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THE SENATE

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THIRTEENTH PARLIAMENT | SECOND SESSION

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09/10/2023

STANDING COMMITTEE ON LABOUR AND SOCIAL
WELFARE

PARLIAMENT
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REPORT ON THE PETITION BY MR. KIMUTAI KIRUI AND
OTHER RESIDENTS OF UASIN GISHU COUNTY
CONCERNING ALLEGED FRAUD BY THE FIRST CHOICE
RECRUITMENT AND CONSULTANCY AGENCY LIMITED.

PAPERS LAID	
DATE	17/10/2023.
TABLED BY	Vice chair.
COMMITTEE	Labour.
CLERK AT THE TABLE	<i>[Signature]</i>

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

September, 2023

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ABBREVIATIONS AND ACRONYMS

Agency— First Choice Recruitment and Consultancy Agency Limited

ASMAK - Association of Skilled Migrant Agencies of Kenya

CS – Cabinet Secretary

DCI - Directorate of Criminal Investigations

FIFA - International Federation of Association Football

IG – Inspector General of Police

IPOA - Independent Policing Oversight Authority

KAPE - Kenya Association of Private Employment Agencies

KMLTTB – Kenya Medical Laboratory Technicians & Technologists Board

MOH – Ministry of Health

NEA - National Employment Authority

ODPP – Office of the Director of Public Prosecution

PRA - Private Recruitment Agencies

UK - United Kingdom

PRELIMINARIES

Establishment and Mandate of the Committee

The Senate Standing Committee on Labour & Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. The Committee is mandated to consider all matters related to - *Manpower and human resources planning, pension, gender, culture, and social welfare; youth, National Youth Service, children's welfare, national heritage, betting, lotteries, sports, public entertainment; public amenities, and recreation.*

The mandate of the Committee spans three ministries: the Ministry of Labour and Social Protection, Public Service, the Ministry of Gender and Affirmative Action, and the Ministry of Youth Affairs, Sports, and the Arts. The Committee also oversees the following state departments: the State Department of Culture and Heritage under the Ministry of Tourism, Wildlife, and Heritage, the State Department of Diaspora Affairs under the Ministry of Foreign and Diaspora Affairs, and the Pensions Department under the National Treasury.

Membership of the Committee

The Committee membership is as follows: -

- | | |
|--|---------------------------|
| (1) Sen. Julius Murgor Recha, MP | - Chairperson |
| (2) Sen. George Mungai Mbugua, MP | - Vice Chairperson |
| (3) Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| (4) Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| (5) Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| (6) Sen. Alexander Munyi Mundigi, MP | - Member |
| (7) Sen. Crystal Kegehi Asige, MP | - Member |
| (8) Sen. Miraj Abdullahi Abdulrahman, MP | - Member |
| (9) Sen. Gloria Orwoba, MP | - Member |

CHAIRPERSON'S FOREWORD

The Petition on alleged fraud by the First Choice Recruitment and Consultancy Agency Limited was presented to the Senate on Wednesday, 15th February, 2023 by the Hon. Speaker of the Senate and was committed to the Standing Committee on Labour and Social Welfare pursuant to standing order 238(1) of the Senate Standing Orders.

The petitioners, Mr. Kimutai Kirui (ID Number 11778369) and Mr. Chepses Arap Koech (ID Number 11364836), representing an estimated 5000 young people, were drawing the attention of the Senate to the matter regarding the Agency. The petitioners indicated that First Choice Recruitment and Consultancy Agency Ltd. based in Eldoret-

- i. Obtained money from an estimated five thousand (5,000) youth to facilitate their placement for jobs and studies abroad during the period before the start of the 2022 World Cup;
- ii. The Agency, however, failed to facilitate the said jobs and studies placement, leaving the youth and their families vulnerable and desperate with the initial hopes of securing employment and study placement dwindling;
- iii. The Agency had influenced the efforts of the affected youth to seek redress through the relevant agencies, such as the police and the County Commissioner, hence making it difficult and unsuccessful and
- iv. The victims continue to face profiling, threats, intimidation, mocking, and ridicule, with some facing arrest without due process or charges leveled against them.

The petitioners, therefore, prayed that the Senate -

- i. intervenes in the matter and provides long-term solutions affecting the operations of the recruitment and consultancy agency; and
- ii. Further, the victims be reimbursed of their monies, and their travel documents and testimonials returned. The petitioners also pray that the Senate ascertain criminal liability and provide appropriate legal redress.

Before commencing its investigations, the Committee confirmed that the Uasin Gishu County Assembly processed a similar petition (in form, content, and petitioners). The Committee took note of the recommendations and noted that they were yet to be implemented. On 13th March 2023, the Committee resolved to engage the petitioners and management of the First Choice Recruitment and Consultancy Agency Limited, among other relevant stakeholders.

The Committee held over ten (10) sittings with different stakeholders and the Petitioners on various dates and received submissions on the petition. They include the lead petitioner, Mr. Kimutai Kirui (Human Rights Activist, Centre against Torture, Eldoret), Mr. Chepses ArapKoech (acting on behalf of the victims).

The Committee met various stakeholders including the Management of First Choice Recruitment and Consultancy Agency Limited, the Inspector General of Police, the Commissioner of Insurance, the Data Protection Commissioner, the Ministry of Labour and Social Protection, the National Employment Authority, the Ministry of Health and the local leaders from the area adversely mentioned in the Petition. The victims were present in all of these meetings.

The Committee also held a session with affected victims and their parents on the sidelines of the Biennial Devolution Conference in Uasin Gishu on Thursday, 17th August, 2023 at the Uasin Gishu County Assembly.

The Committee made the following observations and findings –

- i. THAT, the victims were disadvantaged as their source of funding towards the placements was through the sale of property and loans hence subjecting them to even greater risk of loss of livelihoods, broken relationships, accrued debts and ill health;
- ii. THAT, the involvement of prominent government officials and businessmen from Uasin Gishu County increased the credibility for the Agency and the recruitment process;
- iii. THAT, First Choice Recruitment and Consultancy Agency Ltd. failed to operate professionally and within the confines of the law provided in the Labour Institutions Act, 2007 and the regulations guiding the recruitment agencies;
- iv. THAT, the Director of the Agency, Ms. Judy Jepchirchir, continues to accompany government officials and engage in public functions relating to labour migration, despite confirmation by the Ministry of Labour and Social Protection that the Agency does not hold a valid operating license;
- v. THAT, the Agency continued advertising for placement which places the Ministry of Labour and Social Protection in disrepute;
- vi. THAT, despite the existence of legal framework to regulate and manage the foreign recruitment sub-sector and the existence of the National Employment Authority (NEA), rogue agencies continue to take advantage of gaps to the detriment of potential job seekers.

The Committee resolved to adopt the recommendations of the Uasin Gishu County Assembly on this petition and in response to the prayers of the Petitioners, recommends as follows–

Prayer (1) on intervention in the matter and provision of long-term solutions affecting the operations of the recruitment and consultancy agencies –

- i. The Board of the National Employment Authority be disbanded and reconstituted;
- ii. The Ministry of Labour and Social Protection and the National Employment Authority to issue a public notice in at least two local dailies with nationwide circulation directing First Choice Recruitment and Consultancy Agency Limited to cease its recruitment operations with immediate effect;
- iii. The Commission on Administrative Justice and Ethics and Anti-Corruption Commission (EACC) investigate the involvement of state and public officers with regard to First Choice Recruitment and Consultancy Agency Limited and report to the Senate within three months upon tabling of this report; and
- iv. The First Choice Recruitment and Consultancy Agency Limited and its associated agencies to cease any further operations for a period of not less than five (5) years under close monitoring by the DCI.

Prayer No. (2) on reimbursement to the victims, return of their travel documents and testimonials returned, ascertaining criminal liability and provision of appropriate legal redress –

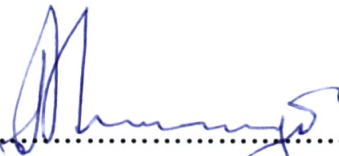
- i. First Choice Recruitment and Consultancy Agency Limited refunds all the petitioners through bankers cheques' only within one month of tabling this report;
- ii. The Assets Recovery Agency repossesses the properties owned by First Choice Recruitment and Consultancy Agency Limited, Ms. Judy Jepchirchir and Ms. Faith Wariga Gichuhi in the event that they do not refund all the monies owed to the petitioners and use the funds to refund the petitioners;
- iii. The bank accounts of the First Choice Recruitment and Consultancy Agency Limited, Ms. Judy Jepchirchir and Ms. Faith Wariga Gichuhi be frozen until the monies owed to the victims are fully recovered;
- iv. Ms. Judy Jepchirchir, Ms. Faith Wariga Gichuhi and other directors of the Agency be barred from registering or operating any other recruitment agency;
- v. The Office of the Director of Public Prosecutions and the Office of the Inspector General finalize the investigations on the possible illegalities by the Agency and report to the Senate within three months of tabling the report.

The Committee submits the report pursuant to section 5(3) of the Petition to Parliament Act and Standing Order 232 (2) of the Senate Standing Orders.

The Committee extends its appreciation to parties who volunteered submissions and contributions to the resolution of this matter. I also wish to express my appreciation to my fellow Senators for their contributions on this matter.

The Committee thanks the Office of the Speaker of the Senate and the Clerk of the Senate for the support extended to the committee in the execution of its mandate.

It is now my pleasant duty pursuant to Standing Order 232 (2) to table this report of the Standing Committee on Labour and Social Welfare on the petition by Mr. Kimutai Kirui and other residents of Uasin Gishu County concerning alleged fraud by the First Choice Recruitment and Consultancy Agency Limited.

Signature.......... Date. 2nd September, 2023

CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP.
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

CHAPTER 1: INTRODUCTION

1.1 THE PETITION

1. The Petition on alleged fraud by the First Choice Recruitment and Consultancy Agency Ltd. was presented to the Senate on 15th February, 2023 by the Hon. Speaker of the Senate. The petitioners, Mr. Kimutai Kirui (ID Number 11778369) and Mr. Chepses Arap Koech (ID Number 11364836), (lead petitioners) representing an estimated 5000 young people, were drawing the attention of the Senate to the matter regarding the Agency. The petitioners and victims consider the action of the Agency as a scam.
2. According to the petitioners, First Choice Recruitment and Consultancy Agency Ltd. based in Eldoret-
 - i. Obtained money from an estimated five thousand (5,000) youth to facilitate their placement for jobs and studies abroad during the period before the start of the 2022 World Cup;
 - ii. Failed to facilitate the said jobs and studies placement, leaving the youth and their families vulnerable and desperate with the initial hopes of securing employment and study placement dwindling;
 - iii. Influenced the efforts of the affected youth to seek redress through the relevant agencies, such as the police and the County Commissioner, hence making it difficult and unsuccessful; and
 - iv. The victims continue to face profiling, threats, intimidation, mocking, and ridicule, with some facing arrest without due process or charges leveled against them.
3. The petitioners, therefore, prayed that the Senate -
 - i. intervenes in the matter and provides long-term solutions affecting the operations of the recruitment and consultancy Agency; and
 - ii. Further, the victims be reimbursed of their monies, and their travel documents and testimonials returned. The petitioners also pray that the Senate ascertain criminal liability and provide appropriate legal redress.

1.2 BACKGROUND

4. This section provides a brief background of the First Choice Recruitment and Consultancy Agency Limited for an in-depth understanding of its services and operations. The section also provides the underpinning legal frameworks, hence setting the context of the petition. The gist of the petition is regarding

regulating recruitment agencies and how such agencies undertake their functions. Some of the relevant laws include the following-

5. *The Employment Act 2007*; the issues relate to employment and recruitment and hence are within the purview of the aforementioned legal framework. Further, Section 83-86 provides for how Foreign Contracts of Service are dealt with, stating that all contracts will be attested by a labor officer in Ministry headquarters and that the contracts must meet the requirements of ensuring that there is no fraud, coercion or undue influence with a probable security bond may be required of employers/firms of Ksh 500,000.
6. *The National Employment Authority Act of 2016* establishes the National Employment Authority (NEA) and provides for a comprehensive institutional framework for employment management; to enhance employment promotion interventions, enhance access to employment for youth, minorities and marginalized groups and connected purposes; Section 8 of the Act provides for the Functions of the Authority, which include the following relevant to matters in the petition- advice on the formulation of employment policies and strategies for national and County governments; monitoring the implementation of employment policies and programs; facilitating cooperation with the national government, the private sector, the informal sector and foreign governments and institutions to promote and increase access to employment; register persons seeking employment; maintain an integrated and up-to-date database of all persons seeking employment; and facilitate the implementation of national policies on employment among others. NEA is the legal entity charged with registering employment agencies on behalf of the Ministry of Labour.
7. *Sections 55 -60 of the Labour Institutions Act 2007* specify the regulations governing private employment agents in Kenya. Specifically, Part Two of the Labor Institutions (Private Employment Agencies) Regulations 2016 outlines the qualification for an agency to be registered as a private employment agency.
8. Some of the essential requirements include duly registered as a limited liability company under the Companies Act and in which at least one Kenyan citizen owns shares; the directors have attained at least an O-level certificate or its equivalent; the manager has at least a degree in a business-related field from a university recognized in Kenya and relevant experience of at least three years; minimum share capital of five million shillings; licensed to carry out business within the Country of intended operation.

9. Other requirements include a registered, fully equipped physical office covering not less than 225 square feet; a tax compliance certificate from the Kenya Revenue Authority; it has completed form ML/NEB/FE/SB/I set out in the First Schedule and executed a guarantee of one million five hundred thousand shillings with a reputable bank or insurance agency in Kenya, to be used for repatriation, paying wages and other entitlements in the event of default by the agent or the employer; all Directors possess valid Police Clearance Certificates from the Directorate of Criminal Investigations must be renewed after every twelve months from the date of issuance; is a member of an association of private employment agencies recognized by the Director; and it commits to observe the provisions of the existing code of conduct for recruitment agencies.
10. There are two leading associations to which private recruitment agencies can be aligned, depending on their work jurisdiction. These are the Kenya Association of Private Employment Agencies (KAPEA) and the Association of Skilled Migrant Agencies of Kenya (ASMAK).

1.2.1 About First Choice Recruitment and Consultancy Agency Limited¹

11. First Choice Recruitment and Consultancy Agency Limited is a human resource management agency specializing in talent identification, assessment, and management, focusing on international jobs. The Agency offers the following services:
 - i. Skills assessment to determine employee suitability for placement by assessing competencies and skills;
 - ii. Recruitment through offering end-to-end recruitment services to ensure talent-to-skill match for both skilled and unskilled workers;
 - iii. Training and development: offering capacity building training to corporates and enhancing employee performance; and
 - iv. Performance Evaluation: offering employee evaluation tools to corporate clients.
12. Ms. Judy Jepchirchir heads the Agency as Director. The Agency's operations commenced in 2019 under Jechri Enterprises Limited, licensed by the National Employment Authority, NEA/FE&LE/009.

¹ Source: submission to the Committee by First Choice Recruitment and Consultancy on the 27th April 2023

13. Under Jechri Enterprises Limited, the Agency secured contracts with Qatar International Manpower Group for Al Zaeem Security Services, Hadico Trading Contracting Company, Doha Security Services, and Leader Projects and Development Company.

14. In 2020, First Choice Recruitment and Consultancy Agency Ltd. was registered. However, due to the Covid pandemic, the Agency did not receive demands for placement. In 2021, the company made placements for the following firms: -

- i. First Select for Human Resources and Services- G4S Security and Carmel Group;
- ii. Qatar International Manpower and Recruitment Agency – TriConstruct W.L.L, Professional Security Services, OTS Cleaning services, USM Cleaning, Vera Cleaning, Wisteria Cleaners, and Cleans for you;
- iii. Mahad Manpower COWLL – Amwaj Catering Services, Woqood Petrol Station, Al Saraiya Security Services, Ezdan Hotel and Hospitality and Living Adventure;
- iv. Friends Manpower Recruitment – Optimize Security, Aamal Services, Mezzan Security Services, and Qatar Star Services (World Cup 2022); and
- v. Aletqan Manpower – European Security Services.

15. The Agency placed several candidates in 2021 and 2022 and estimates that at least 7000 Kenyans have been placed abroad.

1.2.2 Placement of Candidates

16. This section outlines how First Choice Recruitment and Consultancy Agency Limited undertakes candidate placement-

- i. Registration of potential candidates. Registration entails filing a registration form (with terms and conditions), signing the passport consent form and cancellation forms;
- ii. Registration also involves payment of registration fees amounting to Ksh 5,000 and Ksh 5,000 towards medical assessments (non-refundable);
- iii. Upon registration, the job seeker is informed of the available opportunities suitable for their placement;
- iv. Upon registration, the job seeker converts into a 'candidate' and must undertake specific medical tests to ascertain their medical fitness.
- v. Submission of relevant documents by the candidates. Candidates submit the following documents during processing and placement: passport, academic certificates, police clearance certificates, recommendation letters from

previous employers, medical report certificate, passport size and full photo of the candidate, contact details, and details showing the next of kin.

- vi. Scheduling of interviews
- vii. E- visa application
- viii. Placement and Deployments

1.3 PROCESSING THE PETITION

17. The Senate deliberated on the petition concerning alleged fraud by the First Choice Recruitment and Consultancy Agency Limited on 15th February 2023, and according to Standing Order 238(1), the petition was committed to the Standing Committee on Labour and Social Welfare. In this regard, the Committee is to respond to the petitioner within 60 days by way of a report addressed to the petitioner and laid on the Table of the Senate in line with Standing Order 238(2). During the deliberations, the Senate noted the increasing number of incidents where vulnerable youth remain victims of unregistered and unscrupulous recruitment agencies.
18. The Senate also observed that the recruitment agencies are taking advantage of the high unemployment rates among the youth in the Country and their desire to pursue studies or jobs abroad to fleece them of their financial resources.
19. The Senate, therefore, opined that the relevant Committee provides specific remedial measures to address this challenge upon engaging the petitioners and the relevant stakeholders.
20. On 14th March. 2023, the Committee resolved to engage the petitioners and management of the First Choice Recruitment and Consultancy Agency Ltd, among other stakeholders, on various dates in April and May 2023. In processing the petition, the Committee confirmed that the Uasin Gishu County Assembly processed a similar petition (in form, content, and petitioners).
21. Further, THAT-
 - i. The County Assembly of Uasin Gishu received a similar petition on First Choice Recruitment and Consultancy Agency on 23rd November, 2022, processed through the relevant structures of the Assembly and according to Standing Order No. 213(1);
 - ii. The Adhoc Committee, which conducted the inquiry on the matter, prepared a report for tabling in the Assembly on 28th February 2023, and the report was adopted on 1st March 2023; and
 - iii. The Petitioners, on 2nd March 2023, received a copy of the report from the Assembly.

22. The Committee took note of the recommendations of the report as highlighted here below-
- i. The review of the National Employment Act 2016 and its regulations to provide for stricter penalties for unscrupulous agencies;
 - ii. Further investigation on First Choice Recruitment and Consultancy Agency Ltd. and Ms. Judy Jepchirchir by DCI and other relevant agencies to determine culpability, including the allegation of obtaining monies through pretense, extortions, and issuances of bad cheques;
 - iii. The revoking of operating licensing for First Choice Recruitment and Consultancy Agency Ltd. if found culpable and other agencies existing without meeting the requisite requirements;
 - iv. An investigation by DCI and other investigating agencies on allegations of threats and intimidation and provide safety and protection for the victims;
 - v. The Management of First Choice Recruitment and Consultancy Agency Ltd. to reimburse monies received from victims, including processing fees and other incidentals including the documents in their possession that belong to the victims; and
 - vi. In addition to investigating the workings of the consultancy agency, the County Health Department to investigate the Lab technician to ascertain his credentials and the legality of the facility in offering health tests.
23. The report on the petition on First Choice Recruitment and Consultancy Agency Ltd. consists of four sections. Chapter one provides the background and introduces the matter under investigation, giving clarity on the legal framework grounding the regulation of recruitment agencies. Chapter two summarizes the type and nature of the Committee's stakeholder engagements and the specific person(s) from whom the Committee received submissions. Chapter three elaborates on the key issues underpinning the petition with evidence from the victims, the Agency, and other government agencies. The report concludes with Committee observations and recommendations.

CHAPTER 2: CONDUCT AND PROCEEDINGS OF THE COMMITTEE

24. This section of the report summarizes the Committee's engagement with petitioners and other stakeholders relevant to the matters brought forward in the petition. In all meetings, the common denominator was the petitioners, whose interaction with other stakeholders allowed the issue to be addressed conclusively.
25. The Committee held several sittings with different stakeholders on various dates and received submissions on the petition. The first meeting comprised the petitioners Mr. Kimutai Kirui (Human Rights Activist, Centre against Torture, Eldoret) and Mr. Chepses Arap Koech (acting on behalf of the victims). A few affected victims accompanied the two. They are Mr. Lawrence Mulwa Nzuki, ID Number 32170582, 28 years; Mr. Samwel Boiro; Mr. Michael Cheruiyot Yego (30 years and a graduate with a Diploma in Telecommunication Engineering); Mr. Koech; Mr. Kelvin Kipngetich; Mr. Collins Kiplagat Kiptoo and Ms. Pauline Ambaka, ID Number 27719852. The meeting was on 13th March, 2023 in Parliament Buildings. During the meeting, the victims narrated to the Committee the ordeal they had undergone since early 2022 when they first enlisted with First Choice Recruitment and Consultancy Agency Ltd. The petitioners and victims also reiterated the prayers to the Committee.
26. The petitioners and, by extension, the victims highlighted that the Agency advertised its services through social and mainstream media, including Citizen TV. Further, the government and elected leaders, including but not limited to County government officials like the then Governor of Uasin Gishu County, H.E. Jackson Mandago and the then Cabinet Secretary for Labour, Mr. Simon Chelugui, encouraged residents of Uasin Gishu to enlist with the Agency for facilitation towards the goal. In this respect, the Committee noted that the affected victims spread across neighbouring Trans Nzoia, Kakamega, Elgeyo Marakwet, Nandi, and Bomet, among other counties.
27. The victims also explained the state of affairs when the Agency processed the foreign jobs and education placements to Dubai and Poland for over one thousand (1,000) candidates. The Committee also heard about the incidents that followed the failed attempt by the Agency to enlist the job seekers and the resulting conflicts between the Agency and the applicants, including the financial implication of the unsuccessful recruitment on those seeking jobs and their families; the numerous gaps and 'red flags' shrouding the whole recruitment process; alleged abuse and misuse of powers by state agencies like including National Police in Eldoret, and intimidation, threats and blackmail by

the individuals within the Agency and institutions working in cohort with the Agency.

28. The Committee also held a sitting with the management of First Choice Recruitment and Consultancy Agency Ltd. The meeting was held on Thursday, 27th April 2023 am in Parliament Buildings. The management responded to and further clarified some of the issues raised by the petitioners relating to the following-
- i. The compliance of the Agency to the law in terms of registration and existing code of conduct;
 - ii. The state of recruitment and the two clusters: The World Cup Dubai cluster and Poland study /work cluster;
 - iii. Alleged fake travel insurance certificate by Pioneer Insurance Company procured on behalf of the victims by the Agency;
 - iv. Inconsistencies in receipts of the monies received (lack of agency logo, non-official);
 - v. Misuse of state organs like the National Police (Eldoret), DCI (Eldoret), and other county officials, including using threats, intimidation and blackmail to create fear; and
 - vi. The Agency is licensed to provide health checks before international recruitment.
29. In addition to the meeting on 27th April, 2023, the Committee also held follow-up meetings with the director of First Choice Recruitment and Consultancy Agency Limited, Ms. Judy Jepchirchir, on 27th April and 10th August 2023. These meetings superseded other sessions where the Director failed to appear on 22nd June, 31st July and 17th August, 2023.
30. During the meeting on 10th August, 2023, the Committee received a status report on the progress of refunds to the victims of the Agency which the Committee analyzed. The analysis is reported in Chapter Three of this report.
31. The Committee met with the Commissioner of Insurance on 24th May, 2023 to deliberate on the allegations by petitioners that First Choice Agency issued a fake insurance certificate. The Commissioner offered to present a comprehensive report on the matter.
32. The Committee also met with the Inspector General National Police Service (IG-NPS) on Thursday, 8th June, 2023 at Parliament Buildings. The IG shared the progress report on the investigation regarding First Choice Agency and the allegations raised by petitioners, including the laxity of police officers in Eldoret to investigate their concerns. The investigations commenced on 14th

March at the CCIO officers in Uasin Gishu County. The investigators received evidence from Mr. Ngetich, program manager of the Centre for Human Rights and Democracy based in Eldoret, 290 victims of First Choice from Uasin Gishu, Nandi, Elgeyo Marakwet, Bomet, Kericho and Transzoia counties.

33. The Committee received the Ministry of Health's submission. The submission provided clarity on the issues related to the registration and licensing of the laboratory operated by First Choice and Consultancy Agency Ltd, the competency of the laboratory superintendent and the laboratory technicians and the concerns related to the capacity of the Agency to manage health data. In providing clarity on health data management, the CS informed the Committee that the Ministry is collaborating with the Office of the Data Commissioner to ensure that players in the health ecosystem obtain appropriate registration as data processors and controllers in line with the Data Protection Act 2019.
34. To further streamline e-health and safeguard and protect patients' privacy, the Committee heard that the finalization of the Kenya Health Data Governance Framework and the Digital Health Bill under validation would address these concerns. Specifically, the latter provides a legal framework for e-health services, telemedicine, and other digital-related health services including establishing integrated and comprehensive national health information systems, including guidance on medical tourism and e-health waste management.
35. During the meeting with the petitioners, the petitioners adversely mentioned the former Governor and current Senator of Uasin Gishu County, Honorable Senator Jackson Mandago MP, and the former Cabinet Secretary Ministry of Labour and Social Protection and current CS for Co-operatives and Micro and Small Enterprise, Hon. Simon Chelugui and renowned businessman Mr. David Lagat who is based in Uasin Gishu County. According to the petitioners, these key renowned businesspersons, political leaders and government officials worked closely and covertly to advertise the Agency's work and services. In this context, the Committee sought further audience with the three to offer additional information and clarity. Honorable Senator Jackson Mandago and Hon. Simon Chelugui appeared before the Committee on 22 June 2023 at the Parliament Buildings.
36. The Cabinet Secretary, Ministry of Labour and Social Protection, Hon. Florence Bore appeared before the Committee on 31st July, 2028. The CS led a team of other Ministry officials, including the Ag. Director General, NEA, Ms. Edith Okoki and Mr. Festus Mutuse of NEA. Also present in the meeting were the petitioners led by the lead petitioner, Mr. Kimutai Kirui, Advocates representing businessman Mr. David Langat, who had been mentioned

adversely by the petitioners, Mr. James Oduol Ochieng and Mary Sheila Oduor. Others present were officials from the Office of the Data Protection Commissioner (ODPC) led by the Data Commissioner Ms. Immaculate Kassait, Deputy Data Commissioner Ms. Rose Masero and Mr. Oscar Otieno. In her submission, the CS clarified the role of private employment agencies in labor migration management, their licensing, registration, and cancellation, and the existing inter-ministerial vetting committee. The CS also affirmed the policy and legislative frameworks underpinning the petition and the concerns the petitioners and the Committee raised.

37. On the sidelines of the 1st Biennial Devolution Conference in Uasin Gishu between 15th and 19th August 2023, the Committee held a session with victims of First Choice (including affected parents) on 17th August, 2023 at the Uasin Gishu County Assembly. This meeting was a culmination of a series of meetings with victims of the Agency who, for the duration of the Committee investigations on the matter, had been unable to travel to Parliament buildings in Nairobi. The victims' parents explained to the Committee how they incurred losses through selling assets, including land, motorcycles and domestic animals, to fund their children through the program offered by the Agency.

38. The Committee held its last meeting on 30th August with the petitioners and the management of First Choice Recruitment and Consultancy Agency Limited. The Chairperson of the Committee informed the Director of the Agency and her advocate, that the Committee was in receipt of two (2) letters dated 21st August, 2023 and 23rd August, 2023, which the Committee found to be in high disregard to the Committee and condescending. The Director through her advocate was asked to withdraw and apologise so as to be heard by the Committee. The Director declined to withdraw and apologize and was subsequently asked to leave the meeting. The meeting however went on. The lead petitioner informed the Committee that the Agency had not paid the victims as the Director had alleged in the voluminous documents she had tabled to the Committee in previous meetings. Further, Ms. Nancy Mibei a victim informed the Committee that, in 2017, Ms. Judy Jepchirchir operated an agency called All World Migration, which she and over 200 other victims paid Ksh. 800,000 each to go and work in Australia which never materialized.

CHAPTER 3: EMERGING THEMES FROM THE SUBMISSIONS

39. This chapter synthesizes the submissions relating to the petition. While the petition focuses on cases arising from the failed deployment of some candidates to Qatar for short-term employment in 2022, the issues encompass other related themes as described in this section.

3.1 DESPERATION AND EXPLOITATION OF UNEMPLOYED YOUTHS AND THEIR FAMILIES

40. The unemployment rate in Kenya stands at 5.6 percent of the total labor force, with those between 25 and 35 years bearing the huge brunt². The submission by the victims of the First Choice Recruitment and Consultancy Agency Ltd. expresses the level and extent of vulnerability of the youth, given the circumstances they find themselves in due to unemployment and underemployment.

41. The submissions by the victims of the Agency also reveals the extent of risks taken by these young people in search of employment abroad, some of which have resulted in negative consequences like the loss of property, income, livelihoods, and even affected relationships among family members and friends.

42. The Committee noted that most victims are from humble backgrounds and between 19 and 30 years old. The victims' education level was diverse, but those that the Committee engaged possessed basic education training, Diploma courses or undergraduate degrees from reputable universities in Kenya.

43. The petitioners informed the Committee that the Agency required prior payment for the services to process the job placements in Qatar and Poland, and this varied from one person to the next. Further, the majority of them did not possess ready finances. Therefore, they arranged to pay the requested monies by selling property, borrowing and resigning from work to recoup the loss once they secured employment.

44. The Committee learnt of the following cases -

- i. Mr. Kelvin Kipngetich, 22 years from Lessos, Kaplelach village, worked as a casual laborer in the construction industry during high school and had some savings. Kelvin paid Ksh. 40,400 to secure a vacancy as a

² www.data.worldbank.org

- security guard in Qatar. He not only paid his share but he also spent a similar amount to book a place for his brother.
- ii. Mr. Sammy Boiro, involved in the motorcycle taxi hauling business (bodaboda) in Eldoret, was expected to work in Qatar on a six-month contract, earning up to Ksh 170,000 monthly. As a result, he sold his motorcycle at Ksh 60,000 and paid the Agency Ksh 40,400. Further, he influenced his parents to sell a piece of land to secure a slot for the sister at Ksh 100,000. He not only persuaded his parents on behalf of the sister, but in April 2022, he convinced at least eight (8) of his neighbors to get into the scheme. According to Sammy, the family paid a total of Ksh 80,800. This scenario affected the relationship between himself and the neighbor he persuaded, as they view him as insincere and a con.
 - iii. Mr. Michael Cheruiyot Yego, 30 years old, who graduated with a Diploma in Telecommunication Engineering and an employee of Tumaini Innovation Centre, was anticipating being placed for a contract job in Qatar during the World Cup. Mr. Cheruiyot informed the Committee that he quit his job in preparation for deployment to Qatar in August 2022, sold a motorbike at Ksh 50,000, a cupboard at Ksh 10,000 and spent his savings worth Ksh. 60,000 to secure a position for himself and his wife with the Agency at the cost of Ksh. 80,800. According to him, this did not happen, so he lost everything.
 - iv. Mr. Collins Kiptoo, aged 28 years from Uasin Gishu, a graduate of the University of Eldoret with an Environmental Science degree in 2018, informed the Committee that the decision to engage with the Agency led him to dispose of his business (a barber shop) for Ksh. 170,000 anticipating better returns. Mr. Kiptoo also informed the Committee that upon visiting the Agency at their City Plaza offices in Eldoret in early 2022, he decided to pursue a two-year contract job in Qatar with a salary of Ksh.100,000 per month. He paid Ksh. 174,900 to secure the placing on 12th April, 2022, but a receipt of Ksh. 160,000 was issued. However, this opportunity was not only forthcoming, but according to Mr. Kiptoo, he learned that the two-year contract was no longer available upon payment. As such, he was interviewed for the position of Environmental Landscaper on 5th July, 2022 and earned a salary of Ksh 33,000. The interview was on 27th June, 2022, but nothing has been forthcoming.
 - v. Mr. Lawrence Nzuki, 27 years from Eldoret town, Uasin Gishu County, from a single-parent family and a graduate of Kisii University informed the Committee that the Agency was known to him in August, 2021 after several inquiries. Upon consulting with the Agency and his mother, Mr. Nzuki settled for Poland, where the Agency convinced him of opportunities for both work and studies. He paid Ksh. 12,000 for medical assessment and upon confirmation of fitness, he further paid the

Agency Ksh. 88,000 as commitment fees to the process. According to him, through information from the Director, Ms. Judith Jepchirchir, the transaction changed from a job in Poland to pursuing education at Tampere University in Finland courtesy of the county government of Uasin Gishu. The Committee heard that Mr. Nzuki paid a further Ksh. 200,000 and Ksh. 112,000, totaling to Ksh. 412,000, to the Agency. The Committee also heard that upon payment of this total sum of monies, the transaction changed from pursuing a course in Finland to working in Poland, requiring him to pay a further Ksh. 25,000 as travel insurance, totaling to Ksh. 437,000. Mr. Nzuki reiterated the source of his money as a loan through the Family Bank of Kenya. The authenticity of the conditional acceptance letter to Tampere University could not be verified.

- vi. Mr. Koech, a high school graduate in 2021 and a casual laborer in Uasin Gishu, was promised an opportunity in Qatar during the upcoming World Cup with a monthly salary of Ksh 70,000. However, this did not happen despite payment of Ksh. 40,000 comprising Ksh. 5,000 for registration, Ksh. 5,000 for medical assessment, Ksh. 30,000 for commission and facilitation, Ksh. 300 as recommendation fees, and Ksh. 100 for preparing a Curriculum Vitae. Mr. Koech informed the Committee that he paid the monies on 12th May, 2022 and also paid for his brother. Ms. Pauline Ombaka's case, as narrated to the Committee, shows the negative consequences of the activities of the First Choice Agency. According to Ms. Ombaka, her interest and Choice were to proceed to Qatar in June 2022 for a six-month contract before the commencement of the World Cup. She informed the Committee that her payment of Ksh. 40,400 to the Agency was from resources borrowed from her husband through a loan of Ksh. 100,000. This was to cater for other expenses like agency fees, passport application, immunization (yellow fever), and additional costs and reimbursement upon arrival to Qatar. However, as this did not happen, the Committee heard that the husband resorted to physical and emotional abuse, deserted the family, leaving her behind with children to feed, a loan to repay, without any significant source of income and in a state of emotional distress.

45. The desperation among the youth and their families is also expressed in the scenarios and cases where parents of candidates deposited title deeds as surety as they failed to find quick buyers to finance their candidacy. A case is told of one Ms. Elizabeth Ndiema, whose destination was the UK as a nurse/caregiver in 2021 and a Ksh. 1.5 million demanded from her. In this regard, the family was to pay Ksh. 750,000 in cash and a loan of Ksh. 750,00 with a title deed deposited as surety. In this case, the title deed was deposited.

46. The lead petitioner reiterated the sorry state of affairs as "the involvement of government officials was the sole reason parents in and around Uasin Gishu trust the credibility of First Choice, leading to massive enrolment. Many lost money and property; some are paying the loan, others dropped out of college and resigned from jobs with high expectations to travel, and families have broken up due to First Choice."

3.2 THE 'RED FLAGS' AT THE FIRST CHOICE RECRUITMENT AND CONSULTING AGENCY LTD.

47. During the submissions by the stakeholders on the matter, the Committee noted several instances where the Agency's operations failed to meet the expectations of its clients, raising questions about its credibility and legitimacy.

48. Among the areas raising 'red flags' and areas of concern by the Committee include the following—

- (a) inability to provide clarity on the numbers around the Qatar placement and the discrepancies thereof;
- (b) lack of clarity in the mechanism for the candidates to exit the program;
- (c) lack of full disclosure by the Agency;
- (d) claims surrounding the registration of the Agency;
- (e) the mandate of the Agency as per its registration and licensing by NEA and whether it is a job placement agency or educational placement agency;
- (f) the credibility of the medical assessment center run by the Agency;
- (g) the issuance of fake travel insurance;
- (h) the issuance of non-branded agency receipts; and
- (i) the compulsory payment in cash.

3.3 DISCREPANCIES IN THE NUMBER OF CANDIDATES AND CREDIBILITY OF INFORMATION BY FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LTD.

49. The Committee heard that the Agency received demand letters from two agencies in Qatar (Mahad Manpower and Friends Manpower), with which First Choice had an initial contract for short-term recruitment jobs in Qatar following the upcoming World Cup in 2022. According to First Choice, the placements were to commence in June 2022 but were rescheduled to November 2022 by FIFA.

50. The Committee learned that the Agency registered 2011 candidates for the short-term FIFA World Cup jobs in 2022. Out of the 2011 candidates, the Agency deployed 827. The deployment of the 827 in various companies in Qatar was as follows: -

- i. 189 to the European Security Services
- ii. 303 to the Al Saraiya Security Services
- iii. 226 to the Living Adventure (Hospitality)
- iv. 51 to the Optimize Security
- v. 58 to Aamal cleaners

51. Further, out of the 827 candidates, 718 are already back in the country upon contract completion, while 109 are retained as their contracts are long-term two-year contracts.

52. The Committee could not verify the validity of the above claims of the 827 deployed to Qatar and the 109 retained on contract as the Agency could not authenticate these claims. Further, the Committee noted discrepancies in the submissions as the initial claim was that at least 827 candidates deployed for FIFA World Cup jobs were short-term contracts.

53. The Committee could not verify these statistics by the Agency because the Ministry of Labour (NEA), in its submission, noted that on 28th November 2022, in a meeting held at the Uasin Gishu County Commissioners Office, the Agency was directed to provide the following documents but failed to submit to date—

- (a) candidates' names;
- (b) ID numbers, contacts, and salaries of the candidates related to the Qatar program;
- (c) details of payment;
- (d) list of candidates who paid and were successful;
- (e) list of candidates who paid and were not successful;
- (f) list of partial payments;
- (g) list of reimbursement and amounts paid including evidence of payment;
- (h) list of candidates due for refund and the quantity;
- (i) list of the candidate with amended contracts and ready to proceed to Qatar among others.

54. The implication is that the government entity responsible for such crucial data is not privy to the same.

55. During its sitting with the management of the Agency, the Committee requested similar lists for verification. However, the Agency failed to submit verifiable and credible lists as requested, which should have comprised candidates' names, contacts, amounts reimbursed, signatures and contacts of the candidates for verification.

56. The Committee also noted discrepancies in the information by the Agency as the Ministry of Labour and Social Protection indicated that on 26th May 2022, the Agency wrote to NEA with a request to undertake massive recruitment for the FIFA World Cup as they awaited the job orders and that the Agency had requested for job orders from an employer in Qatar.
57. This statement implies that taking into consideration the preceding information, the Committee questions the Agency's claim that they had received demand letters from two agencies in Qatar (Mahad Manpower and Friends Manpower) following the upcoming World Cup in 2022 and that the placements were to commence in June 2022 but were rescheduled to November 2022 by FIFA.
58. According to the Ministry of Labour and Social Welfare, the request was not granted by NEA because, as of May 2022, the Agency lacked an operating license (expired on 8th January, 2022; however, the Agency renewed the license in May 2022 and was backdated to February 2022). Further, the Agency failed to submit the Job Orders.
59. It is worth noting that as of 26th May, 2022, the Agency had no valid operating license but renewed after that, and the license was dated 11th February, 2022 upon its issuance. Evidence (from petitioners) also shows that the Agency advertised and received money from potential job seekers as early as April, 2022. Yet, the Agency did not possess a valid license to operate then. Further, the Agency did not possess job orders for Qatar, contrary to the claims made by the management of the Agency.
60. The Committee heard from the Agency that at least 1,184 candidates were unsuccessful. The Agency reiterated that the primary reasons for the unsuccessful placement were delays in visa processing occasioned by large numbers of travelers to Qatar, delayed processing of passports and failure to meet the medical requirements. In this case, 396 have applied for refunds and have been refunded.
61. The Committee, however, could not verify these numbers as the Agency failed to provide a credible and verifiable list for authentication.
62. The Committee also heard that at least 358 have transferred to two-year programs in Qatar and other destinations. The Committee could also not verify the credibility of these figures and claims.
63. The Committee further noted that at least 328 unsuccessful candidates await their due dates to collect their refunds, while 102 remain undecided.

64. The Agency also claimed that at least 358 candidates had changed their status to other destinations, including Qatar (2-year contract), where at least 307 await deployment, with 51 in due course.
65. The Committee could not verify these claims even as the Ministry of Labour and Social Protection alluded to the fact that according to returns to NEA by the Agency, data shows that the Agency facilitated only 53 (fifty-three) migrant workers for employment in Qatar.
66. In his submission, the IG-NPS confirmed that preliminary investigations show that at least 290 witnesses paid Ksh. 40,000 (Ksh. 30,000 as commission and Ksh 10,000 as medical fees). However, none of the candidates secured employment opportunities in Qatar for the earlier promised positions.
67. The issue of the due date came under scrutiny by the Committee as the Committee heard that a candidate by the name of Lilian, upon the expiration of the due date (90 days), was assaulted and sexually molested by four men (allegedly staff of the Agency) in the presence of the Director of the Agency.
68. As much as the petitioners and victims reported the matter at the Langas Police Station and following several occasions of push and pull, the concerns are under investigation and filed before the Office of the Director of Public Prosecutions (DPP). However, the petitioners fear the Agency's undue influence may derail this progress.
69. In terms of the possible alternative options at the disposal of the unsuccessful candidates include the change to a two-year contract, travel to other destinations, including Poland, Dubai, Lithuania and Turkey, cancellation of the contract within the terms and conditions, or transfer the funds to other siblings or friends already in the program and awaiting deployment, the Committee was dissatisfied with the explanation.
70. The Committee opined that the Agency does not have a precise exit mechanism for unsuccessful candidates who can transfer funds to other siblings already in the programs, raising more questions.
71. Even as the Committee's concerns on the refunds and the due dates of the refunds persist, the Committee also noted the variances in payments to the Agency by the various candidates.

72. The Agency informed the Committee that a non-refundable fee of Ksh 5,000 for registration and Ksh. 5,000 for medical tests are advanced to the Agency for one to be considered as a candidate. Other costs include processing of travel insurance and Commissions.
73. The Committee noted that commissions vary depending on the opportunity advanced and the destination of choice. For instance, concerning commission for the process, the family of Elizabeth Ndiema paid Ksh. 650,000 for the UK placement in 2021(to date, she has failed to travel with no refund); Mr. Nzuki paid Ksh 400,000 for Poland; the short-term placement to Qatar cost Ksh 30,000.
74. The Agency could not provide a cost schedule showing each destination and how the commission per candidate is determined.

3.4 LACK OF FULL DISCLOSURE BY FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LTD. REGARDING THEIR ACTIVITIES TO THE REGULATORY AGENCY AND DURING THEIR ENGAGEMENT WITH CANDIDATES

75. The Committee heard that during the period of processing of the Qatar placement in 2022 and following an alarmist incident on social media regarding the Agency in September 2022, claiming that the Agency had failed to place several candidates successfully, the Agency faced security threats. The security situation necessitated the Agency to shift offices to a private office in Kenmosa Village and Greenwood Hotel (outside of Eldoret Town). The Agency relocated to its current offices on 1st December 2022 (in Eldoret Town, off Nairobi Road).
76. The Committee, however, noted the failure of the Agency to first communicate to all candidates on the change of dates of the World Cup from June to November, 2022 and what that meant in terms of their placements.
77. The Committee was also concerned about the failure of the Agency to communicate promptly to the candidates regarding the change of office address between September and December and instead sharing on 28th December, 2022 upon the completion of the World Cup. The Committee concluded that the anxiety by the candidates and their families may have resulted from the Agency's lack of communication and feedback regarding the progress in their placements. This working modality raises concerns about the credibility of the processes at the Agency.

78. While submitting to the Committee on the registration and licensing of the Agency, the Director indicated that the Agency commenced recruitment in 2019 and that as a Director, she utilized a friend's company by the name Jechri Enterprises Limited, licensed by NEA under NEA/FE&LE/009 to place candidates.
79. The Committee could not confirm these claims; however, it concerned the Committee that an agency acknowledged having placed candidates using the name and registration credential of a different agency.
80. Further, the Committee noticed that Jechri Enterprises Limited, operated in 2019, has its name coined from the current Director's surname (Jepchirchir). While all these remain mere speculation, it remains unanswered whether Jechri Enterprises and First Choice Recruitment and Consultancy Agency Ltd. are the same entity, with the latter having changed names over time.
81. The petitioners made similar assertions, arguing that "the agency *receives money from the candidates, then ends up operating on low profile working closely with NEA officials to register new outfits.*" According to the petitioners, Agency was previously registered as "All World Migration" and is currently morphing into "Royal Capital."
82. To this extent, the Committee expects NEA to clarify the legitimacy of the Agency and its registered status as of May, 2023. One of the victims informed the Committee during its last meeting on 30th August, 2023 that, in 2017 Judy Jepchirchir ran the All World Migration Agency where she collected from over 200 victims Ksh 800,000 each for jobs in Australia. The victims were never deployed as promised.
83. The Committee also heard that the Agency failed to disclose to KMLTTB in writing upon relocating its A&M Health laboratory from City Plaza along Nandi Street to Mobel Plaza along the same street. The implication of this oversight is suspending the practice license for the laboratory facility and the superintendent for violating set regulations. Further, it prompted a rapid, thorough inspection conducted on 9th June, 2023.
84. During the inspection, the Agency failed to disclose to KMLTTB that the Agency was referring candidates to Eldomage Medical Facility, prompting KMLTTB to conclude in their report that 'there were no testing referrals to another laboratory.' However, this conclusion contradicts the findings by the IG, who, in the preliminary report and findings, confirmed that the Agency

referred some of its candidates to Eldomage Medical Facility, which is not a registered entity by the KMLTTB.

85. The Ministry of Labour and Social Protection admitted during a meeting held on 28th November, 2022 at the Uasin Gishu County Commissioner's Office and in the presence of NEA and to date, that the Agency failed to provide documentation and details on candidates for the Qatar program including information on registered clients, amongst paid, those who didn't make it to Qatar among others. This claim indicates that both the Ministry and NEA, as regulators, are unaware of the activities of the Agency and that the latter is not reporting to NEA as required by the law.

3.5 THE STATUS OF REGISTRATION OF FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LTD.

86. The Ministry of Labour and Social Protection, through NEA and the Office of the IG, clarified the allegations on the state of registration of the First Choice Agency.

87. The Committee heard that the Agency applied for registration on 10th May, 2020 and was cleared by the inter-ministerial vetting committee on 9th December, 2020.

88. Records by NEA and Registrar of Companies show that NEA dully registered the Agency under the directorship of Ms. Judy Chepchirchir and Ms. Faith Wariga Gichuhi, whose physical address is City Plaza, Nandi Road, Uasin Gishu.

89. According to NEA, the Agency was issued with approvals to install satellite offices in Nairobi and Kericho on 18th May, 2021 and 27th October, 2021, respectively. The Agency was given a one-year license on 8th January, 2021 and renewed for another year on 11th February, 2022. The operating license expired as of 10th February, 2023 as the vetting Committee failed to renew the license as there are pending background security reports from the National Intelligence Service (NIS), a mandatory requirement for approval.

3.6 FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LIMITED: RECRUITMENT AGENCY OR EDUCATION PLACEMENT AGENCY

90. The Committee noted that the Agency had branded itself as a recruitment agency. As an agency engaging in skills assessment, recruitment, training and

development, and performance evaluation, its service aims to place candidates internationally in the available job markets.

91. While the preceding services do not provide a rationale for the Agency to engage in the placement of students for further studies, the Committee learned that this is taking place unabated under the watch of the regulatory Agency NEA.
92. Further, the Committee heard that the Agency continuously varies the contract of the candidates without due consent, mainly after payments to the candidates' disadvantage.
93. A case in point is Ms. Daisy Chepkurui, who in 2018 allegedly paid via Mpesa to account No. 0609644001 to secure a place in the United Kingdom (UK). The UK placement later shifted to Poland and finally to Qatar in 2022. In another case, Ms. Viona Otiti Ojuma was to pay Ksh 800,000. She opted out of the contract after her contract and destination changed from the UK to Poland and finally the UK. In the case of Mr. Lawrence Nzuki, his initial destination was Poland for work and opportunity for further studies, which failed to materialize, then changed to Finland with the help of Uasin Gishu County for studies at Tampere University in Finland. This option was not honored by the Agency, citing a misunderstanding on the part of the Agency, which led to an offer in Poland. The latest offer was unsuccessful after the Polish Embassy failed to issue a visa, citing fake travel insurance from the candidate.

3.7 THE ISSUANCE OF THE FAKE TRAVEL INSURANCE BY FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LIMITED

94. Mr. Lawrence Nzuki brought up the fake travel insurance issued to him by the Agency's Director on 18th July, 2022. According to him, the two documents, the work permit and travel insurance, were in preparation for the visa interview at the Polish Embassy on 20th July, 2023. However, the visa was not successful, including after the appeal. Further inquiry led him to ascertain the authenticity of the travel insurance at the Pioneer Insurance Company Offices at Zion Mall, Eldoret.
95. The Committee learned that the insurance company could not authenticate the document in Mr. Lawrence Nzuki's possession as a duplicate copy with the same policy number in the company possession showed 32 days and not 365 days.

96. In a rejoinder, the Agency denied the claims, informing the Committee that they are unaware of any foul play regarding the travel insurance as the Agency outsources such services to a Mr. Stephen (whom the Committee understands is well known to Agency and the Director).
97. Further, the Agency argued against claims of having any working relationship with Pioneer Insurance Company. However, the Committee found the explanation preposterous as the candidate, Mr. Nzuki, paid Ksh 25,000 to the Agency for the procurement of travel insurance on his behalf. Hence, the Agency is duty-bound to ensure all the legitimate services are undertaken professionally in the candidate's best interest.
98. Apart from possible fraud cases concerning travel insurance, the Committee heard and was concerned about the recurrent cases of bouncing cheques issued by the Agency in the guise of refunds to unsuccessful candidates. At the same time, the Agency denied any wrongdoing with arguments that the affected candidates presented the cheques for cashing before the due time. The Agency, however, failed to provide evidence to back this explanation and, to this day, refuses to take responsibility for the matter. Copies and images of the unpaid cheques were tabled to the committee by several victims to support the victim's allegations of bouncing cheques.

3.8 CASH PAYMENTS AND NON-OFFICIAL RECEIPTS ISSUED BY FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LIMITED

99. The Agency failed to explain to the Committee the different presentation of receipts issued to the candidates upon payments and why the payments were predominantly in cash. The allegations that the Agency received payments in cash from the victims were confirmed by the IG-NPS in the preliminary investigations.
100. Further, the Committee noted that the receipts issued to candidates lacked the Agency's letterhead but only contained the words "official receipt" with no official stamp for legitimacy or guaranteeing their authenticity. In this regard, the Committee decried the casual manner in which the Agency was operating and offering its services to potential job seekers. The Committee questioned the Agency's credibility and the legitimacy of its operations and sought to determine whether such actions were intentional.
101. The Committee, however, was informed that the office of the IG is yet to receive responses from the Interpol National Central Bureaus, Nairobi, regarding the authenticity of the invoices and agreements to ascertain the

existence of the said job opportunities in Qatar, including the bank details of the Agency within the republic of Kenya.

3.9 THE ISSUE OF PERSONAL DATA CONTROL AND MANAGEMENT BY FIRST CHOICE RECRUITMENT AND CONSULTANCY LIMITED

102. On the final concern raised by the petitioners regarding the in-house laboratory and its legality at the Agency, the Director told the Committee that, indeed, the Agency runs a registered laboratory under the Kenya Medical Laboratory Technicians and Technologists Board (Certificate no.4021) (Serial number 12844) as a private laboratory operating as a class C. The services provided by the laboratory include HIV test, Hepatitis B surface antigen, Hepatitis C virus (HCV) test, Random Blood Sugar (RBS) test, Blood Group and Rhesus factor, Salmonella Antigen Test, Chest X-ray, and Full Haemogram.
103. The Committee was concerned regarding whether the management of the Agency is aware of ethical considerations related to such sensitive personal data and health records. The Agency could not prove that it possesses a Data Protection Certificate. This position was reinforced by the Ministry of Health, reiterating the need for the Agency to show proof of having abided by the provisions relating to registering as a data controller and data processor and that the contract between the candidates and the Agency implies consent to collect their data notwithstanding. The ODPC also clarified that the Agency did not possess a data processor registration certificate.
104. The Committee heard that the Agency applied for the certificate under section 19 of the Data Protection Act and the Data Protection and Registration of Data Controllers and Data Processors) Regulations, 2021, for the first time in May, 2023. Further, the application has yet to be approved as the Agency failed to provide the requisite information.
105. This information includes complete disclosure relating to the personal and sensitive data it processes, including the data subjects affected, generic descriptions, and the purpose of the processing; a comprehensive list of safeguards put in place to ensure the confidentiality and integrity of personal data in its custody including the technical and organizational measures adopted in line with Section 41 of the Act; and turn over evidence by way of audited financial report or revenue statement supporting the turnover.
106. The Committee heard that failure to provide the above means that ODPC may not confirm or deny, whether the processing activities undertaken by the Agency are lawful or otherwise under the law.

107. On the concerns regarding the laboratory charged by the Agency to conduct medical tests on the potential candidates, the IG clarified that the preliminary investigation shows that diagnostic tests for candidates were undertaken within the Agency premises (City Plaza) and at Eldomage Diagnostic Centre situated at Zion Mall (for X-ray services).
108. Based on the Ministry of Health submissions, the Committee confirms that the Agency registered (2nd February, 2022) and was licensed (1st March, 2022) to operate a class 'C' standalone laboratory by the name First Choice Diagnostic Laboratory in Uasin Gishu County vide registration number G4750. This successful licensing and registration followed a successful application on 14th January 2022. Further, the laboratory superintendent (Ms. Sheila Chebotip Lagat of KMLTTB, Reg. No.A09421) and technician (Mr. Abednego Yego of KMLTTB, Reg.No.A012960) are duly registered and licensed under the KMLTTB for 2023. Further, that Class C registered laboratory can perform the following tests: full haemogram, Hepatitis B Surface Antigen, Hepatitis C Virus, Salmonella Antigen Test, VDRL, Urine analysis, pregnancy test, Blood slide for malaria parasites, Blood grouping, and HIV Test.
109. Further reports show that the In-house laboratory, First Choice Diagnostic Laboratory, changed the company name to A&M Health Laboratory via an application by Mr. Abednego Yego, HoD – clinical laboratory on 17th November, 2022 with the physical location at (City Plaza). A&M Health Laboratory renewed its license for 2023 on 27th February, 2023.
110. The Committee also heard that the Agency relocated its laboratory from City Plaza along Nandi Street to Mobel Plaza along the same street without informing the KMLTTB in writing. Actions that prompted the suspension of the practice license for both the laboratory facility and the superintendent for violating set regulations further prompted a rapid, thorough inspection conducted on 9th June, 2023. As a result of the impromptu inspection carried out by the KMLTTB, the A&M Health laboratory was closed for failing to meet the standards prescribed by the law. The Board argued that A&M laboratory failed to disclose its new physical location and that there were no testing referrals to another laboratory. The argument that the Agency did not refer candidates to other laboratories contradicts the findings by the IG, who affirmed that some of the candidates from the Agency were referred to Eldomage Medical Facility, which, according to the IG, is not registered by the KMLTTB and the Ministry or the Agency did not refer to the facility in their submissions.

111. The Committee was also informed that on 14th June 2023, the A&M Diagnostic Laboratory, through its Director, Ms. Judy Jepchirchir, requested a reinspection by the KMLLTB.
112. The Committee noted with concern that at the point of application for change of name, the technologist Mr. Abednego Yego, HoD, sent an application on behalf of the Director, particularly for a critical exercise as the change of name of a facility under her directorship.

3.10 THE REFUNDS ISSUED BY FIRST CHOICE AGENCY FOLLOWING THE COMMITTEE INVESTIGATIONS

113. Based on the submissions by the Agency on Tuesday, 10th August, 2023, and sampled follow-up with the recipients, the Committee noted that –
- a) the Agency has paid 448 candidates, comprising 384 candidates on the short-term program (mainly the Qatar World Cup program) and 64 candidates under the long-term agenda (where target countries include the UK, Poland, and Qatar). In terms of numbers, there is no clarity on the number of affected candidates (for both short-term and long-term programs); therefore, the 448 may not be the only expected refund and a reflection of the number of those affected³;
- b) Agency also paid at least 10 (the original petitioners/candidates). They include the following:-

No.	Names	P/P No. Or ID. No	Amount (Ksh)	Refund(Ksh)	Comments
1.	Mr. Nickson Kibet -	AK1114442	30,000	10,000	Less 20,000
2.	Ms. Dorothy Chepkurui	AK1130513	29,000	19,500	Less 10,000
3.	Mr. Sammy Boiro	AK1177186	40,000	20,000	less 20,000
4.	Ms. Viola Jemell	AK0823879	40,000	30,000	Less 10,000
5	Mr. Kelvin Kipkenetich	BK310946	40,000	20,000	Less 20,000
6.	Mr. Lawrence Cheruiyot	AK1049848	40,000	20,000	Less 20,000
7.	Mr. Enock Kiptoo Taurus	AK1196197	40,000	20,000	Less 20,000
8.	Mr. Pauline Ambaka	AK1074148	40,000	20,000	Less 20,000

³The petitioners alleged over 7,000 youth were duped into the program

9.	Mr. Alfred Kipruto	AK1211667	40,000	20,000	Less 20,000
10	Mr. Cheruyot Mike Yegon	A2585446	40,000	20,000	Less 20,000
11	Mr. Lawrence Nzuki	AK0553525	400,000	314,00	Not due ⁴
12	Mr. Collins Kiplagat kiptoo	AK0851164	10,000	-	Balance of 150,000 ⁵

Source: Submission by the Agency on 10th August, 2023

114. Payments towards the shorter programs range between Ksh. 5,000 and Ksh. 40,000. Additionally, refunds towards long-term programs vary between Ksh. 22,500 – Ksh. 400,000. However, the Committee could not determine how much different candidates paid to the Agency for the long-term programs; hence, it could not ascertain whether refunds had been paid in full.
115. Payment methods were predominantly by cheque through the following banks: M-pesa, Equity and DTB. (*Attached are the copies of cheques and cancellation forms for various candidates*).
116. Most candidates paid Ksh 40,000 to First Choice for the short-term programs; however, most refunds are less than the original amount, Ksh 20,000. This is despite evidence from the Agency showing that processing candidates for the Qatar placements entailed registration, which meant paying registration fees amounting to Ksh 5,000 and Ksh 5,000 towards medical assessments (non-refundable) and Ksh 30,000 comprising process fees.
117. Sampled follow-ups with the affected candidates show that payments were indeed received in cheques for a few candidates; however, the concern remains that the refunds are incomplete. Further, the candidates allege that the cheques are post-dated (staggered to October, 2023); hence, it is challenging to ascertain the funds' availability three months into the future. A case in point is Mr. Caleb Kipngetich, ID. No. 39737254 (Ksh 294,000) and his brother Mr. Collins Kiptoon, P/P no AK1071424 (Ksh 25,000) - / were refunded, and an additional cheque of Ksh 200,000 is due in October 2023.
118. The petitioners alleged that most of the victims have not been refunded their monies yet their names appear on the provided lists as already paid and that the list provided by the Agency cannot be verified.

⁴payment status not clear

⁵ payment status not clear

119. The Committee also noted that some of the petitioners were issued with bouncing cheques.

3.11 THE POLITICAL CLASS, BUSINESS PEOPLE AND FIRST CHOICE RECRUITMENT AND CONSULTANCY AGENCY LIMITED: CONFLICT OF INTEREST OR SERVICE TO THE PEOPLE

120. Part two of the Labour Institutions (Private Employment Agencies) Regulations 2016 outlines the qualification for an agency to be registered as a private employment agency, including the requirements of directorship. While the law provides for proxy directorship, it does not qualify them. The petition highlights concerns about the Agency's relationship with some appointed and elected leaders in Uasin Gishu County.
121. The question arises whether the Agency operates with proxy directors or patrons. Did the recruitment agency use the political class and mainstream media to lobby locals in Uasin Gishu and around the Country to enroll in the program, knowing full well that the program and the activities of the Agency are unlawful? The petitioners and victims of the Agency seem to arrive at that conclusion based on particular happenings during the entire process.
122. The Committee noted that in early 2022, at the height of the Agency's drive to recruit potential youth for jobs abroad, the Agency engaged in an aggressive advertisement in both social media and mainstream media. On one occasion, the Agency's Director, Mr. David Langat, used the appointed and elected leaders for publicity of the Agency. This is captured in a discussion moderated by Mr. John Wanyama. Present was a sitting county official, the then Governor of Uasin Gishu, HE—Jackson Mandago, the host, and then Cabinet Secretary, Labor, Mr. Chelugui, as the chief guest.
123. Several victims of First Choice expressed their concerns about how closely associated some elected and appointed leaders were with First Choice Agency. According to the petitioners, this relationship was a clear indicator of affirmation by elected and appointed leaders from the County on the Agency and its activities. According to Mr. Kevin Kipngetich, *"I paid my money to madam Judith Chepchirchir soon after I saw First Choice Agency launched by the County Government of Uasin Gishu. I rushed to their office on 12 May 2022. I was promised a security job on a short-term contract for the World Cup in Qatar. As such, I was asked to pay Ksh. 40,400 as security for the offer."*

124. Similar sentiments were expressed by Ms. Pauline Ambaka, also a victim of First Choice, having learned about the Agency through an advertisement by the Uasin Gishu County government where the officials were giving fliers of jobs overseas. She said, *"I also watched on Citizen TV through a program called 'Mwanamke Bomba.' Further, in 2021, at the TAC Center in Eldoret, there was a launch event in which our Sen. Mandago graced our Governor of Uasin Gishu then, Cabinet Secretary, Ministry of Labor, Hon. Simon Chelugui and First Choice Patron, Mr. David Langat (DL)."*
125. A possible conflict of interest by elected and appointed leaders is displayed in the submission by Mr. Sammy Boiro, who also claims that he was motivated and convinced that the Agency after its services were advertised by prominent county leaders, including the then Governor of Uasin Gishu and the Cabinet Secretary in the Ministry of Labor, Hon. Simon Chelugui. Mr. Michael Yego reinforces this position as he claims to have learned about the Agency in the same manner.
126. The petitioners summarize the involvement of elected and appointed government officials: *"Governors and county officials are the latest entrants in the recruitment agency business and are acting as launching pad and as hosts and marketers." The power behind these agencies is beyond ordinary people; even as we petitioned the county assembly and made recommendations, no action has been taken. Was it a waste of time?"*
127. Responding to the allegations while meeting the Committee on 22nd June 2023, Senator Mandango MP denied the allegations relating to any business relationship between him and the Agency. The Senator argued that his presence at the program's launch by the Agency was in his capacity as the Governor, and his view that the Agency's objective of securing job employment for the youth resonated with those of the County. In his own words, the Senator asserted, *"The only reason the petitioners are mentioning me is because of my presence at the launch of First Choice and my silence on the issue."* He justified his silence on the issue, indicating that the petitioners have never approached his office following the failed attempt to place the candidates, alleging that the petitioners have instead resorted to abusive language.
128. The Senator also negated claims that the County government conducted advertisements on behalf of the Agency. One of the victims and a petitioner, Mr. Lawrence Nzuki, alleged that upon his failure to secure a place in Poland, the Agency offered him an opportunity to Finland with the help of Uasin Gishu County for further studies at Tampere University in Finland as Ms. Judy Chepchirchir had informed him that the said offer was an initiative between the

Agency and the County government hence reinforcing his positivity on the offer.

129. The Committee could not verify these claims and counterclaims. However, the Committee noted that these were made while other pending concerns touching on Uasin Gishu County and related to student sponsorship to Finland courtesy of the County Government and date back to early 2022. The allegations regarding a possible close relationship between the Agency and Hon. Chelugui, Sen. Mandago and Mr. David Langat were refuted, with official records as filed by the Agency showing its bonafide directors are Ms. Judy Jepchirchir and Ms. Faith Wariga.
130. Mr. James Oduol the advocate representing businessman Mr. David Lagat defended his client by stating that he has no relation with First Choice and informed the Committee that he is not a director at the agency.
131. The Former Cabinet Secretary in the Ministry of Labour and Social Protection and currently the CS for the Ministry of Co-operatives and Micro and Small Enterprise, Hon. Simon Chelugui, informed the Committee that he attended the launch of the Agency on 15th May, 2021 on invitation by the Agency. Further, at that time, he was the CS for Labour and Social Protection, under which the Agency activities are domiciled. Hon Chelugui reiterated that he viewed the initiative as a welcome idea as the Agency operated in the Rift Valley region, unlike most agencies whose base is primarily significant cities and towns.
132. The Committee also heard that the CS, Hon. Simon Chelugui decided to attend the function as the Agency possessed a valid certificate of registration and the information from the Agency had secured several job orders from Qatar, among other countries. In essence, the CS denied the allegations by the victims of the Agency that he has a direct relation or vested interests with the Agency and the Director of the Agency.

3.12 MISUSE AND ABUSE OF STATE AGENCIES AND THE PUBLIC'S DIMINISHING CONFIDENCE IN PUBLIC INSTITUTIONS

133. Misuse and abuse of state agencies was a common theme among the petitioners and victims, each giving their experiences with the agencies charged with protecting them and their interests. These allegations and accusations against the state agencies resonated with several victims and their families.
134. The petitioners' and victims' lack of confidence in public institutions is evident following the investigations on the same matter by the County Assembly of Uasin Gishu.

135. The Committee noted that the Uasin Gishu County Assembly processed a similar petition on First Choice Recruitment and Consultancy Agency Ltd. on 23rd November, 2022. Further, the Adhoc Committee, which conducted the inquiry on the matter, prepared a report and tabled it in the County Assembly on 28th February, 2023 and was adopted by the County Assembly on 1st March, 2023. A copy of the report on the petition was shared with the petitioners on 2nd March, 2023.
136. The Committee notes the practical and actionable recommendations in the report directed to the various state agencies. However, the Committee was concerned about the lack of confidence shown by the petitioners and the victims in the institutions established by Constitution to protect their interests.
137. Additionally, several victims narrate their ordeal and qualify the events as intimidation, threats, frustration, conflict of interest, abuse of power, and deliberate inaction by state agencies. According to the petitioners and victims of the Agency, the state agencies like the Police at Langas, Eldoret, DCI Turbo West, County Commissioner, IPOA, ODPP, and the County Commander seem to have taken sides in the matter, hence failed to take action.
138. The lead petitioners informed the Committee regarding the challenges they faced since the issue of the Agency was brought to their attention by the victims. According to them, the disgruntled victims were denied their constitutional right to picket or report the matter to the police; some of the victims were asked to report the case in Nairobi, yet the incident happened within the jurisdiction of Eldoret town.
139. Further, the petitioner alleges that there were direct instructions that the affected candidates' formal complaints against the Agency should not be recorded. They argued that the affected youth attempting to pursue the matter to an amicable conclusion face intimidation, threats, and some fear for their lives.
140. A case in point is one Mr. Nzuki who, upon receiving fake travel insurance from the Director of the Agency and an assault case against Mr. Matthew Kembo (Personal Assistant to the Director of the Agency), OB Number E2058/2 and despite the reports not action has been taken, or the cases are pending in court.
141. Meanwhile, Mr. Nzuki alleges that the Agency's Director misuses the office of DCIO in Eldoret, curtailing victims' rights through threats. Mr. Nzuki further narrated to the Committee of how he was forced to sign a cancellation form at

central police station under the watch of a police officer who was under the instructions of the First Choice director.

142. Mr. Sammy Boiro, having sold his motorbike and persuaded his parents to support the initiative to travel to Qatar by selling a piece of land and nothing to show, his quest for a refund landed him in further trouble. The state agencies conspired and formulated non-existent charges against him as cybercrime. He was later released on a cash bail of Ksh 20,000. Mr. Boiro told the committee that he has a case in case where he was accused by the Agency's director of some fictitious charges.
143. However, the accusations of laxity and compromise against the Office of the IG – NPS were refuted, with the latter informing the Committee that NPS, through the DCI headquarters, is seized of the matter. The allegations regarding the financial fraud (obtained by pretense) are ongoing, and upon its conclusion, those found culpable face the law. Specifically, the Committee heard that –
 - i. The office of the IG took up the matter on 14th March, 2023 following alleged claims of fraud on the Agency. However, it remains unclear whether the IG was also acting on the recommendations by the County of Assembly of Uasin Gishu on the same matter;
 - ii. Preliminary findings show that indeed, as early as April 2022, the Agency held several road shows and advertisements in local media within the County of Uaisin Gishu, purporting to offer job placement in the upcoming World Cup Games to be held in Qutar later in the year;
 - iii. Interested candidates paid between Ksh 30,000 and Ksh 40,000 in cash as commission and medical fees before the commencement of the process;
 - iv. Medical examinations were held at the Eldomage Diagnostic Centre located at Zion Mall;
 - v. Most applicants failed to secure positions during the World Cup and opted out of the contract.
 - vi. In contrast, others decided to further engage the Agency for alternative replacement in Poland and Canada. In other cases, additional funding is demanded.
144. The submission by the IG-NPS dated 10th July, 2023 did not include the expected interview on 11th July with the Director of the Agency, Interpol statement on the invoices and agreement for the purported job orders by the Agency and state of the payments made to the Agency by the victims.
145. The Committee notes that the preliminary investigation report by the Director DCI dated 14th July 2023 shows that investigations are ongoing.

146. The Committee also heard from the CS, Labor and Social Protection, that the matter is under scrutiny by the security agencies as the issues raised are criminal. According to the CS, this follows a scene during the presidential visit to Uasin Gishu on 25th December, 2022, where a group of youth carrying placards walked to the presidential dais demanding to be paid by the Agency.
147. The Committee observed mainstream media reports showed the Director of the Agency, Ms. Judy Jepchirchir, in the company of CS Foreign and Diaspora Affairs, Hon. Alfred Mutua and CS Hon. Florence Bore, during the launch of the '*Kazi Majuu Platform*' on 30th June, 2023'.
148. The objective of the platform is to bypass rogue agencies. Further, the CS, Labour and Social Welfare was reported saying, '*We have a champion, Judy Jepchirchir, who has been able to send over 10,000 people overseas.*' However, this contradicted her remarks a week prior, in her submission to the Committee, where in her conclusion, she indicated that 'issues raised regarding First Choice Recruitment and Consultancy Agency Ltd. are criminal and will be investigated as such.'
149. The CS, however, explained that the function was a public activity and hence not in her place to deter any person, particularly entities dealing with the labour migration, from attending, a position the Committee found disturbing.
150. Additionally, the CS did not expressly describe how the Ministry of Labour and Social Protection is likely to address the petitioners' concerns, including possible victimization by the very offices expected to protect the interest of citizens; the CS, however, alluded to her willingness to arbitrate on the matter to an amicable resolution.

3.13 THE STATE OF AFFAIRS REGULATING PRIVATE RECRUITMENT AGENCIES: ENFORCEMENT GAPS OR LACUNA IN THE LAW AND WHAT IS THE RECOURSE

151. Regulating recruitment agencies is the policy issue underpinning the petition on the allegations facing the Agency. The Committee's engagement with the stakeholders regarding the matter brought to the fore the following concerns relating to international agency recruitment and management-
- i. criteria for registering and licensing recruitment agencies and enforcement of these rules by the agencies;
 - ii. What constitutes the commission for placement in such cases? And how is it determined and by whom?
 - iii. Professional ethics and standards in recruitment agencies;

- iv. Recruitment agencies and education placement
 - v. The role of the political class in recruitment agencies;
 - vi. Medical screening and recruitment agencies; and
 - vii. Enforcing ethics and governance in recruitment agencies, including data management and protection laws.
152. The Committee was cognizant that existing laws safeguard the candidate's and the Agency's interests. These include the Employment Act of 2007 (though not updated in line with the Constitution), which provides for how foreign contracts of service should be executed; the NEA Act of 2016 establishes NEA, a comprehensive institutional framework for employment management, including its powers; Labour Institutions Act of 2007 specify the regulations governing private employment agents in Kenya; there exist associations where private recruitment agencies can be long, depending on their work jurisdiction.
153. The preceding concerns and allegations by the petitioners arise when the Ministry of Labour is recording an exponential increase in the number of employment agents in the Country from 1 in the 1990s to 700 in 2023. While acknowledging the existence of a framework to guide the operations of private employment agencies under Part VII of the Labour Institutions Act 2007 and the Regulations on Private Employment Agencies, 2016, the Ministry also associated the challenges arising from the exponential increase, including inadequate legal and policy framework to regulate the agencies.
154. The Ministry further opined that the current framework provides for clear criteria for registering employment agencies, the existence of a ministerial committee charged with vetting applications for registration by potential agencies, minimum requirement for registration of an agency, specifications of certificate of registration, and requirements for renewal and cancellation.
155. According to the Ministry, other provisions are the recruitment and placement process of migrant workers and duties of persons conducting employment agency in fees and commission.
156. Regarding fees and commission, the Committee noted the guidelines on fees, which prescribes that the employer shall meet all fees and commissions and that the agencies are allowed to charge a service fee to cover services during recruitment, documentation, and placement. Further, fees that may cover trade tests, occupational tests, and administrative fees must not exceed a candidate's one-month salary and approval sought from NEA before it is affected.

157. However, according to the CS, the provisions of the existing legal framework are inadequate in protecting potential job seekers against the activities of rogue agencies. For instance, the current penalties for malpractices by agencies are not a deterrent.

158. As such, the Committee heard that the Labour Migration Management Bill 2023 before the Senate introduces additional clauses to regulate recruitment agencies and hold the agencies accountable, including hefty penalties and defining illegal recruitment. On this matter, the CS alluded to the need for further consultations with the Committee on the framework as the Ministry has similar legislation currently at the Office of the Attorney General awaiting legal input.

CHAPTER 4: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 COMMITTEE OBSERVATIONS AND FINDINGS

159. Having engaged the various stakeholders on the matter and considering the petitioners' prayers, the Committee makes the following observations and findings –

i. THAT, majority of the victims of the First Choice Recruitment and Consultancy Agency were unemployed or underemployed youth aged 25 and 35 years across Uasin Gishu County and its environs who were desperately searching for improved livelihoods;

THAT, the victims of First Choice were further disadvantaged as their source of funding towards such placements was through the sale of property, loans from SACCOs, banks, friends and relatives hence subjecting them to even greater risk of loss of livelihoods, broken friendships and relationships, accrued debts and ill health including depression and suicide;

ii. THAT, the involvement of prominent government officials and businessmen from Uasin Gishu County increased the credibility of the Agency in general and the recruitment process in particular. This scenario encouraged many parents and candidates to consider the program and invest their resources, including borrowing and selling property towards this cause. The implication of this was massive enrolment and high numbers of candidates with resources;

iii. THAT, First Choice Recruitment and Consultancy Agency Ltd. failed to operate professionally and within the confines of the law provided for in the Labour Institutions Act 2007 and the regulations guiding the recruitment agencies; the following twelve points substantiate this finding–

(a) The Ministry of Labour confirmed that the Agency was cleared for registration on 9th December, 2020, and an application was filed on May 2020; however, claims by the Director that the Agency commenced recruitment in 2019 through a friend's company by the name Jechri Enterprises Limited, licensed by NEA under NEA/FE&LE/009 raises more questions;

(b) The issuance of at least three different unofficial receipts without the Agency name or logo raises credibility and accountability concerns;

(c) Payments in the form of cash transactions by candidates;

(d) First Choice branded itself and was licensed as a recruitment agency engaging in skills assessment, recruitment, training and development, and performance evaluation; its service aims to place candidates

- internationally in the available job markets. However, the Agency was also placing candidates for education in the UK and Poland, among other countries, without due process and under NEA's watch;
- (e) The Agency relocated to its current offices on 1st December, 2022 (in Eldoret Town, off Nairobi Road), citing security concerns without notifying NEA as per the regulations. It equally failed to promptly communicate to the candidates regarding the office address change between September and December. Instead, it was shared on 28th December, 2022, after the end of the World Cup. Further, the Agency also failed to communicate to the potential candidates about the change of dates for the World Cup from June to November, 2022, causing anxiety;
 - (f) The Ministry of Labour and (NEA) are the regulators in the sub-sector. Further, the law is clear regarding reporting and approvals by recruitment agencies. However, the Agency failed to provide the regulator with critical documentation and information related to the Qatar placement when asked to do so and as part of its obligation, even without being asked for the same;
 - (g) Advertising, mass recruitment of candidates and receiving payments from candidates for the Qatar jobs commenced as early as February 2022. However, the Agency had not secured job orders and express approval from NEA to charge commission and other fees. The Agency approached the Ministry of Labour (NEA) on 26th May, 2022 with a request to undertake massive recruitment for the World Cup FIFA as they awaited the job orders; the request was not granted as the Agency had failed to submit the Job Orders. This confirmation raises credibility questions on the part of the Agency as the Agency claims that they had received demand letters from two agencies in Qatar (Mahad Manpower and Friends Manpower) following the upcoming World Cup in 2022 and that the placements were to commence in June 2022.
 - (h) The Committee had not received responses from the IG regarding the authenticity of the invoices and agreements to ascertain the existence of the said job opportunities in Qatar, including the bank details of the Agency;
 - (i) The Agency was issued with a one-year license on 8th January, 2021 and renewed for another year on 11th February, 2022. The operating license is expired as of 10th February, 2023 as the vetting Committee is yet to renew the license, citing pending background security reports from the National Intelligence Service (NIS), a mandatory requirement for approval. This means that the agency is operating illegally.
 - (j) The Agency deals with other third parties, offering candidates services they have failed to authenticate and cannot, therefore, vouch for. A

case in point is the alleged fake travel insurance the Agency's Director issued to Mr. Nzuki (one of the victims) on 18th July, 2022, which cost him a successful visa outcome. Further inquiry led to the determination by Pioneer Insurance Company in Eldoret that the travel policy in his possession, a duplicate copy with the same policy number, shows 32 days and not 365 days as envisaged. Despite the position, First Choice has failed to take responsibility and to adequately explain the matter, offering no compensation to the affected candidate (despite payment of Ksh. 25,000 to the Agency for the procurement of travel insurance on his behalf—the third party, 'Mr. Stephen' is well known to First Choice and the Director;

- (k) The Agency was licensed on 1st March, 2022 to operate a class 'C' standalone laboratory named First Choice Diagnostic Laboratory in Uasin Gishu County vide registration number G4750. This licensing and registration followed a successful application on 14th January, 2022—further, the laboratory superintendent. Further, Ms. Sheila Chebotip Lagat of KMLTTB, Reg. No.A09421 and technician Mr. Abednego Yego of KMLTTB, Reg.No.A012960 were duly registered and licensed under the KMLTTB for 2023. Therefore, First Choice Diagnostics was permitted to perform tests such as full haemogram, Hepatitis B Surface Antigen, Hepatitis C Virus, Salmonella Antigen Test, VDRL, Urine analysis, pregnancy test, Blood slide for malaria parasites, Blood grouping and HIV Test. However, First Choice Agency also conducted X-ray services on the potential candidates at Eldomage Diagnostic Centre situated at Zion Mall, a facility not registered by the KMLTTB;
- (l) The lack of disclosure by the Agency upon relocating its laboratory (*formerly First Choice Diagnostics to A& M Diagnostics*) from City Plaza along Nandi Street to Mobel Plaza along the same street without informing the KMLTTB in writing. The implication is that on 9th June, 2023 the laboratory facility and the superintendent have been suspended from practicing due to violating the regulations and
- (m) The Agency does not possess a data processor registration certificate contrary to section 19 of the Data Protection Act and the Data Protection and Registration of Data Controllers and Data Processors Regulations, 2021. Further, the Agency applied for the certificate for the first time in May, 2023 but could not be issued one for lack of full disclosure of information relating to the personal and sensitive data it processes, including the data subjects affected, generic descriptions and the purpose of the processing; a comprehensive list of safeguards put in place to ensure the confidentiality and integrity of personal data in its custody including the technical and organizational measures adopted in

line with Section 41 of the Act; and turn over evidence by way of audited financial report or revenue statement supporting the turnover.

- iv. THAT the allegation by the petitioners that Mr. David Langat was the CEO of the Agency cannot be substantiated. The Committee notes that, records show that the Agency is under the directorship of Ms. Judy Chepchirchir and Ms. Faith Wariga Gichuhi. The Committee was also not able to determine any relations therein. Further, the leaders also negated and denied that they publicly advertised the Agency for their benefit;
- v. THAT consensus among the petitioners and victims is that their leaders played a significant role and influenced their decision to register as candidates at the Agency as expressed by some of the petitioners including Ms. Pauline Ambaka who learnt about the Agency through an advertisement by the Uasin Gishu County government where the officials were handing out fliers of jobs overseas and also Citizen TV through a program called 'Mwanamke Bomba. Further, in 2021, at the TAC Center in Eldoret, there was a launch event graced by the then Governor of Uasin Gishu County, Sen. Jackson Mandago, then Cabinet Secretary, Ministry of Labour, Hon. Simon Chelugui and First Choice Patron, Mr. David Langat;
- vi. THAT petitioners and victims lack confidence in public institutions, including the County Assembly of Uasin Gishu, the National Police Service in Langas, Eldoret, DCI Turbo West, the County Commissioner, IPOA, ODPP, and the County Commander who seem to have taken sides in the matter hence failed to take action. The victims were denied their constitutional right to picket or report the issue to the police and faced intimidation, threats and fear for their lives;
- vii. THAT the office of the IG took up the matter on 14th March, 2023 following the allegations by the petitioners; further, that preliminary findings show that as early as April, 2022, the Agency was already undertaking recruitment to Qatar without due clearance from NEA. The Committee however noted that the investigations by the IG were ongoing;
- viii. THAT, as recently as June, 2023, the Director of the Agency, Ms. Judy Jepchirchir, continues to accompany government officials and engage in public functions relating to labor migration. The engagement by the Agency in further recruitment unabated comes despite the evidence adduced by several public institutions, including the regulator, the Ministry, that the Agency is not mandated to operate as a recruiting agency under the laws of Kenya as it does not hold a valid operating license';
- ix. THAT, the Agency continued advertising for candidate placement as recently as August, 2023, placing the Ministry of Labour and Social Protection in disrepute. This position is based on the CS Labour and Social Protection

statements that 'the Agency is under scrutiny by the security agencies as the issues raised are criminal';

- x. THAT, despite evidence that First Choice Agency has been handling candidates' personal data since 1st March, 2022 (its class laboratory was approved on 1st March, 2022), the entity does not possess a valid data processor registration certificate in line with Section 19 of the Data Protection Act and the Data Protection and Registration of Data Controllers and Data Processors) Regulations, 2021;
- xi. THAT, the Agency applied for data protection certificate for the first time in May, 2023, but its application is pending as the Agency has yet to provide the ODPC with requisite information relating to the personal and sensitive data in its possession; a comprehensive list of safeguards put in place to ensure the confidentiality and integrity of personal data in its custody, and audited financial reports highlighting turnover among other requirements;
- xii. THAT following the Committee's investigations on the matter, the Agency has so far made refunds to at least 12 affected victims, including the petitioners who initiated the petition at the County Assembly and the Senate. The Committee also notes that the refunds were not paid in full and ranged between Ksh. 5,000 and Ksh. 40,000 for short-term programs and Ksh. 22,500 and Ksh. 400,000 for long-term ones. However, it is unclear how many potential victims require refunds as the statistics by the Agency are yet to be verified;
- xiii. THAT, legal frameworks exist to regulate and manage the foreign recruitment sub-sector, for instance, the Employment Act, 2007 and Labour Institutions Act, 2007. The provisions regarding international recruitment and other criteria include the registration of employment agencies, a ministerial committee charged with vetting applications for potential agencies, and the minimum requirement for agency registration. Others are specifications of certificate of registration, requirements for renewal and cancellation, recruitment and placement process of migrant workers, duties of persons conducting employment agency in fees and commission among others;
- xiv. THAT, there exists an established regulatory institution, NEA, with the express mandate to regulate and govern private employment agents in Kenya;
- xv. THAT observations (Xiii) and (xiv) notwithstanding, rogue agencies continue to take advantage of gaps within the existing legal framework related to the protection of potential job seekers;
- xvi. THAT the Labour Migration Management Bill, 2023, Senate Bills No. 33 of 2023 will fill the gaps in the existing law concerning protecting the interests of potential candidates; and
- xvii. THAT the Labour Migration Management Bill, 2023 provides for, among other things -

- (a) the functions and powers of national government entities including the Ministries responsible for matters relating to foreign affairs and labour and social welfare, National Employment Authority and the National Industrial Training Authority;
- (b) Multi-Agency Committee on Vetting of Private Employment Agencies which is responsible for vetting and approving applications for registration made by private employment agencies;
- (c) functions of labour attaches in relation to migrant workers;
- (d) registration of private employment agencies and the cancellation of such registration;
- (e) execution of security bond by private employment agencies engaged in the employment of workers for foreign employment;
- (f) approval of job orders and the advertisement of jobs by private employment agencies;
- (g) development of a code of conduct for employment agencies;
- (h) pre-departure procedures for foreign employment;
- (i) Pre-departure training for migrant workers;
- (j) attestation of foreign contracts of employment;
- (k) registration of migrant workers;
- (l) enforcement of the Bill through the appointment of inspectors;
- (m) establishment of the Migrant Workers Welfare Fund under the Public Finance Management Act;
- (n) the repatriation of migrant workers;
- (o) conclusion of bilateral labour agreements;
- (p) establishment of safe houses in destination countries; and
- (q) the power of the Cabinet Secretary to restrict labour migration to countries where Kenyans face distress.

4.2 COMMITTEE RECOMMENDATIONS

160. Based on the foregoing observations and findings, the Committee recommends as follows, THAT -

- i. The Board of the National Employment Authority be disbanded and reconstituted upon the tabling of this report;
- ii. The First Choice Recruitment and Consultancy Agency Limited to refund all the petitioners through bankers cheques' only, within one month of tabling this report;
- iii. The Assets Recovery Agency repossesses the properties owned by First Choice Recruitment and Consultancy Agency Limited, Ms. Judy Jepchirchir and Ms. Faith Wariga Gichuhi in the event that they do not refund all the monies owed to the petitioners and use the funds to refund the petitioners;
- iv. The bank accounts of the First Choice Recruitment and Consultancy Agency Limited, Ms. Judy Jepchirchir and Ms. Faith Wariga Gichuhi be frozen by the relevant authorities until the monies owed to the victims are fully recovered;
- v. The Passports of the Directors of First Choice Recruitment and Consultancy Agency Limited be withheld by the Directorate of Criminal Investigations;
- vi. The Ministry of Labour and Social Protection and the National Employment Authority to issue a public notice in at least two local dailies with nationwide circulation directing First Choice Recruitment and Consultancy Agency Limited to cease its recruitment operations with immediate effect;
- vii. The First Choice Recruitment and Consultancy Agency Limited and its other closely related and associated agencies to cease any further operations, recruitment and placement for a period of not less than five (5) years and should be closed, monitored by DCI;
- viii. The Ministry of Labour and Social Protection to cease any further operations, recruitment and placement by similar recruitment agencies that the public has raised concerns about upon tabling of this report;
- ix. The Ministry of Labour and Social Protection to audit and publicise legitimate recruitment agencies in the country in at least two local dailies with nationwide circulation within one month of tabling of this report and annually thereafter;
- x. The Ministry of Labour and Social Protection to publicise the list of blacklisted recruitment agencies in the country in at least two local dailies with nationwide circulation within one month of tabling of this report and annually thereafter.

- xi. Ms. Judy Jepchirchir, Ms. Faith Wariga Gichuhi and other Directors of First Choice Recruitment and Consultancy Agency Limited be barred from registering, operating or managing any other recruitment agency or company upon tabling of this report;
- xii. The Ministry of Labour and Social Protection and the National Employment Authority to strongly enforce the existing measures and ensure agencies adhere to the laid down regulations.
- xiii. The Commission on Administrative Justice and Ethics and Anti-Corruption Commission (EACC) investigate the involvement of business people, political leaders and the conduct of state and public officers with regard to First Choice Recruitment and Consultancy Agency Limited and report to the Senate within three months upon tabling of this report;
- xiv. The Office of the Director of Public Prosecutions and the Office of the Inspector General finalize the investigations on the possible illegalities by First Choice Recruitment and Consultancy Agency Limited and institute criminal proceedings against the Agency and others if found culpable and report to the Senate within three months of tabling of the report;
- xv. The Commission on Administrative Justice investigates the law enforcement agencies in Uasin Gishu County who allegedly harassed the petitioners and report to the Senate within three months of tabling this report; and
- xvi. The Office of the Director of Public Prosecutions finalizes the cases of alleged harassment of the petitioners and terminate cases whose objective was to intimidate petitioners.