

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 25 SEP 2019

Wednesday

THE NATIONAL ASSEMBLY

Hon. O.R. Kent amp
Chairperson of Committee

Halima Ahmed

TWELFTH PARLIAMENT-THIRD SESSION (2019)

PARLIAMENT
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SELECT COMMITTEE ON IMPLEMENTATION

REPORT ON

THE IMPLEMENTATION STATUS OF THE RESOLUTION OF THE HOUSE
MADE ON 6TH JUNE, 2019 APPROVING MS. MWENDE MWINZI FOR
APPOINTMENT AS THE AMBASSADOR TO SEOUL, SOUTH KOREA

Directorate of Committee Services
Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

SEPTEMBER, 2019

Approved for
table
25/9/19

MIS PSONA

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CHAIRPERSON'S FOREWORD

Standing Order 209 mandates the Committee on Implementation to scrutinize the resolutions of the House (including adopted Committee Reports), petitions and the undertakings given by the Executive and examine whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary.

On 6th June, 2019, the House approved the Report of the Departmental Committee on Defence and Foreign Relations which recommended the approval of six (6) nominees and put a conditional approval on the 7th nominee, Ms. Mwendu Mwinzi. The nominee's appointment as the Ambassador to Seoul, South Korea, was subject to upon appointment and before taking office, renounce her United States of America citizenship in line with Article 80 (c) of the Constitution and section 31 as read with section 52 of the Leadership and Integrity Act, 2012.

On Tuesday, 10th September, 2019, a Member rose on a point of order to seek guidance regarding the role of the National Assembly in vetting of persons for appointment to various offices, particularly the authority of the House to approve a nominee conditionally. The Member also alleged that one of the nominees whose approval was conditional and subject to her renouncing of her United States of America citizenship, had taken up appointment without renouncing the said citizenship.

The Speaker directed the Select Committee on Implementation to urgently consider and report on the matter. The Select Committee on Implementation embarked on the task immediately and invited the Cabinet Secretary for Foreign Affairs and International Trade, Amb. Monica Juma, DPHIL, CBS to a meeting on Thursday, 12th September, 2019 who briefed the Committee on the matter. The Cabinet Secretary further made a written submission on 23rd September, 2019.

The Committee hereby presents its findings and recommendations on the implementation status of the Report of the Defence and Foreign Relations Committee on the Vetting of Seven (7) Nominees for Appointment to the Position of Ambassador/High Commissioner as approved by the House on 6th June, 2019.

The Committee registers its appreciation to the Office of the Speaker and the Clerk of the National Assembly for the necessary support and facilitation in the production of this Report. Pursuant to Standing Order 199(6), it is, therefore, my pleasant duty and privilege, on behalf of the Committee on Implementation, to lay this Report on the Table of the House.

Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

The Select Committee on Implementation is established pursuant to Standing Order 209 of the National Assembly Standing Ordersto scrutinize resolutions of the House (including adopted committee reports), petitions, legislation and the undertakings given by the National Executive and examine whether such decisions and undertakings have been implemented within the sixty (60) days provided for in the Standing Orders and whether such implementation has taken place within the minimum time necessary.

Following the directive by the Speaker on 10th September, 2019, the Committee immediately commenced proceedings to establish the implementation status of the recommendations of the Report of the Defence and Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador/High Commissioner adopted by the House on 6th June, 2019 and **specifically on the conditional approval of Ms. Mwendu Mwinzi for appointment as Ambassador to Seoul, South Korea** subject to upon appointment and before taking office, renounce her United States of America citizenship in line with Article 80 (c) of the Constitution and section 31 as read with section 52 of the Leadership and Integrity Act, 2012.

The Committee held a meeting with the Cabinet Secretary for Foreign Affairs and International Trade, Amb. Monica Juma, DPHIL, CBS on Thursday, 12th September, 2019 to receive oral evidence on the matter and the second meeting was consideration of the evidence before the Committee.

The records of evidence adduced, documents and notes received by the Committee, form the basis of the Committee's observations/findings and recommendations as outlined in the Report.

Committee Observations

The Committee observed that–

- (i) **No Ambassador / High Commissioner-designate as approved by the House on 6th June, 2019 has taken up appointment and reported to their respective duty stations.** All nominees underwent a six (6) week induction training from 14th July to 21st August, 2019 as required in the Foreign Service Regulations. Further, the Ministry of Foreign Affairs & International Trade is awaiting '*No Objections*' letters from the receiving Governments;
- (ii) The conditional approval of Ms. Mwendu Mwinzi by the National Assembly was not open-ended. A decision would have to be made as soon as possible on the matter, particularly in view of the fact that more than three (3) months have lapsed since the House approved the said nominees and public funds already expended for carrying out an induction training for all nominees including Ms. Mwinzi who has made it known that she is not willing to renounce her American citizenship, contrary to the House's resolution on the matter. The Committee reiterates that a diplomat represents the interests of the sending State and must therefore be in a position to assert his/her country's position without any possible conflict of interest; and,

(iii) Ms. Mwende Mwinzi has filed a petition before the Constitutional and Human Rights Court (Petition No. 367 of 2019) contesting the National Assembly's recommendation that she renounces her American citizenship before taking up office in South Korea. She avers that the decision by the House is unconstitutional since the position of Ambassador is not a state office as provided for under Article 260 of the Constitution of Kenya and further that, she is exempted by virtue of Article 78 (3) (b) of the Constitution as she was born in the US and as such cannot renounce her citizenship.

Committee Recommendations

The Committee recommends –

- (i) **THAT, the House rescinds its resolution made on 6th June, 2019 which approved the nomination of Ms. Mwende Mwinzi for appointment as an Ambassador to Seoul, South Korea subject to her renouncing her citizenship to the United States of America before taking up the appointment.**

- (ii) **THAT, the House expunges Recommendation 7 on page 51 of the Report by the Departmental Committee on Defence & Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador/High Commissioner.**

- (iii) **THAT, the House considers reviewing existing legislation to expressly provide for Ambassadors and High Commissioners as state officers.**

- (iv) **THAT, the Cabinet secretary for the time being responsible for Foreign Affairs initiates an audit of all serving Ambassadors and High Commissioners to ascertain whether any of them holds dual citizenship and submit the findings to the House within sixty (60) days of adoption of this Report.**

1.0 PREFACE

1.1 Mandate of the Committee

The Select Committee on Implementation is established pursuant to the provisions of Standing Order 209 of the National Assembly to scrutinize the resolutions of the House (including adopted Committee reports), petitions and the undertakings given by the National Executive and examine –

- a) whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and
- b) whether or not legislation passed by the House has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary.

Standing Order 201 further provides that within sixty (60) days of a resolution of the House or adoption of a report of a Select Committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the relevant Committee of the House in accordance with Article 153(4) (b) of the Constitution.

The Committee may, therefore, propose to the House, sanctions against any Cabinet Secretary who fails to report to the relevant Select Committee on Implementation status without justifiable reasons.

1.2 Committee Membership

Chairperson

Hon. Moitalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Movement

Vice Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

Hon. Maj. (Rtd) John Waluke Koyi, MP
Sirisia Constituency

Jubilee Party

Hon. Alois Lentoimanga, MP
Samburu North Constituency

Jubilee Party

Hon. (Dr.) James Murgor, MP
Keiyo North Constituency

Jubilee Party

Hon. Onesmas Kimani Ngunjiri, MP
Bahati Constituency

Jubilee Party

Hon. Francis Munyua Waititu, MP
Juja Constituency

Jubilee Party

Hon. Paul Odalo Abuor, MP
Rongo Constituency

Orange Democratic Movement

Hon. Hassan Oda Hulufu, MP
Isiolo North Constituency

Kenya Patriots Party

Hon. Nelson Koech, MP
Belgut Constituency

Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency

Wiper Democratic Movement-Kenya

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Movement

Hon. Joseph Wathigo Manje, MP
Kajiado North Constituency

Jubilee Party

Hon. Johnson Many Naicca, MP
Mumias West Constituency

Orange Democratic Movement

Hon. George Theuri, MP
Embakasi West Constituency

Jubilee Party

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. Owen Yaa Baya, MP
Kilifi North Constituency

Orange Democratic Movement

Hon. Michael Thoya Kingi, MP
Magarini Constituency

Orange Democratic Movement

Hon. Generali Kiprotich Korir, MP
Langata Constituency

Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

Wiper Democratic Movement-Kenya

Hon. (Dr.) Daniel KamurenTuitoek, MP
Mogotio Constituency
Jubilee Party

Hon. Jared Okello, MP
Nyando Constituency
Orange Democratic Movement

Hon. Silvanus Osoro, MP
South Mugirango Constituency
Kenya National Congress

1.3 Committee Secretariat

Ms. Tracy Chebet Koskei
Clerk Assistant I/Team Leader

Mr. Abdirahman Hassan
Clerk Assistant II

Mr. Peter Mwaura
Senior Legal Counsel

Mr. Joseph Okong'o
Senior Media Relations Officer

Mr. Eugene Apaa
Research Officer III

Mr. James Muguna
Research Officer III

Ms. Jane Serem
Audio Officer I

Mr. Moses Kariuki
Sergeant-at-Arms

2.0 COMMITTEE DELIBERATIONS

2.1 Background Information

1. On 9th May, 2019, H.E. the President, submitted to the National Assembly, a notification of appointment of seven (7) Ambassador/High Commissioner nominees pursuant to Article 132 (2) (e) of the Constitution and section 5 of the Public Appointments (Parliamentary Approval) Act, *No. 33 of 2011*. The notification was committed to the Departmental Committee on Defence and Foreign Relations for vetting and reporting. The Committee vetted the nominees during its Sitting of Tuesday, 28th May, 2019.
2. The Committee tabled its Report on the vetting of the seven (7) nominees on 6th June, 2019. In the Report, the Committee approved six (6) nominees and put a condition on the 7th nominee, Ms. Mwendu Mwinzi for appointment as the Ambassador to Seoul, South Korea, subject to upon appointment and before taking office, renounce her United States of America citizenship in line with Article 80 (c) of the Constitution and section 31 as read with section 52 of the Leadership and Integrity Act, 2012. The House approved the Report on the same date without amendments.
3. On Tuesday, 10th September, 2019, a Member rose on a point of order to seek guidance regarding the role of the National Assembly in vetting of persons for appointment to various offices, particularly the authority of the House to approve a nominee conditionally. The Member also alleged that one of the nominees whose approval was conditional and subject to her renouncing of her United States of America citizenship, had taken up appointment without renouncing the said citizenship.
4. The Speaker directed the Committee on Implementation to urgently consider and report on the matter. The Committee immediately embarked on the task and held a meeting with the Cabinet Secretary for Foreign Affairs and International Trade, Amb. Monica Juma, DPHIL, CBS on Thursday, 12th September, 2019.

2.2 Legal Provisions on Dual Citizenship

5. Article 78 of the Constitutions sets out the provisions relating to citizenship and leadership as follows—

Art. 78 (1) A person is not eligible for election or appointment to a state office unless the person is citizen of Kenya.

(2) A state officer or a member of the defence forces shall not hold dual citizenship.

(3) Clause (1) and (2) do not apply to—

(a) judges and members of commissions; or

(b) any person who has been made a citizen of another country by operation of that country's law without the option to opt out.

6. Article 260 of the Constitution, does not provide in express terms that the office of ambassador is a state office.

7. However, section 31 of the Leadership and Integrity Act, No.19 of 2012 provides that—

“a person who holds dual citizenship shall, upon election or appointment to a state office, not take office before officially renouncing their other citizenship in accordance with the provisions of the Kenya Citizenship and Immigration Act, 2011, (No. 12 of 2011).”

8. Further, section 52, of the Leadership and Integrity Act, No.19 of 2012, provides that, pursuant to *Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution and Part II of this Act, except section 18, shall apply to all public officers as if they were State officers. The Act, therefore binds both State officers and Public Officers.*

2.3 Precedence / Case Studies on Dual Citizenship in other Jurisdictions

9. The following are some of case studies of diplomats and government officials who acquired United States Citizenship at birth but when called to serve in government positions in their native countries, they renounced their American citizenship. Some cases studies include—

- (a) In 2014, **Kevin O'Malley**, an Irish American, was approved as the United States Ambassador to Ireland. He held dual citizenship in Ireland and United States of America. He renounced his Irish citizenship to allow him take up the United States ambassadorial role to Ireland.¹
- (b) **David Alwad**, was born in Massachusetts and moved to New Brunswick, Canada with his family while he was still young. His citizenship was **Jus soli** (birth right citizenship). He was named Canada's Consul-General in Boston in April 2015, and renounced U.S. citizenship to accept the post.²
- (c) **Daphne Barak Erez**, was born to Israeli parents in the U.S. and later returned with them to Israel, where she grew up. Her citizenship was **Jus soli**. She was named a Justice of the Supreme Court of Israel in January 2012, which required her to give up any foreign citizenship she held. She renounced her USA citizenship.³
- (d) **Ron Dermer**, was born in Florida in 1971. He moved to Israel in 1996, and began the process of becoming a citizen there in 1997. His citizenship was **Jus soli**. In 2005, then-Finance Minister Benjamin Netanyahu appointed him Minister for Economic Affairs in the Israeli embassy in Washington, a post for which he had to renounce his U.S. citizenship. He is currently Israel's Ambassador to the United States.⁴
- (e) **Luis Alberto Moreno**, was born in Philadelphia to a Colombian father attending medical school at the University of Pennsylvania. He did his early education in Colombia before coming to the U.S. for further studies. He renounced U.S. citizenship in 1998 after President Andrés Pastrana Arango named him Colombia's ambassador to the United States.⁵

¹ Hosford, P. The US has finally approved a new ambassador to Ireland, <https://www.thejournal.ie/us-ambassador-to-ireland-to-be-confirmed-tonight-1677919-Sep2014/>

²CBC News, David Alward named Canadian consul general in Boston, <https://www.cbc.ca/news/canada/new-brunswick/david-alward-named-canadian-consul-general-in-boston-1.3047614>

³Ahren R., Israeli Supreme Court justice wins women's rights prize, <https://www.timesofisrael.com/israeli-supreme-court-justice-wins-womens-rights-prize/>

⁴ Former ambassador's bizarre attack on Obama lays bare strains in US-Israeli ties, <https://www.theguardian.com/world/2015/jun/22/former-ambassador-book-obama-us-israeli-relationship>

⁵Shenon, P., PUBLIC LIVES; With Roses, an Ambassador Polishes Colombia's Image, <https://www.nytimes.com/2000/01/17/us/public-lives-with-roses-an-ambassador-polishes-colombia-s-image.html>

2.4 Precedence / Case Studies on Dual Citizenship in Kenya

10. In Kenya the Court has in one occasion considered the case of *Bishop Donald Kisaka Mwawasi vs Attorney General & 2 others (2014) eKLR*, the appellant a citizen by birth became an American citizen in 2011. He described himself as a dual citizen. The appellant was registered as a member of Agano Political Party and applied to be nominated to contest for the Senate seat for Taita Taveta County. The Independent Electoral Boundaries Commission published a public notice prescribing the minimum qualifications, one of them being that “one must not hold dual citizenship”. The Appellant filed a petition seeking a declaration to quash the notice. The Learned Judge held that “by virtue of **Article 78(2)** of the Constitution a person who holds dual citizenship cannot run for an elective office as a member of Parliament.” The Appellant appealed the decision and the Court of Appeal held as follows—

- (i) *Parliament in enacting section 31(Citizenship) of the Leadership and Integrity Act interpreted Article 78 (2)(Citizenship and Leadership) correctly. The said Article is not against a dual citizen being elected or being appointed as a state officer. The restriction is against leadership by dual citizen in the specified State Offices and it does not all apply unless and until a person is elected and/or appointed to a State office.*
- (ii) *A dual citizen is eligible to seek nomination for election as a member of Parliament or member of county government and to stand as a Member of Parliament or county government in an election and also eligible to hold any State office.*
- (iii) *However, a dual citizen is disqualified upon election or appointment to a State office from assuming office before voluntarily and officially renouncing his or her other citizenship.*

2.5 Meeting with the Cabinet Secretary for Foreign Affairs and International Trade

The Cabinet Secretary, Amb. Monica Juma, DPHIL, CBS, accompanied by other officials of the Ministry of Foreign Affairs and International Trade appeared before the Committee on 12th September, 2019 and submitted THAT –

11. No Ambassador / High Commissioner designate has taken up the recent appointments yet, as there is a preparatory process which includes undergoing a comprehensive induction. The nominees underwent a six (6) week induction programme from 14th July to 21st August, 2019 as required in the Foreign Service Regulations. Further, the Ministry is awaiting ‘No Objections’ from the receiving Governments.
12. There is no delay by any nominee to take up appointment. Additionally, Kenya’s Embassy in Seoul, South Korea is fully functional and the diplomatic relationship with South Korea is well serviced. Further, all Kenyan missions are staffed with High Commissioners/Ambassadors and officers who are eminently qualified to represent the country and ensure its interests are represented globally.
13. The Ministry is in receipt of appointment letters for all other designates apart from Ms. Mwende Mwinzi, which is waiting her renouncement of her citizenship to the United States of America.
14. The responsibility for initiating the process of the renouncement of her citizenship to the United States of America does not rest with the Ministry but with the nominee, Ms. Mwende Mwinzi.
15. On Ms. Mwende Mwinzi attending the induction training, the Cabinet Secretary posited that from her understanding, the Certificate letter received from Parliament communicating the approval of the nominees indicated that Ms. Mwende Mwinzi had been vetted by the National Assembly and approved based on her suitability and having met all the requirements. The conditionality for approving her nomination was based on her taking up the appointment as an Ambassador and not undertaking the training.
16. In the event that Ms. Mwende Mwinzi does not renounce her citizenship to the United States of America, as set out in the conditional approval, the recruitment process of another Ambassador will have to be initiated in compliance with the law.
17. On whether a background check was conducted on the nominees before their names were submitted for vetting, the Committee heard that the pre-qualification process of envoys is undertaken by many government agencies all of which cleared all the nominees, including Ms. Mwende Mwinzi. The Ministry also played its part and recommended the nominees because it deemed they were qualified for appointment.
18. The process of approving Ambassadors is as follows –
 - (i) H.E. the President submits the names of nominees to the National Assembly for vetting and approval;
 - (ii) vetting is undertaken by the Departmental Committee on Defence and Foreign Relations and subsequently approved by the National Assembly;

- (iii) communication on the decision of the National Assembly regarding the approval of nominees to the Head of Public Service by way of a Certificate;
 - (iv) induction of designate Ambassadors/ High Commissioners;
 - (v) writing to the receiving country requesting for a 'No Objection' letter;
 - (vi) the Head of Public Service originates appointment letters for the designate Ambassadors / High Commissioners; and
 - (vii) dispatch of the Ambassadors/ High Commissioners to their duty stations.
19. Kenya has a total of fifty-nine (59) Missions and Consul Generals; fifty-two (52) head of missions in stations and six (6) embassies are currently without Ambassadors.

2.6 Submission by the Cabinet Secretary regarding the approval of the nomination of Ms. Mwende Mwinzi

20. Following a directive by the Committee that the Cabinet Secretary reaches out to Ms. Mwende Mwinzi regarding her decision to renounce her citizenship to the United States of America, the Cabinet Secretary on Monday, 23rd September, 2019 forwarded a letter from Ms. Mwende Mwinzi.
21. Ms. Mwinzi through her lawyers Prof. Tom Ojienda & Associates submitted as follows, THAT:-
- (i) Ms. Mwende Mwinzi went through the vetting process by the National Assembly's Departmental Committee on Defence and Foreign Relations which recommended her appointment but noted that she had dual citizenship. The Committee thus recommended that she be appointed on condition that she renounces her citizenship to the United States of America.
 - (ii) The said recommendation by the Departmental Committee was unconstitutional, illegal, null and void for reasons that, the position of Ambassador is not a state office in terms of Article 260 of the Constitution of Kenya, 2010. While the same Article provides that national legislation may establish an office and designate it as a State Office, there is currently no legislation in place which has designated the office of a High Commissioner or an Ambassador to be a State office. If Parliament intended that High Commissioners should be registered as state officers, nothing would be simpler than passing legislation to that effect under Article 260 of the Constitution.
 - (iii) On account of the above, under the Constitution of Kenya, 2010, the office of Ambassador is not a State office.

(iv) Ms. Mwende Mwinzi was born in Milwaukee- United States of America and by virtue of the American laws became a citizen by birth. Her citizenship or the process of opting in was a consequence of circumstances out of her control. She did not participate in the decision to be born in the United States of America and she cannot “opt out” of that decision.

(v) A Petition had been filed before the Constitutional and Human Rights Court, which is intended to give the Court an opportunity to interpret the Constitution.

3.0 COMMITTEE OBSERVATIONS

22. Having scrutinized the Resolution of the House on the foregoing matter and the respective Report of the Departmental Committee on Defence and Foreign Relations and considered the oral and written submissions from the stakeholders, the Committee observed that-

- (i) **No Ambassador / High Commissioner-designate as approved by the House on 6th June, 2019 has taken up appointment and reported to their duty missions.** All nominees underwent a six (6) week induction training from 14th July to 21st August, 2019 as required by the Foreign Service Regulations. Further, the Ministry of Foreign Affairs & International Trade is awaiting 'No Objections' letters from the receiving Governments;

- (ii) The conditional approval of Ms. Mwendu Mwinzi by the National Assembly was not open-ended. A decision would have to be made as soon as possible on the matter, particularly in view of the fact that more than three (3) months have lapsed since the House approved the said nominees and public funds already expended for carrying out an induction training for all nominees including Ms. Mwinzi who has made it known that she is not willing to renounce her American citizenship, contrary to the House's resolution on the matter. The Committee reiterates that a diplomat represents the interests of the sending State and must therefore be in a position to assert his/her country's position without any possible conflict of interest; and,

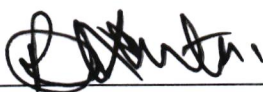
- (iii) Ms. Mwendu Mwinzi filed a petition before the Constitutional and Human Rights Court (Petition No. 367 of 2019) contesting the National Assembly's recommendation that she renounces her American citizenship before taking up office in South Korea. She avers that the decision by the House is unconstitutional since the position of Ambassador is not a state office as provided for under Article 260 of the Constitution of Kenya and further that, she is exempted by virtue of Article 78 (3) (b) of the Constitution as she was born in the US and as such cannot renounce her citizenship.

4.0 COMMITTEE RECOMMENDATIONS

23. Having scrutinized the Report by the Departmental Committee on Defence and Foreign Relations and considered the oral and written submissions provided by the stakeholders, the Committee makes the following recommendations-

- (i) **THAT, the House rescinds its resolution made on 6th June, 2019 which approved the nomination of Ms. Mwendu Mwinzi for appointment as an Ambassador to Seoul, South Korea subject to her renouncing her citizenship to the United States of America before taking up the appointment.**
- (ii) **THAT, the House expunges Recommendation 7 on page 51 of the Report by the Departmental Committee on Defence & Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador/High Commissioner.**
- (iii) **THAT, the House considers reviewing existing legislation to expressly provide for Ambassadors and High Commissioners as state officers.**
- (iv) **THAT, the Cabinet secretary for the time being responsible for Foreign Affairs initiates an audit of all serving Ambassadors and High Commissioners to ascertain whether any of them holds dual citizenship and submit the findings to the House within sixty (60) days of adoption of this Report.**

Signed



Date

24/09/2019.

Hon. Moitalel Ole Kenta, MP

Chairperson, Committee on Implementation

ANNEX I
ADOPTION LIST

The National Assembly



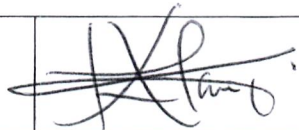

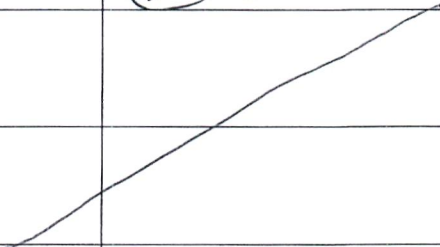
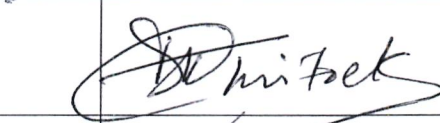
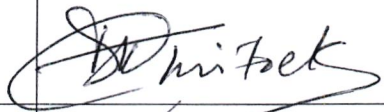


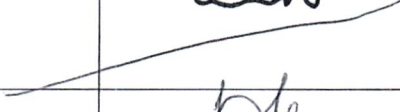
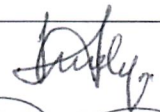
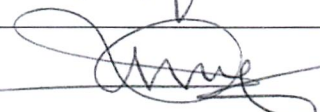

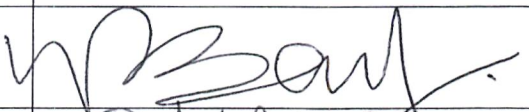
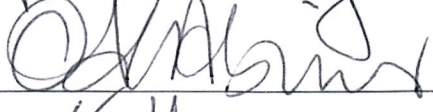

12th Parliament-3rd Session-2019

Committee on Implementation

Adoption Schedule

Agenda: Adoption of the Report on implementation status of the 10th Part by the DC-DFR in Vetting of nominees
Date: ~~WEDNESDAY~~ WEDNESDAY, 24/09/2019
Start Time: 9:45 AM.
Venue: 11th floor Boardroom, Protection House
End Time: 10:50 AM.

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP – Chairperson	
2.	The Hon. Godfrey Osotsi, MP – Vice Chairperson	
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	
5.	The Hon. Francis Munyua Waititu, MP	
6.	The Hon. George Theuri, MP	
7.	The Hon. (Dr.) James Kipkosgei Murgor, MP	
8.	The Hon. Maj. (Rtd) John Waluke Koyi, MP	
9.	The Hon. Johnson Manyua Naicca, MP	

10.	The Hon. Joseph Wathigo Manje, MP	
11.	The Hon. Onesmas Kimani Ngunjiri, MP	
12.	The Hon. Paul Simba Arati, MP	
13.	The Hon. Charles Ngusya Ngunu, MP	
14.	The Hon. (Dr.) Daniel Kamuren Tuitoek, MP	
15.	The Hon. Generali Nixon Korir, MP	
16.	The Hon. Hassan Oda Hulufu, MP	
17.	The Hon. Jared Okello, MP	
18.	The Hon. Joshua Mwalyo Mbithi, MP	
19.	The Hon. Michael Thoya Kingi, MP	
20.	The Hon. Nelson Koech, MP	
21.	The Hon. Owen Yaa Baya, MP	
22.	The Hon. Paul Abuor, MP	
23.	The Hon. Silvanus Osoro, MP	

Committee Clerk

Name Tracy Chebot Keeskei Eekeskei
 (Signature)

Date 24/9/2019

Director Committee Services
 (Signature)

Date.....

The National Assembly

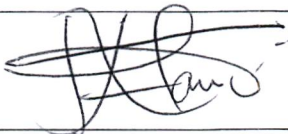

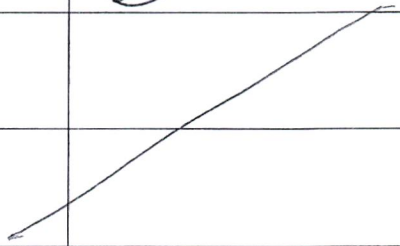
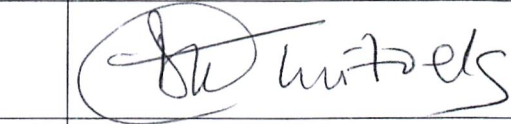
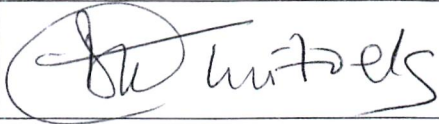
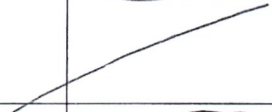
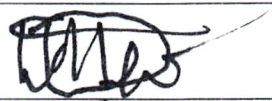
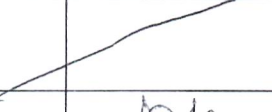
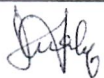
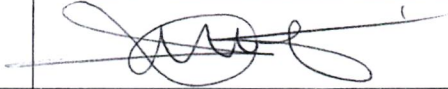
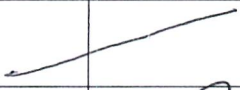
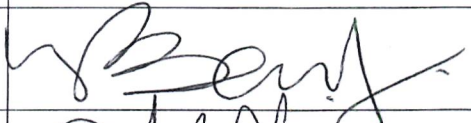
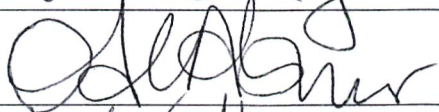



12th Parliament-3rd Session-2019

Committee on Implementation

Agenda: Consideration of the Report on Implementation Status of the Report by the DC-DFR on Vetting of ^{senior} ~~senior~~
Date: 24-09-2019
Start Time: 9.45 AM.
Venue: 11th floor Boardroom, Prosecution House
End Time: 10.50 AM.

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP – Chairperson	
2.	The Hon. Godfrey Osotsi, MP - Vice Chairperson	
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	
5.	The Hon. Francis Munyua Waititu, MP	
6.	The Hon. George Theuri, MP	
7.	The Hon. (Dr.) James Kipkosgei Murgor, MP	
8.	The Hon. Maj. (Rtd) John Waluke Koyi, MP	
9.	The Hon. Johnson Many Naicca, MP	

10.	The Hon. Joseph Wathigo Manje, MP	
11.	The Hon. Onesmas Kimani Ngunjiri, MP	
12.	The Hon. Paul Simba Arati, MP	
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19.	The Hon. Michael Thoya Kingi, MP	
20.	The Hon. Nelson Koech, MP	
21.	The Hon. Owen Yaa Baya, MP	
22.	The Hon. Paul Abuor, MP	
23.	The Hon. Silvanus Osoro, MP	

Committee Clerk

Name Irati Chebet Koskei E Koskei
 (Signature)

Date 24/9/2019

Director Committee Services
 (Signature)

Date.....

ANNEX II
MINUTES

MINUTES OF THE 50TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY 24TH SEPTEMBER 2019, IN THE 4TH FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 9:30 A.M.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. Alois Musa Lentoimaga, MP
4. The Hon. George Theuri, MP
5. The Hon. Maj. (Rtd.) John Waluke Koyi, MP
6. The Hon. Joseph Wathigo Manje, MP
7. The Hon. (Dr.) James Kipkosgei Murgor, MP
8. The Hon. Onesmas Kimani Ngunjiri, MP
9. The Hon. (Dr.) Daniel Kamuren Tuitoek, MP
10. The Hon. Hassan Oda Hulufu, MP
11. The Hon. Joshua Mbithi Mwalyo, MP
12. The Hon. Michael Kingi, MP
13. The Hon. Owen Yaa Baya, MP
14. The Hon. Paul Odalo Abuor, MP
15. The Hon. Silvanus Osoro, MP

APOLOGIES

1. The Hon. Richard Onyonka, MP
2. The Hon. Francis Munyua Waititu, MP
3. The Hon. Johnson Many Naicca, MP
4. The Hon. Paul Simba Arati, MP
5. The Hon. Charles Ngusya Nguna, MP
6. The Hon. Generali Nixon Kiprotich Korir, MP
7. The Hon. Jared Okello, MP
8. The Hon. Nelson Koech, MP

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

- | | | |
|-----------------------------|---|--------------------------------|
| 1. Ms. Tracy Chebet Koskei | - | First Clerk Assistant |
| 2. Mr. Abdirahman G. Hassan | - | Second Clerk Assistant |
| 3. Mr. Peter Mwaura | - | Senior Legal Counsel |
| 4. Mr. Joseph Okongo | - | Senior Media Relations Officer |
| 5. Ms. Jane Serem | - | Audio Officer I |
| 6. Mr. Eugene Apaa | - | Research Officer III |
| 7. Ms. Zeinab Wario | - | Sergeant-at-Arms |

MIN. NO.NA/COI/2019/241:

PRELIMINARIES

The Chairperson called the meeting to order at forty-five minutes past nine o'clock and said the Prayer. The Agenda for the meeting was adopted as proposed and seconded by the Hon. (Dr.) Daniel Kamuren Tuitoek, MP and the Hon. Owen Yaa Baya, MP, respectively.

MIN. NO.NA/COI/2019/242:

CONFIRMATION OF MINUTES

The agenda item was deferred.

MIN. NO.NA/COI/2019/243:

CONSIDERATION OF THE REPORT ON STATUS OF NOMINATION OF MS. MWENDE MWINZI, AS AN AMBASSADOR TO SEOUL, SOUTH KOREA

The Committee considered the Report on implementation status of the Report by the Departmental Committee on Defence and Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador/High Commissioner, and made the following observations and recommendations:

Committee Observations

Having scrutinized the Resolution of the House on the foregoing matter and the respective Report of the Departmental Committee on Defence and Foreign Relations and considered the oral and written submissions from the stakeholders, the Committee observed that-

- (i) **No Ambassador / High Commissioner-designate as approved by the House on 6th June, 2019 has taken up appointment and reported to their respective duty stations.** All nominees underwent a six (6) week induction training from 14th July to 21st August, 2019 as required in the Foreign Service Regulations. Further, the Ministry of Foreign Affairs & International Trade is awaiting '*No Objections*' letters from the receiving Governments;
- (ii) The conditional approval of Ms. Mwendu Mwinzi by the National Assembly was not open-ended. A decision would have to be made as soon as possible on the matter, particularly in view of the fact that more than three (3) months have lapsed since the House approved the said nominees and public funds already expended for carrying out an induction training for all nominees including Ms. Mwinzi who has made it known that she is not willing to renounce her American citizenship, contrary to the House's resolution on the matter. The Committee reiterates that a diplomat represents the interests of the sending State and must

therefore be in a position to assert his/her country's position without any possible conflict of interest; and,

- (iii) Ms. Mwende Mwinzi has filed a petition before the Constitutional and Human Rights Court (Petition No. 367 of 2019) contesting the National Assembly's recommendation that she renounces her American citizenship before taking up office in South Korea. She avers that the decision by the House is unconstitutional since the position of Ambassador is not a state office as provided for under Article 260 of the Constitution of Kenya and further that, she is exempted by virtue of Article 78 (3) (b) of the Constitution as she was born in the US and as such cannot renounce her citizenship.

Committee Recommendations

Having scrutinized the Resolution of the House on the foregoing matter and the respective Report of the Departmental Committee on Defence and Foreign Relations and considered the oral and written submissions from the stakeholders, the Committee recommended-

- (i) **THAT, the House rescinds its resolution made on 6th June, 2019 which approved the nomination of Ms. Mwende Mwinzi for appointment as an Ambassador to Seoul, South Korea subject to her renouncing her citizenship to the United States of America before taking up the appointment.**
- (ii) **THAT, the House expunges Recommendation 7 on page 51 of the Report by the Departmental Committee on Defence & Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador/High Commissioner.**
- (iii) **THAT, the House considers reviewing existing legislation to expressly provide for Ambassadors and High Commissioners as state officers.**
- (iv) **THAT, the Cabinet secretary for the time being responsible for Foreign Affairs initiates an audit of all serving Ambassadors and High Commissioners to ascertain whether any of them holds dual citizenship and submit the findings to the House within sixty (60) days of adoption of this Report.**

MIN. NO.NA/COI/2019/244:

**ADOPTION OF THE
REPORT ON STATUS OF
NOMINATION OF MS.
MWENDE MWINZI, AS AN
AMBASSADOR TO SEOUL,
SOUTH KOREA**

The Committee Members present unanimously adopted the Report on implementation status of the Report of the Departmental Committee on Defence and Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador/High Commissioner, after being proposed and seconded by the Hon. Owen Yaa Baya, MP and the Hon. Godfrey Osotsi, MP respectively.

MIN. NO.NA/COI/2019/245:

**MEETING WITH THE EACC
TO CONSIDER THE REPORT
ON TELKOM**

The Committee resolved to reschedule the meeting with the Ethics and Anti-Corruption Commission to consider implementation status of the special Report by PIC on the recapitalization and balance restructuring of Telkom Kenya Limited, to a later date, to be communicated in due course.

MIN. NO.NA/COI/2019/246:

ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes to eleven o'clock.

Sign.....



(Chairperson)

Date.....

24/09/2019.

MINUTES OF THE 47TH SITTING OF THE SELECT COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 12TH SEPTEMBER, 2019, IN THE COMMITTEE ROOM, ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 4.00 PM.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. (Dr.) James Kipkosgei Murgor, MP
4. The Hon. Joseph Wathigo Manje, MP
5. The Hon. Paul Simba Arati, MP
6. The Hon. Onesmas Kimani Ngunjiri, MP
7. The Hon. Generali Nixon Kiprotich Korir, MP
8. The Hon. Hassan Oda Hulufo, MP
9. The Hon. Paul Odalo Abuor, MP
10. The Hon. Nelson Koech, MP
11. The Hon. Joshua Mbithi Mwalyo, MP
12. The Hon. Michael Kingi, MP
13. The Hon. Charles Ngusya Nguna, MP
14. The Hon. Maj. (Rtd.) John Waluke Koyi, MP

APOLOGIES

1. The Hon. Richard Onyonka, MP
2. The Hon. Francis Munyua Waititu, MP
3. The Hon. Johnson Manyua Naicca, MP
4. The Hon. Alois Musa Lentoimaga, MP
5. The Hon. (Dr.) Daniel Kamuren Tuitoek, MP
6. The Hon. Jared Okello, MP
7. The Hon. Owen Yaa Baya, MP
8. The Hon. Silvanus Osoro, MP
9. The Hon. George Theuri, MP

IN-ATTENDANCE

Hon. Richard Tongi, M.P – **Vice-chairperson**, Departmental Committee on Defence & Foreign Relations / Friend of the Committee

MINISTRY OF FOREIGN AFFAIRS & INTERNATIONAL TRADE

1. Amb. Monica Juma, DPHIL, CBS - Cabinet Secretary
2. Amb. G. Chege - Director Liaison Parliamentary officer
3. Amb. Mweli Muchira - Chief of Staff, Cabinet Secretary Office
4. Ms. Lilian Asavi - Director, Human Resources Management
5. Ms. Betty Chemoiywa - Liaison Officer

THE NATIONAL ASSEMBLY

- | | | |
|-----------------------------|---|------------------------|
| 1. Ms. Tracy Chebet Koskei | - | First Clerk Assistant |
| 2. Mr. Abdirahman G. Hassan | - | Second Clerk Assistant |
| 3. Mr. Peter Mwaura | - | Senior Legal Counsel |
| 4. Ms. Jane Serem | - | Audio Officer I |

MIN. NO.NA/COI/2019/228:

PRELIMINARIES

The Chairperson called the special meeting held pursuant to Standing Order 186 (2) of the National Assembly to order at five minutes past four o'clock and said the Prayer. The Agenda for the meeting was adopted as proposed and seconded by the Hon. Charles Ngusya Nguna, MP and the Hon. (Dr.) James Murgor, MP respectively. Self-introductions were made thereafter.

The Chairperson informed the witnesses of the mandate of the Committee, which was to follow up on implementation of recommendations contained in House resolutions and adopted reports of the National Assembly in order to ensure that the House does not act in vain.

MIN. NO.NA/COI/2019/229:

MEETING WITH THE CABINET SECRETARY FOR THE MINISTRY OF FOREIGN AFFAIRS TO CONSIDER THE IMPLEMENTATION STATUS OF THE CONDITIONAL APPROVAL OF MS. MWENDE MWINZI AS AN AMBASSADOR TO SEOUL, SOUTH KOREA

The Cabinet Secretary, Amb. Monica Juma, DPHIL, CBS, accompanied by other officials of the Ministry of Foreign Affairs and International Trade appeared before the Committee and submitted that: -

No Ambassador / High Commissioner designate has taken up the recent appointments yet, as there was a preparatory process which includes undergoing a comprehensive induction. The nominees underwent a six (6) week induction programme from 14th July to 21st August, 2019 as required in the Foreign Service Regulations. Further, the Ministry was awaiting 'No Objections' from the receiving Governments.

The Ministry was in receipt of appointment letters for all other designates apart from for Ms. Mwende Mwinzi, which she presumed awaiting her renouncement of her citizenship to the United States of America.

The responsibility for initiating the process of the renouncement of her citizenship to the United States of America does not rest with the Ministry but with Ms. Mwende Mwinzi.

On Ms. Mwende Mwinzi attending the induction training, the Cabinet Secretary posited that from her understanding, the Certificate letter received from Parliament communicating the approval of the nominees indicated that Ms. Mwende Mwinzi had been vetted by the National Assembly and approved based on her suitability and having met all the requirements. The conditionality for approving her nomination was based on her taking up the appointment as an Ambassador and not undertaking the training.

There was no delay by any nominee to take up the appointment; additionally the Kenya's Embassy in Seoul, South Korea was fully functional and the diplomatic relationship with South Korea was well serviced. Further, all Kenya's missions are with High Commissioners and officers who are eminently qualified to represent the country and ensure its interests are represented globally.

In the event that Ms. Mwende Mwinzi does not renounce her citizenship to the United States of America, as set out in the conditional approval, the recruitment process of another Ambassador will have to be initiated in compliance with the law.

On whether a background check was done on the nominees before their names were forwarded for vetting, the Committee heard that the pre-qualification process of envoys is done by many government agencies all of which cleared all the nominees, including Ms. Mwende Mwinzi. The Ministry also played its part and recommended the nominees because it deemed they were good candidates.

The process of approving Ambassadors is as follows:

- (i) The President forwards the names of Nominees to the National Assembly for vetting and approval;
- (ii) Vetting is done by the Departmental Committee on Defence and Foreign Relations and subsequently approval by the National Assembly is done;
- (iii) Communication on the decision of the National Assembly as regards the approval of nominees to the Head of Public Service by way of a Certificate;
- (iv) Induction of designate Ambassadors/ High Commissioners;
- (v) Writing to the receiving country(s) requesting for a 'No Objection';
- (vi) The Head of Public Service originates appointment letters for the designate Ambassadors / High Commissioners; and,
- (vii) Dispatch of the Ambassadors/ High Commissioners to their duty stations.

Kenya has a total of fifty nine (59) Missions and Consul Generals; there are fifty two (52) head of missions in stations and six (6) embassies are currently without Ambassadors.

Committee Concerns

The following matters were raised:

1. Timelines for Ms. Mwendu Mwinzi's conditional approval as an Ambassador to Seoul, South Korea

The Committee noted that the conditional approval of Ms. Mwendu Mwinzi by the National Assembly was not open-ended and a decision would have to be made as soon as possible especially given that public funds had already been expended to induct her. Further, in the event that Ms. Mwendu Mwinzi does not renounce her citizenship to the United States of America, more public funds will be expended to recruit another person to serve for the position of an Ambassador to Seoul, South Korea.

2. Conflict of interest arising from dual citizenship

The Committee also noted that an ambassador or diplomat is a representative of the interests of a sending State. In this regard, where a person has dual citizenship, a conflict of interests arises.


Committee Resolution

The Committee resolved that the Cabinet Secretary reaches out to Ms. Mwendu Mwinzi on whether she was going to renounce her citizenship to the United States of America or not and communicates her decision to the Committee within ten (10) days or by Monday, 23rd September, 2019.

MIN. NO.NA/COI/2019/230:

ADJOURNMENT

There being no other business, the meeting was adjourned at five minutes past five o'clock.

Sign.......... Date.....19/09/2019,.....
(Chairperson)

ANNEX III
SUBMISSIONS

③ Ameyo
Please note

Telephone: +254-20-318888
Fax: +254-20-2240066/341935/344333
E-mail: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date

FA
24/9/19



② CHEBET

Please deal
FA
24/9/19

HARAMBEE AVENUE
P.O. BOX 30551-00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

Ref. No.MFA. ADM.1/102A/VOL.XXI (56)

23rd September 2019

Mr. Michael Sialai EBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

① D/Coms

Please deal.
@Grew
24/09/19

Dear

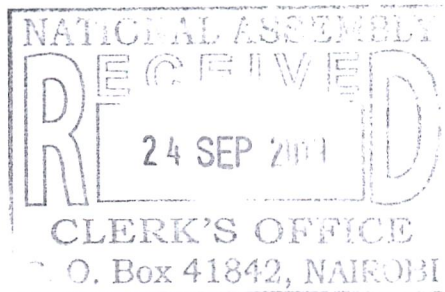
Michael Sialai

RE: PARLIAMENTARY QUERY ON MS. MWENDE MWINZI

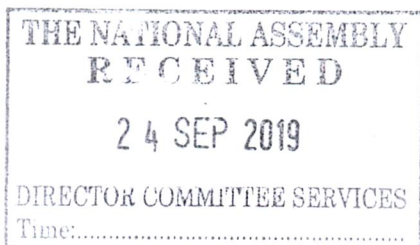
1. I refer to the Cabinet Secretary Juma's meeting with the Committee on Implementation on 12th September 2019 where a brief on the status of the nomination of Ms. Mwendu Mwinzi as Ambassador to South Korea was provided. I wish to thank the Speaker of the National Assembly and the Committee on Implementation for their indulgence on the matter so far.
2. On 10th September 2019 the Speaker ruled that the matter be handled by the Committee on Implementation. On Thursday 12th September 2019 the Cabinet Secretary was given ten (10) days to report on whether Ms. Mwinzi would renounce her United States of America Citizenship.
3. In pursuit of the Committee's directive, on 13th September 2019 the Cabinet Secretary for Foreign Affairs conveyed this decision and requested her to file a response on the matter by the 17th September 2019. In response, Ms. Mwinzi through her lawyers Prof. Tom Ojienda & Associates sent the attached letter, received at the Ministry on Friday 20th September 2019. I wish to convey a copy of the said letter on behalf of the Cabinet Secretary for Foreign Affairs, who is currently away on official duty. I request you to convey the attached letter to the Chair of the National Assembly Committee on Implementation as per its guidance at the 12th September 2019 session.
4. I strongly re-affirm the Ministry's commitment to continued cooperation.

Yours

[Signature]
Amb. Tom Amoto, MBS
Political & Diplomatic Secretary
FOR: PRINCIPAL SECRETARY
Encl



KENYA
AU ENDORSED CANDIDATE FOR
UN SECURITY COUNCIL
2011-2022



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When replying please quote Ref. No. and date



file copy

HARAMBEE AVENUE
P.O.Box 30551-00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

Ref. No. **MFA. 414483/(6)**

13 September 2019

Ms. Mwende Mwinzi
Ambassador Designate to the Republic of Korea
NAIROBI

Dear

RE: PARLIAMENTARY QUERY

Reference is made to your nomination by His Excellency the President as Ambassador Designate of the Republic of Kenya to the Republic of South Korea with effect from 1st May 2019 and the subsequent vetting process by Parliament on 28th May 2019.

The Head of Public Service vide letter OP.CAB.14.IA conveyed to the Ministry of Foreign Affairs the approval by the National Assembly of your deployment as Kenya's Ambassador to Korea, "*subject to renouncing your citizenship to the United States of America.... before taking up your post*"

Subsequent to this, the Parliamentary Committee on Implementation invited me on 12th September 2019, to brief them on this matter, and directed me, as Cabinet Secretary for Foreign Affairs, to ascertain the status of implementation of this decision within 10 days of the meeting.

This letter therefore comes to convey to you this directive of the Parliamentary Committee, and to ask you to file a response on the same through my office by Tuesday 17th September 2019, or before, in order to enable the Head of Public Service finalize your appointment, and respond to Parliament, accordingly.

Yours

Amb. Monica Juma, DPhil, CBS
CABINET SECRETARY

Prof. Tom
Ojienda
& Associates

Date: 17th September, 2019

Advocates, Legal Consultants, Legal Auditors, Notaries Public, Commissioners for Oaths & Patent Agents

Our Ref: PTO/MMM/109/19

Your Ref: TBA



Amb. Monica Juma, DPhil, CBS,

CABINET SECRETARY,

Ministry of Foreign Affairs

NAIROBI



Dear Madam,

RE: PARLIAMENTARY QUERY

Reference is made to the above matter

We acknowledge receipt of your letter dated 13th September sent to our client Mwende Maluki Mwinzi, and respond as hereunder.

Our client was appointed by the President of the Republic of Kenya, His Excellency Uhuru Kenyatta vide a letter dated 2nd May 2019, as Kenya's Ambassador to the Republic of Korea. Our client graciously acknowledged and accepted the appointment and complied with all the requirements for appointment.

Prof. T.O. Ojienda, C.S. 05 (Home Affairs) Dip. (K) (K) (K)
G. H. Mwakilima 05 (Home Affairs) Dip. (K) (K)
V. E. Mwangi 05 (Home Affairs) Dip. (K) (K)
H. E. Othman 05 (Home Affairs) Dip. (K) (K)
J. W. Mwangi 05 (Home Affairs) Dip. (K) (K)
E. B. Hassan 05 (Home Affairs) Dip. (K) (K)
M. M. Kiboi 05 (Home Affairs) Dip. (K) (K)
M. O. Ojienda 05 (Home Affairs) Dip. (K) (K)

Golf View Office Suites
Over Muthanga Golf Club
4th Fl. Suite No. 440
P.O. Box 14246 00400
Muthanga, Nairobi, Kenya

Makumbwa Westgate Mall
2nd Floor Kenyatta Avenue
Next to KEA Roundabout
P.O. Box 14242 20100
Nairobi

TEL: +254 20 271 510
+254 721 971 159
FAX: +254 20 271 500

Our client successfully went through the vetting process by the National Assembly Departmental Committee on defence and foreign relations which recommended her appointment but noted that she had dual citizenship. **The committee thus recommended that she be appointed on condition that she renounces her United States of America Citizenship.**

The said recommendations by the Departmental committee are unconstitutional, illegal null and void for reasons that, **the position of Ambassador is not a state office in terms of Article 260 of the Constitution of Kenya which provides that:**

“State office” means any of the following offices—

(a) President;

(b) Deputy President;

(c) Cabinet Secretary;

(d) Member of Parliament;

(e) Judges and Magistrates;

(f) member of a commission to which Chapter Fifteen applies;

(g) holder of an independent office to which Chapter Fifteen applies

member of a county assembly, governor or deputy governor of a

county, or other member of the executive committee of a county

government;

(i) Attorney-General;

(j) Director of Public Prosecutions;

(k) Secretary to the Cabinet;

(l) Principal Secretary;

(m) Chief of the Kenya Defence Forces;

(n) commander of a service of the Kenya Defence Forces;

(o) Director-General of the National Intelligence Service;

(p) Inspector-General, and the Deputy Inspectors-General, of the

National Police Service; or

(q) an office established and designated as a State office by national legislation;

While **Article 260** of the Constitution provides that national legislation may establish an office and designate it as a State office, there is currently no legislation in place which has designated the office of a High Commissioner or an Ambassador to be a State office. If Parliament intended that High Commissioners or Ambassadors should be regarded as State officers, nothing would be simpler than passing legislation to that effect under **Article 260 of the Constitution**.

On account of the above, under the Constitution of Kenya 2010, the office of an Ambassador is not a State office. **Section 31(2) of the Leadership and Integrity Act** which requires a person who holds dual citizenship, to renounce their other citizenship, upon election or appointment to a state officer does not therefore apply to our client as Ambassadors are not state officers.

Secondly, **even if Article 260 of the Constitution** was to apply to our client, she would be exempted by virtue of **Article 78 (3) (b) of the Constitution** which provides that:

(1) A person is not eligible for election or appointment to a State office unless the person is a citizen of Kenya.

(2) A State officer or a member of the defence forces shall not hold dual Citizenship.

(3) Clauses (1) and (2) do not apply to—

(a) judges and members of commissions; or

(b) any person who has been made a citizen of another country by operation of that country's law, without ability to opt out.

Our client was born in Milwaukee- United States of America and by virtue of the American laws became a Citizen by birth. Her citizenship or the process of opting in was a consequence of circumstances out of her control. She did not participate in the decision to be born in the US and she cannot “opt out” of that decision.

The argument by the National Assembly that the requirements of **Article 78** of the Constitution and **Section 31(2) of the Leadership and Integrity Act** extend to public officers is untenable. The Constitution has been deliberate in differentiating State officers and other public officers from High Commissioners and Ambassadors and this is evident at **Article 234(3) of the Constitution** which provides that the powers and functions of the Public Service Commission shall not apply to “State offices; an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic.”.

We have filed a Petition before the Constitutional and Human Rights Court, **Petition 367 of 2019**, which is in our view not a contentious matter but is intended to give the court an opportunity to interpret the constitution. Pending the hearing of the Petition and without prejudice to the above, we advise that the right thing to do is to post our client as Kenya's Ambassador to the Republic of Korea.

Finally, we reaffirm our client's commitment to the Republic of Kenya and her irrevocable loyalty to the President, His Excellency, Uhuru Kenyatta. Our Client intends to serve in good faith and to the best of her ability.

Yours Faithfully

A handwritten signature in black ink, appearing to be 'Tom Ojienda', written over a horizontal line.

PROF. TOM OJIENDA & ASSOCIATES

ANNEX IV
CERTIFICATE ON THE APPROVAL
FOR APPOINTMENT AS
AMBASSADORS AND HIGH
COMMISSIONERS

REPUBLIC OF KENYA

Telegraphic Address
"Bunge" Nairobi
Telephone: +254 020 221291/ 2848000
Fax: +254-020-243694
E-mail: clerk@parliament.go.ke



OFFICE OF THE CLERK
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

When replying, please quote

THE NATIONAL ASSEMBLY

KNA/DLP/TBO/CERT/2019/(005)

6th June, 2019

Dr. Joseph Kinyua, EGH

Head of the Public Service

State House

NAIROBI

Dear

Joseph,

**RE: APPROVAL OF PERSONS FOR APPOINTMENT AS AMBASSADORS AND
HIGH COMMISSIONERS**

The above-mentioned subject refers.

Enclosed herewith, please find a Certificate in respect of the National Assembly's Approval of seven (7) **persons for appointment** as Ambassadors and High Commissioners.

I have also enclosed a copy of the Report of the Departmental Committee on Defence and Foreign Relations for reference particularly with respect to the nominee approved for appointment as Ambassador to Seoul, Korea.

Yours,

A handwritten signature in black ink, appearing to read 'Justin B.N. Muturi', written over a horizontal line.

HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Encl.

REPUBLIC OF KENYA

Telephone 2848000
E-mail: clerk@parliament.go.ke
Fax: 254-020-243694



National Assembly
Clerk's Chambers
Parliament Buildings
P O Box 41842 - 00100
NAIROBI, Kenya

THE NATIONAL ASSEMBLY

CERTIFICATE

APPROVAL OF PERSONS FOR APPOINTMENT AS AMBASSADORS AND HIGH COMMISSIONERS

I, **MICHAEL R. SIALAI, EBS**, Clerk of the National Assembly, do hereby certify that, in accordance with the provisions of Article 132 (2)(e) of the Constitution, the National Assembly, by a **Resolution** passed on **Thursday, June 06, 2019**, approved the persons submitted by H.E. the President for appointment as Ambassadors and High Commissioners.

NOW THEREFORE, in accordance with the provisions of section (11) of the Public Appointments (Parliamentary Approval) Act, 2011, the names of the persons so **approved** as Ambassadors and High Commissioners are as hereunder: -

<u>S/No.</u>	<u>Name</u>	<u>Mission</u>
(1)	Mr. Kariuki Mugwe	Abu Dhabi, United Arab Emirates
(2)	Mr. Peter Katana Angore	Algiers, Algeria
(3)	Mr. Michael Mubea	Dublin, Ireland
(4)	Ms. Flora Karugu	Lusaka, Zambia
(5)	Ms. Diana Kiambuthi	Stockholm, Sweden
(6)	Ms. Njambi Kinyungu	UN-Habitat
(7)	Ms. Mwendu Mwinzi	Seoul, South Korea, <i>subject to renouncing her citizenship to the United States of America in compliance with the provisions of Article 80(c) of the Constitution and sections 31 and 52 of the Leadership and Integrity Act (No. 19 of 2012), upon appointment and before taking office.</i>

Signature: _____

Clerk of the National Assembly

Given under my hand on this^{6th}..... day of June, 2019.

ANNEX V

REPORT OF THE DEPARTMENTAL
COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS ON THE VETTING OF SEVEN
(7) NOMINEES FOR APPOINTMENT TO
THE POSITION OF AMBASSADOR/HIGH
COMMISSIONER

Approved for tabling. *Ben SARA*
4/6/19.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT –THIRD SESSION

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS

REPORT ON THE VETTING OF SEVEN (7) NOMINEES FOR
APPOINTMENT TO THE POSITION OF AMBASSADOR/HIGH
COMMISSIONER

Clerks Chambers,
Directorate of Committee Services,
Parliament Buildings,
NAIROBI

June, 2019



 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 JUN 2019	DAY: TUESDAY
TABLED BY:	HON KATOO OLE METITO CHAIRPERSON, DEFENCE AND FOREIGN AFFAIRS
CLERK-AT THE TABLE:	

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11. Public Appointments (Parliamentary Approval) Act, No. 33 of 2011
Appendix 14

12. Adoption List **Appendix 15**

ABBREVIATIONS

EACC	Ethics and Anti-Corruption Commission
UN	United Nations
HELB	Higher Education Loans Board
KRA	Kenya Revenue Authority
DCI	Directorate of Criminal Investigations
CV	Curriculum Vitae
SDG's	Sustainable Development Goals
RPP	Registrar of Political Parties
EGH	Elder of the Golden Heart
ID	Identity Card
MGH	Moran of the Order of the Golden Heart
KU	Kenyatta University
UoN	University of Nairobi
PWD	Persons with Disability
KSG	Kenya School of Government
IGAD	Inter-Governmental Authority on Development
CHE	Commission for Higher Education
KCPE	Kenya Certificate of Primary Education
KCSE	Kenya Certificate of Secondary Education
DOB	Date of Birth
TOT	Trainer of Trainers
USA	United State of America
MBS	Moran of the Burning Spear
CBS	Chief of the Burning Spear

CHAIRPERSONS FOREWARD

Pursuant to Article 132 (2) (e) of the Constitution and section 5 of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, H.E. the President, forwarded to the the National Assembly, a notification of appointment containing the names and Curricula Vitae of seven (7) Ambassador/High Commissioner nominees on 9th May, 2019. This was for consideration for approval by the National Assembly for appointment as Ambassador/High Commissioner.

On Thursday, 9th May, 2019, the notification of nominations was communicated by the Speaker and thereafter referred to the Departmental Committee on Defence and Foreign Relations for vetting and reporting to the House within fourteen (14) days.

The Committee held three (3) sittings. Seven nominees appeared before the Committee on 28th May, 2019 and were vetted in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, No. 33 of 2011 and the National Assembly Standing Orders on their suitability or otherwise for appointment as Ambassadors/High Commissioners.

The Committee deliberated on the nominees duly filled questionnaires in accordance with Section 6 (8) of the Public Appointments (Parliamentary Approval) Act, curricula vitae, reports from relevant authorities, submissions made by the nominees including their oral submissions during the vetting at the sittings held on Tuesday, 28th May, 2019.

The Committee, in compliance with the Constitutional and other legal requirements and established procedures for vetting, ensured that its meetings were open to the

public and covered by the media.

However, the Committee for the first time since the promulgation of the Constitution, 2010 which recognizes dual citizenship, was faced with the concept of dual citizenship. It deliberated on the issue and opined that a nominee should be vetted, approved and the appointing entity should ensure that such nominee should not take office until he or she renounces dual citizenship.

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations and vetting exercise. I also take this opportunity on behalf of the Committee to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. As a Committee, we also appreciate the role played by the media following its coverage of the proceedings, thus enhancing accountability, transparency and ensuring the participation of the public.

On behalf of the Departmental Committee on Defence and Foreign Relations and pursuant to Article 132 (2) (e) of the Constitution, Section 8(1) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, and the provisions of Standing Order 199(6), it is my pleasure and duty to present to the House for adoption, the Committee's report on the vetting of **Mr. Kariuki Mugwe, Mr. Peter Katana Angore, Mr. Michael Mubea, Ms. Flora Karugu, Ms. Mwendu Mwinzi, Ms. Diana Kiambuthi and Ms. Njambi Kinyungu** nominees for appointment as Ambassadors/High Commissioners.

Signed..... Date:

Hon. Katoo Ole Metito, EGH, MGH, M.P

(CHAIRPERSON)

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Signed..... Date:

Hon. Katoo Ole Metito, EGH, MGH, M.P

(CHAIRPERSON)

1.0 PREFACE

1.1 Establishment of the Committee

1.0. The Departmental Committee on Defence and Foreign Relations is established pursuant to Standing Order 216 (1).

1.2 Mandate of the Committee

2.0 The Committee is mandated under Standing Order 216 (4) and (5) to inter alia-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation and effectiveness of the implementation;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);**
- g) examine treaties, agreements and conventions;
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

- i) consider reports of Commissions and independent offices submitted to the house pursuant to the provisions of Article 254 of the Constitution; and
- j) examine any questions raised by Members on a matter within its mandate.

3.0 In executing its mandate, the Committee oversights the following Ministries and Departments:

- i. Ministry of Defence;
- ii. Ministry of Foreign Affairs;
- iii. Ministry of East African Community and Regional Development; and
- iv. National Intelligence Service.

4.0 According to Schedule II of the Standing Orders, the Committee is mandated to consider the following subjects:

- i. Defence;
- ii. Intelligence;
- iii. Foreign Relations;
- iv. Diplomatic and Consular Services;
- v. International Boundaries including territorial waters and international Relations; and
- vi. Agreements, Treaties and Conventions.

1.3 Committee Membership

5.0 The Departmental Committee on Defence and Foreign Relations comprises the following Members -

- 1. Hon. Katoo Ole Metito, EGH, MGH, M.P **Chairperson**
- 2. Hon. Richard Tong'i, M.P **Vice Chairperson**
- 3. Hon. Yusuf Hassan Abdi, M.P
- 4. Hon. Charles Mutavi Kilonzo, M.P

5. Hon. Patrick Makau, M.P
6. Hon. Col (Rtd.) Dido Ali Raso, M.P
7. Hon. Peter Mungai Mwathi, M.P
8. Hon. Beatrice Nkatha Nyagah, HSC, M.P
9. Hon. Martha Wangari Wanjira, M.P
10. Hon. Memusi Ole Kanchory, M.P
11. Hon. John Lodepe Nakara, HSC, M.P
12. Hon. Nelson Koech, M.P
13. Hon. Major (Rtd.) Bashir Sheikh Abdullahi, M.P
14. Hon (Dr.) Lilian Gogo, M.P
15. Hon. Vincent Kipkurui Tuwei, M.P
16. Hon. Moses Nguchine Kirima, M.P
17. Hon. Ernest Ogesi Kivai, M.P
18. Hon. Caleb Amisi, MP
19. Hon. Asha Hussein Mohamed, MP

1.4 Committee Secretariat

6.0 The following officers support the Committee in the execution of its mandate

- | | |
|-------------------------|------------------------|
| 1. Mr. Samuel Kalama | Senior Clerk Assistant |
| 2. Mr. Abdiaziz Shobay | Clerk Assistant III |
| 3. Mr. Ronald Walala | Legal Officer I |
| 4. Ms. Grace Wahu | Research Officer |
| 5. Mr. Edison Odhiambo | Fiscal Analyst II |
| 6. Mr. Rodgers Kilungya | Audio Officer II |
| 7. Mr. Said Wako | Sergeant At-Arms |

2.0 BACKGROUND

2.1 Establishment of the Office of High Commissioners/Ambassadors

7. The Office of Ambassador/High Commissioner is an Office under the Ministry of Foreign Affairs. The duties of Ambassadors and High Commissioners include

-

- a) advancement and protection of Kenya's interests in host Countries and Countries of accreditation through innovative Diplomacy;
- b) promotion of Kenya's influence in international decision making;
- c) protection of Kenya's sovereignty and territorial integrity;
- d) promotion and strengthening of bilateral/multilateral co-operation/ties;
- e) promotion of sub-regional, regional and international integration and cooperation; and
- f) promotion of public Diplomacy, among other duties.

2.2 Nomination of High Commissioners and Ambassadors

8. Article 132(2) (e) of the Constitution confers upon the President the power to nominate, and subject to approval by the National Assembly, appoint Ambassadors and High Commissioners. It provides that -

“The President shall nominate and, with the approval of the National Assembly, appoint and may dismiss- ...(e) High Commissioners, Ambassador and Diplomatic and Consular Representatives”

2.3 Notification of nomination

9. In accordance with the provisions of Article 132(2) (e) of the Constitution and section 5 of the Public Appointments (Parliamentary Approvals) Act, His Excellency the President vide a letter dated 9th May, 2019 under reference number

OP.CAB.14.1A (*Annexure 1*) forwarded to the National Assembly, for consideration and approval, the notification of nomination of the following seven (7) persons for appointment as Ambassadors and High Commissioners to respective Missions -

	Name of Nominee	Country/Mission
1.	Mr. Kariuki Mugwe	Abu Dhabi
2.	Mr. Peter Katana Angore	Algiers
3.	Mr. Michael Mubea	Dublin
4.	Ms. Flora Karugu	Lusaka
5.	Ms. Mwendu Mwinzi	Seoul
6.	Ms. Diana Kiambuthi	Stockholm
7.	Ms. Njambi Kinyungu	UN-Habitat

2.4 Committal to the Departmental Committee of the nominations

10. In his Communication to the House on Thursday, 9th May, 2019 pursuant to Standing Order 42, the Speaker of the National Assembly informed the House that His Excellence the President, by way of letter dated 9th May, 2019 had nominated Mr. Kariuki Mugwe, Mr. Peter Katana Angore, Mr. Michael Mubea, Ms. Flora Karugu, Ms. Mwendu Mwinzi, Ms. Diana Kiambuthi and Ms. Njambi Kinyungu as Ambassadors/High Commissioners subject to approval by the House pursuant to Article 132 (2) (e) of the Constitution.

11. After conveying the message from His Excellency, the President on the nomination, the Speaker of the National Assembly pursuant to Standing Order 42 (3)(c) referred the names of the nominees and their curricula vitae to the

Departmental Committee on Defence and Foreign Relations to conduct approval hearings.

2.5 Notification to the public and request for memoranda

12. The Clerk of the National Assembly placed an advertisement in the print media on Friday, 17th May, 2019 (*Annexure 9*) inviting the public to submit memoranda by way of written statements on oath (affidavits) on the suitability or otherwise of the nominees in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011 “*any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated*”. The advertisement indicated that the submissions were to be received by Thursday, 23rd May, 2019 at 5.00 pm.

13. Pursuant to the provisions of Article 118 of the Constitution, Section 6(4) of the Public Appointments (Parliamentary Approval) Act and Standing Order 45(3), the general public was on Friday, 17th May, 2019 (*Annexure 9*) notified in the print media by the Clerk of the National Assembly of the intention of the Departmental Committee on Defence and Foreign Relations to conduct the vetting of the nominees on Tuesday, 28th May, 2019.

2.6 Notification to the nominees

14. On 17th May, 2019, the Clerk of the National Assembly, pursuant to Section 6(3) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, notified the nominees of the date, time, and place for holding the Approval hearings (*Annexure 3*).

2.7 Clearance requirements

15. On 22nd May, 2019 the Clerk of the National Assembly wrote to the Ethics and Anti-Corruption Commission (EACC), Kenya Revenue Authority (KRA), the Directorate of Criminal Investigation (DCI), the Higher Education Loans Board (HELB), and the Registrar of Political Parties (RPP) requesting for information (*Annexure 4*) with respect to the nominees on the following -

- (a) matters touching on integrity;
- (b) tax compliance;
- (c) loan repayments; and
- (d) political affiliations.

2.7.1 Higher Education Loans Board

16. The Higher Education Loans Board vide a letter under ref. HELB/RR/112009/NA dated Friday, 24th May, 2019 (*Annexure 5*) confirmed that there were no outstanding loans balance by the nominees.

2.7.2 Kenya Revenue Authority

17. The Kenya Revenue Authority did not submit a response to confirm whether the seven (7) nominees were all tax compliant. However, all the nominees have tax compliant certificates confirming that they are all tax compliant.

2.7.3 Ethics and Anti-Corruption Commission

18. The Ethics and Anti-Corruption Commission vide a letter under ref. EACC.7/10/5 VOL.IX (119) dated 27th May, 2019 (*Annexure 6*) confirmed that there were no outstanding issues or ongoing investigations against the seven nominees.

2.7.4 The Directorate of Criminal Investigations

19. The Directorate of Criminal Investigations vide a letter under ref. DCI/CRO/SEC/6/7/2/A/VOL.VI/44 dated 27th May, 2019 (*Annexure 7*) confirmed

that the seven (7) Ambassador/High Commissioner nominees applied for police clearance certificates on diverse dates and were genuinely issued with clearance certificates.

2.7.5 Registrar of Political Parties

20. The Office of the Registrar of Political Parties vide a letter under Ref No. RPP/ORG/34 Vol III (44) dated 27th May, 2019 (*Annexure 8*) confirmed that according to the records held by the office as at 27th May, 2019, the seven (7) nominees were not officials of a registered political party.

2.8 Issues for consideration in conducting the Approval hearing

21. The Committee observed that the issues for consideration in relation to the nomination and approval exercise are as provided under section 7 of the Public Appointments (Parliamentary Approvals) Act, as follows-

- a) the procedure used to arrive at the nominee;
- b) the constitutional and statutory requirements relating to the office in question;
and
- c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which the nomination is being made.

(a) Procedure used to arrive at the nominee

22. The Committee observed that Article 132(2) (e) of the Constitution vests the power to nominate persons for appointment as Ambassadors and High Commissioners in the President.

(b) Constitutional and Statutory requirements

23. The Constitution, in addition, sets out requirements on Leadership and Integrity Act, 2012 regarding the appointment of persons to public office.

24. The Committee, in determining the suitability of the nominees, took into consideration the provisions on leadership and integrity as outlined under Chapter Six of the Constitution. In particular, the Committee took cognizance of the following provisions-

- i. Article 73 (2) of the Constitution which provides that the guiding principles of leadership and integrity include –
 - (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
 - (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
 - (c) selfless service based solely on the public interest, demonstrated by —
 - (i) honesty in the execution of public duties; and
 - (ii) the declaration of any personal interest that may conflict with public duties;
 - (d) accountability to the public for decisions and actions; and
 - (e) discipline and commitment in service to the people.
- ii. Article 75(1) of the Constitution that requires a State Officer, whether in public or private life to behave in a manner that avoids conflict between personal interest and public official duties and Article 75(3) of the Constitution that prohibits a State Officer who has been removed from office under that Article from holding any other State Office.
- iii. Article 77(1) of the Constitution that prohibits a full time State Officer from participating in any other gainful employment.
- iv. Article 77(2) of the Constitution that prohibits an appointed State officer from holding office in a political party.

- v. Article 78 of the Constitution that disqualifies persons who are not Kenyan Citizens and persons holding dual citizenship from appointment as State Officers.

c) Suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which the nomination is being made

25. The Committee observed that suitability of the nominee should be evaluated holistically taking into account the nominee's academic credentials, professional training, experience, background and personal qualities as well as the performance of the nominee during the approval hearing.

26. The Committee's observations and resolutions as per the specific nominees are contained in the respective parts relating to those nominees in this report.

2.8 Memoranda from members of the public

27. Section 6(9) of the Public Appointments (Parliamentary Approvals) Act, provides that *any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold office to which the candidate has been nominated.*

28. The Clerk of the National Assembly placed an advertisement in the print media on Friday 17th May, 2019 inviting the public to submit memoranda by way of written statements on oath (affidavits) on the suitability or otherwise of the nominees in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

29. By close of business on Thursday 23rd May, 2019 at 5.00 p.m., the Committee

had not received any written statements on oath in respect of the suitability or otherwise of the seven (7) Ambassadorial and High Commissioner nominees.

2.9 Withdrawal from the approval process

30. Section 6(10) of the Public Appointments (Parliamentary Approvals) Act, provides that *a candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidates nomination shall thereupon lapse .*

31. Pursuant to Section 6(10) of the Public Appointments (Parliamentary Approvals) Act, no nominee notified the Clerk of his/her withdrawal from the approval process.

3.0 APPROVAL HEARINGS/ VETTING OF NOMINEES FOR APPOINTMENT TO THE POSITION OF AMBASSADOR AND HIGH COMMISSIONER

32. The Departmental Committee on Defence and Foreign Relations held a pre-vetting meeting on Monday, 27th May, 2019 at 9:30am to deliberate on the approval hearings, review documents, testimonials and the following were highlighted:

33. That, by the deadline date of 23rd May, 2019 the Clerk of the National Assembly had not received any written statements on oath contesting the suitability of ALL the seven (7) nominees;

34. In conducting the approval hearings, the Committee examined the nominees against the following criteria as set out in the Public Appointments (Parliamentary Approval) Act-

- i. Academic qualifications;
- ii. Employment record;
- iii. Professional affiliations;

- iv. Potential conflict of interest;
- v. Knowledge of the relevant subject;
- vi. Overall suitability for the position;
- vii. Integrity;
- viii. Vision and leadership; and
- ix. Expectations and key priorities.

3.1 VETTING OF MR. KARIUKI MUGWE - NOMINEE FOR POSITION OF AMBASSADOR – ABU DHABI

35. Mr. Kariuki Mugwe appeared before the Committee on Tuesday, 28th May, 2019 at 9.30am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly. The nominee responded to several questions during the vetting as follows-

Citizenship, Date and Place of Birth

36. The nominee is a Kenyan Citizen. He was born in Kiambu in 1956. His National Identity Card number 4827907.

Academic and Professional Qualifications

37. He holds a Bachelor of Commerce Degree in Accounting (1981) and a Masters in Business Administration degree in Accounting (2010) from the University of Nairobi. In the course of his career, he attended the following training courses and programmes-

- a) Mastering Trade Policy: Understanding and Acting in Today's Economy, Harvard Kennedy School, USA

- b) Strategic Leadership Development Program Certificate, Kenya Institute of Administration, Kenya
- c) Senior Management Course Certificate, Kenya Institute of Administration, Kenya
- d) Post Graduate Program on Performance Auditing, University of Connecticut, USA
- e) Public Sector Financial Management: Public Expenditure and Utilization of Resources, University of South Africa in conjunction with Kenya College of Accountancy
- f) Public Expenditure Control and Final Accounts Course, Kenya Institute of Administration, Kenya
- g) Corporate governance, Centre for Corporate Governance (CCG)

Employment records and Work Experience

38. Mr. Kariuki Mugwe is a career public servant with over 37 years of experience and has held various positions in the public sector and currently holds the position of a Consul General and the Head of Mission at the Consulate General of the Republic of Kenya in Dubai.
39. He has wide experience in International Finance, donor funded projects management, international trade and diplomacy.

Achievements

40. He assisted in establishing and improving systems of financial reporting for all missions abroad while at the Ministry of Foreign Affairs. He founded and coordinated a trust fund run by a committee to oversee the improvement of two schools' academic performance (i.e. Kigio Primary and Kigio Secondary School)

Statement of net worth

41. His financial net worth is two hundred million (Ksh. 200,000,000.00). He highlighted that his sources of income include salary, Foreign Service allowance and dividends from shares.

Potential conflict of interest

42. The nominee informed the Committee that he has no arrangements or activities that are likely to present potential conflict of Interest.

Leadership and Suitability of the Nominee

43. He informed the Committee that he has no prior training in diplomacy, but having worked and engaged with diplomats at the Ministry of Foreign Affairs, he is confident that he will be of great value as an Ambassador in Abu Dhabi and the Northern Emirates. In his tenure as Consul General, trade has improved by over 28%, with exports rising by 38% and imports by 23%. He lobbied to get a labour officer seconded to Dubai to handle value addition in labour related fields. Presently, he is coordinating the registration of the Huduma number for Kenyans in diaspora.

44. He noted that he would protect, project and promote the interests of Kenya while in Abu Dhabi. Further, as a representative of H.E the President, he would improve the relationship between Kenya and UAE.

Balance of Trade

45. Regarding the issue of balance of trade, the nominee informed the Committee that balance of trade is currently in favor of United Arab Emirates. He submitted that over 60% of imports from UAE are related to oil and there is

need to close the gap. The nominee indicated that that Kenya needs to expand its product range and work towards closing the trade gap.

Professional Associations

46. The nominee informed the Committee that he is not a member of any professional association.

Youth and Employment creation

47. As regards to creation of employment opportunities for Kenyan youth in the UAE; the nominee stated that there is need to restructure employment institutions and if possible create a stand-alone Ministry of Foreign employment that will promote job opportunities and protect the interests of Kenyans abroad. He further stated that there is need to encourage more investment in labour intensive companies to help create more jobs for the youth. In addition, he indicated that engagement with big organizations and companies in UAE is critical so that the youth living and working in UAE could access employment at professional levels.

Contribution towards realization of Big Four Agenda

48. The nominee informed the Committee that he will strive to achieve the Big 4 agenda by encouraging trade between Kenya and UAE. As a Consul General he has organised several trade fairs in Dubai. He will organise for trade missions from Kenya to the UAE for Kenyan investors to showcase their products. The nominee stated that the high cost of land had made Kenya unattractive for investment. There is urgent need for the government to review the land value index and create a land bank to make Kenya attractive for

investors. He also proposed that the government owns land and lease it to investors in order to reduce the cost of doing business.

His role in the procurement of the Chancery building in Tokyo, Japan

49. The nominee stated that when the MFA purchased the Chancery building in Japan, he was the Principal Accountant in the ministry; he played a critical role in terms of facilitating the transaction. He was also a member of the Tender Committee. He facilitated payment to the seller of the building after the procurement procedures were followed and said that no money was paid in cash. He adduced evidence in court on the matter.

Relationship between UAE and Kenya

50. The nominee stated indicated that if approved and appointed, he will strive to develop a stronger relationship between Kenya the UAE.

Charity and Contributions

51. The nominee stated that as part of his contribution to charity he supports children from poor backgrounds. He further stated that as a Consul General in Dubai he assists Kenyans in distress and anyone who is need of assistance.

Measures to mitigate radicalisation and terrorism

52. The nominee informed the Committee that he will capitalise on the existing bilateral relations between Kenya and UAE and engage UAE authorities with a view to cooperate in matters of security and anti-terrorism.

Committee observations on suitability of Mr. Kariuki Mugwe to serve as Ambassador

53. The Committee having considered the nominees filled questionnaire, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Ambassador, THAT –

- a) The nominee is a Kenyan citizen and does not hold dual citizenship;
- b) He holds a Bachelor of Commerce Degree in Accounting (1981) and a Masters in Business Administration in Accounting (2010) from the University of Nairobi. He has also pursued several professional courses key among them; Strategic Leadership Development Program, Kenya Institute of Administration and Senior Management Course, Kenya Institute of Administration among others.
- c) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- d) he has never been charged in a Court of Law for the last three years;
- e) as stipulated in Article 75(1) of the Constitution, he has no potential conflict of interest;
- f) the nominee satisfies the requirements of Article 77(1) of the Constitution in that he does not intend to participate in any other gainful employment;
- g) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- h) he has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution.

3.2 MR. PETER KATANA ANGORE – NOMINEE FOR POSITION OF AMBASSADOR, ALGIERS

54. Mr. Peter Katana Angore appeared before the Committee on Tuesday, 28th May, 2019 at 10.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly. The nominee responded to several questions during the vetting as follows-

Citizenship, Date and Place of Birth

55. The nominee is a Kenyan Citizen who was born in Kilifi County in 1965. His National Identity Card number is 8459142

Academic and Professional Qualifications

56. He holds a Bachelor of Arts degree from the University of Nairobi (1990), a Post-Graduate Diploma in International Relations (1999) and a Masters of Arts degree in International Studies from the University of Nairobi (2011). In the course of his career, he has attended the following trainings, courses and programmes:

- a) National Youth Service
- b) Administrative Officers' Paramilitary Training
- c) Leadership Development Course, Outward Bound Centre
- d) Senior Management Course, Kenya Institute of Administration
- e) National Defense College
- f) Strategic Leadership Development Programme, Kenya School of Government

Employment records and Work Experience

57. On employment and work experience, the nominee informed the Committee that:-

He has a work experience of 27 years. He started his career as an Assistant Secretary Cadet in the Ministry of foreign Affairs in 1991 and he rose through the ranks from Assistant Secretary III to the position of Deputy Director. He has served in the following missions abroad:

- (i) Third Secretary at the Embassy of Kenya, Khartoum.
- (ii) Charge D' Affaires (Ad Iterim) at the Embassy of Kenya, Khartoum.
- (iii) Ag. Counsellor, High Commission of Kenya, Pretoria.
- (iv) The Second Secretary, High Commission of Kenya, Pretoria and promoted to First Secretary at the same station.
- (v) Ag. Consul-General, Kenya Consulate, Juba.
- (vi) Second Counsellor, Kenya Consulate Juba.
- (vii) Minister Counsellor II, Embassy of Kenya, Brasilia.

Honors and Awards

58. He has been awarded the Order of the Grand Warrior(OGW) of Kenya, in recognition of his distinguished and outstanding public services.

Statement of net worth

59. His financial net worth is forty million (Ksh. 40,000,000.00). His sources of income include salary, Foreign Service allowances and parcels of land.

Potential conflict of interest

60. He has no arrangements that are likely to present potential conflicts of Interest.

Kenya-Algeria Bilateral Relations

61. He informed the Committee that Algeria is the 4th largest economy in Africa and active in the African Union, United Nations and other international organizations. Kenya can learn from Algeria in the areas of oil exploration and production. He stated that if approved and appointed, he would work to improve the relationship between Kenya and Algeria by ensuring that the Joint Commission for Cooperation is operationalized.

Capacity building initiatives for youth

62. The nominee indicated that there are several scholarship trainings especially in the field of engineering that are being offered by Algeria. However, since meetings for the Joint Commission for Cooperation (JCC) have not been scheduled, there has been a slow-down in the uptake of opportunities offered by Algeria. If approved and appointed, he will ensure that JCC meets regularly to unlock the opportunities in areas of education, oil and gas.

The Big Four Agenda

63. The nominee informed the Committee that Algeria is one of the countries that Kenya could benchmark with in terms of the implementation of Universal Health Care. Algeria has been declared Malaria free and Kenya could benchmark and adopt best practices in terms of the implementation of healthcare programme.

Balance of Trade

64. Trade between Kenya and Algeria is minimal and it is at the advantage of Algeria. Talks on bilateral trade within the JCC are necessary so as to work

on agreements for Kenya's horticultural produce to enter the Algerian markets. He emphasized that trade will improve once the JCC is operationalized.

Interest of Kenyan Christians in Algeria

65. The nominee stated that Islam is the state religion of Algeria. Kenyan Christians living in Algeria will have to take note that Islam is the dominant religion and as they practice their religion there is need for them to respect the religion of the host. However, cases of ill treatment of Kenyans on account of their religion will not be tolerated.

Language barrier

66. The nominee appreciated that the official languages of Algeria are French and Arabic. However he said that this will not prevent him from discharging his duties as an Ambassador. Indeed the nominee stated that even though he has not done exams and obtained certification in French or Arabic, his work experience in Sudan and his short training at a French language institute in Nairobi will enable him to communicate and work in that country.

Charity and Contributions

67. The nominee informed the Committee that he largely supports family members by paying school fees and in their upkeep.

Appointments of non-career diplomats

68. The nominee stated that nomination of persons as Ambassadors is a prerogative of the appointing Authority which in this case is the President of the country as provided for in Article 132 of the Constitution of Kenya. The President can appoint

anybody from any professional background. However he noted that appointment of non-career diplomats was a concern shared among career diplomats in the Ministry.

Committee observations on suitability of Mr. Peter Katana Angore to serve as Ambassador

69. The Committee having considered the nominees filled questionnaire, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Ambassador, THAT –

- a) The nominee is a Kenyan citizen and does not hold dual citizenship;
- b) he holds a Bachelor of Arts degree and a Masters of Arts in International Studies from the University of Nairobi, 1990 and 2011 respectively. He has also attended several professional courses among them ;Leadership Development Course and Senior Management Course, Kenya Institute of Administration
- c) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity having been cleared by the DCI and the EACC;
- d) he has never been charged in a Court of Law for the last three years;
- e) as stipulated in Article 75(1) of the Constitution, he has no potential conflict of interest;
- f) the nominee satisfies the requirements of Article 77(1) of the Constitution in that he does not intend to participate in any other gainful employment;
- g) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- h) he has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict

of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution.

3.3 MR. MICHAEL MUBEA – NOMINEE FOR POSITION OF AMBASSADOR, DUBLIN

70.Mr. Michael Mubea appeared before the Committee on Tuesday, 28th May, 2019 at 11.30am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly. The nominee responded to questions during the vetting as follows -

Citizenship, Date and Place of Birth

71.The nominee is a Kenyan Citizen. He was born in Nakuru. His National Identity Card number is 8846070.

Academic and Professional Qualifications

72.He holds a Bachelor of Commerce from Osmania University (1987), a Bachelor of Laws from the University of Nairobi (2001), a Diploma from Kenya School of Law (2002) and a Masters of Arts in International Relations and Diplomacy from Kenyatta University (2018).

Employment records and Work Experience

73. He began his career at Kenya National Trading Corporation. He was a board member and a chairperson of Ecumenical Loan and Fund (ECLOF). He worked at Wetangula, Adan, Makokha Advocates and later joined Michael Daudi and Association Advocates. He is currently the Deputy Chief Executive Officer at EACC.

Professional Association

74. The nominee is a member of the Law Society of Kenya

Honours and Awards

75. He is a recipient of the Second Class Elder of the Order of the Governing Spear.

Public Office, Political Activities and Affiliations

76. He does not hold any position and is not a member of any political party.

Statement of Net Worth

77. His financial net worth is One Hundred and Fifty Million Shillings (**Kshs. 150,000,000**). His major sources of income include salary and dividends from shares.

Potential Conflict of Interest

78. He has no interests that are likely to present potential conflicts of Interest.

Pro-Bono/Charity Work/ Donations to Charity

79. He has participated in charitable activities such as:-

- i. Acting for the church in legal matters on pro-bono basis
- ii. preaching the gospel of Jesus to inmates in prison
- iii. Donate food and other stuff, once or twice a year
- iv. Contributing to the needy

Suitability

80. The nominee holds a degree in Commerce, Law and diplomacy. He has been an Advocate of the High Court since 2003. He is currently the Deputy Chief Executive Officer in-charge of technical services at Ethics and Anti-Corruption Commission. As a Deputy CEO he is in charge of four directorates: investigations, leadership and Integrity, preventive service and legal services. He asserted that his main achievement was spearheading procurement of ambulances for needy counties and mentoring a passionate team in the EACC.

81. He claimed that he has served EACC with utmost integrity, therefore this experience makes him suitable for the position.

His tenure at Ethics and Anti-corruption Commission

82. The nominee joined the EACC during the transition period from KACC to EACC, where his main task at hand was setting up structures in line with the Constitution and various statutes. Since then, the Commission has investigated over three hundred (300) cases which are currently pending in court.

83. He said the mandate of the Commission was to investigate while that of the office of the Director of Public Prosecutions and the Court is to prosecute and adjudicate cases respectively. On the Chicken-gate Scandal, the nominee stated that the matter was investigated and suspects arraigned in court. The case is yet to be fully determined. He argued that the Commission has provided sufficient evidence for convictions; unfortunately the cases have dragged in court.

84. He informed the Committee that the Commissions' strategy on asset tracking and recovery has enabled it to recover over Kshs ten billion worth of assets.

Other actions the Commission has undertaken include; the formation of integrity clubs in both primary and secondary schools, colleges and universities that aim to embed ethos of anti-corruption in the minds of the youth. The Commission also has an academy that train citizens in corruption eradication practices and system reviews of institutions.

85. The Commission is handicapped in terms of budgetary allocation hence it cannot effectively execute its mandate. Other challenges include persons impersonating as EACC officials and some officers accused of corruption.

86. On matters concerning accusations on earning double salary, the nominee confirmed that the issue in dispute was that his salary was in excess of the approved SRC pay attached to his designation. A report was prepared by the Commission on Administrative Justice (CAJ) on the same but the court went ahead and quashed it due to lack of evidence. Lastly he asserted that the matter was heard inter-parties.

87. On the allegation that he abetted the transfer of ownership of the Integrity Centre; the nominee affirmed that the transfer of Integrity Centre was never a function under his docket. The commissioners and the chairperson were the officials responsible for the sale of the building.

88. With regard to media publicity during summoning of VIPs for interrogation, the nominee asserted that the Commission works very closely with the media. There are very many stages such as Investigation (fact finding mission) in a case. The media always has its intelligence and they have their constitutional freedom to report information. But there are many cases that the commission investigates whose details are not known to the public.

Kenya- Ireland Bilateral relations

89. Kenya has had a long relationship with the Republic Ireland that dates back to over one hundred years. Trade between the two countries has tremendously grown to a tune of eight billion since the opening of a Kenya Embassy in Dublin. It is important to note that Ireland supported the Blue Economy conference in Kenya and there is a lot that the country could learn in terms of manufacturing sector and the Blue Economy industry.

Committee observations on suitability of Mr. Michael Mubea to serve as Ambassador

90. The Committee having considered the nominees filled questionnaire, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Ambassador, THAT –

- a) He is a Kenyan citizen and does not hold dual citizenship;
- b) he holds a Bachelor of Commerce degree from Osmania University (1987), a Bachelor of Laws degree from the University of Nairobi (2001) and a Masters of Arts degree in International Relations and Diplomacy from Kenyatta University (2018). He also pursued a Diploma from Kenya School of Law (2002)
- c) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity having been cleared by the DCI and the EACC;
- d) he has never been charged in a Court of Law for the last three years;
- e) as stipulated in Article 75(1) of the Constitution, he has no potential conflict of interest;

- f) the nominee satisfies the requirements of Article 77(1) of the Constitution in that he does not intend to participate in any other gainful employment;
- g) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- h) he has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution.

3.4 MS. FLORA KARUGU – NOMINEE FOR POSITION OF HIGH COMMISSIONER, LUSAKA

91. Ms. Flora Karugu appeared before the Committee on Tuesday, 28th May, 2019 at 12.30pm and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly. The nominee responded to several questions during the vetting as follows-

Citizenship, Date and Place of Birth

92. The nominee is a Kenyan Citizen. She was born in 1959 in Embu. Her Identity Card (ID) number is 3515113.

Academic and Professional Qualifications

93. She holds a Bachelor of Arts degree (1983), a Post Graduate Diploma in International Relations (1987) and a Masters of Arts degree in International Studies (2012) from the University of Nairobi.

Employment records and Work Experience

94. She has a working experience of 35 years. She began her career as an Assistant Secretary in the Ministry of Foreign Affairs in 1984. She rose through the ranks from Assistant Secretary III to the position of Director at UN & Multilateral Directorate which she holds up-to-date. She has served in the Ministry in different capacities as —

- i. Deputy Director, UN & Multilateral Directorate - Ministry Of Foreign Affairs, Nairobi from December 2017 to February 2018,
- ii. Minister-Counsellor, Kenya High Commission Lusaka, Zambia. From September, 2013 to September 2017.
- iii. Deputy Director, Asia & Australasia Directorate – Ministry of Foreign Affairs, Nairobi from June 2012- September.2013;
- iv. Head of Horn of Africa Division - Ministry of Foreign Affairs, Nairobi.
- v. First Counselor/Deputy Head of Division, Europe and Commonwealth Division - Ministry of Foreign Affairs, Nairobi
- vi. First Counselor, Kenya High Commission, London.
- vii. First Counselor/Head of Chancery, Kenya Embassy Paris, France
- viii. Head of the Middle East Division - Ministry of Foreign Affairs, Nairobi.
- ix. First Secretary in Africa, Europe and International Organization and Conferences Divisions
- x. First Secretary/ Head of Chancery, Kenya Embassy Addis Ababa, Ethiopia.

Professional Association

95. The nominee is a member of Kenya Association of Public Administration and Management.

Membership in non-professional Associations

96. She is not a member of any non-professional associations.

Statement of Net Worth

97. Her financial net worth is approximately four million two hundred and fifty eight thousand two hundred and seventeen Kenya shillings (Ksh 4,258,217.)

Potential Conflict of Interest

98. She informed the Committee that she has no interests that are likely to present potential conflict of interest.

Pro-Bono/Charity Work/ Donations to Charity

99. The nominee informed the Committee that she has donated to children homes and to the less privileged.

Leadership and Suitability

100. She has been working in the Ministry of Foreign Affairs since 1984 and served in various capacities in the ministry. She asserted that she has the requisite experience and qualifications. As a Minister Counsellor in Zambia, she pursued deeper collaboration between Kenya and Zambia in terms of trade and investments that saw the conclusion of the ninth Joint Permanent Commission of Co-operation (JPCC) and visit of the Zambian President to Kenya in 2015. The visit culminated in both countries signing MOUs in areas of tourism, gender and police cooperation.

101. She informed the Committee that she intends to further pursue deeper collaboration with Zambia on matters on health, agriculture, trade and investments and also oversee the implementation of the existing MOU's between the two countries.

Bilateral Relations with Zambia

102. The nominee stated that Kenya and Zambia face a number of challenges. One of the main challenges is technical barriers to trade on various commodities such as sugar, milk and palm oil which are currently being addressed both bilaterally and within COMESA. She asserted that there is need to ensure such challenges are addressed.

103. On challenges facing missions abroad, the nominee stated that to effectively discharge programmes in missions abroad, there is need for adequate budgetary allocation and staff capacity especially where such programmes are sector specific. There are various areas where Kenya and Zambia can benefit such as ICT, agriculture, health and education and cultural linkages.

Committee observations on suitability of Ms. Flora Karugu to serve as High Commissioner

104. The Committee having considered the nominees filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Ambassador, THAT –

- a. The nominee is a Kenyan citizen and does not hold dual citizenship;

- b. She holds a Bachelor of Arts degree (1983), a Post Graduate Diploma in International Relations (1987) and a Masters of Arts in International Studies (2012) from the University of Nairobi;
- c. the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity having been cleared by the DCI and the EACC;
- d. she has never been charged in a Court of Law for the last three years;
- e. as stipulated in Article 75(1) of the Constitution, she has no potential conflict of interest;
- f. the nominee satisfies the requirements of Article 77(1) of the Constitution in that she does not intend to participate in any other gainful employment;
- g. the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- h. she has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution.

3.5 MS. MWENDE MWINZI – NOMINEE FOR POSITION OF AMBASSADOR/HIGH COMMISSIONER, SEOUL, SOUTH KOREA

105. Ms. Mwende Mwinzi appeared before the Committee on Tuesday, 28th May, 2019 at 2.30pm and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly. The nominee responded to questions during the vetting as follows-

Citizenship, Date and Place of Birth

104. She is dual citizen of Kenya and United States of America. She was born in Wisconsin (USA) in 1971. She is a Kenyan citizen by virtue of her father who is Kenyan and a US citizen by being born in the United States of America. Her Kenyan identity card (ID) number is 32316366.

Academic and Professional Qualifications

105. She holds a Bachelor of Science degree in Business Administration, University of Phoenix and is currently pursuing a Master of Arts in Global Security, Arizona State University, USA.

Employment records and Work Experience

106. She began her career as a pricing analyst at Interpost in the USA. She joined as a Marketing Associate and later became an Assistant vice president in Nomura Corporate Research and Asset Management. She is currently an Executive Director of the Twana Twitu Organization and a Partner in Global Communication House in Kenya.

Honors and Awards

107. She was awarded the Moran of the Burning Spear (MBS) on the 12th December 2008.

Professional Association

108. She is the founding Member of Kenyan - American Professionals Association

Memberships

109. She is a member of the following organizations;

- i. Rotary club of Suffern, New York.
- ii. The founder and board member of Twana-Twitu in Kitui.

Published Writings

110. She was contributing weekly columnist for the Sunday Nation for a four year period.

Public Office, Political Activities and Affiliations

111. She has held the following public offices and memberships—

- a). Political Aspirant (Member of Parliament) Jubilee Party 2017
- b). National Coordinator, USA for Party of National Unity 2007

Statement of Net Worth

112. Her financial net worth is **One Hundred and Fifty Million Kenya Shillings (Kshs. 150,000,000)**.

Potential Conflict of Interest

113. She stated that she has no interests that are likely to present potential conflicts of Interest.

Pro-bono/ Charity Work/ Donations to Charity

114. She founded Twana-Twitu, an organization supporting vulnerable children and women in Mwingi West Constituency, with contributions amounting to **Forty Million Kenya Shillings (kshs 40,000,000)**.

Suitability

115. She was raised in Kitui County by her parents who were civil servants. At a very early age, she was instilled virtues of servant leadership, honesty, humility and hard work. She served as a member of the Kenya National and Economic Council which devised policy recommendations for Cabinet around areas of social development, equity, economic growth, wealth and the creation of employment. The Council was also responsible for the creation of vision 2030, the blue print that informs the Big Four Agenda.

116. She holds a Bachelor of Science degree in business administration and is currently pursuing a Masters degree of Arts degree in Global Security; qualifications which she believes to be adequate and suitable to the post she has been for appointment.

Bilateral relations with South Korea

117. Kenya has a strong cordial relationship with South Korea that has spanned over sixty-years. South Korea has made vast advancement with regard to manufacturing of defence equipment. This is a very important area for Kenya in deepening bilateral cooperation with the country. She intends to enhance relations and deepen the same by penetrating in each and every gap on manufacturing, food security, nutrition, affordable housing, universal healthcare, ICT and more importantly defence equipment between the two countries.

Dual citizenship

118. The nominee informed the Committee that she was born in Wisconsin but raised in Kitui County. With regard to her citizenship status, she quoted Article 78 of the Constitution which provides that a person is not eligible for election or appointment to a state office unless the person is a citizen of Kenya. She further postulated that

the post or office of an Ambassador in this case is not a state office pursuant to Article 260 and as such she is not barred from holding this office due to her citizenship status. Further, in acquiring Kenyan documents, she mentioned the process was long, arduous and took a number of years for her to acquire the same.

119. In response to her vying for a political position (MP) in the 2017 General Elections with her dual citizenship status, the nominee stated that she has been allowed to participate in the elections based on the fact that she has no option to opt out from her American citizenship. She was able to contest for the seat in Mwingi but was not successful.

Tourism and Employment

120. The nominee stated that Investment is panacea to unemployment. The government should create more special economic zones in the country to attract more investors which in return create more job opportunities. Promoting Kenyan tourism in South Korea may prove to be difficult as their vacation is one week per year, in that regard the mission in conjunction with the Ministry for Tourism can create tourism packages specific to the South Korean people and also encourage Korean investors to invest in Kenya.

Taxes

121. The nominee stated that she still remits taxes to the US government.

Trade Imbalance

122. In regards to trade imbalance, the nominee stated that the government needs to look at the causes of trade imbalance rather than the figures in order to have it corrected. Kenya exports raw materials to South Korea while South Korea exports

steel products to Kenya. In this regards she suggested that Kenya has to export value added goods in order to gain full value of trade with South Korea.

123. She informed the Committee that most of Kenya's agricultural products have been banned from accessing South Korean Market on the basis of hygiene. However, negotiations are on-going on hygiene standards of packaging and some products such as bananas and broccoli have been allowed into the South Korean market. High taxes have also been imposed on Kenyan tea and there are on-going discussions on how to leverage on exporting tea to South Korea.

Loyalty to Kenya

124. The nominee informed the Committee that she was a founding member of PNU in USA supporting Mwai Kibaki in his bid to vie for presidency in Kenya. She committed herself voluntarily to raise funds and awareness for Kibaki's campaign for four months. She also stated that she interacted and worked with the Government of Kenya particularly the Ministry of Foreign Affairs on implementation of projects abroad. In addition she asserted that her purpose for joining the rotary club in the USA was to raise funds for projects in Kenya.

Committee observations on suitability of Ms. Mwende Mwinzi to serve as Ambassador

125. The Committee having considered the nominee's filled questionnaire, her curriculum vitae and having heard her oral submission during the approval hearing,

made the following observations on her suitability for appointment as Ambassador,

125.1 That nominee –

- a. holds a Bachelor of Science degree in Business Administration, University of Phoenix and is currently pursuing a Master of Arts degree in Global Security, Arizona State University;
- b. satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity having been cleared by the DCI and the EACC;
- c. has never been charged in a Court of Law for the last three years;
- d. satisfies the requirements of Article 77(1) of the Constitution in that she does not intend to participate in any other gainful employment;
- e. does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- f. has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers);

125.2 However, the Committee further observed the following on her suitability for appointment as Ambassador, THAT-

Dual Citizenship

- (a) The nominee is a dual citizen of Kenya and USA. Ms.Mwende Mwinzi was nominated for the position of Ambassador, an office not expressly listed as a State Office in the Constitution. Article 80 (c) of the Constitution provides that Parliament shall enact legislation providing for the application of Chapter six on Leadership and Integrity, with necessary modifications, to public officers and by extension public office.

- (b) The Leadership and Integrity Act, No.19 of 2012, binds both State officers and Public Officers to section 52 of the Act which provides that pursuant to *Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution and Part II of this Act except section 18 shall apply to all public officers as if they were State officers.* The Act, therefore binds both state officers and public officers alike on matters of leadership and integrity.
- (c) Further, Section 31 of the Leadership and Integrity Act provides that; “*a person who holds dual citizenship shall, upon election or appointment to a State office, not take office before officially renouncing their other citizenship in accordance with the provisions of the Kenya Citizenship and Immigration Act, 2011, (No. 12 of 2011).*”
- (d) In the case of *Bishop Donald Kisaka Mwawasi vs Attorney General & 2 others (2014) eKLR*, the appellant a citizen by birth became an American citizen in 2011. He described himself as a dual citizen. The appellant was registered as a member of Agano Political Party and applied to be nominated to contest for the Senate seat for Taita Taveta County. The Independent Electoral Boundaries Commission published a public notice prescribing the minimum qualifications, one of them being that “one must not hold dual citizenship”. The Appellant filed a petition seeking a declaration to quash the notice. The Learned Judge held that “by virtue of **Article 78(2)** of the Constitution a person who holds dual citizenship cannot run for an elective office as a member of Parliament.” The Appellant appealed the decision and the Court of Appeal held as follows—
- i. *Parliament in enacting section 31(Citizenship) of the Leadership and Integrity Act interpreted Article 78 (2)(Citizenship and Leadership) correctly. The said Article is not against a dual citizen*

being elected or being appointed as a state officer. The restriction is against leadership by dual citizen in the specified State Offices and it does not all apply unless and until a person is elected and/or appointed to a State office.

- ii. A dual citizen is eligible to seek nomination for election as a member of Parliament or member of county government and to stand as a Member of Parliament or county government in an election and also eligible to hold any State office.*
- iii. However, a dual citizen is disqualified upon election or appointment to a State office from assuming office before voluntarily and officially renouncing his or her other citizenship.*

Potential conflict of interest

125.3 The Committee also observed that there is potential conflict of interest in view of the nominee holding dual citizenship. Article 75 of the Constitution provides “*A State Officer shall behave, whether in public and official life, in private life, or in association with other persons in a manner that avoids any conflict between personal interests and public or official duties*”.

In addition Section 12 (1) of the Public officers Ethic Act, 2003 provides “*A Public Officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties*”.

In the United States of America, Section 101(a (22) of the **Immigration and Nationality Act (INA)**, provides for the definition of the term “National of the United States” to mean “*(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States*” In this case, the nominee asserted that she holds a United States citizenship

and as such owes permanent allegiance to the United States pursuant to the Immigration and Nationality Act.

The nominee further alleged that she is a citizen of the United States by birth and as such cannot renounce her citizenship status as it was acquired at birth. She also quoted Article 78 (3) (b) which provides “*any person who has been made a citizen of another country by operation of that country’s law, without ability to opt out.*”

However, the Committee observed that there are case studies of diplomats and government officials who acquired United States Citizenship at birth but when called to serve in government positions in their native countries, they renounced their American citizenship. Some cases studies include—

(a) In 2014, **Kevin O’Malley**, an Irish American, was approved as the United States Ambassador to Ireland. He held dual citizenship in Ireland and United States of America. He renounced his Irish citizenship to allow him take up the United States ambassadorial role to Ireland.¹

(b) **David Alward**, was born in Massachusetts and moved to New Brunswick, Canada with his family while he was still young. His citizenship was **Jus soli** (birth right citizenship). He was named Canada’s Consul-General in Boston in April 2015, and renounced U.S. citizenship to accept the post.²

(c) **Daphne Barak Erez**, was born to Israeli parents in the U.S. and later returned with them to Israel, where she grew up. Her citizenship was **Jus soli**. She was named a justice of the Supreme Court of Israel in January 2012, which

¹ Hosford, P. The US has finally approved a new ambassador to Ireland, <https://www.thejournal.ie/us-ambassador-to-ireland-to-be-confirmed-tonight-1677919-Sep2014/>

² CBC News, David Alward named Canadian consul general in Boston, <https://www.cbc.ca/news/canada/new-brunswick/david-alward-named-canadian-consul-general-in-boston-1.3047614>

required her to give up any foreign citizenship she held. She renounced her USA citizenship.³

(d) **Ron Dermer**, was born in Florida in 1971. He moved to Israel in 1996, and began the process of becoming a citizen there in 1997. His citizenship was **Jus soli**. In 2005, then-Finance Minister Benjamin Netanyahu appointed him Minister for Economic Affairs in the Israeli embassy in Washington, a post for which he had to renounce his U.S. citizenship. He is currently Israel's Ambassador to the United States.⁴

(e) **Boris Johnson**, was born in New York City in 1964 to British parents, but has not lived there since he was five years old. He was elected Member of Parliament in 2001 and Mayor of London in 2008. In 2014, he unsuccessfully protested the imposition of capital gains tax by the United States on his home in London. He renounced U.S. citizenship in 2016 while becoming Foreign Secretary of the United Kingdom.⁵

(f) **Luis Alberto Moreno**, was born in Philadelphia to a Colombian father attending medical school at the University of Pennsylvania. He did his early education in Colombia before coming to the U.S. for further studies. He renounced U.S. citizenship in 1998 after President Andrés Pastrana Arango named him Colombia's ambassador to the United States.⁶

(g) **Michael Oren**, was born in New York City in 1955 and raised in New Jersey. He emigrated to Israel in 1979, where he went on to become a historian,

³ Ahren R., Israeli Supreme Court justice wins women's rights prize, <https://www.timesofisrael.com/israeli-supreme-court-justice-wins-womens-rights-prize/>

⁴ Former ambassador's bizarre attack on Obama lays bare strains in US-Israeli ties, <https://www.theguardian.com/world/2015/jun/22/former-ambassador-book-obama-us-israeli-relationship>

⁵ AFP, Britain's Boris Johnson renounces US citizenship, <https://www.nation.co.ke/news/world/Boris-Johnson-renounces-US-citizenship/1068-3806126-g2pwc0z/index.html>

⁶ Shenon, P., PUBLIC LIVES; With Roses, an Ambassador Polishes Colombia's Image, <https://www.nytimes.com/2000/01/17/us/public-lives-with-roses-an-ambassador-polishes-colombia-s-image.html>

military officer and diplomat. He relinquished his U.S. citizenship in 2009 upon taking up his new position as Israel's ambassador to the United States.⁷

125.4 The Committee noted that an ambassador or diplomat is a representative of the interests of a sending State. In this regard, where a person has dual citizenship- the conflict of interests is certainly a reality. For a person to protect, project and advance in the receiving State the interests of the sending State, then such person must be; (a) devoid of interests of any other State (b) must be independent; and in a position to assert the positions of the sending state at all times without compromise.

3.6 MS. DIANA WANJIKU KIAMBUTHI – NOMINEE FOR POSITION OF AMBASSADOR STOCKHOLM

126. Ms. Diana Kiambuthi appeared before the Committee on Tuesday, 28th May, 2019 at 3.30pm and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act, and the Standing Orders of the National Assembly. The nominee responded to questions during the vetting as follows-

Citizenship, Date and Place of Birth

127. The nominee is a Kenyan Citizen. She was born in Kiambu. Her National Identity Card Number is 10087101.

Academic and Professional Qualifications

⁷ Ghert-Zand, R., Five new Knesset members renounce foreign citizenship, <https://www.timesofisrael.com/five-new-knesset-members-renounce-foreign-citizenship/>

128. She holds a Bachelor of Arts degree in Political Science and Geography (1988-1991) and a Master of Arts in International Relations from University of Nairobi (1999).

Employment records and Work Experience

129. She has working experience of 15 years. She began her career as an Assistant Secretary Cadet Administration Division, Directorate of Personnel Management Office of the President in 1998. She was later appointed as a programme officer I in (2002- 2004). Subsequently she was appointed as second secretary Director of Political Affairs Office in the Ministry of Foreign Affairs.

130. She has served in the following missions abroad;

- (i) First Secretary in Kenya High Commission in London between 2006- 2010.
- (ii) A Minister Counsellor and Charge d' Affaires (March, 2013- March, 2015) in the Kenya Embassy Bangkok
- (iii) A Minister Counsellor and Deputy head of Mission in the Kenyan Embassy, Bangkok Thailand in March, 2015- June, 2018.

131. Currently, she is a Director for Cultural Diplomacy at the Ministry of Foreign Affairs where she is responsible for developing strategies for implementation of the Cultural Diplomacy Pillar of the Foreign Policy.

Her contribution towards realization of Big 4 agenda

132. The nominee informed the Committee that if approved and appointed she will be accredited to five Countries; Sweden, Norway, Denmark, Finland and Iceland. On the issue of the Kenya's big 4 agenda Sweden has always been leading in housing where they have good affordable housing, also they are keen on the gender equality

where they have a feminist foreign policy which we can emulate. Norway has a comparative advantage in matters of oil and gases and has a comprehensive policy on oil. Since Kenya discovered oil in Turkana there numerous lessons the Country could benchmark with. On the other hand Finland has a comprehensive education system which has been lauded for its good quality. In this regard, Kenya may benchmark with them as they strive to implement the new Competence Based Curriculum.

Multiple Accreditation and rise in populism

133. The nominee asserted that national interest comes first in case of multiple accreditations. On the issue of populism she will always focus on bilateral negotiations where each state will benefit.

Pro-bono/ Charity work

134. The nominee informed the Committee that as a way of giving back to the community she supports needy citizens by donating food to them.

Committee observations on suitability of Ms. Diana Kiambuthi to serve as Ambassador

135. The Committee having considered the nominees filled questionnaire, his curriculum vitae and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Ambassador, THAT –

- (a) She is a Kenyan citizen and does not hold dual citizenship;

- (b) she holds a Bachelor of Arts degree in Political Science and Geography (1988- 1991) and a Master of Arts degree in International Relations from University of Nairobi (1999).
- (c) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity having been cleared by the DCI and the EACC;
- (d) she has never been charged in a Court of Law for the last three years;
- (e) as stipulated in Article 75(1) of the Constitution, she has no potential conflict of interest;
- (f) the nominee satisfies the requirements of Article 77(1) of the Constitution in that she does not intend to participate in any other gainful employment;
- (g) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (h) she has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution.

3.7 MS. ALICE NJAMBI KINYUNGU – NOMINEE FOR POSITION OF AMBASSADOR UN-HABITAT

136. Ms. Njambi Kinyungu appeared before the Committee on Tuesday, 28th May, 2019 at 4.30pm and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly. The nominee responded to questions during the vetting as follows-

Citizenship, Date and Place of Birth

137. The nominee is a Kenyan Citizen. She was born in Kiambu in 1968. Her National Identity Card Number is 9236497.

Academic and Professional Qualifications

138. The nominee holds a Bachelor of Arts degree (Land Economics) from the University of Nairobi (1987- 1990) and a Master of Science degree in Rural and Urban Planning from University of Zimbabwe, Harare.

Professional Association

139. The nominee is a member of the African Association for Public Administration and Management

Honours and Awards

140. She was awarded the President's Award- Kenya (PA-K) Silver Award Level in 1989.

Reasons why there are UN agencies with headquarters in Kenya and yet the country is not benefiting from them

141. The nominee informed the Committee that she will consult with the African diplomatic group to ensure that Nairobi is benefiting from the UN agencies that do have their headquarters in the country. Kenya is the only country hosting UN and UN Habitat and has made major contributions. There are some projects in Kibera and Mathare that are being funded by UN. Housing being one of the big 4 agenda, UN- Habitat will support in the provision of affordable housing for Kenyans

Rapid Urbanization

142. The nominee submitted that UN- Habitat was established to look at the rapid urbanization which has led to better urban future. Climate change is one of the factors that has led to Rapid Urbanization therefore there is a positive correlation between climate change and rapid urbanization.

Community Service

143. The nominee stated that she has been involving herself in assisting her community through donations.

Committee observations on suitability of Ms. Njambi Kinyungu to serve as Ambassador

144. The Committee having considered the nominees filled questionnaire, her curriculum vitae and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Ambassador, THAT –

- a) she is a Kenyan citizen and does not hold dual citizenship;
- b) the nominee holds a Bachelor of Arts degree (Land Economics) from the University of Nairobi (1987- 1990) and a Master of Science in Rural and Urban Planning from University of Zimbabwe, Harare.
- c) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity having been cleared by the DCI and the EACC;
- d) she has never been charged in a Court of Law for the last three years;
- e) as stipulated in Article 75(1) of the Constitution, she has no potential conflict of interest;

- f) the nominee satisfies the requirements of Article 77(1) of the Constitution in that she does not intend to participate in any other gainful employment;
- g) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- h) she has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution.

4.0 COMMITTEE GENERAL OBSERVATIONS

145. Further, the Committee having vetted all the nominees' made the following general observations -

1. THAT, six nominees namely; Mr. Kariuki Mugwe, Mr. Peter Katana Angore, Mr. Michael Mubea Ms. Flora Karugu, Ms. Diana Kiambuthi and Ms. Njambi Kinyungu are Kenyan citizens and do not hold dual citizenship;
2. That, Ms. Mwendu Mwinzi holds dual citizenship. She is Kenyan and USA citizen by birth. An ambassador or diplomat is a representative of the interests of a sending State. In this regard, where a person has dual citizenship there may arise conflict of interest. For a person to protect, project and advance in the receiving State the interests of the sending State, then such person must be; (a) devoid of interests of any other State (b) must be independent; and in a position to assert the positions of the sending state at all times without compromise.
3. THAT, the nominees presented their academic credentials and professional Certificates and demonstrated their experience in accordance with the

provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011;

4. THAT, none of the nominees has been charged in a Court of Law or mentioned adversely in a Parliamentary Committee report or Commission of inquiry in the last three years;
5. THAT, all the nominees satisfy the requirements of Article 77(1) in that they do not intend to participate in any other gainful employment;
6. THAT, all the nominees do not hold office in any registered political party hence satisfy the provisions of Article 77(2) of the Constitution.
7. THAT, none of the nominees has been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), 76(financial probity), 77(restriction of State Officers) and 78(2) (dual citizenship) of the Constitution;
8. THAT, the Committee did not receive any written statements on oath (affidavit) contesting the suitability or otherwise of the nominees.
9. That, none of the nominees, had notified the Clerk of the National Assembly of withdrawal from the approval process as outlined under Section 6(10) of the Public Appointments (Parliamentary Approvals) Act 2011;

5.0 COMMITTEE RECOMMENDATIONS

146. Having considered the suitability, integrity of the nominees, and pursuant to Article 132(2) of the Constitution and Standing Order 216 (5) (f), the Cor

recommends that the National Assembly approves the nomination by His Excellency the President, of -

1. Mr. Kariuki Mugwe for appointment as an Ambassador to Abu Dhabi, United Arab Emirates;
2. Mr. Peter Katana Angore for appointment as an Ambassador to Algiers, Algeria;
3. Mr. Michael Mubea for appointment as an Ambassador to Dublin, Ireland;
4. Mr. Flora Karugu for appointment as High Commissioner to Luaka Zambia;
5. Ms. Diana Kiambuthi for appointment as an Ambassador to Stockholm, Sweden;
6. Ms. Njambi Kinyungu for appointment as an Ambassador to UN Habitat;
7. Ms. Mwendu Mwinzi for appointment as an Ambassador to Seoul, South Korea subject to UPON APPOINTMENT AND BEFORE TAKING OFFICE, renounce her United States of America citizenship in line with Article 80 (c) of the Constitution and section 31 as read with 52 of the Leadership and Integrity Act, No. 19 of 2012.

Signed.....  Date: 30/5/2019

Mon. Katoo Ole Metito, EGH, MGH, M.P

(CHAIRPERSON)