by PEAs in the Philippines. The Philippines has a legislated minimum wage of \$400 for migrant domestic workers. However, only a few employers are willing to pay this amount. To navigate such situations, PEAs provide migrant workers with two contracts to sign, one with the stipulated minimum wage and another with the amount the employer is willing to pay (Jureidini, 2014). Having a signed copy reflecting the minimum wage acts as insurance from legal action for both PEA and prospective employers but is an exploitative practice for domestic workers. PEAs in Saudi Arabia and the United Arab Emirates (UAE) also practice this, with migrant workers reporting that they are offered different contracts with different terms – wages and nature of work – upon placement. A study reported that low-income migrant workers in Saudi Arabia earned 800 Riyal despite having negotiated a 2000 Riyal contract (Atong et al., 2018). Such differences, especially in wages, leave workers vulnerable to forced labor as they try to recoup debt accrued from the labor migration process.

Overall, PEAs play a critical role in labor intermediation in emerging markets. PEAs support the labor market's growth, which supports emerging markets' economic growth. Despite the rapid economic growth in these markets, high unemployment is evident. This has led to high migration flows of low-income workers in these markets and PEAs that facilitate their movement. PEAs are characterized by unscrupulous and unethical practices that hurt the rights of migrant workers. These practices range from operating without licenses, charging high recruitment fees, engaging in contract negotiation on behalf of the workers, and, at worst, contract substitution. These practices expose low-income migrant workers to various vulnerabilities that infringe on their rights, such as human abuse.

### **1.3: Approaches for Governing Private Employment Agencies in Emerging Markets**

Governance is an all-encompassing concept that refers to the exercise of authority, whether formally or informally. Governance presents itself in different modes – hierarchical governance, market-based governance, and network governance (Meuleman, 2008). I discuss these modes and how they present themselves as approaches for governing PEAs in emerging markets.

#### ***Hierarchical Governance***

Hierarchical governance is associated with Weberian bureaucracy. Authorities and rules characterize this form of governance. The state is central, and other actors depend on it. (Meuleman, 2008). Resource allocation is through political budgeting, and processes are highly bureaucratic (Buuren & Eshius, 2010). With defined centralization, this form of governance may lack the financial and human capacity to oversee all operations, giving leeway for governance failures. The following characteristics distinctively mark the Weberian bureaucratic model: definitive division of tasks, authority is sculpted in rules, and rules guide everyday activities. (Meuleman, 2008)

Regulation and monitoring of PEAs in emerging markets are often under the purview of a core ministry in the central government, often the Ministry of Labour. Central administration fosters oversight of PEAs (Andrees et al., 2015). For example, the Taiwanese government has a Ministry of Labour that regulates and monitors employment services and labor complaints, including those of private employment services (Wang & Paul, 2022). At the same time, there is distinct legislation that guides the operations of PEAs. This legislation comes from the government and

is enforced by the government. The legislation also enshrines the legal status and the operating conditions of PEAs in these countries. They give guidelines on such things as registration and licensing. These laws also provide the basis on which PEAs are suspended or banned. When the requirements and the duties of the PEAs outlined in these statutes are violated, governments of emerging markets have revoked the licenses of PEAs. The Philippines, for example, has revoked the licenses of PEAs that did not provide their full details (Andrees et al., 2015). Such radical measures ensure the weeding out of rogue PEAs, which protects the rights of low-income migrant workers.

With the government as the central player, it sets the minimum wage, border controls, and other measures to regulate the labor market. For example, the minimum wage in South Africa as of 2023 was R25.42 per hour (approximately USD 1.36 as of 2023). Minimum wages are fair wages as outlined in law in the National Minimum Wage Act (Republic of South Africa, 2018). PEAs in South Africa are expected to recruit using these rates to protect low-income migrant workers from wage exploitation. Despite having the minimum wage enshrined in law, migrant workers are recruited and paid significantly less than the outlined minimum wage. Similarly, Thailand's minimum wage was increased to range between 328 baht and 354 baht per day in 2022 (approximately USD 9.47 – USD 10.22 as of 2022) (Huld, 2023). However, studies show migrant workers are paid below the minimum wage (MAP Foundation, 2017). On another note, setting up border controls is pivotal in reducing human trafficking. The smuggling of low-income migrant workers, especially in emerging markets such as Thailand, happens on natural borders because they are porous (Murphy, 2018).

A hierarchical mode of governance has many benefits, especially in the context of emerging markets. First, it is structured to support transparent decision-making (Phuong et al., 2018). With top-down governance, decision-making and authority lines are clearly defined, which makes governance easy and enhances efficiency. On the flip side, this mode of governance in emerging markets may be subject to limited capacity, resulting in weak regulatory enforcement and bureaucratic inefficiencies. The cumulation of these factors may hinder the effective implementation of top-down governance needed for the governance of PEAs.

Second, the hierarchical mode of governance enhances communication and coordination across different levels of the government (Widhiastuti, 2013). Enhanced communication and

coordination allow the government to work toward common goals without fragmentation and with better cohesion. However, this mode of governance has also been associated with political interference (Rogger, 2014). Instead of enhanced communication, there is interference that undermines autonomy. This eventually hinders the effectiveness of governance.

Lastly, hierarchical governance promotes formal institutional structures, including regulatory systems (Meuleman, 2008). Upholding these systems is core in emerging markets because they promote compliance and order. A hierarchal mode of governance is core to the development of compliance mechanisms. However, because of emerging markets' ever-growing and expanding nature, institutions and systems should be adaptive (Garvey, 1993).

### ***Market-based Governance***

Market-based governance is associated with New Public Management. It revolves around market-based mechanisms cutting across the public and private sectors and employs instruments such as prices and contracts (Meuleman, 2008). New Public Management, which rose in the 1980s, aimed to infuse efficiency principles borrowed from the private sector and its market mechanisms to improve public administration performance.

The UK is an exemplary case of market-based governance of employment agencies (Eichhorst et al., 2013). This governance method in the UK is marked by self-regulation by codes of practice. The codes of practice are issued by a central body, the Recruitment and Employment Confederation (REC). Despite the REC codes of practice, individual agencies also adhere to their codes of practice. From a rights perspective, the UK has the Agency Workers Regulations 2010 that provides day-one rights for agency workers. These rights ensure agency workers have facility access rights like regular employees, such as childcare after 12 weeks of engagement. (Eichhorst et al., 2013).

This mode of governance in the UK has been associated with a complexity in information dissemination of the legal framework. Since employment agencies are self-governing, workers remain unaware of their rights and responsibilities when dealing with agencies. The government actively guides workers who engage in PEA services to bridge this gap (Eichhorst et al., 2013). Because the UK engages a market-based mode of governance, workers charge for their services at market-rate value based on their skill level and area of specialization.

These features are not standard in emerging markets where government and networks are core in regulating and monitoring PEAs. Emerging markets rely on the concept of minimum wages because it reduces inequality (Saget, 2001). However, compliance with minimum wage is low in emerging markets for low-income workers because of the prevalence of the informal sectors. Market rates prevail based on the ability and willingness to pay.

### *Network-Governance*

Network governance may be defined as the ‘set of conscious, steering attempts or strategies of actors within governance networks aimed at influencing interaction processes and the characteristics of these networks’ (Klijn & Koppenjan, 2015:11). Networks are collaborative structures that do not depend on markets or hierarchies. Instead, they are mutually dependent on common goals (Klijn & Koppenjan, 2015)

Networks operate in a non-hierarchical coordination, often to resolve wicked problems (Ouden, 2015), some of which include labor migration and the governance of PEAs. For this reason, networks are marked by high interdependencies because the resources needed to solve these wicked problems are held by the different actors in the network (Klijn & Koppenjan, 2015). Network actors remain autonomous, and their participation is open and voluntary.

Labor migration governance is a global governance issue that has wielded the attention of organizations such as the International Labour Organization (ILO) and the International Organization for Migration (IOM). These organizations are devoted to promoting social justice in labor and migration. Labor migration in emerging markets attracts more attention because it is irregular and unsafe. Protecting low-income migrant workers requires a collaborative and consultative approach between multinationals such as the ILO, the national government, and civil society. For illustration, the civil society in the Philippines has been pushing to set standard contracts to enforce minimum wages for migrant workers (International Organization for Migration, 2010)

Network governance in labor migration governance also displays itself through transnational networks and domestic policy communities. Transnational networks influence labor migration in how workers are recruited, placed, and circulated in the destination country's labor market (Vertovec, 2002). Regional consultative processes (RCPs) are critical in instituting lasting policy

solutions in the migration governance arena. For example, in 2007, an RCP was convened on overseas and contractual employment for Asian labor. The outcome of the RCP was policy recommendations on protecting migrant workers in those countries (International Organization for Migration, 2007). In addition, establishing bilateral labor agreements (BLA), a network arrangement for labor in emerging markets promotes labor movement between two or more countries. These BLAs outline the roles and responsibilities of PEAs and, therefore, reduce the chances for unethical recruitment by unscrupulous PEAs that put migrant workers in precarious conditions (African Union Commission, 2022)

At the same time, labor migration governance in these markets is also marked by codes of practice and private regulation mechanisms informed by institutions such as the ILO and domestic policies. Similarly, implementing domestic labor migration and other protection policies may result in interagency coordination mechanisms. While these may not be common in emerging markets, they may prove to be effective in governing PEAs and protecting migrant workers' rights.

This section has presented the different governance approaches for PEAs in emerging markets. It presented the different modes of governance and how they informed the approach for PEA governance in emerging markets. Emerging markets are more likely to employ governance strategies that lean towards hierarchical and network-based modes of governance (Eichhorst et al., 2013).

## **2 Framework of Analysis: Evaluation Criteria for Policy Analysis**

Labor migration has been linked to economic development for both home and destination countries. This has sparked interest in the policy arena on the migration-development nexus. This has called for improving governance structures to oversee migratory flows better.

To date, the approaches to governance of PEAs have been conducted from an economic perspective with a focus on their remittances to their home countries (Benner et al., 2007; Juliawan, 2010). When the focus is on economic output, it is easy to overlook the overall well-being of these workers. As such, there is a need to look at the governance of PEAs to promote the overall well-being of migrant workers. This framework provides a new lens for viewing PEA governance as an avenue to promote the rights protection of low-income workers. This framework aims to merge human rights and labor rights to provide a comprehensive view of the rights of low-income workers.

Migrant workers are entitled to legal and social rights regardless of nationality. These rights are enshrined in the Universal Declaration of Human Rights outlined by the United Nations Convention. In addition to this, ILO has established various standards to protect migrants from vulnerabilities. The ILO has instituted two conventions protecting migrant workers. These are the Conventions 97: Migration for Employment Convention (Migration for Employment Convention, 1949) and Convention 143: Migrant Workers (Supplementary Provisions) Conventions (Migrant Workers (Supplementary Provisions) Conventions, 1975). The ILO outlined these two Conventions to combat discrimination and promote equal opportunities for migrant workers in their destination countries.

Despite establishing these Conventions and Protocols, implementation and enforcement by the ILO remains difficult. Only 54 countries globally have ratified Convention 97 of the ILO, while only another 30 have ratified Convention 143 (International Labour Organization, n.d). Many governments have chosen to institute their policies and frameworks to govern PEAs and to protect the rights of migrant workers within their jurisdiction. These protection frameworks work to protect the rights of migrant workers, including their economic, social, civic, and political. (Dean, 2011). Establishing laws and policies aims to protect the general well-being of migrant workers. Low-income migrant workers are vulnerable and, therefore, prone to exploitation (Arat-Koc, 2006) and coercion (Buckley et al., 2022).

Low-income migrant workers work in unregulated sectors, excluding them from social and legal rights (Carens, 2008). The rights of these workers are overlooked because they are irregular and undocumented. However, under the International Labour Law, all workers are entitled to full social and legal rights regardless of status (Adams, 2005). To this extent, low-income migrant workers are prone to vulnerabilities such as exploitation. These workers occupy 3-D jobs in emerging markets – dirty, dangerous, and difficult- compounding their exposure to vulnerabilities. Employers in emerging markets engage the services of these workers because their labor is cheap and flexible.

The precarity of these workers in emerging markets has been normalized. This keeps exposing these workers to many vulnerabilities that endanger their well-being, human rights, and labor rights. Low-income migrant workers in these markets are subjected to poor, below-market wages, which push them to squalid living conditions. Furthermore, these workers are recruited unscrupulously and are more likely to be smuggled or trafficked or to end up in coerced/forced labor (ElDidi et al., 2023) without any escape.

## **2.1 Migrant Well-Being and Human Rights**

Migrant well-being in emerging contexts is a multi-faceted phenomenon that spans job satisfaction, working and living conditions, and other life domains (Sambajee & Scholarios, 2023). Labor migration among the low-skilled and low-earners is evidenced by precarious work with low wages, minimal bargaining power, and poor physical and social protection. The precarious work that these low-income workers hold, combined with the social and economic hardship they experience, yields different forms of precarity: *precarity of work* – uncertainty of holding down a job; *precarity at work* – uncertainty associated with discrimination or harassment at the workplace; and *precarity from work* - anxiety of holding down a job that does not meet your needs (Allan et al., 2021). These forms of precariousness are common among low-income migrant workers.

Understanding migrant rights requires that we consider the geographical prism of migrant workers. Strabac et al. (2018) argue that low-income workers are poorly paid and treated harshly, but this is often better than the conditions they experience in their home countries. However, from a global perspective, the wages and the working conditions are often below par. The jobs that low-income migrant workers occupy in destination countries are often in high demand

despite the precariousness that they carry with them because the locals have little regard for these jobs. This has created leeway for low-income migrant workers to be exploited through low wages and poor living conditions (Misra, 2007). Employers of these jobs devalue these jobs and push this to the low-income migrant workers they engage as employees. With little regard for them, they invalidate their well-being and, in so doing, compromise the rights of migrant workers working for them. In extreme cases, female low-income migrant workers are known to suffer sexual exploitation at the hands of their employers and to receive physical beatings – an example of human abuse and violation (Blaydes, 2023).

Migrant workers are prone to exploitation, an aspect that is hinged on the erosion of their well-being and that of their human rights. Migrant workers fall victim to exploitation primarily due to their inherent vulnerability, which limits the options for social, economic, and legal justice (Lenard & Straehle, 2010). Low-income migrant workers often have low bargaining power because employers assume that they come from worse conditions.

Protection of migrant workers includes protecting them while they are in transit from their home country up to their settling in the destination country. This protection includes safeguarding from human trafficking, smuggling, and forced labor. The erosion of rights of low-income migrant workers is often the result of unscrupulous PEAs gaining access to vulnerable workers seeking employment placements. In areas where labor demand and supply are unequal, the vulnerable, who may often be migrant workers, take up employment placements regardless of the terms. Understanding the vulnerabilities of low-income migrant workers and the prevailing conditions of the labor market is a prerequisite for protecting migrant workers from falling prey to unscrupulous PEAs.

This framework of analysis works to reframe both the economics and the rights-based developmental approach to migration. The rights-based approach promotes social justice, especially for those whose rights may be restricted. While this approach may prevent the victimization of migrant workers because of their inability to agitate for their rights, this approach is not sensitive to the structural factors that surround labor migration that perpetuate the vulnerability of migrant workers. These structural factors may include labor market dynamics that lead to demand for low-income labor and social exclusion and exclude certain groups of people from enjoying certain rights. I recoup rights as an inherent part of human well-being and

integral to migrant workers. This framework considers labor market dynamics. Therefore, this study seeks to remain sensitive to how rights and low-income demand intersect to provide a guide that will give actionable policy options to overcome the over-prescriptive nature of the rights-based approach. Today, migrant workers are the drivers of many national labor markets, both globally and in emerging markets. The livelihoods of many of these migrants are marked by significant exploitation and extreme vulnerabilities. Labor rights as human rights are now taking center stage as labor migration rises higher as a global governance issue (Misra, 2007).

This framework of analysis provides the evaluation criteria for my policy analysis. Herein, this study presents the core rights of low-income migrant workers in emerging markets, drawing from academic and industry scholarship (Misra, 2007; Blaydes, 2023). This policy study will elaborate on how effective governance of PEAs in emerging markets is central to protecting these rights for low-income migrant workers within these contexts. In so doing, this study seeks to advance scholarship by providing actionable policy options that can contribute towards the effective governance of PEAs to promote the rights-protection of low-income working in emerging markets.

Drawing from the above, the rights of low-income migrant workers should be considered imminent. Providing these workers with the proper working conditions recognizes migrant workers as human beings with agency. In accord with human agency and the rights associated with it, migrant workers have the *right to protection from abuse and human rights violations*, the *right to protection from human trafficking*, and the *right to fair wages and collective bargaining*. These form the distinct criteria against which this study evaluates migrant workers' rights and the effect of PEA governance in emerging markets.

### **2.1.1 Right to Protection from Abuse and Human Rights Violations**

The protection of migrant workers from abuse and other human rights violations has been an issue that has gained global attention. I conceptualize abuse and human rights violations as an intentional infringement of workers' freedom and agency. This infringement presents itself in the confiscation of migrant workers' identity documents.

Globally, labor laws and regulations exclude domestic work and other low-income jobs (Ullah, 2015). This opens a playing field for employers and recruiters to be unscrupulous, with low-

income workers seeking opportunities. This lack of regulation enables employers to confiscate documents to restrict movement (McCann & Murray, 2010). It is imperative to note that any form of abuse and violation toward low-income migrant workers infringes on their essential human and legal rights. The right from abuse and human violations should be granted to all low-income migrant workers. This promotes their human rights and recognizes the agency of these workers.

Migrant workers commonly report abuse and violations of human rights. Domestic workers, for example, suffer different forms of abuse – verbal, physical, and sexual - at the hands of their employers (Ullah, 2015). In addition, identity documents are confiscated by PEAs and employers as collateral to ensure recruitment fees are paid. In turn, migrants suffer abuse without a way out. Confiscation of identity documents is prevalent in the UAE, where PEAs and employers keep low-income workers bonded in abusive environments (Ewers, 2023).

### **2.1.2 Right to Protection from Human Trafficking and Smuggling**

Human trafficking encompasses ‘the recruitment, harboring, transportation, provision or obtaining a person for labor or services through the use of force, fraud or coercion for subjection to involuntary servitude peonage, debt bondage or slavery.’ (U.S. Department of State, 2012:8). On the other hand, smuggling refers to the ‘assistance granted to irregular, undocumented migrants to cross borders motivated by financial gain.’ (United Nations Office on Drugs and Crime, 2013:7). For this paper, I conceptualize human trafficking and smuggling as the coercion of low-income migrant workers into servitude of forced labor and bondage, often characterized by the assisted irregular migration of these workers. Human trafficking and smuggling present themselves in debt bondage because of recruitment fees and false identity documents or lack of identity documents.

Labor migration is a costly affair. Low-income migrants sink into debt to secure jobs through PEAs and to settle in their destination countries. The charges of PEAs on low-income migrant workers have been attributed to exposing migrant workers to human trafficking and smuggling. When migrant workers are subjected to recruitment fees, they are more likely to be victims of forced labor. High recruitment fees force low-income migrant workers into debt at times from PEAs or prospective employers with the promise of paying back once the job is secured (Global Compact for Migration, 2018). This leaves migrant workers bonded to their employers without

the opportunity to escape oppressive employment relationships. PEAs perpetuate trafficking by extorting vulnerable migrant workers through high recruitment fees (Global Compact for Migration, 2018).

Smuggling is a chosen path for many low-income migrant workers in emerging markets. This is primarily because smuggling is cheaper than using a formally registered PEA and procuring a travel pass and a work permit. At the same time, these migrants often do not have the informational power to determine what constitutes regular migration. As a result, low-income migrant workers bear the brunt of recruitment irregularities. For these reasons, migrant workers falsify their documents, believing that certain features, such as lower age, will get them jobs (International Labour Organization, 2022). Low-income migrant workers are more likely to use porous routes to access destination countries that use formal ports of entry. The smuggling of low-income workers remains popular because of the demand for them. These workers are also paid below-market-rate wages, making them even more popular.

### **2.1.3 Right to Fair Wages and Collective Bargaining**

Fair wages for low-income workers can be traced back to recruitment. Many low-income migrant workers do not engage with prospective employers for wage negotiations. PEAs and prospective employers determine the terms of their engagement for them. In the end, low-income migrant workers end up earning low wages and lack a voice to lobby for better pay. I conceptualize fair wages and collective bargaining as the earning of a minimum wage as guided by the State and the ability to join a workers' union to lobby for better terms of engagement. This can be assessed through minimum wage salaries and knowledge of workers' union offering channels to register.

Low-income migrant workers are preferred because they are cheaper than nationals (Kuhn & Shen, 2015). Employers gravitate towards these workers, sometimes paying meager wages that cannot sustain the workers. Establishing a minimum wage reduces wage inequality (Sotomayor, 2021). At the same time, a minimum wage allows low-income workers to access basic needs and commodities that promote a decent life and overall well-being. Minimum wages for low-income migrant workers promote agency, allowing them to earn at market value and to live a decent life – proper housing and access to healthcare.

Freedom of association encompassing collective bargaining are labor rights provisioned by the ILO. These rights cover skilled and unskilled labor. Where collective bargaining is used, workers are known to be compensated better. Low-income migrant workers may be unaware of the local trade unions and associations that represent their needs and voice their grievances (Atong et al., 2018). This lack of awareness impairs their access to a fundamental labor right that can improve their terms of engagement. When low-income migrant workers have fair wages, they are empowered to access social protection. This becomes a path towards freedom from other forms of exploitation.

This framework of analysis establishes three rights of low-income migrant workers that are widely discussed. I establish these rights not only as human rights but also as labor rights. In meshing human and labor rights, I bring out an aspect of migrant rights that focuses on their objective and subjective well-being (Wright, 2014). This framework of analysis establishes the evaluation criteria against which policy options for PEA governance in Kenya will be evaluated to protect the rights of low-income migrant workers.

### **3 Methodology**

#### **3.1 Policy Study**

This section describes the approach used to undertake this study. I adopted a policy study as deconstructed by Patton et al. (2012). Policy studies are in-depth empirical studies that seek to ‘understand and inform the policy-making process.’ (Young & Quinn, 2002:4). They are informed by research into the specified subject to give policy solutions to the identified challenges. Several scholars support policy studies because of their evidence-based approach to global challenges. (Dye, 2017; Bacchi, 2009; Bardach & Patashnik, 2016).

Policy studies are firmly grounded on evidence that may involve collecting data through documents or interviews (Bardach & Patashnik, 2016). Consequently, policy study methodology is reiterated to ensure that policy options remain relevant to the prevailing times (Bardach & Patashnik, 2016). My policy study methodology adopts a 6-step iterative method that involves problem definition, determination of the evaluation criteria, identifying policy alternatives, evaluating policy alternatives, comparing alternatives, and assessing outcomes (Patton et al., 2012).

Below, I discuss the 6-step iterative method I adopted for my policy study, as discussed by Patton et al. (2012).

##### *Problem Definition*

This first step involves providing concrete information on the policy issue that convinces the audience of the urgency of the issue. This process involves the identification of the causes of the issue, the magnitude, and its impact on the defined stakeholders. Problem definition encompasses a clear statement of intent for policy analysis (Young & Quinn, 2002). This step is covered in Section 1.2 of this study, where I explicate the features and functions of PEAs emerging markets, and Section 4.1, where I present the case analysis of Kenya with respect to PEA governance.

##### *Determination of the Evaluation Criteria*

An evaluation criterion compares alternative options that achieve desired goals and outcomes. (Patton et al., 2012). An evaluation criterion is derived from the problem definition to ensure it

is valuable and acceptable in addressing the policy issue. The determination of precise evaluation criteria supports thorough policy analysis. It is important to note that evaluation criteria are not imposed on projected policy alternatives but on projected policy outcomes (Bardach & Patashnik, 2016). The evaluation criteria for this study are formed through a combination of the human and labor rights of low-income migrant workers. This evaluation criteria are outlined in section 2.1 and operationalized in section 3.2 below.

### *Identification of Policy Alternatives*

The above evaluation criteria indicate how policies may achieve a specified goal (Patton et al., 2012). Policy alternatives are generated, ensuring they address the policy problem and ease decision-making. Policy alternatives are reached through extensive research and consultation with stakeholders to understand the problem better and explore different perspectives on interventions. Policy alternatives can be derived through various research methods. These may include literature reviews, surveys, and interviews for real-world experiences (Patton et al., 2012). This policy study employs a mix of research methods to identify policy alternatives. I primarily rely on document analysis and interviews to generate my set of policy alternatives.

### *Evaluating Policy Alternatives*

This step aims to evaluate identified policy alternatives against the evaluation criteria. The outcome of this evaluation is to isolate the feasible and desirable policy options to achieve the best outcomes for the defined problem statement. The identified evaluation criteria are the right to protection from abuse and human violations, protection from human trafficking and smuggling, and the right to fair wages and collective bargaining.

### *Comparing Alternatives*

Comparing alternatives involves making trade-offs between the outcomes of each policy alternative (Bardach & Patashnik, 2016). It is easier to select outcomes from policy alternatives that yield the most significant or highest net value. In this step, the focus should be on making a trade-off that resolves the problem.

### 3.2 Research Design

This study will engage an in-depth qualitative analysis of Kenya's case. A case study involves the extensive study of a single example of a phenomenon whose findings can be generalized across similar phenomena (Denzin & Lincoln, 2011). Case studies provide a more in-depth view of the phenomenon by closely examining and explaining links within a particular scope or initiative. (Crowe et al., 2011). I selected a case study research design for this policy study due to its inherent benefits in social science methodology.

Case studies provide a wealth of contextualized data on real-life situations. This data proves helpful when providing policy recommendations for specific problem issues. In addition, the data generated from case studies is pivotal in applying theoretical frameworks to real-life issues. The contextualized data generated in case studies provide an avenue to test these frameworks for their applicability, strengths and weaknesses, and feasibility in policy settings. Overall, case studies provide a holistic view and retain the core characteristics, providing a better understanding of the subject under research (Yin, 2009).

Kenya provides a good example for undertaking a case study on PEA governance. Kenya is an emerging market with a grey regulatory landscape on PEAs despite its high migratory flows (International Organization for Migration, 2022). Kenya has made attempts at regulating and monitoring PEAs by undertaking policy reforms. These reforms have spanned across regulating PEAs with the proposed Labor Migration Management Bill, 2023 (Ministry of Labour and Social Protection, 2023). However, Kenya still struggles with challenges associated with labor mobility, such as irregular migration, human trafficking (Makokha, 2020), and exploitation of migrant workers (Gachoki & Otieno, 2023). These factors make Kenya an excellent case for studying labor migration and PEA governance and its effects on the rights of low-income migrant workers.

I adopted the case study roadmap by Yin (2009) for my study, albeit with a few modifications to what is logical for my policy study. I illustrate the below:

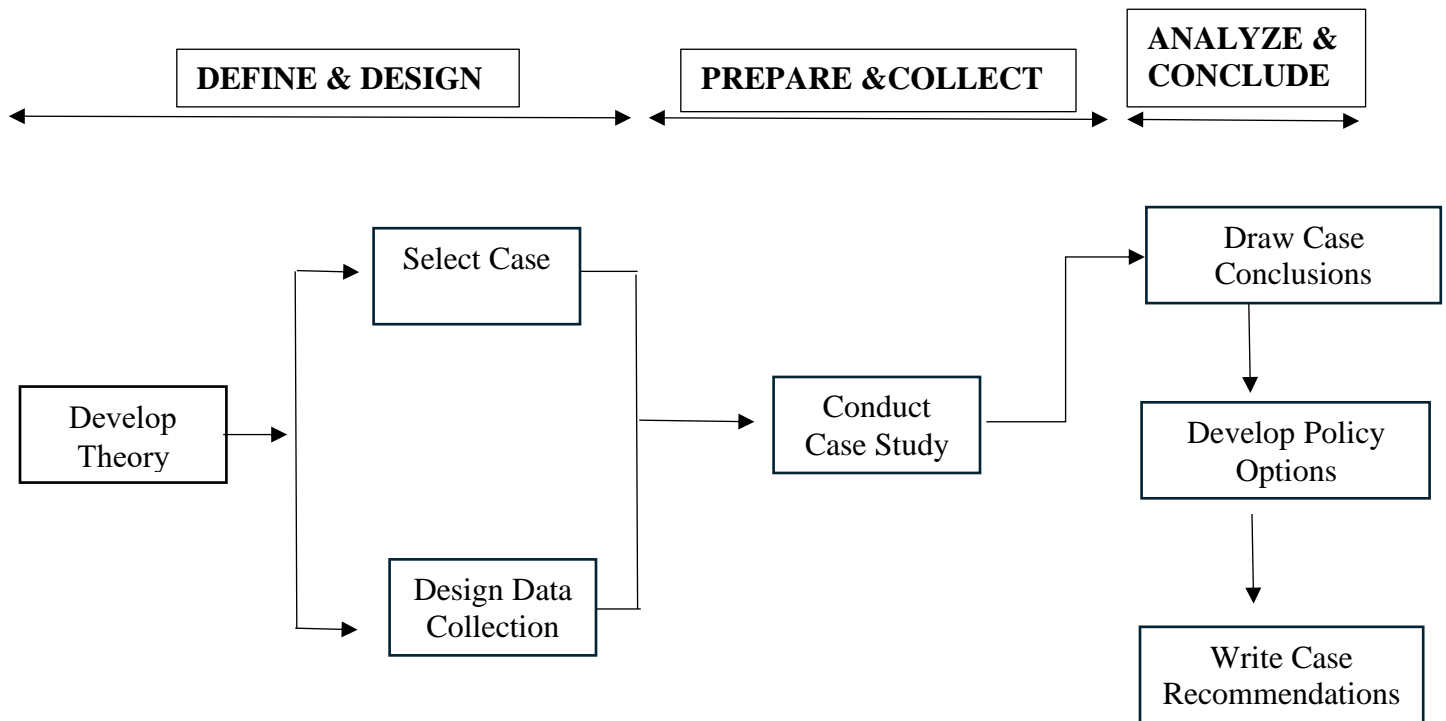


Figure 1: Case Study Method - Modified from Yin. K. (2009). *Case Study Research: Design and Methods (4th ed)*.

The application of this roadmap may be summarized as follows:

### 1. Defining and Designing

This phase involved developing the framework of the study. In this case, I developed the framework of analysis that establishes three distinct rights - *the right to protection from abuse and human rights violations*, the *right to protection from human trafficking*, and the *right to fair wages and collective bargaining*. These rights establish the evaluation criteria for my policy options for the governance of PEAs in Kenya.

To operationalize protection from abuse and human violations, this study focused on the dimension of confiscation of identity documents as a pointer of abuse and human rights violations. The evidence for this dimension was found in assessments and reports from the ILO and the Association of Southeast Asian Nations (ASEAN). Secondly, protection from human trafficking and smuggling was operationalized as debt bondage, assessed through recruitment

fees and/or falsification or absence of identity documents. These dimensions explicated coercion of labor and assisted irregular migration. The evidence for debt bondage and falsification or absence of identification was sourced from reports and evaluations by the ILO and the Human Rights Watch (HRW). Lastly, the right to fair wages and collective bargaining was operationalized as the earning of minimum wage salaries to promote a decent life for low-income migrant workers. This dimension explained the minimum wage earning towards a decent life and how trade unions were attributed to earning minimum wages. The evidence was sourced from reports and evaluations by the ILO, HRW, and isolated reports from the Government of Singapore. In this phase, I also design my data collection methods.

## ***2. Preparing, and Collecting***

The second phase involved the collection of data through the identified stakeholders. Since the data collection tool was interviewed, this phase involved preparing a stakeholder reach-out strategy. I reached out to experts through emails and followed up with a phone call where possible. I contacted migrant workers primarily through phone calls, while PEAs had a combination of emails and phone calls. The interviews were conducted through phone calls and virtual platforms. The platform used was Google Meet for all virtual meetings. All meetings were recorded with the consent of the respondent. The consent form used for this study can be found in Appendix I of this paper. This phase also involved the development of a codebook. This codebook guided document analysis.

## ***3. Analyzing and Concluding***

The final phase involved analysis of the data collected from interviews. Data analysis in this policy study supported the development of the problem statement and entrenched the policy options in evidence for their feasibility. The data analysis helped develop feasible policy options for the governance of PEAs in Kenya and other emerging markets.

### **3.3 Data Collection and Analysis Techniques**

Taherdoost (2021) notes that qualitative methods fall into three (3) main categories. These are interviews, document reviews, and observations. Interviews are often semi-structured and open-ended to allow flexibility and deeper exploration of the phenomenon. Document analysis may be defined as a ‘systematic procedure for reviewing or evaluating documents – both printed and

electronic.’ (Bowen, 2009:27). The content being analyzed is interpreted within the context of the phenomenon being studied to gain a ‘deeper understanding and develop empirical knowledge.’ (Corbin & Strauss, 2015).

Policy studies are firmly grounded on evidence that may involve collecting data through documents or interviews (Bardach & Patashnik, 2016). Therefore, this study used a qualitative approach and collected qualitative data. The qualitative data used for this study was interviews with experts, low-income migrant workers, and representatives of PEAs, and document analysis on policies on rights protection for migrant workers. To gather comprehensive insights to inform policy options for Kenya, interviews were complemented with a thorough document analysis.

Three sets of interviews were conducted for this study – four (4) experts, seventeen (17) low-income migrant workers, and four (4) representatives of PEAs. Experts included policymakers in labor migration governance for low-income migrant workers, such as the Central Organization for Trade Unions – Kenya (COTU- K) and the African Migration and Development Policy Centre (AMADPOC). The second set of interviews was conducted with low-income migrant workers to understand their experiences and whether their welfare and labor rights are upheld. The third set of interviews was done with representatives of PEAs to understand their recruitment practices and how they affected the rights of low-income migrant workers. The interview guides can be found in Appendix II of this paper.

I conducted four (4) expert interviews with specialists in labor migration governance drawn from government agencies and private sector organizations working with low-income migrant workers in Kenya. I also interviewed seventeen (17) low-income migrant workers and representatives of four (4) PEAs. A document analysis of reports and assessments of the pre-determined rights of migrant workers complemented this. Some documents analyzed were legislation on labor migration and PEA regulation in Kenya and assessments or policy evaluations on human and labor rights by the ILO, the IOM, and the Migrant Forum in Asia. Fourteen (14) documents were analyzed, averaging fifty (50) pages each.

I used purposive sampling as my sampling technique. Purposive sampling is a non-probability sampling technique in which the researcher chooses the sample based on set criteria. Using purposive sampling techniques, I established the following decision rules for selecting migrant workers and PEAs for interviews. These decision rules are set to have a representative, diverse,

and inclusive participant pool. The interviews conducted persisted until data saturation was achieved. Data saturation occurs at the point at which the data collected does not produce any more new themes (Braun & Clarke, 2021)

The selection criterion for PEAs and migrant workers was based on the following decision rules:

- PEAs and migrants operating in urban areas.
- PEAs and migrants operating in exclusive labor niches, particularly domestic house workers and security guards.
- Licensed and unlicensed PEAs. This continuum of PEAs aims to establish whether any nuanced patterns exist in migrant workers' rights regarding licensing.

This study employs thematic coding for data analysis. Thematic analysis may be defined as 'identifying, analyzing, and reporting patterns within the data.' (Braun & Clarke, 2006:79). The coding framework supports classifying the themes or patterns that emerge from the data while aligning with the core evaluation criteria for this study. Gibbs (2007) conceptualizes thematic coding as a form of qualitative analysis that groups similar texts by theme, which allows you to categorize these themes and eventually create a framework of ideas around these themes. I adopt the Braun and Clark (2016) 6-step guide to thematic analysis. This process involves familiarizing myself with the raw data, generating the initial codes, searching for common themes across the codes, reviewing the themes, defining the themes, and finally summing up the themes. The coding framework is attached in appendix III of this paper.

I manually code my data on Excel and Mural to generate the themes from my interview data. Manual coding increases analysis rigor and allows better familiarity with the collected data. This policy study will provide a systematic thematic analysis of the governance of PEAs in Kenya to showcase gaps, challenges, and failures and thereby provide feasible policy options applicable in Kenya and emerging markets.

### **3.4 Consent and Data Management**

The informed consent process involved a written, signed, and dated consent form. The form was written in English but translated into the local language where needed. The contents of the consent form were read to the respondent before signing. The form included the nature and scope of the study, how the information gathered would be used, and the procedures for anonymity,

privacy, and confidentiality. The language used in the consent form was kept simple to ensure easy readability and comprehension.

The data management procedures used in this study aimed to ensure that the data collected was protected from loss and corruption. All interviews were saved on my University of Tartu OneDrive Cloud Storage in their audio format as MP3 and annotated with a unique identifier after transcription for archiving. The interviews and transcripts were password-protected. I was the sole custodian of the password. Backup of the data was done every seven (7) days. Data arising from the interviews was not shared. As this study touches on sensitive matters, the protection of respondents took precedence, and data was not shared with any third party. All the data collected was destroyed at the end of the study.

The consent form used for this study is attached in the paper's appendix.

### **3.5 Limitations of the Study**

Despite the methodological rigor, the study is met with a few limitations. These are:

1. **Time constraint:** The duration of time that the study was undertaken was limited. This limited the number of stakeholders I could reach and the depth of secondary research I could undertake on the subject area. This, in turn, limited the insights I could get.
2. **Little prior research on the area:** Little research of this nature has been done before, thus making information access challenging. This research has involved the development of benchmarks to facilitate the study's progress and advance such studies in emerging markets.
3. **Challenge finding suitable participants:** Despite having established decision rules for selecting PEAs and migrant workers, extensive screening was required to find these participants, especially in the time frame in which the study was conducted. Additionally, Ministry of Labor and National Employment Agency officials were inaccessible. There was reliance on insights from agencies that work with these institutions and secondary data.
4. **Language barrier:** Most migrant research participants were non-English speakers. Much may have been lost in translation regarding the weight and depth of their sentiments, as languages do not overlap in expressing depth of emotions.

5. **Fear of reporting:** Both PEAs and migrant workers were hesitant to share information on their operations in Kenya. This led to many migrants and representatives of PEAs cancelling interview appointments at the last minute despite the reading of consent forms.

## **4 Empirical Study**

### **4.1 Problem Analysis: The Case of Kenya**

PEAs are a common pathway for low-income workers to enter the Kenyan labor market. These agencies facilitate labor movement from and into Kenya by disseminating information about available opportunities, recruitment, and training and placement of workers. PEAs in Kenya are regulated by the National Employment Agency (NEA). NEA was established through an Act of Parliament in 2016 to streamline the employment of foreigners in Kenya and the sending of Kenyans abroad for labor (Ministry of Labour and Social Protection, 2016). All PEAs are expected to be legally registered with NEA to be operational in Kenya. Since its inception in 2016, NEA has registered over 900 PEAs (Omulo, 2023). However, in a recent vetting of PEAs, only 531 of the previously registered PEAs were found to be still operating with valid licenses, while another 401 PEAs were operating with expired licenses (Omulo, 2023).

PEAs in Kenya have been associated with unethical recruitment practices that put migrant workers at risk (Odhiambo, 2019). Unethical recruitment practices span across both licensed and unlicensed PEAs. The practices of PEAs that expose migrant workers to these vulnerabilities are embedded in their component roles of information dissemination, recruitment, and placement. They engage in activities such as charging high recruitment fees and providing fraudulent immigration documents, among many other activities that leave migrant workers vulnerable to exploitation. With no legal obligations to migrant workers, PEAs have the leeway to engage in unethical practices that negatively impact migrant workers.

The government of Kenya is tightening the leash on PEAs to promote ethical practices to protect the rights of migrant workers (Omulo, 2023). Below, I discuss how the grey regulatory and monitoring landscape that governs PEAs in Kenya has paved a pathway for unethical practices that harm migrant workers.

#### ***Information Dissemination***

Information dissemination is done to advertise the available opportunities. The methods applied by PEAs vary and are intended to reach the most expansive pool of candidates (Özbilgin et al., 2015). These methods are primarily through word of mouth, PEA brokers/agents, and referrals.

A female research participant from Uganda for this study, who came to Kenya for the first time about three (3) years ago, just before she turned eighteen (18) years old, noted,

*“A friend of my mother who helps people get jobs in Nairobi told me about an opportunity to be a domestic worker in Nairobi. That is how I learned about the job.” (Research Participant 005)*

Individual brokers/agents are not subject to any regulation or licensing from the Government of Kenya (Odhiambo, 2019). This provides leeway for them to engage in unscrupulous practices without any recourse. These brokers/agents charge migrant workers for information on available opportunities. This charge is separate from the recruitment fees imposed by the PEAs on low-income migrant workers (Odhiambo, 2019). This, in turn, makes the financial costs associated with labor migration for low-income workers into Kenya high.

PEAs acting in their interest are not transparent about the nature of work or the legal documents needed for migrant workers to access the Kenyan borders. This lack of transparency has left many migrant workers in precarious circumstances. Many Ugandan girls approached by PEA brokers with the promise of better lives in Kenya end up as domestic workers and are often put through forced and unpaid labor (Raballa, 2023). In worse cases, these domestic workers are children under fifteen (15) years old (Raballa, 2023).

Another female research participant from Uganda, who had come to Kenya for a third time to work as a domestic worker, narrated her experience. She worked her first job in Kenya as a child laborer. She explained her first trip as follows,

*“I came to Kenya for the first time at the age of 15. I did not have any identity documents. I traveled with the woman who recruited me. I was paid Ksh. 4,500 per month as a domestic worker.” (Research Participant 007)*

In addition to this, PEAs recruiting these workers often smuggle workers into the Kenyan borders (The Tanzania Times, 2023). Low-income migrant workers are now associated with using porous migration routes into Kenya because they are barely manned, allowing them to get into Kenyan boundaries without any inspection.

The research participant further noted that they had to devise ways to get past the border checkpoint. She noted that,

*“Since I did not have any identity documents to allow us to use the border checkpoint, we used the side routes where we could escape the border police. That is how we got into Kenya.” (Research Participant 007)*

PEAs prey on the desperation of these workers to smuggle them into the country without any passport or permit (BBC Africa Eye Documentary, 2019). To evade altercations with authorities, PEAs facilitate the bribing of border police unbeknownst to migrant workers (BBC Africa Eye Documentary, 2019). Many of these migrant workers only become aware of their undocumented status when in the hands of an exploitative employer. In the absence of legal migrant documentation, they are unable to report abuse and are more likely to remain in daunting situations (BBC Africa Eye Documentary, 2019).

### ***Recruitment***

Migrant workers recruited through PEAs are often subject to a fee. Though recruitment fees are not illegal in Kenya, there are provisions of up to 25% of the first month's wages (Andabwa, 2023). However, PEAs place exorbitant charges on migrant workers, often over and above the 25% that is provisioned by the recruitment fees guidelines. In a reported case in April 2023, a PEA broker recruited a minor from Uganda for domestic work in Kenya with a promised monthly salary of Ksh 9,000 (approximately USD 64.36 as of 2023). However, his share would be Ksh 3,000 (approximately USD 21.45 as of 2023) (Okata, 2023). This fee would be separate from the recruitment fee to be charged by the PEA. PEAs may opt to push certain recruitment charges to prospective employers.

Several migrant workers interviewed pointed to the high recruitment costs charged to them. Most of them had to borrow money to cover the recruitment costs. Some were lucky to have it lent to them by family or friends. Another research participant in her mid-twenties from Uganda left for Kenya in 2022 and has worked as a domestic worker noted that,

*“I did not have the money the agent was asking for. She was charging me and charging my employer. I also did not have bus fare to visit Nairobi, so I had to go into debt to raise the*

*Ksh. 2000 needed to travel from Uganda. My first salary went to paying debt and paying agent fees.” (Research Participant 008)*

Similarly, while another research participant from Uganda, in her late twenties working as a domestic worker and living in Kenya since 2023, felt that using a PEA was beneficial in placement, she felt that the high recruitment costs watered down the benefits. She noted that she did not enjoy much of her salary for the first few months of working in Kenya as it went to paying debt. She quipped,

*“The agents should lower their fees. Their charges are too high. When you use them, you are assured of getting a job, but their charges are so high that you do not enjoy your salary for months. I paid my debt for almost three months. I felt like I was like someone who came to Kenya without any assurance of a job.” (Research Participant 010)*

When this happens, they place low-income migrant workers in debt bondage, which leaves them vulnerable to abuse and exploitation from their employers (Odhiambo, 2019). The ILO reports that in cases where migrant workers are required to pay recruitment fees, they are more likely to end up in forced labor or being trafficked (International Labour Office, 2009). When recruitment fees are transferred to employers by the PEAs, migrant workers are obliged to stay and work to repay their debts regardless of the nature of work and working conditions.

A research participant from Uganda who has been working as a domestic worker in Kenya for the last two (2) years noted that the debt burden crippled her long after her employer dismissed her. She noted,

*“When my employer dismissed me, I had not fully repaid my debt. My employer did not pay me for the last month I had worked. I did not have any money since my earnings for the last months had also gone to repaying the debt. I asked the PEA to help me get some of my money, but they did not help. Instead, the PEA had the employer pay them to settle the recruitment fees.” (Research Participant 003)*

A similar incidence was reported by a research participant from Uganda who had been working as a domestic worker for less than a year. She says,

*“My first employer was paying my entire salary to the PEA. I never received my money. When I asked the PEA to deduct my salary and stagger the payments, they said their approach worked well. I would not recommend using a PEA. They are very oppressive.”*  
(Research Participant 012)

Recruitment fees among low-income migrant workers are a sore subject. It directly affects their wages, but they have little control over the fees that the PEA will charge for their recruitment and placement. PEAs in Kenya justify the fees by noting that these workers travel long distances to get to Kenya and change jobs quickly. The high fees work as insurance to ensure their businesses remain sustainable and profitable. They disregard the implications of the high fees on the rights of low-income migrant workers. The implications result in the curtailing of freedom and agency and the ultimate form of abuse and human violation.

A representative of an unlicensed PEA operating for the last three years noted,

*“Our fees start from Ksh 3,000 and may go higher. We are in business, so we also must make profits. These migrant workers have a high job turnover, so we cannot make any money if we do not impose high fees. We confiscate their documents because we need some form of assurance that they will pay. We do not do it out of bad faith. It is just a business model.”* (PEA Representative 002)

High recruitment fees are common in Kenya, even with licensed PEAs. The only difference is that licensed PEAs are more transparent with their fees.

A representative from a licensed PEA operating for the last eight months noted,

*“Recruitment fees are generally high, especially for workers like domestic workers, but we break down these costs to workers during the recruitment phase so that these workers can make an informed choice on whether to proceed.”* (PEA Representative 001)

However, even when PEAs are transparent with recruitment fees, the debt burden the fees bear on these workers does not change. This is especially so because these fees remain high compared to their wages.

PEAs are associated with high recruitment fees, whether licensed or unlicensed. These charges are commonly called ‘facilitation fees’ in Kenya. This is despite Kenya having PEAs guidelines

on recruitment fees. Unlicensed PEAs continue operations, facilitating the labor movement of low-income migrant workers while imposing high recruitment fees without any oversight from the government. Unlicensed PEAs in Kenya persist because of bureaucratic processes associated with registration. A representative from an unlicensed PEA operating for the last four years, recruiting domestic workers and farmhands noted,

*“I started this business in 2020 from my house because I need an extra source of income. I have delayed registering and getting the proper licensing because it is very expensive and lengthy.” (PEA Representative 003)*

Such circumstances have led to the persistence of unlicensed PEAs in Kenya. The National Employment Authority Act No. 3 of 2016 (Ministry of Labour and Social Protection, 2016) provides clear guidelines on monitoring PEAs and gives NEA power to vet unethical PEAs. However, this legislation has a shortcoming of a monitoring mechanism to ensure that leaders are prosecuted for ending a self-perpetuating cycle of unlicensed PEAs started and run by the same people. At the same time, the NEA is a semi-autonomous agency and lacks the complete power to oversee the activities of PEAs. Interference from other arms of government limits its efficiency.

Kenya has other legislation to protect migrant workers, such as the Labor Institution Act 2007 (Ministry of Labour and Social Protection, 2007a) and the Private Employment Agencies Regulations Act 2016 through the National Employment Authority Act. These pieces of legislation guide the registration process and, therefore, impact the recruitment practices of PEAs. However, these legislations do not provide provisions for an oversight mechanism for monitoring the recruitment practices of PEAs. The Private Employment Agencies Act under the Labour Institution Act has been considered weak because it institutes NEA. However, it only allows it to protect migrant workers in conjunction with other government agencies.

A policy expert interviewed for this study remarked on NEA's role in gaining autonomy to formalize jobs for low-income migrant workers. She noted,

*“There should be efforts to formalize and regularize these workers' jobs. The informality of their jobs contributes to how they are paid and excluded from other rights. However, the government is currently keen on supporting labor exports, and the agency is supporting*

*them. This means that the low-income workers have no support. Regular migration would be sensitized through accessible work permits, especially for workers in the East Africa region” (Expert 004)*

The informality of jobs for these workers is evident in the lack of issuance of formal contracts. Most low-income migrant workers work through verbal contracts, which enables unfair dismissal. Research participant 003 noted that,

*“I have never been issued with a contract. The boss just tells me what I need to do. She will write me a timetable of which duties to do every day.” (Research Participant 003)*

Domestic workers from Uganda are now in high demand in Kenya. This is because they earn significantly more than they earn in their country. They are compensated over ten times more than they are in their home country, which lures them in (BBC Africa Eye Documentary, 2019). The prospect of earning that much money blinds them to possibilities of exploitation, including apparent exploitation from PEA brokers. Ugandan house girls earn as little as USD 8 per month, barely enough to cover their basic needs (BBC Africa Eye Documentary, 2019). For most migrant workers moving to Kenya, the promise by PEA brokers is lucrative, namely, to access a decent life with decent wages for themselves and their families in their home countries.

The prevailing labor market in Kenya is short on unskilled labor. This is driven by the fact that the Government of Kenya is keen on exporting labor to developed countries with aging populations. Kenya has aggressively signed BLAs with countries like Germany to export unskilled labor (Kinyanjui, 2024). This has left a massive demand for unskilled, low-income labor in Kenya. However, Kenya upholds high entry barriers to labor, promoting porous routes among low-income migrant workers.

A policy expert interviewed for this study noted,

*“We have a restrictive and regulated environment for labor entering the country. It is a tedious and expensive process to acquire a work permit. The movement of labor into Kenya works well for skilled labor, where CBAs have been established or when corporate institutions facilitate the movement. Even then, the Ministry of Immigration and the National Labour Board (NLB) requires that the corporate provides proof that the talent sourced abroad could not be found in the local market. Such high restrictions and*

*regulations force low-income and unskilled workers to find alternative ways to get into the country and seek employment. For them, work permits are unreachable and not an option.” (Expert 003)*

These sentiments were echoed by a representative of a licensed PEA that has been operating in Kenya for four years. The representative noted,

*“Labor movement is highly regulated for labor going out. The government is keen to screen the agencies dealing with labor export. That has created an environment for informal and unlicensed PEAs to bring in unskilled labor because there is no clear monitoring or regulation. Anyone can facilitate this kind of labor movement.” (PEA Representative 004)*

Many migrant workers do not have an opportunity to negotiate their wages. For most of them, wages are negotiated by PEAs. Many of those interviewed for this study reported having taken a job without knowing what they would be paid in return.

A research participant from Burundi who was working as a farmhand in Kenya and had stayed in Kenya as a migrant worker for 3 years reported that he did not ask about salary details when the PEA assured him of a job. He noted,

*“I did not negotiate my salary before taking the job. We agreed on the terms when I had already started the job.” (Research Participant 001)*

The migrants who can negotiate their salary before their departure do not necessarily have the advantage of being paid fairer wages closer to Kenya’s minimum wage. These migrant workers do not understand the Kenyan labor market and rely on friends' information to negotiate wages. PEAs who step in to negotiate do not work towards a fair wage for this worker. In an interview with a PEA representative discussing issues on wage negotiation, they noted,

*“I try not to negotiate wages for the workers. I let them do it for themselves. In any case, they will be doing the work.” (PEA Representative 002)*

Wage negotiation for migrant workers remains difficult in Kenya because migrants work in unregulated spaces. An expert noted that wages in these areas are often pre-determined by the

ability to pay. This paves the way for misinterpretation and eventual exploitation for some of these migrants.

A labor migration expert noted that,

*“Wages for domestic workers, security guards, shamba (farm) boys where these migrants typically work are guided by the ability to pay. This is misinterpreted by the people who can pay a minimum wage and choose to underpay. There should be guidance on negotiating wages for these workers, which should be the work of PEAs. The agency is expected to protect workers.” (Expert 001)*

On May 1, 2022, Kenya’s former president, Uhuru Kenyatta, revised the minimum wage to support the high inflation rates in Kenya. The minimum wage received a 12% from Ksh 13,572 to Ksh. 15,201 (approximately from USD 110.34 to USD 123.59 as of 2022) (KUDHEIHA, 2023). While this was a substantial hike, the minimum wage remains low to sustain a decent living standard. Kenya has experienced significant inflation since 2022 without any minimum wage reviews. The high inflation has also resulted in the devaluation of the Kenyan shilling. With the same minimum wage, the total basket of goods a migrant worker can purchase with the same wage is reduced. Additionally, the devaluation of currency has shrunk the pay from USD 125.59 in 2022 to USD 115.01. Despite this, many research participants reported earning significantly lower wages than the outlined minimum wage.

The female domestic worker recruited as a child laborer noted that,

*“I earned Ksh. 4,500 for my first job. I did not know it was little money at the time. It seemed enough, but I worked very hard. I woke up at 4:00 am and went to sleep at 11:00 pm. Now, I earn Ksh. 9,000. It is better but still little for my young daughter and me.” (Research Participant 007)*

A male research participant worker from Burundi working as a security guard for the last two (2) years noted,

*“I earn Ksh. 8,000. My salary is not reviewed. When I was coming to Kenya, I thought I would earn a better salary than what I am currently earning. With my current wage, I can*

*only afford a small house, which I share with a friend. I send most of my earnings home.”*  
(Research Participant 014)

Some migrant workers earn better, but employers that pay better find other ways to exploit them. A male research participant working as a farmhand in Kenya for the last year noted,

*“I have no rest day because I care for cows. My employer says that cows need constant care, and she does not want to engage another person to care for them on my day off. I earn Ksh. 12,000, but I do not even have the time to spend my money.”* (Research Participant 015)

The Government of Kenya has attempted to regularize wages for low-income migrant workers in Kenya. However, this has not been successful. For this reason, wage theft for migrant workers persists, with many of them earning lower than the minimum wage.

A policy expert interviewed for this study noted,

*“There is a Wages Council at the Ministry of Labour. In 2019, the Ministry of Labour gazetted a wages council for domestic workers and other workers in the informal sector, but the council was never activated.”* (Expert 003)

Wages councils are mechanisms that the national government can use to advocate for the fair wages of low-income migrant workers. With low initiative from the national government, PEAs and employers persist in paying low-income migrant workers meager wages.

Moreover, PEAs and their brokers may not provide any contact between prospective employers and workers. Migrant workers will leave their home countries for Kenya with nothing but the phone number of their prospective employer (BBC Africa Eye Documentary, 2019).

A migrant worker from Burundi in his early twenties coming to take a job as part farmhand and part domestic worker, and who first came to Kenya two years ago narrated his trip to Kenya, noting that,

*“I left my home for Nairobi with my (prospective) employer’s phone number. When I got to the bus station in Nairobi, I called him, but he did not answer my call. I was new in Nairobi; I did not know where to go. He eventually came to pick me up at around 7:00 pm.”* (Research Participant 001)

In some cases of fraud where the PEA is out to exploit the migrant worker, the phone number is a scam, and no prospective employer is waiting on the migrant worker in Kenya. In these instances, migrant workers find themselves stranded with no income, food, or shelter. These circumstances have been linked to a rise in sex work among female low-income migrant workers and forced labor (BBC Africa Eye Documentary, 2019).

The experiences of migrant workers migrating through licensed PEAs are divergent and convergent to those using unlicensed PEAs. Licensed PEAs charge just as high as recruitment fees. However, they ensure that migrant workers have all the necessary documentation for travel and do not recruit children for work. Speaking to a representative of a licensed PEA that has been operational for the last three years, they noted,

*“I do not recruit workers who do not have identification documents. They must have their identity cards. Those who do not have them must have their waiting card showing that the government is processing their identity cards.” (PEA Representative 001)*

The migrants engaging licensed PEAs are also not issued with contracts but earn better than those who do engage unlicensed PEAs. Work hours may vary and largely depend on the employer since no contract is signed. These workers have better access to healthcare because their wages seem to be better. One of the research participants for this study was a female domestic migrant worker in her mid-thirties who first came to Kenya 8 years ago through a licensed PEA. She noted that,

*“I have been in Kenya for many years and with the same employer. My salary has continued to grow. I earn much more than the minimum wage. I have access to the National Insurance Fund (NHIF). I am very comfortable here. This is home now.” (Research Participant 002)*

Regulation of PEA activities is essential in ensuring that recruitment is done ethically. However, there is little to no oversight of the activities of PEAs during recruitment, which creates an avenue of unethical practices that expose migrant workers to vulnerabilities that lead to exploitation.

A policy expert interviewed for this study noted,

*“There is no oversight of the activities of PEAs. This means no data shows how many of these low-income migrant workers are in the country. In truth, we know that there are and interact with them, but without data, it is difficult to have actionable strategies that protect their rights. Tightening the leash on PEAs would simplify the process and put these workers on a path that lowers the chances of exploitation by ensuring they have proper documentation, charging them reasonable recruiting fees, and exposing them to their rights and how to report abuse. Currently, we do not have avenues for reporting abuse because of the irregular nature of migration and jobs of these workers” (Expert 003)*

### **Placement**

PEAs play a critical role in disseminating information on the available opportunities in the job market, recruiting potential candidates, and placing these workers in these vacant job opportunities. Effective job placement is viewed as a combination of the successful matching of workers to jobs and the resultant job match quality (Ayaita et al., 2021). Job match quality can be assessed through various indicators such as wages and job satisfaction, the incidence of fixed-term contracts, and the termination of employment within a year of recruitment (Ayaita et al., 2021). In addition, training is an integral part of placement that ensures that migrant workers integrate with the host country and understand the law, including ways to report abuse and exploitation when it arises (Bisong, 2021).

The Employment Act outlines that workers are entitled to at least one rest day every seven days (MyWage.Org, n.d). However, many low-income migrant workers in Kenya work through the week without any time off (Maichuhie, 2023). In extreme cases, these workers do not get food from their employers and work long hours (Maichuhie, 2023). One of the research participants interviewed for this study is from Burundi, who first came to Kenya in 2021. He started as a security guard but now works at a car wash station. He spoke of his disappointment at lacking a day off. He reported,

*“I do not get any day off. I work Monday to Sunday from 8 am to 8 pm. I carry my laundry to work and do it from there because I have no time to do it from home. I am not even offered lunch at my workplace. Last year, I was only offered Christmas Day off. I do not even get time to go to church.” (Research Participant 004)*

These workers, often undocumented, have received no basic information from the PEAs that recruited them and, therefore, have no knowledge of the justice pathways for reporting the abuse they suffer at the hands of their employers. In addition to a lack of knowledge, fear of repatriation and deportation keeps them silent while they suffer abuse and exploitation. Most migrant workers interviewed reported fear of dealing with the Kenyan police. Research participant 004 noted,

*“I would not go to the police to report anything; I am afraid they would send me back to Burundi.” (Research Participant 004)*

In an interview with a representative of an unlicensed PEA that has been operating for four years on the training and orientation they offer migrant workers, the representative noted,

*“We do not include things such as reporting abuse. Perhaps because we focus more on placement, that is why we do not focus, but it should be something we should consider.” (PEA Representative 003)*

Trade unions are essential in protecting workers from exploitation. The Labour Relations Act 2007 (Ministry of Labour and Social Protection, 2007b) indicates that every employee has the freedom of association and the right to participate in a trade union. However, this legislation does not explicitly protect irregular workers through trade unions. PEAs fall short of informing workers about trade unions and collective bargaining power. Migrant workers expressed hesitance in the desire to join a trade union. A female research participant working as a domestic worker in Kenya since 2017 expressed her hesitancy in trade unions, noting,

*“I do not know about workers’ unions and am not interested. I do not like demonstrations, so I would like to stay away from such things.” (Research Participant 005)*

Migrant workers are misinformed about the purpose of trade unions, showcasing a gap in the recruitment and placement process. This is despite Kenya having the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA). KUDHEIHA is a trade union that represents workers in these classes, covering workers without clear terms of engagement and excluded by Kenyan labor legislation. Migrant workers remain hesitant due to a lack of knowledge and understanding.

Similarly, Kenya's collective bargaining agreements (CBAs) require workers to be part of trade unions. CBAs are negotiated between trade unions and employers (Owidhi, 2016). Because migrant workers refuse to be part of trade unions, it becomes difficult to institute and enforce CBAs for them. Kenya's labor agenda is currently focused on exporting labor instead of importing it. As such, Kenya is signing BLAs with other countries for their unskilled labor. Kenya is not keen on unskilled labor coming in, and that has created an avenue for abuse of the low-income migrant workers coming into the country.

A migration consultant interviewed for this study noted,

*“Kenya is exporting labor. The export of labor is Kenya's highest earner because of the remittances. Unfortunately, we export unskilled labor and have stringent regulations on the labor we import because we import highly skilled labor. The unskilled labor infiltrating our market is irregular and easily abused because of lack of data.” (Expert 004)*

When low-income migrant workers are not a focus area, then enforcing CBAs becomes tough. A policy expert interviewed for this study noted,

*“CBAs are difficult to enforce for low-income migrant workers. This is because of how the law is structured. CBAs are negotiated for groups and not individuals, which makes it difficult since these workers engage with employers individually and for short periods.” (Expert 003)*

BLAs are a known method of negotiating CBAs to ensure fair wages for low-income migrant workers. However, the Government of Kenya excludes critical stakeholders in negotiating CBAs. This exclusion means that the interests of migrant workers are not well represented and provides leeway for abuse and exploitation.

A policy expert interviewed for this study noted,

*“Fair wages are only enforced at the point of BLAs and Memorandums of Agreements (MoUs) at the national level. Unfortunately, social partners are never invited to these meetings and negotiations. We only learn that BLAs and MoUs have been signed without our contribution or input.” (Expert 003)*

The irregular migration associated with low-income migrant workers in Kenya opens them to a wide array of vulnerabilities that would require different policies to protect their rights comprehensively. Their vulnerability starts from recruitment to placement and continues for the time they are in Kenya. Because of their fears of repatriation, they continue to suffer abuse without escape.

A policy expert and a migration consultant interviewed for this study noted,

*“The challenge with low-income migrant workers in Kenya is multi-faceted. It brings in actors from Security, Immigration, Border Control, and, later, employers. Because their skills are unregulated, they are left to the mercies of whomever. Unfortunately, employers of these workers are also unregulated. This lack of regulation is a good breeding ground for exploitation.” (Expert 002)*

A synthesis of the problem case of Kenya showcased how PEAs in Kenya expose low-income migrant workers to various vulnerabilities and eventual exploitation. This synthesis yielded three key themes – unethical recruitment practices, weak legislative and regulatory frameworks, and the absence of monitoring and reporting mechanisms.

I summarize these themes as follows:

1. ***Unethical recruitment practices:*** PEAs engage in unscrupulous activities, such as demanding high recruitment fees that expose migrant workers to debt bondage. PEAs charge high recruitment fees and offer no training, leaving them in precarious situations.
2. ***Weak legislative and regulatory frameworks:*** Kenya’s legislation does not comprehensively protect migrant workers against unscrupulous migrant workers. The legislative frameworks lack follow-up mechanisms to ensure that unscrupulous PEA leaders are prosecuted. At the same time, the legislation institutes the NEA, which is semi-autonomous, limiting its ability to regulate PEAs and protect migrant workers. Additionally, weak border regulation enables migrant rights infringement as border spot checks become corruption zones.
3. ***Absence of monitoring and reporting mechanisms:*** There is an absence of a monitoring mechanism that captures unscrupulous activities of PEAs. This lack of monitoring mechanism allows PEAs to be unethical without any oversight. Oversight in Kenya has

mainly involved spot checks, which are random and far between. In addition to this, no reporting mechanism allows migrants to report PEAs and any associated abuse or exploitation.

## **4.2 Policy Options**

The policy options proposed to govern PEAs are centered around the three (3) themes that emerge in the problem case analysis section. These policy options aim to address the gaps exposed during the problem analysis in Kenya. These policy options aim to protect the rights of low-income migrant workers. These options are drawn from insights from the expert interviews and gap analysis from the interviews with the low-income migrant workers in Kenya.

### ***Policy Option 1: Regulation of Recruitment Fees***

High recruitment fees are associated with human trafficking and debt bondage (Global Compact for Migration, 2018). Recruitment fees in Kenya are not unlawful. However, the fees should not be charged over 25% of the first month's wage (Andabwa, 2023). This prescription is grey and is not inked into law and contravenes ILO's fair recruitment guidelines. However, because wages for these workers vary, their recruitment fees against their wages are always high. Kenya should legislate a fixed value for recruitment fees that guides all PEAs recruiting low-income migrant workers into Kenya. In India, for example, the Government has limited recruitment fees to no more than 30,000 rupees (approximately USD 360 in 2023) (International Labour Organization, 2020). This guarantees that PEAs cannot inflate recruitment fees and protects migrant workers from trafficking and exploitation.

A policy maker in labor migration governance in Kenya noted,

*“Recruitment fees open a plethora of issues. When migrant workers pay recruitment fees, and employers also settle part of it, there is a false sense of ownership by the employer. This sparks the issues of forced labor and limited freedom.” (Expert 002)*

At the same time, migrant workers who have used PEAs to secure opportunities appreciate the value of assurance of a job that PEAs offer but still find that their charges are high. Research participant 007 noted,

*“PEAs should reduce the recruitment fees they charge domestic workers from Uganda. It would be fair if the recruitment fees could be reduced to Ksh 600. That is an amount a domestic worker can afford and pay easily.” (Research Participant 007)*

The recruitment fees need to be defined. This will ensure that PEAs do not inflate these fees. This will protect the workers from exploitation and potential debt bondage. When recruitment fees are defined, as in the case of India, PEAs do not inflate recruitment fees, and for this reason, migrant workers are not agitated to go into debt to finance their mobility. In the absence of debt, confiscation of their identity documents as collateral for recruitment fees debt is eliminated.

Such an approach would be valuable in Kenya. It would eradicate the greyness in defining recruitment fees. It would promote transparency by allowing both migrant workers and PEA clarity on expectations on the amount to be paid. Additionally, it would protect the wages of the migrant worker by ensuring that a huge percentage of it is not lost to debt repayment.

### ***Policy Option 2: Autonomous Regulatory Body***

NEA works to register and license PEAs in Kenya. It even provides pre-departure training for migrant workers. However, its efforts are curtailed because it is a semi-autonomous agency working with many other government agencies. Most pre-departure training has been put on hold as the Ministry of Labour and Social Protection redesigns the program. This means that when the program is suspended, migrant workers will receive no training. At the same time, NEA has yet to be given full power to ensure that all PEAs are members of the Kenya Private Employment Association (KAPEA).

Having a clearly defined authority with a concise mandate removes ambiguity and increases the institution's legitimacy (International Labour Organization, 2007). Such an authority would be charged with the mandate of licensing, enforcing penalties for non-compliance, conducting inspections, developing content, conducting pre-departure training, and following up for post-arrival orientation. The ILO notes that monitoring and regulating PEAs requires a separate authority to enforce legislation to protect migrant workers (International Labour Organization, 2007). The institution of an autonomous regulatory body will introduce a monitoring and reporting mechanism lacking in Kenya, allowing the tracking of PEA activities, and giving a feedback platform on unethical practices.

Autonomizing NEA in Kenya would grant it the power and mandate to oversee all activities of PEAs, including registration and licensing, implementation of pre-departure training for migrant workers, and investigating for PEA compliance. Owning these activities will allow NEA better oversight of PEAs, supporting the rights protection of low-income migrant workers in Kenya.

### ***Policy Option 3: Monitoring and Reporting System***

A monitoring and reporting system allows for the tracking of PEA activities. These activities may include the registration status of the PEA, recruitment, and placement of migrant workers by PEAs, and their compliance with Kenya's labor laws. As it stands, Kenya has not instituted a monitoring or reporting system that tracks and evaluates the activities of PEAs. Kenya's National Employment Agency Information Management System (NEAIMS) only serves as a registration portal for PEAs and prospective workers but does not provide oversight of the activities of PEAs.

Despite having many unlicensed PEAs, NEA continues to rely on spot checks to deal with rogue PEAs. This has allowed for many unlicensed PEAs to continue operations undetected. Their operations expose migrant workers to vulnerabilities, but Kenya lacks a monitoring mechanism that can effectively point NEA in the direction of these agencies.

A migration expert expert noted,

*“There are many PEAs in the Kenyan market, most of which are unlicensed, making it difficult to enforce laws and regulations. Some PEAs get licenses and continue to run long after the license expires. The oversight for PEAs remains challenging.” (Expert 001)*

A monitoring mechanism should give the PEA regulating body details of PEAs such as registration and licensing information, biodata of migrant workers that they recruit and place, wages of the migrant workers they place, and the recruitment fees they charge. Such information is critical in ensuring that migrant workers are protected from potential exploitation.

A reporting mechanism allows for the voicing of grievances for migrant workers. These grievances are related to the activities of PEAs. A reporting mechanism would allow for complaint filing and investigation in a manner that protects the migrant workers. Migrant workers in Kenya have limited access to justice and social protection. Therefore, providing a

reporting mechanism that is affordable and accessible is vital in protecting them from the unethical practices of PEAs while also providing a basis for monitoring and investigating the reported PEAs.

A monitoring and reporting mechanism in Kenya will provide data on low-income migrant workers in Kenya. Data is critical in providing support to these workers in cases of abuse and exploitation. These mechanisms provide data on the PEAs recruiting low-income migrant workers and in what volumes. In contrast, the reporting mechanisms provide data on the types of abuse that these workers suffer.

#### **4.3 Evaluation of Policy Alternatives**

In this section, I will evaluate the policy options above along with the evaluation criteria established in section 1.3 and operationalized in section 3.2. The aim is to assess evidence of the proposed policy options in governing PEAs to protect the rights of low-income migrant workers. As such, this section will provide evidence from Kenya and other jurisdictions where the above policy options in governing PEAs have been implemented and show the effects produced.

##### ***Policy Option 1: Regulating Recruitment Costs***

Regulating recruitment costs charged to migrant workers by PEAs has the benefit of protecting the workers from abuse and human violations. Evidence through an evaluation of PEAs in Nepal by Amnesty International shows that where recruitment costs are high, PEAs tend to confiscate workers' identity documents as collateral and keep them bonded to them (Amnesty International, 2017). When the burden of recruitment costs is transferred to the employer, they confiscate the workers' identity documents. In both circumstances, migrant workers' freedom is curtailed. Ultimately, when the recruitment costs are regulated, there is little room for confiscating documents for migrant workers.

A migration consultant and expert noted that,

*“Recruitment fees are a heavy burden for migrant workers. These workers act out of desperation to secure a job, and at times, this means having your employer or PEAs finance their trip. In doing this, they resign themselves to debt. Migration fees should be reasonable. Some of the fees charged are unreasonable for these workers' jobs. There has to be a way to make migration sensible for them.” (Expert 002)*

The regulation of recruitment fees shelters migrant workers from human trafficking. High recruitment fees in the Philippines have led to the institution of the Migrant Workers and Overseas Filipinos Act of 1995, which caps the recruitment fees charged to migrant workers. This has been a step by the Filipino government to curb trafficking because of labor migration. Besides preventing trafficking, the Filipino government has been keen on reducing the cases of trafficking. In 2023, 392 potential victims of trafficking were deferred with false documentation. (U.S. Department of State, 2023). Regulation of recruitment fees protects workers from both trafficking and smuggling by PEAs.

Additionally, the regulation of recruitment fees ensures that the burden of labor mobility is not high. When the burden is high, migrant workers pay debt to finance their mobility. The desire to move for work for this worker may be fueled by desperation and leave them ready to take up wages that are below market rates, even while they are burrowed in debt. When recruitment costs are regulated, there may be a chance that these workers may be objective about their wages when not much is demanded for their move. This is evidenced in a report by ASEAN that indicates how migration costs are often higher than wages for low-income migrant workers in Asia (The Association of Southeast Asian Nations, 2023). Countries like Vietnam have sought to lower recruitment costs by deferring them to employers to make wages competitive for migrant workers (The Association of Southeast Asian Nations, 2023). However, little research exists to establish the correlation between recruitment fee regulation and access to collective bargaining. This may prove to be a potential area for policy research.

Overall, there is evidence to suggest that the regulation of recruitment costs protects the rights of migrant workers across the three criteria. Whether directly or indirectly, establishing a policy that regulates the recruitment fees that PEAs impose on migrant workers is likely to ensure that these workers are protected from abuse and human violations, human trafficking, and smuggling and earn a fair wage.

### ***Policy Option 2: Autonomous Regulatory Body***

An autonomous regulatory body is charged with regulating and monitoring the activities of PEAs. Such activities include licensing, inspections, and revoking licensing for those not complying with the standards. In Bangladesh, the Bureau of Manpower, Employment, and Training (BMET) is an autonomous regulatory body established to regulate, monitor, and license

PEAs (Ainul et al., 2022). At the same time, BMET is tasked with implementing pre-departure labor migration programs. As a body with an overview of registered PEAs, it trains migrant workers on such issues as their rights up to and including confiscating documents. By 2018, BMET had recorded providing pre-departure training to 575 681 migrants. Workers who undergo these training programs are less likely to suffer human abuse and also more likely to integrate into the destination country better (Bossavie, 2023). When migrant workers retain their identity documents, their freedom is in their hands, allowing them a chance to flee abuse and exploitation.

PEAs work with brokers to help with recruitment. These brokers are often outside the scope of regulation. Sri Lanka, for example, through its Sri Lanka Bureau of Foreign Employment, an autonomous regulation body for employment agencies, has defined boundaries for recruitment fees of a maximum of 20,000 Sri Lankan Rupees (approximately USD 67.48 as of 2024) for advertising and a maximum of 10,000 Sri- Lankan Rupees (USD 33.74 as of 2024) for documentation-related charges. However, HRW reports that brokers charge up to 22,000 Sri Lankan Rupees (approximately USD 74.23 as of 2024) to connect workers to PEAs (Turner, 2007). With no law regulating brokers, imposing a cap on their charges is difficult, even with an autonomous regulatory body. Additionally, HRW reports of PEAs falsifying migrant workers' ages and names on passports to make them more appealing to the labor market (Turner, 2007). This falsification of biodata has made it difficult to trace family members when the migrant worker is abused.

Autonomous bodies are beneficial in negotiating fair wages and CBAs for migrant workers. For example, the Nepalese Department of Foreign Employment (DoFE) is tasked with not only licensing, renewing, and revoking licenses of PEAs when there is non-compliance but also with developing and implementing policies that advance the foreign labor market in Nepal. To this extent, DoFE has established labor agreements with 110 countries as of 2021 (Bajracharya, 2022). These agreements contain an agreement toward paying a fair wage to migrant workers. DoFE has made labor agreements with countries such as India, Qatar, Saudi Arabia, and Kuwait, negotiating their workers' engagement terms. In an isolated example, DoFE halted labor migration with Malaysia for 16 months until an agreement on labor conditions was met. (International Labour Organization, 2021). This exemplifies how an autonomous body can

advocate for fair wages for low-income migrant workers. However, Nepal does not extend every worker's right to collective bargaining. This right is only extended to individuals in the non-domestic sector (The Five Corridors Project, 2021). Unfortunately, many low-income migrant workers work as domestic workers. The extent to which an autonomous body can protect workers' collective bargaining becomes challenging to evaluate when there is no legal provision for collective bargaining for these workers.

Overall, based on the limited evidence collected for this assessment, the institution of an autonomous regulatory body protects the rights of low-income migrant workers, although not comprehensively. Some cases reviewed for this study suggest it does not protect them from recruitment fees charged by brokers outside the legal bounds of recruitment fee regulation. These workers may also be smuggled when PEAs falsify their travel documents.

### ***Policy Option 3: Monitoring and Reporting Mechanism***

A monitoring and reporting mechanism ensures that the government's overseeing body closely tracks the activities of PEAs. These investigations ensure that PEAs follow the required checks when recruiting migrant workers. In Vietnam, the labor inspectorate is given the power to closely supervise the activities of PEAs to ensure the protection of the rights of migrant workers (Agana et al., 2022). In Cambodia, PEAs must submit quarterly, bi-annual, and annual reports on recruitment activities and pre-departure training. These trainings have a direct impact on equipping migrant workers with knowledge of their rights, allowing them to retain their identity documents (Agana et al., 2022). This ensures that their freedom is not curtailed.

When recruitment is transparent, PEAs are likely to adhere to regulations such as fees, which may lead to protecting migrant workers from confiscating identity documents. Saudi Arabia is now leaning towards using Musaned as its official recruiting platform. The platform is backed by Saudi Arabia's labor law, such as the issuance of contracts, prohibition of confiscation of documents, limits of a 10-hour workday, and limits of recruitment fees charged by PEAs to migrant workers (Ramadan, 2024). Additionally, monitoring mechanisms in Malaysia require that PEAs report on recruitment fees charged to migrant workers (Agana et al., 2022). This reporting mechanism aims to ensure PEAs do not over-inflate recruitment fees at the expense of the workers.

A monitoring and reporting system may facilitate fair wages and collective bargaining. Singapore, through its Ministry of Manpower, has the Fair Consideration Framework to promote fair wages among migrant workers (HR Asia, 2020). Through this Framework, Singapore has opened up more opportunities for migrant workers, making it a more attractive destination. To this extent, PEAs are expected to support the negotiation of wages and offer contracts to ensure that migrant workers are considered through the Fair Consideration Framework. In addition, Singapore has ratified ILO conventions for collective bargaining, making it easy for migrant workers to join or form a trade union. However, it has restricted power to exercise this right. (Government of Singapore, 2009).

Overall, based on the limited evidence collected for this study, the institution of a monitoring and reporting system does not comprehensively protect the rights of low-income migrant workers. It only addresses some rights while others are left out.

This section provided an evaluation of policy alternatives to assess how the proposed policy options in governing PEAs protect the rights of low-income migrant workers in Kenya. From this evaluation, I conclude that the proposed policy options cannot be applied in singularity to protect the rights of migrant workers. This is because these policy options do not comprehensively cover these workers' labor and human rights. Instead, the proposed policy options should be applied to complement each other. This will guarantee that PEAs are governed by the government having oversight of their activities while at the same time protecting low-income migrant workers from abuse and human violations, human trafficking, and smuggling and promoting fair wages and collective bargaining for these workers. This study proposes that these policy options be applied simultaneously to comprehensively protect the rights of low-income migrant workers.

The evaluation of policy alternatives can be summarized in the policy outcome matrix below.

Table 1: Policy Outcome Matrix

|   | Policy Option 1   | Policy Option 2   | Policy Option 3   |
|---|---|---|---|
|   | <b>Regulate Recruitment Fees</b>  | <b>Autonomous Regulatory Body</b>   | <b>Monitoring and Reporting Mechanism</b>   |
| <b>Brief</b>  | Capping the recruitment fees charged by PEAs  | Instituting an independent body   | Monitoring and reporting mechanisms to track PEA activities   |
| <b>Evaluation Criteria</b>                                      |   |   |   |
| <b>Right to Protection from Abuse and Human Violations</b>      | Possible reduction of cases of confiscation of identity documents<br><i>Assessment based on the case of India (International Labour Organization, 2020)</i>                                   | Pre-departure training holds the potential to reduce cases of confiscation of identity documents.<br><i>Assessment based on: Report on Bangladeshi BMET (Bossavie, 2023)</i>    | Possible reduction of cases of confiscation of identity documents<br><i>Assessment based on the case of Cambodia (Agana et al., 2022)</i> |
| <b>Right to Protection from Human Trafficking and Smuggling</b> | Prevention of persons with false documents – 392 persons intercepted with false documents.<br><i>Assessment based on: U.S State Department Trafficking in Persons Report-Philippines 2023</i> | Showcases increases in recruitment fees from 20,000 – 22,000 Sri Lankan Rupees and falsified identity document.<br><i>Assessment based on the case of Sri Lanka (HRW, 2007)</i> | Oversight of recruitment fees charged by PEAs.<br><i>Assessment based on the case of Malaysia (Agana et al., 2022)</i>                    |
| <b>Right to Fair Wages and Collective Bargaining</b>            | Recruitment fees transferred to employers improve the wages of workers.<br><i>Assessment based on the case of Vietnam (ASEAN, 2023)</i>   | 110 BLAs signed by the Nepalese government to champion fair wages and collective bargaining.<br><i>Assessment based on Reports by ILO (Bajracharya, 2022)</i>                   | Creates an environment for fair wages.<br><i>Assessment based on the case of Singapore (HR Asia, 2020)</i>                                |

## **5. Synthesis of Findings and Recommendations**

### **5.1 Discussion of Findings from Problem Analysis and Evaluation of Policy Alternatives**

The analysis of the case of Kenya showcases the vulnerabilities that low-income migrant workers in Kenya are exposed to. PEAs expose these workers to many vulnerabilities as they perform their component roles of information dissemination, recruitment, and placement. These vulnerabilities require policy solutions that will protect the rights of these workers. Below, I discuss the critical thematic areas from Kenya's case while linking them to evidenced policy solutions derived from the evaluation of policy alternatives in section 4.3.

#### ***Unethical Recruitment Practices***

PEAs in Kenya engage in unethical recruitment practices that expose low-income migrant workers to vulnerabilities. PEAs, licensed or unlicensed, charge high recruitment fees. The current legislation on recruitment fees is grey, which provides leeway for PEAs to charge exorbitant recruitment fees. PEAs can charge high recruitment fees without recourse due to the lack of monitoring and reporting mechanisms. The high recruitment fees charged by PEAs lead to debt bondage, as many workers cannot raise the fees required for their labor migration. These fees are catered for by the PEAs or pushed onto prospective employers. The low-income migrant workers work for months, with a significant percentage of their salaries, if not all, going towards debt repayment. To ensure that these workers repay the full amount, PEAs and employers confiscate identity documents. This curtails the freedom and agency of these workers and is ultimately abuse and a human violation, as outlined by the Global Compact for Migration. Evidence from this study shows that confiscating identity documents works as collateral but locks low-income migrant workers to one employer even when they face abuse and exploitation. This is also evidenced by reports from HRW on low-income migrant workers in Saudi Arabia. (Sherry, 2004).

As evidenced by a migration expert in Kenya, the recruitment fees charged to low-income migrant workers in Kenya are unreasonable compared to their jobs. Migrant workers in Kenya reported earning around Ksh 7,000 (approximately USD 52.98 as of 2024) while paying Ksh 3,000 on average (approximately 22.70 as of 2024) in recruitment fees. Desperate for a job and unable to raise this fee, these workers have no options but to turn to debt. For many of the low-

income migrant workers who participated in this study, the promise of a job in Kenya was more significant than the risk of falling into debt.

Low-income migrant workers in Kenya are victims of smuggling, which raises the chances of being trafficked for labor. Some participants in this study reported having first been recruited as children under 18, for example, research participant 007. They were engaged as child laborers, earning meager wages. The PEAs that recruited these workers smuggled them into the country using porous routes to escape border police. For these child laborers, they reported being unaware that they were being smuggled into Kenya. They also did not know their wages were meager since they had little comprehension of the labor market. This practice is common even with PEAs and mature workers. The PEAs do not prepare low-income migrant workers with the legal documentation necessary to travel from their home country to Kenya. Those without passports end up using porous routes or bribing border police to get into the Kenyan borders with support from PEAs. The research participants who were smuggled, especially child laborers, reported working long hours and, at times, having their wages delayed. These workers are undocumented, limiting their options for reporting abuse. They also suffer an inherent fear of repatriation or deportation, which holds them back from seeking justice in cases of abuse, violations, and exploitation.

Legal documentation is considered an extra cost for these low-migrant workers. This makes smuggling or bribing border police a more appealing option than getting proper documentation. With the high recruitment fees imposed on them, processing passports is not a luxury many can afford. Regulating or lowering recruitment fees has the potential to protect these workers from smuggling and potential human trafficking, as evidenced by the Philippines Trafficking in Persons Report (2023). When the recruitment fees imposed on these workers are bearable compared to the prospective earnings, they can consider processing passports. Evidence shows that migrant workers who possess proper documentation have lower chances of being abused and exploited in destination countries (Global Migration Group, 2013).

Lastly, PEAs in Kenya negotiate wages for low-income migrant workers. Some of the research participants in this study reported leaving their home countries without knowing the expected income for the jobs they would take up. In contrast, others reported agreeing on the expected income while starting the job. Even when PEAs negotiate wages for these workers, they do not

negotiate the outlined minimum wage in Kenya. The average wage that these workers earn is Ksh. 7,000 (approximately USD 52.98 as of 2024) against the Ksh 15,201 minimum wage (approximately USD 115.01). These workers noted that the high recruitment fees imposed on them affected their wages greatly.

High recruitment fees for these workers mean their wages are lowered as employers deduct recruitment dues at source. These fees may be stretched over months, reducing wages and workers' well-being. Regulating or lowering recruitment can potentially lower the debt burden for these workers. When the debt burden is lessened, migrant workers' wages are not put through deductions for recruitment fees for an extended period. This allows them to enjoy their wages and improves their well-being.

### ***Weak Legislative and Regulatory Frameworks***

PEAs in Kenya are regulated by the NEA. The role of NEA is to register and license PEAs in Kenya. Kenya also has legislation to guide the institution and monitoring of PEAs. These legislations include the National Employment Authority Act No. 3 of 2016 (Ministry of Labour and Social Protection, 2016), which institutes NEA and gives it the power to vet unethical PEAs, the Labour Institutions Act 2007 (Ministry of Labour and Social Protection 2007a) and the Private Employment Agencies Act 2016 through the National Employment Authority Act. These legislations are set up to guide the registration and the licensing of PEAs. However, they have shortcomings that provide a leeway for the infringement of the rights of low-income migrant workers.

Low-income migrant workers fall victim to unethical recruitment practices that lead to an infringement of their rights due to a lack of knowledge. PEAs in Kenya dealing with low-income migrant workers do not provide pre-departure training, which leaves these workers unaware of their rights and freedoms, including the right to retain their identity documents. The regulatory body in Kenya is semi-autonomous and, therefore, lacks the independence and capacity to run pre-departure programs for low-income migrant workers independently. Because of such hiccups, NEA has suspended these programs, leaving migrant workers in the hands of PEAs, some of whom are unscrupulous and unethical, providing no pre-departure training. The representatives of PEAs engaged in this study noted that the training offered to low-income migrant workers was only related to the work but was never around rights, freedoms, and social

integration. This cut across the board for both licensed and unlicensed PEAs. This exposes these workers to vulnerabilities that make them prone to abuse and violations.

Assessment of the protection of low-income migrant workers in Bangladesh was noted to improve through mandatory pre-departure training offered by the autonomous Bangladeshi BMET. BMET develops and implements pre-departure training modules. Low-income migrant workers are sensitized to their rights and freedoms. This training has reduced the cases of confiscation of identity documents even as Bangladesh works to regulate its recruitment fees. Low-income migrant workers in Kenya have no avenues for training, increasing their vulnerability.

Low-income migrant workers in Kenya work in the informal sector. The participants in this study primarily worked as domestic workers, farmhands, or traders. The informal sector is unregulated by the law. This creates fertile ground upon which migrant workers can be abused, violated, and exploited. The Labor Law in Kenya does not make explicit provisions for working hours or benefits for domestic workers, who comprise most low-income migrant workers in my study. With the irregular nature of the informal sector in which many migrant workers work, contracts are not issued for the jobs they take up. The snowballing effect is that wages remain unclear and irregular, with employers arguing their case from an 'ability to pay,' which leads to low wages. Without contractual agreements, these workers are also put through long working hours. This weak legislation has provided an avenue for exploitation, allowing well-earning people to pay these migrant workers' wages below the minimum wage.

The enforcement of minimum wage in Kenya remains challenging. Insights from a policy expert in Kenya indicated that minimum wage enforcement in the informal sector happens voluntarily. Migrant workers are allowed to report wage theft. Institutions such as the COTU-K can follow up on the level to which the employer engaging the migrant can pay the worker a fair wage. However, these cases are far apart as many of these workers are undocumented and afraid of contacting any Kenyan government office. This becomes a cancer that persists with well-earning people engaging migrant workers for low wages since the law in Kenya does not cover the informal sector adequately.

However, appropriating NEA with autonomy is beneficial to low-income migrant workers. As an autonomous body, NEA can register and license PEAs and establish labor agreements to protect

migrant workers. Establishing BLAs is a network-based mode of governance that is useful in protecting the rights of migrant workers. Nepal's autonomous DoFE has successfully negotiated fair wages and CBAs for migrant workers. This ensures that the rights of migrant workers are covered in areas where other laws may be weak.

Porous entry points characterize low-income labor migration in Kenya. This is partly due to a lack of proper documentation and low informational power. However, irregular migration into Kenya by low-income migrant workers is exacerbated by border police. Participants in this study reported a high rate of bribery at the border checkpoint. The high rate of corruption aids irregular migration, human trafficking, and child labor. The border police should work to enforce the controlled movement of people and flag suspicious travelers, such as those traveling with undocumented children. With the high rates of corruption, even those who are documented must be put in a bribe to be let through the border checkpoint. Bribery is expensive, and this may ultimately push migrant workers to use alternative porous routes to avoid parting with more money, money that they may not have.

### ***Absence of Monitoring and Reporting Mechanisms***

Monitoring and tracking the activities of PEAs is critical in protecting the rights of low-income migrant workers. Kenya lacks oversight and relies primarily on spot checks to validate PEA licenses. Despite having NEAIMS, NEA still lacks oversight on the PEAs operating with valid licenses. Most PEAs in Kenya remain unlicensed or do not renew their licenses after the first year of operation. It remains an uphill task for the NEA to track which PEAs are registered and licensed, where they are located, and which labor they deal with. This lack of oversight has been a breeding ground on which PEAs can be unethical and unscrupulous when dealing with migrant workers. At the same time, without a transparent monitoring mechanism, when unlicensed PEAs are shut down for illegal operations, leaders of these PEAs can start and run similar unlicensed PEAs unnoticed, exposing more low-income migrant workers to vulnerabilities that violate their rights.

Reporting mechanisms provide an avenue through which migrant workers can voice their grievances. These mechanisms allow low-income migrant workers to report the abuse they suffer at the hands of PEAs and employers. Low-income migrant workers in Kenya have little access to justice. These workers' knowledge of justice is limited to police officers whom they believe are

corrupt. They are also afraid to report anything for fear of repatriation and deportation—reporting mechanisms open avenues for access to justice while monitoring PEA activities.

Monitoring and reporting mechanisms work in tandem to protect low-income migrant workers. When protecting migrant workers from human trafficking, monitoring PEA recruitment fees is crucial providing a reporting mechanism through which these workers can whistle blow when recruitment fees are deemed too high balances the scale. Digital monitoring and reporting mechanisms may be most reliable as the world digitizes fast. Such tools, such as Musaned in Saudi Arabia, might revolutionize labor migration governance by providing real-time insights into PEA activities. This will support the endeavor to protect low-income migrant workers.

Fair wages remain the heart of labor mobility. Low-income migrant workers move to Kenya hoping for a better wage and a brighter future. However, many workers are paid meager wages and have no one to report the wage theft to. Wage theft is of high prevalence in Kenya. This happens in two primary forms: below minimum and delayed or unpaid wages. Participants in this study indicated that they had left their jobs because they did not receive their wages or because their wages were being sent to the PEA. Promoting the interests of these workers through fair wage frameworks is imperative to ensure that these workers earn decent wages. Monitoring mechanisms would oversee what frameworks PEAs use when recruiting and placing workers to ensure fair wages and collective bargaining rights.

Low-income migrant workers in Kenya are exposed to a variety of vulnerabilities that infringe on their rights and overall well-being. These vulnerabilities start when they receive information on a job opportunity and last until long after the PEA has placed them. The challenge in governing PEAs in Kenya is a deep-rooted issue. The discussion above provides detailed insight into the main themes that arise through which PEAs expose migrant workers to various vulnerabilities and eventual exploitation and discusses policy alternatives and their implications.

## **5.2 Approach for Governance for Proposed Policy Options**

Governing PEAs in Kenya to protect the rights of low-income migrant workers requires an approach that adequately addresses the thematic areas above. Given the proposed policy options and the discussion in Section 5.1 above, the approach for governing PEAs in Kenya is mixed – hierarchical and network-based.

Regulating recruitment fees is a directive that would ultimately come from the central government of Kenya. Such a directive would provide the boundaries within which PEAs would operate. Enforcement of this directive in Kenya would fall in the hands of the Ministry of Labor and Social Protection. To enshrine this directive, as with many other directives in Kenya, this would be drafted and gazetted into a Bill and taken to parliament for deliberation before it is made into a Law if it is approved in Parliament.

There are three models for regulating recruitment fees as outlined by the ILO (International Labour Organization, 2020). These are – issuing a policy that allows PEAs to charge recruitment fees, prescribing the maximum recruitment fees that can be charged to migrant workers, and outlining the costs that should not be charged to a migrant worker and should be charged to the prospective employer. The process of defining the path of regulation of recruitment fees is hierarchical. At the same time, the enforcement will be network-based as it brings in other actors, including prospective employers. With regulated recruitment fees, there is a need for concerted efforts with civil society, non-profit organizations, and other labor organizations, such as the Federation of Kenya Employers (FKE), to ensure that migrant workers are aware of the regulated recruitment fees. This will ensure that migrant workers do not pay recruitment fees higher than those directed by the government.

The breaking-off of NEA to be autonomous is a hierarchical process. This would include processes of vesting independent powers to not only register and license PEAs in Kenya but also implement pre-departure training. This process would involve creating an organizational structure, reporting lines, and budgets. It would promote clear communication and coordination to steer PEA regulation to protect the rights of low-income migrant workers in Kenya. To execute its mandate and adequately protect these workers' rights, an autonomous NEA will engage stakeholders such as the COTU-K, FKE, and other non-profits to assess and enforce fair wages for low-income migrant workers.

Lastly, establishing monitoring and reporting mechanisms would be concerted efforts, making it a network-based governance approach. This policy option amalgamates the monitoring of various PEA activities and reporting streams that give migrant workers access to justice. This policy option would involve actors from the government, civil societies handling low-income migrant workers, FKE, and KAPEA to represent the interests of the PEAs.

Overall, governing PEAs in Kenya is challenging and requires keen attention to ensure that low-income migrant workers are protected from abuse and human violations, human trafficking, and smuggling, earn a fair wage and have access to collective bargaining. To promote these rights to migrant workers in Kenya, governance approaches should take hierarchical and network-based modes of governance to achieve the proposed policy options.

### **5.3 Recommendations for Kenya**

The proposed policy options in Section 4.2 of this paper aim to govern PEAs in Kenya to protect the rights of low-income migrant workers. The three proposed policy options are the regulation of recruitment fees, the institution of an autonomous regulatory body, and the establishment of monitoring and reporting mechanisms. The presentation of the evaluation of policy alternatives in Section 4.3 indicated that the proposed policy options that each of these policy options is crucial in protecting the rights of low-income migrant workers and cannot be applied in singularity but in tandem to ensure comprehensive protection of these workers.

Considering the above, this study derives the following recommendations for Kenya in the governance of PEAs to safeguard the rights of low-income migrant workers.

1. Regulation of recruitment fees by instituting a maximum limit that PEAs can charge low-income migrant workers as recruitment fees. The current recruitment fees guideline is grey, detailing a percentage cut in wages. Without a precise figure for the recruitment fees, PEAs ignore this guide and continue to charge recruitment fees higher than the outlined percentage. Low-income migrant workers in Kenya may repay recruitment fees debt over two to three months. Recruitment fees for these workers should be capped to a specific limit to make it reasonable and comparable to the wages that these workers earn. This capping of recruitment fees should be enshrined into legislation. This will support enforcement by making it unlawful to charge low-income migrant workers recruitment fees above the stated fees outlined by the State. Additionally, legislation will provide grounds for penalties for PEAs that violate this by imposing higher recruitment charges to the migrant workers they recruit and place.
2. Establishment of monitoring mechanisms that enable visibility of PEA activities. This monitoring mechanism should oversee details such as the registration and licensing of the PEAs. Such information will ensure that the governing body has oversight of licensed

and unlicensed PEAs. Monitoring mechanisms should impose mandatory sharing of more details such as fees charged during recruitment, the age of migrant workers that are recruited to ensure that PEAs in Kenya do not recruit children for laborers, information on the length of work contract for which the migrant worker has been recruited which will provide jobs in the sectors that these workers occupy are formalized, details on wages to ensure that these workers earn a fair wage and have access to collective bargaining rights, information on the number of workers recruited by individual PEAs to ensure that PEAs recruit and place workers within reasonable numbers to support post-placement. Such data will protect low-income workers from unscrupulous PEAs and provide a legal basis for penalties where PEAs cannot produce this data or violate standards imposed by the overseeing body.

3. Kenya ought to formalize and regularize the jobs that low-income migrant workers occupy. Formalization and regularization will ensure that these workers are recognized by the law and, by extension, are protected from abuse. Low-income migrant workers in Kenya work in the informal sector, occupying jobs such as domestic workers, which are not recognized by the law and therefore making way for abuse and exploitation. Regularization will ensure that these workers earn a minimum wage and get formal contracts, which will resolve issues such as human trafficking through forced labor.
4. Establishing reporting mechanisms is critical in Kenya as many migrant workers lack access to justice and social protection. A reporting mechanism would allow migrant workers to voice abuse from PEAs. Reporting mechanisms may include features such as call hotlines and text messaging. Such a system would benefit low-income migrant workers in Kenya who feel oppressed for access to justice.
5. There is a need to give autonomy to NEA. With its current semi-autonomous nature, NEA cannot regulate PEA activities effectively and comprehensively in Kenya. NEA should be granted independence to register and license PEA to revoke licenses where there is non-compliance and to develop and implement pre-departure training programs for migrant workers. The reliance on other agencies to facilitate some of these core activities has created leeway for PEAs in Kenya to remain unscrupulous and unethical at the expense of low-income migrant workers.

#### **5.4 Findings in Kenya and Their Contextual Relationship to Emerging Markets**

As demonstrated in Section 1.2, emerging markets adopt two approaches to the governance of PEAs. These approaches are hierarchical and network-based modes of governance. Kenya displays similarities in its governance approaches of PEAs to those of other emerging markets. Kenya displays hierarchical modes of PEA governance. Kenya has legislation that guides the operations of PEAs. The central government enforces this legislation. This is common in other emerging markets, with India and South Africa adopting similar approaches to govern and regulate the activities of PEAs in their jurisdictions.

Secondly, Kenya has instituted a minimum wage that the central government has gazetted. Even with little enforcement, the institution of minimum wage is characteristic of a hierarchical mode of governance in emerging markets. It is a directive of the central government. Many emerging markets, such as India, have established minimum wages but have implemented them poorly for low-income migrant workers.

Kenya also displays network-based modes of governance that are common in emerging markets. Regulation of PEAs in Kenya is under the purview of NEA. However, since it is not an autonomous body, it works with other agencies and actors to enforce PEA regulations. Additionally, protecting the rights of migrant workers invites other organizations into the policy arena. In Kenya, these organizations include COTU-K, the Federation of Kenyan Employers (FKE), which represents employers in Kenya, and KUDHEIHA, an association for low-income earners. The actors all seek to resolve issues around the rights of low-income migrant workers in line with PEA governance. Domestic policies complement this. All these align with network-based governance mechanisms in emerging markets.

Like other emerging markets, Kenya presents a similar policy issue in regulating PEAs to protect the rights of low-income migrant workers. Similarly, Kenya's governance approaches to the policy issue are identical to those in other markets – hierarchical and network-based modes of governance. Notably, the recommendations provided in this paper can be adapted to other emerging markets, remaining sensitive to each emerging market's structural and contextual factors.

## **Conclusion**

This study established that PEAs play a crucial role in emerging markets. They work as labor intermediaries, facilitating labor movement from home countries to destination countries. The labor markets in these countries are characterized by high employment rates that make them prime areas for foreign laborers, including low-income migrant workers. PEAs facilitate movement and matching workers to jobs in these countries through their three component roles: information dissemination, recruitment, and placement.

This policy study aimed to assess the policy issue in Kenya concerning the governance of PEAs. PEAs have been reported to aid in human rights violations and participate in fraudulent activities that put the rights of migrant workers at risk. This study aimed to understand how PEAs work in Kenya and how their functions affect the rights of low-income migrant workers. The study deconstructed the problem issue and provided policy options for the governance of PEAs in Kenya to achieve safe migration for low-income migrant workers. Two research questions guided this policy study: 1) how do PEAs function as labor market intermediaries in Kenya? What are the effects of their practices on the rights of low-income migrant workers? 2) What are the options for governing PEAs to achieve safe labor migration governance in Kenya?

The framework for analysis implemented for this policy study criticized the lenses employed in assessing the rights and welfare of migrant workers. Previous research work has focused on the economic welfare of migrant workers because of the remittance they offer to their home countries. Similarly, a rights-based approach may only focus on human rights and lock out the labor rights of migrant workers. The framework of analysis implemented for this study focuses on migrant well-being, merging human rights and labor rights. These rights are backed by the Global Compact for Migration, which promotes the overall welfare of migrant workers. This analysis focused on three core rights – the right to protection from abuse and human violations, the right to protection from human trafficking and smuggling, and the right to fair wages and collective bargaining. These three rights were used as the evaluation criteria for my policy evaluation.

This study implemented the 6-step policy-study methodology as guided by Patton et al. (2012). This process involved problem definition, determination of the evaluation criteria, identification of policy alternatives, evaluating policy alternatives, comparing alternatives, and assessing

outcomes. An in-depth qualitative analysis of the case of Kenya was undertaken to understand how PEAs work and function and their implications for the rights of low-income migrant workers. This was achieved through interviews with four (4) policy experts and migration consultants, seventeen (17) low-income migrant workers, and four (4) representatives of PEAs. A thorough document analysis was conducted of fourteen (14) documents, including legislation in Kenya, with an average page density of fifty (50) pages each. A thematic analysis was conducted for the document analysis. I developed a coding framework (see appendix III) which guided the analysis of these documents. Some of these documents included reports and assessments from the ILO and MPI that provided evidence for my policy evaluation.

A policy analysis of the case of Kenya yielded three thematic issues – unethical recruitment practices, weak legislative and regulatory frameworks, and the *absence of monitoring and reporting mechanisms*. Discussions with migrant workers, policy experts, and assessments from literature yielded three policy propositions – regulation of recruitment fees, the institution of an autonomous regulatory body, and *the establishment of monitoring and reporting mechanisms*. The evaluation of policy alternatives indicated that these options would work best when implemented in tandem rather than singularity.

The findings in Kenya found convergence in emerging markets. Kenya's governance approach is primarily hierarchical and network-based, as with many emerging markets. This policy study made five recommendations for the governance of PEAs to protect the rights of low-income migrant workers. These recommendations included regulation of recruitment fees by instituting a maximum limit that PEAs can charge low-income migrant workers as recruitment fees, the establishment of monitoring mechanisms that enable visibility of PEA activities, formalization and regularization of jobs that low-income migrant workers occupy, establishing reporting mechanisms to ensure that migrant workers have access to justice and social protection and giving autonomy to NEA. This policy study has shown areas for future research. Through this research, policy options have been indicated to be feasible when implemented in tandem. Possible research areas may include the extent to which individual policy options may be applied. Future policy studies may also focus on the institutional frameworks necessary to protect the rights of low-income migrant workers. These frameworks may assess work permits for this class of workers and their affordability as an avenue to reduce irregular labor migration.

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## Appendix

### Appendix I: Consent Form

#### Governing Private Employment Agencies in Emerging Markets: The Case of Labor Migration Governance in Kenya

Dear Sir or Madam

You are invited to participate in a research interview for the project above. This is a project undertaken in partial fulfillment of my master's degree, M.A. in Politics and Governance in the Digital Age. You are selected to participate because of your knowledge/participation in Kenya's labor migration and governance of the low-income worker's sphere.

The content of this form is to guide your decision on participation in the research project. In case of any questions, you may reach out to the researcher, Fiona Waithira – [fiona.waithira.nduati@ut.ee](mailto:fiona.waithira.nduati@ut.ee)

**Your participation is voluntary, and there is no incentive or reward.**

**Objective of the Research:** This study will aim to understand how PEAs work in Kenya and how they are governed. The study will examine how effective governance of PEAs promotes the rights of migrant workers in Kenya. It focuses on three dimensions of rights – protection from abuse and human violations, protection from human trafficking and smuggling, and the right to fair wages and collective bargaining. This study will provide feasible policy options that Kenya can adopt for the safe migration of low-income workers in Kenya.

**Procedures:** Should you agree to participate in this research project, it would take approximately sixty (60) minutes to be interviewed. Depending on your availability, the interview will be conducted virtually or in person. The interview questions would aim to understand the policy standpoint of low-income migrant workers' rights concerning PEA governance/your lived experiences as a low-income migrant worker in Kenya/your work as a PEA facilitating the movement of low-income migrant workers into Kenya. The interview will be recorded to ensure

## Appendix I Continuation

your insights are captured accurately. However, if you are uncomfortable with audio recording, notes can be taken as an alternative. All audio recordings will be transcribed. Recordings and transcripts will be protected by holding them in my University of Tartu OneDrive Cloud storage and password-protecting them.

**Risks and Benefits:** The scope of this research may involve sensitive issues. Safeguarding measures will be taken to ensure the safety of all participants. All information gathered will be treated with confidentiality and privacy. All interviewees will remain anonymous, and the information shared will not be linked to their identity. Participants can withdraw from the project, skip a question, and withdraw a response anytime.

**Confidentiality and anonymity:** Utmost privacy and confidentiality will be granted to all data collected. Unique identifiers will be given to each participant. Identifiers such as name, phone number, and email address will not be retained. This anonymity will be maintained in the presentation of the study findings. Where findings need to be publicly shared, your identity will remain confidential. Audio recordings and transcripts will be in the sole custody of the researcher. The audio recordings and transcripts will be destroyed after the completion of this study.

### **Informed Consent**

I have read/or my representative has read this form, and I am aware of the request to participate in this research study. I understand the content of this form, and all questions have been comprehensively answered. I agree to participate in this study.

Researcher: Fiona Waithira Nduati

Contact: [fiona.waithira.nduati@ut.ee](mailto:fiona.waithira.nduati@ut.ee)

## **Appendix II: Interview Guides**

### **EXPERT INTERVIEW GUIDE**

Thank you very much for setting time aside to participate in this study, which is part of my master's thesis, a partial fulfillment of the requirements of the degree of Masters of Arts in Politics and Governance in the Digital Age from the University of Tartu, Estonia. This policy study aims to understand how PEAs work in Kenya and how they are governed. In so doing, this study will seek to deconstruct the impact of PEA governance on low-income migrant workers' rights. This study assesses the role of PEAs as labor market intermediaries in Kenya, the effects of their practices on the rights of low-income migrant workers, and, thereafter, evaluating policy options for governing PEAs to achieve safe labor migration governance in Kenya.

The interview will take approximately 60 minutes. Consent will be sought regarding your overall participation in the study and, where possible, to record the interview. Notes will be taken where recording consent is not given or when consent is withdrawn halfway through the interview.

The interview will be held in English or a local language if preferred.

#### **PART A: Protection from Abuse and Human Violations**

1. The Employment Act, the Private Employment Agencies Regulations, and the National Employment Authority Act are legislations that guide labor migration in Kenya, all intending to protect workers. Despite their existence, low-income migrant workers in Kenya suffer abuse at the hands of their employers. What are the gaps in these gaps that need to be bridged better to protect migrant workers from abuse and human violations? (*explain the conceptualization of abuse and human violations*)
2. Bilateral agreements, international organizations, and advocacy groups are methods for steering labor migration. What is the effectiveness of these approaches as mechanisms to protect migrant workers from abuse and human violations?
3. What actionable policy changes can be made to improve oversight of employment agencies to protect migrant workers from abuse and human violations?

**PART B: Protection from Human Trafficking and Smuggling**

1. The Counter-Trafficking in Persons Act protects and legislates against human trafficking and smuggling in Kenya. However, human trafficking and smuggling are prevalent among low-income migrants crossing the Kenyan border. What are the deficiencies of the Counter-Trafficking in Persons Act in protecting low-income migrant workers?
2. What are the policy action actions that can be taken to protect low-income migrant workers from human trafficking and smuggling?
3. What actionable policy changes can be made to improve oversight of employment agencies to protect migrant workers from human trafficking and smuggling?

**PART C: Right to Fair Wages and Collective Bargaining**

1. Migrant workers work in unregulated industries and are, therefore, victims of wage exploitation. What policy actions can be taken to ensure that employers implement the minimum wage?
2. What monitoring policies and strategies are implemented to implement minimum wage? Are there impact assessments on the impact of paying minimum wages and how it affects the well-being of low-income workers?
3. What strategies are in place to ensure that migrant workers have access to collective bargaining?
4. What actionable policy changes can be made to improve oversight of employment agencies to ensure migrant workers earn a fair wage and access collective bargaining?

*\*Note that the space that key informants occupied determined the set of questions they were asked from this guide*

## **LOW-INCOME MIGRANT WORKER INTERVIEW GUIDE**

Thank you very much for setting time aside to participate in this study, which is part of my master's thesis, a partial fulfillment of the requirements of the degree of Masters of Arts in Politics and Governance in the Digital Age from the University of Tartu, Estonia. This policy study aims to understand how PEAs work in Kenya and how they are governed. In so doing, this study will seek to deconstruct the impact of PEA governance on low-income migrant workers' rights. This study assesses the role of PEAs as labor market intermediaries in Kenya, the effects of their practices on the rights of low-income migrant workers, and, thereafter, evaluating policy options for governing PEAs to achieve safe labor migration governance in Kenya.

The interview will take approximately 60 minutes. Consent will be sought regarding your overall participation in the study and, where possible, to record the interview. Notes will be taken where recording consent is not given or when consent is withdrawn halfway through the interview.

The interview will be held in English or a local language if preferred.

### **PART A: Labor Mobility Experience**

1. When did you migrate to Kenya? Is this your first time in Kenya?
2. How did you find a job in this country? (*Probe on the role of PEAs*)

### **PART B: Protection from Abuse and Human Violations**

1. When does your workday start and end? Do you have any days off?
2. Do you have a work contract?
3. Do you have all your identity documents with you?
4. Do you feel safe at your workplace? Is there any inappropriate behavior that makes you feel unsafe at your workplace?
5. How did the employment agency prepare you to deal with abuse and human violations? What do you think they can do better?

### **PART C: Protection from Human Trafficking and Smuggling**

1. Which documents did you use to travel from your home country to Kenya?

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2. Did you travel with any travel documents? Were your documents tampered with to facilitate travel into Kenya?
3. How much did the migration process cost you? (*Probe for recruitment fees*)
4. From your perspective, how do you feel the employment agency prepared you for the documentation needed for travel? What do you think they should have done better?
5. Did you borrow any money to secure your job? How did you pay it back? How long did it take you?
6. From your perspective, what was the role of the employment agency and the cost of my migration process? What do you think they should have done better?

### **PART D: Right to Fair Wages and Collective Bargaining**

1. Did you speak directly with your prospective employer before leaving your home country to negotiate your salary?
2. Do you feel that you earn a fair wage that allows you to live a comfortable and decent life? How would you describe your wage?
3. Do you think employment agencies represent migrant workers well enough in salary negotiations? Do you think employment agencies should give migrant workers a chance to negotiate their salaries?
4. From your perspective, what needs to be done to ensure that migrant workers are paid fair wages?
5. Are you aware of workers' unions that you could join? Are you a member of such a union? (*If yes, probe on how they learned and joined the union*)

## **PEA REPRESENTATIVE INTERVIEW GUIDE**

Thank you very much for setting time aside to participate in this study, which is part of my master's thesis, a partial fulfillment of the requirements of the degree of Masters of Arts in Politics and Governance in the Digital Age from the University of Tartu, Estonia. This policy study aims to understand how PEAs work in Kenya and how they are governed. In so doing, this study will seek to deconstruct the impact of PEA governance on low-income migrant workers' rights. This study assesses the role of PEAs as labor market intermediaries in Kenya, the effects of their practices on the rights of low-income migrant workers, and, thereafter, evaluating policy options for governing PEAs to achieve safe labor migration governance in Kenya.

The interview will take approximately 60 minutes. Consent will be sought regarding your overall participation in the study and, where possible, to record the interview. Notes will be taken where recording consent is not given or when consent is withdrawn halfway through the interview.

The interview will be held in English or a local language if preferred.

### **PART A: Operations**

1. How long have you been in operation?
2. Are you registered with NEA? When did you get registered?
3. Where are you based?

### **PART B: Protection from Abuse and Human Violations**

1. Do you provide your workers with any form of training to shelter them from abuse, such as excessive work hours and confiscation of identity documents?
2. What measures do you take to ensure that your workers are protected from sexual harassment and abuse at their places of work?
3. Do you ensure that your workers are served with a contract?
4. What policies, practices, or strategies do you implement to ensure that migrant workers are protected from abuse and human violations?

### **PART C: Protection from Human Trafficking and Smuggling**

## Appendix II Continuation

1. Do you orient your workers in legal migration into Kenya? Which documents do you require from workers to facilitate their travel from their home country to Kenya?
2. What is the range of your fees for recruiting and placing a migrant worker in Kenya?
3. Do you have payment plans if the worker cannot raise the total amount? What is the payment plan schedule?
4. Do you verify job offers/opportunities to ensure that migrant workers do not fall victim to trafficking?
5. What policies, practices, or strategies do you implement to ensure that migrant workers are protected from trafficking and smuggling? How do you implement them?

### **PART D: Right to Fair Wages and Collective Bargaining**

1. How do you ensure that workers earn a minimum wage?
2. How do you facilitate open and transparent negotiations between workers and prospective employers?
3. Which policies, practices, or strategies do you implement to guide fair compensation of workers and open negotiations?

### Appendix III: Analysis Codebook

#### ANALYSIS CODEBOOK

This analysis codebook is an instrument for evaluating interviews and reports/assessments/evaluations data on labor migration governance that focuses primarily on the rights of low-income migrant workers and governance of private employment agencies.

These codes are based on key features and frequency of appearance of certain words/phrases in interviews and documents. The cumulation of features and frequency informs the development of themes.

| <b>THEME</b>                           | <b>CODE</b>                        | <b>DEFINITION</b>   | <b>EXAMPLE</b>   | <b>FREQUENCY OF CODE</b>         |
|--|------------------------------------|---|--|----------------------------------|
| <b>Unethical Recruitment Practices</b> | High recruitment fees              | Paying high recruitment fees that require going into debt | <i>“I paid Ksh.3000 to the agent. It was too much.” (Research Participant 010)</i> | 22 (interviews)<br>7 (documents) |
|  | Lack of official written contracts | Engagement without any formal written contract            | <i>“I have never been issued with a contract.” (Research Participant 003)</i>      | 21 (interviews)<br>8 (documents) |

Appendix III Continuation

|  |                                    |  |  |  |
|--|------------------------------------|--|--|--|
|  | Confiscation of documents          | Migrant workers are required to surrender their identity documents   | <p><i>“The agent asked for my national ID because I had debt on my recruitment fees.”</i><br/>(Research Participant 010)</p> <p><i>“We ask for their identity documents as insurance because we need them to pay the fees.”</i> (PEA Representative 002)</p> | <p>23 (interviews)</p> <p>13 (documents)</p> |
|  | Negotiation of wages and low wages | PEAs and employers predetermine wages without any consultation with the worker for terms below the minimum wage. | <p><i>“We agreed on the terms of my engagement when I had already started working.”</i><br/>(Research Participant 001)</p> <p><i>“I try not to negotiate wages for the workers.”</i></p>   | <p>19 (interviews)</p> <p>11 (documents)</p> |

Appendix III Continuation

|  |                                     |   |   |   |
|--|-------------------------------------|---|---|---|
|  |                                     |   | <p><i>(PEA Representative 002)</i></p> <p><i>“I am not satisfied with my wage. I earn Ksh. 9,000 per month.”</i></p> <p><i>(Research Participant 007)</i></p> |   |
|  | Knowledge of workers' unions        | Low-income migrant workers are unaware of workers' unions and their benefits. | <p><i>“I am not interested in workers’ union. I like to keep a low profile.”</i></p> <p><i>(Research Participant 005)</i></p>                                 | <p>18 (interviews)</p> <p>9 (documents)</p> |
|  | Collective Bargaining Agreements    | Establishment of CBAs for low-income migrant workers to promote fair wages    | <p><i>“Low-income migrant workers are not unionized, and this makes it difficult to establish and enforce CBAs” (Expert 001)</i></p>                          | <p>2 (interviews)</p> <p>6 (documents)</p>  |
| <b>Weak Regulatory and Legislative Framework</b> | Inadequate institutional frameworks | Institutional frameworks for PEA governance are fragmented                    | <p><i>“NEA cannot effectively govern PEAs in its current state. It is too</i></p>   | <p>2 (interviews)</p> <p>8 (documents)</p>  |

Appendix III Continuation

|  |                           |   |   |   |
|--|---------------------------|---|---|---|
|  |                           |   | <p><i>keen on exporting labor while doing this in conjunction with other parties” (Expert 003)</i></p> <p><i>“There is no oversight for PEA activities and no data on migrant workers.” (Expert 003)</i></p>  |   |
|  | Workers are not protected | Laws in the country do not protect low-income migrant workers | <p><i>Labor law in Kenya does not cover these workers because they work in unregulated spaces (IOM)</i></p> <p><i>“Kenya protects skilled migrant workers but offers little to no protection to unskilled, low-income migrant workers. The legislative framework is not</i></p> | <p>3 (interviews)</p> <p>10 (documents)</p> |

Appendix III Continuation

|   |  |  |   |                                   |
|---|--|--|---|-----------------------------------|
|   |  |  | <i>designed to offer social protection to these workers.” (Expert 002)</i>  |                                   |
|   | Lack of identity documents for border crossing | Low migrant workers travel without the necessary travel identity documents.                      | <i>“I did not have the necessary identity documents to get through the border checkpoint. I used a porous route.” (Research Participant 007)</i>  | 16 (interviews)<br>11 (documents) |
| <b>Absence of monitoring and reporting mechanisms</b> | Unlicensed PEAs/Informal PEAs are prevalent.   | Institutional frameworks for the governance of PEAs focus on skilled labor migrating into Kenya. | <i>“Spot checks for PEAs are the prevalent ways for monitoring PEAs in Kenya.” (Expert 001)</i><br><br><i>“Unlicensed PEAs are shut down only for their leaders to start other PEAs and continue for years undetected. IOM, 2021)</i> | 2 (interviews)<br>15 (documents)  |

Appendix III Continuation

|  |  |  |  |  |
|--|--|--|--|--|
|  | <p>Limited knowledge and access to legal assistance for labor violations</p> | <p>Few avenues exist to support low-income migrant workers through rights violations. Many remain unknown, and most are expensive.</p> | <p><i>“The channels to report abuse in Kenya are limited, and this has perpetuated the cycle of abuse among this class of workers.” (Expert 004)</i></p> <p><i>“Reporting mechanisms are essential in protecting migrant workers from abuse.” (Expert 003)</i></p> | <p>16 (interviews)<br/>9 (documents)</p> |
|  | <p>Fear of repatriation and deportation</p>                                  | <p>Low-income migrant workers will not report violations of rights because of fears of being found undocumented and deported.</p>      | <p><i>“I cannot report anything to the police; I am afraid they will send me back to my country.” (Research Participant 004)</i></p> <p><i>“PEAs and employers capitalize on the fear of</i></p>   | <p>18 (interviews)<br/>7 (documents)</p> |

|  |  |  |   |  |
|--|--|--|---|--|
|  |  |  | <i>repatriation of workers<br/>to abuse and exploit.”<br/>(IOM, 2015)</i> |  |
|--|--|--|---|--|

## Appendix IV: Interview Participants

### List of Experts

| <b>Expert Index Number</b> | <b>Title &amp; Organization</b>  |
|----------------------------|--|
| Expert 001                 | Labor Migration Officer, Central Organization of Trade Unions – Kenya.                             |
| Expert 002                 | Migration Specialist and Policy Analyst, African Migration and Development Policy Centre (AMADPOC) |
| Expert 003                 | Manager, Administration – Federation of Kenya Employers  |
| Expert 004                 | Migration Research Consultant – Economic Commission for Africa.                                    |

### List of Migrant Workers/Research Participants

| <b>Research Participants Index</b> | <b>Description</b>   |
|------------------------------------|--|
| 001                                | Ugandan Male Farmhand  |
| 002                                | Ugandan Female Domestic Worker                               |
| 003                                | Ugandan Female Domestic Worker                               |
| 004                                | Burundian Male Car Wash Worker                               |
| 005                                | Ugandan Female Domestic Worker                               |
| 006                                | Burundian Male Small Trader - Groundnuts                     |
| 007                                | Ugandan Female Domestic Worker                               |
| 008                                | Ugandan Female Domestic Worker                               |
| 009                                | Burundian Male Small Trader – Hawks hot coffee and doughnuts |
| 010                                | Ugandan Female Domestic Worker                               |
| 011                                | Burundian Male Security Guard                                |
| 012                                | Ugandan Female Domestic Worker                               |

Appendix IV Continuation

|     |                                |
|-----|--------------------------------|
| 013 | Ugandan Female Domestic Worker |
| 014 | Ugandan Male Farmhand          |
| 015 | Burundian Male Farmhand        |
| 016 | Burundian Male Security Guard  |
| 017 | Ugandan Female Domestic Worker |

**List of Private Employment Agencies**

| <b>PEA Representative Index</b> | <b>Description</b>                    |
|---------------------------------|---------------------------------------|
| 001                             | Licensed, operating for eight months  |
| 002                             | Unlicensed, operating for three years |
| 003                             | Unlicensed, operating for four years  |
| 004                             | Licensed, operating for four years    |

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