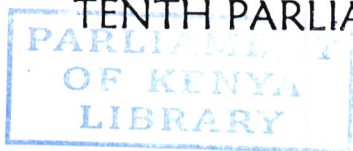




14/8/2012
P.C.A

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - FOURTH SESSION (2012)



THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES

REPORT

ON THE

NOMINATIONS OF THE CHAIRPERSON AND MEMBERS OF THE NATIONAL LAND COMMISSION

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

AUGUST 2012

Mr. Speaker Sir,

INTRODUCTION

1. Pursuant to provisions of Article 124 and 250 of the Constitution and further to your Communications issued on Tuesday, July 31, 2012 on the appointment of the Chairperson and Members of the National Land Commission, that Section 7(2) and the First Schedule of the National Land Commission Act, No. 5 of 2012, set out the process for the appointment of the Chairperson and Members of the National Land Commission.
2. And Specifically, Section 7(1) & (2) and 8 (1), (2) and (3) and the First Schedule of the National Land Commission Act, No. 5 of 2012 set out the composition of the commission, criteria and procedure for appointment and qualification for appointment of the Chairperson and Members of the National Land Commission.
3. Pursuant to paragraph 5 of the First Schedule, the President is required within 14 days of receipt of names of successful applicants forwarded to him by the Selection Panel established under the schedule to which the panel has selected, interviewed and recommended for appointment as Chairperson and Members of the National Land Commission and to forward the names of the persons so selected to the National Assembly for approval.
4. Pursuant to paragraph 6 of the First Schedule, the National Assembly is required to vet and consider all the applicants and to approve or reject any or all of them within 21 days of the day it next sits after receipt of the names.
5. From your Communication, you indicated that by a letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 addressed to the Clerk of the National Assembly, the National Assembly was advised that His Excellency the President had, in consultation with the Right Hon. Prime Minister, nominated the following persons to be considered for appointment as chairperson and Members of the National Land Commission.
6. They are;-
 1. Mr. Muhammad A. Swazuri, PhD. OGW. - Chairperson
 2. Dr. Tomiik M. Konyimbih - Member
 3. Mr. Silas Kinoti Muriithi - Member
 4. Dr. Rose M. Musyoka - Member

5. Dr. Samuel Kipng'etich Tororei - Member
 6. Ms. Abigael Mbagaya - Member
 7. Ms. Emma Muthoni Njogu - Member
 8. Mr. Clement Isaiah Lenachuru - Member
 9. Mr. Abdulkadir Adan Khalif – Member
7. Further, you noted that there were two letters, one from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 purporting to replace one of the nominees and the other from the office of the Prime Minister Ref. PMO/NEW.CONST/112 dated 13th July 2012 contesting the replacement;
 8. That you directed that the names of all the nominees and their accompanying curriculum vitae and other documents relating to those nominees be forwarded to the Departmental Committee on Lands and Natural Resources for consideration and report on or before 14th August, 2012. In addition, you directed that the two aforementioned letters (Para 7 above) be also forwarded to the Committee to consider them as it may deem appropriate;
 9. Following your direction, the Committee has considered the nominees curriculum vitae and other documents, vetted the nominees and considered the two letters forwarded and herein is the report of the Committee.

MANDATE OF THE COMMITTEE

10. The Departmental Committee on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
 - i.) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - ii.) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - iii.) to study and review all legislation referred to it;
 - iv.) to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v.) to 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 or a Minister; and

vi.) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

11. The Committee is mandated to consider:-

- 11.1 Lands and settlement;
- 11.2 Forestry, water resource management and development;
- 11.3 irrigation;
- 11.4 Environment;
- 11.5 Wildlife, and
- 11.6 Mining and Natural Resources.

12. **OVERSIGHT** - In executing its mandate, The Committee oversees the following Government Ministries; namely: -

- 12.1 Ministry of Water and Irrigation;
- 12.2 Ministry of Environment and Minerals Resources;
- 12.3 Ministry of Lands; and
- 12.4 Ministry of Forestry and Wildlife.

COMMITTEE COMPOSITION

13. The Departmental Committee on Lands and Natural Resources was constituted on June 17th 2009 and its membership is as follows:-

- 13.1 Hon. Mutava Musyimi, M.P. – **Chairperson**;
- 13.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**;
- 13.3 Hon. Benjamin Jomo Washiali, M.P.
- 13.4 Hon. Silas Ruteere Muriuki, M.P.
- 13.5 Hon. Benedict Fondo Gunda, M.P.
- 13.6 Hon. Justus Kizito, M.P.
- 13.7 Hon. Njuguna Gitau, M.P.
- 13.8 Hon. Mohammed Affey, M.P.
- 13.9 Hon. Omar Zonga, M.P.
- 13.10 Hon. Kiema Kilonzo, M.P.
- 13.11 Hon. Dr. Erastus K. Mureithi, MBS, HSC, MP

Mr. Speaker Sir,

14. The Committee held Seven (7) meetings to undertake the vetting which involved putting in place a programme, consideration of the communications, consideration of the two letters, consideration of the report of the Selection Panel and meeting with each of the nine nominees on Wednesday, August 8

and Thursday, August 9, 2012 where Nominees made submissions on why they should be appointed to serve in the National Land Commission.

OBSERVATION AND FINDINGS

15. During the vetting process, the Committee noted that:-

a) There was consultation in the nomination of the forwarded nominees to the National Assembly vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 and that the candidates nominated for appointment are;-

1. Dr. Muhammad Abdalla Swazuri, OGW. - Chairperson
2. Dr. Tomiik Mboya Mborassey Konyimbih - Member
3. Mr. Silas Kinoti Muriithi - Member
4. Dr. Rose Mumbua Musyoka - Member
5. Dr. Samuel Kipng'etich Tororei - Member
6. Ms. Abigael Mbagaya - Member
7. Ms. Emma Muthoni Njogu - Member
8. Mr. Clement Isaiah Lenachuru - Member
9. Mr. Abdulkadir Adan Khalif - Member

b) The Selection Panel selected the nominees based on merit, gender, ethnic balance and professional qualification pursuant to Section 8 (1), (2) and (3) of the National Land Commission Act no. 5 of 2012; on Article 232 and 250 of the Constitution in their stated capacities;

c) Previous appointments to other commissions are also a key to consideration when nominees are selected to take care of regional balance and ethnic diversity;

d) The nomination of Mrs. Emma Muthoni Njogu instead of Dr. Winfred Njeri Mwangi was based on her professional qualification being the only lawyer among sixteen (16) shortlisted candidates who were mostly land

- economists/surveyors. Therefore she scored in two areas , gender and professional qualification;
- e) The Rift valley Region having three nominees, the Committee was informed that there was need to consider Minority Community (Mr. Clement Isaiah Lenachuru), persons with disability (Dr. Samuel Kipng'etich Tororei) and the region having serious land problems;
 - f) The nomination of Mr. Abdulkadir Adan Khalif instead of Mr. Mohamed Alew Mohammed, the Committee noted that Garissa is over represented in previous commission therefore the need to consider Mandera County;
 - g) The Committee noted that all the Candidates were cleared for interviews and short listing by statutory agencies i.e. Higher Education Loans Board(HELB), Kenya Revenue Authority(KRA), Ethics and Anti-Corruption Authority (EACC) and National Security Intelligence(NSIS);
 - h) None of the candidates has ever been charged in a court of law, mentioned in an investigatory report of parliament or any other commission of inquiry and or removed or dismissed from office for contravention of the provisions of Article 75 of the Constitution;
 - i) All the nine(9) nominees have had distinguished careers in their respective fields and have either been involved in the land policy development, participated in commission(s) of inquiry on land or worked in the Ministry of lands; and
 - j) All the nominees are Kenyan citizens except one with dual citizenship.

16. The proposed replacement

- (a) There was a proposed replacement of Mr. Abdulkadir Adan Khalif with one Mr. Mohammed Alew Mohammed vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 basing on a report by the

National Security Intelligence Service Ref. INT/SF. 21/1 VOL.59 (70) dated 5th July 2012 as the reason for the replacement.

(b) The report alleged that the candidate is in possession of three passports (Kenyan, Somali and USA) and is alleged to be involved in a political movement and Somalia Politics;

17. The Office of the Prime Minister contested the replacement of Mr. Abdulkadir Adan Khalif vide letter Ref. PMO/NEW. CONST/112 dated 13th July 2012 on the following grounds:-

- a) The replacement was done without consultation as required under Para 14 of the First Schedule of the Act. The letter Ref. OP/CAB.1/16A dated 4th July 2012 by Permanent Secretary, Secretary to the Cabinet and Head of the Public Service to the Clerk of the National Assembly purporting to replace the candidate was never written to Office of the Prime Minister but copied;
- b) Vetting of nominees is reserved to the National Assembly under the Act;
- c) The Mr. Abdulkadir Adan Khalif was never informed of the information by either the Office of the President, Intelligence Service or any other security agency, by virtue of Art.35, 47 and 50 of the Constitution of Kenya;
- d) The security agencies should have provided documentary evidence to support their claim like copies of the passports or numbers, his participation on Somali politics and a report of DIGLIMIRIF;

18. The Committee observed the following on the proposed replacement, that:-

- a) As regards consultation in respect of the replacement, the Committee concluded that there was no consultation; as the letter proposing a replacement was only copied to office of the Prime Minister as matter of information. This was confirmed by the Office of the President that they actually copied to the Office of the Prime Minister.
- b) The report from the security agencies lacked sufficient evidence on the alleged three passport numbers, travels details of the persons, any substantive links with the said political movement and links to Somalia

politics, to support the allegation against the Candidate therefore lacked clarity;

19. With regards to **public participation**, the following complaints/allegation and comments were made:-

- a) The need to ensure people with disability were included in the commission;
- b) The need to reflect regional balance in the commission;
- c) The professional qualification of all candidates nominated should have been made public to establish their competences;
- d) The Selection Panel was not well constituted as the representatives of the NGO council to the panel – Mr. Stephen Ndichu and Ms. Violet Okinda, were not nominated by the NGO Council as per their rules of procedure.
- e) The complaints against Dr. Muhammad Abdalla Swazuri that:
 - i). He is not a team player and not good in decision making;
 - ii). He practiced nepotism in his previous office, chairman of the Kwale Water and Sewerage Company by employing his daughter;
 - iii). Accused of abuse of office by use of company resources for his own benefit while not on company duties – travel expenses while on private duties he uses the office resources;
 - iv). It was alleged that a number of people, which may have included Dr. Muhammad Abdalla Swazuri, trespassed on their land, marked out, coconut trees and planted a number of banana trees.

20. On the public complaints and allegations, the Committee observed that:-

- a) The nominees include persons with disability;
- b) The nomination was sufficiently sensitive to regional and Community balance therefore there was no region or ethnic community that was left out;
- c) Interviews were carried out both in the media /public and the final shortlisted candidates were also made public through the dailies;

- d) The constitution of the selection Panel is a preserve of the Public Service Commission and noting the continued wrangles in the NGO Council, lack of clear nomination procedures of the representatives of all bodies to sit in the Selection Panel, the process is vulnerable to manipulation.
21. On the allegation against Dr. Muhammad Abdalla Swazuri, The Committee deliberated on the matter and noted that the allegations lacked merit.
22. The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and noted that pursuant to the provisions of paragraphs 6 of the First Schedule of the National Land Commission Act No. 5 of 2012, the nominees are qualified to be approved by the House for appointment to the National Land Commission as follows:-
1. Dr. Muhammad A. Swazuri, OGW as Chairperson of the National land Commission,
 2. Dr. Tomiik Mboya Konyimbih as Member of the National Land Commission.
 3. Mr. Silas Kinoti Muriithi as Member of the National Land Commission.
 4. Dr. Rose Mumbua. Musyoka as Member of the National Land Commission.
 5. Dr. Samuel Kipng'etich Tororei as Member of the National Land Commission.
 6. Ms. Abigael Mbagaya as Member of the National Land Commission.
 7. Ms. Emma Muthoni Njogu as Member of the National Land Commission.
 8. Mr. Clement Isaiah Lenachuru as Member of the National Land Commission ;and
 9. Mr. Abdulkadir Adan Khalif as Member of the National Land Commission.

Mr. Speaker Sir,

RECOMMENDATION

23. The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and now recommends that:-

a) pursuant to the provisions of paragraphs 6 of the First Schedule of the National Land Commission Act No. 5 of 2012, the House approves the appointment of the following candidates to the National land Commission in their stated capacities.

b) They are:-

1. Dr. Muhammad Abdalla Swazuri, OGW as Chairperson of the National Land Commission;
2. Dr. Tomiik Mboya Konyimbih as Member of the National Land Commission.
3. Mr. Silas Kinoti Muriithi as Member of the National Land Commission.
4. Dr. Rose Mumbua Musyoka as Member of the National Land Commission.
5. Dr. Samuel Kipng'etich Tororei as Member of the National Land Commission.
6. Mrs. Abigael Mbagaya as Member of the National Land Commission.
7. Mrs. Emma Muthoni Njogu as Member of the National Land Commission.
8. Mr. Clement Isaiah Lenachuru as Member of the National Land Commission: and
9. Mr. Abdulkadir Adan Khalif as Member of the National Land Commission.

Acknowledgements

24. The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the media for live coverage of its proceedings during the vetting process. Further, the Committee thanks members of the public who made submissions to the Committee.

Mr. Speaker Sir,

25. It is my pleasant duty and privilege, on behalf of Departmental Committee on Lands and Natural Resources, to present and commend this report on the nominations to the National Land Commission, to the House for adoption pursuant to the Communication from the Chair made on 31st July 2012 and in accordance with the provisions of paragraph 6 of the First Schedule to the National Land Commission Act No. 5 of 2012.

SIGNED.....

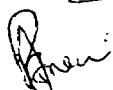

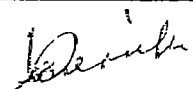
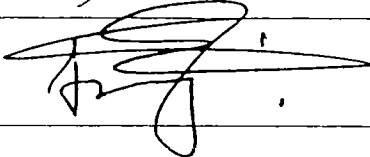
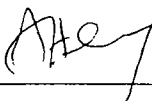
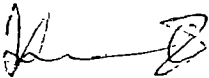
HON. MUTAVA MUSYIMI, M.P

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES

DATE: AUGUST 14, 2012.....

DEPARTMENTAL COMMITTEE -J- ON LANDS AND NATURAL RESOURCES

Hon. Peris Chepchumba Simam, MP	
Hon. Benedict Fondo Gunda, MP	
Hon. Benjamin Jomo Washiali, MP	
Hon. Kiema Julius Kilonzo, MP	
Hon. Silas Muriuki Ruteere, MP	
Hon. Justus M Kizito, MP	
Hon. Omar Mbwana Zonga, MP	
Hon. Mohammed Abdi Affey, MP	
Hon. Njuguna Peter Gitau, MP	
Hon. Dr. Erastus K. Mureithi, M.P	

BACKGROUND

26. The National Land Commission is established under Article 67 of the Constitution and the National Land Commission Act No. 5 of 2012.

27. Article 67 of the Constitution provides that:-

67 (1) *There is established the National Land Commission.*

(2) *The functions of the National Land Commission are—*

- (a) *to manage public land on behalf of the national and county governments;*
- (b) *to recommend a national land policy to the national government;*
- (c) *to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;*
- (d) *to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;*
- (e) *to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;*
- (f) *to encourage the application of traditional dispute resolution mechanisms in land conflicts;*
- (g) *to assess tax on land and premiums on immovable property in any area designated by law; and*
- (h) *to monitor and have oversight responsibilities over land use planning throughout the country.*

(3) *The National Land Commission may perform any other functions prescribed by national legislation.*

28. Section 5(2) of the National Land Commission Act No. 5 of 2012 provides for additional functions of the Commission. That is;-

5 (2) *In addition to the functions set out in subsection (1), the Commission shall, in accordance with Article 67(3) of the Constitution—*

- (a) *on behalf of, and with the consent of the national and county governments, alienate public land;*
- (b) *monitor the registration of all rights and interests in land;*

- (c) ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- (d) develop and maintain an effective land information management system at national and county levels;
- (e) manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- (f) develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.

29. Section 7(1) of the National Land Commission Act No. 5 of 2012 Act provides for the establishment and membership of the Commission. Section 7(1) provides inter alia that The Commission shall consist of a chairperson and eight other Members appointed in accordance with the Constitution and the provisions of the National Land Commission Act.

30. Section 8 (1), (2) and (3) provides for the Qualification for appointment as chairperson or member of the Commission:-

- 8. (1) A person shall be qualified for appointment as the chairperson if the person—
 - (a) holds a degree from a university recognized in Kenya;
 - (b) has knowledge and experience of at least fifteen years in matters relating to any of the following fields—
 - (i) public administration;
 - (ii) land management and administration;
 - (iii) management of natural resources;
 - (iv) land adjudication and settlement;
 - (v) land law, land survey, spatial planning or land economics; or
 - (vi) social sciences;
 - (c) meets the requirements of Chapter Six of the Constitution; and
 - (d) has had a distinguished career in their respective fields.

(2) A person shall be qualified for appointment as a member of the Commission if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and experience of at least ten years in matters relating to any of the following fields —
 - (i) public administration;
 - (ii) land management and administration;
 - (iii) management of natural resources;
 - (iv) land adjudication and settlement;
 - (v) land law, land survey, spatial planning or land economics; or
 - (vi) social sciences;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Commission if the person—

- (a) is a member of Parliament or county assembly;
- (b) is an official of a governing body of a political party;
- (c) has at any time within the preceding five years, held or stood for election as a member of Parliament, a county assembly or as a governor;
- (d) is an undischarged bankrupt;
- (e) has been convicted of a felony;
- (f) has benefitted from, or facilitated an unlawful or irregular allocation, acquisition or use of land or other public property; or
- (g) has been removed from office for contravening the provisions of the Constitution or any other written law.

(4) Subsection (3) (b) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

31. Section 7 (2) the National Land Commission Act No. 5 of 2012 and the First Schedule provides for the procedure of appointment of the Chairperson and Members of the Commission, inter alia;

7 (2) the chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

31. Following its inauguration on May 14, 2012, the Selection Panel put out advertisements declaring vacancies in the positions of chairperson and members of the National Land Commission in the local dailies on 21st and 24th May, 2012 pursuant to Para 3 of the First Schedule of the National Land Commission Act, No. 5 of 2012.
32. Following the advertisement on 21st and 24th May, 2012, Thirty One (31) applied for chairperson's position while Four hundred and Twenty Seven (427) applicants applied for the position of Member.
33. Pursuant to Para 4(e) and (f) of the First Schedule of the National Land Commission Act, No. 5 of 2012, the Selection Panel is required to nominate for appointment two (2) qualified persons for the position of Chairperson and sixteen (16) qualified persons for the position of Members of the National Land Commission.
34. Pursuant to Para 12 of the First Schedule of the National Land Commission Act, No. 5 of 2012, the Selection Panel recommended Sixteen (16) applicants for the position of member while two (2) were recommended for the position of chairperson. The Panel forwarded two(2) and Sixteen (16) names for the position of chairperson and members to the President respectively as follows:-

a) Chairperson

1. Dr. Muhammad Abdalla Swazuri, OGW
2. Dr. Elizabeth A. Nzioki

b) Members

1. Dr. Tomiik Mboya Mborassey Konyimbih
2. Mr. Silas Kinoti Muriithi
3. Dr. Winfred Njeri Mwangi
4. Dr. Rose Mumbua Musyoka
5. Dr. Samuel Kipngetich A. Tororei
6. Ms. Abigael Mbagaya
7. Mr. Erick Okongo Mogeni
8. Mr. Mohamed Alew. Mohamed

9. Mr. Mairura E. Omwenga
10. Ms. Rose Chelangat Kitur
11. Ms. Esther Damar Kodhek
12. Ms. Emma Muthoni Njogu
13. Mr. Clement Isaiah Lenachuru
14. Mr. Abdulkadir Adan Khalif
15. Dr. Judy W. K. Ayodi
16. Mr. Benjamin Njore Mwasi

35. A letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Ag. Head of the Public Service dated 4th July 2012, to the Clerk of the National Assembly indicated that His Excellency the President has, in consultation with the Prime Minister, nominated the following persons to be considered for appointment as chairperson and members of the National Land Commission.

36. They include;-

- | | | |
|--------------------------------------|---|-------------|
| 1. Dr. Muhammad Abdalla Swazuri, OGW | - | Chairperson |
| 2. Dr. Tomiik Mboya Konyimbih | - | Member |
| 3. Mr. Silas Kinoti Muriithi | - | Member |
| 4. Dr. Rose M. Musyoka | - | Member |
| 5. Dr. Samuel Kipngetich A. Tororei | - | Member |
| 6. Ms. Abigael Mbagaya | - | Member |
| 7. Ms. Emma Muthoni Njogu | - | Member |
| 8. Mr. Clement Isaiah Lenachuru | - | Member |
| 9. Mr. Abdulkadir Adan Khalif | - | Member |

37. On 31st July 2012, the Honorable Speaker in a communication to the House referred the names of the nine nominees to the Departmental Committee on Lands & Natural Resources for vetting and directed the Committee to submit its recommendations on the nominees to the House on Tuesday, 14th August 2012.

CONSIDERATION OF THE NOMINEES FOR APPOINTMENT AS CHAIRPERSON AND MEMBERS OF THE NATIONAL LAND COMMISSION BY THE COMMITTEE

38. The nominees were nominated to serve in the National Land Commission pursuant to Articles 67, 232, 250 of the Constitution and Section 7 (1) and (2), 8(1) (2) and (3) and First Schedule of the National Land Commission Act No. 5 of 2012 by H. E. the President through a letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Acting Head of the Public Service dated 4th July 2012 to the Clerk of the National Assembly.
39. At a meeting held on August 6, 8 and 9, 2012, the Committee examined the Candidates against the criteria set out in Section 8(1) (2) and (3) of the National Land Commission Act No. 5 of 2012 and the Public Appointments (parliamentary approval) Act, No.33 of 2011 (Criteria for vetting/approval of nominees for appointment to public office by the National Assembly).
40. The criterion requires nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests among others.
41. Their qualifications for appointment to the National Land Commission are set out in section 8(1) (2) and (3) of the National Land Commission Act No. 5 of 2012.
42. The **Chairperson** of the National Land Commission shall be a person who holds a degree from a university recognized in Kenya, has knowledge and experience of at least fifteen years in matters relating to any of the following fields - public administration, land management and administration, management of natural resources, land adjudication and settlement; land law, land survey, spatial planning or land economics or social sciences; meets the requirements of Chapter Six of the Constitution; and has had a distinguished career in their respective fields.
43. The **Member** of the National Land Commission must be a citizen of Kenya; holds a degree from a university recognized in Kenya, has knowledge and experience of at least ten years in matters relating to any of the following fields — public administration, land management and administration, management of natural resources, land adjudication and settlement, land law, land survey, spatial planning or land economics or social sciences; meets the requirements of Chapter Six of the Constitution and has had a distinguished career in their respective fields;

CONSIDERATION OF NOMINEES BASED ON RELIGION, ETHNIC DIVERSITY, REGIONAL AND GENDER BALANCE

44. The Committee deliberated on three issues surrounding the nominations to the National Land Commission. The issues are religion, gender and regional balance and or ethnic diversity.
- i). Religion - The Committee noted that the issues of religion are not a constitutional requirement and should not be a consideration during nomination/appointments.
 - ii). Gender – The Committee noted that nominations had met the minimum constitutional requirement of not more than one-third of either gender are represented. This is because there are three female nominees;
 - iii). Regional Balance and or ethnic diversity - The Committee noted that not all regions in Kenya are represented in the Commission. And there meets ethnic diversity of Kenya therefore balanced.

NOMINATION OF DR. MUHAMMAD ABDALLA SWAZURI, OGW AS CHAIRPERSON OF THE NATIONAL LAND COMMISSION

45. The Committee having considered the curriculum vitae of **Dr. Muhammad A. Swazuri, OGW**, and having heard his submissions during the interview, made the following observations on his nomination:-
- i). That **Dr. Muhammad A. Swazuri, OGW**, is a Kenyan citizen born on 1959 .He is a Land Economist for over twenty (20) years.
 - ii). He holds a Bachelors degree in Land Economics, Masters of Arts in Housing Administration and Doctor of Philosophy in Land Economics all from the University of Nairobi.
 - iii). He is currently the Deputy Principal Mombasa Polytechnic University College since August 2010, he served as untrained teacher in 1980, Trained Teacher in 1984, Tutorial Fellow, Department of Land Development, University of Nairobi 1986 – 1988, Lecturer at the Department of Real Estate and Construction, University of Nairobi since 1988 - 2009.
 - iv). He has also served as a lecturer at Copperbelt University Zambia in 2008; in 2009, he was a Senior lecturer, Department of Real Estate and Construction management university of Nairobi before being appointed to be the

Chairman, Department of Real Estate and Construction Management University of Nairobi.

- v). He is a member of the Institute of Surveyors of Kenya and Associate member since 1989.
- vi). He served as Permanent Commissioner of the defunct Constitution of Kenya Review Commission in 2000 – 2005 (CKRC);
- vii). He has published four (4) papers and reports among them, "A Unique commercial land tenure Arrangement amongst the digo of Kenya Coast", expansion and land development options for coastal island town of Mombasa" and "Gift of God: Kenya's tourism development ignores token legal and infrastructural support" among others co-authored with others and with 29 professional papers presented;
- viii). He received the Presidential award and honour of the Order of the Grand Warrior of Kenya (OGW).
- ix). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;
- x). He is not a member of any political party and does not expect any conflict of interest to arise;
- xi). He has never been charged in a court of law for any offence;
- xii). The Committee found the nominee qualified.

NOMINATION OF DR. TOMIIK MBOYA MBORASSEY KONYIMBIH, AS MEMBER OF THE NATIONAL LAND COMMISSION

46. The Committee having considered the curriculum vitae of **DR. TOMIIK MBOYA MBORASSEY KONYIMBIH**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That he is a Kenyan Citizen born on 26th May, 1961. He holds a PhD, in land policy, from the University of Cambridge in England, and a Bachelor degree on Land Economics from the University of Nairobi.
- ii). He is currently a senior lecturer and researcher Department of Real Estate and Construction Management University of Nairobi, moderator,

- annual examinations of the institute of Surveyors of Kenya and chairman of the professional Examination Board – 1994 – 2007, Gazzetted member of land Acquisition and Compensation Tribunal – 2001 - 2006.
- iii). He is the external examiner with the University of Dar es Salaam, commonwealth foundation fellow Kenya chapter on assignment to Britain Sri Lanka and Pakistan, designer of the estate management training syllabus and curriculum for property Valuers for diploma and degree capacity building programme with the ministry of lands and also a rehabilitation and resettlement expert for Namibia.
 - iv). He has consulted for the FAO technical cooperation programme on taxing agricultural land and peri urban Agriculture and land tenure dynamics in Namibia and Kenya respectively; researched for the land review Commission of Kenya (“Njonjo commission on land review”)
 - v). He has also consulted for the Ministry of Lands and National Housing Corporation of Kenya on Land Based revenues and Housing market survey respectively.
 - vi). In 1986 – 1987 was a land valuation surveyor with the Ministry of Lands and in 1985 he was graduate trainee with Milligan & company Limited;
 - vii). He has published several papers among them, “land value taxation: rating principles and guidelines for Kenya”, major issues of smallholder land policy in Kenya; past trends and current practices”, Urban Ad Valorem land Tax: implementation experiences in some Kenyan towns:, property taxation in tropical Africa; comparative policies in the three east African countries: and “landholding and ethics: critical issues for Kenya’s rural areas”; among several research and workshop/conferences/seminar papers;
 - viii). Served as board member of Kenya Wines Agencies limited and land acquisition compensation tribunal;
 - ix). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

- x). He is not a member of any political party and does not expect any conflict of interest to arise
- xi). He has never been charged in a court of law for any offence
- xii). The Committee found the nominee qualified.

NOMINATION OF MR. SILAS KINOTI MURIITHI AS MEMBER OF THE NATIONAL LAND COMMISSION

47. The Committee having considered the curriculum vitae of **MR. SILAS KINOTI MURIITHI**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **MR. SILAS KINOTI MURIITHI** is a Kenyan citizen born in 1961, who is land surveyor and holds a Master of Science degree (planning – urban and regional planning) University of Nairobi, Post Graduate certificate in surveying and mapping, Tsukuba Institute, Japan and bachelors degree in Surveying and Photogrammetry from the University of Nairobi.
- ii). He has Ministry of Lands as land surveyor 1986 – 2000, board members Kenya Roads Board 2003 – 2009, Co-director and Land Survey Consultants with Two-Ems Associates limited 2001 –to date and worked as a Director - Boundaries, Interim Independent Boundaries Review Commission.
- iii). He is a Member of Institution of Surveyors of Kenya, Association of Licensed Land Surveyors of Kenya and licensed land surveyor.
- iv). He received the Presidential award and honour of the Distinguished Service Medal (DSM), Certificate of award from Institution of Surveyors of KNEYA, Interim Independent Boundaries Review Commission, Kenya roads Board, Kenya Institute of Planners;
- v). He has published several papers and books among them “securing and managing road reserves in a prudent manner”, “the need for to secure road reserves”, “training of land surveyor/geomantic engineer” and “the role of land surveyor in national Development”.
- vi). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or

adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

- vii). He is not a member of any political party and does not expect any conflict of interest to arise
- viii). He has never been charged in a court of law for any offence
- ix). The Committee found the nominee qualified.

NOMINATION OF DR. ROSE MUMBUA MUSYOKA, AS MEMBER OF THE NATIONAL LAND COMMISSION

48. The Committee having considered the curriculum vitae of **DR. ROSE MUMBUA MUSYOKA**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **DR. ROSE MUMBUA MUSYOKA** is a Kenyan citizen born on 1st April 1966 and holds a post-graduate Diploma in land management and informal settlement regularization (Erasmus University, Netherlands), Doctor of philosophy in public policy from University of Birmingham UK, Masters degree in urban and regional planning from the University of Nairobi and a bachelors of arts degree from the university of Nairobi. She also holds a certificate in Environment Impact Assessment (Kenya).
- ii). He currently works as a lecturer Department of Urban and Regional planning at the University of Nairobi since 2008. In 1990 – 2008, worked at the Ministry of Lands as urban and regional planner, In 1989 – 2007, she worked as part-time lecturer department of Tourism and Scholl of Environment studies, Moi University,
- iii). He has published a book “informal urban residential land delivery and development processes, the dynamics of informality in urban development in Kenya” and several papers on public policy and land.
- iv). He is a corporate member of the architectural Association of Kenya, registered planner and registered lead expert in environment Impact Assessment and Member of the association for the physically disabled of Kenya.
- v). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely

mentioned in any investigatory report of Parliament or any Commission of Inquiry.

- vi). He is not a member of any political party and does not expect any conflict of interest to arise.
- vii). He has never been charged in a court of law for any offence.
- viii). The Committee found the nominee qualified.

NOMINATION OF DR. SAMUEL KIPNGETICH TOROREI AS MEMBER OF THE NATIONAL LAND COMMISSION

49. The Committee having considered the curriculum vitae of **DR. SAMUEL KIPNGETICH TOROREI**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **DR. SAMUEL KIPNGETICH TOROREI** is a Kenyan citizen born on 24th December 1955. She holds a doctor of philosophy in Human ecology from Moi University, Master degree in health planning and financing from London School of Economics, certificate in management from the Kenya Institute of Management and a Bachelor of Arts in Education Commerce from the University of Nairobi.
- ii). Since 2007, He worked in the Kenya National Commission on Human Rights as Commissioner, vice chairperson and now as acting chairperson. In 2003 /04, as chief executive officer, united disabled persons of Kenya, in 2000 - 2007 as lead consultant empowerment resources development centre, in 1999-2003, as chairman, Uasin Gishu district Aids Control committee, in 1999 – 2010, as First National Vice Chairman, Association for the physically disabled of Kenya, In 1998, as visiting lecturer in health economics, great lakes University of Kisumu, in 1995 to date, lecturer in health economics department of health management, Moi University, IN 1994 – 1996, as program director, Institute for civil education and development in Africa, in 1992 – 1994, private consultant in health management, NGO management and disability issues, In 1988 – 1994 chairman, board of governors Machakos Technical institute for the blind and visiting lecturer international centre for eye health, University of London, in 1987 – 1990, as visiting tutor Kenya Institute of Special education, 1986 – 1992, as regional Co-chairman, International agency for

the prevention of blindness, In 1985 – 1992 visiting lecturer, department of medicine, University of Nairobi, In 1982 – 1992 secretary, national prevention of blindness committee and director Kenya society for the blind, In 1981, tutor, Mosoriot Teachers Training College.

- iii). He has published papers among them “civic education in Africa” and responsiveness of ARV/ART services to the need of the persons with disabilities in Kenya”.
- iv). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- v). He is not a member of any political party and does not expect any conflict of interest to arise.
- vi). He has never been charged in a court of law.
- vii). The Committee found the nominee qualified.

NOMINATION OF **MRS. ABIGAEL MBAGAYA** AS A MEMBER OF THE NATIONAL LAND COMMISSION

50. The Committee having considered the curriculum vitae of **MRS. ABIGAEL MBAGAYA**, and having heard her submissions during the interview, made the following observations on his nomination:-

- i). That **MRS. ABIGAEL MBAGAYA** is a Kenyan citizen born on 4th December, 1966 and holds a certificate in project planning and management from Kenya Institute of Management, is an associate certified Fraud examiner, certificate in advanced programme on the prevention, analysis and detection of corporate fraud from Eastern and Southern Africa management Institute(ESAMI), Master of urban Management degree and a holder of a Bachelor of Arts in Land Economics degree from the University of Nairobi and a Diploma in valuation and estate management surveyors from the institution of Surveyors of Kenya.
- ii). She currently works with Ethics and Anti-Corruption Commission (EACC) as a corruption prevention officer – valuer since 2005. She also worked in property plus/Ace Valuer as managing Partner. In 1994 – 1999, she worked

with Tyson Limited as chief letting Manager and in 1989 – 1993, she worked with Milligan and Company Limited as management trainee/property manager.

- iii). She is a Member of the Institution of Surveyors of Kenya and associate member of the Association of Certified Fraud Examiners.
- iv). She received the President's Award Scheme – Bronze Category.
- v). She has published several papers and or report either jointly or alone and among them “public private Partnership in Urban Service Delivery – A case of Nairobi Central Business District”
- vi). She has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vii). He is not a member of any political party and does not expect any conflict of interest to arise
- viii). He has never been charged in a court of law for any offence.
- ix). The Committee found the nominee qualified

NOMINATION OF MS. EMMA MUTHONI NJOGU AS A MEMBER OF THE NATIONAL LAND COMMISSION

51. The Committee having considered the curriculum vitae of **MS. EMMA MUTHONI NJOGU** and having heard her submissions during the interview, made the following observations on her nomination:-

- i). That **MS. EMMA MUTHONI NJOGU** is a Kenyan citizen born on 12TH June 1970. She holds a Bachelor of Law (LLB) degree from the University of Nairobi, a Diploma in Law from the Kenya School of Law and Post graduate Diploma in International Relations from the University of Nairobi. She is an Advocate of the high court having been admitted to the Roll of Advocates in February 1995.
- ii). She is has been trained in Legislative Drafting course, Treaty making, negotiation and effective dispute resolution, Strategic leadership

- development programme, management of information systems, communication skills research skills and performance appraisal.
- iii). She currently works as a Deputy Chief state counsel, State Law Office; she has also served as the senior state counsel of the Kenya Law reform commission, and as Joint Secretary in the Presidential Commission of Inquiry into the land law system of Kenya.
- iv). She is a member of the Law Society of Kenya, and International Federation of Women Lawyers (F.I.D.A), Kenya Chapter.
- v). She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vi). She is not a member of any political party and does not expect any conflict of interest to arise.
- vii). She has never been charged in a court of law for any offence.
- viii). The Committee found the nominee qualified.

NOMINATION OF MR. CLEMENT ISAIAH LENACHURU AS MEMBER OF THE NATIONAL LAND COMMISSION

52. The Committee having considered the curriculum vitae of **MR. CLEMENT ISAIAH LENACHURU** having heard his submissions during the interview, made the following observations on her nomination:-

- i). That **MR. CLEMENT ISAIAH LENACHURU** is a Kenyan citizen born in 31st March 1964. He is finalizing his Doctor of Philosophy degree from Colorado State University, USA, Masters Degree in Natural Resources (Human Ecology) from Egerton University, a Bachelor Degree in Natural Resources and a Diploma in Range Management from Egerton University.
- ii). He is currently teaching and researching as Assistant lecturer at Egerton University Since 2002 – 2012, As Consultant/National Coordinator, Pastoralist Development Network of Kenya and as Livestock Assistant/Technician, Kenya Agricultural Research Institute.
- iii). He is member of the Range Society of America.

- iv). He has published several papers among them “impacts of prosopis species in Baringo District-Workshop proceedings on integrated management of prosopis species in Kenya”, a case study report on community Gemstone mining in Taita Taveta District” and “Can formal education Reduce Risks for drought prone pastoralists? A case study from Baringo District Kenya”. He participated in the drafting of sections of National land Policy on Resolution of Historical land Injustices and Pastoral Land issues;
- v). He has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vi). He is not a member of any political party and does not expect any conflict of interest to arise.
- vii). He has never been charged in a court of law for any offence.
- viii). The Committee found the nominee qualified.

NOMINATION OF MR. ABDULKADIR ADAN KHALIF, AS MEMBER OF THE NATIONAL LAND COMMISSION

53. The Committee having considered the curriculum vitae of **MR. ABDULKADIR ADAN KHALIF** , and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **MR. ABDULKADIR ADAN KHALIF** is a licensed Land Surveyor and is a Kenyan citizen born on 1954 and holds a Bachelors of Science degree in Geomatic Engineering from St. Cloud State University, USA and Bachelors of Science degree in Surveying and Photogrammetry from the University of Nairobi.
- ii). He has 32 years working experience and currently works as Technical Director with Frontier Engineering Since 2010, Chief Surveyor with City of Burnsville, Minnesota, USA 2001 - 2010, as Senior Surveyor with URS Corporation, Minneapolis USA 1999 - 2001, as Chief Surveyor and Consultant with Harunani and Associate, Nairobi 1985 - 1999, as Senior

- Surveyor with Gatome and Associate 1983 – 1985, as surveyor with Survey of Kenya, Ministry of Lands 1980 1982;
- iii). He has published a paper titled “Changes and challenges facing land surveying profession – a comparative report on Kenya and the United States of America – 2009” and various other papers on public health issues and immunization programmes.
 - iv). He is a member of the Institution of Surveyor of Kenya, and associate Member of the American Congress of Surveying and Mapping (USA). Member of the habitat for humanity, Parent United Against Autism, global Citizens Network among others;
 - v). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
 - vi). He is not a member of any political party and does not expect any conflict of interest to arise
 - vii). He has never been charged in a court of law for any offence
 - viii). The Committee found the nominee qualified.

OBSERVATION AND FINDINGS

54. During the vetting process, the Committee noted that:-

- a) There was consultation in the nomination of the forwarded nominees to the National Assembly vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 and that the candidates nominated for appointment are:-
 1. Dr. Muhammad Abdalla Swazuri, OGW. - Chairperson
 2. Dr. Tomiik Mboya Mborassey Konyimbih - Member
 3. Mr. Silas Kinoti Muriithi - Member
 4. Dr. Rose Mumbua Musyoka - Member
 5. Dr. Samuel Kipng'etich Tororei - Member
 6. Ms. Abigael Mbagaya - Member
 7. Ms. Emma Muthoni Njogu - Member
 8. Mr. Clement Isaiah Lenachuru - Member
 9. Mr. Abdulkadir Adan Khalif - Member
- b) The Selection Panel selected the nominees based on merit, gender, ethnic balance and professional qualification pursuant to Section 8 (1), (2) and (3) of the National Land Commission Act no. 5 of 2012; on Article 232 and 250 of the Constitution in their stated capacities;
- c) Previous appointments to other commissions are also a key to consideration when nominees are selected to take care of regional balance and ethnic diversity;
- d) The nomination of Mrs. Emma Muthoni Njogu instead of Dr. Winfred Njeri Mwangi was based on her professional qualification being the only lawyer among sixteen (16) shortlisted candidates who were mostly land economists/surveyors. Therefore she scored in two areas , gender and professional qualification;
- e) The Rift valley Region having three nominees, the Committee was informed that there was need to consider Minority Community (Mr. Clement Isaiah Lenachuru), persons with disability (Dr. Samuel Kipng'etich Tororei) and the region having serious land problems;

- f) The nomination of Mr. Abdulkadir Adan Khalif instead of Mr. Mohamed Alew Mohammed, the Committee noted that Garissa is over represented in previous commission therefore the need to consider Mandera County;
- g) The Committee noted that all the Candidates were cleared for interviews and short listing by statutory agencies i.e. Higher Education Loans Board(HELB), Kenya Revenue Authority(KRA), Ethics and Anti-Corruption Authority (EACC) and National Security Intelligence(NSIS);
- h) None of the candidates has ever been charged in a court of law, mentioned in an investigatory report of parliament or any other commission of inquiry and or removed or dismissed from office for contravention of the provisions of Article 75 of the Constitution;
- i) All the nine(9) nominees have had distinguished careers in their respective fields and have either been involved in the land policy development, participated in commission(s) of inquiry on land or worked in the Ministry of lands; and
- j) All the nominees are Kenyan citizens except one with dual citizenship.

55. The proposed replacement

- a) There was a proposed replacement of Mr. Abdulkadir Adan Khalif with one Mr. Mohammed Alew Mohammed vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 basing on a report by the National Security Intelligence Service Ref. INT/SF. 21/1 VOL.59 (70) dated 5th July 2012 as the reason for the replacement.
- b) The report alleged that the candidates is in possession of three passports(Kenyan, Somali and USA) and is alleged to be involved in a political movement and Somalia Politics;

56.The Office of the Prime Minister contested the replacement of Mr. Abdulkadir Adan Khalif vide letter Ref. PMO/NEW. CONST/112 dated 13th July 2012 on the following grounds:-

- a) The replacement was done without consultation as required under Para 14 of the First Schedule of the Act. The letter Ref. OP/CAB.1/16A dated 4th July 2012 by Permanent Secretary, Secretary to the Cabinet and Head of the Public Service to the Clerk of the National Assembly purporting to replace the candidate was never written to Office of the Prime Minister but copied.;
- b) Vetting of nominees is reserved to the National Assembly under the Act;
- c) The Mr. Abdulkadir Adan Khalif was never informed of the information by either the Office of the President, Intelligence Service or any other security agency, by virtue of Art.35, 47 and 50 of the Constitution of Kenya;
- d) The security agencies should have provided documentary evidence to support their claim like copies of the passports or numbers, his participation on Somali politics and a report of DIGLIMIRIF;

57. The Committee observed the following on the proposed replacement, that:-

- a) As regards consultation in respect of the replacement, the Committee concluded that there was no consultation; as the letter proposing a replacement was only copied to office of the Prime Minister as matter of information. This was confirmed by the Office of the President that they actually copied to the Office of the Prime Minister.
- b) The report from the security agencies lacked sufficient evidence on the alleged three passport numbers, travels details of the persons, any substantive links with the said political movement and links to Somalia politics, to support the allegation against the Candidate therefore lacked clarity;

58. With regards to **public participation**, the following complaints/allegation and comments were made:-

- a) The need to ensure people with disability were included in the commission;
- b) The need to reflect regional balance in the commission;
- c) The professional qualification of all candidates nominated should have been made public to establish their competences;

- d) The Selection Panel was not well constituted as the representatives of the NGO council to the panel – Mr. Stephen Ndichu and Ms. Violet Okinda, were not nominated by the NGO Council as per their rules of procedure.
- e) The complaints against Dr. Muhammad Abdalla Swazuri that:
 - i). He is not a team player and not good in decision making;
 - ii). He practiced nepotism in his previous office, chairman of the Kwale Water and Sewerage Company by employing his daughter;
 - iii). Accused of abuse of office by use of company resources for his own benefit while not on company duties – travel expenses while on private duties he uses the office resources;
 - iv). It was alleged that a number of people, which may have included Dr. Muhammad Abdalla Swazuri, trespassed on their land, marked out, coconut trees and planted a number of banana trees.

59. On the public complaints and allegations, the Committee observed that:-

- a) The nominees include persons with disability;
- b) The nomination was sufficiently sensitive to regional and Community balance therefore there was no region or ethnic community that was left out;
- c) Interviews were carried out both in the media /public and the final shortlisted candidates were also made public through the dailies;
- d) The constitution of the selection Panel is a preserve of the Public Service Commission and noting the continued wrangles in the NGO Council, lack of clear nomination procedures of the representatives of all bodies to sit in the Selection Panel, the process is vulnerable to manipulation.

60. On the allegation against Dr. Muhammad Abdalla Swazuri, The Committee deliberated on the matter and noted that the allegations lacked merit.

61. The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and noted that pursuant to the provisions of paragraphs 6 of the First Schedule of the National Land Commission Act No. 5 of 2012, the nominees are qualified to be approved by the House for appointment to the National Land Commission as follows:-

1. Dr. Muhammad A. Swazuri, OGW as Chairperson of the National land Commission;
2. Dr. Tomiik Mboya Konyimbih as Member of the National Land Commission;
3. Mr. Silas Kinoti Muriithi as Member of the National Land Commission;
4. Dr. Rose Mumbua Musyoka as Member of the National Land Commission;
5. Dr. Samuel Kipng'etich Tororei as Member of the National Land Commission;
6. Ms. Abigael Mbagaya as Member of the National Land Commission;
7. Ms. Emma Muthoni Njogu as Member of the National Land Commission;
8. Mr. Clement Isaiah Lenachuru as Member of the National Land Commission;
and
9. Mr. Abdulkadir Adan Khalif as Member of the National Land Commission.

Mr. Speaker Sir,

RECOMMENDATION

62. The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and **now recommends that:-**

a) pursuant to the provisions of paragraphs 6 of the First Schedule of the National Land Commission Act No. 5 of 2012, the House approves the appointment of the following candidates to the National land Commission in their stated capacities.

b) They are:-

1. Dr. Muhammad Abdalla Swazuri, OGW as Chairperson of the National land Commission;
2. Dr. Tomiik Mboya Konyimbih as Member of the National Land Commission;

3. Mr. Silas Kinoti Muriithi as Member of the National Land Commission.
4. Dr. Rose Mumbua Musyoka as Member of the National Land Commission;
5. Dr. Samuel Kipng'etich Tororei as Member of the National Land Commission;
6. Mrs. Abigael Mbagaya as Member of the National Land Commission;
7. Mrs. Emma Muthoni Njogu as Member of the National Land Commission;
8. Mr. Clement Isaiah Lenachuru as Member of the National Land Commission: and
9. Mr. Abdulkadir Adan Khalif as Member of the National Land Commission.

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ANNEX I AND II

I: MUNITES

II: CV OF THE CANDIDATES

MINUTES OF THE ONE HUNDRED & THIRTIETH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON TUESDAY, JULY 31, 2012 IN COMMITTEE ROOM 4, 4TH FLOOR CONTINENTAL HOUSE AT 4.00 P.M.

PRESENT:

The Hon. Mutava Musyimi, MP – **Chairperson**
The Hon. Peter Njuguna Gitau, MP
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.
The Hon. Silas Ruteere Muriuki, MP.
The Hon. Benjamin Jomo Washiali, MP
The Hon. Benedict Fondo Gunda, MP
The Hon. Mohammed Affey, MP.

ABSENT WITH APOLOGY

The Hon. Peris C. Simam, MP. - **Vice chairperson**
The Hon. Justus M. Kizito, MP.
The Hon. Omar Mbwana Zonga, MP
The Hon. Kiema-Kilonzo, MP.

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Nicholas Emejien - Second Clerk Assistant

MIN. NO. 80/2012: INTRODUCTION

The Chairman called the meeting to order at 4.07p.m after prayers were said. He further informed the meeting that the meeting has been called following the Speaker communication concerning the vetting of nominees to the National Land Commission.

He therefore requested that the Committee considers the agenda to be Deliberation on the Communication by the Chair on Tuesday, July 31, 2012 at 2.30 p.m.

The agenda was agreed upon and adopted by the Members present.

MIN.NO.81/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation Minutes of the 126th, 127th, 128th and 129th Sitting were postponed to a later date.

MIN.NO.82/2012: DELIBERATION ON THE COMMUNICATION BY THE CHAIR

The chairperson directed that the Communications be circulated to each member for perusal before the Committee makes a resolution.

The meeting noted the following, that:-

- a) Pursuant to section 7 (2) and Fourth Schedule of the National Land Commission Act, 2012, the National Assembly is to vet and approve or reject candidates nominated to the Commission;
- b) Since the Head of State has forwarded the names to the National Assembly, the Speaker has therefore directed that the relevant committee considers it, which is that the Committee on Lands and Natural resources undertakes the vetting of the forwarded nominees;
- c) Apart from the (9) nine nominees forwarded by the Head of the Public Service, there is a request to replace one nominee;
- d) On the proposed replacement, two letters, one from the Office of the President and the other from the Prime Minister's office, appear to read differently and the Committee need to consider the two letters as it deem appropriate;
- e) The vetting process will involve the nominees appearing before the Committee and interview as per the provision of Public (appointment/approval) Act, 2012;
- f) **The Committee must submit a report on Tuesday, August 14, 2012.**

The Committee therefore resolved that

- i. The Committee meets on Thursday, August 2, 2012 at 10.00a.m and deliberate on the following
 - a) The two letters – from the Office of the president and Office of the prime Minister with regard to the replacement of one of the nominees;
 - b) Consider the Curriculum Vitae of the nominees;
 - c) Invitation of nominees.
- ii. The nominees should be invited so as to begin vetting on Monday, August 6, 2012 at 10.00a.m.
- iii. The vetting will be undertaken using the list as forwarded and Three (3) nominees will appear per day before the Committee on Monday, Wednesday and Thursday respectively;
- iv. The Committee deliberates on the report on Monday, August 13, 2012 in readiness for tabling on Tuesday, August 14, 2012.

MIN. NO.83/ 2012: ADJOURNMENT

There being no other business, the Chair adjourned the meeting at thirty five minutes past four O'clock until Thursday, August 2, 2012 in the Committee Room, on the first Floor Continental House at 10.00a.m.

SIGN:..........

(CHAIRPERSON)

DATE:.....AUGUST 14, 2012.....

MINUTES OF THE ONE HUNDRED & THIRTY FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON THURSDAY, AUGUST 2, 2012 IN COMMITTEE ROOM 1, 1ST FLOOR CONTINENTAL HOUSE AT 10.00 A.M.

PRESENT:

The Hon. Benjamin Jomo Washiali, MP – **Ag. Chairperson**;
The Hon. Peter Njuguna Gitau, MP
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.
The Hon. Silas Ruteere Muriuki, MP.
The Hon. Benedict Fondo Gunda, MP
The Hon. Mohammed Affey, MP.
The Hon. Omar Mbwana Zonga, MP
The Hon. Mutava Musyimi, MP – **Chairperson**
The Hon. Peris C. Simam, MP. - **Vice chairperson**

ABSENT WITH APOLOGY

The Hon. Justus M. Kizito, MP.
The Hon. Kiema Kilonzo, MP.

IN ATTENDANCE – KENYA NATIONAL ASSEMBLY

Mr. Rana Tiampati - Second Clerk Assistant
Mr. Abenayo Wasike - Third Clerk Assistant

MIN. NO. 84/2012: INTRODUCTION

The Acting Chairperson called the meeting to order at 10.17a.m after prayers were said. He therefore requested that the Committee considers the proposed agenda circulated as follows:-

- a) Prayers;
- b) Confirmations of minutes;
- c) Matters arising;
- d) **Deliberations on the Committee programme, Invitations, Public participation and the communication from the Chair;**
- e) **The Letters from the Head of the Public Service and Office of the prime Minister;**
- f) **Deliberation on pending reports;**
- g) Any Other Business;
- h) Date of the next sitting.

The agenda was agreed upon and adopted by the Members present.
(Substantive chair leaves the meeting)

MIN.NO.85/2012: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation Minutes of the 126th, 127th, 128th, 129th and 130th Sitting were postponed to a later date.

MIN.NO.86/2012: DELIBERATIONS ON THE COMMITTEE PROGRAMME, INVITATIONS, PUBLIC PARTICIPATION AND THE COMMUNICATION FROM THE CHAIR

A. COMMITTEE PROGRAMME - The Committee considered the circulated programme and approved as follows:-

PROGRAMME FOR VETTING OF COMMISSIONERS FOR THE NATIONAL LAND COMMISSION

<p>Thursday, August 2, 2012</p> <p>(10.30 A.M. – 12.30 noon)</p> <p>Deliberations on the Committee programme, Invitations, Public participation and the communication from the Chair</p> <p>(Venue – Committee room 1, First Floor, Continental House)</p>																				
<p>Monday, August 6, 2012</p> <p>(2.30 P.M. – 4.30 P.M.)</p> <p>Deliberations on the Report of the selection panel, consideration of the letters from the Head of public Service and office of the prime Minister and Curriculum vitae of the nominees</p> <p>(Venue – Main Conference Room, First Floor, County Hall, Parliament Buildings)</p>																				
<p>Tuesday, August 7, 2012</p> <p>(3.00 P.M. – 5.00 P.M.)</p> <p>Deliberations on the Report of the selection panel, consideration of the letters from the Head of public Service and office of the prime Minister and Curriculum vitae of the nominees</p> <p>(Venue – Main Conference Room, First Floor, County Hall, Parliament Buildings)</p>																				
<p>Wednesday, August 8, 2012</p> <p>(9.00 A.M. – 4.30 P.M.)</p> <p><u>VETTING OF NOMINEES</u></p> <table style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 40%;">Mr. Muhammad A. Swazuri, PhD, OGW</td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 20%;">Chairperson</td> <td style="width: 30%;">- 09.30 – 10.30 a.m.</td> </tr> <tr> <td>Dr. Tomiik M. Konyimbih</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 10.30 – 11.30 a.m.</td> </tr> <tr> <td>Mr. Silas Kinoti Muriithi</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 11.30 – 12.00noon</td> </tr> <tr> <td>Dr. Rose M. Musyoka</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 2.30 – 3.30 p.m.</td> </tr> <tr> <td>Dr. Samuel Kipngetich A. Tororei</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 3.30 – 4.30 p.m.</td> </tr> </tbody> </table> <p>(Venue – Main Conference Room, First Floor, County Hall, Parliament Buildings)</p>	Mr. Muhammad A. Swazuri, PhD, OGW	-	Chairperson	- 09.30 – 10.30 a.m.	Dr. Tomiik M. Konyimbih	-	Member	- 10.30 – 11.30 a.m.	Mr. Silas Kinoti Muriithi	-	Member	- 11.30 – 12.00noon	Dr. Rose M. Musyoka	-	Member	- 2.30 – 3.30 p.m.	Dr. Samuel Kipngetich A. Tororei	-	Member	- 3.30 – 4.30 p.m.
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<p>Thursday, August 9, 2012</p> <p>(9.00 A.M. – 4.30 P.M.)</p> <p><u>VETTING OF NOMINEES</u></p> <table style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 40%;">Ms. Abigael Mbagaya</td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 20%;">Member</td> <td style="width: 30%;">- 09.30 – 10.30 a.m.</td> </tr> <tr> <td>Ms. Emma Muthoni Njogu</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 10.30 – 11.30 a.m.</td> </tr> <tr> <td>Mr. Clement Isaiah Lenachuru</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 2.30 – 3.30 p.m.</td> </tr> <tr> <td>Mr. Abdulkadir Adan Khalif</td> <td style="text-align: center;">-</td> <td>Member</td> <td>- 3.30 – 4.30 p.m.</td> </tr> </tbody> </table> <p>(Venue – Main Conference Room, First Floor, County Hall, Parliament Buildings)</p>	Ms. Abigael Mbagaya	-	Member	- 09.30 – 10.30 a.m.	Ms. Emma Muthoni Njogu	-	Member	- 10.30 – 11.30 a.m.	Mr. Clement Isaiah Lenachuru	-	Member	- 2.30 – 3.30 p.m.	Mr. Abdulkadir Adan Khalif	-	Member	- 3.30 – 4.30 p.m.				
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Mr. Clement Isaiah Lenachuru	-	Member	- 2.30 – 3.30 p.m.																	
Mr. Abdulkadir Adan Khalif	-	Member	- 3.30 – 4.30 p.m.																	

Monday , August 13, 2012

(10.00 A.M. – 4.30 P.M.)

Deliberations and adoption of the Vetting report

(Venue – Main Conference Room, First Floor, County Hall, Parliament Buildings)

B. INVITATIONS FOR THE NOMINEES AND PUBLIC PARTICIPATION

The Committee was informed that invitations for the nine (9) nominees have been sent and some have confirmed receipt.

The Committee was further informed that the proposed vetting of the nominees which was scheduled to begin on Monday, August 6, 2012 may not be possible due to:-

- a) Nominees need to all confirm receipt of invitations,
- b) The need for the public to be allowed to vet through the Committee; and
- c) there may be information/data that the Committee may need from other institutions in order to verify the information to be given by nominees.

The Committee resolved that the public be informed of the process, requested to make representations and that the vetting to begin on Tuesday, August 8, 2012 at 09.30 am.

C. COMMUNICATION FROM THE CHAIR

The Committee deliberated on the Communications and agreed as follows:-

- a) The report should be submitted on Tuesday, August 14, 2012 to the House;
- b) The two letters will be considered as they are appropriate; and
- c) Will endeavour to abide by the communication.

D. CONSIDERATION OF THE LETTERS

The Committee considered the two letters, i.e.

- a) A letter from the office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service addressed to the Clerk of the National Assembly Ref. OP/CAB.1/16A dated 4th July 2012, purporting to replace one nominee;
- b) A letter from the office of the Prime Minister addressed to the Clerk of the National Assembly Ref. PMO/NEW.CONST/112 dated 13th July 2012 contesting the replacement.

The Committee made the following observations:-

- a) Letter forwarding the names to the National Assembly by from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July 2012 had

- the same reference numbers as the letter from the office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service addressed to the Clerk of the National Assembly Ref. OP/CAB.1/16A dated 4th July 2012, purporting to replace one nominee;
- b) The basis of the replacement is an intelligence report Ref. No. INT/SF.21/1 VOL.59(70) dated July 5, 2012;
 - c) The letter by Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July 2012 is addressed to Mr. Mohammed A. Mohammed instead of the Clerk of the National Assembly, quoting a letter dated July 5, 2012;
 - d) The quoted letter by the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service as a basis for the replacement was written by the National Security Intelligence Service and received on July 10, 2012 by the Public Service Commission;
 - e) The Office of the Prime Minister letter Ref. PMO/NEW.CONST/112 dated 13th July 2012 is confirming that there was no consultations with regard to the appointment of Mohammed A. Mohammed as required by law;
 - f) The National Security Intelligence Service was prompted to write a discrediting letter;
 - g) The letters are contradictions as they appear.

The Committee therefore resolved, that:-

- i. The Public Service Commission be requested to provide copies of the letters Ref. No. PSC SEC/93/71 VOL.II (27) of June 7, 2012 and a letter from National Security Intelligence Service addressed to you Ref. INT/SF. 21/1 VOL. 58 (166) dated 15th June 2012;
- ii. The nominee should be given an opportunity to clarify the claims;
- iii. The authenticity of the letters and their content will be verified and considered progressively as the vetting progresses therefore they should not be dismissed as the early stage; and
- iv. As the nominees are vetted, the committee should have its findings and observations under each of them.

MIN. NO.87/ 2012: A.O.B – PENDING REPORTS

The Committee agreed to consider and finalize on all the reports it deliberated on in Mombasa on Monday, August 13, 2012 and directed the secretariat to avail the reports.

MIN. NO.88/ 2012: ADJOURNMENT

There being no other business, the Chair adjourned the meeting at forty five minutes past Twelve O'clock until Monday, August 6, 2012 in the Main Conference Room, on the First Floor County Hall at 2.30pm.

SIGN:..........
(CHAIRPERSON)

DATE:...AUGUST 14, 2012.....

MINUTES OF THE ONE HUNDRED & THIRTY SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON MONDAY, AUGUST 6, 2012 IN COMMITTEE ROOM 1, 1ST FLOOR CONTINENTAL HOUSE AT 2.30PM.

PRESENT:

The Hon. Mutava Musyimi, MP – **Chairperson**
The Hon. Benjamin Jomo Washiali, MP
The Hon. Peter Njuguna Gitau, MP
The Hon. Silas Ruteere Muriuki, MP.
The Hon. Benedict Fondo Gunda, MP
The Hon. Mohammed Affey, MP.
The Hon. Justus M. Kizito, MP.

ABSENT WITH APOLOGY

The Hon. Peris C. Simam, MP. - **Vice chairperson**
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.
The Hon. Kiema-Kilonzo, MP.
The Hon. Omar Mbwana Zonga, MP

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Rana Tiampati - Second Clerk Assistant
Mr. Abenayo Wasike - Third Clerk Assistant

Min. No.89/2012: INTRODUCTION

The acting Chair called on the meeting to order at 2:35pm after prayers have been said. He further requested Members to note the Agenda items and proposed for any amendment and adoption.

The proposed agenda:-

1. Prayers;
2. Confirmations of minutes;
3. Matters arising;
4. **Deliberations on the Report of the selection panel, consideration of the letters from the Head of public Service and office of the prime Minister and Curriculum vitae of the nominees**
5. Any Other Business –
6. Date of the next sitting.

The agenda was adopted.

Min. No.90/2012: CONFIRMATION OF MINUTES

Minutes of the 130th and 131st sitting of the Committee were confirmed as true records of the Committee deliberations having been proposed and seconded by Hon. Ruteere, M.P Hon. Gitau and by Hon. Affey and Hon. Gunda respectively.

Min No.91/2012: MATTER ARISING

The following matters were raised:-

- (a) The minutes need to be properly numbered to make it easier and consistent for ease of reference and reading.
- (b) That the letter from the Permanent Secretary, Secretary to the Cabinet & Head of the Public Service should be referred to a "Mr. Mohammed" only.
- (c) The Committee is to consider reports deliberated in Mombasa on August 13, 2012.

Min No.92/2012: CONSIDERATION OF NOMINEES TO THE NATIONAL LAND COMMISSION

(a) REPORT OF THE SELECTION PANEL

The Committee noted the following from the report, that

- (i) Panel adhered to the provision of the Act in the procedure and subsequent recommendation of the nominees to the President having selected two (2) persons from thirty one (31) for Chairperson and sixteen (16) persons from four hundred and twenty seven (427) for Members to the Commission.
- (ii) The panel recommended the following 18 for appointments.

a) Chairperson

1. Muhammad Abdalla Swazuri, Ph.D., OQW
2. Dr. Elizabeth A. Nzioki

b) Members

1. Dr. Tomiik Mboya Mborassey Konyimbih
2. Mr. Silas Kinoti Muriithi
3. Dr. Winfred Njeri Mwangi
4. Dr. Rose Mumbua Musyoka
5. Dr. Samuel Kipngetich A. Tororei
6. Ms. Abigael Mbagaya
7. Mr. Erick Okongo Mogeni
8. Mr. Mohamed Alew. Mohamed
9. Mr. Mairura E. Omwenga
10. Ms. Rose Chelangat Kitur

11. Ms. Esther Damar Kodhek
12. Ms. Emma Muthoni Njogu
13. Mr. Clement Isaiah Lenachuru
14. Mr. Abdulkadir Adan Khalif
15. Dr. Judy W. K. Ayodi
16. Mr. Benjamin Njore Mwasi

- (iii) The Committee noted that the list satisfy's the gender balance rule. Though more women can still be appointed.
- (iv) On regional balance, the Committee noted the lack of representation from Central Province. However on ethnic balance the Committee is satisfied with the balance.
- (v) Nominated by the President in consultation with the Prime Minister do not confirm to the interview results but ethnic balance.
- (vi) The Committee noted the criteria for nominating Mrs. Emma Muthoni Njogu instead of Dr. Winfred Njeri Mwangi, noting that they represent the same Ethnic Community. However the latter scored higher marks during the interview. Therefore resolved that the Permanent Secretary to the Cabinet & Head of the Public Service & head of Staff in the Prime Minister's Office appear before the Committee.
- (vii) The nominee proposed for replacement was initially cleared by NSIS and further that the one proposed to replace was also interviewed by the selection panel & cleared by all statutory bodies.
- (viii) Committee adopted the Report of the selection panel.

(b) CURRICULUM VITAE OF THE NOMINEES

The Committee considered the Curriculum Vitae of the nine (9) nominees taking into consideration section 8 (1), (2) and (3) of the National Land Commission Act, No. 5 of 2012. The Committee noted the following:-

- (i) The Professionals nominated range from law, land economist/surveyors/planner, social Natural Resource Scientist therefore they meet the qualification.
- (ii) All have served for more than ten years in the respective fields/professions and published widely.
- (iii) Cleared by the NSIS, EACC, HELB and KRA; and
- (iv) Posse degree recognized in Kenya.

Therefore, meet the qualification for appointments to the stated capacities in the National Land Commission pursuant to section 8 (1), (2) and (7) of the National Land Commission Act No. 5 of 2012.

(c) PROPOSED REPLACEMENT – The Committee noted the following:-

1. There was a proposed replacement of Mr. Abdulkadir Adan Khalif with one Mr. Mohammed Alew Mohammed vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 basing a report of the National Security Intelligence Service Ref. INT/SF. 21/1 VOL.59 (70) dated 5th July 212 as the reason for the replacement.
2. The report alleged that the candidates is in possession of three passports(Kenyan, Somali and USA), is alleged to be involved in a political movement and Somali Politics;
3. The Office of the Prime Minister contested the replacement of Mr. Abdulkadir Adan Khalif vide letter Ref. PMO/NEW. CONST/112 dated 13th July 2012 on the following grounds:-
 - (i) The replacement was done without consultation as required under Para 14 of the First Schedule of the Act. As the letter Ref. OP/CAB.1/16A dated 4th July 2012 by Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service to the Clerk of the National Assembly purporting to replace the candidate was never written to Office of the Prime Minister but copied.;
 - (ii) Vetting of nominees is reserved to the National Assembly under the Act;
 - (iii) The Mr. Abdulkadir Adan Khalif was never informed of the information by either the Office of the President, Intelligence Service or any other security agency, by virtue of Art.35, 47 and 50 of the Constitution of Kenya;
4. The Committee observed the following on the proposed replacement, that:-
 - i.) On verification whether there was no consultation on the replacement, the two offices confirmed that there was no consultation; as the letter proposing a replacement was only copied to office of the prime Minister as matter of information rather than to seek their indulgence or opinion. This was confirmed by the Office of the President that they did copied to the Office of the Prime Minister
 - ii.) The report from the security agencies lacked supporting evidence(like the passport numbers, travels details of the persons, any substantive links with the said political movement and or Somalia

politics) and therefore lacked clarity in the allegation against the nominees;

Min No.93/2012: ADJOURNMENT:

And there being no other business, the Chair adjourned the Sitting until Wednesday, August 8, 2012 in Main Conference Room, First Floor, County Hall at 09:00am.

SIGN..........

**HON. MUTAVA MUSYIMI, MP
CHAIRPERSON**

DATE.....AUGUST 14, 2012.....

MINUTES OF THE ONE HUNDRED & THIRTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON WEDNESDAY, AUGUST 8, 2012 IN COMMITTEE ROOM 1, 1ST FLOOR CONTINENTAL HOUSE AT 09.30AM.

PRESENT:

The Hon. Mutava Musyimi, MP – **Chairperson**

The Hon. Benjamin Jomo Washiali, MP

The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.

The Hon. Peter Njuguna Gitau, MP

The Hon. Silas Ruteere Muriuki, MP.

The Hon. Benedict Fondo Gunda, MP

The Hon. Mohammed Affey, MP.

The Hon. Justus M. Kizito, MP.

The Hon. Omar Mbwana Zonga, MP

ABSENT WITH APOLOGY

The Hon. Peris C. Simam, MP. - **Vice chairperson**

The Hon. Kiema Kilonzo, MP.

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Rana Tiampati - Second Clerk Assistant

Mr. Abenayo Wasike - Third Clerk Assistant

Min. No.94/2012: INTRODUCTION

The Chair called on the meeting to order at 09.07am after prayers have been said. He further requested Members to note the Agenda items and proposed for any amendment and adoption. The proposed agenda:-

1. Prayers;
2. Confirmations of minutes;
3. Matters arising;
4. **Vetting of Nominees**
 - 1 Dr. Muhammad A. Swazuri, , OGW - Chairperson – 09.30 – 10.30 a.m.
 - 2 Dr. Tomiik M. Konyimbih - Member – 10.30 – 11.00 a.m.
 - 3 Ms. Emma Muthoni Njogu - Member - 11.00 – 11.30a.m
 - 4 Mr. Silas Kinoti Muriithi - Member – 11.30 - 12.00noon
 - 5 Dr. Rose M. Musyoka - Member - 2.30 – 3.30 pm
 - 6 Dr. Samuel Kipngetich A. Tororei - Member - 3.30 – 4.30 p.m.
5. Any Other Business –
6. Date of the next sitting.

The agenda was adopted.

MIN. NO.95/2012: CONFIRMATION OF MINUTES

Confirmation of Minutes of the 132nd sitting of the Committee were postponed to a later date

MIN NO.92/2012: VETTING OF NOMINEES TO THE NATIONAL LAND COMMISSION

The Committee noted the following before the vetting of nominees:-

1. The nominees were nominated to serve in the National Land Commission pursuant to Articles 67, 232, 250 of the Constitution and Section 7 (1) and (2), 8(1) (2) and (3) and First Schedule of the National Land Commission Act No. 5 of 2012;
2. the Candidates are to be examined against the criteria set out in Section 8(1) (2) and (3) of the National Land Commission Act No. 5 of 2012 and the Public Appointments (parliamentary approval) Act, No.33 of 2011 (Criteria for vetting/approval of nominees for appointment to public office by the National Assembly).
3. The criterion requires nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests among others.
4. The **Chairperson** of the National Land Commission shall be a person who holds a degree from a university recognized in Kenya, has knowledge and experience of at least fifteen years in matters relating to any of the following fields - public administration, land management and administration, management of natural resources, land adjudication and settlement; land law, land survey, spatial planning or land economics or social sciences; meets the requirements of Chapter Six of the Constitution; and has had a distinguished career in their respective fields.
5. The **Member** of the National Land Commission must be a citizen of Kenya; holds a degree from a university recognized in Kenya, has knowledge and experience of at least ten years in matters relating to any of the following fields — public administration, land management and administration, management of natural resources, land adjudication and settlement, land law, land survey, spatial planning or land economics or social sciences; meets the requirements of Chapter Six of the Constitution and has had a distinguished career in their respective fields;

MIN. NO. 94/2012: VETTING OF NOMINEES

NOMINATION OF DR. MUHAMMAD ABDALLA SWAZURI, OGW AS CHAIRPERSON OF THE NATIONAL LAND COMMISSION

1. The Committee having considered the curriculum vitae of **Dr. Muhammad A. Swazuri, OGW**, and having heard his submissions during the interview, made the following observations on his nomination:-
 - i). That **Dr. Muhammad A. Swazuri, OGW**, is a Kenyan citizen born on 1959 .He is a Land Economist for over twenty (20) years.
 - ii). He holds a Bachelors degree in Land Economics, Masters of Arts in Housing Administration and Doctor of Philosophy in Land Economics all from the University of Nairobi.
 - iii). He is currently the Deputy Principal Mombasa Polytechnic University College since August 2010, he served as untrained teacher in 1980, Trained Teacher in 1984, Tutorial Fellow, Department of Land Development, University of Nairobi 1986 – 1988, Lecturer at the Department of Real Estate and Construction, University of Nairobi since 1988 - 2009.
 - iv). He has also served as a lecturer at Copperbelt University Zambia in 2008; in 2009, he was a Senior lecturer, Department of Real Estate and Construction management university of Nairobi before being appointed to be the Chairman, Department of Real Estate and Construction Management University of Nairobi.
 - v). He is a member of the Institute of Surveyors of Kenya and Associate member since 1989.
 - vi). He served as Permanent Commissioner of the defunct Constitution of Kenya Review Commission in 2000 – 2005 (CKRC);
 - vii). He has published four (4) papers and reports among them," A Unique commercial land tenure Arrangement amongst the digo of Kenya Coast", expansion and land development options for coastal island town of Mombasa" and "Gift of God: Kenya's tourism development ignores token legal and infrastructural support" among others co-authored with others and with 29 professional papers presented;
 - viii). He received the Presidential award and honour of the Order of the Grand Warrior of Kenya (OGW).
 - ix). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely

mentioned in any investigatory report of Parliament or any Commission of Inquiry;

- x). He is not a member of any political party and does not expect any conflict of interest to arise;
- xi). He has never been charged in a court of law for any offence;

With regards to **public participation**, the following complaints/allegations were raised against Dr. Muhammad Abdalla Swazuri that:-

- i). He is not a team player and not good in decision making;
- ii). He practiced nepotism in his previous office, chairman of the Kwale Water and Sewerage Company by employing his daughter;
- iii). Accused of abuse of office by use of company resources for his own benefit while not on company duties – travel expenses while on private duties he uses the office resources;
- iv). It was alleged that a number of people, which may have included Dr. Muhammad Abdalla Swazuri, trespassed on their land, marked out, coconut trees and planted a number of banana trees.

The Committee tasked the nominees on the allegation and noted that the allegations lacked merit.

- xii). The Committee found the nominee qualified.

NOMINATION OF DR. TOMIIK MBOYA MBORASSEY KONYIMBIH, AS MEMBER OF THE NATIONAL LAND COMMISSION

- 2. The Committee having considered the curriculum vitae of **DR. TOMIIK MBOYA MBORASSEY KONYIMBIH**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That he is a Kenyan Citizen born on 26th May, 1961. He holds a PhD, in land policy, from the University of Cambridge in England, and a Bachelor degree on Land Economics from the University of Nairobi.
- ii). He is currently a senior lecturer and researcher Department of Real Estate and Construction Management University of Nairobi, moderator, annual examinations of the institute of Surveyors of Kenya and chairman of the professional Examination Board – 1994 – 2007, Gazetted member of land Acquisition and Compensation Tribunal – 2001 - 2006.
- iii). He is the external examiner with the University of Dar es Salaam, commonwealth foundation fellow Kenya chapter on assignment to Britain

Sri Lanka and Pakistan, designer of the estate management training syllabus and curriculum for property Valuers for diploma and degree capacity building programme with the ministry of lands and also a rehabilitation and resettlement expert for Namibia.

- iv). He has consulted for the FAO technical cooperation programme on taxing agricultural land and peri urban Agriculture and land tenure dynamics in Namibia and Kenya respectively; researched for the land review Commission of Kenya ("Njonjo commission on land review")
- v). He has also consulted for the Ministry of Lands and National Housing Corporation of Kenya on Land Based revenues and Housing market survey respectively.
- vi). In 1986 – 1987 was a land valuation surveyor with the Ministry of Lands and in 1985 he was graduate trainee with Milligan & company Limited;
- vii). He has published several papers among them, "land value taxation: rating principles and guidelines for Kenya", major issues of smallholder land policy in Kenya; past trends and current practices", Urban Ad Valorem land Tax: implementation experiences in some Kenyan towns;, property taxation in tropical Africa; comparative policies in the three east African countries: and "landholding and ethics: critical issues for Kenya's rural areas"; among several research and workshop/conferences/seminar papers;
- viii). Served as board member of Kenya Wines Agencies limited and land acquisition compensation tribunal;
- ix). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- x). He is not a member of any political party and does not expect any conflict of interest to arise
- xi). He has never been charged in a court of law for any offence
- xii). The Committee found the nominee qualified.

NOMINATION OF MR. SILAS KINOTI MURIITHI AS MEMBER OF THE NATIONAL LAND COMMISSION

3. The Committee having considered the curriculum vitae of **MR. SILAS KINOTI MURIITHI**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **MR. SILAS KINOTI MURIITHI** is a Kenyan citizen born in 1961, who is land surveyor and holds a Master of Science degree (planning – urban and regional planning) University of Nairobi, Post Graduate certificate in surveying and mapping, Tsukuba Institute, Japan and bachelors degree in Surveying and Photogrammetry from the University of Nairobi.
- ii). He has Ministry of Lands as land surveyor 1986 – 2000, board members Kenya Roads Board 2003 – 2009, Co-director and Land Survey Consultants with Two-Ems Associates limited 2001 –to date and worked as a Director - Boundaries, Interim Independent Boundaries Review Commission.
- iii). He is a Member of Institution of Surveyors of Kenya, Association of Licensed Land Surveyors of Kenya and licensed land surveyor.
- iv). He received the Presidential award and honour of the Distinguished Service Medal (DSM), Certificate of award from Institution of Surveyors of Kenya, Interim Independent Boundaries Review Commission, Kenya roads Board, Kenya Institute of Planners;
- v). He has published several papers and books among them “securing and managing road reserves in a prudent manner”, “the need for to secure road reserves”, “training of land surveyor/geomantic engineer” and “the role of land surveyor in national Development”.
- vi). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vii). He is not a member of any political party and does not expect any conflict of interest to arise
- viii). He has never been charged in a court of law for any offence
- ix). The Committee found the nominee qualified.

NOMINATION OF **DR. ROSE MUMBUA MUSYOKA**, AS MEMBER OF THE NATIONAL LAND COMMISSION

4. The Committee having considered the curriculum vitae of **DR. ROSE MUMBUA MUSYOKA**, and having heard his submissions during the interview, made the following observations on his nomination:-
 - i). That **DR. ROSE MUMBUA MUSYOKA** is a Kenyan citizen born on 1st April 1966 and holds a post graduate Diploma in land management and informal settlement regularization (Erasmus University, Netherlands), Doctor of philosophy in public policy from University of Birmingham UK, Masters degree in urban and regional planning from the University of

Nairobi and a bachelors of arts degree from the university of Nairobi. She also holds ac certificate in Environment Impact Assessment (Kenya).

- ii). He currently works as a lecturer Department of Urban and Regional planning at the University of Nairobi since 2008. In 1990 – 2008, worked at the Ministry of Lands as urban and regional planner, In 1989 – 2007, she worked as part-time lecturer department of Tourism and Scholl of Environment studies, Moi University,
- iii). He has published a book “informal urban residential land delivery and development processes, the dynamics of informality in urban development in Kenya” and several papers on public policy and land.
- iv). He is a corporate member of the architectural Association of Kenya, registered planner and registered lead expert in environment Impact Assessment and Member of the association for the physically disabled of Kenya.
- v). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vi). He is not a member of any political party and does not expect any conflict of interest to arise.
- vii). He has never been charged in a court of law for any offence.
- viii). The Committee found the nominee qualified.

NOMINATION OF **DR. SAMUEL KIPNGETICH TOROREI** AS MEMBER OF THE NATIONAL LAND COMMISSION

5. The Committee having considered the curriculum vitae of **DR. SAMUEL KIPNGETICH TOROREI**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **DR. SAMUEL KIPNGETICH TOROREI** is a Kenyan citizen born on 24th December 1955. She holds a doctor of philosophy in Human ecology from Moi University, Master degree in health planning and financing from London School of Economics, certificate in management from the Kenya Institute of Management and a Bachelor of Arts in Education Commerce from the University of Nairobi.
- ii). Since 2007, He worked in the Kenya National Commission on Human Rights as Commissioner, vice chairperson and now as acting chairperson. In 2003 /04, as chief executive officer, united disabled persons of Kenya, in 2000 - 2007 as lead consultant empowerment resources development

centre, in 1999-2003, as chairman, Uasin Gishu district Aids Control committee, in 1999 – 2010, as First National Vice Chairman, Association for the physically disabled of Kenya, In 1998, as visiting lecturer in health economics, great lakes University of Kisumu, in 1995 to date, lecturer in health economics department of health management, Moi University, IN 1994 – 1996, as program director, Institute for civil education and development in Africa, in 1992 – 1994, private consultant in health management, NGO management and disability issues, In 1988 – 1994 chairman, board of governors Machakos Technical institute for the blind and visiting lecturer international centre for eye health, University of London, in 1987 – 1990, as visiting tutor Kenya Institute of Special education, 1986 – 1992, as regional Co-chairman, International agency for the prevention of blindness, In 1985 – 1992 visiting lecturer, department of medicine, University of Nairobi, In 1982 – 1992 secretary, national prevention of blindness committee and director Kenya society for the blind, In 1981, tutor, Mosoriot Teachers Training College.

- iii). He has published papers among them "civic education in Africa" and responsiveness of ARV/ART services to the need of the persons with disabilities in Kenya".
- iv). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- v). He is not a member of any political party and does not expect any conflict of interest to arise.
- vi). He has never been charged in a court of law.
- vii). The Committee found the nominee qualified.

NOMINATION OF **MS. EMMA MUTHONI NJOGU** AS A MEMBER OF THE NATIONAL LAND COMMISSION

- 6. The Committee having considered the curriculum vitae of Ms. Emma Muthoni Njogu and having heard her submissions during the interview, made the following observations on her nomination:-
 - i). That Ms. Emma Muthoni Njogu is a Kenyan citizen born on 12TH June 1970. She holds a Bachelor of Law (LLB) degree from the University of Nairobi, a Diploma in Law from the Kenya School of Law and Post graduate Diploma in International Relations from the University of Nairobi.

She is an Advocate of the high court having been admitted to the Roll of Advocates in February 1995.

- ii). She has been trained in Legislative Drafting course, Treaty making, negotiation and effective dispute resolution, Strategic leadership development programme, management of information systems, communication skills research skills and performance appraisal.
- iii). She currently works as a Deputy Chief state counsel, State Law Office; she has also served as the senior state counsel of the Kenya Law reform commission, and as Joint Secretary in the Presidential Commission of Inquiry into the land law system of Kenya.
- iv). She is a member of the Law Society of Kenya, and International Federation of Women Lawyers (F.I.D.A), Kenya Chapter.
- v). She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vi). She is not a member of any political party and does not expect any conflict of interest to arise.
- vii). She has never been charged in a court of law for any offence.
- viii). The Committee found the nominee qualified.

MIN NO.95/2012: MEETING WITH THE OFFICE OF THE PRESEIDENT AND OFFICE OF THE PRIME MINISTER

The Committee deliberated on the outstanding issues below and noted that the following issues need to be clarified:-

1. Regional balance and ethnic diversity in the commission;
2. The nomination of candidates without regard to interview result;
3. The proposed replacement

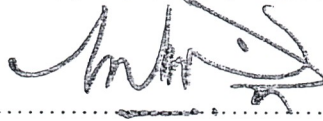
Therefore, the Committee resolved to invite the Permanent Secretary, Secretary to the Cabinet & Ag. Head of the Public Service and Chief of Staff in the Prime Minister's office for a meeting to be held **on Thursday, August 9, 2012 in Main Conference Room, First Floor County Hall, Parliament Buildings starting at 09.00 a.m.** to share with the Committee the following:-

- i). The thinking behind nomination of the nine (9) nominees out of the eighteen (18) recommended by the Selection Panel taking noting regional balance and the interviews results; and

- ii). The proposed replacement of one of the nominees – your letters - Ref. OP/CAB.116A by the Permanent Secretary, Secretary to the Cabinet & Ag. Head of the Public Service dated 4th July 2012 and Ref. PMO/NEW.CONST/112 by Chief of Staff in the Prime Minister's office dated 13th July 2012.

MIN. NO.96/2012: ADJOURNMENT:

And there being no other business, the Chair adjourned the Sitting until Thursday, August 9, 2012 in Committee Room 9, First Floor, Main Parliament at 09:00am.



SIGN.....

**HON. MUTAVA MUSYIMI, MP
CHAIRPERSON**

DATE.....**AUGUST 14, 2012**.....

MINUTES OF THE ONE HUNDRED & THIRTY FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON THURSDAY, AUGUST 9, 2012 IN COMMITTEE ROOM 9, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AT 09.30AM.

PRESENT:

The Hon. Mutava Musyimi, MP – **Chairperson**
The Hon. Peris C. Simam, MP. - **Vice chairperson**
The Hon. Benjamin Jomo Washiali, MP
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.
The Hon. Peter Njuguna Gitau, MP
The Hon. Silas Ruteere Muriuki, MP.
The Hon. Benedict Fondo Gunda, MP
The Hon. Mohammed Affey, MP.
The Hon. Justus M. Kizito, MP.
The Hon. Omar Mbwana Zonga, MP

ABSENT WITH APOLOGY

The Hon. Kiema Kilonzo, MP.

IN ATTENDANCE - OFFICE OF THE PRIME MINISTER/OFFICE OF THE PRESIDENT

Prof. Kivutha Kibwana – Adviser/OP
Mr. Kennedy Kihara – Parliamentary Liaison Officer/OP
Mr. Caroli Omondi – chief of Staff

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Rana Tiampati - Second Clerk Assistant
Mr. Abenayo Wasike - Third Clerk Assistant

Min. No.97/2012: INTRODUCTION

The Chair called on the meeting to order at 09.10am after prayers have been said. He further requested Members to note the Agenda items and proposed for any amendment and adoption. The proposed agenda:-

1. Prayers;
2. Confirmations of minutes;
3. Matters arising;
4. **Meeting with the Permanent Secretary, Secretary to the Cabinet and Ag. Head of the Public Service and Chief of Staff, Prime Minister's Office at 09.00a.m.**
5. **Vetting of Nominees**

Ms. Abigael Mbagaya	- Member	- 11.00 – 11.30 a.m.
Mr. Clement Isaiah Lenachuru	- Member	- 11.30 – 12.00 p.m.
Mr. Abdulkadir Adan Khalif	- Member	- 12.00 – 12.30 p.m.
6. Any Other Business

7. Date of the next sitting.

The agenda was adopted.

MIN. NO.98/2012: CONFIRMATION OF MINUTES

Confirmation of Minutes of the 132nd and 133rd sittings of the Committee were postponed to a later date

MIN NO.99/2012: MEETING WITH THE PERMANENT SECRETARY, SECRETARY TO THE CABINET AND AG. HEAD OF THE PUBLIC SERVICE AND CHIEF OF STAFF, PRIME MINISTER'S OFFICE

The meeting noted the following:-

1. REGIONAL BALANCE AND ETHNIC DIVERSITY

a) There was consultation in the nomination of the forwarded nominees to the National Assembly vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 and that the candidates nominated for appointment are:-

- | | |
|---|---------------|
| 1. Dr. Muhammad Abdalla Swazuri, OGW. | - Chairperson |
| 2. Dr. Tomiik Mboya Mborassey Konyimbih | - Member |
| 3. Mr. Silas Kinoti Muriithi | - Member |
| 4. Dr. Rose Mumbua Musyoka | - Member |
| 5. Dr. Samuel Kipng'etich Tororei | - Member |
| 6. Ms. Abigael Mbagaya | - Member |
| 7. Ms. Emma Muthoni Njogu | - Member |
| 8. Mr. Clement Isaiah Lenachuru | - Member |
| 9. Mr. Abdulkadir Adan Khalif | - Member |

b) The Selection Panel selected the nominees based on merit, gender, ethnic balance and professional qualification pursuant to Section 8 (1), (2) and (3) of the National Land Commission Act no. 5 of 2012; on Article 232 and 250 of the Constitution in their stated capacities;

c) Previous appointments to other commissions are also a key to consideration when nominees are selected to take care of regional balance and ethnic diversity;

d) The nomination of Mrs. Emma Muthoni Njogu instead of Dr. Winfred Njeri Mwangi was based on her professional qualification being the only lawyer among sixteen (16) shortlisted candidates who were mostly land

economists/surveyors. Therefore she scored in two areas , gender and professional qualification;

- e) The Rift valley Region having three nominees, the Committee was informed that there was need to consider Minority Community (Mr. Clement Isaiah Lenachuru), persons with disability (Dr. Samuel Kipng'etich Tororei) and the region having serious land problems;
- f) The nomination of Mr. Abdulkadir Adan Khalif instead of Mr. Mohamed Alew Mohammed, the Committee noted that Garissa is over represented in previous commission therefore the need to consider Mandera County;
- g) The Committee noted that all the Candidates were cleared for interviews and short listing by statutory agencies i.e. Higher Education Loans Board(HELB), Kenya Revenue Authority(KRA), Ethics and Anti-Corruption Authority (EACC) and National Security Intelligence(NSIS);
- h) None of the candidates has ever been charged in a court of law, mentioned in an investigatory report of parliament or any other commission of inquiry and or removed or dismissed from office for contravention of the provisions of Article 75 of the Constitution;
- i) All the nine(9) nominees have had distinguished careers in their respective fields and have either been involved in the land policy development, participated in commission(s) of inquiry on land or worked in the Ministry of lands; and
- j) All the nominees are Kenyan citizens except one with dual citizenship.

2. REPLACEMENT

- (a)There was a proposed replacement of Mr. Abdulkadir Adan Khalif with one Mr. Mohammed Alew Mohammed vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 basing on a report by the National Security Intelligence Service Ref. INT/SF. 21/1 VOL.59 (70) dated 5th July 212 as the reason for the replacement.
- (b)The report alleged that the candidates is in possession of three passports(Kenyan, Somali and USA) and is alleged to be involved in a political movement and Somalia Politics;
- c) The Office of the Prime Minister contested the replacement of Mr. Abdulkadir Adan Khalif vide letter Ref. PMO/NEW. CONST/112 dated 13th July 2012 on the following grounds:-

- d) The replacement was done without consultation as required under Para 14 of the First Schedule of the Act. The letter Ref. OP/CAB.1/16A dated 4th July 2012 by Permanent Secretary, Secretary to the Cabinet and Head of the Public Service to the Clerk of the National Assembly purporting to replace the candidate was never written to Office of the Prime Minister but copied.;
- e) Vetting of nominees is reserved to the National Assembly under the Act;
- f) The Mr. Abdulkadir Adan Khalif was never informed of the information by either the Office of the President, Intelligence Service or any other security agency, by virtue of Art.35, 47 and 50 of the Constitution of Kenya;
- g) The security agencies should have provided documentary evidence to support their claim like copies of the passports or numbers, his participation on Somali politics and a report of DIGLIMIRIF;

The Committee observed the following on the proposed replacement, that:-

- a) As regards consultation in respect of the replacement, the Committee concluded that there was no consultation; as the letter proposing a replacement was only copied to office of the Prime Minister as matter of information. This was confirmed by the Office of the President that they actually copied to the Office of the Prime Minister.
- b) The report from the security agencies lacked sufficient evidence on the alleged three passport numbers, travels details of the persons, any substantive links with the said political movement and links to Somalia politics, to support the allegation against the Candidate therefore lacked clarity;

3. With regards to **public participation**, the following complaints/allegation and comments were made:-

- a) The need to ensure people with disability were included in the commission;
- b) The need to reflect regional balance in the commission;
- c) The professional qualification of all candidates nominated should have been made public to establish their competences;
- d) The Selection Panel was not well constituted as the representatives of the NGO council to the panel – Mr. Stephen Ndichu and Ms. Violet Okinda, were not nominated by the NGO Council as per their rules of procedure.
- e) The complaints against Dr. Muhammad Abdalla Swazuri that:-
 - i). He is not a team player and not good in decision making;

- ii). He practiced nepotism in his previous office, chairman of the Kwale Water and Sewerage Company by employing his daughter;
 - iii). Accused of abuse of office by use of company resources for his own benefit while not on company duties – travel expenses while on private duties he uses the office resources;
 - iv). It was alleged that a number of people, which may have included Dr. Muhammad Abdalla Swazuri, trespassed on their land, marked out, coconut trees and planted a number of banana trees.
4. On the public complaints and allegations, the Committee observed that:-
- a) The nominees include persons with disability;
 - b) The nomination was sufficiently sensitive to regional and Community balance therefore there was no region or ethnic community that was left out;
 - c) Interviews were carried out both in the media /public and the final shortlisted candidates were also made public through the dailies;
 - d) The constitution of the selection Panel is a preserve of the Public Service Commission and noting the continued wrangles in the NGO Council, lack of clear nomination procedures of the representatives of all bodies to sit in the Selection Panel, the process is vulnerable to manipulation.
5. On the allegation against Dr. Muhammad Abdalla Swazuri, The Committee deliberated on the matter and noted that the allegations lacked merit.

MIN. NO. 100/2012: VETTING OF NOMINEES

NOMINATION OF MRS. ABIGAEL MBAGAYA AS A MEMBER OF THE NATIONAL LAND COMMISSION

1. The Committee having considered the curriculum vitae of **MRS. ABIGAEL MBAGAYA**, and having heard her submissions during the interview, made the following observations on his nomination:-
 - i). That **MRS. ABIGAEL MBAGAYA** is a Kenyan citizen born on 4th December, 1966 and holds a certificate in project planning and management from Kenya Institute of Management, is an associate certified Fraud examiner, certificate in advanced programme on the prevention, analysis and detection of corporate fraud from Eastern and Southern Africa management Institute(ESAMI), Master of urban Management degree and a holder of a Bachelor of Arts in Land Economics degree from the University of Nairobi and a Diploma in valuation and estate management surveyors from the institution of Surveyors of Kenya.

- ii). She currently works with Ethics and Anti-Corruption Commission (EACC) as a corruption prevention officer – valuer since 2005. She also worked in property plus/Ace Valuer as managing Partner. In 1994 – 1999, she worked with Tyson Limited as chief letting Manager and in 1989 – 1993, she worked with Milligan and Company Limited as management trainee/property manager.
- iii). She is a Member of the Institution of Surveyors of Kenya and associate member of the Association of Certified Fraud Examiners.
- iv). She received the President's Award Scheme – Bronze Category.
- v). She has published several papers and or report either jointly or alone and among them "public private Partnership in Urban Service Delivery – A case of Nairobi Central Business District"
- vi). She has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vii). He is not a member of any political party and does not expect any conflict of interest to arise
- viii). He has never been charged in a court of law for any offence.
- ix). The Committee found the nominee qualified.

NOMINATION OF **MR. CLEMENT ISAIAH LENACHURU** AS MEMBER OF THE NATIONAL LAND COMMISSION

2. The Committee having considered the curriculum vitae of **MR. CLEMENT ISAIAH LENACHURU** having heard his submissions during the interview, made the following observations on her nomination:-
 - i). That **MR. CLEMENT ISAIAH LENACHURU** is a Kenyan citizen born in 31st March 1964. He is finalizing his Doctor of Philosophy degree from Colorado State University, USA, Masters Degree in Natural Resources (Human Ecology) from Egerton University, a Bachelor Degree in Natural Resources and a Diploma in Range Management from Egerton University.
 - ii). He is currently teaching and researching as Assistant lecturer at Egerton University Since 2002 – 2012, As Consultant/National Coordinator, Pastoralist Development Network of Kenya and as Livestock Assistant/Technician, Kenya Agricultural Research Institute.
 - iii). He is member of the Range Society of America.
 - iv). He has published several papers among them "impacts of prosopis species in Baringo District-Workshop proceedings on integrated management of

- prosopis species in Kenya", a case study report on community Gemstone mining in Taita Taveta District" and "Can formal education Reduce Risks for drought prone pastoralists? A case study from Baringo District Kenya". He participated in the drafting of sections of National land Policy on Resolution of Historical land Injustices and Pastoral Land issues;
- v). He has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
 - vi). He is not a member of any political party and does not expect any conflict of interest to arise.
 - vii). He has never been charged in a court of law for any offence.
 - viii). The Committee found the nominee qualified.

NOMINATION OF **MR. ABDULKADIR ADAN KHALIF**, AS MEMBER OF THE NATIONAL LAND COMMISSION

3. The Committee having considered the curriculum vitae of **MR. ABDULKADIR ADAN KHALIF** , and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That **MR. ABDULKADIR ADAN KHALIF** is a licensed Land Surveyor and is a Kenyan citizen born on 1954 and holds a Bachelors of Science degree in Geomatic Engineering from St. Cloud State University, USA and Bachelors of Science degree in Surveying and Photogrammetry from the University of Nairobi.
- ii). He has 32 years working experience and currently works as Technical Director with Frontier Engineering Since 2010, Chief Surveyor with City of Burnsville, Minnesota, USA 2001 - 2010, as Senior Surveyor with URS Corporation, Minneapolis USA 1999 - 2001, as Chief Surveyor and Consultant with Harunani and Associate, Nairobi 1985 - 1999, as Senior Surveyor with Gatome and Associate 1983 – 1985, as surveyor with Survey of Kenya, Ministry of Lands 1980 1982;
- iii). He has published a paper titled "Changes and challenges facing land surveying profession – a comparative report on Kenya and the United States of America – 2009" and various other papers on public health issues and immunization programmes.
- iv). He is a member of the Institution of Surveyor of Kenya, and associate Member of the American Congress of Surveying and Mapping (USA).

Member of the habitat for humanity, Parent United Against Autism, global Citizens Network among others;

- v). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- vi). He is not a member of any political party and does not expect any conflict of interest to arise
- vii). He has never been charged in a court of law for any offence
- viii). The Committee found the nominee qualified.

MIN NO.101/2012: ADJOURNMENT:

And there being no other business, the Chair adjourned the Sitting until Monday, August 13, 2012 in Main Conference Room, First Floor, County Hall at 10:00am.



SIGN.....

HON. MUTAVA MUSYIMI, MP
CHAIRPERSON

DATE.....AUGUST 14, 2012.....

MINUTES OF THE ONE HUNDRED & THIRTY FIFTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON MONDAY, AUGUST 13, 2012 IN MAIN CONFERENCE ROOM, FIRST FLOOR, COUNTY HALL AT 10.00AM.

PRESENT:

The Hon. Mutava Musyimi, MP – **Chairperson**
The Hon. Peris C. Simam, MP. - **Vice chairperson**
The Hon. Benjamin Jomo Washiali, MP
The Hon. Dr. Erastus Mureithi, MBS, HSC, MP.
The Hon. Peter Njuguna Gitau, MP
The Hon. Silas Ruteere Muriuki, MP.
The Hon. Benedict Fondo Gunda, MP
The Hon. Mohammed Affey, MP.
The Hon. Justus M. Kizito, MP.
The Hon. Omar Mbwana Zonga, MP

ABSENT WITH APOLOGY

The Hon. Kiema Kilonzo, MP.

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Rana Tiampati - Second Clerk Assistant
Mr. Abenayo Wasike - Third Clerk Assistant

Min. No.102/2012: INTRODUCTION

The Chair called on the meeting to order at 09.10am after prayers have been said. He further requested Members to note the Agenda items and proposed for any amendment and adoption.

The proposed agenda:-

1. Prayers;
2. Confirmations of minutes;
3. Matters arising;
4. **Deliberation on Committee observations and findings and recommendations on the vetting of the Nominees to the National Land Commission.**
5. **Adoption of the report;**
6. Any Other Business;
7. Date of the next sitting.

The agenda was adopted.

MIN. NO.103/2012: CONFIRMATION OF MINUTES

Minutes of the 132nd, 133rd, 134th and 135th were confirmed as true deliberations and record of the Committee proceedings by Members present and signed by the Chairperson.

MIN. NO. 104/2012; COMMITTEE FINDINGS AND RECOMMENDATIONS

1. The Committee observed

a) There was consultation in the nomination of the forwarded nominees to the National Assembly vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 and that the candidates nominated for appointment are:-

1. Dr. Muhammad Abdalla Swazuri, OGW. - Chairperson
2. Dr. Tomiik Mboya Mborassey Konyimbih - Member
3. Mr. Silas Kinoti Muriithi - Member
4. Dr. Rose Mumbua Musyoka - Member
5. Dr. Samuel Kipng'etich Tororei - Member
6. Ms. Abigael Mbagaya - Member
7. Ms. Emma Muthoni Njogu - Member
8. Mr. Clement Isaiah Lenachuru - Member
9. Mr. Abdulkadir Adan Khalif - Member

b) The Selection Panel selected the nominees based on merit, gender, ethnic balance and professional qualification pursuant to Section 8 (1), (2) and (3) of the National Land Commission Act no. 5 of 2012; on Article 232 and 250 of the Constitution in their stated capacities;

c) Previous appointments to other commissions are also a key to consideration when nominees are selected to take care of regional balance and ethnic diversity;

d) The nomination of Mrs. Emma Muthoni Njogu instead of Dr. Winfred Njeri Mwangi was based on her professional qualification being the only lawyer among sixteen (16) shortlisted candidates who were mostly land economists/surveyors. Therefore she scored in two areas , gender and professional qualification;

e) The Rift valley Region having three nominees, the Committee was informed that there was need to consider Minority Community (Mr. Clement Isaiah Lenachuru), persons with disability (Dr. Samuel Kipng'etich Tororei) and the region having serious land problems;

- f) The nomination of Mr. Abdulkadir Adan Khalif instead of Mr. Mohamed Alew Mohammed, the Committee noted that Garissa is over represented in previous commission therefore the need to consider Mandera County;
- g) The Committee noted that all the Candidates were cleared for interviews and short listing by statutory agencies i.e. Higher Education Loans Board(HELB), Kenya Revenue Authority(KRA), Ethics and Anti-Corruption Authority (EACC) and National Security Intelligence(NSIS);
- h) None of the candidates has ever been charged in a court of law, mentioned in an investigatory report of parliament or any other commission of inquiry and or removed or dismissed from office for contravention of the provisions of Article 75 of the Constitution;
- i) All the nine(9) nominees have had distinguished careers in their respective fields and have either been involved in the land policy development, participated in commission(s) of inquiry on land or worked in the Ministry of lands; and
- j) All the nominees are Kenyan citizens except one with dual citizenship.

2. The proposed replacement

- (a) There was a proposed replacement of Mr. Abdulkadir Adan Khalif with one Mr. Mohammed Alew Mohammed vide letter from the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service Ref. OP/CAB.1/16A dated 4th July, 2012 basing on a report by the National Security Intelligence Service Ref. INT/SF. 21/1 VOL.59 (70) dated 5th July 2012 as the reason for the replacement.
- (b) The report alleged that the candidate is in possession of three passports(Kenyan, Somali and USA) and is alleged to be involved in a political movement and Somalia Politics;

3. The Office of the Prime Minister contested the replacement of Mr. Abdulkadir Adan Khalif vide letter Ref. PMO/NEW. CONST/112 dated 13th July 2012 on the following grounds:-

- a) The replacement was done without consultation as required under Para 14 of the First Schedule of the Act. The letter Ref. OP/CAB.1/16A dated 4th July 2012 by Permanent Secretary, Secretary to the Cabinet and Head of the Public Service to the Clerk of the National Assembly purporting to replace the candidate was never written to Office of the Prime Minister but copied.;
- b) Vetting of nominees is reserved to the National Assembly under the Act;

- c) The Mr. Abdulkadir Adan Khalif was never informed of the information by either the Office of the President, Intelligence Service or any other security agency, by virtue of Art.35, 47 and 50 of the Constitution of Kenya;
 - d) The security agencies should have provided documentary evidence to support their claim like copies of the passports or numbers, his participation on Somali politics and a report of DIGLIMIRIF;
4. The Committee observed the following on the proposed replacement, that:-
- a) As regards consultation in respect of the replacement, the Committee concluded that there was no consultation; as the letter proposing a replacement was only copied to office of the Prime Minister as matter of information. This was confirmed by the Office of the President that they actually copied to the Office of the Prime Minister.
 - b) The report from the security agencies lacked sufficient evidence on the alleged three passport numbers, travels details of the persons, any substantive links with the said political movement and links to Somalia politics, to support the allegation against the Candidate therefore lacked clarity;
5. With regards to **public participation**, the following complaints/allegation and comments were made:-
- a) The need to ensure people with disability were included in the commission;
 - b) The need to reflect regional balance in the commission;
 - c) The professional qualification of all candidates nominated should have been made public to establish their competences;
 - d) The Selection Panel was not well constituted as the representatives of the NGO council to the panel – Mr. Stephen Ndichu and Ms. Violet Okinda, were not nominated by the NGO Council as per their rules of procedure.
 - e) The complaints against Dr. Muhammad Abdalla Swazuri that:-
 - i). He is not a team player and not good in decision making;
 - ii). He practiced nepotism in his previous office, chairman of the Kwale Water and Sewerage Company by employing his daughter;
 - iii). Accused of abuse of office by use of company resources for his own benefit while not on company duties – travel expenses while on private duties he uses the office resources;
 - iv). It was alleged that a number of people, which may have included Dr. Muhammad Abdalla Swazuri, trespassed on their land, marked out, coconut trees and planted a number of banana trees.

6. On the public complaints and allegations, the Committee observed that:
 - a) The nominees include persons with disability;
 - b) The nomination was sufficiently sensitive to regional and Community balance therefore there was no region or ethnic community that was left out;
 - c) Interviews were carried out both in the media /public and the final shortlisted candidates were also made public through the dailies;
 - d) The constitution of the selection Panel is a preserve of the Public Service Commission and noting the continued wrangles in the NGO Council, lack of clear nomination procedures of the representatives of all bodies to sit in the Selection Panel, the process is vulnerable to manipulation.
7. On the allegation against Dr. Muhammad Abdalla Swazuri, The Committee deliberated on the matter and noted that the allegations lacked merit.
8. The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and noted that pursuant to the provisions of paragraphs 6 of the First Schedule of the National Land Commission Act No. 5 of 2012, the nominees are qualified to be approved by the House for appointment to the National Land Commission as follows:-
 1. Dr. Muhammad A. Swazuri, OGW as Chairperson of the National land Commission,
 2. Dr. Tomiik Mboya Konyimbih as Members of the National Land Commission.
 3. Mr. Silas Kinoti Muriithi as Members of the National Land Commission.
 4. Dr. Rose Mumbua. Musyoka as Members of the National Land Commission.
 5. Dr. Samuel Kipng'etich Tororei as Members of the National Land Commission.
 6. Ms. Abigael Mbagaya as Members of the National Land Commission.
 7. Ms. Emma Muthoni Njogu as Members of the National Land Commission.
 8. Mr. Clement Isaiah Lenachuru as Members of the National Land Commission ;and
 9. Mr. Abdulkadir Adan Khalif as Members of the National Land Commission.

RECOMMENDATION

The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and **now recommends that:-**

- a) pursuant to the provisions of paragraphs 6 of the First Schedule of the National Land Commission Act No. 5 of 2012, the House approves the

appointment of the following candidates to the National Land Commission in their stated capacities.

b) They are:-

1. Dr. Muhammad Abdalla Swazuri, OGW as Chairperson of the National Land Commission;
2. Dr. Tomiik Mboya Konyimbih as Member of the National Land Commission.
3. Mr. Silas Kinoti Muriithi as Member of the National Land Commission.
4. Dr. Rose Mumbua Musyoka as Member of the National Land Commission.
5. Dr. Samuel Kipng'etich Tororei as Member of the National Land Commission.
6. Mrs. Abigael Mbagaya as Member of the National Land Commission.
7. Mrs. Emma Muthoni Njogu as Member of the National Land Commission.
8. Mr. Clement Isaiah Lenachuru as Member of the National Land Commission: and
9. Mr. Abdulkadir Adan Khalif as Member of the National Land Commission.

MIN NO.107/2012: ADOPTION OF THE REPORT

The report of the Committee on the nomination of Chairperson and members of the National Land Commission was adopted unanimously and the Chairperson was mandated to table on Tuesday, August 14, 2012 at 2.30 p.m.

MIN NO.106/2012: ADJOURNMENT:

And there being no other business, the Chair adjourned the Sitting at Thirty Minutes past Twelve o'clock. The next meeting will be called on notice.

SIGN.....

HON. MUTAVA MUSYIMI, MP
CHAIRPERSON

DATE.....AUGUST 14, 2012.....