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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- FOURTH SESSION- 2016

THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON

STUDY VISIT TO PHILIPPINES AND UNITED ARAB EMIRATES ON
ADMINISTRATION OF FOREIGN EMPLOYMENT AND MANAGEMNT OF
LABOUR MIGRATION

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

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APRIL, 2016

TABLE OF CONTENTS

1. Preface.....	3
2. Mandate of Committee.....	3
3. The Committee Membership.....	3
4. Committee Observations and Committee Recommendations	5
5. Acknowledgements.....	10
6. Background.....	11
7. Meeting with the Officials from the Commission on Filipino Overseas (CFO).....	12
8. Meeting with the Officials from Overseas Workers Welfare Administration (OWWA).....	16
9. Meeting with the Department of Labor and Employment	19
10. Meeting with the Philippine Overseas Employment Administration.....	20
11. Meeting with the Officials from the Kenyan Embassy in United Arab Emirates & the Kenyans Working in United Arab Emirates (UAE).....	20
12. Meeting with the officials from Philippine Embassy in Abu Dhabi.....	23
13. Meeting with the officials from the Embassy of India in Abu Dhabi.....	23
14. Committee Observations.....	24
15. Committee Recommendations.....	27
16. Appendices	
17. Appendix I.....	Adoption List
Appendix II.....	Minutes

Acronyms

1. POEA - Philippine Overseas Employment Administration
2. OWWA - Overseas Workers Welfare Administration
3. POLO - Philippines Labour Overseas Offices
4. DOLE - Department of Labour and Employment
5. PDOS - Pre-Departure Orientation Seminar
6. CFO - Commission on Filipino Overseas
7. UAE - United Arab Emirates
8. OFWs - Overseas Filipino Workers

1.0 PREFACE

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199, it is my pleasure and duty to present to this House the Committee's report on the study visit on administration of foreign employment and management of labour migration.

1.1 Mandate of the Committee

As set out in standing order 216 (5), the Committee is mandated to:

- *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- *Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- *Study and review all legislation referred to it.*
- *Investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House.*
- *Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- *Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

1.2 The Committee Membership

The Departmental Committee on Labour and Social Welfare was constituted on Thursday 16th May 2013 and comprises the following members:

1. Hon. David Were, MP - Chairperson
2. Hon. Tiyah Galgalo, MP - Vice Chairperson
3. Hon. Janet Teyiaa, MP

4. Hon. Peris Tobiko, MP
5. Hon. John Ndirangu Kariuki, MP
6. Hon. Winnie Karimi Njuguna, MP
7. Hon. Janet Nangabo, MP
8. Hon. John Serut, MP
9. Hon. Samuel Gichigi, MP
10. Hon. Elijah Lagat, MP
11. Hon. Cornelly Serem, MP
12. Hon. Abdi Noor Ali, MP
13. Hon. Daniel Wanyama, MP
14. Hon. Regina Nyeris, MP
15. Hon. Wesley Korir, MP
16. Hon. Kinoti Gatobu, MP
17. Hon. Elijah Mosomi Moindi, MP
18. Hon. James Onyango K'Oyoo, MP
19. Hon. Omondi John Ogutu, MP
20. Hon. Aisha Jumwa Karisa, MP
21. Hon. Patrick Wangamati, MP
22. Hon. Rose Museo Mumo, MP
23. Hon. Silvance Onyango Osele, MP
24. Hon. Nyasuna Gladys Wanga, MP
25. Hon. John Owuor Onyango Kobado, MP
26. Hon. Mwanyoha Hassan Mohammed, MP
27. Hon. Mlolwa Jones Mwangogo, MP
28. Hon. Ferdinand Waititu, MP

1.3 Meetings and visits undertaken

The benchmarking visit was undertaken from 2nd to 9th June, 2015. The Committee had nominated five Members of the Committee who accompanied the members of the Taskforce on Administration of Foreign Employment and Management of Labour Migration. The main

objective of the said benchmarking visit was to learn, consider and review the existing framework for administration of foreign employment and labour migration of the said countries.

The delegation visited different organisations as indicated below;

1. On 4th June, 2015; Commission of Filipino Overseas and Overseas Workers Administration
2. On 5th June, 2015; Department of Labor and Employment and Philippine Overseas Employment Administration
3. On 7th June, 2015; The Kenyan Embassy in United Arab Emirates and the Kenyans Working in United Arab Emirates (UAE).
4. On 8th June, 2015; The Philippine Embassy in Abu Dhabi and the Embassy of India in Abu Dhabi.

The delegation comprised of the following Committee Members;

1. Hon. Samuel Gichigi, MP – Leader of the Delegation.
2. Hon. Jones Mlolwa, MP
3. Hon. Cornelly Serem, MP
4. Hon. Peris Tobiko, MP
5. Hon. John Omondi Ogutu, MP
6. Ella Kendi Mwenda –Delegation Secretary

1.4 Committee Observations and Recommendations

Having held meetings with the different organizations, and considered the presentations and submissions presented in both Countries, the Committee made the following general observations in and recommendations;-

1.4.1 Observations

Philippines

The delegation made the following observations; that:

1. Philippine had an elaborate system of licensing of private recruitment agencies to ensure that OFWs are deployed only to jobs that do not subject them to abuse and exploitation.

2. The Philippine Government identifies labour market niches abroad and arranges an orderly supply of labour through supervised recruitment by foreign employers, recruitment agencies and foreign governments based on bilateral agreements.
3. There was repatriation program which helps in bringing the distressed OFWs or human remains back to the country. Repatriated OFWs are accorded with airport assistance, temporary shelter, psycho-social counselling, stress debriefing, and provision of transport services or fares for their on-ward travel to their provinces.
4. A mandatory Pre-Departure Orientation Seminar was offered to all Filipinos travelling abroad to enable them familiarize with the employment contract, profile of the country of destination, health and safety, airport procedures, Government programs & services, culture familiarization, stress management and language training.
5. Each OFW deployed by a recruitment agency was covered by a compulsory insurance policy which was secured at no cost to the worker. Such insurance policy are effective for the duration of the migrant worker's employment and covers at the minimum the following; Accidental& natural death, Permanent total disablement, Repatriation cost of the worker, medical evacuation and subsistence allowance benefit for a maximum of 6 months for a worker involved in a case or litigation for the protection of his/her rights.
6. Programs and services on social protection for overseas Filipino worker are provided by Social Security System, Philippine Health Insurance Corporation and Overseas worker welfare. Through their membership and contributions the social protection of Filipino migrant worker is ensured.
7. Philippine Embassies in different Countries provide lawyer who gives legal assistance to their migrants. The Lawyer is paid on a case to case basis.
8. Department of Labor and Employment operates Philippine Labor Overseas Offices (POLO) which are strategically located in countries where a mass of migrant Filipinos workers gravitate. Currently a total of 236 personnel are manning 35 POLOS with 131 personnel deployed in the Middle East and North Africa where majority of Filipino workers are located.
9. Philippine had enforced twenty three bilateral agreements and this had helped in managing migration flows between the Philippines and countries of destination of Filipino migrant.

10. Philippine had formulated Standard Employment Contracts (SEC) which stipulates the minimum terms and conditions under which the migrant Filipino worker will be deployed by the employer. The minimum monthly salary for household service workers is USD400.

United Arab Emirates (UAE)

The delegation made the following observations, that;

1. There was absence of labour attaches to deal exclusively with Labour matters in UAE.
2. There was no bi-lateral agreement with other Countries that would provide framework of engagement in labour matters.
3. Cases involving distressed workers profiled at the Consulate indicate that recruitment agencies in Kenya have facilitated the acquisition of travel documents for individuals whom they facilitate to be employed as domestic workers in UAE; such practices expose the workers to deceit as they are designated as housekeepers and promised jobs in hotels but end up as domestic workers.
4. There was no Labour protocol to set out guidelines for the management of the procurement of both skilled and unskilled labour from Kenya.
5. The Missions were not being funded by the government to enable them to handle the increased number labour related disputes among Kenyans.
6. There was need for mandatory pre-departure induction courses for Kenyans travelling to Middle East as Labour Migrants. Short, targeted curriculum should be developed to induct low skilled labour like house keepers, maids, drivers on the living conditions and standards of Middle East.
7. There was no proper system to establish the whereabouts of the Kenyan migrants and monitor their movements in UAE.
8. In Kenya there was poor coordination between the various government agencies dealing with migration matters.

9. There were no human and financial resources in the Kenyan Missions to take care of the Kenyan workers in distress and this forced the staff at the Embassy to contribute money that will cater for the return expenses of the distressed workers back to Kenya.
10. Workers in other cadres apart from domestic workers did not have any form of work related problems in UAE.

1.4.2 Recommendations

The delegation made the following recommendations;-

1. A mechanism should be introduced to ensure no middlemen are allowed to canvas for travel documents for anyone seeking employment abroad.
2. All recruiting agencies in Kenya must be registered with the Ministry of Labour in Kenya and in case they seek to recruit persons to work in a foreign country they should be compelled to issue their documents at the Ministry of Foreign Affairs which will maintain a database to be periodically shared to respective Kenya Missions abroad.
3. Recruitment agencies must present a one year non revocable bank guarantee/cash deposit/bond for each person recruited to cater for repatriation of person(s) recruited to work abroad. Such a deposit should be made at the Ministry of Labour and a record shared to the Ministry of Foreign Affairs and International Trade. Such monies would be refundable on completion of the contract by the individual domestic workers.
4. Recruitment agencies should be held liable for the repatriation of any person they recruit to work abroad, in particular if there is any variance on the terms of employment.
5. No Kenyan should be recruited as a non-professional or in any other low cadre jobs in a country where Kenya has no diplomatic representation.
6. There was need to post a labour/employment attaché. The Attaché' should be senior, experienced person to deal with labour issues. The delegation to seriously explore the possibilities of setting the office in Dubai given its potential and employment opportunities given that Saudi Arabia is dominated by Indians, Philippines, Pakistanis, Sri Lankans, Sudanese, Indonesians Migrant Labour.
7. The feasibility of creating of a multi-government Labour agency should be explored to deal with the export of manpower abroad. Such an agency should have the responsibility of sourcing for employment opportunities through the Kenya Missions abroad,

recruitment locally, pre-departure training etc. Foreign recruitment agencies would be required to channel their opportunities through the Kenyan Missions.

8. To safeguard the interest of domestic servants recruited from Kenya, a referral system should be introduced where all offer letters to prospective employees must be authenticated first by the respective mission abroad and then by the Ministry Headquarters. Such clearance would ensure there is no variance in the original terms stated and possible different conditions of employment.
9. Clearance certificates should be prepared by the Ministry of Labour and endorsed by the Ministry of Foreign Affairs prior to the departure of the persons being employed to work abroad. Such certificates should be surrendered to the Kenya Mission in the respective Country by the respective sponsor/foreign agency after the inclusion of contact details of the employer.
10. The individuals being recruited abroad should be exposed to some kind of training/briefing for a period of about two weeks on the culture, expectations, working conditions among others. Such training will prepare the prospective candidate to be able to withstand the shocks of the new life and the avenues to channel their issues.
11. A minimum wage should be mutually agreed on and publicized for the domestic worker category in respective Countries of the Middle East. This will eliminate ambiguity and misrepresentation of expected income and employment terms in the cadre. Agencies/Sponsors recruiting domestic workers in Kenya should be willing to offer them the set minimum wage and failure to which such contracts will be cancelled.
12. There is need to enhance the capacity of the Missions to handle the increased number of cases labour related disputes among Kenyans. The deployment of labour attachés should be explored in alternative recruitment of a qualified diaspora with local networks and fluent in the Arabic language should be considered as the viable option.
13. There was an urgent need for the conclusion of Labour protocol between Kenya and UAE. The conclusion of this protocol will set out guidelines for the management of the procurement of both skilled and unskilled labour from Kenya in tandem with other Countries which provide similar labour to UAE.

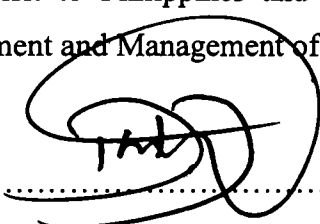
14. The Mission needs to be financed to accommodate, feed, purchase air ticket, facilitate legal procedures for repatriation, compensation and waiver of over stay fees to ease stress on the domestic workers.
15. There is need to review legislation on illegal recruitment in Kenya to provide for maximum sentences as this will deter the agents from engaging in such activities which in some cases can be considered as human trafficking..

1.5 Adoption of the Report

The Members of the Departmental Committee on Labour and Social Welfare pursuant to Standing Order 199 adopted this Report on Study Visit to Philippines and United Arab Emirates on Administration of Foreign Employment and Management of Labour Migration and affixed their signatures as affirmed by attached annex I on 27th, October 2015.

1.6 Acknowledgement

- a) The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.
- b) I take this opportunity to thank all the Members for their useful contribution towards preparation, compilation and production of this report.
- c) The Committee wishes to record its appreciation for services rendered by the staff of the National Assembly attached to the Committee, their efforts and input made the work of the Committee and compilation of this Report possible.
- d) On behalf of the Departmental Committee on Labour and Social Welfare it is my pleasure and duty to present the Committee's observations and recommendations on Study Visit to Philippines and United Arab Emirates on Administration of Foreign Employment and Management of Labour Migration.

SIGNED.......... DATE.....30-03-2016.....

↓ HON. SAMUEL GICHIGI, MP – LEADER OF THE DELEGATION

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

2.0 BACKGROUND

Unemployment remains one of the greatest development challenges, which has adversely affected the country's social economic progress for the last three decades. As the levels of unemployment in Kenya continue to rise, Kenyans are increasingly seeking employment opportunities beyond Kenyan borders. While labour migration is a natural consequence of globalization, it enlarges peoples' choices by increasing their opportunities for education, income and employment.

Foreign employment promotion is, therefore, an important component of our national employment policy and strategies. The number of Kenyans in the diaspora is currently estimated at three million. They possess immense resources which have greatly contributed to the transformation of our country as envisioned in the Kenya Vision 2030 and espoused in the Jubilee Manifesto.

The role of private employment agencies in accessing employment locally and abroad in any country cannot be underscored. Private employment agents have increased enormously in numbers, size and importance. Consequently, they have acquired growing recognition as important elements in the functioning of the labour market. Private employment agencies emerged in the 1990s as a private sector initiative to address local and foreign employment promotion.

Notably, the number of private employment agencies in Kenya has significantly increased from five in 1998 to over 700 in 2013. This rapid increase has created challenges in regulation of the agencies' activities, hence the need for their close supervision and regulation.

2.1 Terms of Reference

The terms of reference were to;

1. Consider the existing framework for the management and regulation of recruitment agencies and assess its effectiveness in protecting Kenyans recruited to work outside the country
2. Analyse the possible reasons and underlying factors for: the increase in migration of Kenyan workers to the Middle East and the Gulf Region and; the causes and extend of

the increasing number of reported cases of mistreatment of Kenyan workers and unfair labour practices in the Middle East and the Gulf Region;

3. Review the existing framework and recommend how it can be strengthened to ensure effective protection of Kenyans working outside the country;
4. Recommend considerations to be taken into account in vetting and accreditation of recruitment agencies;
5. Recommend measures for effective co-ordination and regulation of recruitment agencies;
6. Develop a policy direction and advise the government on whether to maintain or lift the existing ban on export of Kenyan workers to the Middle East and the Gulf Region; Consider any other matter related and incidental to the foregoing and make such recommendations as may be appropriate. Besides the above mentioned tasks, the Task Force will be charged with the responsibility of assessing labour needs and mobility in the Diaspora.

3.0 MEETINGS HELD DURING THE STUDY VISIT

3.1 Meeting with Commission on Filipino Overseas (CFO)

The delegation met with the officials from Commission on Filipinos Overseas where they were informed as follows:

The CFO was established on 16th June 1980 through Batas Pambansa 79, the Commission of Filipino Overseas is an agency of the Philippines Government under the office of the President tasked to promote and uphold the interest, rights and welfare of Overseas Filipinos, and strengthen their ties with the Motherland.

Vision of the CFO: The Commission on Filipinos Overseas (CFO) envisions a community of well-respected and proudly competitive Filipinos overseas who contribute significantly to the productivity and well-being of the countries where they reside or work while maintaining strong political, economic, and cultural ties with the Philippines.

Mission: To be the Philippines' premier institution in promoting policies, programs, and projects with Migration and Development as a framework for the strengthening of and empowering the community of Filipinos overseas.

Goals of the Commission on Filipinos Overseas (CFO) 2010-2016

1. **Policy Advocacy:** Aims at advocating for coherent, coordinated and clear development policies to be mainstreamed in the policy-making process of government.
2. **Socio-economic Development:** To develop and implement, in coordination with and with the support of other government agencies, a streamlined and facilitative entry and directional process for "development assistance" in the form of resources, knowledge, skills and technology from Filipinos overseas, that will be strategic and responsive to existing development issues and needs of the country and will optimize the assistance's development potentials.
3. **Integration and Reintegration:** To assist in the integration of migrating Filipinos in their host countries by educating them on the realities of international migration, preparing them to meet the practical, cultural and psychological challenges attendant to migration and providing them other services as may be developed and needed, mindful of the social costs of migration to the overseas Filipinos themselves (especially for the women who are most vulnerable to abuse, discrimination and exploitation), to the families (especially the children) they have left behind and to their local communities.
4. **Culture and Education:** To ensure that Filipinos overseas remain rooted in their Filipino culture by developing, implementing, promoting and coordinating with other institutions, global awareness and appreciation of Filipino language, culture and heritage.

Legal Mandate.

The work of CFO is guided by the following laws and executive and administrative orders:

- **Batas Pambansa Bilang 79.** An Act Creating the Commission on Filipinos Overseas and for Other Purposes (June 16, 1980)
- **Executive Order No. 728.** Retaining The Commission on Filipinos Overseas Under the Office of the President as a Critical Agency, Designating the Members of the Commission and Providing for the Organizational Guidelines of the Secretariat of the Commission (September 12, 1981)

- **Executive Order No. 938.** Establishing the Overseas Offices of the Commission on Filipinos Overseas Pursuant to Section 4 of Batas PambansaBlg. 79 (March 2, 1984)
- **Executive Order No. 498.** Institutionalizing the Presidential Awards For Filipino Individuals And Organizations Overseas (December 19, 1991)
- **Administrative Order No. 242.** Further Reconstituting the Exchange Visitors Program Committee and Redefining its Functions (January 17, 1996)
- **Executive Order No. 346.** Amending Executive Orders No. 728 and 938, Redefining the Organizational Structure, Functional Thrusts and Providing for the Operational Guidelines of the Commission on Filipinos Overseas (June 14, 1996)
- **Executive Order No. 252.** Establishing the Inter-Agency Committee on Philippine Schools Overseas, Defining its Composition, Structure, and Functions (May 5, 2000)
- **Executive Order No. 373.** Reorganizing the Composition of the Commission on Filipinos Overseas Under the Office of the President (October 18, 2004)

Programs and Services offered by the CFO

1. Pre-Departure Registration & Orientation Seminars, Guidance & Counseling and Peer Counselling.

Filipino emigrants are required to register with the Commission on Filipinos Overseas. Part of its registration requirements is attendance in the Pre-Departure Orientation Seminar (PDOS) to prepare them for settlement overseas. Country-specific PDOS are conducted for Filipino emigrants to address their adjustment concerns in their destination countries. In these seminars, various topics are discussed such as travel regulations, immigration procedures, cultural differences, settlement concerns, employment and social security concerns and rights and obligations of Filipino migrants.

2. 1343 Action line Against Human Trafficking

The 1343 Action line was established to:

- a) Receive and respond to requests for assistance, inquiries and referrals from victims including their families and the public on matters related to cases of human trafficking regardless if the crime was committed locally or internationally; and
- b) Systematize the referral of cases to appropriate government agencies or non-government organizations as immediately as possible.

3. **Lingkodsa Kapwa Filipino Program(Linkapil) : A Partnership for National Development**

LingkodsaKapwa Pilipino (also known as Link for Philippine Development Program) or LINKAPIL Program in 1989.

The LINKAPIL Program aims to:

- a. Enhance participation among overseas Filipinos in the national development efforts;
- b. Provide a mechanism for better coordination and feedback among overseas donors, government agencies and beneficiaries;
- c. Promote awareness and understanding of existing procedures and guidelines for the processing of donations from abroad;
- d. Promote confidence among overseas donors through effective and responsive monitoring and feedback mechanism; and
- e. Espouse genuine collaborative partnerships between overseas Filipinos and those in the Philippine homeland in accordance with national development objectives.

The LINKAPIL Program contributes to the national development by providing opportunities for donors overseas to support projects aimed at uplifting Filipino communities and individuals in need. Such projects include the following:

- a) **Education;** Overseas donors may support the education of Filipino children and youth interested to go to school but are hindered by poverty.
- b) **Micro-Enterprises/Livelihood;** The "**Tulong-Pangkabuhayan**" Program seeks to help improve socio-economic conditions in the countryside by encouraging the establishment

of small-scale or alternative income-generating activities, and fostering the concept of self-help among members of the community

- c) **Health and Welfare;** The "**Tulong-Pangkalusugan**" Program promotes health care among Filipinos especially in rural and poor areas. The program enables indigent groups, i.e., orphans, street children, elderly, and disabled, to have greater access to health services and social benefits.
- d) **Small-Scale Infrastructure;** Overseas donors may sponsor the construction of facilities needed for the improvement of day-to-day life.

4. Diaspora Investment (DI)

This program seeks to work with financial institutions and intermediaries to develop new and innovative instruments and mechanisms such as diaspora bonds, remittance bonds and other mechanisms that tap into remittances and savings for development. Part of the objectives of this Program is the promotion of remittance savings and the use of these remittances in economic and social investments, from the micro-scale of home-businesses and short-term savings up to the large scale of remittance securitization by banks for big-ticket public-private partnership financing.

3.2 Meeting with Overseas Workers Welfare Administration (OWWA)

The delegation met with the officials from Overseas Workers Welfare Administration and they were informed as follows;

OWWA is the government welfare institution that protects and promotes the interest of member-Overseas Filipino Workers (OFW). It develops responsive programs and services for the social protection of its members.

With a membership fee of US\$25.00, an OFW is entitled to the following benefits and services

- 1. Social Benefits includes the following;**
 - I. Disability and Dismemberment Benefit
 - II. Death Benefit
 - III. Burial Benefit
- 2. Education and Training Benefits**

- I. Pre-Departure Education Program (PDEP): A mandatory orientation / training for all departing OFWs. It consists of the following:
 - a) Country Specific Pre-Departure Orientation Seminar (PDOS): A whole day orientation to OFWs consisting of a comprehensive module on employment contract familiarization, profile of the country of destination, stages of the OFWs life, health and safety, airport procedures, government programs and services.
 - b) Comprehensive Pre-Departure Education Program (CPDEP): A 3 to 6-day live-out training for Household Service Workers (HSWs) consisting of language training, culture familiarization and stress management to prepare them for life overseas.
- II. Scholarships, Training and Incentive Programs

Scholarship and Incentive Programs for OFWS / Seafarers

- a) Scholarship for Dependents: Education for Development Scholarship Program (EDSP) - Scholarships for qualified dependents of
- b) OFW Dependents Scholarship Program (OFWDSP) - Scholarships consisting of a maximum of Php 20,000.00 assistance per school year leading to a baccalaureate or associate degree in a state college or university. OFW parents must have a monthly salary of not more than US\$400.00.
- c) Education and Livelihood Assistance Program (ELAP) - Scholarships for survivors of deceased OFWs.
- d) Short-Term Training Programs for OFWs and Dependents

3. Workers Welfare Assistance Program

On-Site Welfare Case Management: Includes requests for assistance on OFWs' whereabouts, psycho-social counselling, conciliation, airport assistance, hospital/prison/work camp visitations and legal assistance to OFWs who wish to pursue labor/welfare case in the court of the host country.

In-Country Welfare Case Management: Includes requests by families and next-of-kin for assistance from Post, post-repatriation assistance, counseling, referrals, and other concerns. Requests for assistance from NOKs or from OFWs can be channelled through the 24/7 Operation Center and the OWWA Regional Offices.

4. Repatriation Program

Includes bringing distressed OFWs back to the country or bringing back of human remains. Emergency repatriation is carried out in the event of any of political unrest or natural calamities. Repatriated OFWs are accorded with airport assistance, temporary shelter at the Halfway Home, psycho-social counseling, stress debriefing, and provision of transport services or fares for their on-ward travel to their provinces.

5. Reintegration Program

Reintegration is a way of preparing for the return of OFWs into the Philippine society.

- a) Reintegration Preparedness (On-Site): Includes trainings on value formation, financial literacy, and entrepreneurial development training (EDT), techno-skills and capacity building trainings.
- b) Reintegration (In-Country): Consists of job referrals (local and overseas employment), business counseling, community organizing, financial literacy seminar, networking with support institutions and social preparation programs. Reintegration Program is being implemented by OWWA and DOLE-National Reintegration Center for OFWs (NRCO)

3.3 Meeting with the Officials from the Department of Labour and Employment International Labor Affairs Bureau (DOLE)

The delegation was informed as follows; that:

The Department of Labor and Employment (DOLE) started as a small bureau in 1908. It became a department on December 8, 1933 with the passage of Act 4121. The DOLE is the national government agency mandated to formulate and implement policies and programs, and serve as the policy-advisory arm of the Executive Branch in the field of labor and employment.

Vision: Every Filipino worker attains full, decent and productive employment.

Mission: To promote gainful employment opportunities, develop human resources, protect workers and promote their welfare, and maintain industrial peace.

DOLE serves more than 40 million workers comprising the country's labor force, covering those in the formal and informal economies, private and public. DOLE clients also include workers' organizations, employers and/or employers' groups, non-government organizations (NGOs), and other government agencies, the academe, other stakeholders and international organizations.

To carry out its mandate, the DOLE has 16 regional offices, 83 Field Offices with four (4) Satellite Offices, 38 overseas posts, 6 bureaus, 7 staff services and 11 agencies attached to it for policy and program supervision and/or coordination. It has a total manpower complement of 9,120. For 2013, the DOLE has a total budget of P8.083 Billion.

Philippine Laws and Policies affecting Overseas Filipinos

1. Batas Pambansa Bilang 79 or an Act creating the Commission on Filipinos Overseas.: It was established on June 16th 1980 to provide advice and assistance to the President and the Philippine Congress on the formulation of policies and measures affecting Filipinos overseas.
2. Presidential Decree No.819 or the Balik Scientist Program of 1975: Was established to allow any foreign based scientist, professional, technician or any other person with special skills who is of Filipino origin to practice his/her profession in the Philippines and providing incentives therefore.
3. Republic Act No.10022 /the migrant workers and overseas Filipinos Act; Was enacted in June 1995 to concretize government's commitment to protect the rights and to promote the welfare of migrant workers, their families and other overseas Filipinos in distress.
4. Republic Act No.8171 or an Act providing for the repatriation of Filipino Women who have lost their Philippine Citizenship of 1995.: It provides for the repatriation of Filipinos who have lost their Philippine citizenship by marriage to aliens and natural – born Filipinos including their minor children, on account of political or economic necessity, to reacquire Philippine citizenship.
5. Republic Act No.8239 or the Philippine Passport Act of 1996: Affirms the inviolability of the constitutional right of Filipinos to travel abroad and also mandates that the State upholds the integrity and credibility of the Philippine passport. The government has the duty to issue passport or travel document to any citizen of the Philippines who complies with the requirements of the Act.

6. The overseas Voting Act of 2013: It ensures equal opportunity to all qualified citizens of the Philippines abroad in the exercise of their right to participate in the election of President, Vice- President, Senators and Party list representatives.

3.4 Meeting with Philippine Overseas Employment Administration (POEA).

The delegation was informed as follows; that:

The Philippine Overseas Employment Administration (POEA) was established in 1982 through Executive Order No. 797. The goal of the agency's establishment was to promote and monitor the overseas employment of workers. The POEA was reorganized in 1987 through Executive Order No. 247 in order to respond to changing markets and economic conditions, and to strengthen components that would protect Filipino workers and the regulatory components of the overseas employment program.

The Migrant Workers and Overseas Filipinos Act of 1995 instituted State policies of overseas employment and established standards for protection and promotion of welfare for migrant workers and their families, and for overseas Filipinos in distress. The act specifies, "Migrant worker refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a legal resident; to be used interchangeably with overseas Filipino worker

In 2010, Republic Act No. 10022 amended some of these provisions, including those quoted above. Among other changes, the paragraph defining the term *Migrant worker* was amended to read, "'Overseas Filipino worker' refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas.

3.5 Meeting with the Officials from the Kenyan Embassy and the Kenyans working in United Arab Emirates (UAE).

The delegation was informed as follows; that:

The United Arab Emirates is one of the most developed economies in the Middle East and is currently classified as a high income developing economy. It is an emerging market for Kenyan seeking employment opportunities abroad. The latest statistics indicate that about 20,208 as at June Kenyans working in UAE mostly employed in the aviation, hospitality, retail, security, maintenance, construction, academic sectors and as domestic helpers.

Foreign nationals are covered by a comprehensive Federal labour Law that governs and regulates all aspects of labour relations that touches on employer- employee relationship including matters related to employment contracts, restrictions on the employment of juveniles and women, maintenance of records and file wages, working hours, leave, safety and protection of the employees, medical and social care, code of discipline, termination of employment contracts, end of service benefits, compensation for occupational disease, labour inspection, penalties and employment related accidents injuries and deaths.

UAE has an elaborate dispute settling process. The Ministry of labour is mandated by the Federal Government to enforce laws in all the seven Emirates. Labour related litigations are adjudicated by the federal and local courts. All disputes relating to Labour matters must first be referred to the Ministry of Labour where they are handled and if no amicable solution is reached, the disputes are referred to the courts within two weeks from the date of which the complaint was filed, after which either party may revert to court directly.

The consulate handles more than eight cases involving domestic servants in distress every week. The UAE has endeavoured to protect the rights of foreign workers through elaborate federal laws and bilateral work agreements, given that more than 80% of UAE residents are foreign nationals who provide the critical labour force required by the Country.

Cases involving Kenyan migrant workers are mostly related to the lowest cadre as domestic helpers. The number of Kenyans working in UAE as domestic helpers has been increasing lately because of:

1. Tightening of immigration rules and crackdown in Saudi Arabia.
2. Cautionary measures towards the issuance of visas to lower cadre workers from Arabic speaking countries for fear of negative influence by revolutionist.

3. Freeze by other African countries for their citizens to work in UAE has contributed to the demand and resultant influx of domestic servants from Kenya.

Challenges faced by the Migrants;

1. Kenyan job seekers are misadvised by the unscrupulous agents to enter into questionable contracts believing that once they arrive in UAE they will be released by their sponsors and easily change a job which is not the case.
2. Some of the agencies have no registered offices or contacts hence they prey on poor job seeking girls.
3. Some of the recruits sign contracts in Kenya believing they will be placed in retail or customer care only to realize that they are in UAE on servant visas and the job requirements are incompatible.
4. The domestic workers were not given the opportunity to leave the house because of the regulation that they must be chaperoned which makes them feel imprisoned. They are not allowed to communicate with anyone or leave the compound on their off days.
5. The reality was that an individual must be sponsored by an Emarati resident to enter UAE on a house help or domestic worker visa, and such sponsorship is not covered by the UAE labour laws. The visa is binding for a minimum of one year and a maximum of two years and it can only be changed subject to the concurrence of the same sponsor.

Challenges faced by the Consulate.

1. Sometimes the sponsors are not willing to release the domestic workers due to the cost incurred while procuring the visas and tickets.
2. Where the case is involving the police in case of mistreatment or alleged theft, the investigation and court processes take too long to be completed.
3. The process of handling the case involves official visits to handling agencies, police stations, filing complaints through typing centers and prosecution Department. All these activities demands finance which are not factored in the mission's budget.
4. In UAE there are limited legal options available to low cadre workers. Cases of run-away of domestic workers are handled through the General Directorate of Residency and Foreign Affairs. Given the binding nature of contracts, absconding is considered a

criminal offence which is punishable by a jail term followed by deportation with a ban of six months to one year.

3.6 Meeting with the Philippines Embassy in Abu -Dhabi:

The delegation met with the officials of the Philippines Embassy in Abu Dhabi, and they were informed that:

1. There were 800,00 Philippines working in United Arab Emirates.
2. The Embassy had an established centre for distressed migrants where they are offered support.
3. There were 20 officials of the Overseas Workers Welfare Agency (OWWA) handling different aspects of labour issues. In addition, there are also Social Workers Attaches.
4. The Embassy has engaged a lawyer to provide legal assistance to the migrants. The lawyer was paid on a case to case basis
5. Philippines was currently negotiating for a minimum of 400 US Dollars for domestic workers

3.7 Meeting with the Embassy of India in Abu Dhabi

The delegation met with the officials of the Embassy of India in Abu Dhabi .The visit enabled the delegation get first-hand information on issues that the embassy is facing in dealing with migrant labour.

During the discussions, it emerged that:

1. India does not have a policy to promote labour migration. Migration is by choice.
2. Prior to departure from India, migrants undergo through a compulsory Emigration checklist which involves scrutiny of the contracts of service.
3. India has established the Indian Community Fund to cater for the welfare of the migrants.
4. India has entered into a Bilateral Labour Agreement to ensure protection of her migrants.
5. A copy of the contract of employment must be submitted by the local agent in India before the migrant departs.

6. In addition to submitting demand letter to the Indian Embassy, recruitment Agents in UAE wishing to recruit Indian migrant workers are required to submit other documents such as registration certificates.

The delegation was informed that India has instituted the following measures to ensure protection of their domestic workers:

1. Only Female migrants of 30 years and above are allowed to take up domestic jobs. There is no age limit for males.
2. The Sponsors/Employers are required to deposit 9,200 Dirhms with the Embassy.
3. Employers are required to register the employees with the embassy within two weeks after engagement. Details should also include salary and mobile telephone numbers.
4. Mandatory Immigration clearance
5. Compulsory pre-departure training
6. All termination of contracts must be notified to the embassy. Employers are must also produce proof that the salary and all dues have been paid.

Some of the challenges were highlighted as:

1. Underpayment
2. Substitution of contacts
3. Inadequate legal representation

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations in Philippines and United Arab Emirates.

Philippines

1. Philippine had an elaborate system of licensing of private recruitment agencies to ensure that OFWs are deployed only to jobs that do not subject them to abuse and exploitation.
2. The Philippine Government identifies labour market niches abroad and arranges an orderly supply of labour through supervised recruitment by foreign employers, recruitment agencies and foreign governments based on bilateral agreements.
3. There was repatriation program which helps in bringing the distressed OFWs or human remains back to the country. Repatriated OFWs are accorded with airport

assistance, temporary shelter, psycho-social counseling, stress debriefing, and provision of transport services or fares for their on-ward travel to their provinces.

4. A mandatory Pre-Departure Orientation Seminar was offered to all Filipinos travelling abroad to enable them familiarize with the employment contract, profile of the country of destination, health and safety, airport procedures, Government programs & services, culture familiarization, stress management and language training.
5. Each OFW deployed by a recruitment agency was covered by a compulsory insurance policy which was secured at no cost to the worker. Such insurance policy are effective for the duration of the migrant worker's employment and covers at the minimum the following; Accidental& natural death, Permanent total disablement, Repatriation cost of the worker, medical evacuation and subsistence allowance benefit for a maximum of 6 months for a worker involved in a case or litigation for the protection of his/her rights.
6. Programs and services on social protection for overseas Filipino worker are provided by Social Security System, Philippine Health Insurance Corporation and Overseas worker welfare. Through their membership and contributions the social protection of Filipino migrant worker is ensured.
7. Philippine Embassies in different Countries provide lawyer who gives legal assistance to their migrants. The Lawyer is paid on a case to case basis.
8. Department of Labor and Employment operates Philippine Labor Overseas Offices (POLO) which are strategically located in countries where a mass of migrant Filipinos workers gravitate. Currently a total of 236 personnel are manning 35 POLOS with 131 personnel deployed in the Middle East and North Africa where majority of Filipino workers are located.
9. Philippine had enforced twenty three bilateral agreements and this had helped in managing migration flows between the Philippines and countries of destination of Filipino migrant.
10. Philippine had formulated Standard Employment Contracts (SEC) which stipulates the minimum terms and conditions under which the migrant Filipino worker will be

deployed by the employer. The minimum monthly salary for household service workers is USD400.

United Arab Emirates (UAE)

The delegation made the following observations, that;

1. There was absence of labour attaches to deal exclusively with Labour matters in UAE.
2. There was no bi-lateral agreement with other Countries that would provide framework of engagement in labour matters.
3. Cases involving distressed workers profiled at the Consulate indicate that recruitment agencies in Kenya have facilitated the acquisition of travel documents for individuals whom they facilitate to be employed as domestic workers in UAE; such practices expose the workers to deceit as they are designated as housekeepers and promised jobs in hotels but end up as domestic workers.
4. There was no Labour protocol to set out guidelines for the management of the procurement of both skilled and unskilled labour from Kenya.
5. The Missions were not being funded by the government to enable them to handle the increased number labour related disputes among Kenyans.
6. There was need for mandatory pre-departure induction courses for Kenyans travelling to Middle East as Labour Migrants. Short, targeted curriculum should be developed to induct low skilled labour like house keepers, maids, drivers on the living conditions and standards of Middle East.
7. There was no proper system to establish the whereabouts of the Kenyan migrants and monitor their movements in UAE.
8. In Kenya there was poor coordination between the various government agencies dealing with migration matters.
9. There were no human and financial resources in the Kenyan Missions to take care of the Kenyan workers in distress and this forced the staff at the Embassy to contribute money that will cater for the return expenses of the distressed workers back to Kenya.

10. Workers in other cadres apart from domestic workers did not have any form of work related problems in UAE.

5.0 COMMITTEE RECOMMENDATIONS

1. A mechanism should be introduced to ensure no middlemen are allowed to canvas for travel documents for anyone seeking employment abroad.
2. All recruiting agencies in Kenya must be registered with the Ministry of Labour in Kenya and in case they seek to recruit persons to work in a foreign country they should be compelled to issue their documents at the Ministry of Foreign Affairs which will maintain a database to be periodically shared to respective Kenya Missions abroad.
3. Recruitment agencies must present a one year non revocable bank guarantee/cash deposit/bond for each person recruited to cater for repatriation of person(s) recruited to work abroad. Such a deposit should be made at the Ministry of Labour and a record shared to the Ministry of Foreign Affairs and International Trade. Such monies would be refundable on completion of the contract by the individual domestic workers.
4. Recruitment agencies should be held liable for the repatriation of any person they recruit to work abroad, in particular if there is any variance on the terms of employment.
5. No Kenyan should be recruited as a non-professional or in any other low cadre jobs in a country where Kenya has no diplomatic representation.
6. There was need to post a labour/employment attaché. The Attaché should be senior, experienced person to deal with labour issues. The delegation to seriously explore the possibilities of setting the office in Dubai given its potential and employment opportunities given that Saudi Arabia is dominated by Indians, Philippines, Pakistanis, Sri Lankans, Sudanese, Indonesians Migrant Labour.
7. The feasibility of creating of a multi-government Labour agency should be explored to deal with the export of manpower abroad. Such an agency should have the responsibility of sourcing for employment opportunities through the Kenya Missions abroad, recruitment locally, pre-departure training etc. Foreign recruitment agencies would be required to channel their opportunities through the Kenyan Missions.
8. To safeguard the interest of domestic servants recruited from Kenya, a referral system should be introduced where all offer letters to prospective employees must be

- authenticated first by the respective mission abroad and then by the Ministry Headquarters. Such clearance would ensure there is no variance in the original terms stated and possible different conditions of employment.
9. Clearance certificates should be prepared by the Ministry of Labour and endorsed by the Ministry of Foreign Affairs prior to the departure of the persons being employed to work abroad. Such certificates should be surrendered to the Kenya Mission in the respective Country by the respective sponsor/foreign agency after the inclusion of contact details of the employer.
 10. The individuals being recruited abroad should be exposed to some kind of training/briefing for a period of about two weeks on the culture, expectations, working conditions among others. Such training will prepare the prospective candidate to be able to withstand the shocks of the new life and the avenues to channel their issues.
 11. A minimum wage should be mutually agreed on and publicized for the domestic worker category in respective Countries of the Middle East. This will eliminate ambiguity and misrepresentation of expected income and employment terms in the cadre. Agencies/Sponsors recruiting domestic workers in Kenya should be willing to offer them the set minimum wage and failure to which such contracts will be cancelled.
 12. There is need to enhance the capacity of the Missions to handle the increased number of cases labour related disputes among Kenyans. The deployment of labour attachés should be explored in alternative recruitment of a qualified diaspora with local networks and fluent in the Arabic language should be considered as the viable option.
 13. There was an urgent need for the conclusion of Labour protocol between Kenya and UAE. The conclusion of this protocol will set out guidelines for the management of the procurement of both skilled and unskilled labour from Kenya in tandem with other Countries which provide similar labour to UAE.
 14. The Mission needs to be financed to accommodate, feed, purchase air ticket facilitate legal procedures for repatriation, compensation and waiver of over stay fees to ease stress on the domestic workers.
 15. There is need to review legislation on illegal recruitment in Kenya to provide for maximum sentences as this will deter the agents from engaging in such activities which in some cases can be considered as human trafficking.

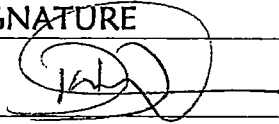
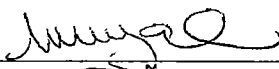
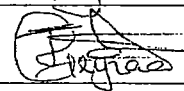
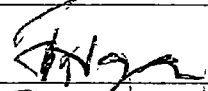
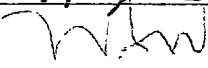
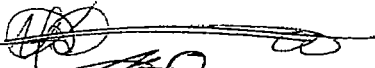

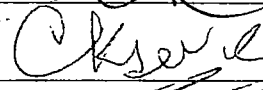
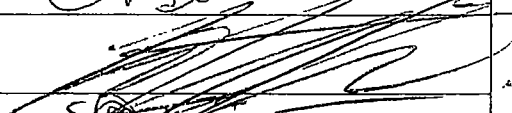
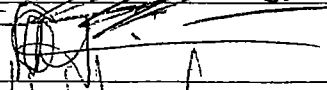
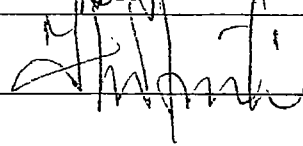
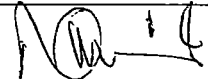
DEPARMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE


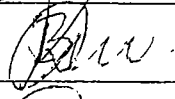
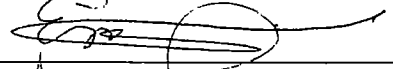

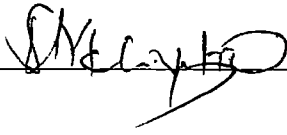
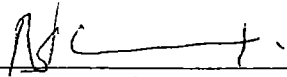
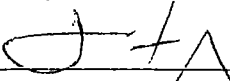
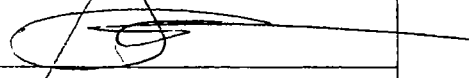
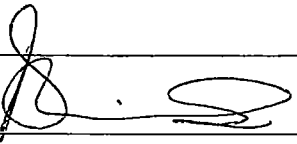
Agenda:

1. Consideration of the Protection of Traditional Knowledge and Traditional Cultural expressions Bill, 2015
2. Consideration and adoption of Reports on foreign trips

Venue: Small Boardroom, 9th Floor, Harambee Sacco Plaza

Date: 27th October, 2015

	NAME	SIGNATURE
	Hon David Were, MP-Chairperson	
	Hon. Tiyah Galgalo, MP-Vice Chairperson	
	Hon. Janet Teyiaa, MP	
	Hon. Peris Tobiko, MP	
	Hon. John Ndirangu Kariuki, MP	
	Hon. John Serut, MP	
	Hon. Winnie Karimi Njuguna, MP	
	Hon. Samuel Gichigi, Mp	
	Hon. Cornelly Serem, MP	
	Hon. Dan Wanyama, MP	
	Hon .Elijah Lagat, MP	
	Hon. Patrick Wangamati, MP	
	Hon. Nyasuna Gladys Wanga, MP	
	Hon. Abdinoor Mohamed Ali, MP	
	Hon. Regina Nyeris, MP	

16.	Hon. Wesley Korir ,MP	
17.	Hon. Kinoti Gatobu, MP	
18.	Hon. Elijah Mosomi Moindi, MP	
19.	Hon. James Onyango K'Oyoo, MP	
20.	Hon. Omondi John Ogutu, MP	
21. *	Hon. Rose Museo Mumo, MP	
22.	Hon. Mustaffa Idd, MP	
23.	Hon. John Owuor O. Kobado, MP	
24.	Hon. Janet Nangabo, MP	
25.	Hon. Mwanyoha Hassan Mohammed, MP	
26.	Hon. Mlolwa Jones Mwangogo, MP	
27.	Hon. Silvance Onyango Osele, MP	
28.	Hon. Aisha Jumwa Karissa, MP	
29.	Hon. Ferdinand Waititu, MP	

Erick Nyambati

For: Clerk of the National Assembly

Minutes of the 45th Sitting of the Departmental Committee on Labour and Social Welfare held on Tuesday 27th October, 2015, in Harambee Sacco Plaza, 9th Floor Boardroom at 10.30 a.m.

Present

1. Hon. David Were, MP- Chairperson
2. Hon. Tiyah Galgalo Ali, M.P. - Vice Chairperson
3. Hon. John Serut, MP
4. Hon. Samuel Gichigi, MP
5. Hon. Patrick Wangamati, MP
6. Hon. Elijah Mosomi Moindi, MP
7. Hon. Dan Wanyama, MP
8. Hon. James Onyango K'oyoo, MP
9. Hon. John Ndirangu Kariuki, MP
10. Hon. Kinoti Gatobu, MP
11. Hon. Winnie Karimi Njuguna, MP
12. Hon. Aisha Jumwa Karissa, MP
13. Hon. Janet Teyiaa, MP
14. Hon. Cornelly Serem, MP
15. Hon. Elijah Lagat, MP
16. Hon. Abdinoor Mohamed Ali, MP
17. Hon. Wesley Korir, MP
18. Hon. Mustafa Idd, MP
19. Hon. Janet Nangabo, MP
20. Hon. Mwanyoha Hassan Mohamed, MP
21. Hon. Jones Mlolwa, MP

Absent

1. Hon. Peris Tobiko, MP
2. Hon. John Omondi Ogutu, MP
3. Hon. John O. Kobado, MP
4. Hon. Regina Nyeris, MP
5. Hon. Silvanice Onyango Osele, MP
6. Hon. Ferdinand Waititu, MP
7. Hon. Rose Museo Mumo, MP
8. Hon. Gladys Wanga, MP

In Attendance

National Assembly Secretariat

1. Ms. Ella Kendi Mwenda -Third Clerk Assistant
2. Mr. Abdirahman Gele Hassan -Third Clerk Assistant
3. Mr. Donald Manyala -Research Officer

Minute No.242/2015 Preliminaries

The meeting was called to order at 10.45 a.m. followed by a word of prayer from the Chairperson.

Minute No. 243/2015 Confirmation of the minutes of the previous sitting

Confirmation of the minutes of the previous sittings was deferred to the next sitting.

Minute No.244/2015 Consideration of the Protection of Traditional Knowledge and Traditional Cultural Expression Bill, 2015

The Committee Members resolved to invite the Attorney General and the Ministry of Sports, Culture and the Arts on their views and recommendations of the Bill.

Minute No.245/2015 Consideration and adoption of reports on foreign trips

The Committee Members considered and unanimously adopted the following reports:-

1. High Level Symposium on Social Protection: Victoria Falls –Zimbabwe; 16th -20th Feb, 2015.
2. Study visit to Philippines and United Arab Emirates; 2nd -9th June, 2015.
3. Special Olympics 2015 Summer Games, Los-Angeles, USA; 25th June – 2nd July, 2015
4. World Youth Championship Cali, Colombia 15th -23rd July, 2015.

Minute No.246/2015 Adjournment

The meeting was adjourned at 1.25 p.m.

Signature..........Date.....20-11-2015.....

Hon. David Were, MP - Chairperson
Departmental Committee on Labour and Social Welfare