

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

SPECIAL SITTING

*(Convened vide Gazette Notice
No.13599 of 15th December, 2021)*

Tuesday, 21st December 2021

The House met at 2.30 p.m.

[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]

PRAYERS

Hon. Deputy Speaker: Hon. Members, we are trying to confirm the numbers. I think we are doing well. We are now safe. So, let us proceed and get into our business.

SPECIAL MOTIONS

**CONSIDERATION OF NOMINEE FOR APPOINTMENT AS
THE CHAIRPERSON OF THE PUBLIC SERVICE COMMISSION**

That, taking into consideration the findings of the Departmental Committee on Administration and National Security in its report on the Vetting of a Nominee for appointment as Chairperson of the Public Service Commission, laid on the Table of the House on Tuesday, 21st December 2021, and pursuant to the provisions of Article 233(2) of the Constitution, paragraph 4(1) of the First Schedule to the Public Service Commission Act, 2017 and Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Amb. Anthony Mwaniki Muchiri as the Chairperson of the Public Service Commission.

Hon. Deputy Speaker: Okay. On that Order, can we have the Mover? That must be the Chairperson, Departmental Committee on Administration and National Security. Can I confirm where the Chairperson is?

(Hon. Peter Mwathi was not in the Chamber)

We could easily go to the next Order and come back to this one. Can we first confirm whether we have the Chairperson of the Departmental Committee on Labour and Social Welfare? I think we could go there then come back to this other one.

(Motion deferred)

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CONSIDERATION OF NOMINEES FOR APPOINTMENT AS
MEMBERS OF THE NATIONAL GENDER AND EQUALITY COMMISSION

Hon. Deputy Speaker: Yes, let us have the Chairperson of the Departmental Committee on Labour and Social Welfare.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Deputy Speaker. I beg to move:

That, taking into consideration the findings of the Departmental Committee on Labour and Social Welfare in its report on the Vetting of the Nominees for appointment as Members of the National Gender and Equality Commission, laid on the Table of the House on Tuesday, 21st December 2021, and pursuant to the provisions of Article 250 (2) (b) of the Constitution and Section 11(7) of the National Gender and Equality Commission Act, 2011; this House approves the appointment of the following persons as members of the National Gender and Equality Commission:

- (i) Ms. Caroline Naikena Lentupuru; and,
- (ii) Mr. Thomas Okoth Koyier.

The establishment of the National Gender and Equality Commission is as spelt out in Article 59 (3) of the Constitution of Kenya and the National Gender and Equality Commission Act No. 23 of 2011. In that, Members will see the membership of the Commission. As it is, the Commission has only three members. The approval of the proposed members will make it five, as stipulated in the Article. In the same, Members will see the functions of the Commission.

The Committee sat to look at the suitability of the nominees for appointment. This was assessed with regard to whether their abilities, experience and qualities met the needs of the National Gender and Equality Commission Act. All the procedural and statutory requirements for the approval of the candidates have been satisfied, including compliance with Section 7 of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011.

The notification by the President and the committal to the Committee for vetting is well adhered to. Public participation also took place as stipulated in Article 118 (1) (b) of the Constitution and Section 9 of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011. The Committee also observed the procedures used in arriving at the nominees. Again, the Committee was satisfied that the procedures were well observed. The Committee noted that the nominations had been made in a manner prescribed in the Constitution and the National Gender and Equality Commission Act.

However, the Committee noted with concern that the selection panel by the Public Service Commission (PSC) did not undertake a thorough scrutiny of the nominees' academic certificates. One of the nominees, Mr. Koyier did not disclose or avail his primary school and secondary school certificates to the panel. These certificates were however availed after the insistence of the Committee. The Committee observed that the regional representation and ethnic diversity was adhered to. The Committee considered the list of the nominees proposed for appointment as members of the National Gender and Equality Commission (NGEC) and noted that the appointments reflected the regional and ethnic diversity of the people of Kenya as required by Article 250 (4) of the Constitution, and also took into account representation of persons living with disabilities.

The current Commissioners are Dr. Joyce Mwikali from Machakos County, Dr. Murithi J. Chomba Munyi from Tharaka Nithi and Hon. Priscilla Nyokabi Kinyua from Nyeri County. The two nominees hail from Baringo and Homa-Bay Counties. We also observed that the two thirds gender rule was adhered to. The Committee observed that the nomination of the two nominees will

ensure gender balance in the Commission. The current Commission comprises of two women and a man. The appointment of the nominees will ensure that the two thirds gender rule is complied with.

On persons with disabilities, we noted that the two nominees do not fall under this category. However, the current Vice-Chairperson of the Commission is a person living with disability. Therefore, that is adhered to.

On youth, the Committee observed that, whereas the Constitution requires the State to take affirmative action measures to ensure that the youth have opportunities to associate, be represented and participate in political, social and economic spheres of life, it does not provide a threshold to be applied in making public appointments. That is something that needs to be addressed.

On leadership and integrity, I wish to inform the House that both nominees obtained the requisite clearances from relevant institutions as evidenced by the responses and clearances from the respective institutions. Also, the Committee noted that all the nominees met the leadership and integrity requirements as set out in Chapter Six of the Constitution and other relevant laws.

Going to specific candidates, Ms. Caroline Naikena Lentupuru appeared before the Committee on 7th December, 2021 at 10.00 a.m., as she was invited by the Committee vide letter dated 26th November, 2021. She is a Kenyan born in 1970 at Kiserian, Baringo County. She is from the minority Ilchamus ethnic community. She is a holder of Master's Degree in International Development and Social Change from Clark University, USA, and a Bachelor of Education Arts Degree from Moi University. She is currently the Director of governance affairs at the Intergovernmental Relations Technical Committee on Devolution. The nominee is a recipient of various awards including the Head of State Commendation (HSC). The nominee has been an associate member of the Kenya Institute of Management since 2020 and the treasurer of Ilchamus Community Development Organisation since 2017.

On Mr. Thomas Okoth Koyier, he appeared before the Committee on 7th December 2021 at 11.00 a.m., as he was invited by the Committee vide letter dated 26th November, 2021. He is a Kenyan Citizen born on May 22nd 1960 in Rachuonyo, Homa-Bay County. He is currently pursuing a Doctorate in Leadership and Governance at the Jomo Kenyatta University of Science and Technology. He is a holder of a Master's Degree in Business Administration from Sutherland Oregon State University in the United States of America (1986-1988). He is a lecturer at the School of Business and Economics, Daystar University since 2000 where he has served as the Head of the Commerce Department and acted as the Dean in the Faculty. The Committee observed that all the procedures were followed and it came up with recommendations.

With the foregoing, the Committee recommends that pursuant to Article 250 (2) (b) of the Constitution and Section 11 (7) of the National Gender and Equality Commission Act, the House approves the appointment of Ms. Caroline Naikena Lentupuru and Mr. Thomas Okoth Koyier as Members of the NGEC.

I want to take this opportunity to thank the Speaker and the Clerk of the National Assembly for the logistics and technical support that was accorded to the Committee at all times. I also wish to express my gratitude to the Hon. Members of the Departmental Committee on Labour and Social Welfare for their resilience and devotion to duty which made the vetting exercise successful. May I also, on behalf of the Committee, appreciate the media for covering the Committee proceedings thereby enhancing transparency and accountability. I seek the support of the Members of this House to agree with the Committee's decision.

I beg to move and request Hon. Sankok, Nominee 001, to second the Motion.

Hon. Deputy Speaker: Hon. Sankok, what is it that you are carrying? You look like a cow with something hanging on the neck heading to the pastures.

(Laughter)

You know, we must dress in a particular manner here. What is it? You should not bring those gadgets from home. You cannot get lost here. That is meant for animals that are going to graze and as they come back home, they can be heard from where they are. What is yours meant for? Are you getting lost in this “big forest?”

(Laughter)

Hon. David ole Sankok (Nominated, JP): Hon. Deputy Speaker, we have just come from the East Africa Inter-Parliamentary Games in Arusha. I won two gold medals in darts. I am proud of my gold medals.

(Applause)

Those who are complaining may not have even won a lollipop or a biscuit. So, they do not know the value of winning a gold medal. I know you know the value because you won a gold medal in golf, the game of the rich. You know the feeling of winning gold.

(Laughter)

Hon. Deputy Speaker: Well, as a congratulate you, Hon. Sankok, this is just to correct you. Golf is not a game for the rich; it is a game of gentlemen watched by gentlemen. For darts, it is hard to describe. Congratulations. Proceed.

Hon. David ole Sankok (Nominated, JP): It is a game of gentlemen played by the rich. Thank you.

I rise to second the nominees. We vetted the nominees as the Departmental Committee on Labour and Social Welfare, led by our Chairman, Hon. Kabinga Wathayo. The name “Wathayo” means peace and since he came to our Committee, we have been having peaceful interactions including the vetting. Both nominees are qualified. Their qualifications are top notch. Thomas is currently pursuing a PhD degree at the University of Nairobi. In terms of clearance, the nominees were cleared by HELB, EACC, DCI and CRB. We also considered regional balancing. Looking at the composition of the Commission, there are two commissioners in place. The addition of these two will not create any regional imbalance.

Caroline Naikena Lentupuru comes from Baringo. She belongs to a minority community called the Ilchamus, which is part of the Maasai. We are very proud that we recognise even the minority tribes. The Ilchamus are the minority tribe of the Maasai who live in Baringo. They do not even have a member of a county assembly. I doubt if they even have a chief, leave alone a Member of Parliament. I know Hon. Kamket is the only one disturbing them in Baringo. In terms of cattle rustling, Hon. Kamket has really disturbed the Ilchamus. But thank God, we now have one of them sitting in a very big commission.

There is also representation of persons with disabilities (PWDs). Currently, the Commission has Dr. Chomba, who is visually impaired. He is blind. He is the Vice-Chairperson

of the Commission. The Chairperson, Madam Mutinda, is very passionate about PWDs issues. She has organised many seminars on accessibility to transport services by PWDs. Recently, we walked with her on the streets of Nairobi City, promoting accessibility of public transport by PWDs. So, as PWDs, we are safe in the hands of the Commission. In terms of the two-thirds gender rule, the criterion is met. There are two women and two gentlemen. Therefore, I urge the House to assist us in approving these two nominees. All parameters in line with the Constitution are met.

With those many remarks, Hon. Deputy Speaker, I beg to second.

(Question proposed)

Hon. Deputy Speaker: I can see a few Members would like to speak to the Motion. The Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Deputy Speaker. I want to support approval of these nominees to the National Gender and Equality Commission. I have only two comments to make.

One, the fact that a minority, in the manner that Hon. Sankok has described, can find her way into a commission as important as this demonstrates that the spirit of inclusivity that we have been talking about has started to gain ground. She is not just a member of a minority community, but she is also of a marginalised gender. How I wish that this is pushed further. We should continue to see more of such nominations being presented to the House so that Kenyans can see that we are all entitled to this appointment and if you qualify, you will be appointed to such positions.

Two, I know Mr. Koyier personally. I know he is someone who can perform and deliver. He has the qualifications, the integrity and the ability to do this job.

There is just one thing that I would like to comment about. This is with regard to our work as a House in approving such nominations. I think we need to ask ourselves: What is the role of the National Assembly in such approvals? Are we part of the interviewing panel or are we just supposed to approve nominees based on parameters provided for in the Constitution? I say this because when a nominee with a master's degree and is undertaking a PhD appears before a Committee, he is asked to go and look for his certificate of primary education. I think it does not make sense. There is an extent to which we can get with these requirements. Asking for my KCPE certificate today - although I have it - does not make sense. Asking someone who is 65 years old for his primary certificate does not make sense.

Hon. Deputy Speaker: Sorry, did you say you have your KCPE certificate?

Hon. John Mbadi (Suba South, ODM): Yes, I have it in the house.

Hon. Deputy Speaker: What happened to the CPE one?

Hon. John Mbadi (Suba South, ODM): What do you mean? How can you have CPE and KCPE certificates at the same time? Hon. Deputy Speaker, you think I am your age mate. I am not.

Hon. Deputy Speaker: Okay. Proceed Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Deputy Speaker, I am young. But there are younger ones who will have CBC certificates and I will be wondering, several years down the road, what happened to their KCPE certificates. It is the same way other people wonder about what happened to KAPE when you tell them you have CPE. I just wanted to say that as a House, I do not think we need to go to that extent. That should have come out probably at the interview stage.

Thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: I will give an opportunity to Hon. Mohamed Sheikh. By the way, if there are Members who sat for the KAPE examinations I will give them priority. Let us proceed. I cannot see the Member for Wajir South and yet he is top on the list. The next is Hon. Seroney Kipkorir.

Hon. Sammy Seroney (Nominated, WDM-K): Thank you, Hon. Deputy Speaker, for giving me this opportunity to support the nominees. Some of us sat for the CPE and we do have our certificates. I can see the Leader of the Minority Party looking at me. I am that old.

Listening to the Mover of this Motion, I support the nominations. When you look at the lady from Baringo, she is a minority just like me. I totally support her to take up the position. Without telling a long story, I support the nomination of the two to join the National Gender and Equality Commission.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: I am still following the list. Hon. Rosanna Passaris. She is missing. The Member for Tiaty, Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Deputy Speaker, thank you very much for this opportunity. I stand to support the Report of the Committee on the appointment of the two Kenyans to the National Gender and Equality Commission. I know the lady, Caroline Lentupuru, in person. When I was the Speaker of the County Assembly of Baringo, Carolyn was a County Executive Committee Member (CECM) in the County Government of Baringo. I can confirm just the way she has been confirmed by the Committee that Caroline is a lady of integrity and she deserves to be...

Hon. Deputy Speaker: Hon. Kamket, please put on your mask. That was the rule we agreed and any Member who will not put on a mask will miss the microphone.

Hon. Kassait Kamket (Tiaty, KANU): She deserves that appointment.

Hon. Deputy Speaker: Proper masking please. That is the last chance I am giving you. Obviously, you know how to mask properly. Proceed now. You are okay.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Deputy Speaker, you know the person who is in danger here is the Member for Turkana North and I have no issue with him even if I...

Hon. Deputy Speaker: Do not go in that direction. I know what you want to say.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Deputy Speaker, as I was saying, I know the lady and she is a great Kenyan. I am very proud that she has been nominated to this position. Coming from my county of Baringo, I am very proud to be associated with the nomination of Caroline Lentupuru. However, I want to say something about the National Gender and Equality Commission. I think there was a problem in the whole formation of that body in terms of the work they do. It is time we consider amending the Act that created that Commission. I think they are thoroughly limited by the kind of work they do. That Commission has been reduced into just coming to report to Parliament any problems that complainants come across. It is time we considered amending the Act in order to give the Commission the real teeth and real power in order to do its work properly. If somebody does not bring that amendment, I will do it myself very shortly.

With those remarks, I beg to support.

Hon. Deputy Speaker: Thank you very much. Let us go to the Member for Kiminini, Hon. (Dr.) Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Deputy Speaker. I thank the Committee for the good work they have done. I have no doubt the two commissioners have what it takes. I looked at the report and listened carefully and in line with the Public

Appointments (Parliamentary Approval) Act, the two officers qualify. The critical thing is the key objective of this Commission which is to ensure aspects of gender and equality. It is nice to note that one of the commissioners comes from the minority. This brings in the aspect of equality.

On the aspects of gender, we are told they are five. We have heard about the two and the other five. How I wish that the Mover would have gone further and do the tabulations to tell us in terms of the gender representation, if it meets the two-thirds gender rule. If you divide two by five, it can meet the two-thirds gender rule. We are just telling the commissioners as they come in, that when you look at their reports, it is not much they are doing. We need to see this practice in terms of the two-thirds rule, particularly when it comes to appointments to positions is adhered to. This is the Commission that is responsible for ensuring there is the aspect of equality and the aspect of two-thirds gender rule. This is because in many other government entities, we are seeing things happening with impunity where you find that the appointments are coming in place and they are not meeting the aspect of the gender rule.

As a Parliament, we will support and we thank the President for particularly looking at the aspects of that particular person from the minorities, the way Hon. Sankok had mentioned. Because there is big business that we are waiting to transact, I was actually not prepared to discuss this one. I was waiting for the debate on the Political Parties (Amendment) Bill.

In line with Standing Order No. 95, can we call the Mover to reply?

Hon. Deputy Speaker: Hon. (Dr.) Wamalwa, you are an extremely astute Member of this House. You cannot speak and then after speaking you invoke that particular Standing Order. It is not going to work because it is actually saying that after you have done it, you want others not to. If anybody else wants to raise, that will be raised by that particular person. In the meantime, let me give Hon. Dennitah Ghati.

Hon. Dennitah Ghati (Nominated, ODM): Thank you very much, Hon. Deputy Speaker, for considering gender in this discussion. I support the appointment of these members, Caroline and Thomas, as commissioners to the National Gender and Equality Commission. My lady colleagues and especially many of us who come from the women's movements that brought us to this House will know the history of the National Gender and Equality Commission. It is good that we are seeing actually the commission mainstream, itself and find space in this country to continue to monitor, facilitate and to mainstream gender and disability and other issues, including the minority in this country.

I want to quickly say that I personally know the National Gender and Equality Commission. I can authoritatively say that this is the most diverse commission that we have in this country. This Commission is led by the Chairperson, Dr. Joyce Mutinda, and also the Vice-Chairperson, Dr. Chomba, who actually is a person with disability. It is again being spearheaded by Hon. Priscilla Nyokabi who was a Member here. It is a commission that we have continuously monitored how it implements the issues. You will remember that it is the National Gender and Equality Commission that was actually spearheading the implementation of Article 100 of the Constitution that talks about the issues of special interest groups (SIGs) in this country.

I also want to say that as a Parliament and National Assembly, we must really be fair. Sometimes the issue of the National Gender and Equality Commission is tricky. Just recently, a Member of this House actually brought a Motion to this House proposing to merge the National Gender and Equality Commission and the Kenya National Commission on Human Rights that they perform the same functions. I want to say in this House that the National Gender and Equality Commission must be funded and be made as an independent institution to continue with the work that it does. We cannot merge the National Gender and Equality Commission with the Kenya

National Commission on Human Rights and the Commission on Administrative Justice. This is because in this country, any time there is need to reduce the budget, you find that it goes to the national gender issues. It is not fair. We must give the National Gender and Equality Commission the teeth to do its work and to continue empowering our women, minorities and people like that in this country. I support the appointments. Thank you.

Hon. Deputy Speaker: What is it, Hon. Murugara?

Hon. George Gitonga (Tharaka, DP): Hon. Deputy Speaker, it does appear that the House is generally agreed on supporting the Report. Therefore, I am praying under Standing Order No. 95 you call upon the Mover to reply so that we move to the next order.

Hon. Deputy Speaker: When a Member raises that, I have absolutely no choice, but to dispense with that particular one first. The Members who are very close to where I am can please take their seats so that I can proceed. Let all Members resume their seats. I can see there are Members who want to contribute, but what we are going to do is to make that decision. Hon. Murugara, Member for Tharaka, has risen on the relevant Standing Order to request that the Mover be called upon to reply. I put the Question.

(Question, that the Mover be called upon to reply, put and agreed to)

Hon. Members, those who did not speak on this particular one will have a chance in the next one. Let us proceed to have the Mover replying. Proceed.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Deputy Speaker. I wish to thank all the Members who have been able to contribute to this particular Motion. In particular, I want to take note of the remarks by our able Leader of the Minority Party that when we are vetting, we are bound to look at everything because in this country, many things happen. We have people who have degrees in this country, but they have never done Form IV, neither have they done any bridging course. We are duty bound to know where they got those degrees from.

With those few remarks, I beg to reply.

(Hon. Caleb Kositany walked into the Gangway)

Hon. Deputy Speaker: Freeze, Hon. Caleb Kositany! Freeze, completely.

(Question put and agreed to)

Hon. Members, we are now going back to the previous order.

SPECIAL MOTION

CONSIDERATION OF NOMINEE FOR APPOINTMENT AS CHAIRPERSON OF THE PSC

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Deputy Speaker. Thank you for indulging me because I did not know that the Order Paper had been re-arranged. However, I was in time for this order.

Hon. Deputy Speaker, I beg to move:

THAT, taking into consideration the findings of the Departmental Committee on Administration and National Security in its Report on the Vetting of a Nominee for appointment as Chairperson of the Public Service Commission, laid on the Table of the House on Tuesday, 21st December, 2021...

Hon. David Gikaria (Nakuru Town East, JP): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is it Hon. Gikaria? What is out of order? He has just started moving the Motion. I wish you could have waited for him to finish moving and then raise your point of order. What is it? Your microphone is not working.

Hon. David Gikaria (Nakuru Town East, JP): Hon. Deputy Speaker, I am a Member of Parliament for Nakuru Town East Constituency and I want to contribute to the Motions that will follow. I have my card but it is not working. I am now not listed.

Hon. Deputy Speaker: I can confirm that where you are seated, the microphone was not working. I can see your card here. So, please, maintain some little peace. I will give you an opportunity in due time because I can see where your name is. So, do not worry. I will give you a chance.

Hon. David Gikaria (Nakuru Town East, JP): I honour you so much. You know we come from the same county.

Hon. Deputy Speaker: I have told you, I will give you an opportunity. I can see you are about number four here. So, you will have an opportunity for sure. That is fine now. You will, however, have to change where you are seated. Let us proceed.

Hon. Peter Mwathi (Limuru, JP): Hon. Deputy Speaker, permit me to take this again. Hon. Deputy Speaker, I beg to move:

THAT, taking into consideration the findings of the Departmental Committee on Administration and National Security in its Report on the vetting of a nominee for appointment as Chairperson of the Public Service Commission, laid on the Table of the House on Tuesday, 21st December, 2021 and, pursuant to the provisions of Article 233(2) of the Constitution, paragraph 3(3)(d) of the First Schedule to the Public Service Commission Act, 2017 and section 8(2) of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Amb. Anthony Mwaniki Muchiri as the Chairperson of the Public Service Commission.

Hon. Deputy Speaker, in exercise of the powers conferred by Section 10(2) of the Public Service Commission Act No.10 of 2017, His Excellency the President declared a vacancy in the Office of the Chairperson, Public Service Commission, vide Gazette Notice No.8626 of 23rd August 2021 and, subsequently and, in accordance with provisions of Paragraph 3(d) of the First Schedule to the Public Service Commission Act No.10 of 2017, a seven-member panel was constituted vide Gazette No.10282 on 1st October 2021 for the selection of nominees for the appointment. The selection panel invited suitable qualified persons to apply for the position of Chairperson, Public Service Commission, vide Gazette Notice No.11088 of 15th October 2021. At the lapse of application period, the panel had received 99 applications out of which 12 were shortlisted and interviewed on 10th and 11th November 2021.

At the end of the interviews, the three top candidates were as follows:

1. Amb. Anthony Mwaniki Muchiri who scored 77.3 per cent.
2. Ms. Charity Selina Kisotu who scored 75.9 per cent.
3. Dr. Kennedy Juma Mulunda who scored 70.8 per cent.

Pursuant to Article 233 (2) of the Constitution and paragraph 3 of the First Schedule of the Public Service Commission Act, No. 10 of 2017 as read together with Section 3 and 5 of the Public

Appointments Parliamentary Approval Act No. 33 of 2011, His Excellency the President nominated Amb. Anthony Mwaniki Muchiri for the appointment to the position of Chairperson, Public Service Commission. The nomination was conveyed to the Speaker of the National Assembly in a letter dated 15th November 2021.

On Thursday 25th November 2021, the Speaker of the National Assembly conveyed the Message from His Excellency the President to the House and referred the nominee's name and his Curriculum Vitae to the Departmental Committee on Administration and National Security for vetting and reporting to the House in accordance with the provisions of Standing Order No.45.

In compliance with Section 6(9) of Public Appointments Parliamentary Approval Act, the Clerk of the National Assembly placed an advertisement in the print media on Friday, 26th November 2021, inviting the public to submit memoranda by way of written statements on oath on the suitability or otherwise of the nominee in conformity with Section 6(9) of the Act.

The submission of memoranda was to be received by Friday 3rd December 2021 at 5.00 p.m. By close of the deadline, the Committee had not received any submission in support or contesting the suitability of the nominee to hold the office to which he has been nominated. Further, in fulfilment of the provisions of Article 118 (1) (b) of the Constitution, Section 6(4) of the Public Appointments Parliamentary Approval Act and Standing Order No.45 (3), the Clerk of the National Assembly on Friday 26th November placed an advertisement in the print media notifying the public on the date, time and place of the approval hearing.

Further to the same, on Friday 26th November, 2021, the Clerk wrote to the nominee inviting him for approval hearing. Section 6 (7) of the Act provides that an approval hearing shall focus on the candidate's academic credentials, professional training and experience and personal integrity.

The Committee conducted approval hearing on Tuesday, 7th December 2021 and considered the following areas:

- a) Academic qualifications.
- b) Employment record and work experience.
- c) Public office, political activities and affiliations.
- d) Potential conflict of interests.
- e) Suitability for the position.
- f) Tax compliance.
- g) Vision and leadership.
- h) Integrity; and,
- i) Expectations on key priority areas.

Hon. Deputy Speaker, having considered the nominee's curriculum vitae and on hearing his oral submissions during the vetting exercise conducted on 7th December 2021, the Committee made the following observations and findings:

That the nominee, Amb. Mwaniki Muchiri, is a Kenyan citizen born on 21st April 1961 in Nyeri County. He met the educational requirement of the office as set out in Section 8 of the Public Service Commission Act (No. 10 of 2017). He also met the minimum experience required having served in the Public Service for a cumulative period of 37 years in various capacities from Assistant Inspector of State Corporations in 1984 to the current position of Kenya's Ambassador to Cuba and concurrently a Permanent Representative to Jamaica, Barbados, St. Kitts and Nevis, Guyana and the Dominican Republic since 2018.

We also observed that the candidate was ranked first by the Selection Panel. He was cleared by the Kenya Revenue Authority (KRA) on tax compliance, Higher Education Loans Board

(HELB) on payment of the university loan, Ethics and Anti-Corruption Commission (EACC) on integrity, Directorate of Criminal Investigations (DCI) on criminal status, and the Office of the Registrar of Political Parties on political affiliation. The Committee further noted that the process of nomination of the candidate was conducted in total fidelity to the provisions of Article 233 (2) of the Constitution and Paragraph 3(3)(d) of the First Schedule to the Public Service Commission Act (No. 10 of 2017).

The Committee found that only one memorandum was received regarding his suitability or otherwise for the position of Chairperson. However, the Committee determined that the Memorandum by Mr. Okiya Omtatah Okoiti was received by the Office of the Clerk of the National Assembly of Kenya on 6th December 2021, which was after the expiry of the period for submission of memorandum and, therefore, inadmissible. This is because the closing date was on 3rd December 2021 at 5:00 p.m.

Having considered the suitability, capacity and integrity of the nominee, and pursuant to Article 250 (2) (b) of the Constitution...

*(Several Hon. Members consulted with Hon. John Mbadi
without keeping social distance)*

Hon. Deputy Speaker: Order! Hon. Members, I have a problem with this congregation that is sitting very close to the Leader of the Minority Party. Even Members who come from neighbouring constituencies, obviously, do not come from the same house. So, please, let us maintain safe distance. You can consult one Member seated from one side of the House. There are better ways to consult.

Leader of the Minority Party, I am not going to take any Point of Order especially knowing the direction you want to take. I am not going to listen to you on that. Let us leave it there. Please, consult safely. Let us proceed.

Hon. Peter Mwathi (Limuru, JP): Hon. Deputy Speaker, as I move to conclude, the nominee, Amb. Muchiri, averred to the Committee that on placements of job opportunities in the country, he would be very keen on regional balance, gender and people with disabilities.

Having considered the suitability, capacity and integrity of the nominee, and pursuant to Article 250 (2) (b) of the Constitution and Paragraph 3(3)(d) of the First Schedule to the Public Service Commission Act (No.10 of 2017) and Section 8(2) of the Public Appointments (Parliamentary Approval) Act, (No. 33 of 2011), the Committee recommends that the National Assembly approves the nomination and subsequent appointment of Amb. Anthony Mwaniki Muchiri as the Chairperson, Public Service Commission.

Hon. Deputy Speaker, the Committee is grateful to the offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the nomination.

Finally, I wish to express appreciation to the Members of the Committee and the staff of the secretariat for their useful contribution towards preparation and production of this Report, which I request Members of this august House to support.

With those many remarks, I beg to move and request Hon. Oku Kaunya to second.

I thank you.

Hon. Deputy Speaker: Hon. Kaunya, Member for Teso North.

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Deputy Speaker. I rise to second the appointment of Amb. Anthony Mwaniki Muchiri. As a Committee and as the Chairman has

explained, the candidate met the requirements of the law. Considering the wide experience that the candidate has in the Public Service as well as the absence of any contentions within the required time, the Committee recommended his appointment. I take this opportunity to second.

I thank you.

Hon. Deputy Speaker: Order! Hon. Members.

(Question proposed)

Hon. Deputy Speaker: Top on the list is Hon. (Prof) Oduol Odhiambo.

Hon. (Prof) Jacqueline Oduol (Nominated, ODM): Hon. Deputy Speaker, I take this opportunity to thank the Chairman.

I want to contribute as a member of the Committee on National Cohesion and Equal Opportunity. I support the nominee. As we look at the Report, we can clearly see that the nominee not only meets the requirements, but that all the procedures were followed. As a member of the Committee on National Cohesion and Equal Opportunity, we have had a chance to not only do audit, but also listen to the views that are reflected by various persons who look at how we continue to evolve as a country in a number of cases.

As we look at the 2010 Constitution, it would be good for us to also look at the spirit of the law. I support the Motion. I want us to remember that there are those who will tell us that there is need for us to sometimes look at the spirit of the Constitution. As we look at the qualifications, we should also look for opportunities that would bring us together.

I support the Motion but ask that we look more at the spirit of the law because from where I sit on the National Cohesion and Equal Opportunity Committee, we at times seem to be losing it.

Hon. Deputy Speaker: Let us have Hon. Baya Yaa.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Deputy Speaker. As I support and commend the Committee for the good job that they have done, I ask myself two questions: Is it only one community in this country that is entitled to the position of the Chairperson of the Public Service Commission? The three previous holders of this office have all come from the same community. Is there a statement to the effect that it is the preserve of only one community? Secondly, is the Public Service Commission inclusive as contemplated in the Constitution? How come certain communities in this country have never served on that Commission?

If you look at the matrix of which tribe has more employees in the Public Service Commission, you will find that there is a correlation between the Chairperson of the Commission and the community with the highest number of employees. There is a positive correlation. What does that speak to? It speaks to a lot of favouritism, nepotism and ethnicisation of the Public Service Commission through the appointment of the Chairperson. Those of us who come from small communities also ask to be given an opportunity to chair the Public Service Commission so that we can also employ our people and balance the Public Service.

Hon. Deputy Speaker...

Hon. Deputy Speaker: What is your point of order, Hon. Kabinga? Order, Hon. Baya. There is a point of order.

Hon. Owen Baya (Kilifi North, ODM): Hon. Deputy Speaker, he just wants to distract me from what I want to say. It is a fact that there is a correlation between the Chairpersons of the Public Service Commission...

Hon. Deputy Speaker: Hon. Baya Yaa, you have the Floor. An Hon. Member has risen on a point of order. Allow him to prosecute it. You will have your say. You will still have your time.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Deputy Speaker, for standing by you word because the contributor did not want to hear what I am just about to say.

The sentiments by the Member are very dangerous. He is talking about the proportional number of the community that has been chairing the Commission. That is very dangerous because the Member is not talking about the proportional population of that same community. He is only looking at the number of employees. It is very dangerous for us to go in that direction because we will be taking ourselves back to a very dangerous time.

Hon. Deputy Speaker: You have had your say. Just finish your contribution. Can Hon. Baya Yaa be given the microphone? I am unable to see from here. He can use the same microphone. It was working well. Actually, it is not working.

Hon. Owen Baya (Kilifi North, ODM): You have been checking my card.

Hon. Deputy Speaker: Yes.

Hon. Owen Baya (Kilifi North, ODM): Hon. Deputy Speaker, I would like to say this...

Hon. Deputy Speaker: Please summarise because your time is almost up.

Hon. Owen Baya (Kilifi North, ODM): When the truth is said, people say it is dangerous. We must speak the truth. The truth is that the Chairperson of the Public Service Commission has consistently been appointed from the same community in the last four occasions. That is a fact. When facts are said, people say that they are dangerous. But they are not. They are truths and must be spoken to liberate this country from a deliberate ethnicisation of the Public Service. We must stop the ethnicisation of the Public Service by giving an opportunity to other people. This appointment flies in the face of Constitution.

I rest my case.

Hon. Deputy Speaker: Let us have Hon. Gikaria who asked for an opportunity to speak. Very interesting! I am trying to look for somebody from this other side of the aisle. That will be Hon. Waweru Kiarie, Member for Dagoretti South. He is absent as well. I will give an opportunity to Hon... Quite a number of Members are from this side and so, I am trying to get one or two from this other side. Let us have Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Deputy Speaker. I did not want to speak to this except to say that I support the Motion. I am waiting for another topic.

Thank you.

Hon. Robert Mbui (Kathiani, WDM-K): On a point of order, Hon. Deputy Speaker. Looking at the Order Paper, we have some very serious business lying ahead of us. I rise under Standing Order No.95 to request that we call the Mover to reply, make a decision on this and then move on to the other business of the day. That was a point of order, not my contribution.

Hon. Deputy Speaker: As usual, you know the hands of the Speaker are tied. When such a situation arises, we quickly put the Question and see the mood of the House because that is the only way I can judge. Hon. Robert Mbui has risen and asked that the Mover be called upon to reply.

*(Question, that the Mover be now called upon to reply,
put and agreed to)*

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Deputy Speaker. I thank the Hon. Members who have supported the Motion, my Seconder and most importantly, Hon. Robert Mbui for standing in his place and asking for concurrence. I have heard from all the Members that I be called upon to reply. That is a good sign of approval of the Motion. I thank all the Members who are in support of this Motion.

By way of explanation, I would like to let Hon. Baya know that Commissioner Ahmed is a Bajuni from the Coast. That is what I know. Almost every tribe is represented. We cannot have all the 42 tribes represented because we only have a few slots. Those who are on the Commission are spread across Kenya and so, there is regional balance. That is for his information. I know that he has heard it.

With those few remarks, I beg to reply.

Hon. Deputy Speaker: Order, Members.

(Question put and agreed to)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Hon. Moses Cheboi) left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Patrick Mariru) took the Chair]*

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members! We are now in the Committee of the whole House. We shall proceed to consider the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021).

(Loud consultations)

Order, Members! Please let us be together. We are now in the Committee of the whole House. I need us to proceed together.

Clause 3

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 3 of the Bill is amended by inserting the following new paragraph immediately after paragraph (b)-

(ba) subsection (3) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;

This is just to change the nomenclature, that is, from “Minister” to “Cabinet Secretary”.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party, you have an amendment.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 4 and substituting therefor the following new clause-

Amendment of section 26
of No.9 of 2009

4. Section 26 of the principal Act is amended –

(a) in subsection (1) by deleting the words “or the Deputy Director” appearing immediately after the word “Director General”; and

(b) by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

The essence of this is, first of all, to remove the position of the Deputy Director as proposed from the public participation and also to change the word “Minister” to “Cabinet Secretary” so that we only have a Director-General, but not a Deputy Director as currently constituted.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 4 as amended agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party, you have an amendment.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the clause 5 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-

(c) in subsection (1) and (2) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

The essence of this is to change “Minister” to “Cabinet Secretary”.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 5 as amended agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members! At least, the Leader of the Majority Party should vote.

Hon. Amos Kimunya (Kipipiri, JP): I voted, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. What is it Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, I have heard you saying Clauses 6 and 7, but I can see amendments on Clauses 7A and 7B.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Those are new clauses.

Hon. David ole Sankok (Nominated, JP): Okay.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is why I told you earlier that you need to go along with us.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, I am well guided. I am always with you; that is why I am inside here.

(Clauses 6 and 7 agreed to)

Clause 8

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have two amendments: one is by the Chairperson of the Departmental Committee on Finance and National Planning and the other one is by Hon. Patrick Musimba. We shall start with the Chairperson.

The Chairperson of the Departmental Committee on Finance and National Planning, Hon. Wanga, move your amendment to Clause 8.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to drop this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, that is dropped by the Chairperson of the Departmental Committee on Finance and National Planning.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

Hon. Patrick Musimba, you have an amendment to Clause 8.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Chairman. I also drop my amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, that is recorded as dropped.

(Proposed amendment by Hon. (Dr.) Patrick Musimba dropped)

(Clause 8 agreed to)

Clause 9

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment. Hon. Peter Kaluma, please proceed. Just wait a minute. You will be on record. Give him the microphone.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Chairman. I drop the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Members, that amendment is dropped by Hon. Peter Kaluma.

(Proposed amendment by Hon. Peter Kaluma dropped)

(Clause 9 agreed to)

Clause 10

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have two amendments: one by Hon. Patrick Musimba and the other one by the Chairperson. We shall start with Hon. Patrick Musimba because he is proposing a deletion.

*(The Temporary Deputy Chairman (Hon. Patrick Mariru)
consulted with the Clerk-at-the-Table)*

Hon. Musimba, I am told that you actually want to move in an amended version.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Yes, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, you have the Floor.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 10 of the Bill be amended -

(a) by deleting paragraph (a) and substituting therefor the following new paragraph

—

(a) by deleting subsection (2) and substituting therefor the following new subsection-

(2) The Public Service Commission shall appoint a fit, competent and proper person to be the Director of the Agency (hereinafter referred to as the “Agency Director”), who shall be subject to Parliamentary approval.

(b) by inserting the following new paragraph immediately after paragraph (c)-

(d) by deleting subsection (4) and substituting therefor the following new subsection-

(4) The Agency Director may request for secondment of staff from the Public Service Commission on such terms and conditions of service as may be recommended by the Salaries and Remuneration Commission, and make such arrangements for the provision of services, as he considers appropriate for or in connection with the exercise of the functions of the Agency.

I would like to move a further amendment to Clause 10 by-

- (a) deleting the words “Public Service Commission” and substituting therefor the words “Advisory Board”; and
- (b) deleting the words “Parliamentary approval” and substituting therefor the words “approval by the National Assembly”.

The import of this is to grant the Advisory Board the powers to appoint the Agency Director.

Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Leader of Majority of the Majority Party, do you want to speak to this?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, Hon. (Dr.) Musimba’s amendment has several parts. I do not know whether we are dealing with (a). In (a) he is changing from the “Public Service Commission” to the “Advisory Board.” I have seen a circulated amendment here which is also talking of parliamentary approval.

(Hon. (Dr.) Patrick Musimba stood up in his place)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Dr.) Musimba, please have your seat.

Hon. Amos Kimunya (Kipipiri, JP): We need to know what we are voting on. Is it all the way to the parliamentary approval or only on the change from the “Public Service Commission” to the “Advisory Board”?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. I am sure Hon. (Dr.) Musimba has noted that. Before that, let us hear from Hon. Makali.

Hon. (Dr.) Musimba, I will still give you another chance to speak to it. Hon. Makali and then if the Chair would like to speak to it, I will give her a chance as well.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. The issues I wanted to raise have been raised by the Leader of the Majority Party. As he says, we have part (a) and (b) of this amendment and I think it is important that we move both of them at the same time. Otherwise, if you change from the “Public Service Commission” to the “Advisory Board”, then do we still need to go ahead and change the “parliamentary approval” to the “National Assembly?”

Another most important issue is when we talk of the National Assembly, are we restricting the issues of crime and money laundering only to the national Government? Could there be elements of the county governments? Those are the only issues for me.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Sankok, you have a minute then we make progress.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, if we delete the words “Public Service Commission” and substitute therefor with the words “Advisory Board” it now means that the “Advisory Board” will be the one appointing.

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Under (b), you are deleting the words “parliamentary approval” but still retain the approval of the “National Assembly”. Therefore, if the Board appoints the CEO, does it come to Parliament? I think that it is only the appointees of the President and of the Public Service Commission that can come to Parliament. My friend, the appointments done by boards cannot come to Parliament.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Wang, do you want to speak to this before I go back to Hon. (Dr.) Patrick Musimba?

Hon. (Ms.) Gladys Wang (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. What Hon. (Dr.) Musimba wanted to do in the first place was to move the appointment of the Director General of the Assets Recovery Agency from how it is done currently to the Public Service Commission, which he was then revoking to return to the Advisory Board that we are currently dealing with. As Hon. Sankok is saying, it might not make sense to bring that appointee to the Floor because which route will the appointee come in? These appointees that we vet come from the President or the Public Service Commission.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We must also have a limitation on how we linger on one amendment. Do you want us to hear from Hon. (Dr.) Patrick Musimba? Hon. Murugara, you have one minute. We need to get there and for the House to at least make progress on this one. We have quite a number of processes ahead of us.

Hon. George Gitonga (Tharaka, DP): Hon. Temporary Deputy Chairman, we need to make this very tidy. The truth is that if we take the recruiting to the Advisory Board from the Public Service Commission, then this is not likely to come to the National Assembly for approval because what comes here for approval is from the Public Service Commission and independent commissions. Therefore, while I agree with the correction, we should remove the words “parliamentary approval” and replace with “approval by the National Assembly” and retain the recruitment to the Public Service Board.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oluoch. Do you really want to speak to this? If you do, you then have one minute then we have Hon. (Dr.) Musimba. Let us make progress on this.

Hon. Olago Aluoch (Kisumu West, FORD - K): Hon. Temporary Deputy Chairman, Hon. Murugara has explained the point. The Assets Recovery Agency is not a constitutional body but a State corporation and so the appointment of the CEO does not come to Parliament. I think Hon. (Dr.) Musimba will be well advised to drop the amendment that requires parliamentary approval. If that is done, then we will move forward.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Dr.) Patrick Musimba.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Hon. Temporary Deputy Chairman, the import is exactly as was explained by the Chair. I was trying to bring congruence between the two agencies, which is the Financial Reporting Center which we approved the Director on the Floor of the House but then, on further consultations, they said that we move from the Public Service Commission, where the Director in charge of the Financial Reporting Center is actually appointed and brought to the House. To maintain congruence, it is best to drop the amendments.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order! Members, I need to hear what Hon. (Dr.) Patrick Musimba is saying. Did you say that you dropped the amendment?

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Yes.

(Proposed amendment by Hon. (Dr.) Patrick Musimba dropped)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. In effect therefore Clause 10 has only one amendment by the Chair of the Departmental Committee on Finance and National Planning. Please proceed.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause be amended —

(a) in paragraph (a) by deleting the words “Oversight Board” and substituting therefor the words “Advisory Board”;

(b) in paragraph (c) in the proposed subsection (3) —

(i) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) holds a degree in law, finance, accounting or any other relevant degree from a university recognised in Kenya;

(ii) in paragraph (c) by deleting the words “Oversight Board” and substituting therefor the words “Advisory Board”.

That is in line with the amendments we have been making to shift the Board from “Oversight” to “Advisory”.

In (b), it is just to add other professions in addition to law, finance, accounting or any other relevant degree, rather than just leaving it as law alone.

I beg to move.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 10 as amended agreed to)

Clause 11

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Chair, Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 11 of the Bill be amended—

(a) in paragraph (a) by deleting the words “Oversight Board” and substituting therefor the words “Advisory Board”; and

(b) in paragraph (c) by deleting the words “Oversight Board” and substituting therefor the words “Advisory Board”.

These amendments are just aligning from “Oversight Board” to “Advisory Board”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(Clause 11 as amended agreed to)

Clause 12

The Temporary Deputy Chairman (Hon. Patrick Mariru): I am told that we have two amendments on this clause: One by Hon. (Dr.) Patrick Musimba and the second by the Leader of Majority Party. We shall start with that of the Majority Leader.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be further amended in clause 12 by inserting the following subsection-
Section 54A of the principal Act is amended subsection (2) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) not more than five per cent of the total proceeds recovered or realized from any property seized or forfeited to the Government, as may be prescribed by the Cabinet Secretary;
The import of this is that the principal Act allows the agency to retain a percentage of the money they recover but that percentage is not defined. To avoid any misuse or abuse in future, much as the Cabinet Secretary is supposed to give guidance, we want to tie that to not more than 5 per cent, which is also the limit for the Kenya Revenue Authority (KRA), and to limit the exposure of those monies. That is the whole essence of this amendment. They can retain a percentage subject to Cabinet's approval, but that should not be more than 5 per cent of the proceeds.

I beg to move.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, there is an amendment by Hon. Patrick Musimba on the same clause.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Chairman. In light of the discourse I already had with the Leader of the Majority Party which occasioned that change, I drop my amendment.

(Proposed amendment by Hon. (Dr.) Patrick Musimba withdrawn)

(Clause 12 as amended agreed to)

Clause 13

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Chairperson, Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 13 by deleting the words “Oversight Board” and substituting therefor the words “Advisory Board”.

It is similar to what has been done above, namely, deleting the word “advisory” and substituting with the word “oversight”.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 13 as amended agreed to)

Clause 14

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have three amendments by the Leader of Majority Party, the Chairperson of the Departmental Committee on Finance and National Planning and Hon. Peter Kaluma. Let us start with that of the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 14 of the Bill be amended -

(a) by deleting the proposed new clause 55A and substituting therefor the following new clause -

Assets
Recovery
Advisory Board

55A. (1) There is established an advisory board to be known as the Asset Recovery Advisory Board which shall consist of-

- (a) the chairperson, who shall be appointed by the Cabinet Secretary from among members of the Advisory Board appointed under paragraphs (h) to (j);
- (b) the Attorney-General;
- (c) the Principal Secretary in the Ministry responsible for finance;
- (d) the Governor of the Central Bank of Kenya;
- (e) the Director-General of the National Intelligence Service;
- (f) the Director-General of Criminal Investigations;
- (g) the Director General of the Centre;
- (h) a representative of the Institute of Certified Public Accountants of Kenya;
- (i) a representative of the Law Society of Kenya;
- (j) a representative of the Estate Agents Registration Board;

(k) the Agency Director, who shall be an ex-officio member of the Advisory Board.

(2) The bodies under subsection (1) (h) to (j) shall each nominate and submit to the Cabinet Secretary two names of persons of either gender.

(3) The Cabinet Secretary shall appoint three persons from among the persons nominated under subsection (2).

(4) In appointing the members of the Advisory Board, under subsection (1) (h) to (j), the Cabinet Secretary shall take into account gender and regional balance.

(5) A person shall be eligible for appointment to the Advisory Board under subsection (1) (h) to (j) if the person-

(a) holds a degree in finance, accounts, economics or law from a university recognised in Kenya; and

(b) has knowledge and expertise in matters relating to money laundering, asset tracing and recovery.

(6) A person appointed under subsection (1) (h) to (j) shall hold office for a period of three years and may be eligible for reappointment for one further term.

(b) by inserting the following new section immediately after the proposed section 55B

Conduct of business
of the Advisory
Board

55BA. The business and affairs of the Advisory Board shall be conducted in accordance with the provisions of the Fifth Schedule, but subject thereto, the Advisory Board may regulate its own procedure.

This is to bring about a whole new Section 55A which sets up the Board to take into consideration the views of the stakeholders. Most importantly, it seeks to remove the Attorney-General from being the Chair of the Agency to it being chaired by an independent person who will be appointed by the Cabinet Secretary from among members of the Advisory Board who constitute non-public officials. These are representatives of the Law Society of Kenya, accountants and estate agents. These three bodies are in the Schedule as reporting agencies. They are stakeholders in this and should also be good in giving advice on the running of the Asset Recovery Agency.

The Attorney-General, the Principal Secretary for the National Treasury and Finance and the Governor of the Central Bank of Kenya become members. We are looking at the stakeholders in the Asset Recovery Agency, namely, the Director-General of the National Intelligence Service, the Director-General of the Directorate of Criminal Investigations who works very closely with the Director of the Centre, plus those three other bodies that I have mentioned and the Agency director as an ex-officio member.

This amendment also removes the Director of Public Prosecutions from being a member of the Board because their mandate has nothing to do with asset recovery. Theirs is to prosecute in court. Also, Hon. Kaluma had proposed to bring in the Ethics and Anti-Corruption Commission (EACC) which is an independent commission and has nothing to do with overseeing other bodies. They have a huge load in terms of what to do and avoiding all the conflicts. We tidied it up to just have bodies that can add value to asset recovery without bringing up internal conflicts in terms of fighting over who has done what.

It also provided for three bodies, namely, the Institute of Certified Public Accountants of Kenya, the Law Society of Kenya and the Asset Registration Board, to nominate two people of

either gender. So out of a pool of six, three people will be nominated. Our people will be obligated to provide the very best who have knowledge in money laundering, asset tracing and asset recovery.

The import of the amendment is to create a constitutional board and provide for how it will conduct business in accordance with the Fifth Schedule where it had not been referenced.

With that explanation, I seek the Members' support.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give an opportunity to the Chair to speak to this because your amendments are overlapping with those of the Leader of the Majority Party. I can give you a chance if you want to speak to this. I will also give a chance to Hon. Kaluma because he has an amendment. Before that, let us have Hon. Makali. Give him the microphone.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you Hon. Temporary Deputy Chairman. I support this amendment. The most attractive bit is the proposal to have an independent person chairing the Advisory Board, other than a public servant. That adds a lot of value to this Advisory Board and is the right move in terms of how to manage such an Advisory Board.

There was also the issue of the agencies that will be reporting. It seems like we are infringing on their human rights issues. If they chair, that will be a good balance rather than having a civil servant chairing the Board.

I support the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Chair first. Do you first want to hear from the other Members? Yes, Hon. Chair.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. If the amendments by the Leader of the Majority Party are carried, I will drop mine.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Aluoch.

Hon. Olago Aluoch (Kisumu West, FORD K): Hon. Temporary Deputy Chairman, I support Hon. Kimunya's proposed amendments and the way he has put them, but the EACC has no place in asset recovery. I say so because the EACC has a component of asset recovery within the Act. The Asset Recovery Agency also has this component in the Act. Currently, there is sibling rivalry between these two organs. The Asset Recovery Agency does not sit on the EACC board. There is no way the EACC can sit on the board of the Asset Recovery Agency. That proposed amendment by Hon. Kaluma should be dropped. I support the amendments by Hon. Kimunya.

The Temporary Deputy Chairman (Hon. Patrick Mariru): No. We will come to Hon. Kaluma's amendment later. We are now dealing with the amendment by the Leader of the Majority Party. I am sure what you have said is noted, Hon. Aluoch.

Let us have just two other Members and then we make progress on this one. Hon. Nduati, you have one minute then we make progress on this.

Hon. Joseph Nduati (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Chairman. I support the proposal by Hon. Kimunya but there is something I wanted to raise regarding the representative of the Estate Agents Registration Board. A lot of money laundering happens during construction, from commencement to completion. That is where we can detect money laundering where people use cash payments. The best solution would be to replace the

representative of the Estate Agents Registration Board with a representative of the Board of Architects and Quantity Surveyors. That would be better.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Maanzo, you have one minute.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I agree with the Leader of the Majority Party. He has created a very good balance. I agree with him that the DPP cannot participate in the Board because of conflict of interest. The same applies to the EACC because they have a role to prosecute.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. I will give you one minute and then we make progress on this.

Hon. Owen Baya (Kilifi North, ODM): I want to concur with the Leader of the Majority Party, especially on the issue of the Director of Public Prosecutions (DPP). Removing the DPP from this is disentangling this whole thing. That is so that the independence of the offices is respected and, therefore, a more powerful office does not interfere with a lesser powerful office. I also concur with him on the issue of percentages. It was open-ended, but he is now introducing a five per cent, which is a good thing.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Although that part is concluded.

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

That having been carried, Chairperson, you have amendments. I guess Clause 55A of your amendments has been taken care of by the Leader of the Majority Party's amendments. Now you are at liberty to move the other amendments (b), (c), (d), (e) and (g) of Clause 55.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I also just wanted the Leader of the Majority Party to clean up his amendment. Rather than say "the Director-General of the Directorate of Criminal Investigations", it should just be the Director of Criminal Investigations. I think that should be cleaned up.

I beg to move:

THAT, Clause 14 of the Bill be amended—

(b) in the proposed new clause 55B by deleting the word "Oversight" and substituting therefor the word "Advisory" wherever it appears;

(c) in the proposed new clause 55C by deleting the word "Oversight" and substituting therefor the word "Advisory" wherever it appears;

(d) by deleting the proposed new clause 55D;

(e) in the proposed new clause 55E by deleting the word "Oversight" and substituting therefor the word "Advisory" wherever it appears;

(f) in the proposed new clause 55F by deleting the word "Oversight" and substituting therefor the word "Advisory";

(g) in the proposed new clause 55G by deleting the word "Oversight" and substituting therefor the word "Advisory" wherever it appears.

This simply moving the oversight by changing "oversight" to "advisory".

I beg to move.

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof
be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Patrick Mariru): Now, Hon. Kaluma, you have an amendment to the same clause. But now I guess paragraph (i) has been taken care of by the Leader of the Majority Party's amendment. Is that right?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, I will drop my amendment because of that development. I had proposed to bring in the EACC to bring a fear factor into the asset recovery process. If you go all over the world, a mandate like this of asset recovery is within serious fraud offices. They do everything there. So, I am dropping, but I will in future bring a far-reaching amendment to bring the Asset Recovery Agency under the EACC.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. That is noted as a dropped amendment.

(Proposed amendment by Hon. Peter Kaluma dropped)

(Clause 14 as amended agreed to)

Clause 15

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have two amendments by the Hon. Chair and that of Hon. Patrick Musimba. We shall start with the Hon. Chairperson.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I beg to drop this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. That is noted. It is dropped.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

Hon. Patrick Musimba, on Clause 15.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 15 of the Bill be further amended by deleting the words "and subject to a court order" and substituting thereof the words "and subject to an order of the High Court".

The import of this is that, on reading the Act, it says that where a person is suspected or accused of an offence under this Act:

- (a) The person's home or their property may be searched;
- (b) The person's possessions may be seized;

- (c) Information relating to that person's financial, family or private affairs, where required, may be revealed, or;
- (d) The privacy of a person's communication may be investigated or otherwise interfered with.

This flies across the provisions of the Constitution, Article 24(3), which requires that a court order be obtained prior to any of these limitations to an individual's rights are carried out. Hence, the moving of the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): For those who want to speak to this, let me first propose the Question.

(Question of the amendment proposed)

Yes, Hon. Aluoch and Hon. Maanzo; if you could take a minute each. Hon. Maanzo, Hon. Aluoch is your senior. He must take precedence.

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Temporary Deputy Chairman, this proposed amendment by Hon. Musimba is very dangerous. It erodes the whole foundation of Asset Recovery Agency and the Financial Reporting Centre. If we have this provision, then we are replete with examples. On the Ruaraka land, Kshs 1.5 billion was withdrawn quickly because there was no provision. Earlier on, the late Justice Okuk gave an order in the Mombasa High Court on the Charter House Bank. Within two hours, money was withdrawn from the Charter House Bank *kabisa* and it went. This is very dangerous. I propose that Hon. Musimba withdraws this amendment. The freezing by these State agencies does not take away the property from the owner. It remains yours if it is genuine; it remains yours.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Maanzo. I will still give a chance to the Chair, if she wants to speak to this.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Temporary Deputy Chairman, you know the words "court order" mean from the Magistrate's Court to the Supreme Court. I am really pleading with my good friend, Hon. Musimba, to drop this. If you limit it to the High Court alone, it means that somebody may suffer because a Magistrate's Court or another court cannot assist. So, I think it is very important that we remain with "court order" so that any court can assist in this matter.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Limo, who has not spoken this afternoon. One minute then we shall make progress.

Hon. Joseph Limo (Kipkelion East, JP): I beg to support Hon. Musimba. When it comes to the issues being raised here, if you allow any court, including just a Magistrate's Court, we are opening a Pandora's Box for busy bodies to just walk into any local court and get orders and you are harassed. At the end of the day, people who are not genuine can interfere with other people. If we want to be very serious, let us make it difficult so that the only people who can pursue this issue are those who are serious and they have evidence. Let us not make it easy.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Well, I was to give a chance to Hon. Sankok, but let us have the Leader of the Minority Party speaking to this for a minute. Leader of the Majority Party, do you also want to speak to this?

Hon. John Mbadi (Suba South, ODM): I think the amendment is dangerous. It is completely against the fight against corruption and money laundering. We need to even make life very difficult for people who bring money or have money that cannot be explained. We should not give space to people to enjoy the luxury of one having to look for a court order. If you cannot

explain your source of funds, you have money that you cannot explain or you have assets that you cannot explain, we should not give you luxury. I am really reluctant to oppose what Hon. Musimba, who is my alumni, classmate and friend, is proposing. So, I advise that you withdraw it so that I do not vote against you. I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader of the Majority Party, I can tell that Hon. Musimba still has the last chance on this one.

Hon. Amos Kimunya (Kipipiri, JP): I think it is important that we remind ourselves of what we are doing to the ARA. Once ARA has reason to believe that there is a certain pot of money or money moving through the system, it needs to have the capacity to freeze it as the matter is being substantiated. If it is genuine money, it goes forward; if it is suspect, it is withheld. Immediately we start giving a leeway that somebody can rush to court to release his money, when that money moves, it will not be possible to get it back. A court order would have been good if the ARA was to take the money away, but it is not. So, let us preserve the intention of the Bill. If Hon. Musimba can be magnanimous enough, he can withdraw his amendment. If he does not, I will ask the House to vote against his amendment that will kill the intention of the Bill that we have worked so hard for.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Sankok, you have only one minute.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Chairperson. I do not need the one minute. I know there are those who are comfortable now because they have the system of the “deep state.” I want to tell them that this is dangerous. One day they will cry because of this law that we are passing. I am sorry that some of them will cry because of this Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That sounds like a serious warning, Hon. Sankok.

Hon. Chairman, do you want to speak to this? Let us have the Chair.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairperson, I dropped the amendment that I had that was similar to Hon. Musimba’s. I want to urge him to drop his amendment as well. The five days that we are giving the ARA is just that. After the five days, if one’s money is clean, it will be there; it will go nowhere. If the money was meant to be withdrawn within the five days for terrorism or other heinous acts, we would have saved the country. So, within the five days, one will have their money.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress on this Bill. We will hear you, Hon. Patrick Musimba. I will limit the time because we cannot linger here forever. Hon. Jennifer and Hon. Sheikh, you will each have half a minute.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Hon. Temporary Deputy Chairperson. We must remember that the key words here are “proceeds of crime” and “anti-money laundering.” They have become a national security risk for this country. Furthermore, we are obliged to comply with regional treaties and the East African Protocols. This amendment is dangerous. Should we allow it, this Bill will fall flat on its face and we will not be able to engage in any kind of transactions going forward.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Junet

Hon. Junet Nuh (Suna East, ODM): I agree with Hon. Sankok. There are rights that have been given by the Constitution. You cannot stop them through a statute. This Bill will end up in court. Do not allow people’s money to be frozen because of suspicion. What Hon. Musimba is

proposing is to put safeguards on how the rights of people can be protected under the Constitution. The Constitution is supreme.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Patrick Musimba.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Chairperson. We cannot trivialise this issue. We are all here because we are concerned about our great country and the crimes that can be committed. Nothing in suspicion can occasion one to search your property without any court order, seize your possessions and circulate your financial information to people. On the basis of suspicion, people are kidnapped. You cannot do that. The privacy of a person is important. As Hon. Junet has said, these are fundamental rights in the Constitution. We must safeguard life and livelihoods. That cannot be left to the whims of one person. Investigations should be carried out by the ARA. They should go to court and show that they have substantiated grounds to infringe on these rights of an individual.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members! Let the House decide on this one.

*(Question, that the words to be left out
be left out put and negated)*

(Clause 15 agreed to)

(Clause 16 agreed to)

New Clause 2A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are now on the new clauses.

Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairperson, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 2:

Amendment of section 24 of No. 9 of 2009	2A. Section 24 of the principal Act is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.
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The import is to change the nomenclature.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, Clause 2A has been carried.

Hon. Kaluma do you have an amendment to New Clause 2A? Order, Hon. Kaluma!

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairperson, I withdraw my proposed amendment to New Clause 2A.

(Proposed amendment by Hon. Kaluma dropped)

New Clause 5A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairperson, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 5:

Amendment of section
28 of No.9 of 2009

5A. The principal Act is amended in section 28 (3) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

The import is to change the nomenclature from “Minister” to “Cabinet Secretary.”

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clauses 7A and 7B

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairperson, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 7:

Amendment of section
40 of No. 9 of 2009

7A. The principal Act is amended in section 40 (1) (c) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Amendment of section
42 of No. 9 of 2009

7B. The principal Act is amended in section 42 by deleting the word “Minister” wherever it appears and substituting therefor the word “Cabinet Secretary”.

The import is to change the nomenclature from “Minister” to “Cabinet Secretary.”

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 8A

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 8:

Amendment of section
45 of No. 9 of 2009

8A. The principal Act is amended in section 45(6) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

It is for the same reason of changing the word ‘Minister’ to ‘Cabinet Secretary’.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New clause 9A

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 9:

Amendment of section
49 of No. 9 of 2009

9A. The principal Act is amended in section 45(6) by deleting the word “Minister” wherever it appears and substituting therefor the word “Cabinet Secretary”.

It is for the same reason of changing the nomenclature from ‘minister’ to ‘Cabinet Secretary’.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New clauses 14A and 14B

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clauses immediately after clause 14:

Amendment of section
113 of No. 9 of 2009

14A. The principal Act is amended in section 113 by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Amendment of section
121 of No.9 of 2009

14B. The principal Act is amended in section 121 by deleting the word “Minister” wherever it appears and substituting therefor the word “Cabinet Secretary”.

The justification for this, again, is to align the nomenclature by changing from ‘Minister’ to ‘Cabinet Secretary’

(Question of the new clause proposed)

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(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New clauses 15A and 15B

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 15:

Amendment of section
132 of No. 9 of 2009

15A. The principal Act is amended in section 132 by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Amendment of section
134 of No.9 of 2009

15B. The principal Act is amended in section 134 by deleting the word “Minister” wherever it appears and substituting therefor the word “Cabinet Secretary”.

They seek to amend sections 132 and 134 by changing the nomenclature from ‘Minister’ to ‘Cabinet Secretary’.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 17

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 16:

Amendment of the Fifth
Schedule to No. 9 of 2009.

17. The Fifth Schedule to the principal Act is amended—

- (a) In the title to the schedule by inserting the words “and Advisory Board” immediately after the word “Board”;
- (b) in paragraph 1 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (c) in paragraph 2 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (d) in paragraph 3 by inserting the words “or Advisory Board” immediately after the word “Board”;
- (e) in the marginal note to paragraph 4 by inserting the words “or Advisory Board” immediately after the word “Board”;
- (f) in paragraph 5 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (g) in paragraph 6 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (h) in paragraph 7 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;
- (i) in paragraph 8 by inserting the words “or Advisory Board” immediately after the word “Board” wherever it appears;

The import of this is to amend the Fifth Schedule, which basically prescribes the manner of conducting business of the Board, by expanding that the Schedule will apply not just to the Board of the FRC, but equally to the Board of the Agency. So, the FRC Board and the Advisory Board of the Agency will be governed by the same Schedule in terms of how they regulate their business. That is the essence of this amendment.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chair, you have an amendment introducing a new clause 17.

Hon. (Ms.) Gladys Wanga (Homa Bay, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the following new clause be introduced immediately after clause 16 of the Bill - Section 130 of the Principal Act is amended by inserting the following new section

Transitional provision.	130A. The Agency Director shall serve for the remaining period of the contract or the period stipulated in section 53(2A) or whichever is longer.
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It is a transitional provision to provide that the serving Agency Director shall serve for the remaining period of their current contract or the period stipulated in section 53(2A), whichever is longer. It is to ensure there is no disruption of service. I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Patrick Mariru): There are three amendments. One by the Leader of the Majority Party, the second by the Chairperson and the third by Hon. Peter Kaluma. We shall start with the one by the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, clause 2 of the Bill be amended—

(a) by inserting the following new paragraph immediately after paragraph (a):

(ab) in the definition of the term “authorised officer” by deleting the word “Minister” and substituting therefor “Cabinet Secretary”;

(b) by deleting paragraph (b) and substituting therefor the following new paragraph:

(b) in the definition of “designated non-financial businesses or professions” by—

(i) inserting the following new paragraph immediately after paragraph (fa):

(fb) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms.

- (ii) deleting the word “Minister” appearing in paragraph (d) and substituting therefor the word “Cabinet Secretary”;
- (c) by deleting the definition of the term “Minister”;
- (d) in the definition of the term “supervisory body” by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.
- (e) in paragraph (d) by inserting the following new definition immediately before the definition of “Oversight Board” -

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

It is basically to change ‘Minister’ to ‘Cabinet Secretary’ and provide further definition of designated financial services by including advocates and notaries in the definitions in section 2. The rest is about definition of the oversight board, which the Chair will be proposing amendments to. The whole point is to align Clause 2 with the body of the Bill.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have an amendment to the same clause 2.

Hon. (Ms.) Gladys Wanga (Homa Bay, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 2 of the Bill be amended—

- (a) in paragraph (c) by deleting the words “insurance undertakings” and substituting therefor the words “insurance underwriter”;
- (b) in paragraph (d) by deleting the definition of the term “Oversight Board” and substituting therefor the following new definition:

“Advisory Board” means the Asset Recovery Advisory Board established under section 55A;

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will now consider the third and final amendment to Clause 2 by Hon. Peter Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Deputy Chairman, my concern is already addressed in the existing Section 18, on which I will be moving a slight amendment later. I, therefore, withdraw this particular amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That amendment is dropped.

(Proposed amendment by Hon. Peter Kaluma dropped)

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are done with the Bill. We shall proceed to reporting. Let us have the Mover.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No.39 of 2021) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

Hon. Deputy Speaker: Hon. Members, let us have the Chairperson to move reporting.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No.39 of 2021) and approved the same with amendments.

Hon. Deputy Speaker: Member for Kibwezi West, what is it? Let us finalise this then I will give you an opportunity. Allow us to report first then I give you a chance. Let the Mover of the Bill move reporting.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Gladys Wanga to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Deputy Speaker: Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I second.

(Question proposed)

Hon. Deputy Speaker: We can now have the Member for Kibwezi West. What is it?

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Deputy Speaker. I beg to move that the Motion for agreement with the Committee of the whole House be amended by inserting the following words—

“subject to re-committal of Clause 15.”

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Is that not the particular clause that was defeated?

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Hon. Deputy Speaker, it did not come out clearly. That is why we are doing a re-committal. We want to do a division thereof.

Hon. Deputy Speaker: Member for Kibwezi, on Clause 15, the House was actually unequivocal in defeating it, unless you want to test the mood a second time. If you would want to test the mood, we will.

Listen, Hon. Members, it is a very straightforward one. If you want to test the mood – I can fairly see the mood myself – it is going to be easy. We will not go the re-committal way. We will vote on whether there is need for re-committal or not. At that point in time, we will not have any reason to go back to re-committal if it is defeated. This amendment was unequivocally defeated. The House made its decision. So if you insist I will give chance to a Member or two even though I did not even want to open it because it looks fairly straightforward. Give us a seconder then we finish with it.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): I will ask Hon. Junet to second.

Hon. Deputy Speaker: Hon. Junet, do you want to second? Second it. Let us deal with it the easier way. Rather than us opening the whole thing, we want to see whether there is need to open it up in the first place.

Hon. Junet Nuh (Suba East, ODM): Hon. Deputy Speaker, this is a House of debate. The Constitution gives everyone the right to debate. Let the Leader of the Majority Party not gag people here.

I second for re-committal.

Hon. Deputy Speaker: Now you see Hon. Junet. Actually, the debate was done and we went to the Committee of the whole House. So there is actually no gagging. The interesting bit is that you are reopening something that was lost. Allow us to put the Question on the re-committal Motion and then we deal with it. We are proceeding to move Third Reading, subject to re-committal of the particular clause.

Hon. Members, you will make your decision.

(Question on re-committal put and negated)

(Question put and agreed to)

Let us have the Mover to move Third Reading.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to move that the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No.39 of 2021) be now read a Third Time.

I thank the Members of this House who have risen to the challenge to cleanse this country of money laundering, wash-wash, being condemned to a failed state and being put in the same level as Somalia in this region. Today we will go home satisfied that Kenya is now being removed from this category of states within the region. The only country that will now be left in that category, which is working hard to ensure that it also passes this kind of legislation, is Somalia.

Within the region, at least Kenya can stand tall with the rest of the countries that have made progress in the fight against money laundering in order to deal with the menace of proceeds of crime and terrorism financing that is busy killing the lives of innocent people.

Hon. Deputy Speaker, I beg to move and ask Hon. Emmanuel Wangwe to second.

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Deputy Speaker, I wish to second the Bill as proposed by the Leader of the Majority Party. I wish to thank my colleagues who have pointed out that a good Bill must be debated. A good Bill that takes the country forward has to be given all the propositions and oppositions. As a country, we have now moved forward. I urge my colleagues to pass this Bill overwhelmingly. We are all Kenyans. We are one nation. We want to thank every colleague who has participated in this debate.

I second, Hon. Deputy Speaker.

(Question proposed)

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! I have given opportunity to Members. We cannot keep on opening debate after every stage. These are matters that have been resolved. Let us now deal with it with finality. That is what makes all the sense.

Hon. Members, I confirm that we have the requisite number for putting the Question.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Hon. Deputy Speaker: Let us move to the next Order.

BILL

Second Reading

THE POLITICAL PARTIES (AMENDMENT) BILL

Hon. Deputy Speaker: I would like to have some quick consultation on this one so that as we proceed, we do so in a neater way. We will have the Leader of the Majority Party.

Hon. Emmanuel Wangwe (Navakholo, JP): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is it, Hon. Wangwe? What is interesting is that I am having Members rising on points of order when we have not even started. We have just finalised something else. What is it, Hon. Wangwe? I will listen to you and to Hon. Kiarie, and then we will proceed.

Hon. Emmanuel Wangwe (Navakholo, JP). Thank you, Hon. Deputy Speaker. My colleagues are getting worried. It is important that we all look at what Hon. Sankok is doing behind me. Hon. Sankok has a weapon in the form of an artificial leg. I wish you could order him to use it nicely or put it away so that our colleagues can feel safe.

Hon. Deputy Speaker: Kindly, leave Hon. Sankok free for the time being. I want to know what is happening. Hon. Sankok, you have been here for more than four years now. I do not think you should be a security risk. I do not want to open it. Hon. Sankok, I would not want to invoke any order against you. So, please, be very careful. The issue is that you should not use that tool for brandishing. Do not try it again. You know it is a useful tool for you. We take your word that you are only adjusting it, and that it will never be brandished in the House. Let us be very careful.

What is it, Hon. Kiarie?

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Deputy Speaker. I do rise because of the business that we are just about to get into. I rise to seek your guidance on whether the business we are just about to transact is in the House procedurally. I am in possession...

Hon. Deputy Speaker: I want you to hold it because I have already consulted with the Leader of the Majority Party. It seems that whatever you want to raise is the same.

Hon. John Kiarie (Dagoretti South, JP): Hon. Deputy Speaker, I am in possession of a newspaper advert by a Committee of this House. It was carried on 7th December 2021, inviting Kenyans to a process of public participation on the business that we are just about to undertake. The 21-day period, after 7th December, expires today at 5.00 p.m. There could be a Kenyan from Dagoretti who may be having a memorandum he may want to present to the Committee. He could be presenting it to the Office of the Clerk right now. I am wondering whether we are in order to transact the business of the Political Parties (Amendment) Bill.

Hon. Deputy Speaker: Hold it there. The Leader of the Majority Party is aware of this matter. It is a matter that is going to be resolved.

Proceed, Leader of Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I am surprised because the Member for Dagoretti South is a Member of Justice and Legal Affairs Committee. He should know better in terms of what I am about to say. *Bonga* points are also welcome.

It is true that we anticipated to start debate on the Political Parties (Amendment) Bill this evening but it was subject to the Committee tabling its Report. Communication has been made from the Chair to the effect that we will not start debate on the Bill until Members receive copies of the Report. We were conscious of that fact. We knew that the period for public participation will end today, at 5.00 p.m. Thereafter, the Committee is supposed to retreat and prepare its Report as we deal with other business. We anticipated that we would start transacting on this business today. We have two minutes remaining to 5.00 p.m. but the Committee needs some time to put together its Report and bring it to the House.

Therefore, we need to stand down that business today to give time to the Committee to retreat and prepare their Report. After the Report is shared with Members tonight, we can come tomorrow morning and debate the Bill, taking into account the Report of the Committee.

Hon. Deputy Speaker, it is basically my request that we stand down this business.

An Hon. Member: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, there cannot be a point of order on the matter of the Mover seeking to stand down a particular business. There is nothing out of order.

I want the Chairman of the Departmental Committee on Justice and Legal Affairs to inform the House when they will be ready to table their Report on this Bill so that we know how we are going to proceed. I was asking Hon. KJ to hold his horses because already there were consultations leading to the same direction. I do not want Hon. Sankok to make allegations he cannot substantiate. Hon. KJ is a Member of the Committee. The assumption we are making as a House is that whatever the Chairman is about to say is the position of the Committee, in which the Member for Dagoretti South sits. So, let us hear what the Chairman has to say.

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Deputy Speaker. I confirm the submission by the Leader of the Majority Party. I am, indeed, surprised that Hon. Kinyanjui would raise this matter because the notice for this evening's meeting has been duly issued and circulated to everybody. The subject matter of the meeting is the debate on this Bill. The notice of the meeting has already been circulated.

An Hon. Member: ... (*Off-record*)

Hon. Deputy Speaker: Hon. Kigano, just conclude your statement. Do not be distracted at all.

Hon. Clement Kigano (Kangema, JP): Hon. Deputy Speaker, under Standing Order No.127, we are obligated to submit this Report to the House. Since the 21-day timeline ends today at 5.00 p.m., we are going to retreat at 5.00 p.m. It is proposed that the Report will be ready by tomorrow morning so that we can hear the memorandum from Hon. Kinyanjui and anybody else.

I thank you.

Hon. Deputy Speaker: Well, Hon. Chairman. The only thing I am quite eager to know is whether the "K" stands for "Kinyanjui." I am not sure but even if it does not, you actually mean the Member for Dagoretti South. So, I think that is perfect.

Hon. Members, please; let us not open this matter for debate because it is a matter that cannot start. Let me just deal with this quickly. The Leader of the Majority Party, after consulting with the Chairman of the Justice and Legal Affairs Committee, approached me and requested that the debate on this particular Bill – the Political Parties (Amendment) Bill – which was supposed to commence as Order No.11, be deferred. Of course, Hon. KJ has since made his input into this matter not knowing the position of his own Chairman. The provisions of Article 118 of the Constitution on public participation contend that the period of notification for public participation is notified by the Clerk and that duration was going to end today at 5.00 p.m. It actually ended a minute or two ago. In this regard, it was the view of the Leader of the Majority Party, and that of the Chairman of the Committee; that debate on this Bill could not commence today because the Report was not ready. Public participation would be rendered a cosmetic exercise if we were to proceed with debate today because Members would not have opportunity to look at the Bill from a point of information.

The second ground on which the Leader of the Majority Party was looking at this matter is the issue of notices of amendments to the Bill. We have received quite a number of notices of amendments. There are 17 Members who have filed proposed amendments to this particular Bill. So, we obviously need some time.

Based on that, I have been asked that we need to defer this matter until tomorrow so that the rest of the issues can be canvassed tomorrow. I accede to the request. Therefore, anything to

do with this Bill should come tomorrow. We can see if we can proceed with other matters we have been called to deal with in this Special Sitting. This particular matter is deferred until tomorrow.
It is so ruled.

(Bill deferred)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, there being no other business, the House stands adjourned until tomorrow, Wednesday, 22nd December 2021 at 10.00 a.m.

The House rose at 5.05 p.m.