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THE NATIONAL ASSEMBLY

DIASPORA AFFAIRS AND MIGRANT
WORKERS COMMITTEE

REPORT ON

INQUIRY INTO THE ROLE AND CONDUCT OF PRIVATE EMPLOYMENT AGENCIES
IN THE RECRUITMENT OF MIGRANT WORKERS AND PLACEMENT OF
STUDENTS ABROAD

 THE NATIONAL ASSEMBLY PAPERS LAID	
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ABBREVIATIONS

AG	-	Attorney General
ASMAK	-	Association of Skilled Migrant Agencies of Kenya
BLAs	-	Bilateral Labour Agreements
BRS	-	Business Registration Services
DCI	-	Directorate of Criminal Investigations
DIIMS	-	Diaspora Information Integrated System
EACC	-	Ethics and Anti-Corruption Commission
FY	-	Financial Year
GAMCA	-	Gulf Approved Medical Centre Association
GCC	-	Gulf Cooperation Countries
HTSK	-	Homecare Trainers Society of Kenya
ILO	-	International Labour Organization
IMVC	-	Inter-Ministerial Vetting Committee
IOM	-	International Organization for Migration
IPRS	-	Integrated Population Registration System
JITC	-	Joint Implementation Technical Committee
KAPEA	-	Kenya Association of Private Employment Agencies
KICD	-	Kenya Institute of Curriculum Development
KLMIS	-	Kenya Labour Market Information System
KMWWF	-	Kenya Migrant Workers Welfare Fund
KNBS	-	Kenya National Bureau of Statistics
KNCCI	-	Kenya National Chamber of Commerce and Industries
KNQA	-	Kenya National Qualifications Authority
KRA	-	Kenya Revenue Authority
LM	-	Labour Migration
MFDA	-	Ministry of Foreign and Diaspora Affairs
MLSP	-	Ministry of Labour and Social Protection
MoU	-	Memorandum of Understanding

NEA	-	National Employment Authority
NEAIMS	-	National Employment Authority Integrated Management System
NIS	-	National Intelligence Service
NITA	-	National Industrial Training Authority
NTSA	-	National Transport and Safety Authority
NYS	-	National Youth Service
PCC	-	Police Clearance Certificate
PEA	-	Private Employment Agencies
POLO	-	Philippines Oversight Labour Office
PS	-	Principal Secretary
RRR	-	Runaways, Returns and Reintegration
SDDA	-	State Department for Diaspora Affairs
SDL & SD	-	State Department for Labour and Skills Development
ToTs	-	Trainer of Trainers
TTAK	-	Transformative Trainers Association of Kenya
TVET	-	Technical and Vocational Education and Training
TVETA	-	Technical and Vocational Education and Training Authority
U.A.E	-	United Arab Emirates
UK	-	United Kingdom
USA	-	United States of America

DEFINITIONS

ARCO	Arco provide professional labour services for public & private sectors as well as individuals based in the Kingdom of Saudi Arabia.
ENJAZ	Online visa service administered by Saudi Ministry of Foreign Affairs
GCC	Political and economic alliance of six Middle Eastern countries—Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman
HOPS	Is synonymous with the recruitment, migration, and supply of seasonal workers to employers in the UK from across the world.
MUSANED	Saudi Ministry of Human Resources and Social Development electronic platform that links Saudi Recruitment Agencies and Foreign Recruitment Agencies for issuance, authentication and approval of contracts between the employer and employee

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Diaspora Affairs and Migrant Workers Committee on its inquiry into the role and conduct of Private Employment Agencies in the recruitment of migrant workers and placement of students abroad.

The Committee in discharge of its mandate, and in order to understand the dynamics of the Labour migration in the country, initiated engagements with the key stakeholders involved in the promotion of the welfare of Kenyans in the diaspora and the recruitment of migrant workers and placement of students abroad. The engagements were aimed at identifying opportunities, challenges and emerging issues in the management of labour migration and the welfare of Kenyans in the diaspora.

The Committee established that opportunities abound for Kenyans to work abroad, whether skilled (professional cadres) or unskilled, and that the country is rich in well trained Kenyans who can benefit from these opportunities. However, there were challenges facing migrant workers particularly in the Middle East domestic labour market, and such concerns had led to a public outcry over domestic workers being mistreated abroad.

The Committee therefore, at its sitting held on 13th April, 2023 resolved to conduct an inquiry into the role and conduct of private recruitment agencies in the recruitment and placement of migrant workers abroad.

In carrying out the inquiry, the Committee received submissions from the Ministry of Labour and Social Protection, State Department for Labour and Skills Development, Ministry of Interior and National Administration, State Department for Immigration and Citizen Services, Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs, the National Employment Authority (NEA), Commission for University Education, and the National Industrial Training Authority (NITA) as well as representatives from Private Employment Agencies and Private Trainers.

The Committee observed that there are challenges arising from the regulatory environment of the Private Employment Agencies due to lack of an overarching policy for labour migration in the country. In addition, the Committee observed that existing laws, specially the Labour Institutions Act, 2007 and the Labour Institutions (Private Employment Agencies) Regulations, 2016 do not address the emerging realities of the labour market. The Committee noted that the Ministry of Labour and Social Protection has developed the National Labour Migration Policy, which once implemented will provide a framework for promotion of inclusive and sustainable development of the country through safe, orderly, regular and productive labour migration. Further, the Committee recommends for the Ministry to fast track the development of the Labour Migration Bill, 2023 for consideration. The Bill will promote safe and orderly migration in light of the current realities and provide a robust framework for the registration, vetting, and accreditation and regulation of private employment agencies.

Additionally, the Committee notes that the Ministry had taken appropriate steps aimed at increasing employment opportunities for Kenyans abroad through the signing of various Bilateral Labour Agreements with different countries of destination, with others at different stages of negotiation. The Committee recommends that the Ministry fast tracks the BLA negotiations and ensures that the BLAs promote the rights of Kenyan Migrant Workers and protects their interests, as well as provide for adequate remuneration tandem to the skills of the workers.

The Committee also observed that there were challenges in implementation of the new home care training curriculum rolled out in the year 2020 occasioned by failure by the Ministry of Labour and Social Protection to involve the stakeholders in its development . This has occasioned push back by the implementers, the training institutions, and has been reflected in the quality of candidates leaving the homecare training institutions for the export labour market. The Committee recommends for halting the review of the curriculum until sufficient public participation is conducted and stakeholders' views incorporated. The curriculum should also be aligned with the evolving demands and realities of the international labour market and customized to meet specific destination country requirements in view of the Bilateral Labour Agreements.

The Committee acknowledges the use of ICT for proper labor migration processes and notes that while systems exist in various state agencies, they are stand-alone systems that lack integration, thus introducing bureaucratic red tape in the registration and accreditation processes for migrant workers processing at registration and accreditation processes. The Committee therefore recommends for the integration of various ICT platforms to ease the process of document verification, attestation, contract approvals among others.

The Committee also observed that without budgetary allocation, the proposed interventions will not be achieved and recommends for adequate budgetary allocation to facilitate the recruitment of labour attaches and diaspora officers and to facilitate the ICT systems integration processes.

The Committee is grateful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it in the discharge of its mandate. The Committee further wishes to thank the Ministry of Labour and Social Protection, the State Department for Citizen and Immigration Services and representatives of ASMAK and KAPEA for their submissions and making the inquiry successful. I also wish to extend my gratitude to the Committee Members and the Committee Secretariat for their dedication and contributions towards making the inquiry successful.

On behalf of the Diaspora Affairs and Migrant Workers Committee, and pursuant to the provisions of Standing Order 199 (6), it is my pleasure and privilege to present to the House the Report of the Committee on the Inquiry into the and conduct of private employment agencies in the recruitment of migrant workers and placement of students abroad.

HON. LYDIA HAIKA MIZIGHI, M.P. - CHAIRPERSON

DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE

1.0 PREFACE

1.1 Establishment and Mandate

1. The Diaspora Affairs and Migrant Workers Committee, is a Select Committee of the National Assembly is established under Standing Order 208B to:

- (i) Consider all matters directly relating to policies and programmes for the protection of the rights and welfare of Kenyans in the diaspora, including;–
 - (a) Kenyan nationals with dual citizenship;
 - (b) Kenyan migrant workers and their families abroad; and
 - (c) Kenyans undertaking studies overseas;
- (ii) Examine policies and programmes of the national government for;–
 - (a) Efficiently harnessing, mobilizing and steering of Kenyan resources in the diaspora for economic and socio-cultural development;
 - (b) Engaging and facilitating Kenyans in the diaspora, including persons eligible for dual citizenship; and
 - (c) Suffrage of Kenyan nationals in the diaspora.

1.2 Committee Membership

2. The Committee was constituted by the House on 27th October, 2022 and comprises of the following Members:–

The Hon. Lydia Haika Mizighi, M.P. – Chairperson

Taita – Taveta County

UDA Party

The Hon. Simon Nganga Kihara, M.P. – Vice Chairperson

Ruiru Constituency

UDA Party

Members

The Hon. Fred C. Kapondi, M.P.

Mount Elgon Constituency

UDA Party

The Hon. Kemei Justice Kipsang, M.P.

Sigowet/ Soin Constituency

UDA Party

The Hon. Capt. Ruweida Mohamed Obo, M.P.

Lamu East Constituency

Jubilee Party

The Hon. Ibrahim Abdi Saney, M.P.

Wajir North Constituency

UDA Party

The Hon. Charity Kathambi Chepkwony, M.P.

Njoro Constituency

UDA Party

The Hon. Paul Ongili Babu Owino, M.P.

Embakasi East Constituency

ODM Party

The Hon. Rashid Juma Bedzimba, M.P.

Kisauni Constituency

ODM Party

The Hon. Titus Lotee, M.P.

Kacheliba Constituency

KUP Party

The Hon. Donya Dorice Aburi, M.P.

Kisii County

WDM Party

The Hon. Phelix Odiwuor Khodhe, M.P.

Langata Constituency

ODM Party

The Hon. Leah Sopiato Sankaire, M.P.

Kajiado County

UDA Party

The Hon. Zamzam Chimba Mohamed, M.P.

Mombasa County

ODM Party

The Hon. Pamela Njoki Njeru Double N, M.P.

Embu County

UDA Party

1.3 Committee Secretariat

3. The Committee is facilitated by the following staff -

Mr. Abdifatah Bule

Clerk Assistant I/Head of Secretariat

Ms. Ivy Miritim
Media Relations Officer III

Mr. Kelvin Nganga
Research Officer III

Mr. Peter Barasa
Legal Counsel II

Mr. Hiram Kimuhu
Fiscal Analyst III

Ms. Grace Odedere
Clerk Assistant III

Mr. Bernard Gwara
Serjeant - At- Arms

2.0 INTRODUCTION

2.1 Background Information

4. The Committee in discharge of its mandate, and with a view understanding the dynamics of the Labour Migration in the country, initiated engagements with the key stakeholders involved in the promotion of the welfare of Kenyans in the diaspora and the recruitment of migrant workers and placement of students abroad. The engagements were aimed at identifying opportunities, challenges and emerging issues in the management of labour migration and the welfare of Kenyans in the diaspora.
5. The Committee held initial meetings with the Ministry of Foreign and Diaspora Affairs, Ministry of Labour and Social Protection, and departments responsible for migrant workers recruitment.
6. From the onset, the Committee established that opportunities abound for Kenyans to work abroad, whether skilled (professional cadres) or unskilled. However, there were challenges facing migrant workers, particularly in the Middle East, and that concerns and complains had been raised by the general public over the unethical conduct of some Private Recruitment Agencies, in the recruitment and placement of migrant workers abroad.
7. The Committee cognizant of the government's commitment to increase employment opportunities for skilled, semi-skilled and unskilled Kenyans abroad through the signing of Bilateral Labour Agreements with different countries of destination noted that Private Employment Agencies play a critical role in the implementation of these BLAs, through the recruitment and placement of the migrant workers.
8. It is on this background that the Committee at its sitting held on 13th April, 2023 resolved to conduct an inquiry into the role and conduct of private employment agencies in the recruitment of migrant workers and placement of students abroad.

2.2 Objectives of the Inquiry

9. The inquiry was guided by the following terms of reference:–
 - (a) Evaluate the efficacy of the process of establishment, registration, vetting and accreditation of local and foreign recruitment agencies;
 - (b) Evaluate the contractual obligations of the recruitment agencies in Migrant Workers and Students placements and the mechanisms in place for monitoring and enforcing the responsibility of recruitment agencies upon recruitment of labour migrants or placement of students overseas;
 - (c) Examine the recruitment process by employment agencies for labour migrants and placement of students abroad and the determination of fees/charges by stakeholders in the recruitment process ;
 - (d) Evaluate the responsibilities of different stakeholders in the pre-departure training and certification process;

- (e) Examine the existing Bilateral Labour Agreements, the role of recruitment agencies in their implementation and their effectiveness in promoting and protecting the rights of migrant workers and students;
- (f) Examine the dispute resolution mechanisms in place and their effectiveness in addressing recruitment violations by the recruitment agencies;
- (g) Evaluate the existing mechanisms for providing administrative, financial and logistical support to migrant workers and migrant workers returnees; and
- (h) Make recommendations on administrative, legal or regulatory changes for the promotion of the rights and welfare of Kenyan Migrant Workers and Students Abroad.

2.3 Private Recruitment Agencies in Kenya

10. A Private Employment Agency (PEA) is a business or organization that facilitates the matching of job seekers with employers. An Agency may provide various services, such as recruiting, screening, and placing workers in employment positions.
11. Section 3 of the Labour Institutions Act, 2007 defines an employment Agency to mean any person, company, institution, agency or other organization which acts as an intermediary for the purpose of procuring employment for a worker, but does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between the employer and the worker; or employment agencies not conducted with a view to profit, that is to say, the placing of services of any company, institution, agency or other organization which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge;
12. PEAs therefore act as intermediaries in the job market, helping both employers and job seekers find suitable matches and facilitate the placement of Kenyan workers in foreign countries thereby helping match job seekers in Kenya and employers or agencies abroad seeking specific skills or labour. This involves understanding the needs of foreign employers and ensuring that the skills and qualifications of the Kenyan workers align with those requirements.
13. They are expected to operate in accordance with the labour laws and are required to register with the Ministry of Labour and Social Protection. The National Employment Authority (NEA) regulates PEAs to ensure that they operate ethically and in compliance with the law, and that they adhere to existing regulations, work permits, and other legal requirements related to the employment of foreign workers. The National Industrial and Training Authority (NITA) designs and implements the pre-departure training programs for the migrant workers, with the necessary skills and information to succeed in a new work environment.
14. PEAs also assist migrant workers with the necessary documentation, including visa applications, work permits, and any other paperwork required for legal employment in the destination country and charge fees for their services. These fees may be borne by the employer, the job seeker, or both, depending on the arrangement. The fee structure is usually agreed upon between the Agency and the client (employer).

15. PEAs therefore form a key part of the industry as they handle all documentation regarding the intake, training, medical checkups, issuance of work contracts, visa processing, pre-departure procedures and deployment of the migrant workers. They also play a key role in keeping up with the welfare of the migrant workers during the entire duration of their contracts.

2.4 Institutional Framework

16. Private Employment Agencies (PEAs) in Kenya are established under the Labour Institutions Act, 2007 and regulated under the Labour Institutions (Private Employment Agencies) Regulations 2006.
17. Labour Institutions Act 2007 which provides for the establishment of Labour Governance institutions which include office of the Commissioner for Labour & Inspectorate Department, National Labour Board and the Wages Councils and appointment of Labour Officers as Authorized officers. Sections 55-60 of the Labour Institutions Act 2007 empowers the Ministry to register and regulate the activities of the PEAs while Section 60 of the Labour Institutions (Private Employment Agencies) Regulations, 2016 empowers the Cabinet Secretary for Labour to make rules and regulations for regulating the operations of the PEAs.
18. Sections 82-86 of the Employment Act, 2007 on foreign Contracts of Service outlines the form and attestation of foreign contracts of service, requirements before attestation, security bond in foreign contracts of service and offences. The Ministry verifies job opportunities and offers abroad by conducting enquiries before the applicants travel to the recipient states.
19. The Industrial Training Act Cap 237, (Amended) Act 2022 outlines the mandates of the National Industrial Training Authority (NITA) which include: Regulation of Industrial training in Kenya; Registration and accreditation of training providers and collection and administration of industrial training levy. The National Industrial Training Authority provide pre-departure training for Kenyan Migrant workers.
20. Section 43 of the Security Laws (Amendment) Act 2014 amended the Labour Institutions Act by establishing an inter-ministerial vetting committee to vet all applications for registration of recruitment agencies.
21. Section 8 of the National Employment Act mandates the National Employment Authority to facilitate employment and placement of job seekers in formal employment or any other form of employment locally and internationally.

3.0 SUBMISSIONS FROM STAKEHOLDERS

22. The Committee invited and received submissions from the following stakeholders on various dates;-

- (i) Ministry of Labour and Social Protection, State Department for Skills Development accompanied by the National Employment Authority (NEA) and the National Industrial Training Authority (NITA);
- (ii) Ministry of Interior and National Administration, State Department for Immigration and Citizen Services;
- (iii) Ministry of Foreign and Diaspora Affairs, State department for Diaspora Affairs
- (iv) Representatives of the Association of Skilled Migrant Agencies of Kenya (ASMAK) and the Kenya Association of Private Employment Agencies (KAPEA), Transformative Trainers Association of Kenya (TTAK) and Homecare Trainers Society of Kenya (HTSK); and
- (v) Ministry of Education, Commission for University Education.

In addition to the above meetings, the Committee conducted inspection visits to the offices of the Private Recruitment Agencies based in Mombasa and Aushu Gishu counties. The objective of the visits was to assess their level of compliance with Labour Institutions Act, 2007 and the Labour Institutions (Private Employment Agencies) Regulations 2006

3.1 Private Employment Agencies and Private Trainers

23. The Committee invited Association of Skilled Migrant Agencies of Kenya (ASMAK) and Kenya Association of Private Employment Agencies (KAPEA) for meetings vide letters Ref. No. NA/AA& OSC/DA&MWC/CORR/2023/032 and Ref. No. NA/AAOSC/DAMWC/2023/044 dated 11th May, and 11th August, 2023 respectively. They were accompanied by representatives of the Transformative Association of Private Employment Agencies (TTAK) and Homecare Trainers Society of Kenya (HTSK) during the meetings where they submitted as follows:-

3.1.1 Association of Skilled Migrant Agencies of Kenya

Mr. Francis Nduhiu Wahome, the Chairperson accompanied by other officials of the Association appeared before the Committee on 27th May, 2023 and submitted that:-

24. The Association of Skilled Migrant Agencies of Kenya (ASMAK) was established in 2018 as a professional body of private employment agencies that have undergone thorough vetting and licensing by the National Employment Authority (NEA) under the Ministry of Labour and Social Protection, and is the largest recruitment association representing Kenya's migrant recruitment and staffing industry. It is non-political and its operations are guided by the ASMAK Constitution.

25. ASMAK serves as the official channel through which members' contributions are brought to the attention of the public at large as well as the Government. The Association also provides a forum for members to discuss, ratify and advocate ethical standards of the operations that are the best for the industry. Through its members' websites, ASMAK acts as a reliable source of timely and accurate information about services, practices, and status of the global employment industry.
26. The association has a standard code of conduct that has been developed for members which they all adhere to with the aim of creating a positive image and raising standards in the industry. It also provides a forum for members to discuss, ratify and advocate ethical standards of operations that are optimal for the industry.
27. The process of deployment of migrant workers in Saudi Arabia involves the Saudi Arabian Employer who offers a two-year contract that is to be completed in the stated timeline, the Migrant worker who expects that their salary to be paid in full and without delays, the employment agency in Saudi Arabia which checks on the welfare of the migrant workers and receive complaints if any and offer solutions, the recruitment Agency in Kenya which offers training and constant follow up on the progress of the migrant workers, the Saudi Government whereby citizens of Saudi Arabia receive services from the migrant workers and the Kenyan Government which find employment opportunities for its citizens while deploying qualified personnel;
28. Licensing – the current license is valid for one year while most contracts for migrant workers run for two years. Further, renewal of licenses takes too long, that is, between three to six months and the fees charged for the license is too high costing Kshs. 500,000 for registration and Kshs. 250,000 for renewal. The renewal of the license should be made automatic unless one had misconduct during the valid duration whilst the fee paid should be reduced or the validity duration increased to run concurrent with the migrant workers' contracts.
29. Medical Testing (GAMCA) – the current system of pre-travel medical screening in Kenya is not synchronized with the post-travel screening in the Middle East, with the Gulf Approved Medical Centers (GAMCA) only based in Nairobi while migrant workers come from all parts of the country. Some of these facilities charge almost double the cost in medical fees compared to the neighboring countries such as Uganda and do not practice standardized medical tests resulting in failed medicals in the destination countries in the Middle East leading to workers being returned. There has also been cases of discrepancies in the medical results by GAMCA approved Centers and medicals done in the destination countries. Pre-employment medicals and medicals done on arrival in destination country should be the standardized to avoid discrepancies as well as have accredited medical centers periodically audited for compliance.
30. More medical centers should be accredited in consultation with Kenya Medical Practitioners and Dentists Board in major cities and towns across the country to ease access for the workers and reduce costs. The government should also consider using Level 5 Hospitals by having a unit which deals with pre-employment medicals. Further, medical testing for migrant workers

should be synchronized with the pre-travel medical screening and post travel medical screening to reduce failed medical examinations in the host country.

31. There are various facilities that offer homecare training but some do not comply with the training curriculum and set standards. This means that the recruits are short-changed in the preparation to be competent migrant workers. The training duration is long, the agreed time of 21 days including the transcripts being ready. Given that workers' contracts are time bound, agencies have been making losses on penalties when they fail to deliver on the contracts in time.
32. The government should consider including Technical & Vocational Training Institutions to the existing NITA training institutions. This will facilitate easier access for migrant workers in both urban and rural areas, create uniformity in skills acquired, lower the cost of training and create a steady revenue stream for the institutions. Further, all training institutions should meet the standards set by NEA and NITA and the training curriculum be reviewed to include specialized requirements as per the labour destinations.
33. Travel Documents – there has been delay in obtaining travel documents such as passport due to booking process. Migrant Workers applying for passports should be placed on priority list same as other urgent cases that are time-bound. Further, creation of a one-stop shop where migrant workers can be issued with all travel documents and creation of migrant workers departure desks at all points of exit will help ease the process and ensure facilitation in a timely manner.
34. Destination country presence – Kenya is one of the major labour exporting countries without presence of recruitment offices in the destination countries unlike her key competitors such as Philippines, Indonesia, Egypt, India, Sri Lanka and Nepal which have recruitment offices in destination countries making them more competitive. Kenyans should be encouraged to open recruitment offices in countries where Kenya has signed BLAs. This will ensure that both the demand and supply side of Kenyan human resource exports are controlled by Kenyans.
35. Illegal Migration – there is illegal migration through which Kenyans use visitor's visas to travel to countries such as Dubai and use of unlicensed agencies. These are agencies that are not registered and do not belong to any registered association. Domestic workers who travel through these illegal channels miss crucial orientation, pre-departure and practical training that is usually offered to migrant workers thereby leading to them being offered alternative job descriptions.
36. Runaways – there have been cases of Kenyan migrant workers running away from their initial employers to work in companies that pay double the amount they are already earning as domestic workers. The government should ensure all runaways in the Kingdom of Saudi Arabia (KSA) are evacuated, and establish overseas labour office and deploy attachés to match identified needs. Further, at least two labour attaches should be placed in the Kingdom of Saudi Arabia with one female attaché, and the labour assistants should be conversant with the Arabic language to assist in interaction with the host Government Ministries. This will help address specific challenges facing the KSA domestic labour market.

37. Bilateral Labour Agreements (BLAs) and expansion of labour markets – in other countries, the export of human capital is given very high profile in the bilateral relations with destination countries. BLAs should include employment quotas, especially on professional cadres such as doctors, nurses, engineers, accountants, marketers, technicians, among others in addition to blue-collar jobs. The government should also negotiate better salaries for Kenyan migrant workers, for example salary for Kenyan Domestic worker is 50% less than that of domestic worker from the Philippines working in Saudi Arabia. Kenyans should also be encouraged to open recruitment offices in countries where Kenya has Bilateral Labour Agreements.
38. The existing BLAs with KSA, United Arab Emirates (UAE), and Qatar need to be reviewed to afford more protection and include other skills apart from Domestic Workers. The BLA's for Kuwait, Oman, Bahrain, Australia, Canada and UK should be fast tracked and the United Kingdom BLA for Nurses actualized. Labour issues should also be given prominence in the new Trade agreement being negotiated with the United States by identifying skills Kenya can supply to US Market.
39. Creating a conducive environment for the growth of the foreign recruitment industry – the operating environment in the foreign recruitment industry is currently frustrating to the Kenyan players. The foreign counterpart agencies are very well much supported by their own embassies and governments even when they illegally go against the Kenyan agents. Many recruitment agents from Gulf Countries are managing offices in Kenya using Kenyan proxies thus controlling both demand and supply. There exists an unchecked infiltration of foreigners using Kenyans as faces to open and manage recruitment agencies which puts the migrant workers at a risk once they are recruited.
40. Only Kenyan nationals should be allowed to operate recruitment agencies as practiced in other countries such as Philippines and Uganda to ensure protection of Migrant workers. Further, the Kenya Police constantly harasses Kenyan agencies and recruits in hostels as well as in transit to the airport hiding under the pretext that they are suspected of human trafficking.
41. Promotion of labour migration – despite the growing contribution of the Kenyan diaspora, the government of Kenya has not actively participated in promoting the increase in diaspora numbers through export of human capital. The government should roll out public awareness programs in Kenya such as roadshows and media campaigns to inform the public about overseas job opportunities and safe labour migration. For labour receiving countries, the Kenyan embassies should engage local embassies and consulates to market Kenyan Human Capital.
42. Integration of State and other related Labour Migration Systems – there are several state and related labour recruitment agencies which are involved in the processing of the migrant workers. Most are standalone systems creating inefficiencies when it comes to labour migration data and management. All the systems of state agencies that are involved with matters of labour should be integrated such as Ministry of Labour approval, attestation by Labour Commissioner, Foreign Affairs, Immigration at the passport issuance, entry and exit points, National Employment Authority Integrated Management System (NEAIMS),

MUSANED, and Border Management System for proper data and labour migration management processes. Additionally, Foreign Contract of Service should be attested online to avoid delays.

43. Private employment agencies association empowerment – the associations should be empowered to enable them to effectively self-regulate. There had been instances where the associations seek assistance on self-regulation related to rogue agents, but fail to receive effective assistance from the Ministry of Labour and Social Protection. Most of the time, this goes unsolved and the rogue agents continue to operate with impunity. This can be addressed by having state agencies and other stakeholders recognize the associations so that their self-regulating decisions are binding to their members. The Association should also be included in the Technical Committee’s implementing BLAs as well as the NEA Board. Further, they should be involved when decisions about the industry are being made.
44. The UAE is a huge economy with many job opportunities which Kenya has not been able to tap into. There has also been lack of implementation of labour framework or Memorandum of Understanding (MoU) which has led to unstructured recruitment of Kenyans by unscrupulous recruitment agencies. The MoU should be implemented and if any changes are required, the same to be addressed urgently. There is further need to have high level engagement with UAE Authorities especially at the Presidency (Executive) level to lift the informal embargo on employment visas for Kenyans. The Ministry of Labour and Social Protection should also organize meeting between UAE and Kenya recruitment agencies.

3.1.2 Kenya Association of Private Employment Agencies

Mr. Juma O. Mwangala, the Chairperson accompanied by other association officials appeared before the Committee on 27th May, 2023 and submitted that:–

45. The Kenya Association of Private Employment Agencies (KAPEA) is the national umbrella organization of recruiting agencies in Kenya with over 400 members and its membership is by registration and annual subscription. The primary aim of KAPEA is to ensure safe migration by defending the rights of both the workers and member organizations. KAPEA works closely with government entities and non-governmental stakeholders for protection and promotion of workers’ rights from the grassroots to the national level.
46. Members of KAPEA are highly committed to supporting the government’s agenda on safe labour migration, connecting Kenyan youth to over one million jobs overseas and increasing remittances from the diaspora.
47. Recruitment process for migrant workers – the recruitment process involves applicants undergoing a rigorous process depending on the different levels of qualifications, that is, skilled, semi-skilled and unskilled. This process is to verify their suitability for the job to ascertain compliance with employers’ requirements. All the relevant and necessary trade tests certificates and professional certificates must be provided by the applicants to ensure competence of the workers. However, for domestic workers, they must undergo training through NITA accredited colleges, passed and certificates issued.

48. The agencies must also ensure that Kenyans recruited for foreign employment under them have employment contracts which are in compliance with the regulations of the foreign employment agency.
49. To safeguard the interests of the migrant worker/job seeker, there are a minimum of three of four contracts to be signed which include:
 - i. Local agency to foreign agency agreement;
 - ii. Foreign employer to employee/migrant worker agreement;
 - iii. Local agency to employee/migrant worker agreement; and
 - iv. Foreign employer to foreign agency agreement.
50. The agencies always refrain from substituting employment contracts and take immediate action to rectify any such substitution. The agencies should not intimidate the workers into signing an employment contract either by coercion, threat, force, harassment, fraud or deception. The information contained in the advertisement should be precise and clear in order not to mislead or deceive job seekers about the working and living conditions in the country of employment.
51. Prospective candidates are then subjected to a medical examination to determine their physical and mental fitness and a background check on their character is also done by the Directorate of Criminal Investigations (DCI) and police clearance issued. The local agency is solely responsible to assist the qualified candidates to obtain passports, visas, and tickets to enable them to get ready for departure for work in the respective countries without any undue delay.
52. Linkages and responsibilities of the agencies – local and foreign agencies are basically governed by the contract between both parties, in that it is binding to both entities. They should work closely with their respective business partners and be mutually supportive. They should be fair with competitors, and refrain from taking contracts and partners from others by raising prices excessively over the agreed levels, which could in turn burden the workers. They must act with fairness, honesty and courtesy when dealing with other agencies.
53. The agencies should endeavor to protect the industry and their clients against fraud, misinterpretation and unethical practices in the recruitment for foreign employment and take measures to ensure that child labour or forced labour is not used or supplied for foreign employment and/or engage in activities that are equivalent to human trafficking and human smuggling.
54. The agencies should only use legal and safe means to send workers overseas for employment and shall not make use of other reasons such as holiday travel, visiting relatives, nor business trips for the purpose of sending workers for employment.
55. The local and foreign employment agencies are solely responsible for their recruits and in an event that there is an issue of any nature pertaining to any of their recruits they should take responsibility and accountability for the same. With all this being put into action, the workers have all the support that they can get when working outside the country.
56. Determination of agency fees – the agency fees charged on migrant workers relatively depends on various cases based on individual applicant. However, there is a standard form of payment for the available opportunities for migrant workers. All the agencies make it paramount to

share with the job seekers accurate information on all types of fees and costs that the Agency may collect from the job seeker and all the services provided. This ensures that there is accountability and transparency in dealing with job seekers and migrant workers.

57. All the fees charged are effectively communicated to the applicant before signing of the contract thus it is a transparent process in which upon payment all the applicants must be issued with receipts with an official stamp of the recruiting local agencies. KAPEA always stresses to the agencies to adhere to the International Labour Organization (ILO) regulation on payment of fees by not charging migrant workers excessively.
58. Mostly, the migrant worker would be expected to make a payment of either half or one month of salary upon commencement of work. This is a challenge to the local agencies because in most cases the jobs available demand they bear the responsibility of service fees and air tickets for their successful applicants. Since they have to do the business the same is passed over to the migrant worker nonetheless, the fees charged by the local agencies are usually a substantial amount depending on each applicant.
59. Responsibilities of recruitment agencies in pre-departure training – the agencies must organize vocational training including basic foreign language training courses for migrant workers before sending them overseas for employment. This is in accordance with the requirements set in the contracts of foreign sponsors and set out in the standards of National Employment Authority (NEA). The agencies organize pre-departure trainings and orientations for skilled and unskilled workers, as stipulated in the core framework of NEA, and provide workers with practical information on their contracts and respective destination countries more specifically the Kingdom of Saudi Arabia.
60. The agencies have to ensure that the prospective workers are aware of their rights, responsibilities, obligations, job positions, and the do's and don'ts in the country of prospective employment and also ascertain and confirm with the foreign recruitment agencies that the successful candidates have reached their destination and commenced work, if possible, proof of the same should be provided in form of documentation.
61. Process of tracing and tracking migrant workers by recruitment agencies – each agency has a record of all the migrant workers it has recruited to different foreign recruitment agencies. This is detailed information captures names, contacts of the foreign agency location, address, and name of the place of work for each and every migrant worker. Every agency is obligated to submit quarterly return to National Employment Authority for the recruited migrants and has in place a team that does routine checkups on the migrants as a follow up to ascertain that they are working and living in good conditions. This is usually done through phone calls or emails to the migrant workers monthly. The team is mandated to do a monthly report aimed to not only protect the migrants but to also maintain a proper image of the agency.
62. Mechanisms in place to address recruitment violations by members – KAPEA has put in place code of ethics and conduct signed by all registered members who must abide to the regulations stated thereon. KAPEA should bear the responsibility for the implementation of the Code of Conduct and Ethics among its members. Complaints can be made to KAPEA against any

agency that violates the Code of Conducts and Ethics. All complaints should be filed at the Association.

63. Any member who violates the Code of Conduct and Ethics can be called upon to resolve the complaint or dispute within a stipulated period, failure to which KAPEA will refer the complaint to NEA. Such referrals are made in writing through email and a hard copy delivered to the office of Director General of National Employment Authority and copy stamped as an acknowledgement of the same. An inquiry is then established and the findings sent to the agency with intimation to KAPEA for filing. The findings are final on the agency, and if the Agency is not satisfied with the findings, it can appeal to the Ministry of Labour and Social Protection or seek legal redress.
64. Available dispute resolutions mechanisms – all disputes between workers, overseas employers and foreign recruitment agents must be settled on the basis of the contract signed between the parties, and comply with the laws in the receiving country and any bilateral agreement with the Government of Kenya and the Government of the receiving country. The agencies must cooperate fully with the KAPEA and relevant parties in settlement of migrant workers' complaints. Agencies must pay attention and take prompt action in resolving migrant worker complaints in coordination with the foreign counterpart and/or employer.
65. Agencies must work to enhance strict adherence by the employer to the terms and conditions stipulated in the employment contract between the worker and the employer and should explore all possibilities to obtain a workers' unpaid wages from the foreign employer.
66. The agencies are also expected to provide assistance to the authorities in the repatriation of workers due to political, economic, or any other emergency situation in the country of employment. Further, agencies should provide timely and factual information to the family members of the migrant worker for inquiries pertaining to the grievances of migrant workers and maintain a database on defaulting foreign agents, employers or sponsors and share such data among other agencies through the KAPEA.
67. Financial guideline to migrant workers returnees – there are no financial guideline that has been put in place by the agencies yet in providing financial guidance or support for migrant workers returnees however, in recent cases, the migrant returnees have acquired financial support from non-governmental organizations and well-wishers. KAPEA engaged financial institution for financial guidance and support since 2019 and it has benefited a large number of migrant workers.
68. Travel documents – obtaining travel documents, particularly passports and visas, is a major challenge for migrant workers and agents. It can take up to six months to obtain a passport, which is time-consuming as employment contracts are usually time-bound. As a result, Kenya is losing out on potential employment opportunities to countries like Ethiopia and Uganda. This situation is contributing to high levels of unemployment and negatively impacting the economy. The Immigration department should set up a special counter for migrant workers to give priority to migrant workers applying for passports, similar to other urgent cases such as medical treatment or further studies. Consideration should be given to creation of a centralized

location where migrant workers can receive all necessary travel documents promptly, including passports, certificates of good conduct, and birth certificates.

69. Inadequate Consular and Support Services for Migrant Workers – most of the Foreign Missions neglect the issues of Diaspora and Migrant Workers, resulting in inadequate consular and support services for them. When agents request help from foreign offices or embassies, officers often direct them to NEA or Ministry of Labour stating that it is not their responsibility. Kenya has only three labour attaches in the UAE, Qatar, and Saudi Arabia, which is insufficient to serve the number of Kenyans in those countries. Increasing labour attaches abroad especially in Saudi Arabia will help facilitate Kenyans in the region with ease.
70. Skilled and Professional Workers – the skilled and professional job market has been neglected for a long time. The government does not sufficiently promote the skills and expertise of Kenyan citizens as potential candidates for high-level employment opportunities in foreign countries. Instead, the government's focus has been on marketing low-skill and semi-skilled jobs as the primary abilities of Kenyans. This is evidenced by the lack of specific Bilateral Labour Agreements (BLAs) signed for skilled and professional workers. Recruitment agencies that specialize in hiring skilled or professional workers therefore have no platform to advocate for their cause, as the emphasis has been on domestic workers. The government should expand the number of countries open for labour migration through signing more BLAs. This will broaden job opportunities for Kenyans beyond unskilled and semi-skilled jobs currently offered mainly in the Middle East.
71. Homecare Training – domestic migrant workers were not given pre-departure training between 2014 and 2019. In 2019, pre-departure training for domestic migrant workers began, and 6 schools affiliated and accredited by NEA were doing well. However, NEA stepped aside and was replaced by NITA, causing several problems, including increased training duration, which is longer than the agreed 21 days. Host countries have also complained about the training standards, resulting in a preference for workers from other countries.
72. The delay in obtaining domestic workers from Kenya has contributed to high unemployment levels and negatively impacted the economy. NEA and NITA have been notified of these issues, but no improvements have been observed. Pre-departure training in Ethiopia takes 2 weeks, while in Uganda it takes 3 weeks.
73. TVETs should be added among the current NITA training institutions to address the challenge. This will make it easier for migrant workers to access training in both urban and rural areas. The training should be customized to meet specific destination requirements.
74. There is need for improved collaboration and communication with government agencies and having the associations represented in committees that deal with matters affecting the industry. Moreover, the agencies would want to have representation during Bilateral Labour Agreement discussions since they have a vested interest in ensuring that the agreement benefits both the workers they hire and the employers who hire them.
75. Delays in accreditation and renewal of licenses of recruitment agencies by the National Employment Authority which takes six months for accreditation and three months for renewal

leading to harassment by law enforcement officers for operating unlicensed businesses. Moreover, the delays also result to instances of inability to follow up and respond to distress calls, closure of business, loss of income and unemployment since the agency staff have to be laid off until the license can be renewed. License validity should be extended to two years to match the contract duration of migrant workers deployed abroad and especially in the Middle East. Agency associations should also have representation in the vetting committee to keep track of the vetting process and credibility of their members.

76. NEA should find a way and introduce automatic renewal of licenses. The NEAIMS portal allows one to upload their documents for license renewal two months before the expiry date. This is sufficient time for all necessary renewal procedures to be completed and a new license issued on or before the expiry of the previous one.
77. Vetting should only be done for new applicants but not for renewal since NEA already has all the details and necessary documents of the existing agency. The National Intelligence Service (NIS) background check should be sufficient for the renewal of the license.
78. Pre-departure training and orientation – currently the duration of training for domestic workers waiting to travel to Saudi for work as domestic workers is approximately five weeks, that is, three weeks of training, one week of examination and an extra week for issuance of transcripts. This has led to loss of contracts for Kenyan workers owing to the long training periods and delays in deployment. Subsequently, Saudi employers now prefer domestic workers from Ethiopia, Uganda, Burundi and Asian countries due to their efficiency in deployment.
79. The pre-departure orientation should be reduced to a maximum of one-week and workers trained for a further two weeks upon arrival in Saudi since the Saudis have better understanding of the employers' needs and what the workers require in order to match the cultural requirements of their employers. The qualifications for training should be ability to read and write and speak English for employment overseas. Representatives of employment agency associations should be included in all NITA sittings that deliberate on matters affecting the trainings.
80. The government should consider including other training bodies like Technical and Vocational Education and Training (TVET) and the National Youth Service (NYS) for all skilled and unskilled migrant workers. TVET, through their online portal can share data of their trained and unemployed graduates willing to travel for work abroad with employment agencies through their association to enable them to be connected with available job opportunities.
81. Passports – there are delays in the passport processing with a duration of thirty days to three months between the day of booking and the day of appointment, delay of up to two months before the passport is issued after biometrics are captured with the Department of Immigration citing lack of passport booklets and the printing machine breakdown for these delays, and a further delay in the collection of passports through Posta which may take up to two weeks from the date of dispatch. This means that a domestic worker trained for five weeks, waits a further two to three months before their agency can request for their contract since one has to have a passport ready before their contract can be issued.

82. The Immigration department should consider putting up an express counter for passport processing for migrant workers and consider speeding up the vetting process for applicants from some regions of the country. Further, the collection of passports from Posta to be sped up to avoid delays and loss of the documents.
83. Police clearance certificates (certificate of good conduct) – the recent introduction of immediate appointment for fingerprint collection after applying Police Clearance Certificate has helped in speeding up issuance of the important documents. The process is however slowed down by the mandatory attestation of the Police Clearance Certificate (PCC) through the Ministry of Foreign and Diaspora Affairs. This attestation is done thrice a week (Monday, Wednesday and Friday) leading to further delays and extra expenses.
84. The verification of a Police Clearance Certificate should be done online by anyone through the DCI portal provided one has the PCC Number and holder's identity card number, which are both in the document.
85. Pre-travel medical screening – for migrant workers destined for Saudi, only medical reports from Gulf Approved Medical Centre Association (GAMCA) centers are accepted by the embassy for Visa stamping. The centers are few in numbers (nine (9) in Nairobi and six (6) in Mombasa) and their long wait before releasing medical reports leads to further delays in migrant workers' deployment. Further, there is no clear or strict regulation for the centers which has led to unethical practices such as issuing false medical reports so that they can collect more money upon reexamination, unregulated price changes and disrespect by staff towards agencies and their staff. Public and private medical centers all over the country should be considered for GAMCA accreditation. This will increase service delivery and improve on generation of revenue.
86. The Musaned platform follows the employee's processes from issuance of contract up to the workers' arrival in Saudi. Companies accredited by NEA have to register for Enjaz system first then proceed to register for Musaned. New applicants have experienced delays in approval for Enjaz which has led to stagnation in business operations and loss of income. Some have even gone an entire year of business without being approved till their licenses have expired. At the moment the Saudi Embassy is not accepting new applications for Enjaz.
87. Further, the contract between The Kenyan agency and Saudi agency in Musaned is very one-sided, favoring only the Saudi company. Their grievances and complaints in case of disputes are well addressed and can even lead to the Kenyan office losing access to the platform or closure. When the Kenyan agency's license expires, the platform locks down meaning one cannot upload new applicants for selection, cannot get contract approval from NEA, cannot manage existing applicants already in the platform and cannot cancel any applicant whose visa process is ongoing if they needed to withdraw from the process or transfer their process to a new agency.
88. The approvals in Musaned are some of the processes causing a lot of delays experienced in the deployment of domestic workers to Saudi as sometimes it takes up to two weeks even when all documents are in order. Agencies' complaints to NEA have fallen on deaf ears.

89. Shortage of staff at the embassy of Saudi in Kenya has affected efficiency in service delays. Currently, each Agency has been limited to submitting maximum of 25 passports per week for visa stamping, with submissions being done on Mondays and collections on Friday. This leads to further delay in deployment of workers.
90. The Ministry of Foreign and Diaspora Affairs should actively engage their Saudi counterparts with the support of association leaders and Kenya National Chamber of Commerce and Industries (KNCCI) to solve all issues related to delays in approval of Enjaz for new agencies. This will enable them engage in business without frustrations and as business people support the country's revenue growth. Further, the Musaned system should be linked to the Ministry of Foreign and Diaspora Affairs for tracking and data keeping of migrant workers while at the same time the Ministry of Labour and Social Protection like some Asian countries, should work towards developing a Kenyan platform that can phase out the need for Musaned use by Kenyan agencies. Musaned FMOL approvals should also be automated in a way that once all necessary documents are uploaded and verified, the platform can approve the contract.
91. There's need to establish rescue centers in places with a large concentration of Kenyan migrants like in Saudi Arabia for a start (Riyadh, Dammam & Jeddah); this will be to help distressed migrant workers and the scheme should be launched without delay. This will be in partnership between the government and the agents.

3.1.3 Joint Submissions from Private Employment Agencies and Private Trainers

Officials from the Kenya Association of Private Employment Agencies (KAPEA), Association of Skilled Migrant Agencies of Kenya (ASMAK), Transformative Trainers Association of Kenya (TTAK) and Homecare Trainers Society of Kenya (HTSK) appearing before the Committee on 24th August, 2023 submitted that:-

92. The Kingdom of Saudi Arabia is Kenya's largest labour destination, especially for domestic workers. The Central Bank of Kenya estimated that in 2022, Kenyan Migrant workers in Saudi Arabia doubled their remittances to Kshs. 22.65 billion within the first eight months of 2022. This has led the government to put in place more measures to safeguard the wellbeing of Kenyan migrant workers in Saudi Arabia especially following reports of widespread mistreatment of Kenyan workers in the Kingdom.
93. Some key industry players have however misconstrued the governments' intentions by putting up uncompromising measures that have led the industry to come to a standstill. The most affected by these measures are private employment agencies accredited by the National Employment Authority and homecare management trainers accredited by the National Industrial Training Authority.
94. Kenya has been facing stiff competition from other countries for the King of Saudi Arabia labour market like Ethiopia, Uganda, Burundi, Sri Lanka, and the Philippines among others. Their favorable market oriented procedures have ensured that they have maintained competition while the visas previously available for Kenyan workers have been diverted to

these markets because of the long deployment periods brought in by the abovementioned measures.

95. Private employment agencies (PEAs) form a key part of the industry as they handle all documentation regarding the intake, training, medical checkups, issuance of work contracts, visa processing, pre-departure procedures and deployment of the migrant workers. They also play a key role in keeping up with the welfare of the migrant workers during the entire duration of their contracts. It is in this background that the joint presentation of the challenges and recommendations was made.

Review of curriculum for Homecare Management Training

96. Traditionally, the domestic workers training program lasted for two weeks promptly meeting Saudi Arabia's demand with a four week lead time. However, the regulatory responsibilities were transferred to NITA in December 2019, leading to lack of a consistent annual training schedule, operational unpredictability, alleged corruption within invigilation, leading to student failures and associated delays, delays in result publication, directly affecting business operations and national revenue. Further, the new curriculum doesn't cater to international recruitment needs, especially for Gulf Cooperation Council (GCC) countries, extending deployment periods.
97. NITA further piloted a new curriculum whose duration is two months and two days while transcripts are issued after thirty days thus the entire period of training takes more than 21 days which is too long. The agencies and trainers were not involved nor consulted on the content or duration of the training before the piloting. NITA has also been unresponsive to matters raised by trainers in quest of trying to address hiccups affecting training institutions.
98. Lack of adequate teaching staff continues to hamper pre-departure training for labour migrant workers. Most trainers work in the hotel industry and therefore are not readily available to handle emerging needs. NITA has a requirement that training institutions must have four teachers from NITA and does not recognize anyone who has trained on teaching methodology to train the house girls.
99. Currently, NITA has 600 Trainer of Trainers (ToTs) who are supposed to be shared between 128 schools and this has incapacitated the number of trainees that the schools can be able to recruit. This has also contributed to schools and employment agencies purchasing transcripts from unscrupulous NITA staff to cater for extra number of trainees spilling over the capped regulatory requirement of ToT to student ratio.
100. During the virtual stakeholders meeting called by NITA on the piloting of the new curriculum, NITA did not supply the documents on the implementation of the new curriculum. The virtual meeting was held on a Wednesday, documents supplied on Thursday while the deadline for submission of application forms for participating in piloting was the following Monday. Most schools therefore decided not to participate based on the short timelines and notice provided.
101. NITA should cease regulating any form of training that involves the international market and that a training section is introduced at NEA that will inspect accredited schools continuously. This will help reduce training period to two weeks to give a competitive edge against rival

countries. NEA entirely deals with migrant workers and understands market needs. It will also provide flexibility to the ever changing dynamics in international trade which will keep Kenya relevant and appealing to client countries.

Issues raised by the Homecare Trainers Society of Kenya

102. The Homecare Trainers Society of Kenya (HTSK) in 2021 raised concerns over conflict of interest among staff at NITA who opened schools and were mismanaging the sector in order to favor their schools and increase their profits. NITA staff moved teachers from other schools to their own to ensure they increased their own admission capacity. NITA also insisted on schools only employing Trainer of Trainers (ToTs) trained by NITA for only two weeks at an exorbitant fee of Kshs. 30,000 so they could manipulate them to their own advantage.
103. In 2022, HTSK wrote to the Director General concerning cohort 17. NITA had just introduced a new digital system for admitting students to their system. They held a virtual training for staff members who were to use it immediately. Some of the trainees were not able to work with the system. NITA disqualified all the candidates of the 16 schools reducing the possibilities of the girls' contracts being approved. The schools were however admitted with a penalty of Kshs. 800 per student with some schools paying more than Kshs. 200,000 as fines. This was extortion and illegal and intimidating to schools.
104. HTSK further raised concerns over the results of cohort 17. NITA had at this time irregularly introduced a new subject entitled literacy without stakeholders' involvement and without a curriculum for the subject. The students had not been taught nor prepared for the exam hence mass failure deliberately orchestrated by NITA, creating a situation where agents were begging for transcripts at a fee.
105. The trainers wrote to the Principal Secretary (PS) State Department for Labour and Skills Development in February 2023 concerning corruption at NITA which included selling of transcripts to unscrupulous agents who aided domestic workers who never attended training to travel to Saudi. Between July 2022 to December 2022 due to campaign and elections as well as before the formation of the new government and setting up of government, NITA took advantage and traded transcripts for untrained girls. Available records show that the number of students enrolled in schools during this period decreased by 70%, meaning that 70% of the students were travelling to Saudi Arabia without being trained and hence had difficulties coping with work hence the outcry that came from Saudi employers and complaints of mistreatment of migrant workers.
106. In December 2022, a delegation which included the PS but excluded representatives from training schools travelled to Saudi Arabia to assess the situation. It was reported that the Saudi Government had considered closing business for Kenya's domestic workers for breach of standards. Most of the girls the Ministry officials interacted with had transcripts but had never attended school. HTSK also pointed out that the ToT system used for NITA to provide trainers was not working and was hampering the program. Also raised was the issue of NITA failing students even those with KCSE certificate in order to attract agents to their own schools.

107. HTSK wrote to the Commission on Administrative Justice highlighting the injustices they were facing with NITA, including forcing trainers to employ NITA trained teachers yet NITA used same teachers as their employees, denial of grace period to adopt the changes introduced by NITA, heavy penalties for slightest mistakes resulting in closure of schools and being zero rated.
108. In 2023, NITA delayed training based on a court ruling that required them not to issue transcripts until a court case by one of the training schools accusing NITA of selling transcripts for untrained domestic workers was resolved. The very act of requiring schools to close down shows the lack of commitment by NITA towards the migrant workers training program since schools had already admitted students and begun training and the ruling had not required NITA to stop training nor assessing . HTSK through its lawyer sought order to overturn the decision by NITA to close schools and the court lifted the orders requiring NITA not to issue transcripts to those workers who were trained. Efforts to have NITA examine those girls who were trained during this period were not successful. HTSK seeks to have the girls sit exams with those learning in the next cohort which NITA has declined.
109. NITA introduced a new digital admission system and trained staff online for 45 minutes. Some of the schools were unable to use the system due to various reasons and requested to be allowed to use the old system and ensure the lists were with NITA as they tried resolving the issue. NITA disqualified all those who used the old system and the candidates could not sit exams during that cohort. This meant that approximately 2500 students were going to miss exams due to technical errors and implementation of new systems without allowing a grace period for schools to adapt. The students were examined upon intervention by the Principal Secretary. NITA does not understand the ecosystem of immigrant workers program as such a cancellation risks contracts in spite of other expenses incurred.
110. The overall effect of these challenges in the training has been loss of trust and business with clients favoring competitors from Ethiopia, Uganda, Burundi and Sierra Leone. Moreover, bureaucratic insufficiencies causing revenue losses, market share decline and damage to the reputation of PEAs due to untrained workers deployed based on fraudulently acquired transcripts.
111. The situation in the industry is dire, particularly in respect to the training of migrant workers, from a situation where 13,000 students were being trained to the current 4,000 students. The training institutions consider the National Industrial Training Authority (NITA) as the greatest cause of failure to ensure the trade is successful because NITA lacks the capacity to handle international business and fails to understand the goals of the national government and those of the business people concerned in order to regulate effectively.
112. The parties involved in this trade include the sponsor in Saudi Arabia, the Agent in Saudi Arabia, the agent in Kenya, the trainer in Kenya and the student (potential domestic migrant worker). NITA needed to have considered the needs of all these parties involved while applying the current regulations and advising the Cabinet Secretary for Labour of the need for

flexibility of the regulations in order to cope with the ever changing circumstances of international trade.

113. Before NITA took over from NEA the regulatory responsibility of training component in the industry up to and including the year 2022, Kenya enjoyed a monopoly in the region as far as export of domestic labour was concerned.
114. The training curricula should be tailored based on destination countries, suggesting the use of the pre-departure manual found in MUSANED as the standard curriculum for domestic workers in GCC nations and adapting the NITA curriculum for European countries.
115. The fourteen (14) days training module should be reintroduced based on the pre-departure manual found in MUSANED, emphasizing skill perfection on the job, followed by the issuance of certificates of participation.
116. NITA should engage stakeholders especially schools when introducing Standard Operating Procedures (SOPs) changes and a robust oversight mechanism put in place to identify and eliminate malpractices.
117. Adopting a streamlined, practical and internationally acceptable training system is imperative. This move addresses current challenges and maintains our competitive position in the international recruitment market.

Accreditation criteria of Private Employment Agencies

118. According to Labour Institutions (Private Employment Agencies) Regulations 2016, a registered limited liability company can apply for registration as a recruitment agency. There should be at least one Kenyan citizen who owns the shares and the directors must have attained an 'O level' certificate with the agency manager possessing a degree in a business related field from a recognized university. The company should have permission to operate in Kenya and have a tax compliance certificate from the Kenya Revenue Authority (KRA). The Agency should commit to observe the provisions of the existing code of conduct for recruitment agencies.
119. NEA states that an applicant requiring accreditation to operate a PEA is required to submit a written application to National Employment Authority director of employment together with the legal documents. The application should be done online via the NEAIMS portal and an application letter for registration as a private employment agency, a certified copy of the certificate of incorporation as a limited liability company, company articles and memorandum of association, company CR12 for the current year submitted.
120. The company must have a minimum share capital of Kshs. 5,000,000 (five million), provide copies of county government licenses, company tax compliance certificate for the current year and have a registered fully equipped physical office covering not less than 225 square feet, and the lease or tenancy agreement must be valid and authenticated by a Commissioner for Oaths.
121. A company director must submit the copy(ies) of identity cards, two passport size photos, current police clearance certificate from the DCI, a valid work permit in case of any foreign

director(s) and certified academic certificates (minimum O level certificate) which must be certified by the director of quality assurance from the Ministry of Education.

122. The Company's manager must submit a degree certificate in a business related filed from a recognized university certified by the Director of Quality Assurance, Ministry of Education, an appointment letter signed by the employer with clear terms of reference and acceptance and a copy of identification card.
123. Once the agency has submitted all the requirements and approved by NEA, it gets approved for payment of full registration fee as per legal notice no. 110 of the Labour Institutions Regulations 2016, execution of Kshs. 1,500,000 Security Bond with a bank or insurance firm for agencies engaging in foreign recruitment and it must be a member of a recognized association of private employment agencies. After approving an agency, the director of employment issues the agency with a one year certificate of operation. The certificate is valid until the anniversary date of issuance.
124. Three months before the expiry date of agency's accreditation license, the NEAIMS portal is automatically open to allow the agency to upload the relevant documents for renewal process. The process and documentation for renewal is the same as that of new application as outlined above. In most cases, the renewal process takes up to six months.

Timelines, documentation and vetting criteria and process for migrant workers

125. Visa and travel documentation processing for migrant workers varies from skilled to domestic workers. For domestic workers destined to Saudi Arabia, mobilization and admission takes three (3) days, homecare management and training takes six weeks which involves documentation (passports, police clearance certificate, Ministry of Foreign and Diaspora Affairs PCC attestation 4 weeks, Ministry of Labour and Social Protection attestation 1 day, Musaned FMOL approvals, GAMCA medical test, embassy submission for visa stamping and deployment take 1 week.
126. Passport applications for some applicants, especially those from borderline regions, are automatically referred to a vetting process by the NIS and immigration department.

Gaps in legislation affecting the Industry

127. The National Employment Authority (NEA) formulates and advises the government on policy matters related to employment. The Authority's mandate is to facilitate Kenyan employment both in the local and foreign market. According to Part V of the NEA Act of 2016, NEA is mandated to provide counselling services to Kenyans seeking employment on general matters relating to employment, including career progression, choice of careers among others. NEA should therefore enlighten stakeholders on the involvement of NITA in homecare management training for migrant workers.
128. Issues with the MUSANED system – the system has contractual bias as Musaned contracts favor Saudi recruitment agencies disadvantaging Kenyan agencies. License expiration in

Kenya disrupts the systems functionalities putting migrant workers at risk while FMOL approvals in the platform have delays. Further, mandates for retraining X-GCC workers and electronic exit documents demand end during FMOL pose challenges with demand letter approval delays impacting recruitment timelines.

129. The associations requested for inclusion of representatives of agency associations in the vetting Committee and other stakeholder Committees including in negotiations and formulations of Bilateral Labour Agreements (BLA) in order to safeguard the interests of private employment agencies and migrant workers.

Runaways, Returns and Reintegration

130. The reputation of the Saudi domestic labour market has been highly affected by cases of runaways (Kembois). Runaways can be classified into those that leave Kenya with the intention of running away as soon as they arrive at the airport with direct connection from the hosts (Dalala), those that run away after being influenced by other runaways with promises of better pay, and those that are forced to run away because of mistreatment by the employers and their distresses are not solved by the Saudi Office, Kenyan Agency or the NEA.
131. The Saudi residency law of 1952 imposes an array of sanctions against foreign nationals and Saudi nationals and employers who violate the provisions of the law (Law no.17-225-1337, art.2).
132. Article 50 for example, requires the imprisonment of illegal residents until their deportation from the country (Id.art. 50). Article 57 of the same law penalizes with imprisonment any Saudi citizen who sponsors a foreign worker if the citizen fails to bring the sponsored foreign national to the authorities or direct the authorities to the foreign national's location. Under this provision, the Saudi national is to be kept in detention until the authorities know where the sponsored foreign national is located (id. Art. 57).
133. Article 58 imposes a fine against employers who have employed illegal foreign workers, and also stipulates that any company, commercial house, contactor, or businessman employing a foreign national who does not have a residency permit for the purposes of work is to be fined between 500 and 1000 riyals (Approx. US\$ 133-266) for each illegal foreigner worker.
134. Dalalals (scrupulous middle men) pry on vulnerable migrant workers to lure them from their employers for better paying jobs. In some cases, they work in partnership with embassy employees who refer runaways to them.

3.2 State Department for Immigration and Citizen Services

Amb. (Prof.) Julius K. Bitok, PhD, Principal Secretary, State Department for Immigration and Citizen Services Ministry of Interior and National Administration appeared before the Committee on 4th July, 2023 and submitted that:—

135. The State Department for Immigration and Citizen Services was created through the Executive Order No.1 of 2023, dated 6th January 2023 and is mandated with the implementation of Citizenship and Immigration policy, registration of persons, births and

deaths, policy on the National Integrated Identity Management System, oversight over coordination of management of the National Primary Data Registers for Citizens and Foreign Nationals, coordination of e-Citizen Services, Oversight of the Integrated Population Registration System (IPRS), implementation of Refugees' and Asylum-seekers' policies, and collaboration with other ministries, departments and agencies regarding collection of relevant primary data.

136. The State Department oversees the Directorate of Immigration Services, National Registration Bureau, Civil Registration Services, Directorate of Refugee Services, Directorate of e-Citizen Services, National Integrated Identity Management System (NIIMS) and the Integrated Population Registration Systems (IPRS).
137. The Directorate of Immigration Services is tasked with several functions, which include;
 - i. Issuance of passports and other travel documents;
 - ii. Provision of consular services at Kenya foreign missions;
 - iii. Border management through regulation of entry and exit of persons, and;
 - iv. Regulation of residency of foreign nationals residing within our territory.
138. The State Department has been working closely with Association for Migrant Agencies in Kenya (ASMAK) and Kenya Association of Private Employment Agencies (KAPEA) in ensuring that migrant workers are facilitated to get passports. It further works closely with the State Department for Maritime and Shipping in facilitating Kenyans aspiring to work in the Marine sector abroad acquire passports.
139. Through a negotiated agreement, the e-Citizen portal was configured to allocate immediate appointment for submission of documents, for all applicants who choose migrant worker as a reason for passport application. This significantly reduced the waiting time between application on e-Citizen and submission of documents.
140. The Directorate of Immigration Services has an established channel through which the State Department and migrant workers umbrella bodies have held several consultative meetings on facilitation of migrant workers.
141. Further, a Special Counter (Counter 13) has been set up at Nyayo House passport section and similar counters in other application-receiving Centres (Mombasa, Kisumu, Eldoret, Kisii, Nakuru and Embu) in order to facilitate those intending to travel as migrant workers.
142. Together with employment agencies umbrella bodies (ASMAK, KAPEA) agreed that, all passport applications must be accompanied with a registration certificate from National Employment Authority (NEA). This certificate is a key requirement that should always accompany every migrant workers application. Notably, majority of agencies fail to comply with this agreement. The department was planning to issue one thousand (1,000) passports for migrant workers on 21st July 2023.
143. Despite having the negotiated fast tracking mechanisms, notably, most migrant workers do not prefer to use the special counters due to lack of letter from National Employment

Authority. Therefore, they apply normally and follow the normal processing queue because they do not meet the threshold.

144. Further, applicants are required to provide primary documents (Identity Card and Birth Certificate) during submission of a passport application. These documents enable the State Department to make an informed determination on whether the applicant is a Kenyan. However, there have been challenges where applicants provide counterfeit birth certificates hence attempting to compromise the integrity of the Kenya passport.
145. The passport application process is automated through the e-Citizen platform making the services easily accessible to all Kenyans living in or out of the country.
146. Passport processing offices have been opened in the following places abroad: London, Washington, Berlin, Paris, Dubai, and Pretoria. Additionally, officers have been deployed with passport application Mobile Kits in the following missions abroad: Doha, Stockholm, Tokyo, New Delhi, Riyadh, New York, Pretoria and London. This has enabled the immigration attachés to move around in their regions and facilitate Kenyans in Diaspora to apply for passports.
147. Notably, as a mark of the State Departments commitment to facilitate Kenyans living abroad, a Consular and Visa Division has been created within the Directorate of Immigration Services. This Division specifically handles the matters of Kenyans living abroad. Currently, 40 immigration attachés have been posted at various missions abroad to offer Consular Services. Their duties are as follows:–
 - (a) Providing citizen services such as receiving and processing applications for passports and other travel documents at Kenyan missions abroad;
 - (b) Register Kenyan citizens abroad including registration of voters in some missions;
 - (c) Issue emergency travel document to Kenyans in the diaspora who maybe in distress and want to return home;
 - (d) Coordinating the removal, repatriation or deportation of Kenyans from the host country;
 - (e) Issuance of authority to repatriate the remains of Kenyans from the host country;
 - (f) Processing applications for birth certificates and identity cards for Kenyans living abroad;
 - (g) Processing certificates of no impediment to marriage for Kenyans intending to get married to foreign nationals in the host country;
 - (h) Visiting Kenyans in distress in the host country such as those in hospitals or prisons;
 - (i) Arbitration of disputes involving Kenyans abroad;
 - (j) Processing renunciation requests for Kenyans in the diaspora who have acquired the citizenship of host country whose laws do not allow dual citizenship for example Germany and Tanzania.
 - (k) Assist Kenyans who have acquired dual citizenship to do declaration of dual citizenship in line with the law;
 - (l) To assist Kenyans who acquired citizenship of host countries before the promulgation of the new Constitution, 2010 to regain Kenyan citizenship in line with the law; and

- (m) Advise Kenyans on acquisition of birth certificates for children of Kenyans born abroad.
148. There are notable challenges that impede the State Department for Immigration and Citizen Services to offer these services in all Kenya's missions abroad. This includes Budgetary Constraints as the State Department for Immigration and Citizen Services has not had adequate allocation of funds to enable it send more immigration and civil registration attachés in our missions abroad. Due to this constraint, not all Kenya missions abroad have attachés.
 149. Further, failure by Kenyans in diaspora to register with the Kenyan embassies and High Commissions in host countries is a major impediment in receiving these services. Kenyans are therefore encouraged to immediately register with the Kenya missions upon arrival in the host country. This service should be automated in order to enable more Kenyans to register. Employment agencies should include this in pre-departure training of migrant workers.
 150. The State department for immigration and citizen services plans to send immigration and civil registration attachés in all our embassies and High Commissions abroad. Further, the Directorate in conjunction with the State Department for Diaspora Affairs, Ministry of Foreign and Diaspora Affairs has planned and carried out some mobile outreach to facilitate Kenyans living abroad far from embassies or in countries where there are no immigration attachés.
 151. The State Department is also in the process of developing an automated end-to-end Civil Registration and Vital Statics System (CRVSS) which will be web-based and intends to cascade it to our foreign missions and embassies abroad once complete.
 152. Once deployed, officers in the embassies and foreign missions will be able to register births and deaths of Kenyans occurring abroad and print certificates online. The certificates will be system generated upon application and payment of the requisite fees. This will shorten the turn-around time for issuance of civil registration documents. The system is expected to be launched by the end of the year.

3.3 State Department for Diaspora Affairs

153. The Committee invited the Ministry of Foreign Affairs, State Department for Diaspora Affairs for a meeting vide a letter Ref no. Ref: NA/AAOSC/DAMWC /2023/034 dated 18th May, 2023 to apprise the committee on various issues on the inquiry. The Ministry sent a written submission dated 29th May, 2023 Ref. No MFA.DIAS/32 VOL II (32) and submitted as follows:-
154. Details and implementation status of existing Bilateral labour Agreements, stakeholders involved and their specific roles - According to Executive Order No. 1 on the organization of the government detailing the roles of each Government Ministry and State Department, the role of the Ministry under the State Department for Diaspora Affairs was :-
 - (a) Promotion of continuous dialogue with Kenyans abroad;
 - (b) Champion the Protection of Kenya's Diaspora the rights and welfare;
 - (c) Support Kenyans in the diaspora in harnessing more opportunities for employment and enterprise development;
 - (d) Develop incentive framework for diaspora remittances;

- (e) Harness diaspora savings, facilitate foreign direct investments (FDI) and technology transfers; and
 - (f) Mainstreaming the Kenyan diaspora into the national development process.
155. In this respect, the details and implementation status of the existing Bilateral Labour Agreements, stakeholders involved alongside their specific roles can only be provided by the Ministry of labour and Social Protection, State Department for Labour and Skills Development under which the issues of bilateral labour agreement are domiciled.
 156. Responsibility of the Ministry in the process of recruitment and placement of migrant labour for all categories (skilled, semi- skilled and unskilled) and the placement of students in institutions of higher learning abroad – according to Executive Order No. 1, the Ministry of Labour and Social Protection has no direct responsibility in the recruitment and placement of migrant labour for all categories and in the placement of students in institutions of higher learning abroad.
 157. Process of identification, assessment and addressing conflicts among the actors involved in the processing of migrant labour and students in view of the BLAs – the process of identification, assessment and addressing conflicts among the actors involved in the processing of migrant labour and students in view of the BLAs is spearheaded by the Ministry of Labour and Social Protection, State Department for Labour and Skills Development and the Ministry of Foreign and Diaspora Affairs is only an actor.
 158. Level of preparedness by the Ministry to implement Bilateral Labour Agreements including those projected to be signed and measures taken to ensure migrant workers’ rights are promoted and protected in their negotiations – the Ministry has, in collaboration with the Ministry of Labour and Social Protection, State Department for Labour and Skills Development have agreed and organized to increase the number of labour attachés in Kenyan missions to ensure that the BLAs are strictly implemented by host countries. The Ministry of Foreign and Diaspora Affairs in liaison with the Ministry of Labour and Social Protection collaborates in the negotiations of BLAs after seeking inputs from the State Law Office, the National Treasury and other stakeholders.
 159. Additionally, the State Department for Diaspora Affairs has organized to send diaspora officers to Kenyan missions abroad who will ensure that migrant workers’ rights are protected in accordance with the BLAs.
 160. Further, that the Ministry was planning to establish safe houses for distressed migrant workers in Qatar, Saudi Arabia and UAE, Dubai.

3.4 State Department for Labour and Skills Development

161. The Committee invited the Cabinet Secretary, Ministry of Labour and Social Protection, the Hon. Florence Bore for a meeting vide letters Ref. no. NA/DAAOSC/DAMWC/2023/031, NA/DAAOSC/DAMWC/2023/038 and NA/DAAOSC/DAMWC/2023/041 dated 10th May, 15th June, and 29th June, 2023 respectively, and the Principal Secretary, State Department for Labour and Skills Development vide letters Ref. no. NA/DAAOSC/DAMWC/2023/044 and

NA/DAAOSC/DAMWC/2023/045 dated 11th and 28th August, 2023 respectively. The Cabinet Secretary appeared before the Committee on 6th July, 2023 while the Principal Secretary appeared before the Committee on 24th August, 11th and 12th September, 2023. They were accompanied by other officials from the Ministry, the National Employment Authority (NEA) and the National Industrial Training Authority (NITA). The Ministry of Labour and Social Protection submitted that:–

162. The number of Kenyan migrant workers has significantly increased with the number of Kenyans in the diaspora estimated to be 4 million in the year 2019 with over 200,000 projected to be in the Middle East. Labour migration has immense socio-economic benefits to both countries of origin and destination. It is a source of employment and livelihoods for migrant workers, bridges skills gaps in destination countries, supports skills development and technological transfer in the countries of origin and a source of the much-needed remittances in the migrant workers' countries of origin.
163. Kenya has experienced tremendous growth in remittances, making remittances to be recognized as a key foreign exchange earner contributor to economic growth and development, and a catalyst for sustainable development. Remittances have significantly increased reaching Kshs.499.86 billion (USD 4.03 Billion) in 2022 compared to Kshs.104.6 Million in 2012. Diaspora remittances are currently Kenya's highest foreign exchange earner having overtaken tea, coffee and tourism.
164. Diaspora remittances are currently one of Kenya's highest foreign exchange earners with the country ranking the fourth highest remittance-recipient countries in Africa lagging behind Egypt (USD 32 billion), Nigeria (USD 20.6 billion) and Ghana (USD 4.7 Billion).
165. In order to enhance safe, productive and orderly labour migration, the Government continues to design and implement policies, legislation, programmes, as well as institutions that enhance protection and promote their welfare and also create conducive environment for the workers to participate effectively in economic, political and social affairs.
166. The mandate of the Ministry on labour migration governance and management in the country is derived from the Executive Order No. 1 of 2023 and includes national labour and employment policy management, labour and social protection policy and programme implementation, migratory labour and international jobs policy, promotion of overseas employment, coordination of labour migration management, development of legal and institutional framework for labour migration, promotion of co-operation and partnerships on labour migration and skills development and training.

3.4.1 Institutional framework

167. The mandate of the Ministry in relation to Labour Migration is anchored on the Labour Institutions Act, 2007 Sections 55-60 which empowers the Ministry to register and regulate the activities of Private Employment Agencies and the Labour Institutions (Private Employment Agencies) Regulations, 2016 under Section 60 of the Labour Institutions Act 2007 which empowers the Cabinet Secretary for Labour to make Rules and Regulations for

regulating the operations of PEAs.

168. Sections 82-86 of the Employment Act, 2007 on Foreign Contracts of Service outlines the form and attestation of foreign contracts of service, requirements before attestation, security bond in foreign contracts of service, and offences. The Ministry also verifies job opportunities and offers abroad by conducting enquiries before the applicants travel to the recipient states.
169. Section 43 of the Security Laws (Amendment) Act 2014 amended the Labour Institutions Act by establishing an Inter-Ministerial Committee to vet all applications for registration of employment agencies.
170. Section 8 of the National Employment Act, 2016 mandates the National Employment Authority to facilitate the employment and placement of job seekers in formal and informal or any other form of employment, locally and internationally.

3.4.2 Registration of Private Employment Agencies

171. The operations of private employment agencies are guided by Labour Institutions Act, 2007: Part VII – Employment Agencies. All employment agencies must be registered by NEA on the advice of the Vetting committee. The Committee must be satisfied that the applicant is qualified to own and manage an Agency and the proposed premises for carrying out business are suitable. The Committee may take into consideration any other relevant matter in deciding whether to issue accreditation.
172. In order to be considered for registration, an agency must be duly registered as a corporation under the Companies Act, have director(s) who have attained at least O-Level certificate or its equivalent, have a manager who is in possession of at least a degree in a business-related field from a university recognized in Kenya and relevant experience of at least three years, have a minimum paid up share capital of five million Kenya Shillings, be licensed to carry out business within the county of intended operation, have a registered fully equipped physical office covering not less than 225 square feet and a tax compliance certificate from the Kenya Revenue Authority.
173. The agency must also have an executed a guarantee of five hundred thousand Kenya Shillings with a reputable bank or insurance agency in Kenya which shall be used for the purpose of repatriation, paying wages and other entitlements in the event of default by the agent or the employer.
174. All directors must have Police Clearance Certificates (PCCs) from the Directorate of Criminal Investigations (DCI) which must be renewed after every twelve months from the date of issuance; and be a member of an association of private employment agencies recognized by NEA.
175. Successful agencies are issued with a registration certificate valid for one year after payment of a fee of Kshs. 500,000.

3.4.3 Certificate of Registration

176. The Certificate of Registration specifies the name of the person to whom the certificate is

being issued, the premises at which the business is to be contacted, the period for which the certificate shall be in force, area in respect of which the certificate shall be in force and any other conditions.

Renewal of Certificate

177. An application for the renewal of a certificate of registration is made at least one month before expiry of the certificate. It is accompanied by proof that the agency has been submitting returns in the prescribed form, proof that the agency has renewed the security bond, audited financial statements and accounts; and a copy of a valid lease agreement in case of change of office location.
178. If the Committee is satisfied that the applicant qualifies for renewal of the registration certificate, the certificate is renewed upon payment of Kshs. 250,000.

Cancellation of Certificate:

179. A certificate of registration of an Agency may be cancelled or its terms varied after due inquiry and for cause provided that the owner of the agency has notified of the intention to do so and has been given an opportunity to make a presentation.
180. In order to ensure that private employment agencies adhere to the labour laws, a monitoring mechanism has been established. This was after it was established that agencies could change their office location(s), their director(s) and managers after inspection and vetting and at the same time be involved in money laundering and trafficking in persons. The mechanism involves increased frequency of physical snap inspections of the private employment agencies' premises and their records.
181. Increasing the frequency of physical snap inspections of the private employment agencies' premises and capacity building of enforcement agencies is working to promote effective responses against fraudulent employment practices.
182. The updated list of registered private employment agencies with valid licenses can be accessed on the NEA website at <https://www.neaims.go.ke/>.

3.4.4 Inter-Ministerial Vetting Committee

183. The Inter-Ministerial Vetting Committee is established under section 54A of the Labour Institutions Act, 2007. The law requires every Employment Bureau or Agency to seek and obtain government approval prior to sending Kenyan Citizens for employment outside Kenya and for employment of foreigners within Kenya.
184. The Committee is responsible for advising the Cabinet Secretary responsible for labour on matters related to vetting the application for registration made by employment bureaus and agencies. The Committee, with representation from key government agencies vets all the private employment agencies in the country prior to their registration. The Ministry of Labour and Social Protection chairs the Committee and it comprises of officers from: the Ministry responsible for Labour; Immigration; Internal Security – Interior, DCI, NIS and Kenya

Police; Foreign Affairs; and the Office of the Attorney General.

185. The Committee checks whether the agencies have fulfilled the criteria set out in the legal notice No.110 Labour Institutions (Private Employment Agencies) Regulations 2016. The Committee makes independent recommendations (approval or non-approval). The vetting process requires anyone seeking to open or operate an employment agency or renew the license to appear in person for vetting.

186. Other stakeholders involved in vetting and accreditation of employment agencies are as follows:

Table 1: Stakeholder's role in accreditation of employment agencies

No.	Name of Stakeholder	Role in Vetting and Accreditation of Employment Agency
1	Office of the Attorney General (Registration of Companies)	Registration of Employment Agencies.
2.	Kenya Revenue Authority (KRA)	Compliance to tax requirements (TaxReturns, Tax Compliance).
3.	Ministry of Education (Standards and Quality Assurance)	Verification of academic certificates for directors and managers of employment agencies.
4.	National Intelligence Service (NIS)	Background security checks to assess any potential threat posed by the operations of the recruitment agency to national security.
5.	Directorate of Criminal Investigations (DCI)	Issuance of Police Clearance Certificates to directors and managers, and investigation of criminal activities by employment agencies.
6.	National Police Service	Enforcement.
7.	Ministry of Foreign and Diaspora Affairs	Advising on any issues of bilateral relations with labour receiving country.
8.	Ministry of Labour and Social Protection	Advising on labour and employment issues relating to operations of the employment agencies.
9.	National Employment Authority (NEA)	Receipt of application for registration and inspection of the employment agencies.
10.	Commission for University Education (CUE).	Verification of degree certificates for directors and managers of employment agencies.

The Vetting Process

187. The National Employment Authority is the Secretariat to the vetting committee. Before submitting applications to the committee for vetting, NEA undertakes a verification of the Article and Memorandum of Incorporation, Company Registration Certificate, List of Current

Directors (CR12), Tax Compliance Certificate, County Government License, National/Alien ID for director(s) and manager, Police Clearance Certificate for director(s), work permit for foreign directors, and Certified academic Certificates for directors and managers submitted by private recruitment agencies.

188. It also forwards of agency's information to NIS for background check and capturing the report in the NEAIMS, conducts an inspection of employment agency's premises, prepares and submits the files to the vetting committee and issues notification of approval and registration certificates after approval by the vetting committee
189. During the vetting of the applications for registration of recruitment agencies, the Committee checks whether the agency has fulfilled the criteria set out in the legal notice No.110 Labour Institutions (Private Employment Agencies) 2016 which provides for clearance by security agencies, inspection report, valid tenancy/lease agreement, copies of identity cards or passports for directors and managers, certified academic and professional certificates for directors and managers, tax compliance certificate, company registration certificate and CR12 and other certificates or documents as agreed by the Committee.
190. The vetting committee vets all the applications submitted by recruitment agencies and make independent recommendation(s) for approval or non-approval. The committee is guided by the terms of reference developed for the vetting of private employment agencies.

Delays in accreditation and renewal of licenses.

191. A total of 35 private employment agencies were approved in the year 2016 after the formation of the vetting committee. The approvals have grown over the years to the current 1,106 vetted agencies.
192. The vetting process has since been reviewed and anyone seeking to open or operate a recruitment agency or renew the license is required to appear in person for vetting. All recruitment agencies whose background check report was received from NIS have been vetted by the Committee. The Vetting Committee doesn't have any backlog.
193. It is also noted that some recruitment agencies fail to take advantage of the window which allows them to apply for license renewal three months before expiry of the operating license.
194. Currently the National Employment Authority is waiting for National Intelligence Service (NIS) to clear 153 agencies.

Process of recruitment and placement of migrant labour for all categories

195. The process starts when a registered Kenyan employment agency sources for employment opportunities either from an employer or a registered recruitment agency in a foreign country. The Kenyan employment agency then receives a job order or job demand from the foreign employer or foreign recruitment agency. The job order specifies the number of positions, job description and specifications as well as the terms and conditions of employment. A job order is supposed to be authenticated by the labour attaches or Kenyan embassies in the foreign country.
196. The Kenyan recruitment agencies are also required to upload the job orders into the National

Employment Authority portal www.nea.go.ke for approval.

197. Upon approval by NEA, recruitment agencies can advertise the vacancies as per the regulation on private employment agencies, 2016. The regulations require registered agencies to advertise job vacancies either within their premises, public offices or through the media provided that such advertisement is notified to NEA.
198. An advertisement made must specify the name and address of the agency including its physical address, the place where the vacancy is available, the terms and conditions of employment, the job specification and description, the number of positions available, the reference number of the registration certificate of the agency, the registration certificates for the company and the county trading license.
199. Employment agencies are normally encouraged to give priority to consider job seekers who have already registered with the NEA system (NEAIMS).
200. After shortlisting and interview, successful candidates are issued with a job offer and a contract. Migrant workers are also required to undergo medical examination, skills test and pre-departure training. All foreign contracts of service are attested to by a labour officer to ensure that the terms and conditions are favorable to the worker.

Pre-departure Training and certification process

201. The National Employment Authority (NEA) and the National Industrial Training Authority (NITA) with technical assistance from the Kenya Institute of Curriculum Development (KICD) developed a curriculum on homecare management in the year 2018.
202. The curriculum consisted of 4 training support documents:
 - (i) Homecare Management Course Syllabus and Regulations; A 360 hours course consisting of six units namely; Homecare, Life-Skills, Pre-Departure Training, Homecare Nursing, Child Care, and Work Placement.
 - (ii) Homecare Management Course Trainer's Guide.
 - (iii) Homecare Management Course Trainer of Trainers Manual.
 - (iv) Guidelines for Accreditation of Homecare Management Training Providers
203. The Pre-Departure Training and Life Skills Course Units of the curriculum address associated challenges in the host country. The curriculum equips prospective migrants with knowledge, skills, attitudes and values that will enable them cope with challenges they are likely to encounter in the new work environment and on return. It aims at creating a qualified, productive, healthy workforce with practical knowledge and skills in homecare management.
204. The programme is being run on a 4-week training and assessment cycle (3 weeks-training and 1 week assessment). Since the full roll-out of the training in December 2020, a total of 23 cohorts have gone through the 4-week training and assessment with a total of 275,878 out-bound migrant domestic workers trained, 685 ToTs trained, and a total of 124 training institutions accredited to undertake training on the curriculum on homecare management course.
205. The training only covers Module I of 200 hours out of the curriculum of two modules of 360 hours. The course is covered for 9.5hrs a day for 21 days to make a total of 200 hours. The

contract timelines are meant for qualified persons who only requires pre-departure training in order to leave and the component is 40 as per the table below.

206. However, in the current case the agents, recruit non-skilled people who must be then taken for training to equip them with requisite skills which currently take 160 hours as per the table below.
207. The transcript is normally issued within a week after conclusion of the assessment since the process is now automated. In this arrangement, it is assumed that other travel arrangement and processes are done in concurrence with the training without interrupting the training.
208. The reviewed curriculum has different topics, order, timelines and requirements as agreed upon with the stakeholders and Saudi counterparts.
209. In 2020 after the full rollout of the curriculum, graduates of the programme were sent to the Kingdom of Saudi Arabia (KSA). However, frequent media reports have highlighted challenges facing the Kenyan migrant workers. This necessitated fact-finding mission to the Kingdom of Saudi Arabia in January 2023. One of the findings of the mission was inadequacy of the training curriculum to adequately equip the domestic migrant workers with key information in regards to the country of destination.
210. To address the shortcomings, NITA in collaboration with the International Labour Organization (ILO) Fairway Project undertook to review the curriculum and related support guidelines. The review incorporated input from the Kingdom of Saudi Arabia to address the challenges identified and is anchored on Level 2 of the Kenya National Qualification Authority (KNQA) Framework. Preparations are underway to pilot the curriculum which is also targeting involvement of government institutions like the TVETs. Other documents reviewed in support of the curriculum implementation are:
 - (i) Trainers Guide to support the trainer in the content to cover;
 - (ii) Trainer of Trainers (ToT) Manual to include more skill areas and also revise the entry behavior; and
 - (iii) Standard Operating Procedures (SOPs) for Homecare Training and Assessment.
211. To enhance efficiency in pre-departure training NITA has developed a registration portal where details of all prospective domestic migrant workers are uploaded for training in various schools. The system captures name, identity card number, employment agency and schools the migrant worker will be enrolled in for pre-departure training.
212. A transcript with security features including a QR code to ensure it is not duplicated elsewhere has also been developed and submission of results to all schools is through an administrator log. This ensures only authorized persons or school directors can access the transcript. The logs in details for transcripts are different from that of registration to ensure security of the transcript.
213. NITA has further set strict timelines which ensure no students are uploaded un-procedurally into the system and integrated their systems with NEA to enable the prospective migrant workers be recruited through the NEA portal which also enables the results release for processing for travel.

214. Domestic migrant workers headed to Saudi Arabia are only approved by NEA through the Musaned system, once they have been assessed and certified by the National Industrial Training Authority (NITA), and the successful candidates are accessed by NEA through the integrated system.
215. NEA in collaboration with NITA and the Ministry conducts physical inspections in the accredited training institutions offering pre-departure training to check on the quality of training being offered and the safety and health of the trainees.

Determination of Agency fees and other charges to the migrantworkers

216. The Regulations on Private Employment Agencies 2016 provide guidelines on fees and commissions payable by the jobseeker. The general principle is that all fees and commissions shall be met by the employer. Agencies are therefore allowed to charge from their principals a service fee to cover services rendered in the recruitment, documentation and placement of workers. A foreign contract of employment shall specify the party responsible for the payment of visa fee, airfare and medical examination.
217. In cases where the employer does not meet the recruitment costs, recruitment agencies are allowed to charge a jobseeker administrative cost in respect of trade test, occupational test and the administrative fees provided that such fees do not exceed the job seeker's proposed one month's salary.

The role of recruitment agencies and their contractual obligations

218. The Labour Institutions Act, 2007 Section 57 (1), outlines the duties of persons operating employment agencies, where every person who operates or is in charge of an employment agency registered shall retain all records of their operations including details of migrant workers and furnish the same to the Authority and they shall not charge or receive in respect of anything done or to be done at the employment agency.
219. As per the Labour Institutions (Private Employment Agencies) Regulations 2016, the role of the recruitment agencies include sourcing for employment opportunities, payment of expenses incurred by the migrant workers during departure, return and in the event of repatriation.
220. Agencies also prepare and sign foreign contracts of service with the prospective migrant worker, notify all job opportunities and visas for employment to NEA and advertise job vacancies to the public including all the necessary job requirements. They also secure a security bond with the bank or insurance company for the purpose of repatriating a distressed migrant worker.
221. Agencies further avail records of migrant workers to enforcement agencies and provide information on the welfare of persons recruited, report to the relevant authorities on any issue affecting migrant workers, repatriate migrant workers in distress or remains of a deceased migrant worker, update the next of kin of the migrant worker on the welfare of or repatriation arrangements and liaise with the family of the migrant worker to receive the worker or remains of the worker.

Conflict of interest management in labour processing and protection of jobseekers from rogue agencies

222. The actors involved in the processing of migrant labour are guided by their policies on conflict of interest. The biggest conflict is agencies owning and running pre-departure homecare training schools. In the revised standard operating procedures, which also hoped will inform policy decision, an agency cannot own a school. NITA has introduced a multi-agency team which will provide both internal and external quality assurance.
223. NEA has developed an online system (www.neaims.go.ke) that requires all jobseekers to register and apply for job opportunities advertised by private employment agencies. The authority is continuously creating awareness to job seekers through the social media on the need to register on NEAIMS and also to ensure that they secure job opportunities through licensed private employment agencies.
224. The following 5 modules have so far been developed and implemented in the system:
- (i) Job Seekers module;
 - (ii) Employers' module;
 - (iii) Private Employment Agencies Module;
 - (iv) Customer Feedback module; and
 - (v) System Administration module.
225. A distress reporting interface and an interface for workers working abroad (to facilitate registration) has also been defined in the system. The system has been integrated with Integrated Persons Registry System (IPRS) and the Passport processing system through e-Citizen and the National Industrial Training Authority (NITA) System. NEA has also undertaken documentation to enable integration with the MUSANED system.
226. The Authority intends to integrate its system with other systems such as Border Management system, Police Clearance Certificate System and Business registration Services system (BRS).

Information Handbooks

227. The Ministry developed information handbooks for all the GCC in 2021 and 2022. Information handbooks for United Kingdom (for health care workers) have been developed to provide information to prospective healthcare workers. In April, 2023, the Ministry initiated development of information handbooks for Canada, Australia and Poland. The handbooks are meant to empower Kenyan migrant workers by providing factual information on the country of destination, and assist them in setting realistic goals and developing the key skills and attitudes needed to succeed in their new work environment. The information includes geography to basic laws, healthcare system, and culture. Such background information will help any potential migrant worker or family member, in mitigating any risk (including socio-cultural shocks).
228. NEA is also upgrading the Kenya migrant worker website (<https://kmw.nea.go.ke/>). The website is dedicated to provide migrant workers with country specific information.

Monitoring and Spot Checks

229. In order to ensure that private employment agencies adhere to the labour laws, a monitoring mechanism has been established. The mechanism involves increased frequency of physical snap inspections of the private employment agencies' premises and their records. Increasing the frequency of physical snap inspections of the private employment agencies' premises and capacity building of enforcement agencies is aimed at promoting effective responses against fraudulent recruitment practices.

Complaints and Distress Reporting

230. Any person aggrieved by operations of a recruitment agency can lodge complaints through the making an oral or written submission to NEA, making a submission through the NEAIMS, making a complaint to the labour attaches offices or Kenyan embassy or making a distress call through a Web Portal under NEAIMS and a Toll-Free Line 0800222223 to report migrant workers' distress cases.

231. The authority receives reports from the enforcement agencies concerning the operations of the employment agencies. Employment agencies with adverse reports or failure to adhere to the set guidelines and regulations in place have their licenses cancelled and for new agencies no license is issued. In the last twelve months, eighty-seven (87) complaints against recruitment agencies have been recorded by NEA.

Oversight and Community Feedback Mechanism

232. The Ministry in collaboration with the International Organization for Migration (IOM) has established an oversight mechanism and a community feedback mechanism to facilitate continuous monitoring of private employment agencies. To ensure adequate awareness creation of the established mechanisms at the community level, 277 resource persons have been trained on the oversight and community feedback mechanism in the five (5) pilot counties of Nairobi, Mombasa, Kilifi, Nandi and Busia. The Counties were identified due to the high number of reported cases.

Capacity Building of Private Employment Agencies on Ethical Recruitment

233. The Ministry with support from IOM is implementing a programme geared towards capacity building of private employment agencies (PEAs) to enable adoption and adherence to the International Recruitment Integrity System (IRIS) standards. The IRIS standards relate to the entire recruitment process, from recruitment, deployment, employment and return or onward migration. A total of 162 private employment agencies have been trained on introductory international recruitment integrity, eighteen (18) PEAs enrolled in the International Recruitment Integrity System (IRIS) capacity building programme and four (4) PEAs audited for compliance with international standards.

Measures to ensure provision of Financial and logistical support to migrant workers

Migrant Workers Welfare Fund:

234. One of the identified critical institutions to be established is the Kenya Migrant Workers Welfare Fund (KMWWF). The Cabinet approved the establishment of a Migrant Workers

Welfare Fund in February 2021 and the directive as per the Executive order No.1 of 2023.

235. The main objective of the Fund is to provide protection, welfare and assistance to Kenyan migrant workers during migration, stay in destination country and upon return to the country. The National Treasury and the Office of the Attorney General have approved the establishment of the Fund under a new Act of Parliament.
236. The Ministry with support of ILO has carried out benchmarking study covering four countries where such Funds have been operationalized (Philippines, Vietnam, Nepal and Sri Lanka) to inform the process of designing and establishing a Migrant Workers' Welfare Fund in Kenya. A multi-agency technical committee to steer the process of establishment of the Fund has been constituted.
237. The establishment of the Fund has been included in the Draft Labour Migration Management Bill which has finalized by the Office of the Attorney General and is to be subjected to public participation.
238. The Government also intends to establish a specialized social welfare kitty for Kenyan women working abroad to provide a safety net for those in distress and development of a framework to facilitate portability of knowledge, skills, innovation and technical resources available in the diaspora for national development.
239. The Kenya Migrant Workers Welfare Fund to be established under a new Act of Parliament as advised by the National Treasury and Office of the Attorney General however requires budgetary allocation.

Labour Attachés Offices:

240. The State Department for Labour and Skills Development has established three (3) Labour Attaché Offices in Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates (UAE). The labour attaché officers are mandated to source for employment opportunities, monitor the implementation of bilateral labour agreements and address the welfare of Kenyan migrant workers including those in distress. However, there is need for establishment of additional labour attaché offices in key labour destination countries.
241. The Cabinet for Labour and Social Protection approved the establishment of seven (7) labour attaché offices in February, 2021 however this has been hampered by lack of budgetary allocation.

Deepening Use of ICT in Labour Migration Management:-

242. NEA has automated all its services to ensure all Kenyans have access to public employment services through development of the National Employment Authority Integrated Management System (NEAIMS). Through this system employers and private employment agencies are able to post job opportunities while jobseekers can register and apply for the posted job vacancies. Collection and dissemination of labour migration data and information is also done through the system (www.neaims.go.ke).
243. NEA has developed a website on labour migration (Kenya migrant workers website) which provides potential migrant workers with country specific information on the key destination countries. NEA plans to integrate the System with other relevant systems to improve linkages

and seamless flow of information.

244. The State Department is also in the process of coming up with an on-line application for attestation of foreign contracts. The on-line attestation system will not only guarantee safe keeping of records and easy retrieval of data on attestation but also ensure transparency and accountability. The online attestation of foreign contracts systems will be linked to the NEAIMS.

National Policy on Labour Migration:

245. The Ministry of Labour in collaboration with relevant Ministries and other stakeholders has developed a National policy on Labour Migrations. The Policy provides a framework for promotion of inclusive and sustainable development of the country through safe, orderly and productive labour migration.
246. The Policy outlines strategies whose implementation will promote access to employment opportunities and enhance protection of Kenyan migrant workers. The Policy was presented to the Cabinet in February 2023, where the Cabinet directed certain amendments to the policy. A consultative meeting was held with the relevant stakeholders to address the issues raised by the Cabinet. The policy was to be resubmitted to the Cabinet before the end of June 2023.

Labour Migration Management Bill, 2023:

247. The Ministry of Labour in collaboration with relevant Ministries and other stakeholders has developed the Labour Migration Management Bill, 2023 which seeks to promote safe, ethical and orderly recruitment; and safeguard the rights and the welfare of migrant workers.
248. The bill has introduced additional clauses to make employment agencies more accountable and periodically report on the welfare of the migrant workers recruited. The Office of Attorney General has finalized the legal drafting of the Bill, which is now awaiting submission to Cabinet for approval before submitting to Parliament for approval and enactment.

Capacity Building on Labour Migration Data Collection, Analysis and Dissemination:

249. The Ministry with support from the International Organization on Migration in collaboration with relevant stakeholders has developed a National Capacity Building Strategy on Labour Migration data. The implementation of the strategy will enhance the country's capacity in data collection, analysis and dissemination on labour migration. In addition, a Labour Migration Statistics Metadata Handbook is being developed to guide in identification of labour migration policy issues to be studied, define labour migration indicators, variables, methods of computation, data sources, data disaggregation, and responsible agencies for data management among other aspects.

Return and Re-Integration Programme for Migrant Workers:

250. The Ministry with support from the International Labour Organization (ILO) is working towards establishment of a Return and Re-Integration Programme that will enable migrant workers participate in national development while abroad and upon their return. To enhance

the institutional framework for reintegration of Kenyan migrant workers, a Migrant Resource Centre has been operationalized at NEA to offer redress to returnees. The Return and Re-Integration Programme will focus on welfare assistance such as psychosocial counselling and legal assistance to distress migrant workers, labour market information, employment facilitation services, skills upgrading, saving and investment opportunities, business and enterprise development, and provision of information on health assistance referral.

Ways to Deal with challenges facing domestic workers runaways

251. The employers in the Kingdom of Saudi Arabia have raised concern over the high number of Kenyan migrant workers (runaways) which is believed to be one of the highest. To address this challenge, a number of measures have been initiated. Some of these include:–
- (i) Incorporating aspects of Arabic culture in the pre-departure training;
 - (ii) Creating awareness on the Saudi labour laws on clauses concerning change of employers;
 - (iii) Creating awareness on the obligations of employers and workers; and
 - (iv) Negotiating for better terms and conditions of employment under the draft bilateral labour agreement.

The Status of negotiation and implementation of BLAs and MOUS

252. Bilateral labour agreements have emerged as important instruments in the protection of the rights of migrant workers. In order to promote employment and enhance protection of Kenyan migrant workers in countries of destination, the Government has signed four (4) bilateral labour agreements with Governments of State of Qatar, United Arab Emirates, Kingdom of Saudi Arabia (for recruitment of domestic workers) and United Kingdom for recruitment of healthcare workers.
253. The BLAs with Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates (UAE) are being reviewed to improve terms and conditions of service, enhance protection of Kenyan migrant workers and increase the cadres of skilled and professional workers covered by the agreement.
254. The Ministry of Labour and Social Protection has prepared Draft Bilateral Labour Agreements (BLAs) with nine key labour destination countries which have been cleared by Office of the Attorney General and the National Treasury. These include: United Kingdom (for all other category of workers except healthcare), Poland, Oman, Kuwait, Jordan, Bahrain, Australia, State of Qatar and Kingdom of Saudi Arabia (for recruitment and employment of other categories of workers). The BLAs have been forwarded to the countries of destinations and are awaiting negotiations.
255. In addition, the Ministry has developed a Right-Based Model BLA guidelines with support from ILO to extend rights and labour protection to the Kenyan migrant workers and all the draft BLAs have been aligned to this model BLA. All new draft agreements have been aligned to the model bilateral labour agreement.
256. The design and implementations of bilateral labour agreements involves several actors. These are the Ministry of Labour and Social Protection, Ministry of Foreign and Diaspora Affairs, State Law office, Ministry of Interior and National Administration, the National Treasury,

Employment Agencies; and countries of destination.

257. The areas of cooperation in the bilateral labour agreements between the parties, that is Kenya and the country of destination include:

- (i) Skills development and training;
- (ii) Recruitment process (workers);
- (iii) Recruitment of workers shall be in accordance with the laws and procedures applied by the Parties, international conventions and international best practice;
- (iv) Enforcing the rights and welfare of workers;
- (v) Grant the contractual parties the right of recourse to competent authorities in case of contractual disputes, in accordance with the applicable laws, rules and regulations;
- (vi) Take legal measures against the recruitment offices, companies or agencies for any violations of applicable laws, rules and regulations;
- (vii) Resolve any issues arising from the implementation and enforcement of any provisions of this agreement;
- (viii) Regulate or endeavor to control recruitment costs in both countries;
- (ix) Provision of labour market information;
- (x) Coordination of consular affairs as relates to workers;
- (xi) Development of standard contract for workers, the text of which shall be agreed by the Parties; and
- (xii) Promote direct contact between employers in the country of destination and accredited agencies in the Kenya to facilitate orderly recruitment of workers in accordance with laid down laws, rules and procedures.

Current status of Bilateral Labour Agreements

258. The current status of the various BLAs and Memoranda of Understanding (MoUs) on employment of Kenyan migrant workers with key countries of destination was presented as follows:

- (a) Bilateral Labour Agreement between the Government of the Republic of Kenya and Government of the United Kingdom of Great Britain and the Northern Ireland for collaboration on Healthcare Workforce.

259. The BLA was signed in September, 2021 and Guidelines developed. A web-based portal for recruitment of healthcare professionals was established at NEAIMS and over 4,200 nurses have so far expressed interest in working as nurses in the UK through the system. Seventy-six (76) nurses were flagged off to the UK on Monday, 21st August, 2023.

260. There is need to create awareness among interested Kenyan Healthcare workers on the UK National Health Services (NHS) requirements (language testing and the immigration process).

- (b) Bilateral Labour Agreement between Government of Kenya and Government of Kingdom of Saudi Arabia on Recruitment of Domestic Workers.

261. The Agreement was signed in May, 2017 covering recruitment of domestic workers. The

agreement is being reviewed and negotiations are ongoing. During the recently concluded Joint Commission for Cooperation held in Riyadh in August 2023, the Saudi Team submitted counter proposals on the draft BLA, which Kenya has replied to the Saudi counter proposals and is awaiting confirmation from the Saudi Government on conclusion of the revised BLA. Kenya also requested for a joint meeting either in Riyadh or Nairobi to finalise on a few pending areas of divergence.

(c) Memorandum of Understanding on Labour Cooperation between the Republic of Kenya and the United Arab Emirates (UAE).

262. The MOU was signed in April 2018 but is yet to be implemented. The Kenya Government submitted a list of the Joint Implementation Committee members to UAE and the last notification of compliance for implementation of the signed MOU in 2019 but the MoU has not been operationalized. Review of the BLA is ongoing. The Ministry of Human Resources and Emiratization of the United Arab Emirates (UAE) submitted a counter-proposal MoU which has been reviewed by the Kenyan side and a comprehensive response has been submitted.

(d) Draft Bilateral Agreement between the Government of the Republic of Kenya and Government of the State of Qatar on Regulation and Employment of Kenyan migrant workers.

263. The initial agreement was signed in 2012. The agreement was to remain in force for a period of three (3) years renewable for a similar period. The first (initial) agreement has since expired and the Ministry submitted a revised draft BLA to the State of Qatar for consideration. A meeting was held in August, 2023 with the Chargé d'Affaires of the Embassy of Qatar in Kenya where it was agreed that a negotiating team be constituted and propose dates for the negotiation for confirmation by the Qataris.

(e) Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Sultanate of Oman on Regulation of Employment.

264. An agreed negotiated draft MoU between the two countries has been finalized, and forwarded to the heads of the Ministries in charge of labour in the respective countries for approval and signing. The Government of Kenya and the Sultanate of Oman held two (2) days of bilateral meetings on the 7th and 8th June, 2023 and concluded negotiations on the draft MoUs. The final BLA is awaiting signing.

(f) MoU between the Government of the Republic of Kenya and the Government of the Kingdom of Bahrain on Regulation of Employment of Kenyan workers.

265. The agreement was approved by Office of the Attorney General and the National Treasury. The Agreement was forwarded and comments received from the Kenyan Embassy in Kuwait. The MoU has been revised to incorporate comments received from the Kingdom of Bahrain and was re-submitted to the Kingdom of Bahrain for further consideration.

(g) Memorandum of Understanding between the Government of Kenya and the United Republic of Tanzania on labour matters.

266. A draft was prepared and submitted to the Ministry of Foreign and Diaspora Affairs on 15th

December, 2022 for onward submission to the United Republic of Tanzania. The draft MoU was discussed during the high-level bilateral forum between the Government of Kenya and Republic of Tanzania held in April, 2023 and is awaiting finalization.

(h) Agreement between the Republic of Kenya and the Federal Republic of Germany on employment of Kenyan Workers.

267. A draft was prepared and submitted to the Federal Republic of Germany and bilateral talks are on-going on employment of Kenyan workers resumed with the officials from the German Embassy in Nairobi.

(i) Bilateral Labour Agreement between the Government of the Republic of Kenya and the Government of the Republic of Austria on Recruitment and Employment.

268. A draft has been prepared and was submitted to the Ministry of Foreign and Diaspora Affairs for onward submission to the Republic of Austria. The Ministry has consultative discussions with the Director General for Labour in Austria and agreed to include labour clauses in the economic agreement with Kenya.

(j) Cooperation between the Government of Canada and the Republic of Kenya.

269. The Ministry submitted a draft BLA to the Government of Canada and was advised by the Canadian High Commission officials to engage directly with the Governments of the provinces of Manitoba, Saskatchewan and Alberta as labour migration issues are devolved in Canada. An advisory was received from the Canadian Minister for International Cooperation for Kenya to consider exploring employment opportunities using the Atlantic and Rural Immigration Programmes which provide for easy entry requirements for migrants because they are employer driven.

(k) Draft Bilateral Labour Agreements awaiting Negotiations

270. The BLAs for the Kingdom of the State of Kuwait, United Kingdom, Kingdom of Saudi Arabia, Hashemite Kingdom of Jordan, Republic of Poland, Republic of Ireland (Nursing and Midwifery Workforce), Arab Republic of Egypt, Republic of Kazakhstan, Republic of Serbia, Republic of Rwanda, Federal Republic of Ethiopia, Republic of Malta and Vietnam focusing on employment of Kenyan skilled and professional cadres have been forwarded to Ministry of Foreign and Diaspora Affairs for onward submission to the countries of destination for consideration. The Ministry is yet to receive feedback or counter-proposals from the identified countries of destination.

271. In order to be able to achieve on the planned interventions, the Ministry stated that budgetary support was required towards the establishment of a one-stop-centre offering all labour migration services under one integrated system for improved linkages and seamless flow of information. The identified Systems for integration include, NEAIMS, Integration of attestation process into the NEAIMS, Passport processing, and Border Management system, System on authentication of Certificate of Good Conduct, Integrated Population Registration System (IPRS), Business Registration Services, and countries of destination systems.

272. The Ministry further sought supports towards Establishment of Safe Houses in the Gulf Region (Cities of Riyadh, Jeddah, Dammam in Saudi Arabia and State of Qatar) with priority

in the Kingdom of Saudi Arabia where numerous distress cases have been reported.

3.5 Commission for University Education

273. The Committee invited the Chief Executive Officer (CEO) for the Commission for University Education via a letter **Ref: NA/AA&GPC/DA&MWC/CORR/2024/024** dated 14th May 2024 for meeting with Committee. Dr. Eunice Marete, Director in-charge of registration, appeared before the Committee on 4th June 2024 on behalf the CEO and submitted that-
274. Licensing of Student Recruitment Agencies is one of the functions of the Commission for University Education as per the Universities Act No. 42 of 2012, The Universities Regulations, 2014, Sections 71-75; and The Universities Standards and Guidelines, 2014. It ensures that local Agencies recruiting students for foreign universities and institutions are regulated for the benefit of Kenyans intending to pursue university education abroad. Through this function, the Commission aims to:
- a) Streamline the operations of local agencies for student recruitment into foreign universities and institutions.
 - b) Regulate the agencies for advertising, exhibiting and marketing foreign universities and institutions in Kenya.
 - c) Regulate foreign universities and institutions directly advertising, exhibiting or recruiting students in Kenya.
 - d) Ensure that Kenyan students are recruited and admitted to study in accredited and recognized universities outside the country for the award of valid and recognized certificates.
 - e) Take appropriate action against student recruitment agencies operating in Kenya illegally.
- Scope for licensing student recruitment agencies**
275. The Commission is mandated to License any Student Recruitment Agencies operating in Kenya and any activities by foreign universities and institutions. The process is applicable to:
- a) Agencies registered in Kenya (direct recruitment)**
- i. Agencies for student recruitment into universities/institutions
 - ii. Agencies for advertising, exhibiting and marketing universities/institutions;
 - iii. Foreign universities or institutions directly advertising, exhibiting or recruiting students;
 - iv. Confederations of agencies for student recruitment into universities/institutions;
 - v. Confederations of agencies for advertising, exhibiting and marketing universities/institutions
- b) Local universities as agencies of foreign universities or institutions. Such as Foreign universities or institutions offering academic programmes in collaboration with Local universities or institutions (Indirect recruitment/Collaboration).

Procedure for application, processing and inspection of Student Recruitment Agencies for licensing

276. An applicant creates an account through the Licensing of student recruitment agencies portal available at the Commission website; <https://imis.cue.or.ke/LicensingPortal/>.
277. The Licensing of Student Recruitment Agencies portal allows an applicant to complete an online application form from the Commission's web portal. The required details include:
 - i. The Agency's physical location details;
 - ii. Institutions/Universities (to be) represented by the agency;
 - iii. Services offered to students before and after they join the universities/institutions, they are being recruited for;
 - iv. Compliance with national and county governments' regulations governing public and health safety including fire safety;
 - v. The facilities put in place by the agency for student recruitment purposes and;
 - vi. Identification details, certificates of good conduct and academic qualifications of the agency's human resources.
278. The applicant attaches all the required documentation and signs a declaration to adhere to the standards and guidelines for the service.
279. The applicant then pays the requisite charges via e-citizen then attaches evidence of payment and submits the application via the portal.
280. Upon receipt the Commission processes the application and carries out an inspection of the agency's facilities to verify adherence to the minimum standards and guidelines for licensing

Background checks/vetting before approval and licensing

281. The Commission enlists the services of the National Intelligence Service (NIS) in vetting the agencies before approval of grant of new/renewal of licenses by the Commission Board. The Commission also subjects the unlicensed agencies identified during surveillance exercise for vetting. The information submitted to NIS includes:
 - a) Name of Agencies
 - b) Physical, postal and email address
 - c) Name and address of the contact persons.
 - d) Status of the application whether new or renewal

Status of student recruitment agencies

282. As of 30th May 2024, there were a total of eighty-six (86) Student Recruitment Agencies operating under various statuses. Among these, two (2) agencies had been closed, while thirty-two (32) were pending Board approval. Nine (9) agencies were awaiting either application submission or payment for relicensing. Four (4) agencies were pending inspection, and thirty-nine (39) agencies held valid licenses, which were set to expire on 19th June 2024.

3.6 Inspection visit to offices of Private Recruitment Agencies

283. On various dates in the month of March and April 2024, the Committee conducted inspection visits to the offices of Private Recruitment Agencies (PRAs) located in Mombasa and Uasin Gishu counties. The purpose of these visits was to evaluate how well these agencies comply with the Labour Institutions Act, 2007, and the Labour Institutions (Private Employment Agencies) Regulations, 2006.

284. During the inspection visit to Mombasa, the Committee engaged the following Private Recruitments Agencies-

- 1 Al Hadhramy & Mahla
- 2 Atawakul Limited
- 3 Al-shifaa Investment Agency



Figure 1: Consultative meeting between the Committee members and Directors of various Private Recruitment Agencies domiciled in Mombasa

285. In Uasin Gishu County, the Committee engaged the following Private Recruitments Agencies-

- 1 Absolute Connection International Limited
- 2 Majesty Recruitment Agency Limited
- 3 Oval Recruitment Agency Limited



Figure 2: Committee Members pictured during the inspection visit in Uasin Gishu County, 2024

286. During the visits , the Committee identified several significant challenges that PRAs are facing. They included :-

- a) **High Registration and Renewal Fees:** PRAs reported that the cost of registering is Kenya Shilling five hundred thousand (500,000) and the cost renewing their licenses is two hundred and fifty-thousand (250,000). This financial burden makes it difficult for some agencies to maintain their operations.
- b) **Short Validity of Certificates Issued by the National Employment Authority (NEA):** The certificates that PRAs receive from the NEA have one (1) year validity period. This means that agencies must frequently renew their certificates, adding to their operational challenges.
- c) **Discrimination in Job Order Allocations:** Some PRAs claimed that there is unfair treatment in the way job orders are distributed. This discrimination makes it harder for certain agencies to secure job orders and places them at a disadvantage.
- d) **Allegations of Corruption at the JKIA Labour Desk:** There have been allegations of corrupt practices at the newly established labour desk at Jomo Kenyatta

International Airport (JKIA). These corrupt activities could potentially hinder the fair processing of workers traveling abroad.

- e) **Lengthy Process for Obtaining Travel Documents:** The process of acquiring necessary travel documents, such as passports, visas, certificates of good conduct, and other certifications, is often lengthy and cumbersome. This delay can affect the timely deployment of workers.
- f) **Difficulty in Sourcing and Advertising Available Positions:** PRAs face challenges in finding suitable job openings and advertising them to attract eligible recruits. This problem limits their ability to connect job seekers with available opportunities.
- g) Unregistered agents, brokers, individual contacts, and individual online recruitment processes greatly contribute to the unregulated recruitment of youth into migrant labour. This affects most of those in the domestic labour industry. This "off the radar" recruitment process has distorted data on those working as migrant labour. This means therefore that workers and especially domestic labour recruited through these means are exposed to potential human traffickers and households that may not consider workers' rights as imperative.

4.0 COMMITTEE OBSERVATIONS

287. Having considered the stakeholder submissions and the various issues as per the terms of reference of the inquiry, the Committee made the following observations:

1. Policy and Regulatory environment

- a) That the Ministry of Labour and Social Protection has submitted the National Labour Policy (Sessional Paper no. 5 of 2023) to the National Assembly for consideration. The Policy provides a framework for promotion of inclusive and sustainable development of the country through safe, orderly and productive labour migration and outlines strategies whose implementation will promote access to employment opportunities and enhance protection of Kenyan migrant workers. The policy once implemented will provide a framework for promotion of inclusive and sustainable development of the country through safe, orderly, regular and productive labour migration.
- b) The Ministry of Labour in collaboration with relevant Ministries and other stakeholders has developed the Labour Migration Management Bill, 2023 which seeks to promote safe, ethical and orderly recruitment; and safeguard the rights and the welfare of migrant workers. The bill has introduced additional clauses to make recruitment agencies more accountable and periodically report on the welfare of the migrant workers recruited. The bill further anchors the Kenya Migrant Workers Welfare Fund which is contributory in nature and aims at providing protection, welfare and assistance to Kenyan migrant workers during migration; stay in destination country and upon return to the country.

2. Establishment, registration, vetting and renewal of Licenses:

- a) The validity period for Private Employment Agencies' licenses is one year while most contracts for migrant workers run for two years, particularly domestic workers recruited for the Middle East labour market.
- b) The inter- ministerial committee established under section 54 of the Labour Institution Act no. 12 of 2012 does not provide for representation of representatives from private employment agencies.
- c) The fresh vetting of agencies and the new requirements of agencies to appear before the vetting Committee during renewal as well as the requirement for the agencies to provide the statement of account during vetting for renewal has helped weed out recruitment agencies that are foreign-owned as the bank statements are able to identify the actual owners.
- d) There have been instances of rogue private employment agencies causing distress to Kenyan migrant workers abroad, particularly in countries like the Kingdom of Saudi Arabia.

3. Pre-travel medical screening

- a) The medical testing for migrant workers for the GCC market is only done through the Gulf Approved Medical Centers (GAMCA). These centers are only based in Nairobi and Mombasa while migrant workers come from all parts of the country. Having testing centers in major

cities/towns would ease access for the workers and reduce costs. There has also been cases of discrepancies in the medical results by GAMCA approved Centers and medicals done in the destination countries.

4. Travel documents

- a) Instances exist where Kenyans have exploited the use of visitor visas to travel to other countries in search of employment, bypassing the authorized migrant worker processing channels. This practice, utilizing visitor visas for job-seeking purposes, is deemed illegal and circumvents the proper channels for migrant worker procedures.
- b) While the State Department for Immigration and Citizen Services has put in place measures to streamline and assist individuals planning to travel as migrant workers, the majority opt apply for passports through the regular application route, as they do not meet the specified eligibility criteria for Migrant workers passport processing.

5. Pre-departure training and certification process

- a) The National Industrial and Training Authority (NITA) piloted a new curriculum for homecare training for the Saudi Arabia domestic market **without** conducting public participation or engaging the stakeholders on the content or duration of the training before the piloting. This led to push back from the training schools. The changes also led to a longer training delaying the process of deployment of workers.
- b) The pre-departure curriculum is lacking in content as it fails to address orientation on cultural differences, financial management, soft or people skills and legal rights in view of the BLAs being signed. Domestic workers therefore not informed of their rights and obligations, including making distress calls, access to safe houses and how to meet expectations from their employers.

6. Runaways in the Kingdom of Saudi Arabia

- a) The reputation of the Saudi domestic Labour Market has been highly affected by cases of Runaways (Kembois). Runaways include those that leave Kenya with the intention of running away as soon as they arrive at the airport with direct connection from the hosts(Dalala). Those that run away after being influenced by other runaways with promises of better pay and those that are forced to run away because of mistreatment by the employers and their distresses are not solved by the Saudi Office, Kenyan Agency or the NEA.
- b) Unscrupulous middle men pry on vulnerable migrant workers to lure them from their employers for better paying jobs thereby endangering their lives by working in a foreign country without legal documents.

- 7. Bilateral Labour Agreements and consular and Support Services for Migrant Workers**
Bilateral labour agreements have emerged as important instruments in the protection of the rights of migrant workers. In order to ensure that the Bilateral Labour Agreements are strictly implemented by host countries, it is important to have enough labour Attachés in Kenya's missions abroad. For instance, the existing Labour Attaché Offices in Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates are not sufficient to cater for the growing number of Kenyan Migrant Workers in the region. Further, with more BLAs expected to be signed, there's need for the State Department for Diaspora Affairs to send Diaspora officers who will ensure that migrant workers' rights are protected in accordance with the BLAs.

- 8. Use of ICT in Labour Migration management**
The labour migration sector involves multiple players. Most of their systems function independently, resulting in inefficiencies in labour migration data and management. There is therefore need to integrate the various ICT platforms to ease the process of document verification, attestation, contract approvals in MUSANED etc.

- 9. International Conventions**
Kenya has not ratified the Private Employment Agencies Convention, 1997 (No. 181). The convention establishes a comprehensive framework for the registration, licensing, and effective regulation of private employment agencies and the protection of workers that use their services. It further requires ratifying member States to take measures to protect national and migrant workers from abuses and protects legitimate agencies from unfair competition by rogue operators. Ratification and domestication of this convention will strengthen efforts towards promotion and protection of the rights of migrant workers and the sectors regulation.

Commission for University Education (CUE)

10. The CUE's mandate to license and regulate student recruitment agencies is pursuant to the Universities Act No. 42 of 2012, the Universities Regulations, 2014, and the Universities Standards and Guidelines, 2014. This provides a strong legal framework for oversight;
11. The scope of licensing process covers both direct recruitment by local agencies and indirect recruitment through collaborations with local universities.
12. The validity period of the registration certificate issued under Regulation 73 of the Universities Regulations, 2014 is one year.

5.0 COMMITTEE RECOMMENDATIONS

288. The Committee makes the following recommendations:

1. Policy and regulatory Environment

That the Cabinet Secretary, Ministry of Labour and Social Protection;

- (i) Fast-tracks the Labour Migration Bill, 2023 and attendant regulations and submits them to the National Assembly for consideration within 6 months of adoption of this report.
- (ii) Reviews section 54 of the Labour Institutions Act, no. 12 of 2012 and submit to the National Assembly for consideration within three (3) months of adoption of this report to include a representative (s) of the registered private employment agencies association in the inter-ministerial committee. This will enhance all round stakeholders' engagement in policy formulation on matters vetting of private employment agencies.
- (iii) Reviews the Labour Institution (Private Employment Agencies) Regulations, 2016 and submit to the National Assembly for consideration within three (3) months of adoption of this report to:
 - a. Include registration of signage with registration number included and placed clearly within the agencies registered premises.
 - b. to create a list of registered private employment agencies together with their registered signage's and posted on the National Employment authority's website and made accessible to the public.
 - c. Increase the validity period of the registration certificate issued under **Regulation 5** to 2 years from the current one year.
 - d. review the amount of fee the Private Recruitment Agencies pay to NEA for various categories of registrations as follows –
 - (i) Fees for an initial application for the registration of an agency dealing with recruitment for foreign labour market to Kshs four hundred thousand (400,000) from the current five hundred thousand (500,000) ;
 - (ii) Fees for an application for the renewal of registration of an agency dealing with recruitment for foreign labour market to Kshs three hundred thousand (300,000) from the current two hundred and fifty thousand (250,000);
 - (iii) Fees for an application for renewal of registration of an agency dealing with recruitment for local Kenyan labour market to Kshs One Hundred thousand (100,000) from the current seventy-five thousand (75,000); and
 - (iv) Fees for a replacement of a certificate of registration to ksh five thousand (5,000) from the current ten thousand (10,000)

- (iv) Reviews the Industrial Training Act Cap 237, (Amended) Act 2022 and submit to the National Assembly for consideration within three (3) months of adoption of this report to:
 - a. include Technical Vocational Educational Training Institutions (TVETs) to the current NITA training institutions and further develops guidelines for curriculum and training to ensure standardization of the training offered.
 - b. reduce the period for pre departure training to fourteen (14) days from the current twenty eight (28) days in order to enhance Kenya's labour market competitiveness.

2. Pre travel medical Screening

The Cabinet Secretary, Ministry of Labour and Social Protection;

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- (ii) Ensures that the new curriculum is customized to meet specific destination country requirements in view of the Bilateral Labour Agreements signed, being negotiated or proposed for negotiation.

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The Ministry of Labour and Social Protection:

- (i) In collaboration with the State Department for Immigration and Citizen Services and the State Department for Diaspora Affairs identifies and evacuates all runaways from the Kingdom of Saudi Arabia and other Middle East countries.
- (ii) Through its agencies conducts continuous public awareness on the repatriation process;
- (iii) Puts in place measures to ensure that agents are held liable by ensuring their employees adhere to their contractual obligations and where the migrant workers

- who breach their contracts, that they cannot seek alternative employment without being facilitated by a registered recruitment agency
- (iv) Puts in place measures to monitor all employees leaving as Migrant Workers and where the migrant workers leave their employment, put measures to ensure they are repatriated.

5. Bilateral Labour Agreements

The Cabinet Secretary, Ministry of Labour and Social Protection;

- (i) fast tracks the negotiation of the pending Bilateral Labour Agreements (BLAs).
- (ii) review of the current Bilateral Labour Agreement with the Kingdom of Saudi Arabia on Domestic Workers, renegotiates for the salaries paid to Kenyan domestic workers to bring them to par with the pay offered to domestic migrant workers from other countries working in Saudi Arabia such as Philippines.

6. International Treaties and Conventions

Transmits the Private Employment Agencies Convention, 1997 (No. 181) to Parliament for ratification within three months of the adoption of this report.

7. Budgetary Support

The Principal Secretary, the National Treasury makes budgetary allocation proposals:

- (i) to the Ministry of Labour and Social Protection, State Department for Labour and Skills Development
 - a. To facilitate the Integration of various ICT platforms offering labour migration services under one integrated system for improved linkages and seamless flow of information. The identified Systems for integration include; NEAIMS, Integration of Attestation process into the NEAIMS, Business Registration Services, and integration of countries of destination systems like MUSANED with the NEAIMS system.
 - b. For the establishment of additional labour attaché offices in key labour destination countries.
- (ii) To the Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs to facilitate recruitment and placement of diaspora officers to Kenyan missions abroad who will ensure that migrant worker' rights are protected in accordance with signed BLAs.

8. Policy and regulatory Environment


That the Cabinet Secretary for the Ministry of Education review the Universities Regulations, 2014 and submits them to the National Assembly for consideration within 6 months of adoption of this report.to-

- a. increase the validity period of the registration certificate issued under Regulation 73 (1) to two years from the current one year.

- b. permit Students Recruitment agencies to operate temporarily as their **renewal** registration is under review but not more than ninety (90) calendar days.
- c. Include in the Regulations, timelines within which application and renewal of licences by Students Recruitment Agencies shall be considered by the Commission for University Education.



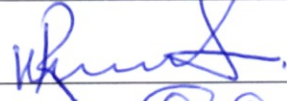


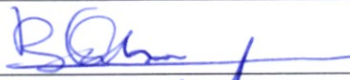




SIGNED.......... DATE.....15/08/24.....

**HON. LYDIA HAIKA MIZIGHI, M.P,
CHAIRPERSON,
DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 15 AUG 2024	DAY:
TABLED BY:	Hon. Owen Bayo, mp Deputy Leader of Majority
CLERK AT THE TABLE:	Chibot Kerkei

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT- (THIRD SESSION)
DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE

Register for the adoption of the Report on the Inquiry into the Role and Conduct of Private Recruitment Agencies in the Recruitment of Migrant Workers and Placement of Students Abroad

NO.	NAME	SIGNATURE
1.	Hon. Haika Mizighi, M.P. (Chairperson)	
2.	Hon. Simon Nganga Kingara, M.P. (Vice Chairperson)	
3.	Hon. Fred C. Kapondi, M.P.	
4.	Hon. Capt. Ruweida Mohamed Obo, M.P.	
5.	Hon. Charity Kathambi Chepkwony, M.P.	
6.	Hon. Kemei Justice Kipsang, M.P.	
7.	Hon. Ibrahim Abdi Saney, M.P.	
8.	Hon. Paul Ongili Babu Owino, M.P.	
9.	Hon. Rashid Juma Bedzimba, M.P.	
10.	Hon. Donya Dorice Aburi, M.P.	
11.	Hon. Leah Sopiato Sankaire, M.P.	
12.	Hon. Pamela Njoki Njeru Double N. M.P.	
13.	Hon. Titus Lotee, M.P.	
14.	Hon. Phelix Odiwuor Khodhe, M.P.	
15.	Hon. Zamzam Chimba Mohamed, M.P.	

MINUTES OF THE 17TH SITTING OF THE DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE HELD ON THURSDAY, 6TH AUGUST, 2024 AT 12.00 NOON IN COMMITTEE ROOM 13, 2ND FLOOR, BUNGE TOWER.

PRESENT

1. The Hon. Haika Mizighi, M.P. (**Chairperson**)
2. The Hon Capt. Ruweida Mohamed Obo, M.P
3. The Hon. Fred Kapondi, M.P
4. The Hon. Charity Kathambi Chepkwony M.P
5. The Hon. Kemei Justice Kipsang M.P
6. The Hon. Babu Ongili Owino, M.P
7. The Hon Donya Dorice Aburi , M.P
8. The Hon. Rashid Juma Bedzimba M.P
9. The Hon, Phelix Odiwuor Kodhe M.P
10. The Hon, Zamzam Chimba Mohamed, MP

ABSENT WITH APOLOGY

1. The Hon. Simon Nganga Kingara , M.P (**Vice Chairperson**)
2. The Hon. Ibrahim Abdi Saney, M.P
3. The Hon. Leah Sopiato Sankaire, M.P
4. The Hon. Pamela Njoki Njeru Double N, M.P
5. The Hon. Titus Lotee, M.P

IN ATTENDANCE

SECRETARIAT

- | | |
|-----------------------|------------------------------|
| 1. Mr. Abdifatah Bule | - Clerk Assistant I |
| 2. Ms. Grace Odedere | - Clerk Assistant III |
| 3. Mr. Peter Barasa | - Legal Counsel II |
| 4. Mr. Kelvin Nganga | - Research Officer III |
| 5. Ms. Ivy Maritim | - Media Relation Officer III |

MIN.NO. /DAAMW/2024/83

PRELIMINARIES

The Chairperson called the meeting to order at 12:24 p.m. and said a word of prayer. She led members in the introduction and briefed them on the agenda of the meeting.

MIN.NO. /DAAMW/2024/84

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed and seconded by the Hon Capt. Ruweida Mohamed Obo, MP and the Hon. Fred Kapondi, MP respectively.

MIN.NO. /DAAMW/2024/85

CONFIRMATION OF MINUTES

The Minutes of the 16th sitting were confirmed as a true record of the proceedings having been proposed and seconded by Hon. Capt Ruweida Mohamed Obo, M.P and Hon Charity Kathambi, M.P respectively.

The Committee considered and adopted the report on the Inquiry into the role and conduct of Private Recruitment Agencies in the recruitment of migrant workers and placement of students abroad having been proposed and seconded by the Hon Charity Kathambi, M.P and the Hon. Zamzam Chimba Mohammed M.P respectively.

COMMITTEE OBSERVATIONS

Having considered the stakeholder submissions and the various issues as per the terms of reference of the inquiry, the Committee made the following observations:

1. Policy and Regulatory environment

- a) That the Ministry of Labour and Social Protection has submitted the National Labour Policy (Sessional Paper no. 5 of 2023) to the National Assembly for consideration. The Policy provides a framework for promotion of inclusive and sustainable development of the country through safe, orderly and productive labour migration and outlines strategies whose implementation will promote access to employment opportunities and enhance protection of Kenyan migrant workers. The policy once implemented will provide a framework for promotion of inclusive and sustainable development of the country through safe, orderly, regular and productive labour migration.
- b) The Ministry of Labour in collaboration with relevant Ministries and other stakeholders has developed the Labour Migration Management Bill, 2023 which seeks to promote safe, ethical and orderly recruitment; and safeguard the rights and the welfare of migrant workers. The bill has introduced additional clauses to make recruitment agencies more accountable and periodically report on the welfare of the migrant workers recruited. The bill further anchors the Kenya Migrant Workers Welfare Fund which is contributory in nature and aims at providing protection, welfare and assistance to Kenyan migrant workers during migration; stay in destination country and upon return to the country.

2. Establishment, registration, vetting and renewal of Licenses:

- a) The validity period for Private Employment Agencies' licenses is one year while most contracts for migrant workers run for two years, particularly domestic workers recruited for the Middle East labour market.
- b) The inter- ministerial committee established under section 54 of the Labour Institution Act no. 12 of 2012 does not provide for representation of representatives from private employment agencies.
- c) The fresh vetting of agencies and the new requirements of agencies to appear before the vetting Committee during renewal as well as the requirement for the agencies to provide the statement of account during vetting for renewal has helped weed out recruitment agencies that are foreign-owned as the bank statements are able to identify the actual owners.
- d) There have been instances of rogue private employment agencies causing distress to Kenyan migrant workers abroad, particularly in countries like the Kingdom of Saudi Arabia.

3. Pre-travel medical screening

- a) The medical testing for migrant workers for the GCC market is only done through the Gulf Approved Medical Centers (GAMCA). These centers are only based in Nairobi and Mombasa while migrant workers come from all parts of the country. Having testing centers in major cities/towns would ease access for the workers and reduce costs. There has also been cases of discrepancies in the medical results by GAMCA approved Centers and medicals done in the destination countries.

4. Travel documents

- a) Instances exist where Kenyans have exploited the use of visitor visas to travel to other countries in search of employment, bypassing the authorized migrant worker processing channels. This practice, utilizing visitor visas for job-seeking purposes, is deemed illegal and circumvents the proper channels for migrant worker procedures.
- b) While the State Department for Immigration and Citizen Services has put in place measures to streamline and assist individuals planning to travel as migrant workers, the majority opt apply for passports through the regular application route, as they do not meet the specified eligibility criteria for Migrant workers passport processing.

5. Pre-departure training and certification process

- a) The National Industrial and Training Authority (NITA) piloted a new curriculum for homecare training for the Saudi Arabia domestic market **without** conducting public participation or engaging the stakeholders on the content or duration of the training before the piloting. This led to push back from the training schools. The changes also led to a longer training delaying the process of deployment of workers.
- b) The pre-departure curriculum is lacking in content as it fails to address orientation on cultural differences, financial management, soft or people skills and legal rights in view of the BLAs being signed. Domestic workers therefore not informed of their rights and obligations, including making distress calls, access to safe houses and how to meet expectations from their employers.

6. Runaways in the Kingdom of Saudi Arabia

- a) The reputation of the Saudi domestic Labour Market has been highly affected by cases of Runaways (Kembois). Runaways include those that leave Kenya with the intention of running away as soon as they arrive at the airport with direct connection from the hosts(Dalala). Those that run away after being influenced by other runaways with promises of better pay and those that are forced to run away because of mistreatment by the employers and their distresses are not solved by the Saudi Office, Kenyan Agency or the NEA.
- b) Unscrupulous middle men pry on vulnerable migrant workers to lure them from their employers for better paying jobs thereby endangering their lives by working in a foreign country without legal documents.

7. Bilateral Labour Agreements and consular and Support Services for Migrant Workers

Bilateral labour agreements have emerged as important instruments in the protection of the rights of migrant workers. In order to ensure that the Bilateral Labour Agreements are strictly implemented by host countries, it is important to have enough labour Attachés in Kenya's missions abroad. For instance, the existing Labour Attaché Offices in Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates are not sufficient to cater for the growing number of Kenyan Migrant Workers in the region. Further, with more BLAs expected to be signed, there's need for the State Department for Diaspora Affairs to send Diaspora officers who will ensure that migrant workers' rights are protected in accordance with the BLAs.

8. Use of ICT in Labour Migration management

The labour migration sector involves multiple players. Most of their systems function independently, resulting in inefficiencies in labour migration data and management. There is therefore need to integrate the various ICT platforms to ease the process of document verification, attestation, contract approvals in MUSANED etc.

9. International Conventions

Kenya has not ratified the Private Employment Agencies Convention, 1997 (No. 181). The convention establishes a comprehensive framework for the registration, licensing, and effective regulation of private employment agencies and the protection of workers that use their services. It further requires ratifying member States to take measures to protect national and migrant workers from abuses and protects legitimate agencies from unfair competition by rogue operators. Ratification and domestication of this convention will strengthen efforts towards promotion and protection of the rights of migrant workers and the sectors regulation.

Commission for University Education (CUE)

10. The CUE's mandate to license and regulate student recruitment agencies is pursuant to the Universities Act No. 42 of 2012, the Universities Regulations, 2014, and the Universities Standards and Guidelines, 2014. This provides a strong legal framework for oversight;
11. The scope of licensing process covers both direct recruitment by local agencies and indirect recruitment through collaborations with local universities.
12. The validity period of the registration certificate issued under Regulation 73 of the Universities Regulations, 2014 is one year.

5.0 COMMITTEE RECOMMENDATIONS

4. The Committee made the following recommendations:

1. Policy and regulatory Environment

That the Cabinet Secretary, Ministry of Labour and Social Protection;

- (i) Fast-tracks the Labour Migration Bill, 2023 and attendant regulations and submits them to the National Assembly for consideration within 6 months of adoption of this report.
- (ii) Reviews section 54 of the Labour Institutions Act, no. 12 of 2012 and submit to the National Assembly for consideration within three (3) months of adoption of this report to include a representative (s) of the registered private employment agencies association in the inter-ministerial committee. This will enhance all round stakeholders' engagement in policy formulation on matters vetting of private employment agencies.
- (iii) Reviews the Labour Institution (Private Employment Agencies) Regulations, 2016 and submit to the National Assembly for consideration within three (3) months of adoption of this report to:
 - a. Include registration of signage with registration number included and placed clearly within the agencies registered premises.
 - b. to create a list of registered private employment agencies together with their registered signage's and posted on the National Employment authority's website and made accessible to the public.
 - c. Increase the validity period of the registration certificate issued under **Regulation 5** to 2 years from the current one year.
 - d. review the amount of fee the Private Recruitment Agencies pay to NEA for various categories of registrations as follows –
 - (i) Fees for an initial application for the registration of an agency dealing with recruitment for foreign labour market to Kshs four hundred thousand (400,000) from the current five hundred thousand (500,000) ;
 - (ii) Fees for an application for the renewal of registration of an agency dealing with recruitment for foreign labour market to Kshs three hundred thousand (300,000) from the current two hundred and fifty thousand (250,000);
 - (iii) Fees for an application for renewal of registration of an agency dealing with recruitment for local Kenyan labour market to Kshs One Hundred thousand (100,000) from the current seventy-five thousand (75,000); and
 - (iv) Fees for a replacement of a certificate of registration to ksh five thousand (5,000) from the current ten thousand (10,000)

- (iv) Reviews the Industrial Training Act Cap 237, (Amended) Act 2022 and submit to the National Assembly for consideration within three (3) months of adoption of this report to:
 - a. include Technical Vocational Educational Training Institutions (TVETs) to the current NITA training institutions and further develops guidelines for curriculum and training to ensure standardization of the training offered.
 - b. reduce the period for pre departure training to fourteen (14) days from the current twenty eight (28) days in order to enhance Kenya's labour market competitiveness.

2. Pre travel medical Screening

The Cabinet Secretary, Ministry of Labour and Social Protection;

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- c. Include in the Regulations, timelines within which application and renewal of licences by Students Recruitment Agencies shall be considered by the Commission for University Education.

MIN.NO. /DAAMW/2024/87

ADJOURNMENT

Having concluded the day's business, the meeting was adjourned at 2.10 p.m.

SIGNED..........DATE.....15/02/24.....

THE HON. HAIKA MIZIGHI, M.P
CHAIRPERSON, DIASPORA AFFAIRS AND MIGRANT WORKERS COMMITTEE