



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

COMMITTEE ON APPOINTMENTS

**SECOND REPORT ON THE APPROVAL HEARINGS OF NOMINEES FOR
APPOINTMENT AS CABINET SECRETARIES**

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 07 AUG 2024	AUGUST 2024
TABLED BY:	HON K. ICHUNG'WANI (MEMBER)
CLEAR AT THE TABLE:	TRACY CHEBET

DIRECTORATE OF AUDIT, APPROPRIATIONS & GENERAL PURPOSE COMMITTEES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI



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LIST OF ABBREVIATIONS AND ACRONYMS

AG	Attorney-General
ASAL	Arid and Semi-Arid Lands
CBS	Chief of the Order of the Burning Spear
CS	Cabinet Secretary
CUE	Commission for University Education
DCI	Directorate of Criminal Investigations
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
EBS	Elder of the Order of the Burning Spear
EGH	Elder of the Order of the Golden Heart
H. E.	His Excellency
HELB	Higher Education Loans Board
IPOA	Independent Police Oversight Authority
KDF	Kenya Defence Forces
KenGen	Kenya Electricity Generating Company PLC
KRA	Kenya Revenue Authority
MP	Member of Parliament
MSMEs	Micro, Small and Medium Enterprises
NPS	National Police Service
ODPP	Office of the Director of Public Prosecutions
ORPP	Office of the Registrar of Political Parties
PLC	Public Limited Company
UN	United Nations

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Second Report on the Approval Hearings of Nominees for Appointment as Cabinet Secretaries vij

CHAIRPERSON'S FOREWORD

This Report contains proceedings of the Committee on Appointments relating to the approval hearings of twenty (20) persons nominated for appointment as Cabinet Secretaries.

In exercise of his powers under Article 152(5)(b) of the Constitution, H.E the President vide Gazette Notice No. 8440 of 2024 dated 12th July 2024 dismissed from office twenty-one (21) persons serving as Cabinet Secretaries thus rendering the offices vacant. Consequently, and pursuant to Article 152(2) of the Constitution, H.E the President nominated the following persons for appointment as Cabinet Secretaries of the stated ministerial portfolios in the Cabinet of the Government of Kenya—

- 1) **Hon. (Prof.) Kithure Kindiki, EGH** - Interior and National Administration;
- 2) **Dr. Debra Mlongo Barasa** - Health;
- 3) **Hon. Alice Wahome, EGH** - Lands, Public Works, Housing and Urban Development;
- 4) **Mr. Julius Migos Ogamba** - Education;
- 5) **Hon. Roselinda Soipan Tuya, EGH** - Defence;
- 6) **Dr. Andrew Mwhia Karanja** - Agriculture and Livestock Development;
- 7) **Hon. Aden Bare Duale, EGH** - Environment, Climate Change and Forestry;
- 8) **Mr. Eric Murithi Mugaa** - Water, Sanitation and Irrigation;
- 9) **Mr. Davis Chirchir, EGH** - Roads and Transport;
- 10) **Dr. Margaret Nyambura Ndung'u** -Information, Communication and the Digital Economy;
- 11) **Hon. John Mbadi Ng'ongo, EGH** -The National Treasury and Economic Planning;
- 12) **Hon. Salim Mvurya Mgala, EGH** - Investments, Trade and Industry;
- 13) **Ms. Rebecca Miano, EGH** - Tourism and Wildlife;
- 14) **Hon. James Opiyo Wandayi, EGH** - Energy and Petroleum;
- 15) **Hon. Onesimus Kipchumba Murkomen, EGH** -Youth affairs, Creative Economy and Sports;
- 16) **Hon. Hassan Ali Joho, EGH** - Mining, Blue Economy and Maritime Affairs;
- 17) **Hon. (Dr.) Alfred Nganga Mutua, EGH** -Labour and Social Protection;
- 18) **Hon. Wycliffe Ambetsa Oparanyah, EGH** - Co-operatives and Micro, Small and Medium Enterprises Development;
- 19) **Hon. Justin Bedan Muturi, EGH** - Public Service and Human Capital Development; and
- 20) **Ms. Stella Soi Lang'at** - Gender, Culture, The Arts and Heritage.

The Rt. Honourable Speaker vide Communications No. 004 and 005 of 2024 issued on Tuesday 23rd and Wednesday 24th July 2024, respectively, conveyed to the House the Messages from H.E the President nominating persons to the office of Cabinet Secretaries. The Rt. Hon. Speaker subsequently referred the curricula vitae of the nominees to the Committee on Appointments for approval hearings in accordance with section 6 of the Public Appointments (Parliamentary Approval) Act, Cap 7F and Standing Order 204(4) of the National Assembly Standing Orders. The Rt. Hon. Speaker directed the Committee to undertake approval hearings and table its report within twenty-eight (28) days pursuant to section 8 of the Public Appointments (Parliamentary Approval) Act. The Rt. Hon Speaker further directed the Clerk of the National Assembly to notify the nominees and the general public of the time and place of holding the approval hearings.

Pursuant to Article 118 of the Constitution, section 6(3) and (4) of the Public Appointments (Parliamentary Approval) Act and Standing Order 45(3) of the National Assembly Standing Orders, the Clerk of the National Assembly notified the nominees and placed an advertisement in the print media on 25th July 2024 informing the nominees and the general public that the Committee on Appointments would conduct the approval hearings from 1st to 4th August 2024 in the Mini-Chamber, County Hall, Parliament Buildings.

Additionally, and pursuant to section 6(9) of the Public Appointments (Parliamentary Approval) Act, the Clerk of the National Assembly placed two advertisements in the print media on 24th and 25th July, 2024 inviting the public to submit memoranda by way of written statements on oath (affidavit) on the suitability of each of the nominees. The advertisements indicated that the submissions were to be received by Wednesday 31st July and Thursday 1st August, 2024 at 5.00 pm, respectively. By close of the submission deadline, the Committee had received **837 memoranda** on the suitability or otherwise of the nominees for appointment. Out of the total memoranda received, **123 were hand delivered and 714 memoranda were submitted by email**. Of these, **181 memoranda complied** with section 6(9) of the Public Appointments (Parliamentary Approval) Act. **656 memoranda** did not meet the requirements of section 6(9) of the Public Appointments (Parliamentary Approval) Act as they were not written statements on oath. Further, out of the 656 memoranda, some of the memoranda although in the form of affidavits, were submitted in support of the nominees and not contesting the suitability of the nominees as required by section 6(9) of the Public Appointments (Parliamentary Approval) Act hence inadmissible. Section 6(9) of the Act requires the written sworn statements to contain evidence contesting the suitability of a candidate to hold office to which the candidate has been

nominated and not in support of a candidate. A detailed analysis of the memoranda is contained in Chapter 3 of this Report.

Further, the Clerk of the National Assembly vide letters dated 23rd July 2024 and 24th July, 2024, wrote to the Ethics and Anti-Corruption Commission (EACC), Higher Education Loans Board (HELB), Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP), Kenya Revenue Authority (KRA) and Commission for University Education (CUE) seeking references and background checks relating to the suitability of the nominees.

The nominees appeared before the Committee for approval hearings from 1st to 4th August 2024 as scheduled. The Committee examined their suitability based on the criteria set out in section 7 of the Public Appointments (Parliamentary Approval) Act, the constitutional and statutory requirements relating to the offices in question and suitability of the nominees for the proposed appointments having regard to whether the nominees' abilities, experience and qualities meet the needs of the Ministries in question. Furthermore, the Committee examined the nominees' academic credentials, relevant professional training and experience, knowledge of sector issues and personal integrity in accordance with section 6(7) and (8) of the Public Appointments (Parliamentary Approval) Act.

Pursuant to sections 6(7), 6(8) and 7 of the Public Appointments (Parliamentary Approval) Act, the Committee observed—

- (1) **THAT** the following nominees demonstrated knowledge of topical, administrative and technical issues touching on the portfolios to which they had been nominated; and had the requisite abilities, academic qualifications and professional experience to be approved for appointment—
 - (a) **Hon. (Prof.) Kithure Kindiki, EGH** as Cabinet Secretary for Interior and National Administration;
 - (b) **Dr. Debra Mlongo Barasa** as Cabinet Secretary for Health;
 - (c) **Hon. Alice Wahome, EGH** as Cabinet Secretary for Lands, Public Works, Housing and Urban Development;
 - (d) **Mr. Julius Migos Ogamba** as Cabinet Secretary for Education;
 - (e) **Hon. Roselinda Soipan Tuya, EGH** as Cabinet Secretary for Defence;
 - (f) **Dr. Andrew Mwiha Karanja** - as Cabinet Secretary for Agriculture and Livestock Development;

- (g) **Hon. Aden Bare Duale, EGH** as Cabinet Secretary for Environment, Climate Change and Forestry;
- (h) **Mr. Eric Murithi Mugaa** as Cabinet Secretary for Water, Sanitation and Irrigation;
- (i) **Mr. Davis Chirchir, EGH** as Cabinet Secretary for Roads and Transport;
- (j) **Dr. Margaret Nyambura Ndung'u** as Cabinet Secretary for Information, Communication and the Digital Economy;
- (k) **Hon. John Mbadi Ng'ongo, EGH** as Cabinet Secretary for The National Treasury and Economic Planning;
- (l) **Hon. Salim Mvurya Mgala, EGH** as Cabinet Secretary for Investments, Trade and Industry;
- (m) **Ms. Rebecca Miano, EGH** as Cabinet Secretary for Tourism and Wildlife;
- (n) **Hon. James Oplyo Wandayi, EGH** as Cabinet Secretary for Energy and Petroleum;
- (o) **Hon. Onesimus Kipchumba Murkomen, EGH** as Cabinet Secretary for Youth affairs, Creative Economy and Sports;
- (p) **Hon. Hassan Ali Joho, EGH** as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs;
- (q) **Hon. (Dr.) Alfred Nganga Mutua, EGH** as Cabinet Secretary for Labour and Social Protection;
- (r) **Hon. Wycliffe Ambetsa Oparanyah, EGH** as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises Development; and
- (s) **Hon. Justin Bedan Muturi, EGH** as Cabinet Secretary for Public Service and Human Capital Development.

(2) **THAT Ms. Stella Soi Lang'at** did NOT demonstrate adequate knowledge of topical, administrative and technical issues touching on the portfolio to which she had been nominated; and lacked the requisite abilities, and qualities to be approved for appointment to the office of Cabinet Secretary for Gender, Culture, The Arts and Heritage.

Having conducted the approval hearing for the nominees pursuant to Article 152(2) of the Constitution, sections 3 and 8 of the Public Appointments

(Parliamentary Approval) Act and Standing Order 204(4) of the National Assembly Standing Orders, the Committee recommends that this House—

- (1) Approves the following nominees for appointment as Cabinet Secretaries for the stated ministerial portfolios in the Cabinet of the Government of Kenya—
- (a) **Hon. (Prof.) Kithure Kindiki, EGH** as Cabinet Secretary for Interior and National Administration;
 - (b) **Dr. Debra Mlongo Barasa** as Cabinet Secretary for Health;
 - (c) **Hon. Alice Wahome, EGH** as Cabinet Secretary for Lands, Public Works, Housing and Urban Development;
 - (d) **Mr. Julius Migos Ogamba** as Cabinet Secretary for Education;
 - (e) **Hon. Roselinda Soipan Tuya, EGH** as Cabinet Secretary for Defence;
 - (f) **Dr. Andrew Mwhia Karanja** - as Cabinet Secretary for Agriculture and Livestock Development;
 - (g) **Hon. Aden Bare Duale, EGH** as Cabinet Secretary for Environment, Climate Change and Forestry;
 - (h) **Mr. Eric Murithi Mugaa** as Cabinet Secretary for Water, Sanitation and Irrigation;
 - (i) **Mr. Davis Chirchir, EGH** as Cabinet Secretary for Roads and Transport;
 - (j) **Dr. Margaret Nyambura Ndung'u** as Cabinet Secretary for Information, Communication and the Digital Economy;
 - (k) **Hon. John Mbadi Ng'ongo, EGH** as Cabinet Secretary for The National Treasury and Economic Planning;
 - (l) **Hon. Salim Mvurya Mgala, EGH** as Cabinet Secretary for Investments, Trade and Industry;
 - (m) **Ms. Rebecca Miano, EGH** as Cabinet Secretary for Tourism and Wildlife;
 - (n) **Hon. James Opiyo Wandayi, EGH** as Cabinet Secretary for Energy and Petroleum;
 - (o) **Hon. Onesimus Kipchumba Murkomen, EGH** as Cabinet Secretary for Youth affairs, Creative Economy and Sports;

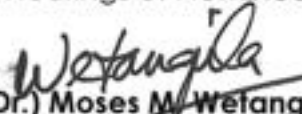
- (p) **Hon. Hassan Ali Joho, EGH** as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs;
- (q) **Hon. (Dr.) Alfred Nganga Mutua, EGH** as Cabinet Secretary for Labour and Social Protection;
- (r) **Hon. Wycliffe Ambetsa Oparanyah, EGH** as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises Development; and
- (s) **Hon. Justin Bedan Muturi, EGH** as Cabinet Secretary for Public Service and Human Capital Development.

(2) Rejects the nomination of **Ms. Stella Soi Lang'at** for appointment as Cabinet Secretary for Gender, Culture, The Arts and Heritage.

May I take this opportunity to acknowledge and appreciate the Honourable Members of the Committee for actively participating in the approval hearings, sitting for long hours including the weekends and making valuable contributions towards the preparation of this Report.

The Committee wishes to thank the Offices of the Speaker and of the Clerk of the National Assembly for the technical support accorded to it during the exercise. I am aware that our technical team spent several nights attending to the call of duty, the result of which is the success of the vetting exercise. The Committee further extends its appreciation to the nominees for their cooperation during the approval hearings. The Committee also appreciates the EACC, HELB, DCI, ORPP, KRA and CUE for providing references and background checks relating to the suitability of the nominees. The Committee notes with appreciation the active participation of the public during every stage of the vetting process. Of special note, is the many members of the public who sent memoranda and actively followed the proceedings and forwarded many insightful comments when the nominees were being vetted.

On behalf of the Committee on Appointments and pursuant to Article 124(4)(b) of the Constitution, section 8(1) of the Public Appointments (Parliamentary Approval) Act and the provisions of Standing Order 199(6) of the National Assembly Standing Orders, it is now my duty and privilege to present to the House the Report of the Committee on Appointments on the Approval Hearings of Nominees for Appointment as Cabinet Secretaries.


Rt. Hon. (Dr.) Moses M. Wetang'ula, EGH, MP
Speaker of the National Assembly/Chairperson, Committee on Appointments

CHAPTER ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

1. Article 124(4)(a) of the Constitution provides that when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the relevant House.
2. The Committee on Appointments is established under Standing Order 204(1). Standing Order 204(4) provides that the Committee on Appointments shall consider, for approval by the House, appointments under Article 152(2) of the Constitution (Cabinet Secretaries).

1.2 Committee Membership

3. The Committee on Appointments was constituted by the House on Wednesday, 12th October, 2022 and comprises of the following Members—

- | | | |
|--|---|---|
| 1) Rt. Hon. (Dr.)Moses Wetang'ula, EGH, MP | - | Speaker of the National Assembly/Chairperson |
| 2) Hon. Gladys J. Boss, MGH, MP | - | Deputy Speaker |
| 3) Hon. Kimani Ichung'wah, EGH, MP | - | Leader of the Majority Party |
| 4) Hon. Opiyo Wandayi, EGH MP | - | Leader of the Minority Party |
| 5) Hon. Owen Baya, CBS MP | - | Deputy Leader of the Majority Party |
| 6) Hon. Robert Mbui, CBS MP | - | Deputy Leader of the Minority Party |
| 7) Hon. Junet Mohamed, CBS, MP | - | Minority whip |
| 8) Hon. Mishi Mboko, CBS, MP | | |
| 9) Hon. Abdul Rahim Dawood, MP | | |
| 10) Hon. David Gikaria, MP | | |
| 11) Hon. David Pkosing, CBS, MP | | |
| 12) Hon. Dido Ali Raso, MP | | |
| 13) Hon. Ferdinand Wanyonyi, MP | | |
| 14) Hon. Stephen Mule, MP | | |
| 15) Hon. Naisula Lesuuda, MP | | |
| 16) Hon. Mary Emaase, MP | | |
| 17) Hon. Abdi Shurie, MP | | |

- 18) Hon. Caleb Amisi, MP
- 19) Hon. George Gitonga Murugara, CBS, MP
- 20) Hon. Nelson Koech, MP
- 21) Hon. Rahab Wachira Mukami, MP

1.3 Committee Secretariat

4. The Committee was supported in the execution of its mandate by a Secretariat comprised of-

- | | | |
|-------------------------|---|---|
| 1. Mr. Nicholas Emejen | - | Deputy Director, Audit, Committees Services |
| 2. Mr. Michael Karuru | - | Deputy Director, Legal Services |
| 3. Ms. Leah Mwaura | - | Principal Clerk Assistant II |
| 4. Dr. Andrew Shangirai | - | Principal Serjeant-at-Arms |
| 5. Mr. David Ngeno | - | Principal Senior Research Officer |
| 6. Mr. Ronald Walala | - | Senior Legal Counsel |
| 7. Ms. Kathleen Nanzala | - | Clerk Assistant III |
| 8. Mr. Collins Mahamba | - | Audio Officer |

CHAPTER TWO

2 BACKGROUND

2.1 Legal Framework

5. Article 152(2) of the Constitution provides for the appointment of Cabinet Secretaries. It stipulates that—

(2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.

6. The Committee was guided by the following provisions of the Constitution and statutes in executing its mandate —

(a) Article 10 of the Constitution on the national values and principles of governance;

(b) Article 73 of the Constitution on responsibilities of leadership;

(c) Article 75 of the Constitution on conduct of State Officers;

(d) Article 77 of the Constitution on restriction on activities of State Officers;

(e) Article 78 of the Constitution on dual citizenship;

(f) Chapter 6 of the Constitution on leadership and integrity;

(g) Article 118 of the Constitution on public participation;

(h) Article 124(4) of the Constitution on consideration of persons for appointment to public office;

(i) Article 232 of the Constitution on values and principles of public service;

(j) The Public Appointments (Parliamentary Approval) Act, Cap 7F;

(k) The Leadership and Integrity Act, Cap. 185C;

(l) The Ethics and Anti-Corruption Commission Act, Cap 7H; and

(m) The Public Officer Ethics Act, Cap. 185B.

2.2 Vacancy in the Offices of Cabinet Secretaries

7. In exercise of his powers in Article 152(5)(b) of the Constitution, H.E the President vide Gazette Notice No. 8440 of 2024 dated 11th July 2024 (Annexure 1) dismissed from office twenty-one (21) persons serving as Cabinet Secretaries therefore rendering the positions vacant. Subsequently, on 22nd July 2024 and 24th July 2024 and pursuant to Article

152(2) of the Constitution, H.E the President nominated twenty (20) persons for appointment as Cabinet Secretaries.

2.3 Notification of Nominations

8. Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, stipulate as follows—

"3. Exercise of powers of appointment

An appointment under the Constitution or any other law for which the approval of Parliament is required shall not be made unless the appointment is approved or deemed to have been approved by Parliament in accordance with this Act.

5. Notification of nomination

(1) An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant House of Parliament accordingly.

(2) A notification under subsection (1) shall be —

(a) in writing;

(b) be lodged with the Clerk of the relevant House of Parliament.

(3) A notification of appointment shall be accompanied by information concerning the nominee, having regard to the issues mentioned in section 7.

(4) For purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (2) and (3)."

9. Pursuant to Article 152(2) of the Constitution as read with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, H.E the President, through the Head of Public Service, forwarded to the Clerk of the National Assembly the following letters —

(a) Letter dated 22nd July 2024 (Annexure 2a) forwarding the names and curricula vitae of the following ten (10) persons nominated for appointment as Cabinet Secretaries:

(i) Hon. (Prof.) Kithure Kindiki, EGH;

(ii) Dr. Debra Mlongo Barasa;

(iii) Hon. Alice Wahome, EGH;

(iv) Mr. Julius Migos Ogamba;

- (v) Hon. Roselinda Soipan Tuya, EGH;
- (vi) Dr. Andrew Mwihia Karanja;
- (vii) Hon. Aden Bare Duale, EGH;
- (viii) Mr. Eric Murithi Mugaa;
- (ix) Mr. Davis Chirchir, EGH; and
- (x) Dr. Margaret Nyambura Ndung'u.

(b) Letter dated 24th July 2024 (*Annexure 2b*) forwarding the names and curricula vitae of the following ten (10) persons nominated for appointment as Cabinet Secretaries:

- (i) Hon. John Mbadi Ng'ongo, EGH;
- (ii) Hon. Salim Mvurya Mgala, EGH;
- (iii) Ms. Rebecca Miano, EGH;
- (iv) Hon. James Opiyo Wandayi, EGH;
- (v) Hon. Onesimus Kipchumba Murkomen, EGH;
- (vi) Hon. Hassan Ali Joho, EGH;
- (vii) Hon. (Dr.) Alfred Nganga Mutua, EGH;
- (viii) Hon. Wycliffe Ambetsa Oparanyah, EGH;
- (ix) Hon. Justin Bedan Muturi, EGH; and
- (x) Ms. Stella Soi Lang'at.

2.4 Notification to the House and Referral to the Committee on Appointments

10. Pursuant to the provisions of Standing Order 42(1), the Speaker, vide Communications No. 004 and 005 of 2024 dated Tuesday 23rd and Wednesday 24th July 2024 (*Annexure 3a and 3b*), conveyed to the House the President's Message on nomination of Cabinet Secretaries for approval by the National Assembly.
11. Pursuant to section 8(1) of the Public Appointments (Parliamentary Approval) Act and Standing Order 204, the names and curricula vitae of the nominees were referred to the Committee on Appointments for approval hearings and reporting to the House within twenty-eight (28) days.

2.5 Notification to the Public

12. Article 118 of the Constitution provides that Parliament shall facilitate public participation and involvement in the legislative business and other business of Parliament and its Committees.
13. Section 6(4) of the Public Appointments (Parliamentary Approval) Act provides that the Clerk shall notify the public of the time and place for holding an approval hearing at least seven (7) days prior to the hearing. Consequently, and in accordance with Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act and Standing Order 45(3) of the National Assembly Standing Orders, the Clerk of the National Assembly placed an advertisement in the print media and Parliament website on Thursday 25th July, 2024 (*Annexure 4*) notifying the public that the approval hearings of the nominees would be conducted from 1st to 4th August, 2024.

2.6 Notification to the Nominees

14. The Clerk of the National Assembly vide letters dated 24th July 2024 and 25th July, 2024 (*Annexures 5a and 5b*) invited the nominees for the approval hearings in accordance with section 6(3) of the Public Appointments (Parliamentary Approval) Act.

2.7 Clearance and Compliance Requirements

15. The Clerk of the National Assembly vide letters dated 23rd July, 2024 and 24th July, 2024 wrote to the Ethics and Anti- Corruption Commission (EACC), Higher Education Loans (HELB), Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP), Kenya Revenue Authority (KRA) and Commission for University Education (CUE) (*Annexure 6a and 6b*) requesting for reports with respect to the nominees on the following matters—
 - (a) EACC on ethics and integrity;
 - (b) HELB on higher education loan repayments;
 - (c) DCI on criminal records;
 - (d) ORPP on holding office in political parties;
 - (e) KRA on tax compliance; and
 - (f) CUE on recognition and equation of academic certificates.
16. On matters of ethics and integrity, the EACC vide letters dated 26th and 29th July 2024 responded and stated that the Commission had not

undertaken any investigation or recommended prosecution pursuant to its mandate against the following nineteen (19) nominees—

- (1) Hon. (Prof.) Kithure Kindiki, EGH;
- (2) Dr. Debra Mlongo Barasa;
- (3) Hon. Alice Wahome, EGH;
- (4) Mr. Julius Migos Ogamba;
- (5) Hon. Roselinda Soipan Tuya, EGH;
- (6) Dr. Andrew Mwihia Karanja;
- (7) Hon. Aden Bare Duale, EGH;
- (8) Mr. Eric Murithi Mugaa;
- (9) Mr. Davis Chirchir, EGH;
- (10) Dr. Margaret Nyambura Ndung'u;
- (11) Hon. John Mbadi Ng'ongo, EGH;
- (12) Hon. Salim Mvurya Mgala, EGH;
- (13) Ms. Rebecca Miano, EGH;
- (14) Hon. James Opiyo Wandayi;
- (15) Hon. Onesimus Kipchumba Murkomen, EGH;
- (16) Hon. Hassan Ali Joho, EGH;
- (17) Hon. (Dr.) Alfred Nganga Mutua, EGH;
- (18) Hon. Justin Bedan Muturi, EGH; and
- (19) Ms. Stella Soi Lang'at.

17. However, with regard to Hon. Wycliffe Ambetsa Oparanyah, EGH, the nominee for appointment as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development, the Commission informed the Committee as follows—

- (a) That the Commission conducted an investigation on allegations of corruption against the nominee for offences committed during his stint as the Governor, County Government of Kakamega.
- (b) Upon the conclusion of the investigation, the Commission submitted a Report to the Director of Public Prosecutions (DPP) recommending prosecution of the nominee on various charges including of conspiracy to commit an offence of corruption, conflict of interest, abuse of office and money laundering.

- (c) The nominee obtained a conservatory order staying any arrest or prosecution based on information obtained by the Commission pursuant to investigate warrants granted to the Commission. The conservatory order was issued by the High Court in Kakamega *Constitutional and Human Rights Petition No. E019 of 2023 (Wycliffe Ambetsa Oparanyah vs EACC and 3 Others)*. The matter is pending in court.
- (d) That the Commission also filed an application for preservation orders against assets of the nominee, where he is suspected to be in possession of proceeds of corruption arising from the conflict of interest. The Commission has obtained orders preserving money Kshs. 28,900,000; through Nairobi High Court *Anti-Corruption and Economic Crimes Court Miscellaneous Application No. E040 of 2023 (EACC vs Wycliffe Ambetsa Oparanyah & 3 Others)*. The matter is pending in court.
18. In relation to higher education loan repayments, HELB responded vide letters dated 29th July, 2024 and 31st July, 2024 and stated that the following nominees had cleared their higher education loans on various dates:
- (1) Hon. (Prof.) Kithure Kindiki, EGH;
 - (2) Hon. Alice Wahome, EGH;
 - (3) Mr. Julius Migos Ogamba;
 - (4) Dr. Andrew Mwhia Karanja;
 - (5) Hon. Aden Bare Duale, EGH;
 - (6) Dr. Margaret Nyambura Ndung'u;
 - (7) Hon. John Mbadi Ng'ongo, EGH;
 - (8) Hon. Salim Mvurya Mgala, EGH;
 - (9) Ms. Rebecca Miano, EGH;
 - (10) Hon. James Opiyo Wandayi, EGH;
 - (11) Hon. Onesimus Kipchumba Murkomen, EGH;
 - (12) Ms. Stella Soi Lang'at; and
 - (13) Hon. Wycliffe Ambetsa Oparanyah, EGH.
19. The Higher Education Loans Board further stated that the following nominees were not beneficiaries of the higher education loans:
- (1) Dr. Debra Mlongo Barasa;

- (2) Hon. Roselinda Soipan Tuya, EGH;
 - (3) Mr. Davis Chirchir, EGH;
 - (4) Hon. Hassan Ali Joho, EGH;
 - (5) Hon. (Dr.) Alfred Nganga Mutua, EGH; and
 - (6) Hon. Justin Bedan Muturi, EGH.
20. Additionally, the Higher Education Loans Board stated that Mr. Eric Murithi Mugaa, the nominee for appointment as Cabinet Secretary for Water, Sanitation and Irrigation was a loanee and compliant. (Annexure 7)
21. The DCI vide a letter dated 26th July 2024 and two letters dated 31st July 2024 wrote back and advised that forensic fingerprint analysis of all the nominees had been conducted and that the criminal database had not revealed any previous records. (Annexure 8a, 8b and 8c)
22. On whether the nominees hold offices within political parties, the ORPP vide letters dated 29th July 2024 and 31st July 2024 wrote back and stated that pursuant to Article 77 (2) of the Constitution and according to the records held by the Office as at 29th July 2024, all the twenty (20) nominees were not officials of any registered political party in Kenya: (Annexure 9a and 9b)
23. With regard to the request for the tax compliance status for the nominees, KRA vide two letters dated 31st July 2024, indicated that all twenty (20) nominees were compliant. (Annexure 10a and 10b)

2.8 Criteria for Consideration During the Approval Hearings

24. Section 6(7) and (8) of the Public Appointments (Parliamentary Approval) Act provides that:
- (7) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.*
 - (8) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate."*
25. Additionally, section 7 of the Act provides that the issues for consideration by the relevant House of Parliament in relation to any nomination shall be—
- (a) the procedure used to arrive at the nominee;*
 - (b) any constitutional or statutory requirements relating to the office in question; and*
 - (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.*

26. While conducting the approval hearings, the Committee was guided by the provisions of sections 6(7), 6(8) and 7 of the Public Appointments (Parliamentary Approval) Act.

2.9 Procedure for Nomination

27. Article 152(2) of the Constitution confers upon the President the power to appoint Cabinet Secretaries with the approval of the National Assembly.

28. Section 5(1) of the Public Appointments (Parliamentary Approval) Act further requires the appointing authority, upon nominating a person for appointment, to notify the relevant House of Parliament.

29. To this end, H. E. the President notified the National Assembly of the nomination of twenty (20) persons for appointment as Cabinet Secretaries

2.10 Constitutional and Statutory Requirements

30. The Committee was guided by the following provisions of law on the requirements for appointment to the State offices:

(i) Two-Thirds Gender Rule

31. Article 27(8) of the Constitution provides that the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

(ii) Representation of Regional and Ethnic Diversity

32. Article 130(2) of the Constitution provides that the composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

(iii) Leadership and Integrity

33. The Committee, in determining the suitability of the nominees, was also guided by the provisions on leadership and integrity as outlined under Chapter Six of the Constitution. In particular, Article 73(2) of the Constitution provides that the guiding principles of leadership and integrity include –

- a) *selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*
- b) *objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;*

- c) *selfless service based solely on the public interest, demonstrated by*
 -
 - i) *honesty in the execution of public duties; and*
 - ii) *the declaration of any personal interest that may conflict with public duties.*
 - d) *accountability to the public for decisions and actions; and*
 - e) *discipline and commitment in service to the people.*
34. Article 75 of the Constitution requires a State Officer, whether in public or private life to behave in a manner that avoids conflict between personal interest and public official duties. This Article further prohibits a State officer who has been removed from office under it from holding any other State office.
35. Article 77(1) of the Constitution prohibits a full time State officer from participating in any other gainful employment.
36. Article 77(2) of the Constitution prohibits an appointed State officer from holding office in a political party.
37. Article 78 of the Constitution disqualifies persons who are not Kenyan Citizens from appointment as State Officers. Further, a State Officer is Bared from holding dual citizenship.
38. In addition, the Committee considered section 10 of the Leadership and Integrity Act, Cap 185C which provides that—
- "A State officer shall, to the best of their ability—*
- (a) carry out the duties of the office efficiently and honestly;*
 - (b) carry out the duties in a transparent and accountable manner;*
 - (c) keep accurate records and documents relating to the functions of the office; and*
 - (d) report truthfully on all matters of the organization which they represent."*

2.11 Suitability of the Nominees for the Proposed Appointment

39. The suitability of the nominees was assessed after scrutiny of the nominees' academic credentials, professional training and experience, personal integrity, background and qualities as well as their performance during the approval hearings conducted from 1st to 4th August, 2024.

CHAPTER THREE

3 MEMORANDA FROM THE PUBLIC ON THE SUITABILITY OF NOMINEES

40. Article 118 of the Constitution provides that Parliament shall facilitate public participation and involvement in the legislative business and other business of Parliament and its Committees
41. Section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that *"any person may, prior to the approval hearing, and by **written statement on oath**, provide the Clerk **with evidence contesting the suitability of a candidate** to hold office to which the candidate has been nominated"*.
42. Pursuant to Article 118 of the Constitution as read with section 6(9) of Public Appointments (Parliamentary Approval) Act, the Clerk of the National Assembly placed two advertisements in the print media on 24th and 25th July 2024 inviting the public to submit memoranda by way of a written statement on oath (affidavit) on the suitability or otherwise of the nominees in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act.
43. The advertisement indicated that the submissions were to be received by 31st July and 1st August 2024 at 5.00 pm, respectively. At the close of the submission deadlines, the Committee had **received 123 hand delivered memoranda and 714 memoranda vide email** for or against the suitability of the nominee totalling to **837 memoranda**. Out of these **181 memoranda** complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.
44. Further, out of the 656 memoranda, some of the memoranda although in the form of affidavits, were submitted in support of the nominees and not contesting the suitability of the nominees as required by section 6(9) of the Public Appointments (Parliamentary Approval) Act hence inadmissible. Section 6(9) of the Act requires the written sworn statements to contain evidence contesting the suitability of a candidate to hold office to which the candidate has been nominated and not in support of a candidate.
45. The Committee received affidavits contesting the suitability of the nominees on the following grounds—
- (a) dismissal from Cabinet by the President vide Gazette Notice 8440 of 2024;
 - (b) allegations of corruption and abuse of power;
 - (c) the President appointing persons from the minority party;

- (d) the list of nominees did not comply with the two-thirds gender principle;
- (e) the list of nominees did not reflect representation from special interest groups;
- (f) integrity issues and alleged violation of Chapter Six of the Constitution; and
- (g) alleged violation of Articles 103(1)(e) and 194(1)(e) of the Constitution.

46. The following is the analysis of the 181 memoranda received by the Committee from the public which met the requirements of section 6(9) of the Act—

3.1 Affidavits Contesting Suitability of Nominees on the Basis of Dismissal from Cabinet by the President

47. The Committee received affidavits contesting the suitability of ten (10) nominees namely **Hon. (Prof.) Kithure Kindiki, Hon. Alice Wahome, EGH, Hon. Aden Bare Duale, EGH, Hon. Roselinda Soipan Tuyu, EGH, Mr. Davis Chirchir, EGH, Hon. Salim Mvurya, Ms. Rebecca Miano, Hon. Kipchumba Murkomen, Hon. Alfred Mutua and Hon. Justin Muturi** from the following one hundred and sixty-three (163) persons—

- | | |
|-------------------------------|---------------------------------------|
| 1. Eliud Karanja Matindi | 22. Michelle Khisa |
| 2. Frida Karani | 23. Diane Gaciku Meria |
| 3. Phoebe Nyokabi Thambu | 24. Eric Maina Chege |
| 4. Achar Sammy Omondi | 25. Gladys Nyambura Gatuha |
| 5. Elijah Mwangi Wachira | 26. Florence Wanjiru Maina |
| 6. Doreen Adhiambo Onyango | 27. Elizabeth Mugure Kinuthia |
| 7. Japheth Hope Abuya | 28. Evans Maina Chege |
| 8. Victor Ombonya | 29. Esther Wangeci Wachira |
| 9. Anne Waituika | 30. Allan Amdany Chebon |
| 10. Margaret Wachera Wanjau | 31. Charles Mbarire Wachira |
| 11. Abdi Rashid Ibrahim | 32. Michelle Njoki Gichuru |
| 12. Marianne Njeri Gitau | 33. James Shisiah |
| 13. Munene Brian M | 34. Tania Wacuka |
| 14. Mark W. Maina | 35. Warren Mageto Otachi |
| 15. Purity Nyawira Wanjohi | 36. Sophie Kinya |
| 16. Joyce Ida Wangui | 37. Aisha Abdallah Kibwana |
| 17. Peter Chiira Maina | 38. Myra Amogola |
| 18. Stephen Muhugu Thaidu | 39. Vincent Frankline Odhiambo Obonyo |
| 19. Agnes Wanjiru Njoroge | 40. Brian Mwangangi |
| 20. Brenda Cindy Wedube Onalo | 41. Immanuel Ochieng |
| 21. Linet Wanjira Gathuka | |

42. Sabina Njeri
43. Jewel Karungari Ndungu
(Bunge la Magut)
44. Nixon Kebiego Nyambati
45. Sarah Wambui
46. Winnie Njeri Rumui
47. Paul Kiplagat Chemonges
48. Mbugua Muiruri
49. Linda Ferdinand Chami
50. Eluid Rogoncho Mogesa
51. Cormac Ajwang Ramogi
52. Bernard Nyongesa Wambulua
53. Zipporah Mueni Kioko
54. Caroline Wangechi
55. Muhammaddin Sirrow Adan
56. Susan Naliaka
57. Caroline Wangui Njue
58. Ian Simba Morangi
59. Lynnette Waruguru Mwangi
60. Bonface Ndungu Mugucha
61. Canaan Sally Otuka
62. Diana Njeri Kirigo
63. Flavia Bosire
64. Nyaemo Loise Nyoteyo
Rehema
65. Anita Njambi Mwangi
66. Purity Wanjiku
67. Katherine Apisi Mungau
68. Everlyn Ombasa Mungau
69. Angela Atieno Ngesa
70. George Munga Kariuki
71. Kioi Ndungu
72. Michael Kimemia Kamau
73. Margaret Wambui Waweru
74. Filbert Castii Chami
75. Antony Nduati Ndibui
76. Diane Njeri Kiribo
77. Griffin Oganda Onyimbo
78. Donald Kiprono Kiplagat
79. Leonard Keya Simiyu
80. Benjamin Ndungu
81. Edwina Nekoye Makokha
82. Becky V.A Genga
83. Mary Wambui Murimi
84. Anthony Kiprono Sogomo
85. Brian Mutahi Ngaruiya
86. Elvis Muema Kimeu
87. Robert Gitu Njuguna
88. Wambui Kibore
89. Barbara Wangui Nganga
90. Michelle Mumbi Kairo
91. Paul Oketch
92. Brian Ochieng
93. Miano Elvis Gichohi
94. Carol Gathigia Warui
95. Mercy Wendy Kimakwa
96. Kibe Nduni
97. Kevin Kimani
98. Eva Gatwiri Bundi
99. Susan Justine Opwanda
100. Caroline Wanjiru Kimani
101. Pauline Esther Wangari
Ng'ang'a
102. Kelvin Maina Kamau
103. Evyone Kiriimi
104. Joyous Mbuthia
105. Anne Mwendu Mutulu
106. Doreen Nyaguthii Chege
107. Angela Wanjiku Wamai
108. Eugene Kipkorir Langat
109. Wangui Muthaka
110. Faith Karimi Mbogo
111. Susan Wakio Mbogo
112. Irene Nyamolo Abagi
113. Salma Khamala
114. Wendy Chepkorir Sigey
115. Paul Kariuki Maingi
116. Mary Wambui Wamaitha
117. Joyce Wanjiku Ngugi
118. Nelius Waruguru Wangari
119. Jacqueline Kubania
120. Laura Rono

121. Kenneth S. Kibet
122. Florence Caroline Naomi Wangui Kamonji
123. Caroline V. Muthoni Nyaga
124. Amina Ali Darani
125. Victor Njenga Mary
126. Jackson Kabithi Ngei
127. Sandra Adikinyi Bwire
128. Wairimu Gathimba
129. Nelson Mbithi
130. Louise Barbara Waruguru
131. Lydia Muthoni Gituru
132. James Mbugua Njenga
133. Elsie Diana Masitsa Magoi
134. Isaiah Iraya
135. Alfred Mukoko Muchilwa
136. William Omari William
137. Petra Muriuki Wairimu
138. Stella Wangari Maina
139. Evans Mbuthia Njuguna
140. Maurice Agireh Gayah
141. George Ngathu Nganga
142. Faith Catherine Aketch
143. Tessa Lulia
144. Jackton Ondicho
145. Lynnette Waruguru Mwangi
146. Christine Wanjiru
147. Nicole Wambui Githiri
148. Khalid Ibrahim (withdrawn)
149. Aisha Adan
150. Sonia Mshila
151. Mercy Murugi Kuria
152. Ahmed M. Sigat
153. Antony Gitau Murumba
154. Victor Muiya
155. Agnes Mathai
156. Sheila Masinde
157. Eric Ochieng Oloo
158. Benson Wanjohi Njoroge
159. Paul Onyango Opondo
160. Peter Kioni
161. Mathare Sub-County Community Health Workers Organization (MSCHWO)
162. Ernest Muguku Muriu
163. Joseph Mwathi c/o Kilele Youth Organization

48. The deponents contested the suitability of the nominees based on grounds that —

(a) in a statement dated 11th July, 2024 issued at State House, Nairobi, H. E. the President announced that he had dismissed all Cabinet Secretaries and the Attorney-General from the Cabinet including the aforementioned ten (10) nominees save for the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs;

(b) the dismissal of the above-named persons was confirmed vide Executive Order No. 6 of 2024 dated 11th July, 2024 and published as Kenya Gazette Notice No. 8440 of 2024 on 12th July, 2024; and

(c) the President could not subsequently, lawfully nominate any of the persons he had dismissed as Cabinet Secretaries on 11th July, 2024 including the above-named nominees.

49. The affidavits cited as evidence the following documents—

(a) the Statement by H.E. the President on the Changes in the National Government Executive dated 11th July, 2024; and

(b) Gazette Notice No. 8440 of 2024 dated 12th July, 2024 on the re-organization of the Government of Kenya.

Observations

50. The Committee made the following observations—

(a) The affidavits complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act and were similar in wording.

(b) The Affidavit by Khalid Ibrahim was withdrawn vide Notice of Withdrawal dated 24th July, 2024.

3.2 Affidavits Contesting Suitability of Nominees on the Basis of Appointment of Persons from the Minority Party

51. The Committee noted that some of the deponents mentioned in the afore-mentioned list of deponents (numbers 1 to 97) and in the **Affidavit of Agnes Mathai**, further contested the suitability of four (4) nominees namely **Hon. John Mbadi, Hon. Opiyo Wandayi, Hon. Hassan Joho and Hon. Wycliffe Oparanyah** on the grounds that—

(a) the four (4) nominees were members of and are affiliated to the Orange Democratic Movement (ODM) and H. E. the President could not lawfully nominate persons associated with and who were/have been members of political parties or coalition of rival political parties in opposition to the President's party for appointment as members of the

national executive of the Republic which he heads as this destroys multi-party democracy;

(b) approval of **Hon. Opiyo Wandayi** was a threat to Article 201 of the Constitution and did not safeguard public money as the nominee would have to resign as a member of the National Assembly which would occasion a by-election causing unnecessary expenditure of the scarce public resources;

(c) **Hon. Wycliffe Oparanyah** was currently the subject of ongoing criminal investigations and prosecutions by the Ethics and Anti-Corruption Commission (EACC) for offences allegedly committed during his tenure as the Governor of Kakamega County and that the EACC received a notification from the Office of the Director of Public Prosecutions (ODPP) concurring with its recommendation that the nominee should be charged for the alleged offences.

(d) The affidavits cited as evidence the excerpts from *Gazette Notice* No. 2089 dated 23rd February, 2024 on EACC's notification of investigations against Hon. Wycliffe Oparanyah for alleged corruption and money laundering.

Observation

52. The Committee observed that the Affidavits by the deponents were written statements on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.3 Affidavits Contesting the Suitability of Nominees on the Basis of Lack of Representation by Special Interest Groups in the Composition of the Proposed Cabinet

53. The Committee received affidavits that contested the appointment of ten (10) nominees namely **Hon. (Prof.) Kithure Kindiki, Hon. Alice Wahome, EGH, Hon. Aden Bare Duale, EGH, Hon. Roselinda Soipan Tuya, EGH, Mr. Davis Chirchir, EGH, Hon. Salim Mvurya, Ms. Rebecca Miano, Hon. Kipchumba Murkomen, Hon. Alfred Mutua and Hon. Justin Muturi** based on the ground that the nomination of all nominees did not comply with Article 27(8) of the Constitution which provides that not more than two thirds of members of appointive bodies shall be of the same gender.

54. The affidavits were received from the following deponents—

- | | |
|----------------------------|---------------------------|
| 1. Eva Gatwiri Bundi | 4. Pauline Esther Wangari |
| 2. Susan Justine Opwanda | Ng'ang'a |
| 3. Caroline Wanjiru Kimani | 5. Kelvin Maina Kamau |
| | 6. Evyone Kirimi |

7. Joyous Mbutia
8. Anne Mwendu Mutulu
9. Doreen Nyaguthii Chege
10. Angela Wanjiku Wamai
11. Eugene Kipkorir Langat
12. Wangui Muthaka
13. Faith Karimi Mbogo
14. Susan Wakio Mbogo
15. Irene Nyamolo Abagi
16. Salma Khamala
17. Wendy Chepkorir Sigey
18. Paul Kariuki Maingi
19. Mary Wambui Wamaitha
20. Joyce Wanjiku Ngugi
21. Nelius Waruguru Wangari
22. Jacqueline Kubania
23. Laura Rono
24. Kenneth S. Kibet
25. Florence Caroline Naomi
Wangui Kamonji
26. Caroline V. Muthoni Nyaga
27. Amina Ali Darani
28. Victor Njenga Mary
29. Sandra Adikinyi Bwire
30. Wairimu Gathimba
31. Nelson Mbithi
32. Louise Barbara Waruguru
33. Lydia Muthoni Gituru
34. James Mbugua Njenga
35. Elsie Diana Masitsa Magoi
36. Isaiah Iraya
37. Alfred Mukoko Muchilwa
38. William Omari William
39. Petra Muriuki Wairimu
40. Stella Wangari Maina
41. Evans Mbutia Njuguna
42. Maurice Agireh Gayah
43. George Ngathu Nganga
44. Faith Catherine Aketch
45. Tessy Lulia
46. Jackton Ondicho
47. Lynnette Waruguru Mwangi
48. Christine Wanjiru
49. Nicole Wambui Githiri
50. Jackson Kabithi Ngei

55. Further, the affidavit by Kesho Kioko contested the appointment of all the nominees on the grounds that—

- (a) the current nominations consisted of fifteen male and six female candidates respectively which in addition to His Excellency the President and the Deputy President amounted to seventeen males and six females in the Cabinet. This composition did not comply with Article 27(8) of the Constitution which stipulates that not more than two thirds of the members of an appointive body should be of the same gender;
- (b) there was no representation of persons with disabilities amongst the nominees as stipulated under Article 54(2);
- (c) in order to comply with the constitutional requirements, the remaining nominations of the Attorney-General and one more Cabinet Secretary should be women and include persons with disabilities.

Observation:

56. The Committee observed that the affidavits by the deponents were written statements on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.4 Affidavits Contesting Suitability of Nominees on the Basis of Alleged Violation of Articles 103(1)(e) and 194(1)(e) of the Constitution

57. The Committee received an affidavit from **Isaac Alvochier (an FCI Arb Arbitrator)** that contested the suitability of six (6) nominees namely:

- (a) **Hon. Alice Wahome, Hon. Aden Duale, Hon. Onesimus Murkomen and Hon. Justin Muturi** on the grounds that the nominees through an arbitration award delivered by the deponent, had been found to have continued to occupy office after their offices became vacant pursuant to Article 103(1)(e) of the Constitution and as such they had committed a crime under national law;
- (b) **Hon. Roselinda Tuya and Hon. Kithure Kindiki** on the grounds that, although not respondents in the arbitration, they had continued to occupy office after their offices became vacant under the operation of Article 103(1)(e) during the 2017- 2022 term of Parliament; and
- (c) **Hon. Justin Muturi** on the grounds that, as the Speaker of the National Assembly, he failed to give written notices to the Independent Electoral and Boundaries Commission within twenty-one days of legislative office vacancies occurring.

58. The arbitration award was delivered on 21st July, 2024 by Isaac Aluochier, the Arbitrator, who found that—

- (a) During the 2017-2022 term of Parliament, the nominees were among the Non-speaker Members of legislative assemblies who changed political parties.
- (b) the offices in the appropriate legislative assemblies that the non-Speaker Respondents were elected to automatically became vacant upon their change of political party membership status, pursuant to Articles 103(1)(e) and 194(1)(e) of the Constitution.
- (c) the non-Speaker Respondents unlawfully remained in occupation of office following such automatic vacancy.
- (d) the non-Speaker Respondents unlawfully received salaries and other remuneration during their periods of unlawful occupation of office.
- (e) the non-Speaker Respondents, following vacancies that arose in offices on account of their change in political party membership status, contravened Article 74 of the Constitution by assuming the vacant offices and performing the functions of office without having first taken or subscribed to the oath or affirmation of office.
- (f) the non-Speaker Respondents failed to satisfy, during their periods of unlawful occupation of office, moral and ethical requirements prescribed by the Constitution or an Act of Parliament, pursuant to Articles 99(1)(b) and 193(1)(b) of the Constitution, and subsequently contravened sections 12A and 13 of the Leadership and Integrity Act, 2012.
- (g) the Speakers of the various legislative assemblies who failed to give written notices to the Independent Electoral and Boundaries Commission within twenty-one days of legislative office vacancies occurring share jointly and severally with the non -Speaker Respondents in compensating the public for the unlawful salaries and other remuneration received by the non-Speaker Respondents.

Observation

59. The Committee observed that the affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.5 Affidavit by Esborn Kariuki

60. Esborn Kariuki contested the appointment of **Prof. Kithure Kindiki, EGH** on the grounds that the nominee lacked capacity to serve as the Cabinet

Secretary in charge of Interior and National Administration, due to the loss of public confidence, inefficiency, ineffectiveness, lack of transparency and accountability which had occasioned his dismissal from Cabinet.

Observation

61. The Committee observed that the affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.6 Statement on Oath by Joshua Abaki on Behalf of Kenyans in Canada Movement

62. The Kenyans in Canada Movement contested the appointment of **Prof. Kithure Kindiki, EGH** on the grounds that the killing of peaceful protestors by police raised questions about the nominee's competence and commitment to his responsibilities as a Cabinet Secretary.

Observation

63. The statement by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.7 Affidavit by Jackson K. Mathenge

64. **Jackson K. Mathenge** contested the appointment of **Prof. Kithure Kindiki, EGH** based on the allegations of abuse of power. The deponent averred in his affidavit that the OCS of Magutuini Police Station, acting under the instructions of the nominee, had evicted him from their parcel of land.

Observation

65. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.8 Affidavit by Collins Kipkemol Sang

66. Collins Kipkemol Sang contested the suitability of **Hon. Kipchumba Murkomen** on the grounds that—
- (a) the nominee had been accused of receiving Kshs. 15 million from Out of the Box Solutions through his law firm, Sing'oei, Murkomen and Sigei Advocates;
 - (b) the nominee had been accused of accepting a bribe of USD 100 million from Chinese contractors;

- (c) the nominee had been arrested for money laundering in Dubai;
 - (d) there existed a video of the nominee threatening other leaders during his tenure as the Cabinet Secretary for Roads and Transport stating that he was the Cabinet Secretary and that he was going nowhere and that all leaders must submit to him to secure development in their areas; and
 - (e) the nominee was widely perceived by the Kenya public as being arrogant and opulent at the expense of taxpayers, which he also admitted in an interview; and
67. The deponent attached video evidence to support the allegation of the nominee's arrogance and display of opulence.

Observation

68. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.9 Affidavit by Robbin Murimi Karani

69. Robbin Murimi Karani in his email contested the suitability of **Hon. Kipchumba Murkomen** stating that—
- (a) the nominee had been accused of receiving Kshs. 15 million from Out of the Box solutions during his tenure as the Senator of Elgeyo Marakwet County through his law firm Sing'oei, Murkomen and Sigei Advocates. Out of Box solutions had been accused of having received millions through the fraudulent National Youth Service contracts;
 - (b) there were reports that the nominee was arrested in Dubai for money laundering to the tune of Kshs. 280 million;
 - (c) The Nandi Senator Samson Cherargei had also accused the nominee of collecting a Kshs. 15.3 billion bribe from a Chinese company, China Wu Yi in 2023. Robbin Murimi Karani stated that if the allegations were true, they would amount to a violation of the Anti-corruption and Economic Crimes Act, (Cap. 65) regarding allegations of bribery and money laundering, the Leadership and Integrity Act, (Cap. 185C) and Article 10 of the Constitution on national values and principles of governance;
 - (d) during the nominee's tenure as the Cabinet Secretary for Roads and Transport, the Kenya Airport Authority (KAA) that falls within the ambit of the Ministry of Roads and Transport had a deliberate but concealed

Concession Proposal to cede part of the Jomo Kenyatta International Airport to Adani Holding Limited, an Indian Company without subjecting the concession plan through the due process of the law;

- (e) the construction of Kerenga Airstrip stalled despite the Kshs. 55.4 million that had been used and the residents of Kericho county were yet to realize value for the public funds used;
- (f) the Committee on Approvals should probe the tender and company awarded to the Security Management for the Kenya Railways cooperation and ascertain whether there exists a conflict of interest;
- (g) the nominee's character did not augur well with the edicts and leitmotifs of the Constitution on values and principles of public service;
- (h) the nominee publicly displayed arrogance, disdain and a boastful character.

70. The affidavit was made in support of the deponent's submissions to the effect that the nominee should not be approved to hold a constitutional office within the republic of Kenya.

71. The deponent cited the several articles and video clips as evidence in support of his Affidavit.

Observation

72. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.10 Affidavit by Grace Muriuki

73. Grace Muriuki contested the appointment of Hon. Alice Wahome on the grounds that—

- (i) the deponent was the director and shareholder of Landmarc Medical Laboratories, while the nominee was the majority shareholder and director of the Woman's Clinic Medical Centre Limited;
- (ii) for a period of over six years, Landmarc Medical Laboratories had an agreement with the Woman's Clinic Medical Centre Limited where, the former provided laboratory services and the two companies split revenues received minus expenses at a ratio of 30% for the deponent's company and 70% for the nominee's company;
- (iii) from the year 2010-2015, the nominee's company was paid Kshs. 14 million however the company refused to hand over the deponent's share and as such drove the deponent out of business;

(iv) even though Landmarc Medical laboratories was the deponent's brainchild, the nominee's firm registered it and the deponent was in the process made to include the husband of the nominee as a co-director so that the Nominee and her husband could take full control of the deponent's company and through the machinations of the law make it difficult for the deponent to access the courts when the nominee and her husband shortchange her as she could not obtain the Board consent to pursue legal proceedings on behalf of her company; and

(v) the nominee is therefore not an individual who can be trusted in financial and contractual dealings in light of her actions

Observations

74. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act. The affidavit contesting the suitability of the nominee was submitted on 1st August 2024, beyond the deadline for submission of memoranda in respect of the nominee.

3.11 Affidavit by Munira Ali Omar on Behalf of Haki Yetu Organization

75. The Haki Yetu Organisation contested the appointment of **Hon. Ali Hassan Joho** on the grounds that—

- (a) the nominee failed to meet the standards and principles of Chapter Six of the Constitution during his tenure as Governor of Mombasa;
- (b) there was an increase of youth gangs, drugs menace and high insecurity, wastage of public resources and misappropriation of funds during the nominee's tenure as governor of Mombasa; and
- (c) the nominee did not comply with the rule of law and therefore failed to meet the requirements of the provisions of Chapter Six of the Constitution.

Observation

76. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.12 Statement on Oath by Karanja Murai on Behalf of the Peoples Movement for Human Rights

77. Karanja Murai contested the appointment of **Hon. Ali Hassan Joho** on the grounds that—

- (a) in 2010, the then Internal Security Minister, the late Prof. George Saitoti tabled a list of suspected drug traffickers in Parliament, containing the names of four Members of Parliament including the nominee;
- (b) a dossier by the US Embassy-Kenya stated that the Kenya Anti-Narcotic Unit suspected that the nominee was involved in the narcotics trade. According to this dossier, the nominee who was elected as a Member of Parliament in 2007 together with his allies were connected with drug trafficking. The report also implicated the nominee and his brother Abubakar Joho among the dangerous drug traffickers in the country and noted that the two were in charge of a multi-million-dollar drug trafficking empire; and
- (c) as per the US Embassy report of December 2004, the nominee's brother Abubakar Joho was the clearing agent while the nominee was acting as his assistant and business partner for containers that held 1.1 tonnes of cocaine in 2004 which were seized in the country having been brought in a vessel docked at the Mombasa port.

Observation

78. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.13 Affidavit by Kamau James Njendu

79. Kamau James Njendu, an architect residing and working in Mombasa County, contested the appointment of **Hon. Ali Hassan Joho** on the grounds that—
- (a) the deponent, was the registered proprietor of Plot Numbers 8005/I/MN, 8006/I/MN, 8007/I/MN, 8008/I/MN, 8009/I/MN and 8010/I/MN which were situated in Kisauni Constituency and that on 6th September 2011, he submitted an application to the then Municipal Council of Mombasa for permission for the development of a boundary wall on the said plots and the same was approved by the Director of Town Planning, County Government of Mombasa;
 - (b) on 23rd September, 2011, the nominee who was then the Member of Parliament for Kisauni Constituency, in total disregard of the right to own private property enshrined under the Constitution of Kenya, maliciously incited a crowd of goons and advised them to demolish the deponent's perimeter wall which was at its final stages of construction; and

(c) the nominee did not meet the requirements of a state officer as provided under Chapter Six of the Constitution as he had no regard for private property.

80. The affidavit cited as evidence—

(a) a letter from Kiarie Kariuki and Company Advocates on the settlement of Mombasa HCCC No. 57 of 2012;

(b) a cheque of Kshs. 450,000 from Kiarie Kariuki and Company Advocates to the deponent;

(c) the notification of approval of the application of the permission of development from the County Government of Mombasa;

(d) a statement by the deponent; and

(e) a copy of a notice of substituted service in Civil Suit No. 57 of 2012.

Observation

81. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.14 Affidavit by Caleb Ngwena on Behalf of Genesis for Human Rights Commission

82. Caleb Ngwena contested the appointment of **Hon. Ali Hassan Joho** on the grounds that:

(a) while in office as the Governor of Mombasa County, the nominee's administration awarded a tender for the construction of a county stadium at a cost of Kshs. 1.8 billion.

(b) In a report by the Auditor-General for the financial year that ended June 2023, the county stadium was yet to be completed despite the construction beginning in 2018. An inspection conducted by the Auditor-General showed that the project had stalled and that the contractor was not on the site. Consequently, the Auditor-General could not ascertain the value for money of the expenditure incurred on the proposed development of the sports complex and this could therefore risk cost escalation and project termination.

(c) the Auditor-General had queried the misappropriation of Kshs.1 billion by the nominee's regime in the county garbage tendering procurement, which the nominee's relatives are believed to be the beneficiaries of that irregular award;

- (d) the nominee irregularly allocated the contract for garbage collection through single sourcing and the company which was associated with his relative received Kshs. 300 million annually;
- (e) despite the request by the EACC for the county government of Mombasa to furnish defectives with the list of tenders awarded and to which firms, no information has been obtained in that regard; and
- (f) the nominee had a questionable educational background as he was purported to have been schooled in Tom Mboya Primary School on or about 1989. However, there are no clear records in school on when he was enrolled nor documents relating to the year when he sat for his Kenya Certificate of Primary Education examination as well as the grades that he obtained including his school completion certificate.

Observation

83. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act. The statement was however not supported by evidence.

3.15 Affidavit by David Ogega Ochwangi

84. David Ogega Ochwangi contested the appointment of **Mr. Ogamba Julius Migos** on the grounds that—

(a) the nominee, while acting in his capacity as an advocate and a Commissioner for Oaths and Notaries Public on 20th November 2017, witnessed the signing of a consent to the making of a Grant of Administration Intestate dated 20th November, 2017;

(b) The consent was subsequently used in obtaining the Grant;

85. The deponent however averred that his name and a signature was appended against the consent document and yet he did not sign the consent. The deponent further contended that most signatures listed in the consent were forged as several heirs to the estate were not in the country and therefore could not have signed the consent.

86. The affidavit cited as evidence—

(a) a Limited Grant of Letters of Administration Ad Litem;

(b) consent to the making of the Grant of Administration Intestate to a person of Equal or Less Priority; and

(c) a letter from the Advocates Complaints Commission addressed to the nominee.

Observation

87. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.16 Affidavit by Peter Kioni

88. The deponent contested the suitability of two (2) nominees namely **Prof. Kithure Kindiki and Hon. Kipchumba Murkomen** on the grounds that—

- (a) the nominees were dismissed from office on 12th July 2024 since His Excellency the President was dissatisfied with the performance of the Cabinet. The nominees therefore cannot be sanitized through re-nomination without proper due process;
- (b) despite taking their oaths as advocates of the High Court of Kenya and being law teachers locally and internationally, the nominees had failed to understand what public service entails;
- (c) **Prof. Kithure Kindiki** lied on Citizen TV on 4th July 2024 that the National Police Service (NPS) was not involved in abductions of young people exercising their right to protest especially because the NPS on 17th July 2024 admitted that it had abducted Macharia Gaiho, a veteran journalist by error. The police under the nominee did not understand their work as they fired projectiles and bullets on sighting a crowd; and
- (d) **Hon. Kipchumba Murkomen** on Obinna TV admitted to owning clothing in excess of Kshs. 1 million which was an insult to Kenyans as his monthly net salary could not afford to buy such items.

Observation

89. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.17 Affidavit by Davis Malombe on Behalf of the Kenya Human Rights Commission (KHCR)

90. The deponent contested the appointment of five (5) nominees namely **Prof. Kithure Kindiki, Hon. Alice Wahome, Mr. Davis Chirchir, on. Roselinda Soipan Tuya and Hon. Aden Duale** on grounds that—

- (a) The nominees lacked capacity to serve as Cabinet Secretaries owing to the loss of public confidence, inefficiency, ineffectiveness, lack of transparency and accountability which had led to their dismissal from Cabinet;

(b) **Hon. (Prof.) Kithure Kindiki** specifically failed to address the bandit problem in Northern Kenya;

(c) **Hon. Alice Wahome** had been captured on video assaulting an IEBC official; and

(d) **Mr. Davis Chirchir** had been adversely mentioned in the "Chicken gate" scandal.

Observation

91. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.18 Affidavit by Sheila Masinde Executive Director of Transparency International Kenya (TI-Kenya)

92. In addition to contesting the suitability of the ten (10) nominees who were previously dismissed from Cabinet, the deponent further contested the suitability of **Hon. Wycliffe Oparanyah** on the grounds that the nominee was the subject of an alleged embezzlement of Kshs. 1.3 Billion which occurred during his tenure as Kakamega Governor.

93. Sheila Masinde averred that in June 2024, the High Court froze the nominee's Lap Trust escrow account after EACC filed a case alleging proceeds of crime. On 26th July 2024, the High Court declined the nominee's plea to unfreeze his assets including not to extend preservation orders for the nominee's house in Karen. The nominee was again barred until 6th September 2024 and granted fourteen (14) days to file his bank statements.

Observation

94. The affidavit by the deponent was a written statement on oath and therefore complied with section 6(9) of the Public Appointments (Parliamentary Approval) Act.

3.19 Memoranda that did not Comply with Section 6(9) of the Public Appointments (Parliamentary Approval) Act

95. The Committee received memoranda that did not comply with section 6 (9) of the Public Appointments (Parliamentary Approval) Act, (Cap. 7F) in the form of Affidavits that were either not signed or not commissioned. These Affidavits were submitted by the following eighteen (18) persons who contested the re-appointment of the ten (10) nominees who were dismissed from Cabinet by the President—

- | | |
|---------------------------|-------------------------------|
| 1. Diana Akinyi Odiambo | 11. Grace Wakio |
| 2. Rozalia Wangui Karanja | 12. Irene Wairimu Chege |
| 3. Wanjiru Murage | 13. Sagal Yusuf |
| 4. George Nyandika Nduko | 14. Nderifu Nduba |
| 5. Brian Mwangi | 15. Ann Njeri Chege |
| 6. Micheal Onyango Akello | 16. Michael Murithi Gichane |
| 7. Tevin Mwaka | 17. Diana Daisy Awuor Onyango |
| 8. Evelyn Mumbi Maina | 18. Melanie Lato Koin |
| 9. Nduta Njega | 19. Grace Wakio |
| 10. Jane Wamuyu Nyamu | 20. Irene Wairimu Chege |

96. The memoranda were not written statements on oath contrary to section 6(9) of the Public Appointments (Parliamentary Approval) Act.

97. The Committee also received memoranda via email that did not comply with section 6 (9) of the Public Appointments (Parliamentary Approval) Act as they were not written statements on oath.

98. Additionally, although some of the memoranda were in the form of Affidavits, they were submitted in support of the nominees and not contesting the suitability of the nominees as required by section 6(9) of the Act and hence were inadmissible. Nevertheless, the content of these submissions was incorporated into questions that were posed to the nominees by the Committee, where appropriate.

Observation

99. Section 6(9) of the Act envisages that the statement made under oath should be evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated and not in support of a nominee. In this regard, the memoranda were inadmissible.

Other Memoranda

100. The Committee received two memoranda from Bob Ndolo and Khalid Ibrahim that were subsequently withdrawn by the deponents.

3.20 Preliminary Issues arising from the Memoranda

Effect of Dismissal from Cabinet

101. The Committee noted that one hundred and sixty-three (163) of the Affidavits received from the public contested the suitability of ten (10) nominees namely **Hon. (Prof.) Kithure Kindiki, Hon. Alice Wahome, EGH,**

Hon. Aden Bare Duale, EGH, Hon. Roselinda Solpan Tuya, EGH, Mr. Davis Chirchir, EGH, Hon. Salm Mvurya, Ms. Rebecca Miano, Hon. Kipchumba Murkomen, Hon. Alfred Mutua and Hon. Justin Muturi for having been dismissed from Cabinet.

102. It was the contention of the deponents of the Affidavits that the President could not lawfully nominate any of the persons he had dismissed to Cabinet. This gave rise to the question of whether a nominee who was dismissed from the Cabinet may be reappointed to Cabinet; and whether the Committee ought to conduct approval hearings for all nominees, including the nominees re-appointed to the Cabinet.

103. On the question of whether a nominee who was dismissed from the Cabinet may be reappointed to Cabinet, the Committee observed that—

(a) Article 132 of the Constitution empowers the President to nominate and with the approval of the National Assembly, appoint Cabinet Secretaries in accordance with Article 152 of the Constitution;

(b) The National Assembly ultimately determines the suitability for reappointment of a nominee who has previously been dismissed from office. In particular, sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act obligate the relevant Committee of the House during approval hearings to examine a nominee's suitability;

(c) Section 6(8) of the Act requires the Committee on Appointments to be guided by the criteria set out in the Schedule to the Act. Paragraph 20(c) of the vetting criteria requires a nominee to state whether he or she has been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution;

(d) The dismissal envisaged under the vetting criteria only applies where a state officer has, following appropriate disciplinary procedures, been found to have contravened Article 75(1) of the Constitution (*Conduct of State Officers*), Article 76 of the Constitution (*Financial probity of state officers*), Article 77 of the Constitution (*Restriction of activities of state officers*); or Article 78 of the Constitution (*Citizenship and leadership*);

(e) The nominees were not dismissed under the provisions of Article 75(2) of the Constitution and are, therefore, not disqualified from holding any other state office;

- (f) There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law;
- (g) The Statement by H. E., the President, dismissing the Cabinet Secretaries did not state any reasons for the dismissal; and
- (h) The mandate of the Committee includes recommending whether any person nominated for approval is suitable for re-appointment following such dismissal from public office.

Re-appointment of nominees

104. On the question of whether the Committee should conduct approval hearings for all nominees, including the nominees nominated or re-appointment to the Cabinet, the Committee observed as follows—

- (a) Under section 2 of the Public Appointments (Parliamentary Approval) Act, **"appointment" includes "re-appointments"**. Additionally, section 3 of the Act provides that all appointments done under the Constitution or any other law for which the approval of Parliament is required shall not be made unless the appointment is approved or deemed to have been approved by Parliament in accordance with the Act;
- (b) The High Court has partly addressed this question while considering Petition No. 33 of 2018. The Court held that a re-appointed Cabinet Secretary must be vetted afresh by the National Assembly;
- (c) Pursuant to the provisions of Articles 132 and 152 of the Constitution, as read with sections 2 and 3 of the Public Appointments (Parliamentary Approval) Act, nominees for appointment or re-appointment by H. E. the President must be vetted and approved by the National Assembly;
- (d) If a Cabinet Secretary has been dismissed from office, a nomination by H. E. the President for the reappointment of that person back to Cabinet requires the approval of the National Assembly; and
- (e) Articles 132(2) and 152(2) of the Constitution of Kenya vests the power to constitute Cabinet solely on the President.

Basis of Appointment of Persons from the Minority Party

105. The Committee noted that ninety-nine (99) of the Affidavits received from the public contested the suitability of four (4) nominees namely **Hon. John Mbadi, Hon. Opiyo Wandayi, Hon. Hassan Joho and Hon. Wycliffe Oparanyah** on the grounds that the four (4) nominees were members of

and are affiliated to the Orange Democratic Movement (ODM) and H. E. the President could not lawfully nominate persons associated with and who were or have been members of political parties or coalition of rival political parties in opposition.

106. The Committee observed that the President has the prerogative under Articles 132(2) and 152(2) of the Constitution to nominate and with the approval of the National Assembly appoint Cabinet Secretaries.

Court Proceedings on the vetting process

107. On the 26th of July, 2024, a Court case **Malindi High Court Constitutional Petition E015 of 2024**, was filed against the President of the Republic of Kenya, the Speaker Of The National Assembly and the Hon. Attorney General as Respondents and the following fourteen nominees for appointment to Cabinet as Interested Parties—

- (1) Hon. James Opiyo Wandayi;
- (2) Hon. John Mbadi Ng'ongo;
- (3) Hon. Hassan Ali Joho;
- (4) Hon. Wycliffe Ambetsa Oparanya;
- (5) Hon. Prof. Kithure Kindiki,
- (6) Hon. Alice Wahome,
- (7) Hon. Roselinda Soipan Tuyu,
- (8) Hon. Aden Barre Duale;
- (9) Mr. Davis Chirchir;
- (10) Hon. Salim Mvurya;
- (11) Ms. Rebecca Miano,
- (12) Hon. Alfred Nganga Mutua;
- (13) Hon. Onesimus Kipchumba Murkomen; and
- (14) Hon. Justin Bedan Njoka.

108. The Petitioner seeks to prohibit the Rt. Honourable Speaker of the National Assembly from commencing, conducting or entertaining approval hearings or vetting of Interested Parties as Cabinet Secretaries and requests that H.E. the President be barred from appointing the Interested Parties as Cabinet Secretaries during this period.

109. The Committee observed that at the time of concluding the Report no orders had been given in the case.

Representation of Special Interest Groups in the Proposed Cabinet

110. The Committee noted it had received fifty-two (52) affidavits contesting the nominations made to Cabinet, arguing that the nominations did not comply with Article 27(8) of the Constitution, which provides that not more than two-thirds of members of appointive bodies shall be of the same gender.
111. The Committee further noted the Rt. Hon. Speaker of the National Assembly has referred an additional two nominees for appointment to Cabinet.
112. The Committee observed that, when viewed cumulatively, the nominees to Cabinet meet the two-thirds principle. However, any recommendation made by the Committee on the nominees may be approved or rejected by the House.

Integrity issues

113. The Committee noted that several Affidavits contested the suitability of a nominee on the basis of integrity. The Committee observed that—
- (a) during the approval hearings, the Committee is required to consider a candidate's personal integrity as provided for under section 6(7) of the Act;
 - (b) pursuant to section 6(8) of the Act, the Committee is required to consider the vetting. Paragraph 28 of the vetting criteria set out in the Schedule to the Act requires a nominee to provide information to the Committee on whether they have ever been charged in a court of law in the last three years and specify the nature of the charge, the status of the matter, or where the matter is concluded, the judgment of the court;
 - (c) section 7 of the Act requires the Committee to consider any constitutional or statutory requirements relating to the office in question.
 - (d) Article 50 of the Constitution provides for the right of an accused person to a fair trial including the presumption of innocence until the contrary is proven and, if convicted, the right of appeal. In this regard, the presumption of innocence of a person subsists unless a person has exhausted all possibility of appeal or review of the relevant sentence or decision.
 - (e) Section 64(1) of the Anti-Corruption and Economic Crimes Act, Cap 65 provides that a person who is convicted of corruption or

economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction. The section applies where there has been a successful conviction against a public officer and subject to exhaustion of the right of appeal.

(f) Section 62 of the Anti-Corruption and Economic Crimes Act, Cap 65, provides for the suspension of a public officer or state officer who is charged with corruption and economic crimes.

(g) However, the suspension does not apply to state offices for which the Constitution provides for a removal process, such as that of a Cabinet Secretary.

Academic qualifications for appointment to Cabinet

114. The Committee noted that an Affidavit was filed contesting the suitability of a nominee on the basis of alleged lack of requisite academic qualifications. The Committee observed that Article 152 of the Constitution does not prescribe any minimum academic qualifications for appointment to the Cabinet.

3.21 Notification of the Nominees of the Issues Raised in the Memoranda

115. The Clerk of the National Assembly vide letters dated 30th July, 2024 (Annexure 11) wrote to specific nominees to respond to issues that were raised in the affidavits by the public pursuant to Section 6(9) of the Act contesting their suitability for appointment to office.

116. During the approval hearings, Committee examined the nominees on the issues that were raised in the memoranda. The responses by the nominees and the observations of the Committee on the issues raised by the public are contained in Chapter Four.

CHAPTER FOUR

4 APPROVAL HEARINGS OF THE NOMINEES

117. The Committee held approval hearings from 1st to 4th August 2024 and examined the nominees on the areas set out in sections 6(7), 6(9) and 7 of the Public Appointments (Parliamentary Approval) Act as follows—

4.1 Hon. (Prof) Kithure Kindiki, EGH – Nominee Cabinet Secretary for Interior and National Administration

118. Hon. (Prof.) Kithure Kindiki, EGH appeared before the Committee on 1st August 2024 and was vetted under oath to examine his suitability. The Committee noted the following—

4.1.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

119. The nominee is a male Kenyan citizen born on 16th July, 1972 in Tharaka-Nithi County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

120. The nominee holds a Doctor of Philosophy (PhD) degree in International Law and a Master of Laws (LL.M) degree from the University of Pretoria. He also possesses a Bachelor of Laws (LL.B) degree from Moi University and a Diploma in Legal Studies from the Kenya School of Law.

Employment Record and Work Experience

121. The nominee was the Cabinet Secretary for Interior and National Administration between October 2022 and July 2024. In addition, he was the Senator for Tharaka Nithi County from March 2013 until August 2022. As a Senator, the nominee served as the Senate Majority Leader and thereafter as Deputy Speaker. He is admitted as a Defence Counsel at the International Criminal Court at The Hague and has been an Advocate of the High Court of Kenya, for the last 24 years.

122. The nominee has also worked as a consultant for various International Organizations including the African Union (AU) and the United Nations (UN), an Associate Dean at the School of Law and the Head of the Department of Public Law at the University of Nairobi. He also served as a senior lecturer of Law, lecturer and assistant lecturer of Law at Moi University and the University of Nairobi.

Honours and Awards

123. The nominee was awarded the Elder of the Order of the Golden Heart (EGH) in 2013 and a PhD scholarship by the University of Pretoria in 2000 where he was a DAAD Scholar in 1999 and 2000.

Professional Association and Memberships

124. The nominee is a member of the Academic Council on the United Nations System (ACUNS); the International Association for the Study on Forced Migration (IASFM); the International Commission of Jurists (ICJ); East African Law Society (EALS) and the Law Society of Kenya (LSK).

Published Writings

125. The nominee has published thirty-five (35) academic and non-academic works including books, book chapters and academic articles published in peer-reviewed journals internationally.

Public Office, Political Activities and Affiliations

126. The nominee is a former member of The National Alliance (TNA), Jubilee and United Democratic Alliance (UDA) Party. He was also and Senate Majority Leader in the Jubilee Party and the Chief Agent for Presidential candidate of the UDA Party in 2022.

Integrity

127. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

128. During his previous approval hearing for appointment as Cabinet Secretary for Interior and National Administration in 2022, the nominee estimated his net worth to be Kshs. 544 million with the sources of income being proceeds from legal practice, businesses, local and international consultancies.

129. As at the time of the approval hearing, the nominee estimated his current net worth to be Kshs. 694 million comprising immovable property, money held in bank savings, income from shares in SACCOs, business profits from legal practice and motor vehicles. The approximately Kshs. 100 million increase in the net worth was attributed to substantial payment of legal fees from his law firm and income from other businesses.

Potential Conflict of Interest

130. The nominee declared that he is currently not associated with any persons or matters that would present a conflict of interest should he assume the position of Cabinet Secretary. In the event that a conflict of interest arose, he stated that he would resolve the same in accordance with the provisions of law.

Pro-bono/Charity Work

131. The nominee stated that before assuming office as Cabinet Secretary in 2022, he volunteered with the Law Society of Kenya (LSK) and church organizations.

4.1.2 General and Sector-Specific Questions to the Nominee

132. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Interior and National Administration. The nominee responded as follows:

On implementation of the recommendations of the Report of the National Taskforce on Police Reforms

133. The nominee highlighted some of the recommendations which included matters relating to the welfare, leadership and accountability, career progression and operational capabilities of the National Police Service (NPS) and the Kenya Prisons Service (KPS).

134. He submitted that among the recommendations, two hundred and twenty-one (221) required administrative action, one hundred and seventy-eight (178) recommendations required funding, one hundred and seventy-seven (177) required legislative and policy changes and twenty-three (23) relating to the Kenya Police Service required action in consultation and concurrence with the National Security Council.

135. Out of the recommendations proposed by the Taskforce, he had already implemented some including a massive police equipment modernization program to be rolled out in five years. He added that he had convinced the National Treasury to allocate Kshs. 5 billion for the purchase of air and land assets to assist officers exposed to great danger in the fight against terror, banditry and sophisticated crimes and had restored the collapsed Police Airwing and operationalized its aircraft. He submitted that, if approved for appointment, he would, in the following financial year, purchase additional helicopters to enhance the fight against crime.

136. The nominee stated that he had institutionalized leadership and succession management in the National Police Service, put in place and

operationalized the National Police Academy in Ngong' with a curriculum on short and professional courses aimed at reskilling police officers and nurturing leadership among police officers.

137. Regarding welfare issues, he noted that the first salary increments, as proposed by the Taskforce were already effected and the National Police Hospital had been operationalized to cater for injured police officers.
138. The nominee further stated that out of the recommendations requiring legislative and policy changes proposed by the Taskforce, six (6) Bills had already been drafted and were awaiting Cabinet approval as at the time of his dismissal. Some of the Bills include: the National Police Service Bill, 2024; the National Police Service Commission Bill, 2024; National Forensic Laboratory Services Bill, 2024 and a Bill on the leadership and command oversight in the National Police Service.

On Article 37 of the Constitution on the right to picket

139. The nominee noted that whilst the Article provides for the right to protest, the right ought to be exercised in a manner that maintains public order and respects the rights of other citizens. He added that before his dismissal, he had finalized the draft Regulations to the Public Order Act to give effect to Article 37 of the Constitution and create an environment in which the right to picket can be enjoyed in a responsible manner whilst respecting the rights of others.

On the restoration of administrative security structures

140. The nominee acknowledged that there were gaps within the National Government Administrative Officers (NGAO) system and Nyumba Kumi security and administrative structures in the country thereby resulting in the Shakahola and Kware incidents. He submitted that, if approved for appointment, he would initiate far reaching reforms in the government and administration system aimed at restructuring the NGAO system to modernize it and ensure its effectiveness.
141. Concerning the Shakahola incident, he clarified that the massacres began in 2019 but only became manifest in 2022. He informed the Committee that he had apologized to Kenyans on behalf of the previous and current administration for the security breach. He informed the Committee that there were efforts to form a Commission of Inquiry into the Shakahola killings.
142. Additionally, while noting that the Presidential Taskforce on the Review of the Legal and Regulatory Framework Governing Religious Organisations

in Kenya had proposed recommendations to end religious extremism, he submitted that, if approved for appointment, he would ensure that the culpable public officers are held liable.

On reappointment to the same docket despite the abductions and human rights violations during his tenure

143. The nominee submitted that he could account for every single day of the six hundred and twenty-three (623) days he held office to ensure the country's security. He intimated that he had exhibited commitment to the country's security.
144. Additionally, he stated that cases of terror and banditry in Lamu and Northern Kenya, respectively had significantly reduced since his appointment as Cabinet Secretary for Interior and National Administration. He added that he had visited some of the most affected areas in the country numerous times including Lamu, Samburu and Baringo Counties, among others.
145. It was his submission that during his tenure as Cabinet Secretary, he had conducted himself within the parameters of Article 73 of the Constitution.

On the management of protests, alleged use of force by the police and the role of the Cabinet Secretary

146. The nominee clarified that the role of the Cabinet Secretary is to provide policy guidance while that of the NPS is to undertake operations during protests. He added that Article 245(2) of the Constitution provides that the National Police Service (NPS) shall be under the command of the Inspector General and therefore not within his mandate as Cabinet Secretary.
147. The nominee added that he regularly communicated the government's policy on zero tolerance for extra-judicial killings and the limited use of force in accordance with the Constitution and the National Police Service Act.
148. Further, the nominee stated that the use of firearms by a police officer is an individual responsibility and that any officer who went beyond the permitted use of force should be held to account by the IPOA and other accountability agencies to ensure justice for victims of excessive use of force. The Inspector General can only provide operational guidelines for the use of arms as provided in the National Police Service Act.

On measures to resettle IDPs in Northern Kenya

149. The nominee informed the Committee that Operation *Maliza Uhalifu* was launched in February 2023 to eradicate the banditry menace and shall

not be complete until all Internally Displaced Persons (IDPs) are safely returned to their homes. He added that the resettlement of the displaced persons was his top priority in line with the rights of all Kenyans enshrined in the Constitution and international guidelines on the protection of IDPs.

On the alleged killings and abductions in Suguta Town in Samburu

150. The nominee elucidated that the Constitution and international law prohibit abductions and extra-judicial killings. It was his view that in combating insecurity cases in the North Rift and Northern Kenya, the police had generally been professional and that any reported infractions and excesses would be dealt with by the Independent Policing Oversight Authority (IPOA).

On the application of Article 241 of the Constitution

151. The nominee noted that the intent of Article 241 of the Constitution is to deploy Kenya Defence Force (KDF) officers to assist the NPS during emergency or disaster such as insecurity in the North Rift and the threats to critical government installations.
152. He indicated that the deployment of KDF in the first instance was informed by the fact that, at the time, the NPS needed the airwing and air assets which the KDF provided. He added that the operation was police-led with four thousand five hundred (4,500) police officers against less than one thousand (1,000) KDF officers.
153. Concerning the second instance on 25th June 2024, the nominee indicated that the KDF officers were deployed to be on standby as a precautionary measure to avert existential threats to burn Parliament, State House and other critical government installations.

On the allegation that police officers are demoralized

154. The nominee stated that the issues of welfare such as salary increments and medication were already being addressed. He added that a police hospital at the Border Patrol Unit campus in Kanyonyo, Kitui County was recently opened.

On implementing measures to curb banditry as agreed with leaders in the North Rift Region

155. The nominee submitted that while some measures had not been operationalized, some had already been implemented including the training and equipping of police officers in West Pokot and the setting up of a security camp at Lami Nyeusi. He added that the operationalization of new administrative units in Samburu and Baringo was yet to be completed and was work in progress.

On financial independence of the NPS

156. The nominee was of the view that the decision to give financial autonomy to the NPS was necessary for effective service delivery.

On fostering cordial working relations between IPOA and NPS

157. The nominee noted that IPOA and NPS both play important roles and undertook to ensure that the two entities collaborate in investigating the alleged cases of police excesses. He added that he would employ the same strategies he had previously used to realize a harmonious working relationship between the NPS and National Police Service Commission (NPSC).

On curbing the increase of criminal gangs in urban centres

158. Acknowledging urban crime, as a serious issue, the nominee submitted that gang violence had reduced since he assumed office. He added that to further combat gang violence in Nakuru County, there were plans to change the command in the County.

On why he did not resign despite the deaths of over one hundred (100) Kenyans during protests

159. The nominee stated that the role of the Cabinet Secretary was to issue and communicate policy and therefore would only have resigned if the policy instruction issued was unconstitutional or illegal.

On deployment of police officers to Haiti

160. The nominee indicated that the deployment was pursuant to a request by the United Nations (UN) Security Council and UN General Assembly and amounts to an international obligation which Kenya has a duty to honour. He added that the deployment would profile Kenya highly and has not affected the country's operational capabilities as alleged.

161. With regard to the welfare and security of the police officers deployed in Haiti he noted that the officers were covered, insured and paid for by the UN. He added that there had been good progress in curbing the situation so far.

On the use of stern language

162. The nominee acknowledged the use of stern terms which he termed as security language addressed to terrorists, bandits and organized criminals. He added that the use of force was permitted in law depending on who it was used against and highlighted the measures taken against criminals in Kurkum, Samburu using gorges as hideouts.

On adorning combat uniform

163. The nominee noted that during his time as a Cabinet Secretary for Interior and National Administration he had spent time at the headquarter offices in Harambee House where he had been involved in policy direction. He stated that he had also spent time in the field where he engaged in disseminating policy.
164. Moreover, the nominee added that he had visited some of the most dangerous parts of the country to motivate police officers while educating them on the best policy direction. He added that the combat uniform he adorned was tactical wear for protective purposes only.
165. Further, he stated that the use of police and military helicopters was in accordance with the law that provides for the Cabinet Secretary for Interior and National Administration to be facilitated when in dangerous situations due to the nature of risk and danger posed by the office.

On the status of nyumba kumi, village elders and their remuneration

166. The nominee submitted that the Village Elders Bill, 2024 had been finalised and was among the twelve (12) Bills awaiting Cabinet approval for submission to Parliament.

On the withdrawal of National Police Reservists in Kwanza, Trans Nzoia County

167. The nominee stated that there was general calm in Trans Nzoia save for the areas bordering West Pokot hence it was not justified to have over four hundred (400) National Police Reservists in the county. He added that, if approved, he would consider deploying a reasonable number of national police reservists in other parts of the county.

On the issuance of passports

168. The nominee noted that since assuming office as Cabinet Secretary the issuance of passports had largely improved. He stated that corruption incidences and delays had also reduced. He added that pending bills had been paid, enough printing equipment for personalization of passports acquired and the system upscaled. Furthermore, he noted that the backlog of 724,000 passports had been cleared during his tenure.
169. It was his undertaking that, if approved for appointment, he would reduce the wait-time period of passports from seven (7) to three (3) days.

On the Maisha Namba and other identification documents

170. The nominee noted that unlike the ordinary identification card, the Maisha Namba would be a third-generation identification card with technology-

enabled security chips hence the ten (10)-year expiry term limit. He added that the decision to transition from the second to third generation had been premised on the current security trends in identification documents. He committed to ensuring that, if approved, he would ensure a seamless transition in the renewal of the identification cards.

171. He added that the issue of the *Maisha Namba* was still in court and hoped that it would be resolved in a timely manner to prevent further delays in the issuance of Identification (ID) cards.

172. In addition, he intimated that reforming the Immigration Directorate to unclog the backlog in the issuance of identification documents including birth and death certificates would be his priority, if approved for appointment.

On his priority areas and their impact

173. The nominee stated that, if approved for appointment, his priority areas would be matters he considered the biggest national security threats including terror and organized crime, drugs, climate change, violent extremism and corruption.

On the fair recruitment of police officers

174. The nominee submitted that, if approved, he would ensure that every Kenyan recruited by the NPS was accounted for so as to curb corruption and favouritism. He added that the NPS Academy was also aimed at enhancing the fight against corruption.

On decisions made by the National Security Council

175. The nominee stated that the National Security Council critically evaluated and examined ensuing circumstances before making decisions on matters of national security.

On alleged discrimination in remuneration of police constables

176. The nominee submitted that graduate police constables had moved to court on the issue of remuneration. He submitted that if approved for appointment, he would implement the recommendations of the *Kenya National Taskforce on Police Reform* that creates a two-tier structure of career progression to resolve and prevent similar court cases and ensure fair career growth for all police officers. He added that in collaboration with the NPS Commission, he would provide a clearer policy on promotions based on merit and a reward system for well-performing officers who meet targets.

On the increase in femicide cases in Kenya

177. The nominee acknowledged that there was a worrying increase in the cases of femicide which he attributed to critical gaps at the lower levels of policing, the NPS, NGAO and the National Intelligence Service. He pledged to address these gaps if reappointed.

On the alleged corruption at the Ministry of Interior and National Administration

178. The nominee acknowledged that corruption is a serious problem in the Ministry and the public service as a whole and it is among the top five existential threats to Kenya. He added that, if approved for appointment, he would put in place measures in the organs of national security to combat corruption.

On restoring peace and security in the Hilo Gold Mine in Dabel, Moyale

179. The nominee noted that the area was identified as dangerous due to unrest caused by illegal miners leading to its closure. He added that, if approved, he would consult with the Ministry of Mining to ensure the safe reopening of the mine.

On the influx of small arms, drugs and illegal immigrants in the country

180. The nominee noted that there were police checks on main highways near border areas including at Archer's Post and the Garsen-Malindi Road. However, he noted that smugglers had begun using alternative routes to avoid police checkpoints. In light of this, he stated that, if approved for appointment, he would introduce multi-agency efforts to patrol the alternative routes used by drug and human traffickers.

On the revocation of licenses of nine (9) private security firms and regulating the sector

181. It was the nominee's view that the Private Security Regulations emanated from the Ministry of Interior and National Administration. He added that he believed that the private security sector, if regulated well, could supplement the work of the police in manning supermarkets and banks.
182. The nominee clarified that while the licenses were revoked by the Private Security Regulatory Authority, the firms had appealed to the Cabinet Secretary for reinstatement in accordance with section 43 of the Private Security Regulation Act which the Cabinet Secretary granted.

On measures to ensure proper communication to the public in the Ministry of Interior and National Administration

183. The nominee submitted that he had held public accountability updates on security matters where he also shared important information relating to the Ministry of Interior and National Administration during his tenure. He

averged that he would increase the frequency of the updates if reappointed.

On the fight against illicit brew, narcotics and psychotropic substances

184. The nominee noted that there was a government policy on the fight against illicit brew, psychotropic and narcotic substances implemented by the Ministry of Interior and National Administration. He added that the fight against illicit brews was not allocated a specific budget but was undertaken as a normal program in the Ministry.

On Kenya Prison Service reforms and grabbing of prison land

185. The nominee stated that, if approved for appointment, he would prioritize the modernization of carpentry and masonry equipment to enhance the productivity of Prison Enterprises. In consultation with Salaries and Remuneration Commission (SRC) he would also seek to improve the terms and conditions of service for prisons wardens.
186. While highlighting Kitale Prison as the most affected, the nominee stated that he would recover grabbed prison land with the help of the National Land Commission (NLC). Further, he added that he would engage the Ministry of Lands in titling prison land.
187. He further stated that he would also ensure that all prisoners were provided with mattresses under the 'One Prisoner, One Mattress' program noting that 10,000 mattresses had already been issued to prisoners.

On simplifying the application to reclaim citizenship

188. The nominee noted that there have been tremendous improvements in the processing of applications to reclaim and/or acquire citizenship by registration. Particularly, he submitted that a backlog of 7,200 applications had been cleared during his tenure.
189. It was his submission that he would reduce the wait-time period to twenty-one (21) days if approved. Furthermore, in a bid to further reduce the wait-time period to seven (7) days, he would digitize the process.

On allegations arising from the Memoranda, the nominee responded as follows—

190. On the issue of re-appointment to Cabinet after dismissal, the nominee submitted—
- (a) that the President has power to nominate, dismiss, appoint and re-nominate persons to enable him exercise executive authority

delegated to him by the people of Kenya as per Articles 132(2), 152(2), and 156(2) of the Constitution;

(b) that the suitability of a person to serve in the Cabinet was not a question for determination by any one person. Such determination on suitability must be determined dispassionately by the bodies/institutions set up by law to so determine and these would be the courts and constitutional commissions;

(c) that none of these said institutions or courts had found him unsuitable to hold any public office;

(d) that there was neither legal basis whatsoever nor any judicial precedent that states that a Cabinet Secretary dismissed cannot be nominated once again; and

(e) that performance appraisal could only be done individually even though Cabinet members must own decisions of Cabinet collectively.

191. On the issue raised by **Joshua Abaki on behalf of the Kenyans in Canada Movement** on the killing of peaceful protestors by police, the nominee responded as follows—

(a) that the incidences of violence perpetrated against innocent and peaceful protestors was regrettable;

(b) that the process for holding such officers accountable was ongoing and could not be rushed and it ought to remain so, in fidelity to the Constitution and respect for institutions; and

(c) that the request by some people to release all protestors from custody unconditionally and compensate those who were injured was not a decision he could make as a Cabinet nominee or even as a Cabinet Secretary as to attempt to do so would be to infringe on the powers of the Office of the Director of Public Prosecutions and the courts and other players within the criminal justice system.

192. On the allegation raised by **Davis Malombe of the Kenya Human Rights Commission**, that the nominee had not improved passport issuance nor handled bandit problems. He further alleges that there had been increased crime. The nominee responded that the allegations are not factual as passport issuance turnaround had reduced and he had since addressed banditry compared to when he had assumed office.

193. On the issue that the list of nominees did not meet the **two-thirds gender rule**, the nominee responded that the issue was now overtaken by events

as the President subsequently nominated two additional women, being the Attorney General and Cabinet Secretary for EAC Cabinet Secretary, making a total of 8 female nominees.

Observations on Memoranda Submitted Against the Nominee

194. The Committee noted that Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.

4.1.3 Committee Observations on the Suitability of the Nominee

195. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Interior and National Administration -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1972 in Tharaka-Nithi County and does not hold dual citizenship.
- (2) **THAT**, the nominee was the Cabinet Secretary for Interior and National Administration between October 2022 and July 2024. In addition, he was the Senator for Tharaka Nithi County from March 2013 until August 2022. As a Senator, the nominee served as the Leader of the Majority Party and thereafter as Deputy Speaker. He is admitted as a Defence Counsel at the International Criminal Court at the Hague and has been an Advocate of the High Court of Kenya, for the last 24 years. The nominee has also worked as a consultant for various International Organizations including the African Union (AU) and the United Nations (UN), an Associate Dean at the School of Law and the Head of the Department of Public Law at the University of Nairobi. He also served as a senior lecturer of Law, lecturer and assistant lecturer of Law at Moi University and the University of Nairobi.
- (3) The nominee holds a Doctor of Philosophy (PhD) in International Law and a Master of Laws (LL.M) degree both from the University of Pretoria. He also holds a Bachelor of Laws (LL.B) degree from Moi University and

a Diploma in Legal Studies from the Kenya School of Law. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.

- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Interior and National Administration.
- (9) **THAT**, even though the Inspector General of the National Police Service took responsibility and resigned, the nominee issued a press statement during the recent demonstrations that may have been construed as giving directions to the National Police Service.

4.2 Dr. Debra Mlongo Barasa – Nominee Cabinet Secretary for Health

196. The nominee appeared before the Committee on 1st August 2024 and was vetted under oath to examine her suitability. The Committee noted the following—

4.2.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

197. The nominee is a female Kenyan citizen born on 13th November 1982 in Nairobi County. The nominee confirmed that she is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

198. The nominee is pursuing Master of Science (MSc) degree in Infectious diseases at the London School of Hygiene and Tropical Medicine. She holds a Master of Internal Medicine and a Bachelor of Medicine and Surgery (MBChB) degree from the University of Nairobi.

Employment Record

199. The nominee possesses extensive experience in the health sector and currently serves as a Consultant in Infectious Diseases at the World Health Organization. She has previously served as an Internal Medicine Physician/Senior Registrar at Mater Hospital and Internal Medicine Physician/Technical Advisor at the Eastern Deanery AIDS Relief Program. She also worked as a Medical Registrar in Kenyatta Hospital and as a Medical Officer Intern in Machakos General Hospital.

Honours and Awards

200. The nominee has been certified as a trainer of trainers by the Eastern, Central and South African College of Physicians and an Infection Control African Network Award.

Professional Association and Memberships

201. The nominee is a member of the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU); the Kenya Physician Association; the Kenya Medical Practitioner and Dentist Council (KMPDC); the East, Central and Southern Africa College of Physicians; and the Infection Control African Network.

Published Writings

202. The nominee has published a thesis submitted to the University of Nairobi in partial fulfilment of the Master of Medicine in Internal Medicine titled "*Prevalence of CMV infection among renal transplant patients in Kenyatta National Hospital*" and a research proposal submitted to the Kenyatta National Hospital for a Scientific Research Conference on "*Analyzing the implementation of infection and control measures in health care facilities during the COVID-19 pandemic in the African Region*".
203. The nominee has also contributed to the preparation of the WHO Guidelines for HIV Post-Exposure Prophylaxis, 2023; the WHO Infection, Prevention and Control Guidelines for Ebola and Marburg Disease of August 2023; and the Public Health Surveillance for Cholera Guidance Document, 2024 as part of the Global Taskforce on Cholera Control.

Public Office, Political Activities and Affiliations

204. The nominee indicated that she had not held any public office and had neither held membership nor rendered service to any political party or election committee.

Integrity

205. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

206. The nominee estimated her net worth to be Kshs. 455,845,320 comprising immovable property; shares in SACCOs; money in shares, money market funds and offshore bank accounts. She indicated that her sources of income include salary, rental income and farming.

Potential Conflict of Interest

207. The nominee declared that she was not associated with any persons or matters that would present a conflict of interest should she assume the position of Cabinet Secretary. In the event that a conflict of interest arose, she stated that she would comply with the provisions of all relevant laws and regulation, declare interest and recuse herself from any deliberations and interests in the matter.

Pro-bono/Charity Work

208. The nominee is involved in volunteer work in Thomas Bernados Children Home and contributes Kshs. 200,000 annually to widows and orphans in Migumi and Kinoo PAG Churches.

4.2.2 General and Sector-Specific Questions to the Nominee

209. The Committee posed several questions to the nominee on her suitability for appointment as Cabinet Secretary for Health. The nominee responded as follows—

On the adequacy of Universal Health Coverage (UHC)

210. The nominee submitted that while UHC is still in the process of being rolled out, it is projected to adequately realise the objectives of the Health Financing Strategy. She noted, however, that UHC is not yet fully understood by the general populace. To address this, she plans to engage all relevant stakeholders, including the Director-General of the Ministry of Health, the Principal Secretaries, the National Treasury, and the community at large, to foster ownership of the UHC programme. The

nominee also submitted that she would ensure the *Linda Mama* programme was incorporated into the SHIF framework when it is rolled out, recognising its importance in supporting maternal health.

On the NHIF system where patients can only access medical services at one nominated hospital

211. The nominee noted that UHC aims to offer affordable healthcare to all Kenyans. She further mentioned that UHC would address the limitations posed by the current NHIF system. Additionally, she highlighted that strengthening primary healthcare would increase access to quality and affordable healthcare.

On collusion between NHIF staff and private health providers resulting in the misappropriation of health resources

212. The nominee acknowledged the existence of isolated incidents of collusion between NHIF staff and private health providers, leading to financial misconduct. To combat this, she expressed her intention to leverage digital platforms to minimise human-to-human interaction, thereby improving the monitoring of transactions and services. She also outlined plans to enhance transparency and accountability through mechanisms such as open tender systems and the involvement of external oversight bodies, as well as the integration of telemedicine to streamline processes.

On cooperation between national and county governments for proper devolution of health services and resources

213. The nominee emphasised the importance of cooperation between the two levels of government, noting that health is a shared function that requires the cascading of resources down to counties for effective service delivery. She underscored the need to streamline health institutions at both levels to ensure coordination, cooperation, and mutual support, all in the spirit of devolution, to fulfil the health needs of the Kenyan population.
214. The nominee expressed her intention to engage universities and other institutions in discussions aimed at strengthening community health promoters with specialisation in mental health. This would ensure the progression of mental health support among healthcare workers and enhance mental health services at the community level.

On the issue of doctors' strikes and the deployment of intern doctors

215. The nominee acknowledged the ongoing challenges in deploying intern doctors and addressing the concerns that lead to frequent industrial actions by health practitioners. She expressed her intention to engage

with key stakeholders in the health sector, including county governments, to resolve these issues. She also recognised the budgetary constraints affecting the posting of intern doctors and committed to assessing the situation thoroughly and proposing solutions to address the challenges faced by health students in Kenya.

On the delay and low stipends for community health promoters

216. The nominee underscored the critical role played by community health workers in the healthcare system. She shared her extensive experience working in community health programmes such as Fikiria Jamii in Shauri Moyo, Huruma, Kariobangi, and Kayole, which have strengthened community health initiatives.
217. The nominee noted that delays in the payment of stipends to community health promoters are often due to budgetary constraints at the county level. She committed to engaging with county governments through various platforms and exploring alternative funding sources to ensure timely and adequate support for community health promoters.

On ensuring public participation in the implementation of UHC

218. The nominee acknowledged the suspension of UHC following the High Court's suspension of several key health-related legislations. She highlighted her extensive experience working in institutions that offer primary healthcare at various levels and noted that while public discourse has largely focused on the 2.75% deduction for SHIF, the broader benefits of UHC have not been fully appreciated. She emphasised the need for robust public engagement to foster a better understanding and acceptance of the system.

On the possibilities of establishment of National Health Commission to manage health workers

219. The nominee noted that devolution of health services was a real game changer. She further observed that whereas health sector continues to witness various challenges, there is need to enhance the capacity of the county government to be able to provide health services at the devolved units. She noted that county governments are better placed to offer health services and that the mandate of the national government is limited to policy matters. She however, committed to involve county-level stakeholders, including the Director General and others to discuss capacity of the two levels of government. However, the nominee stated her support for the establishment of the National Health Service

Commission, seeing it as a way to improve the management and delivery of healthcare services.

On the denial of emergency healthcare for accident victims due to inability to pay for services

220. The nominee emphasised the importance of integrating emergency health services into UHC to ensure that all Kenyans have access to healthcare during emergency situations, regardless of their financial status.

On Kenya Medical Supplies Agency (KEMSA) scandals

221. The nominee submitted that she will engage the public and various key players in the health sector to strengthen existing procedures and processes to ensure transparency and accountability in KEMSA. She planned to leverage digital platforms to streamline the management of drugs and medical supplies. Additionally, she acknowledged that the involvement of external bodies like EACC would help in monitoring activities and ensuring transparency and accountability.

222. For affordability, the nominee submitted that she would adopt a pooled procurement strategy with other countries in the East African Community (EAC) region in collaboration with the Treasury and various partners to ensure sustainable financing and prevent vaccine stock-outs.

On the skills the nominee brings and how she plans to amalgamate various stakeholders to improve the health system

223. The nominee submitted that she would support the various players within the health sector and work to bring them together in a coordinated effort to improve the overall healthcare system. She emphasised her commitment to collaboration and partnership in achieving the Ministry's goals.

On policy measures to balance cost recovery and prevent indefinite detention of patients and deceased bodies due to unpaid medical bills

224. The nominee committed to reviewing cases with a technical team of detention of patients and bodies of deceased persons due to unpaid medical bills.

On plans to reduce the cost of expensive treatments and ensure affordable access to cancer treatment

225. The nominee submitted that embracing local production of medicines could significantly reduce the cost of treatment. She noted that this

strategy could make essential drugs, including those for cancer treatment, more affordable and accessible to the general population.

On the training of more oncologists and other interventions under the Cancer Prevention and Control Act, 2012

226. The nominee submitted that the East, Central, and Southern Africa College of Physicians is actively supporting doctors to specialise in critical areas like oncology.

On barriers to achieving optimal funding in health research

227. The nominee indicated that she would develop policies to support health research and establish a regulatory body to oversee this area. She planned to engage multiple partners willing to support research initiatives and maintain open dialogue to identify who could contribute to the research agenda.

On hospitals built through donor funding but not operationalised due to lack of facilities

228. The nominee submitted that she would ensure facility assessments were conducted and that sufficient capacity was developed to operationalize these hospitals. She also committed to ensuring routine assessments were performed to maintain quality services in these facilities.

On the practicability of upgrading NHIF rather than transitioning to SHIF

229. The nominee noted that the primary goal was to serve Kenyans, who must be engaged to understand the new SHIF system. She further mentioned that the community was not adequately engaged in the past and that proper engagement was essential to help them comprehend the system's benefits and functionalities.

On whether Kenya is ready to become a destination for medical tourism

230. The nominee observed that Kenya should focus on embracing regional experts and bringing in specialists from abroad to enhance capacity. She also emphasised the importance of capacitating Kenya's medical facilities to become centres of excellence in Africa. The nominee further submitted that Kenya should assess and adopt best practices from other countries to establish itself as a medical tourism destination. However, she cautioned that Kenya should first prioritise quality, affordable, and accessible healthcare before pursuing the goal of becoming a medical hub.

On the perception of the Ministry of Health as 'mafia house' due to its association with corruption and cartels

231. The nominee submitted that she would utilise digital platforms, open tender processes, and independent bodies to monitor and combat corruption within the Ministry. She emphasised her commitment to transparency and integrity in the management of the Ministry's affairs.

On feedback regarding the exchange programme between Kenyan and Cuban doctors

232. The nominee submitted that she would prioritise reviewing and making recommendations on the exchange programme between Kenyan and Cuban doctors, ensuring that it served the best interests of both countries' healthcare systems.

On plans to improve Kenyatta National Teaching and Referral Hospital

233. The nominee submitted that she would conduct routine facility assessments at Kenyatta National Teaching and Referral Hospital and make recommendations for improvements based on the findings.

On the renewal of the nominee's practising certificate in 2024

234. The nominee clarified that she had been a medical practitioner since 2007 and, in 2022, was working with the World Health Organisation (WHO), an entity not affiliated with any specific country. She further explained that she had renewed her practising certificate in 2024 following her nomination as the Cabinet Secretary for Health in Kenya as a good practice to comply with the practice requirements in Kenya.

On the issue of delays in payment of suppliers of vaccines

235. The nominee emphasised the need to allocate funds for the procurement of vaccines and adopt a pooled procurement approach to ensure timely payments to suppliers and avoid delays that could affect vaccine availability.

Written submissions by the Nominee

236. The nominee in her Affidavits sworn on 31st July 2024, further stated as follows—

(a) On the issue that the list of nominees did not meet the two-thirds gender rule, the nominee responded that she was nominated by the President to the Cabinet as a female in line with the two-thirds gender principle;

(b) That at the World Health Organization where she has been working this year, she is engaged in policy and not clinical practice and therefore, she was not required to have a practicing certificate as per the provisions of the Medical Practitioners and Dentist Act;

- (c) That she has never engaged in any practice without a license and has always practiced within the law;
- (d) That she has never lost her job as a Medical Doctor at any time and she is competent to handle the Ministry of Health; and
- (e) That she has never engaged in any unethical behaviour nor participated in any corrupt or illegal activity and she meets all the requirements of the Constitution and is therefore fit and suitable to hold public office.

4.2.3 Committee Observations on the Suitability of the Nominee

237. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, her curriculum vitae, memoranda from the public and having heard her oral submission during the approval hearing made the following observations on her suitability for appointment as Cabinet Secretary for Health—

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a Kenyan citizen born in 1982 in Nairobi County and does not hold dual citizenship.
- (2) **THAT**, the nominee possesses extensive experience in the health sector and currently serves as an Infectious Diseases Consultant at the World Health Organization. The nominee has previously served as an Internal Medicine Physician/Senior Registrar at Mater Hospital, and Internal Medicine Physician/Technical Advisor at the Eastern Deanery AIDS Relief Program. Further, the nominee worked as a Medical Registrar in Kenyatta Hospital and as a Medical Officer Intern in Machakos General Hospital.
- (3) The nominee is currently pursuing Master of Science (MSc) in Infectious diseases at the London School of Hygiene and Tropical Medicine. She holds a Master of Internal Medicine and a Bachelor of Medicine and Surgery (MBChB) from the University of Nairobi. Her academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the

Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).

(5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.

(6) **THAT**, the nominee does not hold office in any political party.

(7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

(8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Health.

4.3 Hon. Alice Wahome, EGH – Nominee Cabinet Secretary for Lands, Public Works, Housing and Urban Development

238. The nominee appeared before the Committee on 1st August 2024 and was vetted under oath to examine her suitability. The Committee noted the following—

4.3.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

239. The nominee is a female Kenyan citizen born on 28th April 1959 in Murang'a County. The nominee confirmed that she is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

240. The nominee holds a Bachelor of Laws (LLB) degree from the University of Nairobi, a Diploma in Legal Studies from the Kenya School of Law, a Diploma in Teaching and Training and a Certificate in Corporate Governance from the Centre for Corporate Governance.

Employment Record and Work Experience

241. The nominee possesses extensive experience in Public Service having served as the Cabinet Secretary in the Ministry of Lands, Public Works, Housing and Urban Development from October 2023 to July 2024 and the Ministry of Water, Sanitation and Irrigation from 2022 to 2023. In addition,

the nominee had previously served as the Member of National Assembly for Kandara Constituency from 2013 to 2022).

Honours and Awards

242. The nominee was awarded the of Elder of the Order of Golden Heart.
243. Additionally, in 2022 she was awarded a certificate of recognition by the Anglican Church of Kenya for her contribution to the development of Kandara Sub-County notably in schools, hospitals and agriculture. Further, in 2010 the Mount Kenya Foundation issued her a Certificate of Appreciation in recognition of her contribution and support in ushering in the Constitution of Kenya, 2010.

Professional Association and Memberships

244. The nominee is a member of the Law Society of Kenya and the Federation of Women Lawyers (FIDA) Kenya.

Published Writings

245. The nominee submitted that during her tenure as Chairperson of the United Democratic Alliance Constitution Review Committee, she contributed to the preparation of the Party's Constitution, Code of Conduct and Nomination Rules.

Public Office, Political Activities and Affiliations

246. In addition to the positions highlighted above, the nominee submitted that she served as Director in the Retirement Benefits Authority from 2003 to 2006 and as the Chairperson of the *Inua Mama Jenga Taifa* Initiative Regional from 2021 to 2022.
247. The nominee added that she had served as Secretary General in the Safina Party in 2006 and Deputy Secretary General in NARC Kenya in 2007. She was also a member of the TNA and Jubilee Parties in 2013 and of the UDA Party in 2021.

Integrity

248. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net worth

249. During her previous approval hearing for appointment as Cabinet Secretary for Water, Sanitation and Irrigation in 2022, the nominee

estimated her net worth to be Kshs. 218,400,000 with the sources of income being salary and allowances from employment as a Member of the National Assembly; earnings from the firm of Wahome & Akedi Advocates; and rental income.

250. As at the time of the approval hearing, the nominee estimated her current net worth to be Kshs. 327.65 million comprising immovable property and motor vehicles.

Potential Conflict of Interest

251. The nominee declared that she is currently not associated with any persons or matters that would present a conflict of interest should she assume the position of Cabinet Secretary. In the event that a conflict of interest arose, she stated that she would resolve the same in accordance with the provisions of law.

Pro-bono/Charity Work

252. The nominee indicated that she founded the Alice Muthoni Wahome Foundation that focuses on social welfare issues for Kandara constituents including sponsoring students in pursuit of their education, supporting farmers in agriculture and agribusiness, and empowerment of special interest groups including women, youth and the elderly.
253. In addition, she indicated that she donates food to vulnerable families and has been involved in providing legal aid to indigent men and women at FIDA.

4.3.2 General and Sector-Specific Questions to the Nominee

254. The Committee posed several questions to the nominee on her suitability for appointment as Cabinet Secretary for Lands, Public Works, Housing and Urban Development. The nominee responded as follows—

On the ongoing digitization of land transactions

255. The nominee informed the Committee that the program had been designed to enhance efficiency and secure land records, ensuring their integrity is maintained. She stated that the program was initiated in 2014 and had successfully digitized land records in Nairobi, covering over 300,000 titles which are accessible through the Ardhisasa Platform. The nominee stated that the program had also expanded to Murang'a, Isiolo and Mombasa and a budget of approximately 35 to 40 billion was needed to fully secure all land records and complete the digitization process within the next five years.

On land grabbing in Kenya

256. The nominee informed the Committee that it was unfortunate that a title was no longer considered prima facie evidence of ownership due to widespread fraud by cartels and Ministry officials. She indicated that she would propose amendments to the Land Act to empower the Chief Land Registrar to cancel fraudulent titles. The nominee further stated that the Ministry would address the challenges directly and genuine landowners would not have to struggle with court cases.
257. The nominee stated that the law needed to be more explicit in dealing with the issue of land cartels to ensure long-term effectiveness and protection of public land.

On the withdrawn Land Laws (Amendment) Bill, 2023

258. The nominee informed the Committee that the Ministry of Lands and the NLC had distinct mandates and that there existed a cordial working relationship between them. She stated that the Ministry was responsible for issuing leases and title deeds while NLC managed public land. She also observed that the proposed amendments to the Land Laws (Amendment) Bill, 2023 sought to clarify the roles of the Ministry and the NLC.

On the Ministry's proposal to levy a charge on freehold land

259. The nominee informed the Committee that the proposed levy on freehold land within cities like Nairobi, Mombasa, Kisumu and Nakuru was aimed at standardizing development taxes. The nominee stated that the Ministry, with Parliament's approval, would designate specific areas for which land owners would be required to pay the levy.

On affordable housing

260. The nominee stated that the pilot of the Affordable Housing Program would include two hundred and ninety (290) constituencies to ensure significant coverage and accessibility to affordable housing across the country. She indicated that the goal was to construct 210,000 housing units.
261. The nominee stated that the Affordable Housing Program had been disrupted by court cases however, the construction of 48,000 housing units had already begun. She also stated that the Ministry would be launching more units this year.
262. Further, she observed that 106,000 youths had been employed through the Affordable Housing Program. She stated that the program's

sustainability was contingent on the continuation of the Affordable Housing Levy.

263. She confirmed that the affordable housing initiative would be expanded to include rural areas to ensure that residents in those areas have access to quality housing.

On ensuring safety of buildings

264. The nominee informed the Committee that the National Construction Authority (NCA) was responsible for ensuring the eligibility of contractors. She stated that collaboration with county governments is crucial in addressing the issue of construction of buildings without approved plans. The nominee emphasised on the need for Kenyans to use professional services when building and to adhere to existing Regulations to prevent the collapse of buildings.

On the issue of land adjudication fees

265. The nominee noted that the adjudication fee, which was initially set in 1980, was reviewed and increased to Kshs. 3,000 following comprehensive public participation.

On the Ndung'u Land Report

266. The nominee informed the Committee that the Ndung'u Land Report was a valuable document that highlighted several properties linked to land cartels. The nominee stated that the Report had been instrumental in the recovery of land by the Ethics and Anti-Corruption Commission (EACC). She further stated that the recovery process was still ongoing thus signifying the continuous efforts to address fraud and corruption in the land sector.

On plans to streamline the development of new facilities in congested areas

267. The nominee observed that the Kenya Slum Upgrading Programme (KENSUP) being funded by the European Union (EU), United Nations (UN) and World Bank among others had already been implemented in Kibra and would soon extend to Mathare.

On the relationship between the Ministry and NLC

268. The nominee informed the Committee that the Ministry maintained a cordial working relationship with the Commission while respecting the independence of the Commission. She also stated that she had no personal interest in encroaching on their mandate and contrary to some reports, she had met with the NLC Board to discuss pertinent issues.

On curtailing fraud and corruption at the Ministry

269. The nominee submitted that since assuming office as the Cabinet Secretary for Lands, Public Works, Housing and Urban Development, four (4) staff members had been arrested and charged in court, three (3) were facing disciplinary action and many other cases were under investigation by the DCI. She mentioned that she had met with all chief land registrars to reiterate the Ministry's and the government's policy against participating in fraud. The nominee stated that if reappointed, she intended to strengthen measures to deal with fraudsters more effectively and ensure accountability within the Ministry.

Regarding evictions and concerns about inadequate compensation

270. The nominee stated that approximately 20,000 people living on riparian land were affected by floods. She emphasized the need for funding to resettle victims of floods noting that some had already been compensated. She stated that it was important for Kenyans to avoid living in flood-prone areas.

On land disputes between government entities

271. The nominee informed the Committee that before being dismissed from office, she had proposed to the Executive that all Ministries circulate a list of their properties to create a holistic view of all land, including those that had been grabbed. He added that this would ensure better management and coordination across government entities.

On pending bills in the Ministry

272. The nominee informed the Committee that the Ministry had pending bills amounting to Kshs. 18 billion. She mentioned that given the financial constraints facing the country, strategic measures would need to be implemented to address these liabilities effectively.

On compulsory acquisition and timely compensation

273. The nominee submitted that the NLC was responsible for handling the compensation of individuals whose land had been acquired through compulsory acquisition. Further, she stated that the Commission was responsible for ensuring transparency and fairness in the disbursement of compensation funds.

On operationalization of the community land regime

274. The nominee indicated that the Community Land Act was operational and that the registration of community land was underway. She mentioned that while the preparation process was complex and demanding, significant progress on the registration of community land had been made in various counties.

On delays relating to transfer of property

275. The nominee informed the Committee that it was now possible to obtain real-time information regarding land records. With adequate funding, the Ministry could expedite these processes and address related issues more efficiently.

On validity of titles

276. The nominee stated that not all land titles in circulation were valid and the Ministry would address this issue appropriately to safeguard the integrity of land ownership records.

On her vision for sustaining urban development across the 47 counties

277. The nominee informed the Committee that the Ministry envisioned comprehensive urban development across the 47 counties through the implementation of the Urban Areas and Cities Act.

On the Ministry not processing titles for schools

278. The nominee informed the Committee that the total number of titles required was 31,000, of which 1,500 had issues that needed to be addressed. She stated that so far close to 15,000 titles had already been processed for schools.

279.

On allegations arising from the Memoranda, the nominee responded as follows—

280. On the issue of re-appointment to Cabinet after dismissal, the nominee vide an Affidavit sworn on 31st July 2024 responded as follows—

- (i) that on 11th July 2024, the President exercised his prerogative powers and dismissed all members of the Cabinet;
- (ii) that the action by the President did not in any way isolate the nominee or any other member of the Cabinet for any misconduct that would disqualify her for a reappointment or an elective position in the future;
- (iii) that on 19th July 2024 the President, while exercising his prerogative powers, reconstituted the Cabinet and nominated the nominee to serve as Cabinet Secretary in the Ministry of Lands, Public Works, Housing and Urban Development; and
- (iv) That the decision of the President to nominate her to the Cabinet was based on his assessment of her competence, ability and suitability to discharge the functions of Cabinet Secretary in the said Ministry.

281. On the issue of the affidavit of **Issac Aluochier** that contested the suitability of the nominee on the grounds that she had been found to have continued to occupy office after her office became vacant pursuant to Article 103(1)(e) of the Constitution and as such, had committed a crime under national law, the nominee responded vide affidavit sworn on 31st July, 2024 as follows—

- (a) that the entire process of arbitration and the award did not comply with the existing law on arbitration that require parties to consent to the jurisdiction of an arbitrator;
- (b) that disputes concerning the constitutionality of a decision that is ostensibly made pursuant to the Constitution are determined by the High Court of Kenya; and
- (c) that the nominee unequivocally confirmed that she had not faced any issues related to performance, integrity, misconduct or bad governance prior and during her tenure as Cabinet Secretary.

Observations on Memoranda Submitted Against the Nominee

282. The Committee noted that—

- (a) Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.
- (b) Article 105(1)(b) of the Constitution vests the High Court with jurisdiction to determine any question whether the seat of a member has become vacant. Accordingly, the question on whether the nominees violated Articles 103(1)(e) and 194(1)(e) of the Constitution was a question to be determined by the High Court and therefore the arbitrator, Isaac Aluochier, did not have jurisdiction to conduct the arbitral proceedings

4.3.3 Committee Observations on the Suitability of the Nominee

283. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, her curriculum vitae, memoranda from the public and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Cabinet Secretary for Lands, Public Works, Housing and Urban Development—

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a Kenyan citizen born in 1959 in Murang'a County and does not hold dual citizenship.
- (2) **THAT**, the nominee possesses relevant experience in Public Service having served as the Cabinet Secretary in the Ministry of Lands, Public Works, Housing and Urban Development (October 2022 to July 2024) and the Ministry of Water, Sanitation and Irrigation (2022-2023). In addition, the nominee had previously served as the Member of National Assembly for Kandara Constituency (2013- 2022). The nominee holds a Bachelor of Laws (LLB) degree from the University of Nairobi, a Diploma in Legal Practice from the Kenya School of Law and a Diploma in Teaching and Training and a Certificate in Corporate Governance from the Centre for Corporate Governance. Her academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (3) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (4) **THAT** the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (5) **THAT**, the nominee does not hold office in any political party.
- (6) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (7) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Lands, Public Works, Housing and Urban Development.

4.4 Mr. Julius Migos Ogamba – Nominee Cabinet Secretary for Education

284. The nominee appeared before the Committee on 1st August 2024 and was vetted under oath to examine his suitability. The Committee noted the following—

4.4.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

285. The nominee is a male Kenyan citizen born in 1967 in Kisii County. The nominee confirmed that he was a citizen of Kenya by birth and does not hold any dual citizenship.

Academic and Professional Qualifications

286. The nominee holds a Bachelor of Laws degree from the University of Nairobi, a Post-Graduate Diploma in Law from the Kenya School of Law and a Diploma in Law from the Institute of Advanced Legal Studies, University of London.

Employment Record and Work Experience

287. The nominee is presently a Senior Partner at Migos-Ogamba and Waudu Advocates, a position he has held since 1993. Additionally, he is presently the Chairman of the Kenya Electricity Generating Company since 2023.

Honours and Awards

288. The nominee was awarded the Elder of Order of the Burning Spear (EBS) in 2023.

Professional Association and Memberships

289. The nominee is an Advocate of the High Court of Kenya and a Member of the Law Society of Kenya. He is also a Certified Secretary.

Published Writings

290. The nominee indicated that he had neither authored nor edited any published materials.

Public Office, Political Activities and Affiliations

291. The nominee stated that in 2023 he was appointed Chairman of the Board of Directors of the Kenya Electricity Generating Company for a three (3) year term.

Integrity

292. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or

otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

293. The nominee estimated his net-worth to be Kshs. 790,000,000 comprising parcels of land, farm equipment, tea farm, houses and motor vehicles.

Potential Conflict of Interest

294. The nominee declared that he is currently not associated with any persons or matters that would present a potential conflict of interest. He added that in the event that any conflict of interest would arise, he would resolve the same in accordance with the provisions of the law.

Pro-bono/Charity Work

295. The nominee indicated that he provides scholarships to support students' education and that has been engaged in legal aid since 1993.

4.4.2 General and Sector-Specific Questions to the Nominee

296. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Education. The nominee responded as follows—

On his interest in the public sector and motivation to serve in public service three years to retirement

297. The nominee informed the Committee that he was not new to the public sector citing his experience in representing public institutions in court as an advocate. He stated that he had also done pro-bono work for many public institutions, and was at the time, serving as the Chairperson of KenGen PLC- a government enterprise. The nominee assured the Committee of his knowledge of the education sector, having worked as an untrained teacher at Buruburu High School where he offered support to over six hundred (600) students to access education.

On his analysis of the Competency Based Curriculum (CBC)

298. The nominee stated that he had identified the key issues hindering the smooth implementation of CBC as, insufficient number of teachers, limited engagement of parents and inadequate infrastructure. The nominee further stated that full implementation of the CBC would ensure that children get the most out of their talents, which had not been the focus under the 8-4-4 system. He further stated that the 8-4-4 system was exam-based and therefore disadvantaged students that may not have performed well in exams but possessed other talents.

On continuing good policies already in existence

299. The nominee stated that he did not believe in changing what was working, noting that government has perpetual succession and operates in continuity.

On the new education funding model

300. The nominee pointed out that there was need for the new university funding model to be unbundled sufficiently for the public to understand. In addition, the nominee stated that the initial funding model had not focused on the individual needs of the students while the new model sought to address this hence enabling more vulnerable persons to access education. The nominee informed the Committee that the tool used to determine the most vulnerable learners, that is, the 'Means Testing Instrument', had eight (8) parameters which were not comprehensive enough. He proposed expanding and linking the parameters to ensure accurate results. However, he noted that the rationalized budget would further affect the operations of the Ministry as it would call for cost-cutting measures in areas determined to be less critical while focusing on the priority areas.

On courage to dismantle the cartels in the education sector

301. The nominee stated that through political, parliamentary and public support, it was possible to dismantle the cartels that existed in the education sector.

On three major challenges in the education sector and how he intends to handle them

302. The nominee stated that problems in the education sector could be attributed to lack of sufficient funding. As such, there was need to find ways of funding all programs under the education sector in order to resolve the problems. If confirmed as Cabinet Secretary, the nominee informed the Committee that he would find a way of ensuring that a proper audit of the education sector is carried out and that adequate funding is harnessed and channeled to the sector and up to date policies and laws are implemented.

On capitation for basic education and additional fees charged by schools

303. The nominee noted that the issue of inadequate capitation arose from the fact that there were inadequate resources in the country. He further noted that funds going to schools to undertake programs were not disbursed on time. The nominee undertook to engage with the National Treasury to ensure that the budget for capitation is ringfenced to secure timely disbursement of funds to schools. On the issue of additional fees charged by schools, the nominee stated that there were some schools

that flouted set policies and guidelines and he proposed to institute stringent disciplinary mechanisms against them.

On the school feeding program

304. The nominee stated that the program was intended to cover the ASAL counties and informal settlements in some urban areas. The nominee observed that at the time, it catered for approximately 2.6 million children in twenty-six (26) counties and acknowledged that the program enabled retention of students in school. In order to sustain the program and even expand it, the nominee suggested coming up with programs to allow inter-government agencies such as the Kenya Meat Commission and the National Cereals and Produce Board to subsidize food prices. In addition, the nominee observed that there was need to address transportation costs to mitigate high food prices and therefore reach more children.

On the free and compulsory basic education

305. The nominee stated that, if confirmed as the Cabinet Secretary, he would liaise with the Teachers Service Commission (TSC) to ensure that teachers do not send away children from schools for failure to clear school fees balances. The nominee noted that the engagement between the Ministry and TSC was necessary to ensure regulations are put in place to facilitate free and compulsory basic education and ensure necessary action is taken by the Ministry directly.

On the issue of transitioning to Senior Secondary and maintaining Junior Secondary Schools (JSS)

306. The nominee stated that JSS, as proposed by the Presidential working party, was intended to be domiciled in the current primary schools for cost-effectiveness and because of the age of the learners. However, he noted that out of the 16,000 classrooms required, only 3,500 were already under construction. Further, construction of another 7,500 classrooms was expected to start in October, leaving a shortfall of 5,000.

On whether he would have the courage to change what is not working in the Ministry

307. The nominee stated that he would make the best decision in the best interests of the learners.

On charging fees contrary to circulars from the Ministry

308. The nominee noted that TSC was in charge of teachers in public schools including enforcing their discipline. He further noted that the Ministry of Education releases funds to schools but had no power to ensure the

proper utilization of the funds. If appointed as Cabinet Secretary, the nominee stated that he would find a way to work with TSC so that TSC could be an agent to enforce non-compliance with Ministry circulars.

On withholding of certificates by schools

309. The nominee stated that schools were only agents of the Kenya National Examination Council (KNEC) and therefore, the schools should not retain students' certificates. However, the nominee stated that there was need to balance the question of non-payment of fees and release of certificates. The nominee stated that, if approved for appointment, he would look into the issue and advise on how the issue could be resolved.

On the Ministry ignoring the special needs schools

310. The nominee submitted that, under the capitation model, special schools were expected to get more funding than normal schools. He further stated that the allocation to special schools should be higher as per requirement but lack of resources resulted in schools lacking special needs facilities. If confirmed as Cabinet Secretary, the nominee stated that he would engage partners to ensure that adequate special needs facilities were put up in schools.

On access to education for learners with special needs

311. The nominee pointed out that some Persons with Disabilities (PWDs) had been integrated into regular schools but the requirement to have accessible infrastructure for PWDs had not been met. The nominee stated that there was need for affirmative action programs to support learners with special needs as well as mainstreaming.

On relations with TSC noting accusations of high-handedness and unprocedural dismissal of intern teachers

312. The nominee stated that the threat of the strike by intern teachers was based on a Collective Bargaining Agreement (CBA) which was to be implemented with effect from July, 2024. The nominee noted that consultation with the stakeholders would allow parties to find a middle-ground and a possible long-term solution.

On the requirement for birth certificates to access capitation

313. The nominee noted that, while each child had an allocation for capitation, those without birth certificates did not receive capitation because they were not captured in the National Education Management Information System (NEMIS) system. The nominee informed the Committee that a team had been formed to carry out a fifty (50) day physical census that would be concluded on 2nd August 2024. He noted that this would

ensure that all students are captured in the NEMIS system and allow disbursement of full capitation for learners.

On improving NEMIS to ensure equal opportunities for those who do not have birth certificates

314. The nominee stated that he would seek to improve the NEMIS system to capture more parameters. The nominee further stated that with regard to the regions where most children did not have birth certificates, he would, if approved for appointment, liaise with the registrar of births and deaths to have birth certificates issued to those in marginalized areas.

On considering dropping the 'free education' or implementing it fully

315. The nominee stated that he would provide leadership and mobilise stakeholders to come up with a fund to cover all costs of education. He added that he would ensure that an audit is carried out to find out how much would be needed to fully finance the schools. The nominee further suggested partnering with stakeholders to ensure that the needs of learners are fully met, including partnering with textile companies to provide school uniforms to learners. The nominee further indicated that lack of audit had led to cases where some children got more funding than others while some got nothing at all.

On uniform issues

316. The nominee stated that, to lower the cost of school uniforms, he would liaise with the National Youth Service (NYS) and textile industries to produce uniforms for learners cost effectively.

On teachers' training

317. The nominee stated that the rationalization of the number of teachers had not been done. He noted that there were some schools which had excess teachers while others had a shortfall of teachers, including limited number of well-trained teachers. The nominee further stated that the problem was worsened by overlapping policies. The nominee observed that, solving the challenges in totality and having key stakeholders working together, would be fundamental in coming up with holistic and lasting solutions. On the issue of teachers who were expected to teach grade 9, the nominee proposed that the teachers should be trained to retool and reskill them.

On the National Council for Nomadic Education in Kenya (NACONEK)

318. The nominee stated that, if confirmed as Cabinet Secretary, he would expand NACONEK to ensure that children in the ASAL areas had access to education.

On Technical and Vocational Education and Training (TVET) institutions

319. The nominee noted that TVET institutions had been constructed in the two hundred and ninety (290) constituencies with fifty-two (52) institutions still coming up. If approved as Cabinet Secretary, the nominee proposed the creation of colleges and the selection of a few, to become "centres of excellence" in order to encourage students from other countries to study in Kenya and hence raise additional revenue for self-sustenance. The nominee further suggested that there was need to develop mechanisms where projects that were to be undertaken in the country, would incorporate students from TVET colleges to undertake their 'practicals'.

On the court judgement on matters CBC

320. The nominee stated that he had not yet read the judgement concerning CBC (Nelson Havi vs Ministry of Education) and would respond once he had read the judgement.

On ensuring that students in ASAL areas are not disadvantaged

321. The nominee stated that the issue of teachers declining their deployment to the North Eastern region and ASAL areas was rampant and he proposed working with the Ministry of Interior and National Administration to ensure the security of teachers, learners and schools.

On measures to ensure girls dropping out from school are allowed to complete schooling

322. The nominee stated that the Ministry's policy is to ensure that all girls are allowed to complete school, pregnancy notwithstanding. He added that there was no policy against their reinstatement and therefore, the process should be seamless.

On delayed Higher Education Loans Board (HELB) disbursements

323. The nominee stated that the issue of delayed disbursements was due to lack of resources and poor collection of repayments from those who had benefited. He proposed that HELB should come up with a bond to supplement their resources.

On the new university funding model

324. The nominee informed the Committee that, under the new funding model, the amount payable was being indicated unlike with the previous model and as such, the fee had not been increased. The nominee informed the Committee that, if appointed as Cabinet Secretary, he would carry out an audit of all funds within the education sector.

325. The nominee noted that the model prioritises a student's financial need and separated placement from funding. He further stated that funding for students was provided through scholarships, loans and household contributions.

On his priority areas for the first 100 days

326. The nominee stated that he would prioritize more critical issues first, such as Grade 9 issues of classrooms and teachers. He also acknowledged that, despite 27% of the national budget being allocated to education, underfunding was still a challenge.

On resolving the bursary scheme – a multiplicity of bursaries drawing from the same source

327. The nominee stated that if appointed, he would commission an audit on the monies allocated to the education sector in order to allow a clearer picture on utilization of funds.

On Kenya Universities and Colleges Central Placement Service (KUCCPS) placing students in private universities and utilization of the public resources for students in private universities

328. The nominee stated that, based on his experience in law, there was no way to reclaim the funds from those under the old model, as it would be legally wrong. The nominee further stated that under the new funding model, only those in public universities would be funded and those in private universities would be given loans. The nominee added that, in his view, it was a personal decision for the parents to take their children to private universities.

On renewal of PWDs certificates every five years

329. The nominee stated that he would liaise with the relevant department of government to have the provision removed as disability does not change.

On mushrooming boarding schools without adequate structures especially in Kisii County

330. The nominee stated that quality assurance on registration requirements of boarding schools was necessary.

On P1 teachers

331. The nominee stated that the P1 teachers would be reskilled and absorbed into the CBC program as they were permanent and pensionable employees.

On allegations arising from the Memoranda, the nominee responded as follows—

332. On the issue of the affidavit by **David Ogega Ochwangi** that contested the suitability of the nominee on grounds that the nominee's name as an Advocate and signature was appended against a consent document whose signatures were allegedly forged as several heirs to the estate were not in the country and therefore could not have signed the consent, the nominee responded as follows vide Affidavit sworn on 31st July 2024 —

- (a) that he was informed of David Ochwangi's complaint as filed with the Advocates Complaints Commission vide a letter dated 23rd September, 2019 and he responded to the letter from the Advocates Complaints Commission vide letter dated 24th September 2019, in which he clearly indicated that he did not commission the consent in question;
- (b) that vide a further letter dated 14th October, 2019, the Advocates Complaints Commission sought to ascertain whether the Advocate who drew the impugned consent worked at the nominee's law firm and he confirmed that the said Advocate did not work at the nominee's law firm;
- (c) that having received the said communication, the Advocates Complaints Commission never made any adverse finding against the nominee or his law firm, as would have been the case had there been substance in the complaint; and
- (d) that indeed, by a letter dated 13th May, 2023, the Advocates Complaints Commission issued the nominee with a Certificate of Good Standing that confirmed that the nominee had no pending complaint.

333. The nominee annexed the following supporting documents to his Affidavit—

- (a) letter from the Advocates Complaints Commission dated 23rd September, 2019;
- (b) letter by Julius Migos Ogamba to the Advocates Complaints Commission dated 24th September, 2019;
- (c) letter from the Advocates Complaints Commission dated 14th October, 2019;
- (d) letter by Julius Migos Ogamba to the Advocates Complaints Commission dated 14th November, 2019; and
- (e) Certificate of Good Standing issued to Julius Migos Ogamba dated 13th May 2024.

Observations on Memoranda Submitted Against the Nominee

334. The Committee noted that the nominee was issued with a Certificate of Good Standing dated 13th May 2024 by the Advocates Complaints Commission that stated that according to their records, there was no pending complaint against the nominee, Julius Migos Ogamba.

4.4.3 Committee Observations on the Suitability of the Nominee

335. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Education -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1967 in Kisii County and does not hold dual citizenship.
- (2) **THAT**, the nominee is presently a Senior Partner at Migos-Ogamba and Waudu Advocates, a position he has held since 1993. Additionally, he is the Chairman of the Kenya Electricity Generating Company, a position he had held since 2023.
- (3) **THAT**, the nominee holds a Bachelor of Laws from the University of Nairobi, a Post-Graduate Diploma in Law from the Kenya School of Law and a Diploma in Law from the Institute of Advanced Legal Studies, University of London. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB)
- (5) **THAT** the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

THAT, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite

abilities, qualifications and experience to serve as the Cabinet Secretary for Education.

4.5 Hon. Roselinda Soipan Tuya, EGH – Nominee Cabinet Secretary for Defence

336. Hon. Roselinda Soipan Tuya, EGH appeared before the Committee on 1st August 2024 and was vetted under oath to examine her suitability. The Committee noted the following—

4.5.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

337. The nominee is a female Kenya born on 24th July 1978 in Narok County. The nominee confirmed that she is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

338. The nominee holds a Master of Laws Degree (LL.M) in Sustainable International Development from University of Washington, Seattle (2010); a Bachelor's Degree in Law from the University of Nairobi (2002); and a Postgraduate Diploma in Law from the Kenya School of Law (2003). She sat for the Kenya Certificate for Secondary Education (KCSE) in 1998 at the Kenya High School.

Employment Record and Work Experience

339. The nominee served as the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry from 2022 to 2024, Nominated Senator from 2022 to October 2022, the Woman Representative for Narok County from 2013 to 2022. As a Member of Parliament, she served as the First Chairperson in the Speaker's Panel in the 12th Parliament. Further, she also served as a Land Law and Gender Specialist with the USAID Justice Project from November 2010 to July 2011; and as a Legal Aid Coordinator, at the Kituo Cha Sheria from February 2008 to September 2009.

Honours and Awards

340. The nominee was conferred upon the Chief of the Order of the Burning Spear (CBS) in 2018 and the Elder of the Order of the Golden Heart (EGH) in 2023 by President.

Professional Association and Memberships

341. The nominee is a member of the Law Society of Kenya (LSK).

Published Writings

342. The nominee indicated that she had neither authored nor edited any published materials.

Public Office, Political Activities and Affiliations

343. The nominee is a member of the UDA Party, the Kenya Kwanza Alliance 2022 Presidential Campaign Council and the head of the Kenya Kwanza Alliance Women Charter.

Integrity

344. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

345. During her previous approval hearing for appointment as Cabinet Secretary for Environment, Climate Change and Forestry in 2022, the nominee estimated her net worth to be Kshs. 156,000,000 with the source of income being salary and allowances; immovable property, motor vehicles, shares in SACCOs and dairy farming.
346. As at the time of the approval hearing, the nominee estimated her current net worth to be Kshs. 243,448,000 comprising immovable property, motor vehicles, shares in SACCOs and farming. The nominee attributed the change in net worth to appreciation in property and assets.

Potential Conflict of Interest

347. The nominee declared that she is currently not associated with any persons or matters that would present a conflict of interest should she assume the position of Cabinet Secretary. In the event that a conflict of interest arose, she stated that she would resolve the same in accordance with the provisions of law.

Pro-bono/Charity Work

348. The nominee submitted that she has participated in the mentorship of women and girls for fifteen years and volunteered at the Menstrual Health Champion for Days for Girls International for five years.

4.5.2 General and Sector-Specific Questions to the Nominee

349. The Committee posed several questions to the nominee on her suitability for appointment as Cabinet Secretary for Defence. The nominee responded as follows—

On the potential overlap between the role of the Cabinet Secretary and the Chief of Defence Forces

350. The nominee acknowledged her role as the principal adviser to the President on defence policy, which also includes a significant advisory role to Parliament on policy formulation and assessment of the capabilities of the Kenya Defence Forces (KDF) and any necessary actions to maximise military effectiveness. She noted that although she did not have a military background, she recognised that the Ministry of Defence comprises both a uniformed and a civilian unit.
351. The nominee stated that upon confirmation, she would chair the Defence Council, which includes the Chief of Defence Forces and service commanders. The nominee further stated that she was a team player and consultative in her leadership approach, qualities she planned to apply extensively to understand the operational and administrative roles of the uniformed side of the ministry, thereby ensuring complementarity. She expressed confidence that her advisory role would be enriched by integrating her civilian expertise with insights from the military, enabling her to effectively advise the Commander-in-Chief and interact with Parliament.

On achievements as CS Environment, Climate Change and Forestry

352. As the Cabinet Secretary for Environment, Climate Change and Forestry, the nominee highlighted her leadership in policy matters and coordination across various sectors and levels of government. The nominee successfully organised the African Climate Change Summit, a global event that brought international attention to Nairobi.
353. Additionally, she prioritised ecosystem restoration, including the fifteen (15) billion tree-planting programme, which she deemed successful in rallying the nation to participate in ecosystem restoration as a critical component of climate action. She further noted that the Africa Climate Summit was particularly significant in positioning Africa as a key contributor to global climate solutions, rather than merely a victim of climate change.

On Carbon Trading

354. The nominee identified carbon trading as a significant achievement, with Kenya being recognised as a leader in this field in Africa. However, she acknowledged the need for greater transparency, particularly regarding its impact on the daily lives of Kenyans and its contribution to the Gross Domestic Product (GDP). Upon assuming office, as the CS Environment, Climate Change and Forestry she focused on creating a legal framework through amendments to the Climate Change Act to enhance

transparency, accountability, and benefit-sharing in the carbon market. She stressed that carbon trading is a nascent form of climate financing, and before leaving the ministry, she had already established structures for the full implementation of the new legal framework, which is expected to benefit Kenyans, investors, and communities.

On the lack of appreciation from the civilian side of the military unit and the perception of overreach

355. The nominee reassured all stakeholders in the Ministry of Defence that, upon confirmation as Cabinet Secretary, she would prioritise team collaboration and quickly familiarise herself with military operations and administration. She emphasised her commitment to understanding these operations without infringing upon the distinct roles of the uniformed units of the ministry, ensuring that her overall oversight, policy direction, and advisory functions are exercised effectively.

On use of aircraft by government officials for the national tree-planting

356. The nominee explained that her primary role as the Cabinet Secretary for Environment in the tree-planting initiative was that of a coordinator. She stressed that the nature of ecosystem restoration required the involvement of all sectors of society, including individual Kenyans, the private sector, and all government agencies. As such, she stated that the programme could not be confined solely to the Ministry of Environment, Climate Change and Forestry. She clarified that her Ministry did not provide transport or logistical support for Cabinet Secretaries during their activities related to tree planting. She did however note that concerns about excessive spending on the tree-planting programme were addressed at the Cabinet level, and the second national tree-planting programme was more grassroots-centred, with coordination by the Kenya Forest Service (KFS) and other entities at the community level.

On the deployment of the KDF internally

357. The nominee clarified that one of the core mandates of the KDF is the defence and protection of the country's territorial integrity and sovereignty. She further stated that KDF also has a role in internal deployment, which falls under two categories: assisting and cooperating with other agencies in instances of emergency and disaster (Article 241(3)(b) of the Constitution) and deployment to maintain peace during instances of instability (Article 241(3)(c) of the Constitution). The nominee observed that with regard to the recent protest the KDF was deployed under Article 241(3)(b) to assist the National Police Service (NPS), with the KDF not taking the lead role. She further clarified that a Gazette Notice was issued to define the scope, nature, and duration of the deployment.

On the alleged slow response by KDF in parts of the North Rift

358. The nominee indicated that all KDF operations are conducted under the principles of national security, which are subject to the Constitution and the authority of Parliament. She assured the Committee that, upon confirmation, she would ensure strict adherence to constitutional provisions regarding deployment.

On implementation of KDF projects

359. The nominee stated that one of her key mandates as Cabinet Secretary for Defence, upon confirmation, would be to assess and oversee the implementation of projects to ensure efficiency and proper utilisation of funds. She undertook to work closely with the relevant parliamentary committees to address these issues.

On alleged corruption in the KDF recruitment process

360. The nominee recognized the importance of integrity in the recruitment of Kenyans into the KDF, as outlined in the Constitution. She acknowledged the recurring issue of corruption in the recruitment process, where individuals reportedly pay significant sums to be recruited, only to be dismissed on questionable grounds. She undertook to evaluate the standard operating procedures of the KDF recruitment process to identify gaps and ensure adherence to constitutional requirements. She also emphasized the need for public sensitization to dispel the notion that payment is required for recruitment and suggested the introduction of whistleblowing mechanisms and rapid response to address corruption and malpractices.

On the KDF's role in national development

361. The nominee noted that there is a Defence Industrialisation Policy aimed at integrating the KDF into the national development agenda due to its unique competencies. She highlighted state corporations under the Ministry of Defence, such as the Kenya Ordnance Factories Corporation, which is expanding its mandate to include food production. She suggested that the KDF's involvement in industries could enhance self-sufficiency in operations, food security, capacity building, and equipment capabilities, particularly in the face of global fiscal challenges.

On the safety and modernisation of military equipment

362. The nominee acknowledged that a significant portion of the budget for the Ministry of Defence is allocated to recurrent expenditure. She committed to work with the relevant parliamentary committee to ensure value for money in military investments, particularly in the maintenance and efficiency of military equipment. She expressed concern about the

condition of equipment, especially air assets, and stated that one of her priorities would be to assess and improve the maintenance and readiness of military assets.

On balancing access to information with national security concerns

363. The nominee explained that access to information has limitations under Article 24 of the Constitution, as read with the Kenya Defence Forces Act, regarding classified information. However, she emphasized that the Cabinet Secretary for Defence has the regulatory authority to determine what information can be shared and with whom, ensuring that transparency and accountability are maintained without compromising national security.

On her vision for the defence sector

364. The nominee articulated her vision for a well-equipped and prepared defence force, capable of responding to external aggression with appropriate measures. She emphasized the importance of mission preparedness, training, capacity building, and addressing the welfare of KDF service members to ensure that they are well-prepared and motivated to defend the country.

On balancing external and internal deployment of the military

365. The nominee reiterated that the defence and protection mandate is subject to constitutional authority and pledged to ensure that the deployment of the KDF, both externally and internally, is balanced, with a primary focus on protecting the country from external aggression.
366. The nominee confirmed that the Gazette Notice on the deployment of KDF internally remains in effect until normalcy is restored. She indicated that, upon confirmation, she would assess the situation to determine whether the deployment should continue or be concluded, given the restoration of normalcy following recent unrest.

On gender parity in key military positions

367. The nominee noted the progress made in gender parity within the military, highlighting the disbandment of the Women's Service Corps in 1999, which previously limited the integration and rights of women in the KDF. She committed to reviewing the Ministry of Defence's gender policy to ensure that women are fully integrated into the KDF and are not limited in any way.

On leasing versus purchasing of vehicles

368. The nominee expressed an interest in reviewing the current situation regarding vehicle leasing versus purchasing within the KDF. She

acknowledged the validity of concerns about efficient use of public resources and committed to exploring cost-effective solutions.

On the benefits of designation of Kenya as a non-NATO Ally

369. The nominee noted that Kenya's designation as a non-NATO Ally places the country at a competitive advantage in bilateral engagements with the United States. She observed that the designation offers Kenya access to equipment, training opportunities, and enhanced defence cooperation, which are critical in advancing the country's defence capabilities. She also emphasized the importance of multilateralism and bilateralism in Kenya's role in the global security and defence landscape.

Written submissions by the Nominee

370. With regard to the issue relating to Shiru and Shaviringa settlement schemes in Kakamega Forest, vide an Affidavit sworn on 30th July 2024 the nominee stated as follows—
- (1) That the issue related to Shiru and Shaviringa settlement schemes in Kakamega Forest where the Government (through the then Ministry of Environment and Natural Resources) initiated a land exchange between private land owners in Mbale, where the Government ceded 134.8Ha in Shiru area of Kiburu Forest and a boundary plan 180/215 was prepared in anticipation of de-gazettement;
 - (2) That further, in 1992, an area was earmarked for settlement of people affected by the expansion of Mudete Tea Factory in Vihiga and 36Ha of the 134.8Ha was set aside for this purpose and it came to be known as Shaviringa settlement schemes;
 - (3) That, whereas the initial settlement area was supposed to be 36Ha, a ground confirmation by the Kenya Forest Service confirmed on the ground indicated that the actual area occupied was 43.5Ha which means that an additional 7.5Ha was occupied;
 - (4) That, however, none of the identified areas earmarked for excision was degazetted and therefore it remains under the jurisdiction of Kenya Forest Service although the two areas (Shiru and Shaviringa) are fully occupied, the degazettement process outlined by law has not been undertaken;
 - (5) That, the Ministry of Environment and Forestry under the then Cabinet Secretary Keriako Tobiko, formed a multi-agency team to expedite resolution of the matter and during the tenure of the nominee as CS, the nominee did not engage in any acts or omissions as alleged by the Claimant;

- (6) That, further, it is untrue that the degazettement and issuance of titles was to take place in 3 months because the process was to be undertaken by a multi-agency team and not one Ministry;
- (7) That the process of degazettement as provided by the Forest Conservation and Management Act is a robust process that involves public participation, Parliament and many more stakeholders;
- (8) That the Claimant's statement is therefore untrue and misleading;
- (9) That the nominee engaged the offices of the Prime Cabinet Secretary and Governor's office Vihiga on the matter and question of the draft budget for survey was raised and discussed long before my appointment as CS and the nominee did not author any letter in this regard;
- (10) That in March 2024, the Senate wrote to the Ministry of Environment to respond to a Statement by the Senator of Vihiga County on this issue and the nominee responded to the Statement comprehensively;
- (11) That the matters raised by the Claimant are vested within the Ministry of Environment, Climate Change and Forestry and the process has been on-going to resolve the issue including developing a Cabinet memorandum on the same and other issues for regularization; and

That based on the weighty matters raised by the Claimant under oath, the nominee shall be seeking to cross-examine the Claimant on the false averments at the earliest opportunity and through legal channels.

On allegations arising from the Memoranda, the nominee responded as follows:

371. On the issue of re-appointment to Cabinet after dismissal, the nominee responded vide Affidavits sworn on 30th July, 2024 and 31st July, 2024 as follows—
- (a) the President exercised his prerogative powers and dismissed all members of the Cabinet based on the need to re-organize the Cabinet and improve service delivery;
 - (b) That the President's dissolution of Cabinet was not related to gross misconduct or abuse of public office or any acts or omissions contravening the Public Officers Ethics Act.
 - (c) The Constitution does not provide for grounds for dismissal of Cabinet Secretaries;

- (d) That a Cabinet Secretary should not be disbarred from subsequently holding any public office pursuant to a dissolution of Cabinet.
- (e) That neither the Constitution nor the Act limits or prohibits the President from nominating a person who was previously dismissed from Cabinet.
- (f) That she submitted to the Committee clearance certificates from the DCI and EACC indicating that she has not been under investigations from the respective agencies in the past as regards to any illegal activities;
- (g) That during her tenure as Cabinet Secretary for Environment, Climate Change and Forestry, she exercised her responsibilities in a manner consistent with the constitutional principles; and
- (h) That her nomination together with that of five other females is an illustration of the President's noble efforts towards realizing the two-thirds gender rule and to promote gender inclusivity.

Observations on Memoranda Submitted Against the Nominee

372. The Committee noted that Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.
373. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, her curriculum vitae, memoranda from the public and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Cabinet Secretary for Defence—
- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a Kenyan citizen born in 1978 in Narok County and does not hold dual citizenship.
 - (2) **THAT**, the nominee previously served in the position of Cabinet Secretary, Ministry of Environment, Climate Change and Forestry from

October 2022 to July 2024. Prior to that, she served as a nominated Senator from 9th September 2022 to October 2022 and the Woman Representative for Narok County from 2013 to 2022. As a Member of the National Assembly, she served as the First Chairperson in the Speaker's Panel in the 12th Parliament. Further, she also served as a Land Law and Gender Specialist with the USAID Justice Project from November 2010 to July 2011; and as a Legal Aid Coordinator, at the Kituo Cha Sheria from February 2008 to September 2009.

- (3) **THAT** the nominee holds a Masters Law Degree (LL.M) in Sustainable International Development from University of Washington, Seattle (2010); a Bachelor's Degree in Law from the University of Nairobi (2002); and a Postgraduate Diploma in Law from the Kenya School of Law (2003). She sat for the Kenya Certificate for Secondary Education (KCSE) in 1998 at the Kenya High School. Her academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT the** nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Defence.

4.6 Dr. Andrew Mwhia Karanja – Nominee Cabinet Secretary for Agriculture and Livestock Development

374. The nominee appeared before the Committee on 2nd August 2024 and was vetted under oath to examine his suitability. The Committee noted the following—

4.6.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

375. The nominee is a male Kenyan citizen born on 26th April 1962, in Kiambu County. The nominee confirmed that he is a citizen of Kenya by birth and did not hold dual citizenship.

Academic and Professional Qualifications

376. The nominee holds a Doctor of Philosophy (PhD) degree in Development Economics and Policy from the Wageningen University, Netherlands. He also holds an MSc in Agricultural Economics and a BSc in Agriculture, both from the University of Nairobi. In addition, he has a Certificate in Development Oriented Agriculture.

Employment Record and Work Experience

377. The nominee is currently a Principal Consultant for Best Results Associates Ltd, a position he has held since January 2015. Prior to this, he served as a Senior Agricultural Economist and Task Team Leader for the World Bank from February 2003 to December 2014; Research Fellow for the Egerton University from February 2002 to January 2003; Senior Agricultural Economist for the Coffee Research Foundation from September 1991 to January 2002; and a Planning Officer/Lecturer for the Ministry of Agriculture and Livestock from July 1987 to August 1991.

Honours and Awards

378. The nominee holds a Best Team Award from the World Bank in 2011; was awarded Wageningen Agricultural University Fellowship for PhD training; was a principal investigator in a project funded by the Agricultural Research Fund (ARF); and awarded Nairobi University fellowship for MSc. course.

Professional Association and Memberships

379. The nominee is a member of the African Association of Agricultural Economists and a member of the European Association of Agricultural Economists.

Published Writings

380. The nominee has authored/co-authored over twenty-six (26) papers, thesis, policy briefs and book chapters in both international and local publications.

Public Office, Political Activities and Affiliations

381. The nominee was a member of the Coffee Sub-Sector Implementation Committee and Coffee Sub-Sector Reforms Standing Committee in 2016 to 2022 and member of the Presidential Taskforce on Coffee Sub-Sector Reforms in March to May 2016.

Integrity

382. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

383. The nominee estimated his net-worth to be Kshs. 214 million comprising of immovable property, motor vehicles, money held in bank accounts and listed shares.

Potential Conflict of Interest

384. The nominee declared that he did not have any persons, litigation, financial arrangement, matter or issue that would present a potential conflict of interest should he assume the position of Cabinet Secretary. The nominee stated that, should a conflict of interest arise, he would declare the interest in writing to the appointing authority in accordance with the law.

Pro-bono/Charity Work

385. The nominee has been a member and chairperson of the Board of Management of St. Francis Girls Secondary School; member of the Board of Management of PCEA Mukuyu-ini Secondary School; a member of the Lions Club International; and is a life member of the Kenya Red Cross.

4.6.2 General and Sector-Specific Questions to the Nominee

386. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Agriculture and Livestock Development. The nominee responded as follows—

On GMOs and the Biosafety Act

387. The nominee acknowledged the potential of GMOs to increase agricultural productivity but also recognised the concerns surrounding food safety. He stated that if approved, he would thoroughly examine the

issue, particularly noting that GMOs, such as BT-cotton, are already in use within the country. He emphasised the need to balance food safety with agricultural productivity, stating that the Biosafety Act provides guidelines on labelling and scientific evidence, which he intends to utilise in making informed decisions that would satisfy all stakeholders in Kenya.

388. The nominee discussed the safety of GMO food products, stating that while some GMOs are safe for human consumption, others may not be. He cited soya as an example of a safe GMO product but warned that caution is necessary, especially with GMOs involving genetic engineering. He reiterated that decisions regarding GMOs should be based on scientific evidence and closely aligned with the provisions of the Biosafety Act.

On the use of banned pesticides

389. The nominee noted that certain pesticides, manufactured in Europe and North America for export to African countries, had caused significant harm, particularly by threatening the quality of horticultural exports due to pesticide residues. He expressed his readiness, if confirmed as Cabinet Secretary for Agriculture and Livestock Development, to ban the use of harmful substances, to protect Kenyans from the harmful effects of the pesticides.

On livestock development experience

390. The nominee highlighted his academic background, noting that his thesis at the University of Nairobi focused on cattle breeding. He also stated that he had experience on matters relating to livestock development and had extensive work on reviewing dairy sector policies while at Tegemeo and his consultancy work across various counties, particularly in the arid and semi-arid lands (ASAL) regions. Additionally, he engaged in evaluating programmes managed by the European Union and other agencies in the livestock sector.

On public sector experience in crop development

391. In response to inquiries about his extensive work in crop development, particularly within the public sector, the nominee stated that he began his career as an extension officer and eventually rose to the position of planning officer and economist at a coffee research institution. He also stated that he had served as a member of the Taskforce on Coffee Reform. He further observed that, his experience in both the public sector and at the World Bank, where he engaged with various levels of government, underscores his deep involvement in crop development.

On allegations of serving as a personal assistant to the former Cabinet Secretary for Agriculture and Livestock Development, Hon. Mithika Linturi

392. The nominee denied ever meeting the former Cabinet Secretary or serving as his personal assistant.

On the fertiliser subsidy scandal

393. The nominee acknowledged the significance of the fertiliser subsidy programme in ensuring food security, but he also noted the presence of cartels that compromised the quality and distribution of fertiliser last season. He undertook, if approved, to address the issues by ensuring transparency, competition, and integrity in fertiliser procurement and distribution. The nominee proposed a shift away from centralised procurement to a voucher system, allowing farmers to purchase fertiliser from various suppliers, thereby reducing reliance on the National Cereals and Produce Board (NCPB).

On tackling cartels and corruption in the Ministry of Agriculture

394. The nominee expressed a strong commitment to confronting cartels and corruption within the Ministry of Agriculture. He stated that his guiding principles of integrity and prioritising the interests of the country and its farmers would be his main tools in combating these challenges. He undertook to establish governance structures and involve government agencies to ensure transparency and fairness in the agricultural sector.

On developing a fertiliser manufacturing programme

395. The nominee agreed that fertilizer manufacturing was a good idea, that will also develop the local industry. He also acknowledged the need to move beyond blending to actual manufacturing. He added that, if approved, he will pursue this agenda to bolster the local industry and reduce reliance on imported fertiliser.

On the crisis in the tea sector

396. The nominee addressed the ongoing crisis in the tea sector, particularly the declining tea prices at the Mombasa auction and the resulting stockpile of unsold tea. He acknowledged the seriousness of the issue, which affects farmers' income, and suggested that while the intention behind the minimum reserve price was good, the policy needed to be reviewed. He expressed his willingness to take charge of the situation, advocating for a careful and cautious approach to policy adjustments that would not negatively impact farmers' incomes.

On reviving the agriculture sector

397. The nominee acknowledged the challenges faced in the agriculture sector, citing statistics that indicate a decline in agricultural exports and

an increase in food imports. He proposed focusing on food security by ensuring timely and quality inputs for farmers, reviving extension services at the devolved units, and adopting appropriate agricultural technologies to boost productivity.

On collaborating with county governments

398. The nominee emphasised the importance of engaging with county governments, noting that agriculture is a devolved function. He stated that one of his top priorities would be to use intergovernmental structures to build the capacity of county governments and work collaboratively with them. He proposed regular summits and close collaboration with agricultural committees to ensure effective delivery of services and extension support to farmers.

On avoiding duplication of functions and wastage

399. The nominee acknowledged the issue of duplication of functions among state agencies and regional development bodies, attributing this to a lack of coordination and highlighted the need for better alignment with the sector's priorities. He undertook to ensure that the ministry's parastatals, while semi-autonomous, would work as a team towards a common goal, and to improve inter-ministerial coordination.

On encouraging youth involvement in agriculture

400. The nominee recognised the importance of agriculture as a key sector for employment, particularly for the youth. He expressed his commitment to ensuring that young Kenyans are actively involved in agricultural activities, from grassroots to higher levels of the value chain. He proposed a value chain approach to create meaningful jobs for the youth and promised to monitor their engagement in the sector.
401. The nominee expressed concern about the high number of trained but jobless youths in the agriculture sector. He committed to taking deliberate measures to create job opportunities for the youth, women, and persons with disabilities, and to monitor their participation in agricultural programmes to ensure they benefit from these initiatives.

On fertiliser distribution and the role of county governments

402. The nominee addressed concerns about fertiliser being retained at Kilimo House instead of being distributed and managed at the county level. He reaffirmed his belief in devolution and argued that sustainable agricultural development requires active participation from county governments. The

nominee further proposed decentralising fertiliser procurement to agro-dealers and implementing a voucher system.

On livestock development

403. The nominee highlighted the critical role of livestock in improving livelihoods, particularly in ASAL areas. He acknowledged the lack of a specific agency created to promote livestock matters and noted that the introduction of a Livestock Marketing Board and a research organisation focused on livestock would address this gap. The nominee also stated that there was need to regulate breeding and animal feeds to improve livestock productivity.

On mitigation measures for drought and flooding

404. Addressing the issue of recurrent droughts and flooding in Kenya, the nominee emphasised the need to invest in mitigation and adaptation measures, particularly in arid and semi-arid areas. The nominee stated that some of the mitigation measures include promoting pasture conservation, introducing drought-resistant crop varieties, and working closely with the Ministry of Irrigation to develop small-scale irrigation programmes. He also advocated for the implementation of crop and livestock insurance to protect farmers from losses.

On revitalising the coffee sector

405. The nominee acknowledged the turmoil in the coffee sector, including issues related to pricing, theft, and value addition. He expressed his intention to collaborate with the Ministry of Interior to address coffee theft and to support the passage of the Coffee Bill currently before Parliament. He also discussed the need to explore the feasibility of guaranteed minimum returns for farmers, although he recognised the significant resources required for such a policy.

On the Prevention of Livestock and Produce Theft Bill, 2023

406. The nominee expressed his willingness to work with Parliament on this issue. He noted that dealing with livestock theft would require a collaborative effort and that he would support any legislative measures aimed at addressing this problem.

On failed agricultural projects

407. The nominee noted the failure of projects such as Galana Kulalu and stated that there was need to determine why the projects did not deliver value for money. He undertook to ensure that future agricultural projects will be thoroughly evaluated and aligned with the country's priorities.

On agricultural land use and real estate development

408. The nominee expressed concern about the loss of agricultural land to real estate development and stressed the importance of having clear land use policies. He pledged to engage with the lands sector to implement amendments to the land use policy and to ensure that agricultural land is preserved for its intended purpose.

On small-scale irrigation in agriculture

409. The nominee highlighted the importance of small-scale irrigation in agriculture and noted that while the Ministry of Agriculture no longer directly oversees irrigation, he would work closely with the relevant ministry to promote small-scale irrigation initiatives that support farmers and increase productivity.

On flower farming and revenue decline

410. When asked about the decline in revenue from flower farming, the nominee attributed it to the ongoing Russia-Ukraine war, which has disrupted exports to the region. He also pointed out that the Kenyan flower industry was required to meet new EU requirements on reducing pesticide use. He proposed promoting domestic flower markets, like Ethiopia's model, to diversify market risks and reduce reliance on exports.

On protecting horticultural farmers

411. The nominee expressed his concern about the challenges facing horticultural farmers, particularly the high cost of production, high cost of inputs and compliance with international standards. He proposed supporting farmers by promoting domestic and regional markets and reducing their reliance on exports, thereby ensuring their livelihoods are safeguarded.

On the preservation of grazing lands

412. The nominee emphasised the need to preserve grazing lands for pastoralists and suggested collaboration with the Ministry of Lands to ensure proper land use planning. He also highlighted the importance of educating pastoral communities on sustainable grazing practices to prevent overgrazing and land degradation.

On plans to revive neglected agricultural sectors

413. The nominee acknowledged the challenges in the agricultural sectors and proposed a comprehensive approach that includes policy reforms, stakeholder engagement, and a focus on value addition to revive the industries in the sector and make them competitive.

On rice farming and the expansion of Mwea Scheme

414. The nominee discussed the potential of rice farming in Kenya, particularly in the Mwea region. He proposed expanding the Mwea scheme and investing in irrigation infrastructure to increase rice production. He also suggested exploring new rice varieties that are more resilient and have higher yields to boost the sector.

On afforestation and environmental conservation

415. The nominee highlighted the importance of afforestation and environmental conservation in agricultural development. If approved, he committed to work with the Ministry of Environment to promote tree planting and sustainable land use practices that protect the environment while supporting agricultural productivity.

Written submissions by the nominee

416. Dr. Andrew Mwhia Karanja responded to the memoranda contesting the suitability of the nominees on the issue of non-compliance with the two-thirds gender rule and stated in his Affidavit that H. E. the President had nominated eight female members to the Cabinet and therefore had complied with Article 27(8) of the Constitution in the list of nominees.

4.6.3 Committee Observations on the Suitability of the Nominee

417. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Agriculture and Livestock Development—

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1962 in Kiambu County and does not hold dual citizenship.
- (2) **THAT**, the nominee is currently a Principal Consultant for Best Results Associates Ltd a position he has held since January 2015. Prior to this, he served as a Senior Agricultural Economist and Task Team Leader for the World Bank from February 2003 to December 2014; as a Research Fellow for the Egerton University from February 2002 to January 2003; as a Senior Agricultural Economist for the Coffee Research Foundation from September 1991 to January 2002; and as a Planning Officer/Lecturer for the Ministry of Agriculture and Livestock from July 1987 to August 1991.

- (3) **THAT** the nominee holds a Doctor of Philosophy (PhD) degree in Development Economics and Policy from the Wageningen University, Netherlands. He also holds an MSc in Agricultural Economics and a BSc in Agriculture, both from the University of Nairobi. Additionally, he has a Certificate in Development Oriented Agriculture. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Agriculture and Livestock Development.

4.7 Hon. Aden Bare Duale, EGH – Nominee Cabinet Secretary for Environment, Climate Change and Forestry

418. The nominee appeared before the Committee on 2nd August 2024 and was vetted under oath to examine his suitability. The Committee noted the following:

4.7.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

419. The nominee is a male Kenyan citizen born in 1965 in Garissa County. The nominee confirmed that he is a citizen of Kenya by birth and did not hold dual citizenship.

Academic and Professional Qualifications

420. The nominee holds an Honorary Doctorate Degree in Political Science from Garissa University, a Master's in Business Administration from Jomo Kenyatta University of Agriculture and Technology and a Bachelor's Degree in Education from Moi University. He also possesses Diploma Certificates in Conflict Management and Project Management, Certificates in Livestock marketing and Value Chain, Livestock Cross-Border Trade, Animal Disease and Traceability System; and Conflict Resolution and Peacebuilding.

Employment Record and Work Experience

421. The nominee is the immediate former Cabinet Secretary in the Ministry of Defence; and has previously served as a Member of Parliament for Garissa Township and Dujis Constituencies. He had been elected as a Member of Parliament for four (4) consecutive terms during which he served as the Leader of the Majority Party in the National Assembly for eight (8) years. He has previously held various positions including former Assistant Minister for Livestock, Chief Executive Officer (CEO) at Livestock Traders and marketing Kenya Society, Director at Medina Chemical Limited, Kenya Broadcasting Corporation and Mombasa Export Slaughter House.
422. Additionally, he has been a largescale Beef rancher at the Coast, Technical advisor for the revival of the Kenya Meat Commission and a graduate teacher at Sankuri secondary School. Furthermore, he has been a Board Member at Kenya Veterinary Privatization Programme and Garissa Teachers School and a Member of Petroleum Institute of Kenya.

Honours and Awards

423. He was awarded Elder of the Order of the Golden Heart in 2015.

Professional Association and Memberships

424. The nominee stated that he was neither a member of any professional association nor did he belong to any professional, business, fraternal, scholarly, civic, charitable or other organization.

Published Writings

425. The nominee has authored the autobiography titled For The Record which is currently the fourth book on the best seller list in Kenya.

Public Office, Political Activities and Affiliations

426. The nominee is a founding member of the Orange Democratic Movement (ODM), the United Republican Party (URP), the Jubilee Party (JP) and the United Democratic Alliance (UDA).

Integrity

427. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

428. During his previous approval hearing for appointment as Cabinet Secretary for Defence in 2022, the nominee estimated his net worth to be Kshs. 851,000,000.

429. As at the time of the approval hearing, the nominee estimated her current net worth to be Kshs. 243,448,000 comprising immovable property, motor vehicles, shares in SACCOs and farming. The nominee attributed the change in net worth to appreciation in property and assets.

430. The nominee estimated his net-worth to be Kshs. 980 million comprising immovable assets, rental property, shares in family-owned business, livestock and motor vehicles.

Potential Conflict of Interest

431. The nominee declared that he currently did not have any personal interests that were likely to present potential conflicts of interest, should he assume the position of a Cabinet Secretary.

Pro-bono/Charity Work

432. The nominee indicated that he annually contributed to the construction and operational costs of Hafsa Bint Sireen Islamic School, Ummi Hawa Kosar Islamic School, Aisha Bint Abubakar Islamic Center, Madrassa Khadija, Madrassa Fathi and Imam Malik Educational Center.

4.7.2 General and Sector-Specific Questions to the Nominee

433. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Environment, Climate Change and Forestry. The nominee responded as follows:

On COP 28 and carbon credit

434. The nominee stated that carbon credits were critical for economic development. Further, the nominee observed that the Climate Change Act provides that the annual social contributions by carbon projects to local communities is 40% of the aggregate earnings. If approved for appointment, the nominee stated that he would ensure public

participation and consultation to ensure that communities benefitted from the export of carbon credit.

On forest restoration and tree planting

435. The nominee noted that the country had only 8.83% forest cover and therefore it was critical for any initiative on planting of trees to be community driven. He proposed the inclusion of fruit trees that would benefit the community thus acting as an incentive for the public to plant more trees. On measures to increase forest cover, the nominee suggested that he would explore partnerships with the private sector to restore degraded forests by giving private businesses free advertisement spaces for branding, in exchange for forest preservation efforts.

On gazettment of forests and grabbed forest land

436. The nominee stated that, land grabbing was a historical issue and if confirmed for appointment, he would consolidate all petitions on land disputes within the first forty (40) days of his tenure as Cabinet Secretary for Environment and where appropriate recommend revocation of illegal title deeds regardless of the status of the title holders.

On priority issues

437. The nominee made reference to Article 42 of the Constitution which provides for the right to a clean and safe environment for every Kenyan, Article 69 of the Constitution which provides for citizen obligations on environmental issues and Article 70 of the Constitution which mandates the enforcement of environmental rights. He stated that since every citizen had an obligation to preserve the environment, it was important to focus on public participation and stakeholder consultation in seeking to address environmental matters.
438. In addition, the nominee noted that the country was experiencing high levels of water and air pollution. In particular, he noted that the rivers were highly polluted from sewage due to poor waste management. He noted that there was need to implement proper waste management practices and to promote recycling.

On the government's commitment to plant 15billion trees by 2032

439. The nominee stated that the 15 Billion trees by 2032 target was achievable. He noted that it was the responsibility of every citizen to participate in tree planting. Further, if confirmed for appointment as Cabinet Secretary, the nominee stated that he would advocate for planting of trees to ensure the realisation of the government's commitment. In addition, the nominee cited the example of Ethiopia as having made considerable progress in tree-planting. He stated that he

would benchmark with Ethiopia in seeking to learn best practices in tree-planting.

On upcoming COP 29 conference

440. The nominee stated that the 29th UN Climate Change Conference, commonly known as COP29 would be held in Baku, Azerbaijan on the 11th to 22nd of November, 2024. He further stated that the top priorities for the conference were climate change financing; and climate change mitigation efforts. In preparation for the conference, the nominee suggested that Kenya needed to fully operationalize Article 6 of the Paris Agreement.

On use of military aircraft

441. The nominee stated that the Minister for Defence, the President and the First Lady were authorised to use military aircraft and any other person would only use a military aircraft with the concurrence of the Commander in Chief.

On forest conservation and management

442. The nominee stated that it was not possible to conserve the forests without the help of the communities and citizens living around the forests. He noted that, as provided for in the Forest Conservation and Management Act, Community Forests Associations were instrumental in spearheading forest conservation and management efforts. The nominee proposed the fencing off of forests and operationalization of the forest community management regulations to enhance the conservation efforts.

On the floods in various counties

443. The nominee noted that climate change was the greatest threat to human life, citing different climate change occurrences in various countries. Further, he stated that in the recent past, Kenya had experienced severe drought and flooding in various parts of the country. As such, the nominee stated that he would put in place various mitigation measures including pursuing the fulfilment of the government commitment to plant 15 billion trees by 2032. The nominee further undertook to audit factories and industries in residential areas and recommend revocation of licences by the National Environment Management Authority (NEMA), where pollution is established.

On his prior nomination as Cabinet Secretary for Defence

444. The nominee stated that it was the President's prerogative to organize his Cabinet as he deemed fit. To this end, the nominee stated that he was willing to serve the people of Kenya in his new role, if approved for appointment.

On collaboration with the County Governments to avoid duplication of roles

445. The nominee acknowledged that in line with the Fourth Schedule to the Constitution, several functions related to the environment had been devolved to the Counties. The nominee stated that there was need to engage the Council of Governors to ensure smooth and efficient delivery of services at the counties.

On controlling pollution

446. The nominee noted that there were challenges in the implementation of physical planning and zoning legal requirements by counties. He further noted that it was the role of NEMA to enforce zoning requirements and safeguard against environmental pollution. If approved for appointment, the nominee stated that through NEMA, he would initiate an audit of industries and bars in residential areas and revoke licenses that had been acquired illegally.

On his legacy as Cabinet Secretary

447. The nominee stated that if approved for appointment, he would uphold discipline, respect, teamwork, implementation of tasks and patriotism to the country.

On conservancies and how they are run

448. The nominee informed the Committee that the conservancies were under the mandate of the Ministry of Wildlife. He however added that, in collaboration with other ministries, there was need for consultations on the management of conservancies and conflict resolution during droughts.

On harnessing expertise from international agencies based in Kenya

449. The nominee noted that the Country was privileged to host the United Nations Environment Programme (UNEP) and United Nations (UN) Habitat in Nairobi, where the top experts on environment were based. He stated that the Ministry, under his leadership, would take advantage of the skilled labour, data and technology to build the capacity of staff as well as facilitate skills transfer. He undertook to working closely with these institutions to ensure that the environment sector in Kenya benefitted from the global expertise.

On corruption in the recruitment process of KDF

450. The nominee stated that there was need to address the issues of corruption in the recruitment of KDF before the next recruitment process.

On KDF deployment to the streets during the recent protests

451. The nominee stated that the deployment was undertaken as provided for under Article 241 of the Constitution and with the approval of the National Assembly.

On promoting the Ministry's effectiveness

452. The nominee stated that, if approved for appointment, he intended on working with the Nairobi River Commission to ensure that the pollution of the Nairobi River is eliminated by among other things removing dumpsites from the river' bank.

On the proposed nuclear plant in Uyombo Kilifi County

453. The nominee undertook to prioritize the public on the issue and facilitate public participation in seeking to building consensus on the issue.

On rivers drying up as a result of environmental degradation

454. The nominee, while acknowledging that rivers had been drying up, noted that water levels were also going down as a result of forest degradation and upstream farming activities near rivers. The nominee stated that if confirmed for appointment, he would put in place various measures to mitigate the situation.

On forest degradation

455. The nominee acknowledged that infrastructure and construction of roads was contributing to the reduction of forest cover. He observed that the Ministry was in discussions with the Ministry of Roads and Transport with a view to having trees planted on the roadsides as part of road maintenance. If confirmed for appointment, the nominee undertook to follow through with the discussions to ensure the goal is achieved.

On noise pollution from bars, night clubs and religious institutions

456. The nominee stated that licensing of bars and other businesses was a county function. However, if confirmed for appointment, the nominee undertook to look into the issue of licensing of bars, night clubs and religious institutions in residential areas and propose appropriate action.

On waste management

457. The nominee stated that waste management is a devolved function but the county governments were not implementing the existing laws and regulations on waste management. He added that despite it being a devolved function, if confirmed for appointment, he would introduce bins in public areas, including in public motor vehicles and separate bins for dry and wet waste, for ease of management and recycling.

458. The nominee further noted that community involvement was the appropriate mechanism of addressing waste management citing the example of Karura forest which is run by a community forest Association.

On the use of asbestos in roofing

459. The nominee noted that several government institutions were still using asbestos products. However, the nominee noted that the Ministry of Environment, in collaboration with NEMA, was in the process of ensuring that by December, 2024, all government agencies would stop using asbestos as roofing materials.

On creating synergy with KPLC

460. The nominee informed the committee that he would engage with KPLC to address the issue of tree logging and also enforce the law providing for urban forestry planning, once approved as Cabinet Secretary.

On public servants participating in politics and fund raisers.

461. On fund raisers, the nominee noted that there was need to regulate Harambees to avoid cases of illegally acquired money being re-distributed through Harambees.

On logging and Protection of indigenous trees

462. The nominee noted that although illegal logging had reduced in the recent times, if approved for appointment, he would put in place appropriate measures to protect indigenous trees.

On Staffing at Kenya Forest Service

463. The nominee noted that to deal with the issue of understaffing, there was need to embrace the use of ICT in forest management. He however noted that the use of technology would require more resource allocation and therefore if he is approved for appointment, he stated that he would consult Parliamentary Committees for funding.

On public facilities in Mt. Kenya, Mt. Elgon and Mt. Longonot

464. To protect the climbing routes on various Mountains, the nominee undertook to put in place waste management structures including public toilets and waste bins as one way of managing the waste.

On pharmaceuticals dumping waste in the sea

465. The nominee undertook to recommend revocation of licenses for persons found contravening the law by disposing and dumping waste into the sea and other water bodies.

On allegations arising from the Memoranda, the nominee responded as follows:

466. On the issue of re-appointment to Cabinet after dismissal, **Hon. Aden Bare Duale** vide an Affidavit sworn on 30th July, 2024 responded as follows—

- (a) The President has discretion to nominate any person including a person who has been dismissed as a Cabinet Secretary under Article 152(5)(b).
- (b) Neither the Constitution nor the Act has provision limiting or prohibiting the President from nominating a person who has been previously dismissed from office.
- (c) The Gazette Notice did not state the reasons for dismissal of the Cabinet Secretaries.

467. On the issue of the affidavit of **Issac Aluochier** that contested the suitability of the nominee on the grounds that he had been found to have continued to occupy office after his office became vacant pursuant to Article 103(1)(e) of the Constitution and as such, had committed a crime under national law, the nominee responded vide affidavit sworn on 30th July, 2024 as follows—

- (a) that the issue as to whether a Member of Parliament had resigned from a political party was not a matter capable of settlement by Arbitration;
- (b) that, all matters related to the resignation and resultant vacancy in a political seat cannot be determined by arbitration as it falls within the exclusive jurisdiction of the High Court under Article 105(1)(b);
- (c) that therefore, it is only the High Court that can determine whether a seat of Member of Parliament has become vacant or not and Mr. Isaac Aluochier did not possess authority to issue the alleged arbitral award; and
- (d) that the alleged arbitral award was not recognized and enforced through an application made in writing to the High Court under section 36 (1).

Observations on Memoranda Submitted Against the Nominee

468. The Committee noted that—

- (a) Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other

state office. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.

(b) Article 105(1)(b) of the Constitution vests the High Court with jurisdiction to determine any question whether the seat of a member has become vacant. Accordingly, the question on whether the nominees violated Articles 103(1)(e) and 194(1)(e) of the Constitution was a question to be determined by the High Court and therefore the arbitrator, Isaac Aluochier, did not have jurisdiction to conduct the arbitral proceedings.

4.7.3 Committee Observations on the Suitability of the Nominee

469. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Environment, Climate Change and Forestry -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1965 in Garissa County and does not hold dual citizenship.
- (2) **THAT**, the nominee is the immediate former Cabinet secretary in the Ministry of Defence; and has previously served as Member of Parliament for Garissa Township and Dujis Constituencies. He had been elected as a Member of Parliament for four (4) consecutive terms during which he served as the Leader of the Majority Party in the National Assembly for eight (8) years. He has previously held various positions including former Assistant Minister for Livestock, Chief Executive Officer (CEO) at Livestock Traders and marketing Kenya Society, Director at Medina Chemical Limited, Kenya Broadcasting Corporation and Mombasa Export Slaughter House.
- (3) The nominee holds an Honorary Doctorate Degree in Political Science from Garissa University, a Master's in Business Administration from Jomo Kenyatta University of Agriculture and Technology and a Bachelor's Degree in Education from Moi University. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.

- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Education Loans Board (HELB).
- (5) **THAT** the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Environment, Climate Change and Forestry.

4.8 Mr. Eric Murithi Mugaa – Nominee Cabinet Secretary for Water, Sanitation and Irrigation

470. The nominee appeared before the Committee on 2nd August 2024 and was vetted under oath to examine his suitability. The Committee noted the following—

4.8.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

471. The nominee is a male Kenyan citizen born on 14th July, 1992 in Meru County. The nominee confirmed that he is a citizen of Kenya by birth and did not hold dual citizenship.

Academic and Professional Qualifications

472. The nominee holds both a Master's Degree in Civil Engineering (Water Resources) and a Bachelor's Degree in Civil and Construction Engineering from the University of Nairobi.

Employment Record and Work Experience

473. The nominee possesses relevant experience in the engineering sector and currently serves as an Assistant Project Engineer at the Water and Sanitation Development Project (WSDP). He has previously held positions

as an Assistant Project Engineer at Nairobi Rivers Sewerage; a Design Engineer at Kenya Towns Sustainable Water Supply and Sanitation Program and a project involved in the preparation of detailed design and tender documents for water distribution works for Mombasa and three (3) service providers; an Assistant Design Engineer at a project involved in the feasibility study and preparation of water supply masterplan for Murang'a county, Kenya Towns Sustainable Water Supply and Sanitation Program and Water and sanitation Service Improvement Project Additional Financing (WASSIPAF); and an Assistant Engineer at the Kenya Transport Sector Support Project Road Inventory and Condition Survey for Central Zone.

474. The nominee informed the Committee that he is a duly registered member of the Institution of Engineers of Kenya with about nine (9) years of experience in the water and sanitation sector.

Honours and Awards

475. The nominee was awarded a First-Class Honours in his Bachelor's Degree in Civil and Construction Engineering in the University of Nairobi.

Professional Association and Memberships

476. The nominee is a registered graduate engineer of the Engineers Board of Kenya (EBK) and the Institution of Engineers Kenya (IEK).

Published Writings

477. The nominee has co-authored an article in the ICASTOR Journal of Engineering Vol. 13 No. 2 of 2020 titled 'Robustness of water distribution networks under different peak factors through modelling, sensitivity, analysis and NRW management by DMA delinking- Case Study of Mombasa North Mainland Distribution Network'.

Public Office, Political Activities and Affiliations

478. The nominee indicated that he had not held any public office, and had neither held membership nor rendered service to any political party or election committee.

Integrity

479. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

480. The nominee estimated his net-worth to be Kshs. 31million.

Potential Conflict of Interest

481. The nominee declared that he did not have any persons, parties, categories of litigation or financial or matters that would present a potential conflict of interest when they assume the office of Cabinet Secretary.

Pro-bono/Charity Work

482. The nominee has volunteered as a teacher at Kirindine Secondary School in Meru tutoring students in Mathematics, Physics, Business Studies and Geography. He has offered basic first aid services during local events; contributes to fees for needy students; trains youths daily at a local gym; tutors young engineers; participated in voluntary street-cleaning around Nairobi; and organized and managed the Campaign against Drug and Sexual Immorality (CADASI) in the University of Nairobi.

4.8.2 General and Sector-Specific Questions to the Nominee

483. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Water, Sanitation and Irrigation. The nominee responded as follows—

On alternative means of acquiring funding due to the rationalized budget in the Ministry

484. The nominee stated that he was aware that the budgets of the State Department for Irrigation and the State Department for Water and Sanitation had been reduced by Kshs. 1.7 billion and Kshs. 2.7 billion respectively. The nominee stated that he would therefore leverage on Public Private Partnerships (PPPs) to address the funding gap. Further, the nominee informed the Committee that he would leverage public-private partnerships to cure water shortage.
485. The nominee informed the Committee that he would leverage on Public Private Partnerships to construct dams which offer a holistic solution for water shortage, as they provide water for domestic use and as irrigation. He further stated that would also lease land for irrigation, noting that water as a human right was intertwined with food security.
486. The nominee stated that dams are multipurpose as they provide water for domestic use, hydropower and irrigation, adding that irrigation is crucial in developing climate resilience, especially in ASAL areas. He stated that he

would be prudent to also have Public Private Partnerships to lease land for irrigation to guarantee value for money.

On corruption in the development of water resources

487. The nominee noted that he had served in previous positions with diligence, upholding the values of transparency and accountability. If approved for appointment, he undertook to carry out his duties with integrity, honesty and accountability. The nominee further stated he would ensure that the due process of law is followed, if anyone under the Ministry was found culpable of corruption.

On creating employment opportunities for the youth

488. The nominee stated that 75% of the economy is driven by Agriculture. If approved for appointment, he stated that he would work to encourage the public to embrace Agriculture as a career and as an income generating economic activity. In addition, the nominee undertook to ensure that the State Department for Irrigation fulfills its mandate of harvesting, storing water and reclaiming land for productivity and increasing acreage for farming in the country.
489. Further, in collaboration with the Ministry of Education, the nominee stated that he would advocate for projects such as micro-irrigation, sinking boreholes and giving opportunities to high school 4K Clubs and Agriculture teachers to inculcate and train the youth in Agriculture.
490. He further added that, he would harness the use of technology in the Ministry which would be critical to ensure ease of tracking issues that require attention. The nominee highlighted his experience in the water sector and use of smart meters, adding that he would champion the development of policies that take into account public participation and inclusivity.

On balancing completion of existing projects and commencement of new ones

491. The nominee stated that he would first pursue the completion of the ongoing projects while ensuring value for money is attained. He further stated that he would ensure connection of water to all Kenyans in line with Vision 2030 on 100% water connectivity in all homes and the Sustainable Development Goals (SDGs).

On the water agencies under the Ministry

492. The nominee stated that the Constitution and Water Act are clear on the establishment of the agencies. The nominee stated that he was willing to

consult on the possible review of the laws to allow centralization of the agencies, where appropriate.

On incomplete dams

493. The nominee stated that he was aware of the incomplete dam in Pokot South Constituency which was at 50% completion and that Kshs.10 billion had already been utilized in the project. If approved for appointment, he undertook to review the status of all the incomplete dams in the country and where necessary, request for additional funds through the National Assembly for the completion of projects.

494. The nominee further stated that dams are constructed on a need basis. If approved for appointment, he would prioritize completion of the incomplete dams before starting new projects. He acknowledged the need for dams in Meru and Tharaka and stated that he would adhere to the National Water Master Plan. The nominee stated that the construction of the Thwake and Umaa dams was ongoing and undertook to give the status of completion if approved for appointment.

On funding repayment of loans for construction of dams with water levies

495. The nominee stated that he was aware that the State Department for Water and Sanitation had a loan of approximately Kshs. 225 billion arising from water projects that were completed and handed over to the county governments. If approved for appointment, the nominee stated that he would use his of experience in working with water service providers to strengthen water service institutions, reduce non-levied water, increase billing and increase last-mile connectivity. Through these interventions, he expected that the institutions would generate enough revenue to help in repayment of the loans. The nominee added that he would consult with National Treasury and the Taskforce on Debt restructuring on the same.

On addressing potential conflicts of interest

496. The nominee confirmed that he was a director at a company that deals with water, sanitation and building. He stated that he understood the responsibilities of the office, and if approved for appointment, he would declare if any conflict of interest arose, and allow for a decision to be made from that point.

On high cost of water in the coastal region

497. The nominee confirmed that he had worked in Kilifi where provision of water is a challenge. He stated that sinking boreholes would lower the cost of electricity and alleviate the water challenge for Kilifi residents. He further noted that the completion of Mwache Dam in Kwale will also be a solution to the issue.

On access to water

498. The nominee stated that the Ministry had a duty to ensure 100% water connectivity in line with Vision 2030 and the Africa Water Agenda 2063. He assured Kenyans that he would ensure water gets to the end user noting that at the moment, the water did not get to 45% of end users. He also undertook to sensitize Kenyans on conservation of water and other renewable resources.

On incomplete Meru Sewage Plant

499. The nominee informed the Committee that he was aware of the project but was not sure of the status. If approved, he undertook to follow up on the status of the project.

On maintenance and repairs of boreholes

500. The nominee stated that the operations and maintenance of boreholes is the responsibility of the Water and Sanitation Program (WSP), unless they are privately owned facilities. The lack of repair and maintenance has been caused by lack of revenue. He stated that if approved for appointment, he would endeavor to reduce non-revenue water from 45% to less than 20% to ensure that WSPs generate adequate revenue to undertake repairs and maintenance of boreholes.

501. The nominee added that leveraging on technology would be vital to ensuring that operations and maintenance needs are minimized. He stated that if all water facilities were well-mapped through a centralized program, it would become easier to ascertain when they were built and pinpoint when they are due for repairs and maintenance.

On borehole licensing

502. The nominee stated that Water Resource Authority (WRA) is responsible for regulations and approval of boreholes. He noted that the Authority is underfunded and has limited personnel. To find a lasting solution, the nominee stated that there is need to empower the Authority with resources and personnel.

On diminishing water resources

503. The nominee stated that Nairobi has diminishing water resources because of the proximity between boreholes leading to low recharge time. If approved for appointment, he stated that he would work together with the department of planning in the county governments to construct detention and retention points in Nairobi during rainy seasons as recharge points for aquifers. He added that the concept had been benchmarked in Israel and that it was possible to implement it in Kenya.

On his managerial experience

504. The nominee stated that he possessed experience and knowledge in the sector. He stated that his experience in water and sanitation issues was relevant to the work in the Ministry, and through consultations with officers in the Ministry and teamwork, he would ensure that the Ministry effectively executes its mandate.

On drought solutions and supply of water to schools

505. The nominee stated that the immediate solution to drought problems is the installation of gutters in all primary schools where they would also be provided with tanks and boreholes in schools that would also serve the community at large. On Medium-term solutions, the nominee suggested sharing of water pans among schools. In the long term, he proposed the construction of dams to hold over 1,000 m³ of water.

On geopolitical issues in water provision

506. The nominee confirmed having worked at the water distribution network in Taita Taveta region and stated that the Water Act mandates the Cabinet Secretary to ensure amicable use of water catchment areas. He added that water resources such as Mzima Springs belong to all Kenyans and that he would consult with the leaders of the respective regions to reach an agreement on the sharing of the water resources.

On realization of the right to clean water in rural areas

507. The nominee stated that county governments are responsible for last-mile connectivity through Water Service Providers. If approved for appointment, he would work with the county governments to identify and resolve challenges. He proposed that projects could be packaged and presented to development partners, such as the World Bank and Africa Development Bank, to complement funding from the Exchequer.

On the lack of water in Marsabit

508. The nominee stated that 84% of renewable water resources, including rainwater, drain into the ocean. He observed that discussions were underway to build one hundred (100) PPP dams to enable the provision of piped water for all and irrigation.

On the 2013 National Water Master Plan

509. The nominee stated that the Master plan was effective and required to be fully implemented despite the funding challenges.

On registration with the Engineers Board of Kenya

510. The nominee stated that he obtained his registration in 2024 and that one is required to work under a registered engineer if they are not registered.

Written Submissions by the Nominee

511. The nominee vide an Affidavit sworn on 4th August 2024, responded to the memoranda that contested his suitability on the basis of lack of the requisite qualifications as follows—

- (a) That he holds a degree in Civil Engineering from the University of Nairobi where he graduated with First Class Honours, an academic foundation that provided him with a comprehensive understanding of the technical aspects related to water and sanitation systems and that he also holds a Masters of Science (Msc.) Degree in Civil Engineering (Water Resources) which is in line with the current designated nomination;
- (b) That he has practical experience having worked as an Engineer with SMEC Kenya Consulting Engineers and Mangat I.B Patel Limited Consulting Engineers thereby demonstrating a strong capacity for leadership and technical proficiency;
- (c) That as the youngest nominee for a Cabinet position, he represents a new generation of leaders eager to bring fresh ideas and innovative solutions to government and that his appointment underscores the President's commitment to inclusivity and diversity in leadership, ensuring that the perspectives and aspirations of the youth are well-represented at the highest levels of decision-making;
- (d) That he is uniquely positioned to address the challenges facing water and sanitation sectors with a forward-thinking approach and his understanding of cutting-edge technologies and sustainable practices is essential for addressing contemporary issues such as water scarcity, environmental degradation, and the equitable distribution of resources;
- (e) That he is dedicated to public service, possesses a genuine passion for improving the quality of life for all citizens and has demonstrated commitment to transparency, accountability, and ethical governance; and
- (f) That his private sector experience, fresh perspective, combined with a solid technical background, will bring a balanced and effective approach to the Ministry of Water, Sanitation and Irrigation.

512. On the issue of the **two-thirds gender rule**, he stated that—

- (a) The President nominated seventeen male and eight female persons to the Cabinet. Accordingly, the President has complied with Article 27(8) of the Constitution since eight out of twenty-five members meets the

two thirds constitutional threshold, noting that the memoranda did not factor in the nominees for the position of Attorney General and the Ministry of East African Community Affairs and Regional Development; and

- (b) The above position has been acknowledged and appreciated by the National Equality and Gender Commission in an article dated 30th July 2024, which commended the President for his efforts towards gender balance.

4.8.3 Committee Observations on the Suitability of the Nominee

513. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Water, Sanitation and Irrigation—

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1992 in Meru County and does not hold dual citizenship.
- (2) **THAT**, the nominee is a duly registered member of the Institution of Engineers of Kenya with over nine (9) years of experience in the water and sanitation sector. The nominee also possesses extensive experience in the engineering sector and currently serves as an Assistant Project Engineer at the Water and Sanitation Development Project (WSDP). He has previously held positions as an Assistant Project Engineer at Nairobi Rivers Sewerage; an Assistant Design Engineer at a project involved in the feasibility study and preparation of water supply masterplan for Murang'a county; and an Assistant Engineer at the Kenya Transport Sector Support Project Road Inventory and Condition Survey for Central Zone.
- (3) The nominee holds a Master's Degree in Civil Engineering (Water Resources) and a Bachelor's Degree in Civil and Construction Engineering from the University of Nairobi. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the

Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).

- (5) **THAT** the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (7) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Water, Sanitation and Irrigation.

4.9 Mr. Davis Chirchir, EGH – Nominee Cabinet Secretary for Roads and Transport

514. Mr. Davis Chirchir, EGH appeared before the Committee on 2nd August 2024 and was vetted under oath to examine his suitability. The Committee noted the following—

4.9.1 Questions from the General Questionnaire ***Citizenship, Date and Place of Birth***

515. The nominee is a male Kenyan citizen born on 30th September 1960 in Kericho County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

516. The nominee holds a Master's of Business Administration in International Management from the Royal Holloway School of Management from the University of London, a Postgraduate Diploma in Tele-Traffic Engineering and a Bachelor of Science Degree in Physics and Computer Science from the University of Nairobi.

Employment Record and Work Experience

517. The nominee is the immediate former Cabinet Secretary in the Ministry of Energy and Petroleum a position he had previously held from 2013 to 2015. He has previously served as the Chief of Staff in the Office of the Deputy President.

518. Additionally, he has been a General Manager at the Kenya Posts and Telecommunications Corporation (KPTC); Commissioner at the Interim

Independent Electoral Commission (IIEC); and the Technology Committee at the Nairobi Stock Exchange.

Honours and Awards

519. The nominee was awarded a Certificate of Appreciation by the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya on 5th January 1998; Commendation for participating in the drafting of Kenya Communications Act and the Postal Corporation of Kenya Act by the Ministry of Transport and Communication on 15th March 1999; and Elder of the Order of the Golden Heart by the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya on 12th December 2023.

Professional Association and Memberships

520. The nominee stated that he was neither a member of any professional association nor did he belong to any professional, business, fraternal, scholarly, civic, charitable or other organization.

Published Writings

521. The nominee has published one academic writing and contributed to the preparation of various reports and regulations in the Ministry of Energy and Petroleum of the Republic of Kenya.

Public Office, Political Activities and Affiliations

522. The nominee is a member of the United Democratic Alliance (UDA), served as Secretary General of the United Republican Party (URP), and a member of the Jubilee Party.

Integrity

523. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

524. During his approval hearing for appointment as Cabinet Secretary Energy in 2022, the nominee estimated his net worth to be Kshs. 482 million from salary, farming and rental income
525. As at the time of the approval hearing, the nominee estimated his net worth to be Kshs. 509,800,000 comprising parcels of land and buildings,

motor vehicles, cash in banks and earnings from shareholding in companies.

Potential Conflict of Interest

526. The nominee declared that he is currently not associated with any persons or matters that would present a conflict of interest should he assume the position of Cabinet Secretary. In the event that a conflict of interest arose, he stated that he would resolve the same in accordance with the provisions of law.

Pro-bono/Charity Work

527. The nominee indicated that he contributes time and cash donations to the African Gospel Churches in Kipketii and Chebango, Kipketii Primary School and Koita Primary School.

4.9.2 General and Sector-Specific Questions to the Nominee

528. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Roads and Transport. The nominee responded as follows—

On the interventions to mitigate the high cost of petroleum products and electricity

529. The nominee stated that the high cost of electricity largely affected the overall cost of doing business by approximately 30 to 40%. He highlighted the development of the Least Cost Power Development Plan 2024-2043, which outlined the necessary electricity generation and transmission capacity required to match the country's electricity demand with supply. This plan was aimed at preventing shortfalls and ensuring a consistent and reliable energy supply.
530. At the time, the Ministry was already planning for the country's electricity needs for the 2027/28 period. This planning involved the construction of power plants in strategic locations such as Ol Karia, Kiambere, Kamburu, and Menengai, among others, to ensure future energy demands would be met.
531. In addressing the cost of energy, the Ministry sought to expand its sources of energy to include solar, wind, geothermal and hydropower leveraging the climatic conditions during drought and high rainfall seasons.
532. To prevent losses and decrease electricity cost to the consumer, he indicated that the Ministry was planning to switch off the power plants considered to be expensive such as Muhoroni Power Station generating 60 megawatts costing Kshs. 70 per kilowatt-hour (kWh); Kipevu 1 Thermal

Power Station generating 76 megawatts which had reached its end-of-life; and Kipevu 2 generating 76.4 megawatts. He indicated that the three plants generated 210 megawatts but only discharged 15% of the country's electricity needs while costing the government approximately Kshs. 10 billion annually hence the closure. He also submitted that the closure was premised on the country's climate change commitment to go green by 2030.

533. The nominee observed that as at July 2024, the costs of both electricity and petroleum products were at their lowest in the last fifteen months.

On the huge pending bills in the Ministry of Roads and Transport

534. The nominee noted that during his tenure at the Ministry of Energy and Petroleum, he had offset all pending bills save for one which was a subject of litigation. He undertook to realize the same in the Ministry of Roads and Transport which had pending bills estimated at Kshs. 166 billion. He stated that the Ministry of Roads and Transport had unfunded commitments of about Kshs. 1 trillion with an exchequer support of only Kshs. 55 billion. The nominee indicated that he would leverage off-balance sheet financing (private investing other than exchequer) to ensure the construction of roads in light of austerity measures as he had done while at the Ministry of Energy and Petroleum. Furthermore, the nominee observed that, if approved for appointment, he would consider the securitization of the monies raised through the Road Maintenance Levy to access loans to fund the construction of roads.

On the measures to attract private investors

535. To attract private investors, the nominee noted the use of indicative tariffs, similar to those gazetted in the Ministry of Energy and Petroleum, to ensure competitive and cost-effective contractual obligations.

On improving the operations of Kenya Airways

536. The nominee submitted that the Kenya Airways required a lot of support indicating that the government had provided Kshs. 600 billion to enable it stay afloat due to operating at a negative working capital.
537. In his view, reforms to resolve the issues at Kenya Airways would entail proper communication and consultation with its employees on how best to improve the industrial relations.
538. He also highlighted that the Kenya Airways fleet could be improved to attract more customers. He added that he would evaluate the best

practices of Kenya Airways in 2023 when it operated at a profit of Kshs. 10 billion and re-implement the same and reduce its operational costs.

539. The nominee observed that the Kenya Airways could build a network of supporting airlines to support the tourism industry, flower industry, avocado industry and export sector as a whole.

On the G-to-G agreement

540. The nominee noted that the G-to-G agreement was a fairly complex matter and required proper communication to enable the public to understand it. He noted that public participation from inception of all government programs was vital in ensuring public confidence in such programs.

541. He further stated that the G-to-G agreement was a great success for the country as it came at a time when there was a high inflation rate with a tight monetary policy in the world. The nominee noted that the agreement was crucial in forestalling the unavailability of dollars in the industry and enabled the purchase of petroleum in Kenyan shillings.

On the PPP framework between JKIA and Adani Airport Holdings Limited

542. The nominee reiterated the need to inculcate public participation in all government projects and proper communication in accordance with the provisions of the Constitution to dispel misinformation. He committed to realizing public engagement, if approved for appointment.

543. Concerning the upgrade of the Kenya Airports Authority by Adani Airport Holdings Limited, he noted that public private partnerships are a significant way of enabling the government to undertake projects it may not afford in a competitive and cost-effective manner.

On the recurrent nationwide power blackouts

544. The nominee acknowledged that there had been a number of blackouts in the country particularly in western Kenya caused by transmission challenges. He explained that while electricity production was by off balance sheet financing, the transmission network was financed by the exchequer which is marred by underfunding thereby occasioning overloading hence the power trips resulting in recurrent blackouts. He added that the Ministry had since secured funding from the African Development Bank to reroute the transmission networks in the Kisumu-Muhoroni-Chemosit network.

545. He stated that another cause of the recurrent blackouts was load shedding in the Turkwel-Ortum-Kitale electricity network which was done

to prevent entire national grid failures while completing the improvement of two solar plants, Alten and Selenkei, that were installed but caused a transmission constraint. He stated that the problem had since been resolved by the installation of transformers in Ortum and Kitale to resolve the transmission constraint.

546. To manage voltage stabilization, the nominee stated that the Ministry intended to install starcom on the Ethiopia-Kenya network.

On the purported agreement with the French government to construct a dual highway through Mau Summit

547. The nominee confirmed that the Rironi-Molo Highway was concessioned with the French government and was one of his priorities and committed to ensuring its construction to decongest traffic to western Kenya, if approved for appointment.

On the increase of the Road Maintenance Levy without adequate public participation

548. The nominee confirmed that the highways were well maintained and attributed this to the Kshs. 7 increase in the Road Maintenance Levy. He added that road development did not have any revenue hence reliance on the exchequer. He noted that tolling may be a solution to ensuring road development. The nominee stated that it was important to sensitize Kenyans on the need to open up the country for economic development.

On road safety and the high cost of transportation

549. The nominee stated the Ministry was already leveraging technology to develop an intelligent transportation system with cameras on the roads and a reward-enabled electronic wallet to ensure road safety.

550. The nominee noted that the high cost of transportation was attributed to the high cost of fuel and congestion. He further observed that technology would be relevant in ridding these challenges such as the use of google maps to avoid congestion.

On the expansion of Malindi Airport

551. The nominee undertook to consult and collaborate with the relevant stakeholders to commission the expansion of an airport in Malindi while considering the cost to avoid pending bills.

On the open sky policy

552. The nominee noted that while opening Kenya's skies was a good move it was not the opportune moment since Kenya Airways was facing some challenges and not in a position to compete with other airlines. He added

that once the economic situation of Kenya Airways improves then the government could open its skies on reciprocity to improve tourism.

On inequality of road construction and completion in the country

553. The nominee noted that there was need to invest in new development corridors in collaboration with Members of Parliament and ensure last mile connectivity. He added that, if appointed, he would identify alternative funding options to ensure the construction of roads despite the current austerity measures.

On the preferential treatment of local contractors

554. The nominee stated that he would oversee the creation and implementation of a policy that requires all operational tasks are undertaken by Kenyans in foreign contracts. He added that he would also localize employment and ensure that the labour is local where there is capacity. Furthermore, he submitted that he would endeavor, in collaboration with other partners such as EXIM banks, to build the capacity of Kenyans to enable them compete at the same level as foreign contractors.

On the operationalization of the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) project

555. He stated that LAPSSET was a new corridor hence the Ministry should prioritize its completion to ensure return on the investment input. In addition, the nominee undertook to open up more special economic zones such as Dongo Kundu.

On creating employment opportunities for the youth

556. The nominee submitted that there is need for a deliberate policy on the hiring of the local youth in road construction by foreign contractors. He added that there were deliberations to strike a balance between labor-intensive and capital-intensive investments.

On the duplication of road works among KURA, the county government and KeRRA

557. The nominee committed to relooking the establishing statutes of all road works agencies in a bid to harmonize them and eliminate the duplication of roles by creating a unified and effective institutional framework. He added that he would also look into proper reclassification of all roads.

On corruption in the award of tenders

558. The nominee intimated that he would, at all times, maintain fidelity to the law and adhere to the laid-out procurement processes in law.

On SGR control centre located in Beijing, China

559. The nominee stated that he would collaborate with the relevant partners to relocate the control centre to Kenya.

On the extension of the SGR

560. The nominee stated that, through securitization of the Railway Development Fund to enable borrowing, he would ensure extension of the SGR to Naivasha-Kisumu-Malaba to meet the demand of Kenya's landlocked neighbour, Uganda. He added that he would leverage on Uganda's need for cargo to make railway use more profitable.

On the construction of public facilities along Highways

561. The nominee noted that this would be progressive and inexpensive. Thus, he submitted that he would consider the construction of more modern toilets in petrol stations on main highways.

On the allegations arising from the Memoranda, the nominee responded as follows—

562. On the issue of re-appointment to Cabinet after dismissal, the nominee submitted:

(1) that he was appointed as Cabinet Secretary, Ministry of Energy and Petroleum on 27th October 2022 and on 11th July 2024 H.E. the President, in exercise of his prerogative powers dismissed all members of the Cabinet;

(2) That the action by the President did not in any way isolate the nominee or any other member of the Cabinet for any misconduct that would disqualify him for a reappointment or an elective position in the future;

(3) That, further, the decision by H.E. the President to dismiss members of the Cabinet, was not a dismissal as contemplated by Article 75(3) such as to disqualify him from holding a public office;

(4) That, on 19th July 2024 the President, while exercising his prerogative powers under the Constitution, reconstituted the Cabinet and nominated him based on the President's assessment of the nominee's competence, ability and suitability to discharge the functions of Cabinet Secretary in the said Ministry;

563. On the issue of 'chicken-gate scandal', the nominee responded that he was adversely mentioned in investigations undertaken by the Ethics and Anti-Corruption Commission with regards to a contract entered into between the defunct Interim Independent Electoral Commission (IIEC)

and a company by the name Smith and Ouzman Limited dubbed the "chicken-gate scandal".

564. He further responded as follows—

(a) That a similar complaint was filed in the year 2022 to challenge his nomination then as the intended Cabinet Secretary for the Ministry of Energy and Petroleum and the issue was conclusively dealt with and the National Assembly approved his nomination; and

(b) That the EACC through a letter dated 17th October, 2022 confirmed that upon conclusion of their investigations, the nominee was not found culpable. (copy of EACC letter dated 17th October, 2022 annexed).

565. The nominee submitted as follows—

(a) That further the memoranda made broad allegations without any evidence to support the allegations that he had been involved in corruption scandals with regard to award of tenders at Kenya Pipeline Corporation; solar lantern procurement, linked to the NYS scandal, alleged rigging of elections in 2013;

(b) That he is competent, qualified and has consistently upheld the constitutional principles of integrity, transparency and accountability and the law and has not faced any issues related to performance, integrity, misconduct or bad governance, prior or during his tenure as Cabinet Secretary; and

(c) On the issue that the list does not comply with the two-thirds gender rule, the assertion is not accurate as the nominations comprise twenty-two names, eight (8) of whom are women, which is more than two-thirds.

Observations on Memoranda Submitted Against the Nominee

566. The Committee noted that—

(a) Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President.

(b) The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office;

(c) That there is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.

- (d) The EACC vide its letter dated 26th July 2024 submitted that the Commission had not undertaken any investigation or recommended prosecution against the nominee pursuant to its mandate.

4.9.3 Committee Observations on the Suitability of the Nominee

567. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Roads and Transport—

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1960 in Kericho County and does not hold dual citizenship.
- (2) **THAT**, the nominee is the immediate former Cabinet Secretary in the Ministry of Energy and Petroleum a position he had previously held from 2013 to 2015. He has previously served as the Chief of Staff in the Office of the Deputy President. Additionally, the nominee has been a General Manager at the Kenya Posts and Telecommunications Corporation (KPTC); Commissioner at the Interim Independent Electoral Commission (IIEC); and also served in the Technology Committee at the Nairobi Stock Exchange.
- (3) **THAT** the nominee holds a Master's of Business Administration in International Management from the Royal Holloway School of Management from the University of London, a Bachelor of Science Degree in Physics and Computer Science from the University of Nairobi and a Postgraduate Diploma in Tele-Traffic Engineering. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Education Loan Board (HELB).
- (5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.

(6) **THAT**, the nominee does not hold office in any political party.

(7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

(8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Roads and Transport.

4.10 Dr. Margaret Nyambura Ndung'u – Nominee Cabinet Secretary for Information, Communication and the Digital Economy

568. The nominee appeared before the Committee on 2nd August 2024 and was vetted under oath to examine her suitability or otherwise. The Committee noted the following—

4.10.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

569. The nominee is a female Kenyan citizen born on 26th August 1972 in Nakuru County. The nominee confirmed that she is a Kenyan citizen by birth and did not hold dual citizenship.

Academic and Professional Qualifications

570. The nominee holds a Post-Doctorate Fellowship in Innovation Value Chain from Tshwane University of Technology, a PhD in Information Systems from the University of Nairobi, a Master of Business Administration in Management Science and a Bachelor of Science degree in Information Science from Moi University. She also possesses certificates in Cybersecurity Diplomacy and Internet Governance from Diplo Foundation and Media Studies and Information Management from Hamburg University.

Employment Record and Work Experience

571. The nominee possesses extensive experience in the ICT sector and currently serves as Senior Research Manager at the Global Digital Inclusion Partnership, coordinating research projects on the cost of digital gender divide. She has previously held positions including Co-Investigator at Gender Justice in STEM Research in Africa, Senior Regulatory and Internet Governance Expert at the African Union Commission, lead author of the

WSIS Africa Progress Report, and Consultant at the Information and Communication Technology Authority.

572. Additionally, she has been a local researcher for a USAID/Government of Kenya project with the Alliance for Affordable Internet, a Member of the Communications and Multimedia Appeals Tribunal at the Ministry of ICT/Judiciary, and a Short-Term Consultant at the World Bank. Her roles also include serving as a Member of the Multi-Stakeholder Board at UNESCO, Lead Kenya Partner for Research ICT Africa, Lecturer at the University of Nairobi and Tshwane University of Technology, and Consultant for various organisations including the State Department of Education, ICT Authority, and International Trade Centre. Furthermore, she has been a Research Associate and Project Coordinator at the Kenya Education Network and Coordinator of ICT, Education, Science and Technology Sectors at the Kenya Private Sector Alliance.

Honours and Awards

573. The nominee was awarded a Postdoctoral Research Fellowship by the Institute of Economic Research on Innovation, Tshwane University of Technology, Pretoria, South Africa; Amy Mahan Scholarship Award for the Advancement of ICT Policy and Regulatory Research in Africa; and IDRC Scholarships on ICT for Development by the University of Nairobi.

Professional Association and Memberships

574. The nominee is a member of the African Internet Governance Forum Secretariat, Information Security Operations Center (ISOC), KEPSA ICT and Education Board, Computer Society of Kenya, Kenya ICT Action Network (KICTANet), Gender Justice in STEM Research in Africa (GEJUSTA), and African Union Cybersecurity Expert Group (AUCSEG).

Published Writings

575. The nominee has published the various academic papers and scholarly materials including:
- (a) Child Online Safety and Empowerment Policy: Adopted by the 44th ordinary Session of the African Union Executive Council, February 2024.
 - (b) Research ICT Africa Policy Paper No. 7, Vol.5. Beyond Access. The State of ICT in Kenya.
 - (c) The DigiSchools – Fears of Parental Exclusion in an Era of Connecting the Child.
 - (d) Mobile Internet as the Key Driver to Internet Growth in Kenya: Factors Underpinning and Exploited Opportunities.

- (e) Understanding what is happening in ICT in Kenya: A Supply and Demand Side Analysis of the ICT Sector.
- (f) Development Outcomes of the New Technologies to the Quality of Life of Low-Income Households in Kenya: A Case Study of Nairobi.
- (g) Factor Influencing Usage of New Technologies in Low-Income Households in Kenya: The Case of Nairobi.
- (h) Development Outcomes of Internet and Mobile Phones Use in Kenya: The Households' Perspective.

Public Office, Political Activities and Affiliations

576. The nominee indicated that she had not held any public office, and had neither held membership nor rendered service to any political party or election committee.

Integrity

577. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

578. The nominee estimated her net-worth to be Kshs. 95,323,248 comprising immovable property, shares in SACCO, treasury bills and bonds and money.

Potential Conflict of Interest

579. The nominee declared that she did not have any persons, parties, categories of litigation or financial arrangements that were likely to present potential conflicts of interest. She added that in the event that any conflict of interest would arise, she would do a full disclosure.

Pro-bono/Charity Work

580. The nominee has provided voluntary support to the African Union Data Governance and Innovation Forum, the 17th Global IGF Africa Taskforce hosted by UNECA, and the IGF Expert Group Meeting in New York. She is a member of the Global Internet Governance Forum Policy Network on Meaningful Access and a volunteer on the Editorial Board of LONDA. Additionally, she has offered technical support to the African Union Cybersecurity Expert Group and the African Internet Governance Forum. She is a founding member of the Network of African Women in

Cybersecurity, has supported the World Bank Digital Business Indicators Project and World Development Report 2021 and 2022, and serves as a faculty member at the Africa School of Internet Governance.

4.10.2 General and Sector-Specific Questions to the Nominee

581. The Committee posed several questions to the nominee on her suitability for appointment as Cabinet Secretary for Information, Communication and Digital Economy. The nominee responded as follows—

On the state of cybersecurity and data protection and plans to enforce the Cyber Crimes Act and the Data Protection Act

582. The nominee stated that she would fully utilize and potentially enhance the existing frameworks provided by the Cyber Crimes Act and the Data Protection Act. The nominee further stated that she planned on engaging stakeholders to ensure that personal data is protected in a manner that respects the constitutional rights to privacy and freedom of expression. The nominee further proposed the establishment of centralized data centres, which would facilitate better cooperation among the private sector, academia and government entities. She noted that such centres would adhere to international standards and align with initiatives like the African Union Convention on Cyber Security and Personal Data Protection, ensure a unified and effective response to cyber threats, whether they originate domestically or abroad.

On leveraging the nominee's extensive experience in the private sector, facilitating increased investment in Konza Technopolis and similar ICT hubs

583. The nominee informed the Committee that she would draw from successful models in the private sector like Tatu City and replicate this success in the Konza Technopolis. She further stated that there was need to harmonize inter-county policies to streamline operations and reduce bureaucratic barriers. In addition, she stated that she would pursue Public Private Partnerships (PPPs) to co-fund infrastructure projects. Additionally, the nominee noted that by leveraging the National Government Constituencies Development Fund (CDF) provisions that allow up to 2% for recurrent expenditure, she will ensure the maintenance and operational sustainability of these hubs.

On the critical role of the media in shaping public opinion and maintaining national cohesion

584. The nominee noted that the Media Act and the Data Protection Act provide a solid foundation for regulating media practice. She stated that she would enhance the capacity of the Media Council of Kenya and the Media Complaints Commission to handle violations effectively. Additionally, she noted that she planned on fostering a collaborative approach with media houses to promote self-regulation and ethical reporting standards. She also observed that she would work on updating the media guidelines to reflect the current digital landscape and ensure that they are comprehensive and enforceable.

On cyberbullying, data breaches, and misinformation

585. The nominee stated that she would enhance the enforcement of the Computer Misuse and Cybercrimes Act by increasing funding and resources for the Cyber Crime Units. She further stated that she would also collaborate with international bodies to adopt best practices and technologies in cybersecurity and introduce a national cyber incident response team to coordinate responses to cyber threats and incidents. Additionally, she noted the need to develop a comprehensive framework for data protection and privacy to ensure all stakeholders adhere to stringent data management standards.

On balancing media freedom

586. The nominee informed the Committee that she would adopt a multi-faceted approach that includes stringent enforcement of existing laws against hate speech and incitement and promoting media literacy among the public. The nominee further stated that she would enhance the capabilities of regulatory bodies like the Communications Authority of Kenya and the Media Council of Kenya to ensure that media outlets adhere to ethical standards. Further, the nominee observed that there was need to hold regular stakeholder engagements to review and update the code of conduct for journalists. Additionally, she stated that she would support initiatives that promote investigative journalism and fact-checking to counter misinformation and fake news effectively.

On revamping Kenya Broadcasting Corporation (KBC)

587. The nominee noted that revamping KBC would involve a comprehensive overhaul of its operational and strategic frameworks. The nominee undertook to conduct a detailed market analysis to identify KBC's competitive advantages and areas needing improvement. She further undertook to upgrade KBC's technology infrastructure to High Definition (HD) broadcasting and expand its digital presence. Furthermore, she stated that she would implement a robust talent management and

training program to enhance the skills of KBC staff to ensure they produce high quality content that meets international standards.

On the sustainability and impact of digital job initiatives

588. The nominee informed the Committee that she would adopt a results-oriented approach by integrating a robust monitoring and evaluation framework to track the effectiveness of digital job initiatives such as Ajira. The nominee further stated that there was need to establish partnerships with international tech firms to provide mentorship and job placements for trained youth. Additionally, she observed that if approved, her focus would be on creating a conducive ecosystem for start-ups by providing access to funding, incubation and acceleration programs. Further, she stated that she would enhance the digital literacy curriculum to include emerging technologies such as AI and blockchain to ensure that the youth are equipped with relevant skills for the global job market.

On the issue of the Universal Service Fund

589. The nominee noted the need to maximize the impact of the Universal Service Fund and conduct a comprehensive audit to identify the gaps and areas of underutilization. She stated that there was need to expand the sources of the Fund to include additional contributors from the tech industry and revise its mandate to cover a broader range of connectivity. Further, she noted that implementing a transparent allocation process and stringent monitoring mechanisms would ensure funds are used effectively. Additionally, she stated that she would explore innovative connectivity solutions such as satellite internet and community networks to reach remote areas and engage local communities in the planning and implementation process.

On e-waste management

590. The nominee stated that she would develop and implement a national e-waste management policy that includes guidelines for the safe disposal, recycling and repurposing of electronic devices. She further noted that there was need to work with the Ministry of Environment and set up e-waste collection centres and recycling facilities across the country. Additionally, the nominee noted that she would also introduce incentives for companies that adopt sustainable practices and comply with e-waste regulations to encourage responsible behaviour. Additionally, she

undertook to work with international partners to adopt best practices in e-waste management.

On opportunities in the 4th industrial revolution and Artificial Intelligence (AI)

591. The nominee informed the Committee that she would establish centres of excellence in collaboration with leading global tech institutions and promote research and development in AI and robotics through grants and partnerships with universities and private sector players. The nominee further observed that there was need to implement specialized training programs in advanced technologies to build a highly skilled workforce capable of driving innovation. She further stated that developing a national AI strategy that outlined the ethical use of AI, data protection and the integration of AI into various sectors would ensure a structured approach to leveraging these technologies for economic growth.

On the issue of the security of government data especially on platforms like e-citizen

592. The nominee stated that she would enhance the cybersecurity framework for government data by adopting advanced encryption technologies and implementing multi-factor authentication for access control. She noted that there was need to establish a government wide Cybersecurity Operations Centre (CSOC) to monitor and respond to threats in real-time, invest in regular cybersecurity training for government employees, and conduct periodic audits to identify and address vulnerabilities. She also noted that it was important to collaborate with international cybersecurity firms to stay updated on the latest threats and solutions to strengthen our data security posture.

On using ICT to combat corruption

593. The nominee noted that ICT can significantly enhance transparency and accountability in government operations. As such, she undertook to develop comprehensive e-governance frameworks that include real time reporting and monitoring tools that would help detect and prevent fraudulent activities.

On regulating emerging technologies like AI without infringing on basic human rights

594. The nominee informed the Committee that she would develop a regulatory framework for AI that prioritizes ethical considerations and human rights by establishing guidelines for the responsible use of AI. She stated that collaborating with international bodies to adopt best practices

and standards would ensure that Kenya's regulations are in line with global norms. The nominee undertook to promote public participation in the development of AI policies to ensure they reflect societal values and concerns. Additionally, she noted that regular reviews and updates of the regulatory framework would ensure relevance and effectiveness in protecting human rights while fostering innovation.

On key deliverables if approved for appointment as Cabinet Secretary

595. The nominee stated that her key deliverables would be to enhance connectivity, create centres of excellence in advanced technologies, implement the Kenya Digital Master Plan, establish green national data centres and provide affordable digital services.

On creation and sustainability of digital hubs in rural areas

596. The nominee undertook to work with relevant agencies to ensure that all rural schools and communities were connected to the national grid. She further stated that she would leverage on universal service funds, explore sustainable connectivity solutions such as fibreoptic cables and satellite technologies and engage local communities in the planning and implementation process. She stated that creating PPPs and incentivizing local entrepreneurs to establish digital hubs would ensure the sustainability and impact of these initiatives. Additionally, she noted that regular monitoring and evaluation would help identify and address any challenges to ensure the continuous success of digital hubs.

On harnessing the skills of tech-savvy youth

597. The nominee informed the Committee that she would outline a strategic initiative to establish specialized centres of excellence focused on software development. She noted that the centres would serve as platforms to nurture and refine the technical skills of young individuals, including those previously involved in unethical hacking. By redirecting their talents towards ethical practices and cybersecurity, the nominee observed that the centres would foster a generation of cybersecurity experts who can safeguard national digital infrastructure. Additionally, the nominee stated that the approach would not only mitigate the risks associated with cyber threats but also leverage the skills in developing robust security solutions, contributing positively to national cybersecurity resilience and innovation.

On plans to enhance computer literacy in schools

598. The nominee undertook to revitalize and expand digital literacy programs across educational institutions. She acknowledged the shortcomings of the previous regime, particularly in the distribution of laptops which faced challenges including lack of infrastructure and inadequate maintenance support. She stated that she would reintroduce the programs and ensure that digital devices were both functional and effectively integrated into the educational curriculum. She noted that the approach would include comprehensive training for teachers, establishing reliable technical support and creating a sustainable model that ensures every student benefits from direct access to technology.

On nurturing the talents of the youth and promoting the creative economy

599. The nominee undertook to continue enhancing the Ajira program which leverages various business models to improve connectivity especially in rural areas. She noted that despite absorbing approximately 800,000 to 1,000,000 young people into the workforce annually, many remained unemployed. She undertook to address the issue by fostering innovation within the i-hubs and the Ajira platform to create more job opportunities.

Written Submission by the Nominee

600. The nominee vide an Affidavit sworn on 31st July 2024 further submitted as follows—

(a) That Article 131 of the Constitution mandates the President as the appointing authority to appoint qualified persons to the Cabinet;

(b) That the memoranda mostly relate to one nominee and are repetitive and this is an indication that the memoranda are intended to discredit the list of nominees; and

(c) That in any case, an allegation until proven, should not be used against her.

4.10.3 Committee Observations on the Suitability of the Nominee

601. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, her curriculum vitae and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Cabinet Secretary for Information, Communication and Digital Economy—

(1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a

Kenyan citizen born in 1972 in Nakuru County and does not hold dual citizenship.

- (2) **THAT**, the nominee possesses extensive experience in the ICT sector and currently serves as Senior Research Manager at the Global Digital Inclusion Partnership. The nominee has previously held positions including as a Co-Investigator at Gender Justice in STEM Research in Africa, Senior Regulatory and Internet Governance Expert at the African Union Commission, lead author of the WSIS Africa Progress Report, and Consultant at the Information and Communication Technology Authority. Additionally, she has been a local researcher for a USAID/Government of Kenya project with the Alliance for Affordable Internet, she is a Member of the Communications and Multimedia Appeals Tribunal at the Ministry of ICT/Judiciary, and a Short-Term Consultant at the World Bank. Her roles also include serving as a Member of the Multi-Stakeholder Board at UNESCO, Lead Kenya Partner for Research ICT Africa, Lecturer at the University of Nairobi and Tshwane University of Technology, and Consultant for various organisations including the State Department of Education, ICT Authority, and International Trade Centre. Furthermore, she has been a Research Associate and Project Coordinator at the Kenya Education Network and Coordinator of ICT, Education, Science and Technology Sectors at the Kenya Private Sector Alliance.
- (3) The nominee holds a Post-Doctorate Fellowship in Innovation Value Chain from Tshwane University of Technology, a PhD in Information Systems from the University of Nairobi, a Master of Business Administration in Management Science and a Bachelor of Science in Information Science from Moi University. She also possesses certificates in Cybersecurity Diplomacy and Internet Governance from Diplo Foundation and Media Studies and Information Management from Hamburg University. Her academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).

(5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.

(6) **THAT**, the nominee does not hold office in any political party.

(7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

(8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Information, Communication and Digital Economy.

4.11 Hon. John Mbadi Ng'ongo, EGH – Nominee Cabinet Secretary for The National Treasury and Economic Planning

602. The nominee appeared before the Committee on 3rd August 2024 and was vetted under oath to examine his suitability or otherwise. The Committee noted the following—

4.11.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

603. The nominee is a male Kenyan citizen and was born in July 1971 in Homa Bay County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

604. The nominee holds a Bachelor of Commerce (BCom) Accounting Option from The University of Nairobi and is a Certified Public Accountant of Kenya (CPA-K).

Employment Record and Work Experience

605. The nominee is a nominated Member of Parliament from August 2022 to date. He previously served as a Member of Parliament for Suba South Constituency from 2017 to 2022; as a Member of Parliament, Suba Constituency from 2013 to 2017; and, as a Member of Parliament, Gwassi Constituency from 2008 to 2013.

606. Served in the Budget Committee where he has been engaged in the preparation of the Budget Estimates of Kenya, and Budget Review Paper; is conversant with the budget-making process and government

expenditure in Kenya and restructuring debt. Served as the Chairperson of the Public Accounts Committee.

607. Additionally, from 2004 to 2008, he was the Finance Director, Medair East Africa – South Sudan Programme. He also served in the University of Nairobi, first as a Senior Accountant from 1999- 2003; as an Accountant at the University of Nairobi Enterprise Services (UNES) from 2002 to 2003; and, as Assistant Accountant from 1996 to 1999.

Honours and Awards

608. The nominee was awarded the presidential award Elder of the Order of the Golden Heart (EGH).

Professional Association and Memberships

609. The nominee is a member of the Institute of Certified Public Accountants of Kenya (ICPAK).

Published Writings

610. The nominee did not indicate whether he had authored or edited any published materials.

Public Office, Political Activities and Affiliations

611. The nominee served as the National Chairman of the Orange Democratic Movement (ODM) a position he has held since 2014 to July 2024. He has also served as the Leader of the Minority in the National Assembly from 2017 to 2022; and, as an Assistant Minister in the Office of the Prime Minister from 2012 to 2014. Additionally, from 2000 to 2004, he was the Chair of the Supervisory Committee of Chuna SACCO.

Integrity

612. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

613. The nominee stated that his net worth was approximately Kshs. 380 million which includes immovable property, SACCO shares, Bonds and Vehicles.

Potential Conflict of Interest

614. The nominee declared that he was not associated with any persons or matters that would present a potential conflict of interest should he assume the position of Cabinet Secretary. In the event that a conflict of interest arose, he stated that he would resolve the same in accordance with the provisions of law

4.11.2 General and Sector-Specific Questions to the Nominee

615. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for National Treasury and Economic Planning. The nominee responded as follows:

On his plan to address Kenya's public debt

616. The nominee confirmed that Kenya's public debt is at approximately 60% of the country's GDP and that his priority would be to ensure debt accountability. He undertook to ensure transparency in public debt by making the debt register a statutory document to be published annually for the information of the public. Additionally, he noted that, if approved, he would consider substituting general-support loans with specific loans linked to definite projects. Further, he stated that he would prioritize concessional loans over commercial borrowing to invest in viable projects.

On measures to improve tax collection and expand the tax base without overburdening Kenyans

617. The nominee noted that the solution to revenue mobilization would be, in consultation with the leadership of KRA, to implement reforms in the KRA including building the capacity of KRA officers and the automation and re-engineering of the porous tax collection systems to prevent tax leakage occasioned by smuggling and faulty systems. He added that he would ensure proper staffing at the KRA and relook the leadership and management of the institution to enhance revenue collection. As a matter of utmost priority, he undertook to meet with the KRA to address pressing matters, if appointed.

On the rejected Finance Bill and public participation

618. While noting that in the past Finance Bills could be passed as late as September, the nominee assured Kenyans that there is no lacuna in Kenya's revenue generation and fiscal policy implementation hence no cause for alarm.

619. Furthermore, he noted that public participation is crucial in avoiding misinformation and committed to ensuring that, under his leadership, the Ministry would undertake effective public engagement. He added that, if

approved, he would consult the AG and Members of Parliament to ensure the establishment of a robust legal framework for public participation.

620. Further, the nominee submitted that it was important to rebuild public trust in the government to encourage public engagement in a bid to realize effective communication. He emphasized the need for the use of modern channels of communication responsive to the public's needs, especially Generation Z.

On ensuring realistic revenue projections

621. The nominee confirmed that over time, revenue projections have not been realistic and dedicated to reform it based on economic growth.

On the pending bills and irregular procurement

622. The nominee emphasized the need for amendment of the existing laws to criminalize failure to pay pending bills and the approval of fictitious pending bills. He added that, if appointed, he would consider implementing a tamper-proof system that ensures payment of bills is done on a first-in-first-out basis.

623. Regarding the high interest rate and penalties bloating pending bills, the nominee indicated that he would be open to negotiation aimed at reducing the amount of bills to be paid as recommended during his tenure as the Public Accounts Committee Chairperson. He noted that such negotiation would only be successful where there is a willingness and intention to pay. Furthermore, he undertook to collaborate with the Cabinet Secretary for Roads and Transport to realize this and ensure the completion of stalled road construction.

624. Moreover, he pledged that he would oversee the completion of the automated procurement system by January 2025 to mitigate the loopholes caused by a mechanical procurement process. He also submitted that he would explore an end-to-end procurement style to guarantee value for money and prudent use of resources. He emphasized that accounting officers in the various MDAs would be held culpable for non-compliance with the provisions of the PFM Act.

625. To ensure compliance with the requirement of the PFM Act in procuring goods and services only where there is an attendant budget, the nominee echoed the need for synchronized planning, budgeting, and cash management.

On harmonizing the BETA and ODM manifestos

626. The nominee stated that the philosophy of UDA and ODM are quite similar as they are both aimed at promoting social democracy that ensures job creation and agricultural productivity among others. He further stated that he would, at all times, be guided by the Constitution and relevant laws in the discharge of his duties, if appointed.

On measures to curb the abuse of Article 223 by the National Treasury

627. The nominee indicated that supplementary appropriation requires approval by Parliament and hence undertook to ensure that there shall be no misapplication of Article 223 of the Constitution. He noted that even though a Bill he had once sponsored to put in place checks and balances was never enacted, he would reintroduce the Bill in Cabinet, if appointed.

On ensuring synergy between the Ministry and the President's economic council

628. The nominee indicated that while the President has the prerogative to hire his private advisors, the Cabinet Secretary for the National Treasury and Economic Planning is, legally, the principal advisor to the President on financial matters. The nominee committed to providing sound financial advice noting that he would foster consultation and cooperation with the President's economic advisors.

On dealing with the cartels at the National Treasury

629. The nominee undertook to provide leadership at the Ministry to ensure service delivery to Kenyans. He committed to ensuring that he would identify the gaps and loopholes in the Ministry and address them accordingly, if approved.

On devolution and financing of county governments

630. The nominee stated that he is a firm believer and supporter of devolution and hence vowed to safeguard counties' financial allocations by ensuring timely disbursements to counties to secure the proper provision of critical county government services.

631. Moreover, to ensure proper utilization of county resources, the nominee stated that he would coordinate with the relevant agencies including the Senate, Auditor General, and the EACC to combat embezzlement and mismanagement of funds.

On reducing wastage in government expenditure

632. The nominee undertook to contain wastage by reducing government operating expenditure, making it transparent, and streamlining the procurement process.

On facilitating the Office of the Auditor General

633. Highlighting some of the findings in the 2023/2024 Auditor General Report, the nominee stated that he would persuade the Cabinet to allocate more resources to the Auditor General to enhance the office's operations. He further noted that the report contained solid findings thus signifying the importance of the role of the Auditor General in ensuring proper fiscal monitoring.

On measures to turn around the economy and create job opportunities

634. The nominee submitted that agriculture should be leveraged to support manufacturing to create jobs and improve the economy. He added that realizing the political, social and economic pillars of Vision 2030 will be instrumental in addressing the economic unrest and high unemployment rate in the country.

On the certainty and predictability of tax policies

635. The nominee highlighted some principles of taxation including simplicity, fairness, and equity. He emphasized the need to review Kenya's current tax policies in a bid to encourage compliance.

On VAT refunds as a loophole for pilferage of funds

636. The nominee stated that tax expenditure costs about half a billion shillings. He noted that reclassification of items as tax-exempt instead of zero-rated would significantly reduce tax expenditure on tax refunds. Moreover, he proposed the installation of a system that captures tax advances to avoid tax refund claims that may be unmerited and unverifiable.

On operationalization of the Equalisation Fund and equitable distribution of resources

637. The nominee while underscoring the principles of public finance enshrined in Article 201 of the Constitution committed to ensuring equity and inclusivity in the distribution of resources to all parts of the country. He stressed the importance of the Equalisation Fund in providing basic services including water, roads, electricity, and health services to the marginalized, especially the youth, women, and PWDs.
638. Further, he stated that the World Bank has already undertaken to fund social safety nets to alleviate the short-term fiscal pressures facing the country.

On his integrity and capacity to serve and restore public trust in the Ministry

639. The nominee assured Kenyans that he is a patriot and would serve all Kenyans as he did during the consideration of the Finance Bill, 2024. He exhibited his loyalty to the public by stating that during his time as a member of the Economic Council of Azimio Coalition Party he, at all times, remained faithful to the public by advocating for the people's needs.

On the Aror and Kimwarer Dam issue

640. The nominee attributed the issues to lopsided commercial agreements and committed to engaging and consulting with the Attorney General to ensure that the government only enters into agreements that are beneficial to Kenyans.

On navigating the current tight fiscal space in the country

641. The nominee indicated that he would explore alternative funding options such as off-balance sheet financing, climate change financing and leveraging on public-private partnerships in both big and small projects. He added that he would undertake an evaluation of stalled projects and ensure coordination of the national and county governments to avoid duplicity of projects.

642. To ensure the successful implementation of PPPs, he further undertook to facilitate adequate public participation to avoid misinformation of the public.

On addressing the high-interest lending rates and strict banking regulations

643. The nominee confirmed that the base lending rate is at 13% while commercial banks lend at a rate of up to 20%. He attributed this to a measure introduced to control inflation. However, it was his view that the lending rate needs to be revised to allow cash flow to the private sector for business growth.

644. The nominee attributed the strict banking regulations to international requirements and Kenya's membership to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). He undertook to hold a meeting with the Kenya Bankers Association and the Central Bank of Kenya to resolve these issues, if approved.

On long-term sustainability and timely payment of pension

645. The nominee committed to prioritize payment of pensions to senior citizens. He noted that the new superannuation scheme may be better in

realizing this noting that in the year ending 30th June 2023, there was a deficit of pension payments of approximately Ksh. 26 billion.

On raising awareness of the numerous unclaimed financial assets

646. The nominee committed to implement measures to ensure necessary reforms and capacity building so that Kenyans are adequately sensitized.

On leveraging diaspora remittance to increase Kenya's revenue

647. The nominee pledged to reduce diaspora transaction costs and consider investment options such as green and blue bonds to encourage more diaspora remittance.

On delays in disbursement of capitation to schools

648. The nominee attributed delays in disbursements of capitation to schools to inadequate revenue and committed to ensure the availability of funds for timely disbursement to schools.

On blockchain technology in the financial sector

649. The nominee stated that he would consult and assess the viability of blockchain technology, if appointed.

On leveraging gold reserves

650. The nominee submitted that gold reserves have become more crucial in safeguarding national wealth and ensuring economic stability. He committed to leverage this as a reliable store of value in the current and future economic landscape.

On allegations arising from the Memoranda, the nominee responded as follows:

651. On the issue that four (4) of the nominees were members of and are affiliated to the Orange Democratic Movement (ODM) and that H.E the President could not lawfully nominate persons associated with and who were/have been members of political parties or coalition of rival political parties in opposition to the President's party for appointment as members of the national executive of the Republic which he heads as this destroys multi-party democracy, the nominee responded vide an affidavit sworn of 1st August, 2024 as follows—

- (a) that he has been a member of ODM Party since 2005 and was duly nominated by the political party to serve in the National Assembly.
- (b) Further, that his appointment promoted the inclusion of all Kenyans in the governance of Kenya.

Observations on Memoranda Submitted Against the Nominee

652. The Committee noted that the President has the prerogative under Articles 132(2) and 152(2) of the Constitution to nominate and with the approval of the National Assembly appoint Cabinet Secretaries.

4.11.3 Committee Observations on the Suitability of the Nominee

653. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for National Treasury and Economic Planning -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1971 in Homa Bay County and does not hold dual citizenship.
- (2) **THAT**, the nominee is a nominated Member of Parliament from August 2022 to date. He previously served as a Member of Parliament for Suba South Constituency from 2017 to 2022; as a Member of Parliament, Suba Constituency from 2013 to 2017; and, as a Member of Parliament, Gwassi Constituency from 2008 to 2013. The nominee also served as a Member of the Budget Committee where he was engaged in the preparation of the Budget Estimates of Kenya, and Budget Review Paper and is conversant with the budget-making process and government expenditure in Kenya and the process of restructuring debt. The nominee also served as the Chairperson of the Public Accounts Committee. Additionally, from 2004 to 2008, he was the Finance Director, Medair East Africa – South Sudan Programme. He also served in the University of Nairobi, first as a Senior Accountant from 1999- 2003; as an Accountant at the University of Nairobi Enterprise Services (UNES) from 2002 to 2003; and, as Assistant Accountant from 1996 to 1999.

- (3) **THAT**, the nominee holds a Bachelor of Commerce (BCom) Accounting Option from the University of Nairobi and is a Certified Public Accountant of Kenya (CPA-K). His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for National Treasury and Economic Planning.

4.12 Hon. Salim Mvurya Mgala, EGH – Nominee Cabinet Secretary for Investments, Trade and Industry

654. The nominee appeared before the Committee on 3rd August, 2024 and was vetted under oath to examine his suitability. The Committee noted the following—

4.12.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

655. The nominee is a male Kenyan citizen born in 1970 in Kwale County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

656. The nominee holds a Master of Arts in Participation, Power and Social Change from the University of Sussex, Brighton in the United Kingdom awarded in 2011. He also holds a Bachelors Degree in Agribusiness Management from Egerton University which was awarded in 1996. He sat for his Kenya Certificate of Secondary Education at Mpeketoni Secondary School in 1980.

Employment Record and Work Experience

657. The nominee served as the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs from October 2022 to July 2024. Prior to this he was the first Governor of Kwale County, having served for two terms from 2013 to 2022.

658. From 2003 to 2012, the nominee served as a Program Unit Manager at Plan International (Inc), Kilifi County. He also served as a Program Officer, Plan International (Inc), Kwale County from 2000 to 2003. Additionally, he worked as a Field Officer for Aga Khan Foundation in the Kwale Rural Support Program from June 1998 to January 2000. From January 1997 to May 1998, he served as a Research Assistant at the Tegemeo Institute of Agricultural Policy and Development. He also served as a Field Monitoring Officer of Rea Vipingo Plantations in 1995.

Honours and Awards

659. The nominee was awarded the presidential award Elder of the Order of the Golden Heart (EGH).

Professional Association and Memberships

660. The nominee served as the Vice Chairperson of the Council of Governors and Chair of the Resource Mobilization Committee of the Council of Governors from 2014 – 2016.

661. The nominee has also served as the Chairperson to the Jumuiya ya Kaunti za Pwani, Kwale Health Forum, Agribusiness Club of Egerton University and Kwale Students Association, Egerton Chapter. He has also served in the Board of Governors, Kwale Girls High School and Director in the Kwale Water and Sewerage Company. The nominee was also a founder member and Treasurer of the Kinango Professionals Association.

Published Writings

662. The nominee had neither authored nor edited any published materials.

Public Office, Political Activities and Affiliations

663. In addition to the positions highlighted under the nominee's employment record, he has also held various positions in public service and affiliations

including: Chairperson of the Jumuiya ya Kaunti za Pwani, Regional Economic Block; Vice-Chairperson, Council of County Governors; Chairperson, Resource Mobilization Committee of the Council of Governors; Chairperson of the Kwale Health Forum, Kwale District; member of the Board of Governors, Kwale Girls High School; Director, Kwale Water and Sewerage Company; Chairperson, Agribusiness Club of Egerton University; and Chairperson of the Kwale Students Association, Egerton Chapter.

664. The nominee is an ordinary member of the UDA Party but does not hold any office in the political party.

Integrity

665. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

666. During his approval hearing for appointment as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs in 2022, the nominee estimated his net worth to be Kshs. 120 million held in parcels of land, motor vehicles, rental income and a sum of Kshs. 32 million held in a bank account.
667. As at the time of the approval hearing, the nominee estimated his net worth to be Kshs. 158 million comprising immovable property and motor vehicles.

Potential Conflict of Interest

668. The nominee declared that he has no immediate associations likely to present potential conflict of interest when he assumes office, if approved. Further, the nominee declared that he did not have any persons or matters that would present a potential conflict of interest. Additionally, he submitted that he would comply with the provisions of all relevant laws.

Pro-bono/Charity Work

669. The nominee indicated that he is not involved in any charity work.

4.12.2 General and Sector-Specific Questions to the Nominee

670. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Investments, Trade and Industry. The nominee responded as follows:

On key achievements during his tenure as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs

671. The nominee stated that he provided leadership in carrying out key reforms in the Ministry, in order to carry out its mandate effectively as follows—

- (a) On licensing, the nominee stated that during his tenure, he put in place a licensing system where investors could apply online and over 1200 licenses had been processed through the system.
- (b) On testing and sampling of products, the nominee had overseen the decentralization of eight (8) labs for ease of testing for investors across the Country.
- (c) On instituting reforms on value addition, he noted that there was a number of investors who were carrying out value addition across the country.
- (d) During his tenure, the nominee stated that he onboarded investors, adding that there were investments in various regions such as; Kshs. 5.8 billion in the gold refinery, Kshs. 4.8 billion in Fluorspar in Elgeyo Marakwet and Kshs. 2.5 billion in Vihiga. He noted that the Ministry had mapped the country and already there was an investor who was prepared to invest Kshs.11 billion in mining iron ore in Taita Taveta.
- (e) The Ministry had also organized the artisanal miners into about 300 cooperative societies that were ready for licensing across the country. The nominee further stated that he had also recommended the gazettelement of 29 artisanal mining societies.
- (f) The nominee had put in place the mining police unit, which worked closely with county security teams to safeguard mining activities.
- (g) On mine restoration, the nominee stated the Ministry had put in place requirements for environmental restoration upon conclusion of mining activities.
- (h) The nominee further stated that the government had invested Kshs. 1.4 billion in the Coast region and another Kshs. 1.5 billion in the lake region for the landing sites.

- (i) The nominee further noted that the Ministry had licensed the first industrial fishing vessel to provide avenue for industrial fishing with a projected income of Kshs. 4 billion annually.
- (j) He added that Kenya was now a highly valued maritime country, and was designated at category C as a maritime country and as a result of that profile, he had worked to upgrade the institutions to fit the new profile. In line with this, he stated that there was a draft Bill for Bandari Maritime Academy which sought to modernize the institution.

On import substitution policy

672. The nominee informed the Committee that he would pursue the import substitution proposals list in the Finance Bill, 2024, with the aim to inspire local manufacturing. He undertook to ensure that there would be robust engagement with stakeholders before a decision is made.

On Importation of substandard, counterfeit and contraband commodities

673. The nominee stated that in addressing importation of counterfeit and contraband commodities, there was need to enhance the capacity of the Anti-Counterfeit Authority by enacting the necessary legislation. In addition, he stated that he would introduce an anti-counterfeit integrated management system that will ensure efficiency in identifying counterfeit and contraband goods. The nominee further stated that he would also work with the Kenya Bureau of Standards (KEBS) to help in checking the standards and quality of goods. He also proposed to work with security personnel at the borders to create awareness and enforce compliance at the borders.

On negotiations for investment opportunities

674. The nominee undertook to negotiate for investment opportunities in the East African Community and other regions while safeguarding national interests.

On information dissemination

675. The nominee undertook to use the available channels of communication to disseminate information and keep the public apprised on the activities of the Ministry.

On protecting and financing of the Micro, Small and Medium Enterprises (MSMEs)

676. The nominee undertook to introduce a Trade Development Bill and to review existing policies where necessary, to enhance the dichotomy between foreign investors and MSMEs. The nominee further noted that he

would recommend the amendment of the Investment Promotion Act, Cap 485 to protect local manufacturers.

677. The nominee pointed out that whereas there were efforts to enhance manufacturing to constitute at least 20% of Gross Domestic Product (GDP) by 2030, the cost of power and other related challenges would hinder such growth. He stated that he would engage the Ministry of Energy with a view of reviewing the cost of energy.

On Special Economic Zones being seen as tax evasion avenues

678. The nominee stated that he would work with the institutions in the Ministry to enforce compliance and payment of taxes by all manufacturers.

On allegations that he never undertook field work

679. The nominee informed the Committee that he had been to various parts of the country including West Pokot and Elgeyo Marakwet in his previous Ministry.

On harnessing skills of the young people and technology

680. The nominee stated that he planned to ensure incubation and mentorship of business ideas through the Kenya Industrial Research and Development Institute (KIRDI). In addition, he stated that he would develop an industrialization fund to help young entrepreneurs to advance their business ideas.

On the mining activities at the border in Alupe Area

681. The nominee informed the Committee that there had been mining activities in Uganda which encroached to the Kenyan territory. The nominee stated that the issue had been taken up in collaboration with the Ministry of Interior and National Administration. He further noted that the issue had also been discussed between Kenya and Uganda to ensure that the countries did not encroach on each other's territories.

On trade development and regulation

682. The nominee stated that most of the trade functions of the MSMEs were devolved. The nominee noted that there were thirty-seven (37) County Aggregation and Industrial Park (CAIPs) intended for value addition. He noted that the model was intended to promote the local economy and manufacturing sector.

On working with the Ministry of Agriculture to provide raw materials for value addition

683. He stated that he would work with the Ministry of Agriculture to support the production of the raw materials for local industries e.g., coffee, sunflower and cotton, both for local manufacturing and use in Export Processing Zones (EPZ).

On African Growth and Opportunity Act (AGOA) expiring in 2025

684. The nominee stated that the government was keen at continued engagement with AGOA beyond 2025. In addition, he undertook to follow-up on discussions with the USA for a Strategic Investment Partnership (STIP).

On misappropriation of funds during his tenure as Governor

685. The nominee stated that he had served as Governor of Kwale County for 10 years but no charges had been preferred against him on grounds of misappropriation of funds by any investigative body.

On KONZA Technopolis

686. The nominee stated that Konza Technopolis was of economic significance for the young people and would promote digital enhancement for the country, led by the Ministry of Information, Communication and the Digital Economy. He added that they would collaborate to bring the investors and create employment opportunities for the young people of Kenya.

On economic significance of mining and blue economy

687. The nominee observed that the blue economy was a multi-billion sector but required initial investment on data. He added that there was need for government to invest in exploration, before making investment. The nominee further stated that part of the government investments should include licensing, mapping and data projected to cost Kshs. 221 billion.

688. The nominee clarified that the geo-physical survey conducted in the past was a basic indicator of mineral occurrences. He further noted that ground truthing was necessary to ascertain the economic value and rule out superficial indications. He observed that the process had been done in twenty-four (24) counties.

On blue economy

689. The nominee stated that the success of the blue economy required marine spatial planning to identify areas for investments. He stated that marine spatial planning was necessary before investing in the blue-economy to ensure viability of investments.

On Foreign Direct Investments (FDIs)

690. The nominee noted that Special Economic Zones (SEZ) and Export Processing Zones (EPZ) are meant to inspire the Foreign Direct Investment. If approved, he stated that he would provide leadership to bring the investments to fruition. He further stated that he would work with Parliament to create an enabling environment including prescribing minimum requirements for investors.

World Trade Organization (WTO) and engagement with the Government

691. He stated that the WTO gives broad policy frameworks for countries and would therefore engage WTO in specific negotiations to ensure that national interests are upheld.

On tariffs and imposing levy on Clinker

692. The nominee stated that imposing a levy on clinker had brought investments in the country. He noted that tariffs were being employed by the government, selectively and deliberately to address particular policy issues. He further noted that the input of Parliament will be critical in the discussions of the kind of levies and tariffs that will apply for certain products. Therefore, if approved, the nominee undertook to consult on the matters of tariffs and taxes.

On Dongo Kundu Special Economic Zone (SEZ)

693. The nominee stated that Dongo Kundu SEZ is a key investment in Kenya, covering Kwale and Mombasa counties. He stated that presently, the implementation of infrastructure was still going on and Japan International Cooperation Agency (JICA) was supporting the project with Kenya Ports Authority being the lead agency for the project. He informed the Committee that the 1,648 persons affected by the project would be compensated and resettled. He stated that so far seventy-two (72) investors had expressed interest and committed to ensuring fairness in allocation of land in Dongo Kundu.

On leather and Kenanie project in Athi-River

694. The nominee stated that leather is a very critical product for the implementation of the Kenya Kwanza Government plan and the Medium-Term Plan (MTP) IV on manufacturing. He noted that Kenya has adequate supply of leather with an estimated revenue of Kshs. 120 billion every year. He further noted that KENANIE in Athi River had been identified as an investment facility that could promote value addition for enhanced economic impact of the leather industry.

695. On value addition of cashew nuts and coconuts, the nominee stated that in collaboration with (Kenya Industrial Research and Development Institute

(KIRDI) and KENTASTE, the Ministry would ensure the success of the value addition investments.

On the cost of living

696. While noting that the issue did not fall entirely under the Ministry of Investments, Trade and Industry, the nominee stated that he would work closely with the Ministry of Agriculture to ensure that production in agriculture is enhanced. Thereafter, he noted that the introduction of a warehouse receipting system to aggregate surplus produce would be key to protect farmers from unscrupulous traders and cartels.

On SMEs and access to markets and finance

697. The nominee noted that there was need for manufacturers to work with SMEs as sub-contractors to deliver their last mile products.

On closure of Base Titanium project

698. The nominee clarified that the closure of base titanium is as a result of depletion of mineral resources in the area that was licensed. He noted that the investor had subsequently, applied for licenses in different areas such as Lamu, Tana River and Kwale County which were under consideration. He added that, through the Ministry, he had constituted a committee to engage stakeholders on post-mining land use.

On buy Kenya, Build Kenya

699. The nominee stated that he would work to activate Keninvest and the Kenya Export Promotion and Branding Agency (KEPROBA) in order to promote local products and explore new markets for Kenyan products.

On how Kenya is positioning itself for emerging markets

700. The nominee stated that the country had economic partnership agreements with the European Market hence creating opportunities for new export markets. Noting that most of the local investors may not be aware of the new market opportunities, he undertook to ensure robust dissemination of information to create awareness on the available market opportunities.

On balancing taxation and production

701. The nominee undertook to ensure that Kenyans are not over-taxed. Further, he committed to providing leadership to ensure sequencing is done in the implementation of the resolutions of the Ministry.

On the Kenya National Transport Company (KENATCO) being under receivership for 27 years

702. The nominee stated that his first assignment would be to understand the ensuing issues in regard to the parastatal and take appropriate action.

On allegations arising from the Memoranda, the nominee responded as follows:

703. On the issue of re-appointment to Cabinet after dismissal, **Mr. Salim Mvurya** vide an Affidavit sworn on 31st July 2024, responded as follows—

- (a) The nominee was not adjudged by any organ as having violated the Constitutional values and principles of integrity and leadership.
- (b) On 11th July 2024, the President exercised his Constitutional prerogative powers and dismissed all members of the Cabinet so as to reconstitute a new Cabinet that will enable him fulsomely discharge functions to Kenyans.
- (c) That the Constitution vests the President with powers to determine and portfolio to assign to a Cabinet Secretary. It is purely the President's prerogative.

Observation on Memoranda Submitted Against the Nominee

704. The Committee noted that Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.

4.12.3 Committee Observations on the Suitability of the Nominee

705. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Investments, Trade and Industry -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1970 in Kwale County and does not hold dual citizenship.
- (2) **THAT**, the nominee served as the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs from October 2022 to July 2024. Prior to this he was the first Governor of Kwale County, having served for two terms from 2013 to 2022. From 2003 to 2012, the nominee served as a Program Unit Manager at Plan International (Inc), Kilifi County. He also served as a Program Officer, Plan International (Inc), Kwale County from 2000 to 2003.
- (3) **THAT**, the nominee holds a Master of Arts in Participation, Power and Social Change from the University of Sussex, Brighton in the United Kingdom awarded in 2011. He also holds a Bachelors in Agribusiness Management from Egerton University awarded in 1996. He sat for his Kenya Certificate of Secondary Education at Mpeketoni Secondary School in 1980. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Investments, Trade and Industry.

4.13 Ms. Rebecca Miano, EGH – Nominee Cabinet Secretary for Tourism and Wildlife

706. The nominee appeared before the Committee on 3rd August 2024 and was vetted under oath to examine her suitability. The Committee noted the following—

4.13.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

707. The nominee is a female Kenyan citizen born in 1966 in Nyandarua County. The nominee confirmed that she is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

708. The nominee holds a Master of Laws degree from the University of Salford, Manchester United Kingdom; One-Year Advanced Management Program from the Strathmore Business School & Navara University, Spain; a Post-Graduate Diploma in Law from the Kenya School of Law; and Bachelor of Laws (LLB) degree from the University of Nairobi.

Employment Record and Work Experience

709. The nominee is the immediate former Cabinet Secretary in the Ministry of Investments, Trade & Industry and former Cabinet Secretary EAC, ASALs & Regional Development. She has previously held various position in Kenya Generating Electricity Company (KenGen) PLC including, Managing Director & Chief Executive Officer; Company Secretary/ Legal Affairs Director; Acting Human Resource & Administration Director; Company Secretary & Corporate Affairs Director; Assistant Company Secretary; Principal Legal Officer; and Senior Legal Officer.

710. The nominee has also previously served as a part-time Legal Research Assistant at Slater & Gordon Queensland Australia; a Legal Officer/Assistant Legal Officer at Kenya Power Lighting Company (KPLC); and Associate Lawyer, Musyoka Annan & Co. Advocates.

Honours and Awards

711. She was awarded the Order of the Grand Warrior (OGW); Member of the Order of the Burning Spear (MBS); and Elder of the Order of the Burning Spear (EBS) by the President of the Republic of Kenya.

Professional Association and Memberships

712. The nominee is a member of the United Nations Global Compact COP26 Business Leaders; Certified Trustee TDPK by School of Insurance and Humber Centre for Employee Benefits; East Africa Law Society (EALS); International Community of Jurists; the Institute of Certified Public

Secretaries of Kenya (ICPSK); FIDA Kenya; Women on Boards Network; Advocates Benevolent Association; and Global Women Energy and Petroleum Club.

Published Writings

713. The nominee has published numerous academic and non-academic articles and reports.

Public Office and Political Activities and Affiliations

714. The nominee was the Cabinet Secretary, Ministry of Investments, Trade & Industry between October 2023 and July 2024; Cabinet Secretary, Ministry of East African Community, the ASAL & Regional Development between September 2022 and October 2023; Managing Director and CEO, KenGen PLC between 2018 and 2022; and Company Secretary/ Legal Affairs Director, KenGen PLC between 2008 and 2017.

Integrity

715. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

716. During her previous approval hearing for appointment as Cabinet Secretary EAC, ASALs and Regional Development in 2022, the nominee estimated her net worth to be Kshs. 397,100,000.
717. The nominee stated that her current net worth is approximately Kshs. 444,192,000 comprising land properties, SACCO and KenGen shares and motor vehicles.

Potential Conflict of Interest

718. The nominee declared that she is currently not associated with any persons or matters that would present a conflict of interest should she assume the position of Cabinet Secretary, Ministry of Tourism and Wildlife.

Pro-bono/Charity Work

719. The nominee stated that she had drilled a borehole and constructed a waterpoint in Nyandarua County, Ndaragua Sub-county, Kihara Village. She also supports fundraisers at PCEA St. Andrews Church and regularly responds to medical appeals and food donations.

4.13.2 General and Sector-Specific Questions to the Nominee

720. The Committee posed several questions to the nominee on her suitability for appointment as Cabinet Secretary for Tourism and Wildlife. The nominee responded as follows—

On the classification and star rating of hotels

721. The nominee recognised the significant importance of hotel classification. She explained that classifying hotels was crucial for aligning with global standards and practices, noting that hotel classification is a requirement within the East African Community (EAC).

722. She noted that in Kenya, the absence of such classification often led to guests and occupants determining the quality of the hotels themselves, which subsequently distorted pricing and classification. The nominee undertook to prioritise the completion of the pending classification work in order to establish an objective system with integrity thus enabling Kenyan hotels to compete globally. She emphasised that without a proper classification system, Kenya risked being left behind as other countries take initiative to define their standards.

On addressing the security concerns and regulation of Airbnb accommodations

723. While addressing the issue of Airbnb accommodations, which have posed security challenges, the nominee highlighted the rapid growth of this sector and noted that the sector had outpaced the industry's regulatory framework. She observed that Kenya, as a country, had lagged behind in adapting to these changes and thus struggled to manoeuvre through the emerging issues. The nominee emphasised the need for research institutions and organisations focused on tourism to remain proactive and forward-thinking to keep up with contemporary changes. If approved for appointment, the nominee undertook to prioritise the regulation of Airbnb accommodations and ensure that the issue is addressed in consultation with other government arms and relevant ministries. She underscored the importance of finalising strategies, regulations and any legislative and policy agendas that are necessary to organise the sector which is currently marred by security concerns and other issues.

On the impact of the Tourism Fund and Tourism Promotion Fund

724. The nominee explained the distinct functions of these funds as follows; that the Tourism Fund collects levies from the hotel industry while the Tourism Promotion Fund gathers levies from both international and local travel. She stated that these funds are instrumental in providing resources necessary

to propel the tourism sector forward thus enabling Kenya to compete effectively on a global scale.

725. Referring to the Kenya Kwanza Manifesto, she noted that the tourism sector was recognised as a key driver of economic growth, yet Kenya was underperforming in the area. The nominee pointed out that despite significant efforts, the number of tourists visiting Kenya compared to its population, indicated that the country was not achieving its full potential. She compared Kenya to other nations that, despite having fewer natural attractions, had succeeded in attracting more visitors. The nominee argued that Kenya, with its hospitable people, favourable climate, and rich natural resources, should be performing better. She proposed that the two funds be restructured to address the pressing issues facing the tourism sector, which she believes has the potential to elevate Kenya to the next level economically. She stated that by strategically organising these funds, she intends to prioritise activities that are crucial for developing and promoting tourism.

On the nominee's legacy and achievements in previous government roles

726. Reflecting on her legacy in the two dockets she served over a brief period of two years, the nominee expressed pride in her accomplishments. She cited her success in strengthening Kenya's partnerships and resolving various non-tariff barriers that had previously hindered the export of Kenyan products to other countries, such as juices to Tanzania. She also highlighted her role in facilitating Kenya's participation in the East African Confederation's public participation process, where Kenya was among the first countries to complete this process. The nominee also shared her achievements in the Arid and Semi-Arid Lands (ASALs) docket, where she took office during the worst drought period the country had experienced in forty (40) years. She stated that through effective strategies, she was able to manage the crisis and ensured that no human lives were lost.
727. In the Ministry of Trade and Investment, the nominee observed the significant progress she made, including expediting the conclusion of the European Union Economic Partnership Agreement and guiding it through the ratification process. She also established robust relationships with the private sector that led to the creation of a comprehensive Business Reform Action Plan that aimed at addressing issues related to the cost of doing business in Kenya.
728. She noted that the plan submitted to the Cabinet provided a detailed list of tasks for each ministry to strengthen investment, trade and industry and it had been recognised as a vital document for creating a conducive

business environment. The nominee also stated her efforts on the global stage, where she helped to position Kenya as a top investment destination thus attracting significant start-up capital and achieving high rankings compared to other African nations.

On evaluating Kenya's competitiveness in the global tourism sector

729. The nominee stated that, while Kenya had made strides, there was still considerable room for improvement. She noted that competitiveness is not solely measured in monetary terms but also in the quality of services and the variety of products offered. She noted that historically, Kenya has been known primarily for its beaches and safaris, but the country is endowed with a wide range of attractions, including heritage sites, cultural events, and sports, which need to be better marketed and packaged. The nominee pointed out that domestic tourism remained relatively low, with many Kenyans perceiving tourism as an activity primarily for international visitors. She noted that this perception was partly due to the high cost of local tourism, which discouraged Kenyans from exploring their own country. The nominee further noted that Kenya must rethink its strategies to become more competitive in all aspects of tourism, including pricing, service quality, and the diversification of products. She emphasised the need to digitise the tourism sector and to implement other innovations that could enhance Kenya's competitiveness on the global stage.

On the impact of increased entry fees at Maasai Mara National Reserve

730. The nominee noted that discussions with Ministry officials and Narok County had revealed that the Tourism Strategy of 2021-2025 that was developed with input from stakeholders, had identified the need to make Maasai Mara more competitive. She observed that one of the recommendations was to revise the park's entry rates which had remained unchanged for the past fifteen years, despite rising costs associated with park management. The nominee further noted that the increased rates which took effect in January 2024 were actually slightly lower than what the Strategic Plan had proposed.
731. Additionally, the nominee observed that Maasai Mara had experienced high occupancy rates with the park being up to 90% full during the high season. However, she noted that recent reports suggested a shift of tourists to other regions, such as the Serengeti, though she mentioned that there was no empirical data to support the claim yet. If approved, the nominee undertook to equip herself with accurate information to make

informed decisions and to provide the country with accurate data and ensure that the reporting does not unjustly disadvantage Kenya.

On the transfer of parks from national to county governments and the legal framework

732. The nominee referred to the Wildlife Conservation and Management Act, which outlines the roles of the two levels of government. She stated that a task force had been formed to evaluate the merits and demerits of such transfers along with the regulations, processes and procedures that would be necessary, if any transfers were to occur.
733. She noted that the task force had completed its work and was expected to present its report in the coming weeks. The nominee expressed her intention to contribute to this discussion and to ensure that clear guidelines and processes are established to facilitate smooth and effective transfers and thus avoid disputes and delays. She stated that this issue forms a key part of her list of priorities, should she be approved, to enable more efficient action in the area.

On multiple taxes and levies in the hospitality industry

734. While addressing the issue of the burden of multiple taxes and levies on hoteliers, the nominee recognised the complexity of the current tax system and its impact on the hospitality industry. She stated that the multiplicity of taxes including those imposed by national and county governments, as well as levies collected by various regulatory bodies posed significant challenges to hoteliers thus making it difficult for them to operate profitably and compete effectively.
735. The nominee stated that one of her priorities, if approved, would be to engage with stakeholders in the industry, including hoteliers, county governments, and relevant national agencies in order to review the tax and levy structure. She emphasised the need for a balanced approach that ensures the government can generate necessary revenue while also supporting the growth and sustainability of the hospitality sector. The nominee proposed the possibility of streamlining or consolidating some of these taxes and levies to reduce the financial burden on hoteliers and to foster a more conducive business environment in the tourism and hospitality industry.

On compensation for wildlife cases

736. The nominee emphasised the necessity for close collaboration with county governments. She asserted that under the Wildlife Conservation and Management Act, it is imperative to develop clear procedures and

guidelines to attract the much-needed investment opportunities, particularly in upgrading infrastructure such as hotels and other tourism attractions. She noted that harmonious coexistence between conservation areas and tourism is vital, as conservation areas form the backbone of the tourism industry. The nominee identified the lack of clarity in procedures, regulations, and processes as a major issue affecting the sector. If approved, she undertook to bring greater clarity and streamline processes to enhance efficiency.

On resolving the issues at Ronald Ngala Utalii College

737. The nominee stated that the infrastructural works and buildings at Ronald Ngala Utalii College are approximately 85% complete, with an expectation that most of the work will be finished by October thus allowing for student intakes to commence. She assured the Committee that she would monitor progress closely to ensure that the timelines are adhered to.

On the open sky policy and its role in promoting tourism

738. The nominee noted the extensive discussions with the Ministry of Transport regarding the Open Sky Policy. By attracting more airlines from various destinations and facilitating easier access for tourists, particularly through airports beyond Nairobi's Jomo Kenyatta International Airport, the nominee noted that Kenya could increase tourist arrivals without the debate becoming overly emotive.

On the uptake of tourism special economic zones

739. The nominee expressed her support for the establishment of Tourism Special Economic Zones (SEZs), citing existing policies that envisage the creation of various SEZs, including sector-specific ones. She noted that a tourism SEZ was gazetted in Lamu County, although it was not yet operational and she viewed this as the right direction for the sector.

On honouring Parliament invitations

740. The nominee affirmed her commitment to respecting Parliament, emphasising that her record had demonstrated this. She stated that she prioritises attending to Parliamentary invitations and committee sessions and if rescheduling was necessary, she ensured that it was done in consultation with the relevant committee of Parliament.

On reducing park charges to boost tourism

741. The nominee stated that a strategy developed by stakeholders recommended some changes to park charges. She undertook to review all relevant reports and further consult with stakeholders to make an informed decision aimed at reducing these charges which currently posed a deterrent to both local and foreign tourists.

On implementing the National Human-Wildlife Coexistence Strategic Plan 2024-2033

742. The nominee noted that the National Human-Wildlife Coexistence Strategic Plan proposes various ways of reducing human-wildlife conflict. She emphasised the need for fencing and securing conservation areas alongside extensive civic education to foster coexistence between humans and wildlife. Regarding compensation, she emphasised the importance of streamlining procedures to ensure timely, fair, and transparent compensation for those affected, while recognising that delayed compensation exacerbated the situation.

On benefits to communities living near wildlife sanctuaries

743. The nominee highlighted that nearly 90% of wild animals and 70% of livestock along with many tourist attractions and conservancies, are located in Arid and Semi-Arid Lands (ASALs). She recognised ASALs as one of Kenya's developmental frontiers. The nominee stated that she would lead conversations on resource benefit-sharing, increasing economic benefits, improving infrastructure, enhancing security and promoting alternative income sources and activities. This would be done in collaboration with relevant ministries to focus on the potential of ASALs, which are richly endowed with resources and offer many advantages.

On revamping tourism in the Coast Region

744. The nominee referred to Kenya's coast region as a "jewel," noting that its potential to elevate tourism has yet to be fully realised. She undertook to collaborate with county governments to identify niche tourist attractions and further create a circuit of coastal counties that will offer visitors a comprehensive experience of the region. The nominee emphasised the need for good infrastructure, well-maintained hotels and increased investment in tourist infrastructure to make the coast region a premier tourist destination in Kenya alongside the region's rich cultural sites.

On reverting Mama Ngina Waterfront to Mombasa County Government

745. The nominee noted that collaboration is essential to maximising the benefits of Mama Ngina Waterfront. She stated that, by consulting with counties, she aims to devise a formula and strategy that will lead to

increased tourism and economic activity in the coast region thus ultimately driving its success.

On introducing new tourist attractions beyond traditional offerings

746. The nominee observed that Kenya had underperformed in the tourism sector by focusing primarily on beach and safari attractions. She pointed out that Kenya has much more to offer and should take advantage of its diversity. For instance, the nominee highlighted that the majority of visitors are from the United States of America (USA), followed by Uganda who frequent the coast for various functions. She expressed her intention to continue exploring the niche market of landlocked countries and their affinity for coastal experiences.
747. Additionally, she emphasised the need to diversify the origins of visitors by targeting new markets in the Middle East and Far East while also expanding the range of tourism products available. She stated that branding and communication must be central to these efforts with Kenya being packaged and promoted as a year-round destination. The nominee also emphasised the importance of leveraging innovation and technology, such as establishing a one-stop shop for tourists to access all necessary information. By harnessing the power of social media, she stated that Kenya can aggressively market herself and attract a greater number of tourists thus positioning herself as a leading global destination.

On leveraging the strength of Kenyan content creators to market the country

748. The nominee emphasised the potential of Kenyan content creators, particularly the younger generation who produce compelling infographics and content. She believes that this is an area that should be harnessed, rather than relying solely on consultancies. She expressed her intention to engage with the Ministry of Youth Affairs, Creative Economy and Sports to explore how the creativity of content creators can be utilised to enhance the country's branding and marketing. She stated that she aimed to use positive social media content to effectively position and showcase Kenya to the world in collaboration with the private sector.

On communication and the alleged failure to promote positive aspects of the Finance Bill 2024

749. The nominee defended her role in the Ministry of Trade and Investment particularly regarding communication related to the Finance Bill 2024. She stated that the Ministry made several proposals aimed at promoting local manufacturing and reducing unnecessary imports of products that could

be produced domestically. According to her, the Ministry engaged in extensive consultations with industry stakeholders and manufacturers, leading to a consensus on the necessary actions. She confirmed that there was sufficient consultation and communication in this regard.

On leveraging the success of Kenyan athletes to promote the country as a tourist destination

750. The nominee highlighted the unique position of Kenyan athletes who are a source of national pride. She proposed that these athletes could be positioned as tourism brand ambassadors thus promoting Kenya in the countries they visit. By showcasing what Kenya has to offer through marketing materials and content, the nominee stated that the world could be convinced of the unparalleled experience of visiting the "home of athletes." This approach would celebrate the talent, bravery and courage of Kenyan athletes while also promoting the country as a premier tourist destination.

On ensuring inclusive tourism development for marginalised communities, indigenous groups and rural areas

751. The nominee noted the importance of ensuring that tourism development is inclusive particularly for marginalised communities, indigenous groups and people living in rural areas. She emphasised the need for fair sharing of benefits and respect for local cultures. She proposed exploring opportunities to establish intellectual property rights to protect and honour the cultural contributions of these communities. The nominee stated that these communities would benefit from the economic activities generated by tourism including employment opportunities thus creating a win-win situation across the country.

On the use of E-Citizen to pay fees at national parks

752. The nominee stated that improvements are needed in the payment processes within the tourism sector, particularly for foreign visitors. She noted that efforts are underway to strengthen and streamline the e-Citizen platform, which will be a priority for her. By enhancing this digital platform, she aimed to make payments more efficient and quicker, improving the overall experience for tourists.

On strengthening the Kenya Tourist Police Unit

753. The nominee made reference to Executive Order No. 1 of 2023, which proposed the creation of a National Tourism Service, a body that is yet to be operationalised. She identified this as a priority area, noting the importance of ensuring adequate security for both tourists and citizens.

She also suggested utilising technology, such as Closed-Circuit Television (CCTV) for surveillance, and working with communities to disseminate security information. She emphasised that security is a collective responsibility that requires collaboration with relevant Ministries and State Departments.

On the underfunded Ushanga Initiative

754. The nominee noted that the Ushanga Initiative falls under the Ministry of Culture, Heritage, and Sports and this indicates that the Ministry is better positioned to provide comprehensive answers regarding the initiative.

On the Petition filed at the High Court regarding the expenditure of Kshs. 94 billion on ineffective power generation

755. The nominee stated that she did not have specific information regarding the Petition but expressed her readiness to address any issues that may arise. She affirmed her record of diligent service as the Chief Executive Officer (CEO) of KenGen and expressed pride in the achievements she made during her tenure while highlighting her role as a strong leader in the energy sector.

On the complications in the Mara-Serengeti Tourism Corridor

756. The nominee undertook to consult with the State Department of Immigration to address the need for easy access which is crucial for supporting tourism. She suggested the establishment of an immigration department at the affected points to streamline the process.

On positioning Kenya as a top tourist destination

757. The nominee expressed confidence in her ability to turn around the tourism sector and noted that people tend to support what they believe in. She emphasised the importance of leveraging Kenyan patriotism and encouraging citizens to take pride in their country and market it themselves. She highlighted the potential of young people who make up 80% of the employees in the tourism and hospitality sector, as a key resource.
758. She advocated for partnerships with individuals, corporates and the private sector to tap into the creativity and talent of young people. The nominee expressed her ambition to increase the number of tourists visiting Kenya and targeted over twenty (20) million tourists with the support of Parliament to implement the right policies. She undertook to work with stakeholders, the private sector and development partners to achieve this goal. The nominee described herself as an executor who is determined to

lead the "most progressive and exciting docket," and to transform the tourism sector and by extension, the country.

On revolutionising organisations like Brand Kenya

759. The nominee stated that there is need to stretch imaginations and develop new products to reimagine and refresh Kenya's tourism sector and brand. She stated that she believes that this rebranding effort will inform the approach to positioning the country to attract more tourists. This will involve creating new facilities, refreshing existing ones and ensuring that the country projects the desired image. The nominee expressed her commitment to being innovative, transformative and leading high-performance teams to rally this vision through and achieve the necessary reforms.

On marketing Kenya in major destinations

760. The nominee emphasised the importance of selecting attachees based on their skills and competence and particularly, their ability to contribute effectively to the country's tourism marketing efforts. She proposed checking the linguistic abilities of attachees to ensure that the correct people are appointed. The nominee stated that by selecting the right individuals who are equipped with the necessary competencies, the country will be able to achieve much more. She suggested that multi-skilled attachees who are capable of handling both trade and tourism would be more efficient and cost-effective. She called for a fair and firm selection procedure to ensure that the right people are chosen thus avoiding duplication of roles.

On cost rationalization in the hotel industry

761. The nominee noted the need to rationalise the hotel industry in order to optimise operations and maintenance costs. She proposed exploring alternative and more cost-effective ways of running operations and maintenance to ensure that hotels continue offering competitive and affordable rates. She also highlighted the potential of local tourism and suggested that sensitising communities and offering diversified and affordable tourism products could boost the sector. The nominee noted that young people are significant consumers of tourism products and urged the industry to offer products that appeal to this demographic.

On safari lodges and government shareholding in hotels

762. The nominee was aware that an Executive Order had assigned the management of safari lodges and government shareholding in some

hotels to the National Treasury. She indicated that she would work in consultation with the National Treasury to develop the best strategies for transforming, reforming and managing these assets effectively.

On allegations arising from the Memoranda, the nominee responded as follows:

763. On the issue of re-appointment to Cabinet after dismissal, **Hon. Rebecca Miano** vide a Replying Affidavit sworn on 1st August, 2024, responded as follows—

- (a) The Constitution vest the President with powers to dismiss or re-assign a Cabinet Secretary and to also determine the suitability of Cabinet members; and
- (b) The decision by the President to nominate her to serve the people of Kenya was an assessment of her suitability, competence and the ability to serve the country.

Observations on Memoranda Submitted Against the Nominee

764. The Committee noted that Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.

4.13.3 Committee Observations on the Suitability of the Nominee

765. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, her curriculum vitae, memoranda from the public and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Cabinet Secretary for Tourism and Wildlife:

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a Kenyan citizen born in 1966 in Nyandarua County and does not hold dual citizenship.
- (2) **THAT**, the nominee is the immediate former Cabinet Secretary in the Ministry of Investments, Trade & Industry and former Cabinet Secretary EAC, ASALs & Regional Development. She has previously held various position in Kenya Generating Electricity Company (KenGen) PLC

including, Managing Director & Chief Executive Officer; Company Secretary/ Legal Affairs Director; Acting Human Resource & Administration Director; Company Secretary & Corporate Affairs Director; Assistant Company Secretary; Principal Legal Officer; and Senior Legal Officer. The nominee has also previously served as Legal Research Assistant, Slater & Gordon Queensland Australia; Legal Officer/Assistant Legal Officer, Kenya Power Lighting Company (KPLC); and Associate Lawyer, Musyoka Annan & Co. Advocates.

- (3) The nominee holds a Masters in Law, University of Salford, Manchester United Kingdom; One-Year Advanced Management Program, Strathmore Business School & Navara University, Spain; Post-Graduate Diploma in Law, Kenya School of Law; and Bachelor of Law (LLB) Degree, University of Nairobi. Her academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.
- (6) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (7) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Tourism and Wildlife.

4.14 Hon. James Opiyo Wandayi, EGH – Nominee Cabinet Secretary for Energy and Petroleum

766. The nominee appeared before the Committee on 3rd August 2024 and was vetted under oath to examine his suitability. The Committee noted the following:

4.14.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

767. The nominee is a male Kenyan citizen born in 1972 in Siaya County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship

Academic and Professional Qualifications

768. The nominee holds a Master's in Business Administration, Jomo Kenyatta University of Agriculture and Technology; Bachelor of Law Degree, Daystar University and Bachelor of Science in Agriculture (Agricultural Economics), University of Nairobi.

Employment Record and Work Experience

769. The nominee is the Leader of the Minority Party in the National Assembly and MP, Ugunja Constituency. He has previously served as the Chairperson, Public Accounts Committee (PAC) during the 12th Parliament and Secretary-General, African Organization of Public Accounts Committee (AFROPAC). He was serving a consecutive third term as MP for Ugunja Constituency. The Nominee served in Core Management Positions in the private sector within and outside Kenya., the last being Leaf Business Sustainability Manager responsible for Uganda and DRC at British American Tobacco.

Honours and Awards

770. He was awarded Elder of the Order of the Golden Heart which was awarded by the President in 2023.

Professional Association and Memberships

771. The nominee stated that he was neither a member of any professional association nor did he belong to any professional, business, fraternal, scholarly, civic, charitable or other organization.

Published Writings

772. The nominee had not authored or edited any published materials.

Public Office, Political Activities and Affiliations

773. The nominee is a member of the Orange Democratic Movement (ODM) and was serving as the Second Deputy Secretary-General of the Azimio la Umoja One Kenya Coalition Party.

Integrity

774. The nominee stated that he had been charged alongside others in criminal case number MCCR E08 of 2023 (Rep vs James Opiyo and 5 others) with the offences of taking part in an unlawful assembly and malicious damage to property in March 2023 at Kahawa Law Courts. He

had been discharged under section 87 (a) of the Criminal Procedure Code on 3rd April 2023.

Income and Net Worth

775. The nominee indicated that his net worth is approximately Kshs.536 million which comprised Cash, SACCO shares, real estate and personal property.

Potential Conflict of Interest

776. The nominee indicated that he did not have any persons, categories of litigation or financial arrangements that were likely to present potential conflict of interest when he assumed the office of Cabinet Secretary for Energy and Petroleum.

4.14.2 General and Sector-Specific Questions to the Nominee

777. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Energy and Petroleum. The nominee responded as follows—

On shift in ideology to demonstrate commitment to the bottom-up economic transformation agenda

778. The nominee informed the Committee that his role in the National Assembly was to hold the government accountable as mandated by Article 95 of the Constitution. He stated that he believed in performing his national duty as a patriotic Kenyan and his commitment to the bottom-up economic transformation agenda would be unwavering and therefore would work diligently to implement it effectively.

On the increase in fuel prices by the Energy and Petroleum Regulatory Authority (EPRA)

779. The nominee stated that the Road Maintenance Levy that had caused the recent rise in fuel prices is under the Ministry of Roads and Transport. However, he undertook to work closely with the relevant ministries and stakeholders to address such issues and ensure transparency and fairness in fuel pricing.

On the issue of IPPs

780. He stated that he would engage with the Attorney General to address the issues concerning independent power producers and ensure that future power purchase agreements are fair and do not disadvantage Kenyans. Additionally, he undertook to consider moving towards an energy auction system where energy is purchased based on demand.

On electrification in areas in Kenya with no electricity and addressing maintenance issues that lead to frequent power outages

781. The nominee informed the Committee that he intends to empower the Rural Electrification and Renewable Energy Corporation (REREC) to handle last mile connections and separate their functions from KPLC to avoid overlaps. He stated that for maintenance, he would work closely with the relevant agencies to fast-track modernization of infrastructure and ensure timely repairs to minimize outages.

On breaking KPLC's monopoly to allow competition in the energy sector

782. The nominee stated that the Energy Act 2019 had laid the foundation for opening the distribution space to other players. However, he noted that there was need for a robust KPLC to manage the existing infrastructure. He also foresaw a situation where Kenya creates zones for optimal utilization of resources.

On disparities in power connectivity

783. The nominee informed the Committee that he was aware of the historical injustices in power distribution and would work systematically to correct these imbalances. He stated this would involve adequate resourcing to REREC and collaborating with county governments. He further proposed affirmative action to prioritize electrification in under-served areas, ensuring that every region, including marginalized ones, receive equitable access to electricity.

On the issue of frequent power outages and the long duration it takes for KPLC to respond to breakdowns, especially in rural areas

784. The nominee stated that it would be crucial to address power outages and response times. If approved, he would ensure that KPLC undergoes business process re-engineering to improve efficiency and responsiveness. He would further implement strict timelines for addressing outages and leverage on modern technologies and enhancing the capacity of transmission lines to ensure stable power supply across all regions.

On combating corruption and inefficiencies within KPLC

785. The nominee informed the Committee that combating corruption and inefficiencies require a multifaceted approach and would work closely with the Attorney-General to review and renegotiate existing power purchase agreements that are unfavourable to Kenyans. He added that, if approved, he would strengthen the regulatory framework and enforcement mechanisms to ensure transparency, accountability and fair procurement processes.

On addressing the high cost of electricity

786. The nominee stated that reducing the cost of electricity would involve addressing both technical and commercial losses, which currently stood at around 23%. He stated that he would enhance the efficiency of KPLC's operations and increase the generation of cheaper clean energy sources such as geothermal and wind. He undertook to review and optimize the tariffs and levies that contribute to high electricity costs and promote investment in renewable energy projects, if approved as Cabinet Secretary.

On the proposed Lamu coal power plant and balancing energy needs with environmental protection

787. The nominee informed the Committee that it was crucial to balance energy needs with environmental protection. Despite the opposition faced in the proposed Lamu coal power plant due to environmental concerns, once approved as Cabinet Secretary, he would carefully evaluate its impact. He undertook to engage with environmental groups, stakeholders and experts to ensure that any decision made prioritizes sustainability. He further stated that exploring alternative clean energy sources and technologies would be a priority to meet energy demands without compromising the environment.

On challenges surrounding the Lake Turkana Wind Power Project

788. The nominee stated that the Lake Turkana Wind Power Project is a significant and key investment. He undertook to conduct a thorough review of the project to address any existing issues and improve its efficiency. He also noted that lessons learned from this project would inform future renewable energy projects to ensure they are cost effective and beneficial to the public.

On improving the safety standards for petroleum transportation and storage

789. The nominee informed the Committee that he would work closely with EPRA to enforce strict safety regulations and conduct regular inspections of transportation facilities. He stated that implementing advanced monitoring and emergency response systems would help mitigate risks and prevent accidents like the ones that occurred in Embakasi and Sachangwan.

On adoption of clean energy technologies

790. The nominee stated that he would prioritize investments in renewable energy sources such as geothermal, wind and solar power. He would also implement policies and incentives to attract private sector investment in

clean energy. Additionally, the nominee noted the need to enhance research and development in renewable energy technologies and build local capacity to drive innovation and sustainability.

791. Further, he informed the Committee that ensuring Kenya's energy infrastructure supports industrialization, involved increasing the installed capacity particularly from clean energy sources. He stated that he would invest in geothermal, hydro, wind and solar energy projects to provide a stable and reliable power supply. The nominee undertook to modernize and expand transmission and distribution networks to meet the growing demand, once approved as Cabinet Secretary. The nominee also noted the need to collaborate with regional partners to create an East African power pool which would also help in managing supply fluctuations and enhance energy security.

On the frequent and erratic billing by KPLC and measures to address this issue and improve customer satisfaction

792. The nominee stated that he would implement a comprehensive business process re-engineering at KPLC to enhance accuracy and transparency in billing. He stated that this would involve upgrading metering systems, streamlining billing processes, and ensuring timely and clear communication with customers as well as a framework to handle billing disputes efficiently and fairly.

On KPLC's response time to repair faults and restore power outages

793. The nominee informed the Committee he would implement strict timelines and performance benchmarks for addressing faults and outages. He stated that enhancing the training and resources available to field teams would also be a priority. Additionally, he noted that leveraging technology for real-time monitoring and faster incident response would ensure that power restoration is handled promptly, reducing the inconvenience to consumers.

On attracting investment in the energy sector especially in renewable energy projects

794. The nominee stated that, if approved, he would streamline regulatory processes, provide incentives for clean energy projects and ensure transparency in project approvals. He further stated that he would establish clear and consistent policies to give investors' confidence. He also undertook to promote Public Private Partnerships (PPPs) and engage with international development partners to secure funding and technical expertise for renewable energy initiatives.

On reducing carbon emissions

795. The nominee reiterated his commitment to invest in expanding geothermal, wind and solar energy capacities which are not only clean but also cost effective. He stated that encouraging the adoption of electric vehicles and enhancing public transportation infrastructure would help reduce emissions from the transportation sector. Additionally, he stated that he would implement policies that support energy efficiency and conservation in industries and households. Further, the nominee noted that aligning the energy strategy with international climate agreements would also ensure that the country contributes to global efforts in combating climate change.

On revamping the oil drilling projects in Turkana

796. The nominee stated that he would work to attract strategic partners with the necessary financial and technical capacity to develop these oil reserves. He further stated that he would ensure that the infrastructure, such as roads and pipelines is in place to support oil extraction and transportation. The nominee also undertook to engage with local communities to ensure their participation and benefit from these projects would help create a supportive environment for sustainable development.

On combating the influence of cartels within the energy sector

797. The nominee stated that he would implement strict oversight mechanisms and engage independent audit bodies to help identify and eliminate corrupt practices. Additionally, he undertook to foster a culture of ethical conduct and provide whistle-blower protection that would encourage the reporting of illegal activities.

On delayed processing of applications for electricity connections

798. He stated that he would adopt technology solutions to automate and expedite application processing. He further stated that establishing clear service delivery timelines and monitoring compliance would ensure accountability. He also noted that increasing staffing levels and providing adequate training for personnel involved in the connection process would help address capacity constraints and improve overall service delivery.

On ensuring schools receive reliable and affordable electricity

799. The nominee informed the Committee that, if approved, he would explore options for subsidizing electricity tariffs for schools to reduce their financial burden. He stated that, he would implement efficiency measures and provide schools with access to renewable energy solutions. He further undertook to collaborate with the Ministry of Education and other stakeholders to help prioritize the electrification of schools and ensure they have the resources needed to support their educational mission.

On power theft and illegal connections

800. The nominee stated that he would enhance surveillance and monitoring of the electricity network to detect and prevent illegal activities. He noted that implementing stricter penalties and increasing enforcement efforts would deter power theft. He emphasised on the need to engage with communities to raise awareness about the risks and consequences of illegal connections.

On promoting regional energy integration

801. The nominee stated that he would actively participate in regional initiatives, such as the East African Power Pool to facilitate energy trade and resource sharing. He noted that there was need to develop cross-border energy infrastructure such as transmission lines and interconnectors to enhance regional connectivity. In addition, he noted that harmonizing energy policies and regulations with neighbouring countries would create a conducive environment for cooperation.

On the G-to-G deal

802. The nominee informed the Committee that he would thoroughly study and understand details of the deal then offer informed and appropriate advice on how to proceed with the agreement to ensure it aligns with national interest and policy objectives.

On REREC taking over the last-mile metering from KPLC to enhance customer satisfaction

803. The nominee stated that he is in support of the idea of REREC handling last-mile metering and this division of responsibilities would allow KPLC to focus more on customer service and satisfaction.

On transitioning from oil-based transformers to fiber-optic technology

804. The nominee informed the Committee that he would consult with technical experts on this matter and assured that he would address the transition accordingly. He stated that he is dedicated to pursuing any initiative to modernize the infrastructure and improve efficiency.

On stalled energy projects

805. The nominee stated that he would seek funding from development partners to finance the completion of transmission line projects. He emphasized the importance of collaborating with international donors and financial institutions to secure the needed resources for these critical infrastructure developments.

On the proposed implementation of nuclear energy in Uyombo

806. The nominee explained that Kenya, as a member state of the International Atomic Energy Agency, had adopted a phased approach

to installing nuclear energy. He stated that public participation had already been conducted as part of the first phase, with site identification completed in Kwale and Kilifi counties. Additionally, he undertook to revisit the matter and encourage a holistic involvement of all stakeholders, emphasizing that nuclear energy is a clean and affordable option that would contribute significantly to the base load power supply.

On measures to ensure Kenya stays on course to achieving its industrialization goals as outlined in the Vision 2030

807. The nominee informed the Committee that achieving the industrialization goals in alignment with both Vision 2030 and the EAC Vision, requires a consistent supply of clean and reliable energy. He stated he would ensure proper licensing for the construction of geothermal wells by KenGen. Additionally, he noted that attracting investors to the energy sector would be a priority as it would spur economic growth and help meet the industrialization targets.

On addressing concerns regarding unfair dismissals at KPLC in Mombasa

808. The nominee stated that he would thoroughly investigate the cases of alleged unfair dismissals at KPLC in Mombasa. He also emphasized the importance of fair labour practices and pledged to ensure that any actions taken are in line with legal and ethical standards. He also undertook to review and improve the company's human resource policies to prevent future occurrences of unfair dismissals.

On prevalence of faulty meters at KPLC

809. The nominee acknowledged the concerns raised by the Auditor General, attributing the issues primarily to procurement problems influenced by pervasive cartels that disrupt the tendering process. He committed to investigating these inconsistencies further and emphasized the need for stricter oversight and reform in the procurement process. He also noted that the Public Procurement and Asset Disposal Act allows bidders to lodge complaints but this provision is often exploited by entrenched cartels. He undertook to work closely with other ministries to ensure a fair and transparent procurement process and to address the influence of cartels effectively.

On the Tullow Oil project

810. The nominee informed the Committee that the Tullow Oil project is not a non-viable project and committed to ensure its revival. He acknowledged the project's lack of requisite financial capacity in the South Lokichar Basin. He stated he would work closely with Tullow Oil to source a

strategic partner, with guidance from the Attorney General, to secure the necessary financial support and expertise for the project's successful continuation.

Electricity connectivity at the Constituency level

811. The nominee recognized the collaboration between MPs and REREC on electricity connectivity. He proposed proper resourcing for REREC to expedite the connectivity process, aiming to increase the current 76% penetration rate. He also emphasized the importance of involving county governments to enhance the effectiveness of these efforts.
812. He also addressed the problem of street lights, which often go off after commissioning due to maintenance issues and unpaid bills. He committed to empowering REREC to fully take charge of street lighting and payment processes, including exploring the use of solar street lights to ensure sustainability and continuous operation.

On strategies to reduce the pump price of fuel in Kenya

813. The nominee informed the Committee that he had a three-fold strategy to reduce fuel prices. First, he stated that he would address the landing cost, which significantly contributes to the pump price. Second, the nominee noted that he would work closely with Parliament to review and possibly reduce taxes and levies on fuel. Third, he stated that he would improve the storage and transportation logistics by collaborating with the Kenya Pipeline Company (KPC) to enhance efficiency. Additionally, he noted that extending KPC's operations to regions like Uganda, Rwanda and the Democratic Republic of Congo (DRC) would generate more revenue through increased volume and distance, ultimately lowering fuel prices. He noted that making KPC more competitive would benefit the overall fuel pricing structure, leveraging Uganda's use of Kenya's pipeline for direct fuel imports.

On compensation for electricity related accidents

814. The nominee underscored the importance of addressing the needs of victims of electricity related accidents. He stated that he would work with relevant authorities to streamline the claims process and make it more accessible to affected individuals. He also noted the need to improve safety standards and practices to prevent such accidents from occurring in the first place.

On allegations arising from the Memoranda, the nominee responded as follows—

815. The nominee in his Affidavit responded as follows —

- (1) That his nomination by the President did not contravene any provision in the Constitution or any law;
- (2) The Constitution and the law do not bar persons from appointment based on their party affiliation as that would amount to discrimination on grounds of one's political affiliation contrary to Article 27 of the Constitution;
- (3) That upon successful vetting, appointment, gazettelement and swearing in, a Cabinet Secretary who previously served as a Member of Parliament (MP) shall automatically cease to hold such office of MP pursuant to Article 152(3) of the Constitution.
- (4) That the nominee tendered his resignation as Leader of the Minority Party in the National Assembly on 31st July 2024;
- (5) That Article 103 of the Constitution of the Constitution provides that the office of Member of Parliament may become vacant for any reason provided under, including by resignation from Parliament in writing to the Speaker and therefore, according to the Constitution, a by-election becomes a constitutional necessity and not an unnecessary expenditure as the deponents would want this Honorable Committee to believe;
- (6) That the nominee's resignation as Member of Parliament in a bid to accept a state appointment does not in any way offend any provision of the Constitution as that scenario is already pre-empted by the very Constitution;
- (7) That section 6(7) of the Public Appointments (Parliamentary Approval) Act narrows an approval hearing's focus on a candidate's academic credentials, professional training and experience, personal integrity and background and nothing has been tendered in evidence to impeach the nominee's suitability for appointment;
- (8) That on the allegations that the nominee's appointment would destroy Kenya's multi-party democracy, the Committee is permitted to consider the statements only to the extent that evidence is provided and not on merely speculations as is in this case; and
- (9) That he therefore prays that this Honorable Committee finds that the memorandum by the deponents have not to have been substantiated.

Observations on Memoranda submitted against the Nominee

816. The Committee noted that the President has the prerogative under Articles 132(2) and 152(2) of the Constitution to nominate and with the approval of the National Assembly appoint Cabinet Secretaries.

4.14.3 Committee's Observations on the Suitability of the Nominee

817. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Energy and Petroleum -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1972 in Siaya County and does not hold dual citizenship.
- (2) **THAT**, the nominee is the Leader of the Minority Party in the National Assembly and MP, Ugunja Constituency. He has previously served as the Chairperson, Public Accounts Committee (PAC) during the 12th Parliament and Secretary-General, African Organization of Public Accounts Committee (AFROPAC). He was serving a consecutive third term MP for Ugunja Constituency. The nominee previously served in Core Management Positions in the private sector within and outside Kenya, the last being Leaf Business Sustainability Manager responsible for Uganda and DRC at British American Tobacco.
- (3) The nominee holds a Master's in Business Administration, Jomo Kenyatta University of Agriculture and Technology; Bachelor of Law Degree, Daystar University and Bachelor of Science in Agriculture (Agricultural Economics), University of Nairobi. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years.

(6) **THAT**, the nominee does not hold office in any political party.

(7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

(8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Energy and Petroleum.

4.15 Hon. Onesimus Kipchumba Murkomen, EGH - Nominee Cabinet Secretary for Youth Affairs, Creative Economy and Sports

818. The nominee appeared before the Committee on 3rd August 2024 and was vetted under oath to examine his suitability or otherwise. The Committee noted the following—

4.15.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

819. The nominee is a male Kenyan citizen born on 12th March 2024 in 1979. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

820. The nominee holds a Master of Laws (LLM) degree from both American University's Washington College of Law, Washington DC, USA, and the University of Pretoria, South Africa, where he graduated with distinction. He also holds a Diploma in Law from the Kenya School of Law and a Bachelor of Laws (LLB) degree from the University of Nairobi.

Employment Record and Work Experience

821. The nominee served as the Cabinet Secretary in the Ministry of Roads and Transport in the Government of Kenya from 2022 to 2024. Prior to this role, the nominee served as the Senator for Elgeyo Marakwet County from 2013 to 2022.

822. Additionally, the nominee served as a consultant at Kirui Law Firm in Arlington, Virginia, and as a lecturer at several universities, including the University of Nairobi, Moi University, and the Catholic University of Eastern Africa.

823. The nominee also worked as an advocate at Kelly and Company Advocates, consultant at the Lutheran World Federation, and a member

of the Task Force on Devolved Government under the Ministry of Local Government.

Honours and Awards

824. Throughout his career, the nominee has been recognised with several honours and awards including the Elder of the Order of the Golden Heart (EGH) in 2015.

Professional Association and Memberships

825. The nominee stated that he is a member of the Law Society of Kenya and the East Africa Law Society.

Published Writings

826. The nominee informed that Committee that he authored the following published materials—

(a) The role of the Judiciary in the growth of environmental jurisprudence in India and Kenya, Nairobi Law Journal 2008.

(b) Making sanitary and phytosanitary agreement work in developing countries of Sub-Saharan Africa, Law by Press, 2007.

(c) Book chapter: The impact of IMF policies on Education, health and Women Rights in Kenya- published by ActionAid, 2008.

(d) The Legislature: Bi-Cameralism under the new Constitution, SID Constitutional Working Paper No. 8 of 2011.

Public Office, Political Activities and Affiliations

827. The nominee stated that he was a Cabinet Secretary from October 2022 to July 2024. Prior to this, he served as the Senator for Elgeyo Marakwet County from 2013 to September 2022.

828. In addition, the nominee listed the following political party affiliations—

(a) Member of the United Democratic Alliance Party (UDA)- Until October 2022.

(b) Legal advisor- United Democratic Alliance Party (UDA)- Until October 2022.

(c) Member of Jubilee Party Kenya- 2017 to 2022.

(d) Member of United Republican Party (URP)- 2013 to 2017.

Integrity

829. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or

otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

830. During his previous approval hearing for appointment as Cabinet Secretary in 2022, the nominee estimated his net worth to be Kshs. 550million from services provided by SMS Advocates LLP, salary from Parliament and proceeds of farming.
831. As at the time of the approval hearing, the nominee estimated his current net worth to be approximately Kshs. 620 million.

Potential Conflict of Interest

832. The nominee indicated that he did not have any persons, categories of litigation or financial arrangements that are likely to present potential conflict of interest if he assumes the office of cabinet Secretary for Youth Affairs, Creative Economy & Sports.

Pro-bono/Charity Work

833. The nominee stated that he had been involved in various charity work activities including payment of school fees for needy students in various high schools and colleges across the Country. He also offered support towards infrastructure development in various institutions and churches.

4.15.2 General and Sector-Specific Questions to the Nominee

834. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Youth Affairs, Creative Economy and Sports. The nominee responded as follows—

On his performance as Cabinet Secretary for Roads and Transport

835. The nominee highlighted some of his greatest achievements during his tenure as Cabinet Secretary for Roads and Transport as good leadership in realizing a seamless and harmonious working of the ministries, departments and agencies in the ministry; improving the staffing in the Kenya Airports Authority (KAA); realizing several projects despite the huge pending bills including the construction of about a 1,000 km road in various parts of the country; raising revenue for the Ministry to undertake infrastructure development; installation of an intelligent traffic management system; and enhancing the efficiency of the rail, road, ports and airport sectors among others.

On his vision for the Ministry

836. The nominee submitted that his main vision was to enhance community cohesion through sports tournaments.

On restoring Kenya's football team

837. The nominee undertook to ensure efficient sports management by guaranteeing transparency and accountability in the leadership of the Football Kenya Federation (FKF). He added that he would deal with the cartels in the FKF with the support of Parliament, the Judiciary, the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI) and other relevant agencies to rid it of corruption.
838. He further stated that he would conduct audits of the operations of the FKF and ensure compliance with the provisions of the law. He stated that he would provide adequate financial support to sport teams he undertook to leverage on partnerships with the private sector.
839. He committed to draw lessons from the AFC Leopards, Shabana and Gor Mahia teams to support positive social groupings to form football teams.

On exploring Public Private Partnerships (PPPs)

840. The nominee emphasized the need for creating awareness of PPPs to prevent misinformation as in the case of Adani Airport Holdings Limited. He submitted that the alleged sale of the Jomo Kenyatta International Airport was a misrepresentation of the actual facts. He assured Kenyans that, if approved, he would ensure any PPP agreements would be evaluated and entered into in the best interests of Kenyans.

On the protection of local creatives from plagiarism

841. The nominee committed to ensuring the enforcement of intellectual property laws by the relevant agencies such as the Kenya Copyrights Board. Noting the programs by the Royal Media Services as an example of supporting local content, he undertook to supporting initiatives aimed at increasing viewership of local films. It was his submission that the policy on local viewership should be implemented and enacted into law.

On measures to ensure world-class delivery of the African Nations Championship (CHAN) and Africa Cup of Nations (AFCON) in 2024 and 2027, respectively

842. The nominee submitted that preparations of the Nyayo and Kasarani stadia for the CHAN and AFCON events were underway. He stated that he would form a steering committee comprising all relevant stakeholders including the private sector to invest and take advantage of the opportunities presented.
843. He undertook to ensure that the Talanta Stadium in Jamhuri would be completed to the required standard and in turn attract foreign business from events like World Championships.

On the construction of stadia

844. The nominee recommended that standards should be put in place to regulate infrastructure development. He submitted that he would realize this through an updated Sports Policy and attendant Regulations to give effect to the Sports Act. He stated that he would endeavour to complete the construction of stalled stadia throughout the country.

On gender-based violence in the sports sector

845. The nominee noted that gender violence was a serious concern in the sports sector. He committed to implementing the recommendations of the Sports Committee on Gender Welfare and Equity including providing sportswomen with properly vetted female matrons. In addition, he undertook to ensure the safety of women in training camps by amending the existing policy and legal framework to entrench the Committee's proposals in law.

On enhancing government support to athletes participating in the Olympics

846. The nominee stated that he would ensure the construction of stadia and pitches in all constituencies to ensure access to training grounds for athletes across the country. Further, he undertook to invest in talent identification through collaborating with schools to identify talent. To this end, he proposed that the Kenya Academy of Sports should train all coached teachers in schools and have them certified. He undertook to facilitate the training of talented individuals through establishing training centres in all counties. The nominee stated that he would prioritize setting of standards for sports facilities and ensuring adherence. In addition, he would facilitate building the capacity of athletes and educating them on retirement life after sports.

On bridging the nexus between the national sports office and county offices

847. The nominee reiterated the need to review the Sports Act to recognize counties as a fundamental unit in sports development at the grass-root level aimed at early talent identification and support in training.

On innovative programs for youth employment and job creation

848. The nominee undertook to increase resources to boost youth involvement in governance, noting that there is inadequate allocation to the State Department of Youth Affairs. He submitted that the youth can leverage programs supported by the World Bank such as Nyota targeting approximately 800,000 youth between the ages of 19 and 28 years to engage in entrepreneurship. He stated that he would, in collaboration

with Members of the Parliament, ensure the equitable distribution of the opportunities through programs such as Jitume on ICT hubs.

849. The nominee stated that, if approved, he would implement deliberate mechanisms of finding jobs for young people in the public service. For instance, through creating prerogatives for contractors to employ the youth in the locality within which they are undertaking infrastructure development.
850. The nominee also noted that there are fragmented initiatives targeting the youth including Access to Government Procurement Opportunities (AGPO), Ajira and internship programs in the public service. It was his view that there should be a uniform oversight mechanism situated in the Ministry of Youth Affairs, Creative Economy and Sports to ensure proper implementation of the programs.
851. Additionally, he committed to imposing performance contracting by public entities to report on their status of youth inclusion and operationalizing the National Youth Council. As an example of his commitment to the inclusivity of the youth, the nominee stated that he had appointed two youth in boards in the railway sector during his tenure as Cabinet Secretary for Roads and Transport.

On payment of royalties to local artists and retention of benefits derived from internationally broadcast films done in Kenya

852. The nominee noted that payment of royalties was a mandate of the Ministry of Gender, Culture, the Arts and Heritage. Nevertheless, the nominee undertook to deal with corruption in the Kenya Copyright Board. He added that he would champion the modernization of the law governing the film industry to foster transparency in registration of film makers and ensure local companies are allowed competitive advantage in wildlife filming.

On delegations to international sports activities at the expense of athletes

853. The nominee noted his dedication to ensuring the welfare of athletes and prudent use of resources in the ministry. He submitted that he would ensure only travel of essential persons to international sports events such as the Olympics. He, however, clarified that some officials go to scout for investors and that he would work with the private sector to sponsor cheering squads to accompany athletes for motivation.

On Mtongwe Ferry Bridge and floating bridge

854. The nominee clarified that discontinuing the construction of the floating bridge was due to a cost-benefit analysis of the floating bridge vis-à-vis business accruing from Mombasa Port. He added that to facilitate

movement, plans were underway to construct the Likoni Bridge. Concerning the construction of the Mtongwe Bridge, the nominee stated that it was work in progress.

On his vision for Talanta Hela

855. The nominee stated that, if approved, he would upskill talents to generate income and leverage technology to showcase such talent.

On regaining youth trust and confidence

856. The nominee highlighted his track record in mentorship of the youth in his capacities as a Senator and Cabinet Secretary that resulted in his mentees rising to leadership positions in the country. He committed to doing the same for the youth.

On ensuring proper communication with the youth

857. The nominee undertook to engage and consult the youth in undertaking his duties as a Cabinet Secretary, if approved.

On rewarding students and athletes

858. In collaboration with the Ministry of Education, the nominee undertook to re-introduce a policy on rewarding students and athletes for good performance in sporting activities.

On incorporating refugees in the community through sports

859. The nominee undertook to collaborate with the Ministry of Interior and National Administration to realize the integration of refugees in the sports community.

On mental health for the youth

860. The nominee noted the significance of psycho-social support for the youth. He informed the Committee that he would ensure incorporation of counselling services in the education and sports sectors.

On welfare of sportspersons

861. The nominee informed the Committee that he would empower sportspersons and former athletes with skills on saving and investment and facilitate them to pursue education.

On allegations arising from the Memoranda, the nominee responded as follows:

862. On the issue of re-appointment to Cabinet after dismissal, **Hon. Kichumba Murkomen** vide an Affidavit sworn on 2nd August 2024, responded as follows—

- (a) The President has power to nominate, appoint and dismiss CSs as well as to dismiss a CS without providing specific reasons.

- (b) His dismissal was not subject to disciplinary procedures or a contravention of Article 75(1), 76, 77 or 78(2) of the Constitution.
- (c) His dismissal does not fall under Article 75(3) of the Constitution which would disqualify him from holding state office.

863. The nominee responded to the Affidavit of **Collins Kipkemoi Sang** vide Replying Affidavit sworn on 2nd August, 2024 as follows—

- (a) The allegation involving funds from Out of the Box Solutions through SMAS advocates is *res judicata* and not subject to reconsideration as the matter was previously addressed and settled during his vetting for CS Roads and Transport; judgement was delivered in Petition no. 275 of 2017 absolving his previous law firm from any wrongdoing.
- (b) The accusations by Senator, Nandi County are false; the nominee has filed a defamation claim against the Senator in Civil Suit No. E783 of 2024 that is pending adjudication
- (c) The reports of alleged arrest for money laundering are malicious, unsubstantiated and false as he has never been involved in any such activities.
- (d) The video evidence cited was taken out of context, lacks a certificate of translation and does not accurately reflect his conduct or intentions as he has consistently advocated for unity and collaboration.
- (e) The perceptions of arrogance and opulence are subjective and influenced by political rhetoric and yet he has maintained humility and integrity throughout his public service aligning his lifestyle and conduct with the principles of public service.

864. The nominee further responded to the **Affidavit by Robbin Murimi Karani** vide Replying Affidavit sworn on 2nd August 2024, responded to the allegations as follows—

- (a) The allegation involving funds from Out of the Box Solutions through SMS advocates is *res judicata* and not subject to reconsideration as the matter was previously addressed and settled during his vetting for CS Roads and Transport and Judgement was delivered in Petition no. 275 of 2017 absolving his previous law firm from any wrongdoing;
- (b) The accusations by Senator, Nandi County are false and the nominee had filed a defamation claim against the Senator in Civil Suit No. E783 of 2024 that was pending adjudication.

- (c) The reports of alleged arrest for money laundering were malicious, unsubstantiated and false as he had never been involved in any such activities.
- (d) The video evidence cited was taken out of context, lacks a certificate of translation and does not accurately reflect his conduct or intentions as he has consistently advocated for unity and collaboration.
- (e) The perceptions of arrogance and opulence are subjective and influenced by political rhetoric and yet he has maintained humility and integrity throughout his public service aligning his lifestyle and conduct with the principles of public service.
- (f) The nominee has no role in the procurement process of any parastatal under the Ministry as procurement processes are independently managed by the respective parastatals and a Cabinet Secretary is not an accounting officer in the Ministry or the Agencies under it.

Observations on Memoranda Submitted Against the Nominee

- 865. The Committee noted that Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President. The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office.
- 866. There is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.
- 867. The EACC vide its letter dated 29th July 2024 submitted that the Commission had not undertaken any investigation or recommended prosecution against the nominee pursuant to its mandate.

4.15.3 Committee Observations on the Suitability of the Nominee

- 868. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae and having heard his oral submission during the approval hearing, made the following observations on his

suitability for appointment as Cabinet Secretary for Youth Affairs, Creative Economy and Sports -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1979 in Elgeyo Marakwet County and does not hold dual citizenship.
- (2) **THAT**, the nominee served as the Cabinet Secretary for the Ministry of Roads and Transport in the Government of Kenya from 2022 to 2024. Prior to this role, the nominee served as the Senator of Elgeyo Marakwet County in the Parliament of Kenya from 2013 to 2022. Additionally, the nominee served as a consultant at Kirui Law Firm in Arlington, Virginia, and a lecturer at several universities, including the University of Nairobi, Moi University, and the Catholic University of East Africa. The nominee also worked as an advocate at Kelly and Company Advocates, consultant at the Lutheran World Federation, and was a member of the Task Force on Devolved Government under the Ministry of Local Government.
- (3) The nominee is an Advocate of the High Court of Kenya and holds a Master of Laws (LLM) from both American University's Washington College of Law, Washington DC, USA, and the University of Pretoria, South Africa, where he graduated with distinction. He also holds a Bachelor of Laws (LLB) from the University of Nairobi and Diploma in Law from the Kenya School of Law. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- (5) **THAT**, the nominee neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.
- (6) **THAT**, the nominee does not hold office in any political party.
- (7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77

(restriction on activities of State Officers) and Article 78(2) (dual citizenship) of the Constitution.

- (8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Youth Affairs, Creative Economy and Sports.

4.16 Hon. Hassan Ali Joho, EGH - Nominee Cabinet Secretary for Mining, Blue Economy and Maritime Affairs

869. The nominee appeared before the Committee on 4th August 2024 and was vetted under oath to examine his suitability. The Committee noted the following:

4.16.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

870. The nominee is a male Kenyan citizen born on 26th February 1973 in Mombasa County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

871. The nominee holds Public Leadership Credential from Harvard Kennedy School of Government, a Bachelors of Business Administration from the Kampala University, and a Diploma in Human Resource Management, Kampala University, Certificate in Business Administration from Kampala University, and a Certificate of secondary Education from Serani Secondary School.

Employment Record and Work Experience

872. The nominee served as the Governor of Mombasa County from 2013 to 2022, during which he was involved in community development, economic empowerment, and the advocacy of democratic and constitutional principles. In his tenure as the Governor Mombasa County, the implemented progressive policies that significantly enhanced economic growth and regional investment, thereby creating substantial employment opportunities. The nominee introduced automation in various county processes, which greatly increased revenue collection and reduced inefficiencies.
873. Additionally, the nominee served as the Member of Parliament for Kisauni Constituency where he spearheaded numerous developmental projects, including road construction, educational enhancements, healthcare facilities, and youth empowerment programs. He also doubled as the

Assistant Minister for Transport, overseeing significant infrastructure projects that reduced traffic congestion and improved public transport systems.

Honours and Awards

874. The nominee was recognised with the award of Elder of the Golden Heart (EGH) by the Kenyan Government in 2018 for his outstanding service to the community and fostering national unity.

Professional Association and Memberships

875. The nominee informed the Committee that he was a life member of the Red Cross Society and a member of the Rotary Club of Mombasa.

Published Writings

876. The nominee stated that he was neither a member of any professional association nor did he belong to any professional, business, fraternal, scholarly, civic, charitable or other organization.

Public Office, Political Activities and Affiliations

877. The nominee submitted that he was the Deputy Party Leader of the Orange Democratic Movement (ODM) (2012 to date), had served as a member of the ODM Campaign Steering Committee (2013, 2017, 2022) and ODM Organizing Secretary (2008- 2012).

Integrity

878. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

879. The nominee stated that his net worth was approximately Kshs. 2.3 billion which includes developed and undeveloped properties, shareholding in property holding companies, shareholding in trade companies, motor vehicles, valuables, jewellery and cash at bank.

Potential Conflict of Interest

880. The nominee informed the Committee that neither he nor persons of interest to him were engaged in any activities that could lead to personal

gain at the expense of the Ministry that he had been nominated to work in.

Pro-bono/Charity Work

881. The nominee is the founder of Hassan Joho Foundation, which undertakes various philanthropic activities, including hospital rehabilitation, drug rehabilitation programs, and youth empowerment initiatives. He was also involved in issuance of school resources for children and restoration of recreational facilities.

4.16.2 General and Sector-Specific Questions to the Nominee

882. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs. The nominee responded as follows:

On key priority areas

883. The nominee emphasized that mining, blue economy, and maritime affairs should be viewed as new economic frontiers. He noted that mining currently contributes slightly under 1% to the country's GDP and stressed the need to generate confidence among investors and the public. If approved, the nominee pledged to be a Cabinet Secretary who recognizes stakeholder engagement, provides valuable information and data for informed policy decision-making.
884. He committed to involve stakeholders, auditing human and technological resources, and reassessing legal frameworks and policies to ensure they are investor-friendly. The nominee expressed his eagerness to gather accurate geological data on the country's minerals and ensure Kenya becomes an attractive destination for investment in mining, the blue economy, and maritime affairs.

On the academic credentials of the nominee

885. The nominee acknowledged that it is common for people to cast doubt on individuals from the coast, despite their qualifications. He noted that he drew inspiration from Prof. Ali Mazrui, who did not succeed in his Cambridge examination yet went on to achieve academic success. The nominee shared his personal story of overcoming historical struggles, coming from a very poor background, and having to take a one-year break before transitioning from primary to high school due to financial constraints. He noted that despite scoring a D- (minus) in his exams, he was able to progress in his academic journey and now holds two Bachelor's degrees and is pursuing a Master's degree. The nominee

mentioned that his academic credentials have often been questioned whenever he sought public office, including during his bids for Member of Parliament and Mombasa Governor. He further noted that the administration of President Uhuru had previously questioned his credentials in an attempt to remove him from politics. However, he asserted that his credentials have been investigated by various government institutions, including the Commission on University Education, EACC, and through judicial processes, all of which cleared him.

On equipping young people to work in the maritime industry

886. Noting the industry's significant potential to create jobs both locally and internationally, the nominee highlighted that the Ministry is key to wealth and employment creation with a global demand for seafarers is approximately 1.9 million, while Kenya contributes only 0.2%, translating to about 4,000 Kenyans employed in the industry.
887. The nominee stressed the need to redesign training programmes to meet the demands of this opportunity and pledged to engage Parliament in realigning policies around training. He pointed out that while the Bandari Maritime Academy provides good training, not all graduates secure employment due to a lack of sea-time opportunities. He identified this as an urgent issue, requiring policy realignment to combine training with sea-time opportunities. The nominee also pointed out that Kenya has only five vessels carrying its flag, limiting job opportunities for young people. He called for a review of policies to increase the number of Kenyan-flagged vessels, which would improve revenue collection and create more job and internship opportunities for Kenyans, particularly in securing sea-time. He committed to evaluating the current situation in training institutions and developing programmes that better meet the demands of the sector.
888. In addressing how the nominee would encourage those striving to succeed in life and how he intends to leverage his experience in business and as a Governor to inspire young people who may be losing hope, the nominee submitted that he would bring the combined ideology of the business and public sectors to aid fishermen and small-scale miners. He expressed his intention to explore various means, including partnerships, government funding, and private sector sponsorships, to enable Kenyans to engage in deep-sea fishing, which he views as a potential game-changer.

On licensing and environmental standards in the mining industry

889. The nominee emphasised the need for collaboration with county governments, the beneficiaries of royalties, to train and encourage adherence to environmental standards. He also highlighted the importance of improving enforcement, which would require a multisectoral approach that he would initiate. He suggested that licensing policies could include a requirement for miners to provide a surety bond, which would be deposited with the government to ensure environmental restoration. If a miner fails to restore the environment, the government could use the bond to cover the costs of restoration.

On improving the lives of people in the fishing industry

890. The nominee noted that neighbouring countries process more fish for export than Kenya and emphasised the need for capacity building among fisherfolk, particularly artisan fishermen and women. He proposed that they be trained in processing, storage, and value addition, with a focus on creating a lucrative environment for business and investment. He expressed his commitment to combining private sector investment, government support, and community participation. He suggested strategies such as creating collection points and organising fishermen into cooperatives to consolidate their catch, thereby qualifying for export markets.

On his willingness to work in the Ministry

891. The nominee noted that the Cabinet appointment is an opportunity to serve the people of Kenya.

On dealing with cartels in the industry

892. The nominee acknowledged the need to review policies and attributed the low contribution of mining to the GDP to the influence of cartels and brokers in the industry. He emphasised the need to eliminate cartels to promote the development of the industry.

893. Additionally, he highlighted the importance of timely disbursement of royalties and pledged to establish functional systems to prioritise the needs of Kenyan communities. He expressed his intention to engage with counties that receive significant royalties, to review the legal framework and ensure that resources are ring-fenced for development. The nominee also promised to work on creating synergy with counties, formulating an efficient framework for disbursing royalties, and organising communities into cooperatives to improve their circumstances.

On the gemstone mining sector

894. The nominee advocated for a focus on private sector investment in the mining sector. He raised concerns on whether the Voi Gemstone Value Addition Centre is properly equipped to test and process minerals and pledged to review its operations if approved. He emphasised the need to ensure that minerals are tested and identified correctly, to prevent the exploitation of Kenyans, and to guarantee that value is added to the minerals before they enter the market.

On his achievements during his tenure as Governor

895. The nominee highlighted his achievements in Mombasa County, including the establishment of a state-of-the-art cardiac centre, well-trained medics, and a cancer treatment centre. He pledged to provide leadership in the Ministry of Mining, Blue Economy, and Maritime Affairs, if approved.

On bureaucracies in the National Mining Corporation and National Minerals Board

896. The nominee acknowledged the challenges in the licensing process, particularly for artisanal miners. He noted that the process involves engaging with local communities and obtaining their consent before proceeding with a license application. However, he pointed out that instances of document falsification have hindered the efficiency of issuing licenses and proposed the adoption of technological solutions to address the issues. He emphasised the need to digitise the entire process, with the cadastre system hosted in Kenya to reduce corruption and improve efficiency. He also expressed his intention to involve young people in developing these technological solutions.

On allegations of drug trafficking

897. The nominee stated that the late Internal Security Minister, George Saitoti had tabled a list in Parliament on an alleged dossier that had been forwarded to Kenyan authorities by the American Embassy containing a list of suspected drug traffickers. The nominee noted that the report which was formulated by a multi-agency involving broad international investigations did not contain any evidence implicating him or disclosing any culpability by the nominee in the alleged drug trafficking scandal. He further stated that the Minister thereafter clarified the matter by tabling a Report detailing the outcome of investigations which exonerated him. He added that he has never been barred from visiting the United States and frequently visits the United States without any hindrance.

898. The nominee stated that the allegations were as a result of political witch hunt. He emphasized that he conducts legitimate business that can be audited.

On the role of the National Intelligence Service (NIS) in prospecting for minerals

899. The nominee expressed his inability to comment on the NIS prospect report due to a lack of information. However, he emphasised the importance of improving communication and ensuring that Ministries assist the President in conveying information to the public. He pledged to review the situation if approved and ensure that companies continue to pay royalties to the community and the government, regardless of changes in ownership.

On allegations against the nominee

900. Regarding the Auditor General's report on the KES 1.7 billion tender allegedly awarded to relatives of the nominee and the accusation that the County Government of Mombasa was managed by a relative during his tenure as Governor, the nominee submitted that the matters were thoroughly audited and investigated by the EACC and the DCI; no charges were preferred against him.

On abandoned ships from other countries

901. The nominee stated that destruction of abandoned ships presented a significant business opportunity, particularly for supporting the steel industry. He cited similar practices in Liberia, India and Singapore as successful examples.

On the completion of stalled projects

902. Referring to the stalled projects of the Kenya Marine and Fisheries Research Institutes, the nominee noted that government should prioritize completion of projects and ensure value for money.

On the implementation of the Marine Spatial Plan

903. The nominee submitted that he believes in effective planning and, if approved, would ensure that the Marine Spatial Plan is expedited and implemented without further delay.

On the KES 1.8 billion tender for the construction of a county stadium

904. The nominee submitted that the idea of building the stadium was conceptualised in 2019, and the tender was awarded to a Turkish

company in partnership with a Kenyan firm to construct a world-class stadium. He further clarified that all earthworks had been completed, with the remaining task being the installation of steel structures, which have been assembled in Turkey.

905. He stated that the programme had been adversely affected by the COVID-19 pandemic, leading to a significant drop in local revenue. The nominee asserted that the amount paid so far was not Kshs 1 billion but approximately Kshs. 400 million. He added that 30% of the steel structures were already in Mombasa, while 70% remained in Turkey, and maintained that the tender process was conducted in accordance with the law.

On leveraging opportunities in the Blue Economy to create jobs

906. The nominee submitted that he fully acknowledged the potential in the blue economy. He stressed that the country should focus on mining within the blue economy sector, and if managed correctly, this sector could help the nation alleviate its debt burden.

On transitioning from Mombasa politics

907. The nominee submitted that he would rise above local divisive conversations and serve the entire nation. He expressed a commitment to uniting Kenyans and undertook to promote national unity.

On concerns regarding favouring international investors over locals

908. The nominee submitted that his family is solely engaged in logistics and does not conduct business with the government. The nominee emphasised that for Kenya to fully capitalise on its mineral resources, engagement with international investors is necessary. However, he also indicated plans to organise locals into cooperatives and equip them with the necessary skills to participate safely and effectively in the mining sector to ensure they benefit from the nation's resources.
909. The nominee stressed the importance of involving locals as primary beneficiaries, who would be trained and equipped in mining and business skills to enable them to earn a livelihood in a more organised manner. He noted that a deeper conversation is required to improve the law on local content, mandating foreign investors to include local shareholders, and advocated for the government to hold shares in mining activities to reduce capital flight. Additionally, he proposed that the National Mining Corporation should partner with foreign investors to fulfil local content requirements as stipulated by law.

On supporting trained seafarers to STCW certificates

910. The nominee submitted that he would prioritise facilitating Kenyans who wish to pursue seafaring courses, affirming that there is no justification for failing to certify them.

On measures to protect fishermen from the effects of dredging

911. The nominee submitted that dredging should be conducted in an organised manner, with due regard for environmental protection. He emphasised that the environment is crucial to the local economy, and one benefit should not be allowed to outweigh another. He further noted that fishermen in Likoni lost their livelihood due to dredging activities that affected the fish breeding areas. He stressed that proper measures must be implemented to protect fishermen from such adverse effects.

On the harassment of Kenyan fishermen

912. The nominee submitted that Kenya, in the spirit of the East African Community (EAC), should engage with other countries on matters of territorial boundaries. He underscored the need for EAC dialogue on boundary issues to safeguard Kenya's territorial interests.

On measures to support artisanal small-scale miners

913. The nominee submitted that he would not overlook a sector that employs 140,000 Kenyans. He stated that the sector must be developed and sustained, and he committed to implementing measures to train and support artisanal miners. He also expressed his intention to visit mining sites, listen to the miners, gather actual data and information, and develop clear strategies to protect and support them.

On marine resource utilisation

914. The nominee submitted that Kenya has yet to fully exploit the potential of maritime resource utilisation. He committed to working with Parliament and the Attorney-General to review agreements and contracts on marine resource utilisation to protect the interests of Kenyans.

On the nominee's ability to deliver on his promises

915. The nominee assured the Committee that he would deliver on his mandate, if approved. He undertook to engage with the people and advocate for mining to promote economic growth and create employment opportunities for Kenyans.

On mining at the Kenya-Uganda border in Alupe

916. The nominee submitted that he would work with Members of Parliament and governors to safeguard mineral resources along the border.

On mineral speculation and the need for a mineral audit

917. The nominee submitted that he would address the issue of mineral speculation in Kenya, ensuring clarity on where mineral deposits are located and who holds rights over them to avoid land disputes particularly in mineral rich areas.

On opulence, arrogance, and the separation of private and public life

918. The nominee submitted that he recognized the need for balance between his private and public life and undertook to maintain modesty with regard to public display of his private life.

On mining research and collaboration with learning institutions

919. The nominee submitted that if approved for appointment, he would collaborate with learning institutions to enhance mining research. He also committed to train Kenyans on mineral resource development with the aim of raising the contribution of the mining sector to at least 10% of the GDP.

On local participation in the mining sector

920. The nominee submitted that he would sensitize Kenyans on the potential of the mining sector and encourage local participation.

On enhancing maritime training in Kenya

921. The nominee submitted that there is a need to reconsider the content of the maritime training programme. He proposed a redesign of the programme in collaborating with local universities and international institutions for purposes of certification.

On his vision for the Ministry

922. The nominee submitted that he had developed the following ten-point plan for the Ministry—

(a) Digitisation of Ministry Processes: Create an open-source repository for information access and build local capacity for technological system control;

(b) Stakeholder Involvement/Public Participation: Engage the private sector through public-private partnerships and conduct regular accountability briefings for public engagement.

- (c) Blue Carbon Regulatory Framework: Develop a framework to guide carbon trading and exploit economic potential.
- (d) Review of the Mining Act: Ensure the completion of the review of the Mining Act.
- (e) Enhanced Community Development Agreements: Empower communities through better engagement programs and develop a public participation framework.
- (f) International Maritime Organization (IMO) Representation: Secure Kenyan representation in the IMO.
- (g) Capacity Building for Deep-Sea Fishing: Train 875 individuals to boost local expertise.
- (h) Improved Licensing Processes: Simplify and standardize licensing procedures.
- (i) Sustainability Standards and Certifications: Implement sustainability certifications for projects.
- (j) Public-Private Partnerships (PPPs): Encourage and leverage PPPs for large-scale projects.

On allegations relating to a Kshs 5.9 billion grain facility

923. The nominee submitted that his family is involved in the logistics business and plans to build a grain handling facility on their own land. He clarified that there were no public funds utilized in the project, as it is entirely a private equity initiative.

On the allegation of failure to comply with a court order

924. The nominee submitted that he had not been personally served with any court order to provide information on the Urban Renewal and Regeneration Programme. He further noted that the information sought may be accessed from the County Government.

On allegations arising from the Memoranda, the nominee responded as follows:

925. On the issue that the four (4) of the nominees were members of and are affiliated to the Orange Democratic Movement (ODM) and that H.E the President could not lawfully nominate persons associated with and who were/have been members of political parties or coalition of rival political parties in opposition to the President's party for appointment as members of the national executive of the Republic which he heads as this destroys

multi-party democracy, the nominee responded vide an affidavit sworn on 1st August 2024, as follows—

- (a) that the Constitution did not prohibit him from being nominated and approved as a Cabinet Secretary;
- (b) that Article 130(2) requires the National Executive to reflect regional and ethnic diversity of the people of Kenya; and
- (c) party affiliation does not bar any Kenyan from appointment to Cabinet.

926. **Hassan Ali Joho** responded to the **Affidavit by Munira Ali Omar on behalf of Haki Yetu Organization** vide an affidavit sworn on 1st August, 2024 as follows-

- (a) The building of a stadium in Mombasa was advertised in a public Tender, which was competitively awarded to Sitara Construction and Supplies Limited;
- (b) The facility has not been made accessible to the public because it had not been completed by the year 2022, when he left office as Governor of the County and the suspension of the stadium project works was not done by him;
- (c) The Sports Facility at Uwanja wa Mbuzi Kongowea in Nyali Sub-County was fully in use up to now and the Mtopanga road was completed and was now in use;
- (d) The report referred to by the deponent was prepared by her organization and therefore had no rational basis;
- (e) There were suits that were filed against the County Government of Mombasa and while the suits requesting for information are ordinarily filed against the Information Officer of an organization, the Governor is no such information officer;
- (f) There was no Court order was annexed and the Advocate should have enforced the order if it existed and not transfer the blame; and
- (g) The nominee had at no time been found to be unsuitable for any office and the allegation had no legal foundation in law and was unfounded.

Committees Observations on the Memoranda

927. The Committee observed that—

- (a) The President has the prerogative under Articles 132(2) and 152(2) of the Constitution to nominate and with the approval of the National Assembly appoint Cabinet Secretaries;
- (b) The request for information on the Urban Renewal and Regeneration Programme is a subject of on-going court proceedings against the County Government of Mombasa;
- (c) The EACC vide its letter dated 29th July 2024 submitted that the Commission had not undertaken any investigation or recommended prosecution against the nominee pursuant to its mandate;
- (d) Article 152 of the Constitution does not prescribe any minimum academic qualifications for appointment to the Cabinet.

4.16.3 Committee Observations on the Suitability of the Nominee

928. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1973 in Mombasa County and does not hold dual citizenship.
- (2) **THAT**, the nominee previously served as the Governor of Mombasa County from 2013 to 2022, Member of Parliament for Kisauni Constituency and Assistant Minister for Transport. The nominee holds Public Leadership Credential from Harvard Kennedy School of Government, a Bachelors of Business Administration from the Kampala University, and a Diploma in Human Resource Management, Kampala University, Certificate in Business Administration from Kampala University, and a Certificate of Secondary Education from Serani Secondary School. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (3) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the

Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).

(4) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.

(5) **THAT**, the nominee does not hold office in any political party.

(6) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

(7) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs.

4.17 Hon. (Dr.) Alfred Nganga Mutua, EGH - Nominee Cabinet Secretary for Labour and Social Protection

929. The nominee appeared before the Committee on 4th August 2024 and was vetted under oath to examine his suitability. The Committee noted the following:

4.17.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

930. The nominee is a male Kenyan citizen in 1970 in Machakos County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

931. The nominee holds a Doctorate from the University of Western Sydney, awarded in 2002. He holds a Master of Science in Communication from Eastern Washington University awarded on 12th December 1997 and a Bachelor of Arts Degree in Journalism from Whitworth University awarded on 16th August 1996. He sat for his Kenya Certificate of Education at Dagoretti High School in 1987.

Employment Record and Professional Experience

932. The nominee served as the immediate former Cabinet Secretary for Tourism and Wildlife and had also served as the Cabinet Secretary for Foreign and Diaspora Affairs. He served as the Governor of Machakos

County from 2013 to 2022. He also served as the first official Government Spokesman of Kenya and Public Communications Secretary from 2002 to 2012.

933. The nominee has also served as a lecturer at Daystar University in Kenya and an assistant professor at Zayed University's College of Communication and Media Studies in Dubai.

934. The nominee has an extensive background in media and journalism. He has worked for major Kenyan newspapers, including Nation Media, Standard Newspaper, and Kenya Times, and his articles have been published internationally in outlets such as the Spokesman Review and the Sydney Morning Herald. Dr. Mutua also served as a Foreign Correspondent for Australia's SBS TV, where he interviewed numerous world leaders and produced TV documentaries.

Honours and Awards

935. The nominee was awarded Elder of the Order of the Golden Heart, (EGH), and the Elder of Order of the Burning Spear, (EBS).

936. He was also awarded Best Governor in Africa in 2021 by the Illustrious Awards Organizers for significantly improving the livelihoods of Machakos County residents.

Professional Association and Memberships

937. The nominee stated that he was neither a member of any professional association nor did he belong to any professional, business, fraternal, scholarly, civic, charitable or other organization.

Published Writings

938. The nominee has published a book titled '*How to be Rich in Africa and Other Secrets of Success*'. The nominee has been a journalist and has published articles in various print media including, The Daily Nation, The Standard, The New York Times, L.A Times and The Sydney Morning Herald.

939. The nominee has also directed and produced several TV series.

Public Office and Political Activities and Affiliations

940. The nominee served as the immediate former Cabinet Secretary for Tourism and Wildlife. Before this role, he was the Cabinet Secretary for Foreign and Diaspora Affairs. He served as the Governor of Machakos County from 2013 to 2022. He served as the first official Government Spokesman of Kenya and Public Communications Secretary from 2002 to 2012.

941. The nominee is the founder and has been the Party Leader of the Maendeleo Chap Chap Party. He was also once a member of the Wiper Party.

Integrity

942. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

943. During his previous approval hearing for appointment as Cabinet Secretary for Foreign and Diaspora Affairs in 2022, the nominee estimated his net worth to be Kshs. 420 million held in assets and shareholding.

944. As at the time of the approval hearing, the nominee estimated his current net worth to be Kshs. 462 million.

Potential Conflict of Interest

945. The nominee declared that he did not have any persons or matters that would present a potential conflict of interest. He indicated that in the event that conflict of interest arose, he would resolve it in accordance with the Constitution and the law.

Pro-bono/Charity Work

946. The nominee stated that he had been involved in charity work such as educating children, supporting schools, religious work and in supporting young people in business.

4.17.2 General and Sector-Specific Questions to the Nominee

947. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Labour and Social Protection. The nominee responded as follows:

On leveraging on the contacts he made during his time at the Ministry of Foreign Affairs

948. He stated that he will ensure that the country has labour market agreements and would work with the Cabinet to break the bureaucracy and ensure faster movement in processing the bilateral labour agreements. He noted that bilateral labour migration would ensure the best interests of Kenyans are taken care of.

On his association with First Choice Employment Agency

949. He stated that he only met a representative of the Agency at a Ministry of Labour event at the Kenyatta International Convention Centre (KICC). He stated that the said representative of the Agency was not known to him and therefore there would be no potential conflict of interest should he be approved for appointment at the Cabinet Secretary for Labour and Social Protection.
950. The nominee stated that the law should take its course with regard to the issue of compensation for any victims in the matter.

On employment opportunities in Canada

951. The nominee stated that there was a mix-up in information regarding seasonal employment opportunities for Kenyans in Canada. If approved for appointment, he stated that he would follow up on these opportunities.

On the National Employment Authority Integrated Management system

952. The nominee stated that he would publicize National Employment Authority Integrated Management system and sensitize Kenyans on the available opportunities and how to enhance their skills to qualify for the jobs.

On diplomatic channels of communication

953. On the Note-Verbale allowing diplomatic missions to communicate directly with state departments, the nominee stated that the decision was informed by the need to reduce bureaucracy and facilitate effective decision making. He added that it was a government policy that had been made at the time and served its purpose.

On managing industrial action and perennial labour disputes in Kenya

954. The nominee informed the Committee that enforcement of the Employment Act would ensure that workers are given the benefits they deserve according to the law. He noted that conducive work environment increased productivity which translated to economic growth.
955. The nominee further stated that he would maintain an open-door policy, on labour issues to ensure effective dispute resolution.

On Inua Jamii and Older Persons Cash Transfer (OPCT)

956. The nominee stated that challenges with the programmes had since been resolved and more beneficiaries were being brought on board. The

nominee expressed his concern about the classification of Persons with Disabilities, where their social assistance benefits are allocated to households and not individuals. In addition, their allocations had been reduced from 20 USD down to 12USD to 15USD. He undertook to have this issue addressed, if approved for appointment.

957. The nominee noted that there is need for a more seamless on-boarding process for older persons into the Cash transfer program as well as coming up with programs with prospects of making the lives of older persons easier.

On social protection

958. The nominee undertook to ensure that the poor and vulnerable people have access to the relevant social safety net programmes, if approved for appointment.

On unfair Labour Practises including not employing interns

959. The nominee undertook to liaise with the Public Service Commission to ensure that interns deployed to Ministries, who perform well, are considered for permanent positions when opportunities arise.

On mismatch between employment opportunities and labour force

960. The nominee stated that, if approved for appointment, he would facilitate Kenyans to work for foreign companies operating in Kenya. He stated that he would seek to attract business processing outsourcing to Kenya in the financial, medical and technology sectors.

On Kenyan migrant workers

961. The nominee stated that he would review existing bilateral labour agreements and negotiate new agreements to protect the interests Kenyan migrant workers and explore employment opportunities for Kenyans. Further, the nominee stated that he would sensitize Kenyan migrant workers on labour related matters and develop a database of accredited employment agencies.

On his vision for the Ministry

962. The nominee informed the committee that he would engage employers and advocate for creation of conducive environment for employees.

963. He added that he would undertake a comprehensive review of the labour laws to protect the interests of Kenyans.

964. The nominee stated that he would promote Business Process Outsourcing (BPO) and remote working to reduce rural-urban labour migration by utilizing internet connectivity and technology.

On systems to monitor and evaluate the inclusion of minorities in employment

965. The nominee emphasised on the need for government agencies to publish data on inclusion of minorities and marginalized groups to address the perception that some minorities groups are excluded from employment.

On collective bargaining agreements

966. The nominee stated that the Ministry of Labour and Social Protection will serve as an arbitrator and hold the Public Service accountable to ensure implementation.

On Cabinet Secretaries being seen only during industrial strikes

967. The nominee stated that he intended to be visible at all times as he moved around constituencies to identify labour issues as well as to communicate with the young people on skill development and opportunities that are available for them.

On minimum wage

968. The nominee stated that he would prioritize the gazettelement of 6% increment on the prescribed minimum wage after engaging with the Federation of Kenya Employers (FKE) and the Central Organization of Trade Unions (COTU).

On street families rehabilitation

969. If approved for appointment, the nominee stated that he would review the street families rehabilitation programs and ensure the implementation of the relevant legislation.

970. The nominee added that the Ministry is putting up a rehabilitation centre in Mavoko to assist in equipping street children for resocialization.

On allegations of being abrasive to his employees

971. The nominee stated that the allegations of his being abrasive to his employees were false and malicious. He informed the committee that he considers himself to be a very caring and gentle person.

On provision of medical insurance to employees

972. The nominee undertook to engage the employers with a view to ensuring that employees have access to insurance cover.

On the National Social Security Fund (NSSF)

973. The nominee pointed out that NSSF has a portfolio of about Kshs. 400 billion and he would engage the NSSF Board to focus on expanding the investment portfolio and improving the processing and payment of pension benefits.

On recent protests

974. On the demonstrations by 'Gen-Zs', he stated that the lack of employment may have contributed to the crisis. The nominee undertook to create an enabling environment to foster job creation. He further stated that he would encourage diversification of skills to create opportunities for young people in the country and abroad.

On allegations arising from the Memoranda, the nominee responded as follows:

975. On the issue of re-appointment to Cabinet after dismissal, **Hon. Alfred Mutua** vide Affidavit sworn on 1st August 2024 responded as follows—

(a) The President was within his constitutional discretion to consider the performance of individual members of the dismissed cabinet and to reconsider any of the persons for re-appointment.

(b) Therefore, the President cannot be faulted for nominating a person on the basis that they served in the dismissed cabinet.

Observations on Memoranda Submitted Against the Nominee

976. The Committee noted that—

(a) Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President;

(b) The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office; and

- (c) That there is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law.

4.17.3 Committee Observations on the Suitability of the Nominee

977. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Labour and Social Protection -

- (1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1970 in Machakos County and does not hold dual citizenship.
- (2) **THAT**, the nominee served as the immediate former Cabinet Secretary for Tourism and Wildlife. Before this role, he was the Cabinet Secretary for Foreign and Diaspora Affairs. He served as the Governor of Machakos County from 2013 to 2022. He served as the first official Government Spokesman of Kenya and Public Communications Secretary from 2002 to 2012. The nominee has also served as a lecturer at Daystar University in Kenya and an assistant professor at Zayed University's College of Communication and Media Studies in Dubai.
- (3) The nominee holds a Doctorate from the University of Western Sydney, awarded in 2002. He holds a Master of Science in Communication from Eastern Washington University awarded on 12th December 1997 and a Bachelor of Arts, in Journalism from Whitworth University awarded on 16th August 1996. He sat for his Kenya Certificate of Education at Dagoretti High School in 1987. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- (4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Education Loan Board (HELB).

(5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.

(6) **THAT**, the nominee does not hold office in any political party.

(7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.

(8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Labour and Social Protection.

4.18 Hon. Wycliffe Ambetsa Oparanyah, EGH – Nominee Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development

978. The nominee appeared before the Committee on 4th August 2024 and was vetted under oath to examine his suitability. The Committee noted the following:

4.18.1 Questions from the General Questionnaire

Citizenship, Date, and Place of Birth

979. The nominee is a male Kenyan citizen born on 25th March 1956 in Kakamega County. The nominee confirmed that he is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

980. The nominee holds a Master of Business Administration Finance Option from the University of Nairobi attained in 2002 and a Bachelor of Commerce (B. Com) from the University of Nairobi in 1980. The nominee is on the verge of completing his Doctor of Philosophy Degree (Ph.D. in Economics) from the University of Dar es Salaam, Tanzania. The nominee sat for the Kenya Certificate of Education (KCE) in 1976 at Kisii School and O- O-Level in 1974 at Butere Boys High School.

981. The nominee is a Fellow Certified Practicing Accountant (FCPA) and a Certified Public Accountant (CPA-K).

Employment Record and Work Experience

982. The nominee was a Governor of Kakamega County from 2013 to 2022. Previously, he served as the Minister of State for Planning Development and Vision 2030 from 2008 to 2013 and Member of Parliament, Butere Constituency from 2002 to 2013. He also served as the Chief Financial Controller at Kenya Aerotech Company Limited between 1996 and 2003; and Senior Audit Manager at Earnest Young between 1995 and 1980.

Honours and Awards

983. The nominee has received the presidential award of the Elder of the Order of the Golden Heart (EGH).

Professional Association and Memberships

984. The nominee stated that he is a member of the Institute of Certified Public Accountants of Kenya (ICPAK). In addition, he is a member of the Nairobi Club, Karen Country Club, Railway Golf Club, and Kakamega Sports Club.

Published Writings

985. The nominee did not indicate whether he had authored or edited any published materials.

Public Office, Political Activities and Affiliations

986. The nominee indicated that he had been elected as the Deputy Party leader for ODM, and the Chairman of the Lake Basin Economic Bloc. The nominee also stated that he had been elected as the Chairman of the Council of Governors during part of his tenure as Governor.
987. The nominee stated that he had been a Governor of Kakamega County from 2013 to 2022. He had also served as the Minister of State for Planning Development and Vision 2030 (2008 to 2013) and Member of Parliament, Butere Constituency (2002 to 2013). Further, the nominee stated that he had campaigned for ODM candidates and had been part of the presidential campaign in 2017 and 2022.

Integrity

988. The Committee noted that—
- (a) It received a letter dated 29th July, 2024 from the Ethics and Anti-Corruption Commission (EACC) with respect to the nominees for appointment as Cabinet Secretaries. The letter noted that the following in respect of the nominee—

- (i) the Commission conducted an investigation on allegations of corruption against the nominee for offences committed during his stint as Governor, Kakamega County;
 - (ii) upon the conclusion of the investigation, the Commission submitted a Report to the Director of Public Prosecutions recommending prosecution on various charges, including conspiracy to commit an offence of corruption, conflict of interest, abuse of office, and money laundering.
 - (iii) the nominee obtained a conservatory order issued by the High Court in Kakamega Constitutional and Human Rights Petition No. E019 of 2023 Wycliffe Ambetsa Oparanya versus EACC and 3 Others staying any arrest or prosecution based on information obtained by the Commission. The matter is pending in court.
 - (iv) the Commission also filed an application for preservation orders against the assets of the nominee where he is suspected to be in possession of proceeds of corruption from the conflict of interest. The Commission obtained orders preserving Kshs. 28,900,000 through Nairobi High Court Anti-Corruption and Economic Crimes Court Miscellaneous Application No. E040 of 2023 (EACC versus Wycliffe Ambetsa Oparanya and 3 Others). The matter is pending in Court.
- (b) the Committee resolved to seek information from the Office of the Director of Public Prosecutions on the status of any active criminal proceedings relating to the nominee to assist the Committee to effectively discharge its mandate. On 31st July, 2022, the Clerk of the National Assembly wrote to the Director of Public Prosecutions (DPP) requesting information on the status of any active criminal proceedings against the nominee.
- (c) Based on records held as at 1st August, 2024, the DPP has responded by a letter dated 2nd August 2024, with the following information—
- (i) That there are no active criminal proceedings relating to the nominee.
 - (ii) That the Office of the Director of Public Prosecutions had granted consent to charge the nominee on 18th December, 2023 after EACC investigations on corruption against the nominee and other persons. However, following representations from various suspects and upon independent and holistic review of the evidence on record, the Office of the Director of

Public Prosecutions reviewed the decision to charge all the suspects in the file vide a letter dated 8th July, 2024.

- (d) section 7 of the Act requires the Committee to consider any constitutional or statutory requirements relating to the office in question. It is notable that Article 73(1)(a) of the Constitution sets out the responsibilities of state officers and provides that the authority assigned to a State officer is a public trust to be exercised in a manner that is consistent with the purposes and objects of the Constitution; demonstrates respect for the people; brings honour to the nation and dignity to the office; and promotes public confidence in the integrity of the office.
- (e) Article 73(2) of the Constitution provides that the guiding principles of leadership and integrity include selection on the basis of personal integrity, competence, and suitability, objectivity and impartiality in decision-making, and ensuring that decisions are not influenced by nepotism, favouritism, other improper motives, or corrupt practices.
- (f) Article 50 of the Constitution provides for the right of an accused person to a fair trial. This right includes the presumption of innocence until the contrary is proven and, if convicted, the right of appeal which subsists unless a person has exhausted all possibility of appeal or review of the relevant sentence or decision.
- (g) Article 157(6) of the Constitution exclusively vests the Director of Public Prosecutions with the power to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed. The DPP has formally communicated that from the records as at 1st August, 2024, there are no active criminal proceedings relating to the nominee.
- (h) the letter received from the DPP was accompanied by correspondence from the DPP to the EACC dated 8th July, 2024 in relation to the investigations conducted by the EACC on the nominee and other persons. In the letter, the DPP communicated the review of a previous decision to charge the suspects in the matter under inquiry and directed that the file in question be closed for lack of sufficient evidence unless additional evidence is provided to necessitate further action.

989. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or

otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

990. The nominee stated his net worth to be approximately Kshs. 610 million.

Potential Conflict of Interest

991. The nominee declared that he did not have any persons, parties, categories of litigation or financial or matters that would present a potential conflict of interest when he assume the office of Cabinet Secretary. Further, he stated that he would discourage close family members from engaging in business with the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development. In addition, he would declare and recuse himself should any potential conflict of interest situation occur.

Pro-bono/Charity Work

992. The nominee stated that he had been paying school fees for deserving children (approximately Kshs. 200,000 per year), contributing towards construction of churches, schools, hospitals (approximately Kshs. 500,000 per year) and promoting sports, clubs, Community Based Organizations, youth groups, women groups (up to Kshs. 250,000 per year).

4.18.2 General and Sector-Specific Questions to the Nominee

993. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development. The nominee responded as follows:

994. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development. The nominee responded as follows:

On key achievements in cooperatives as Governor of Kakamega County

995. The nominee stated that cooperatives were not well developed in Kakamega County, where only a few coffee, dairy, and fish cooperatives existed. The coffee cooperative had been performing well but eventually collapsed. Upon assuming office as Governor, he found that the office was understaffed and he strengthened this unit by recruiting additional staff. He also allocated Kshs. 20 million to revive and support the existing cooperatives.

On the Hustler Fund

996. The nominee explained that his initial opposition to the Hustler Fund was due to a lack of information. However, after receiving a briefing, he acknowledged the Fund's potential to alleviate poverty if managed properly. He pointed out that the Fund was launched hastily without proper legal structures, resulting in challenges. Despite this, the Fund had disbursed Kshs 55 billion, engaged 21 million people, and had recovered Kshs 43 billion, leaving Kshs 12 billion outstanding. The nominee noted that the digital infrastructure allowed for tracking the remaining funds but highlighted the absence of a legal framework to facilitate recovery.
997. The nominee stated that the intention behind the Hustler Fund was commendable, aimed at addressing market failures at the bottom of the economic pyramid. He noted that the Fund was designed to help borrowers build a credit score up to a million shillings. If approved for appointment, the nominee undertook to establish a proper legal framework and ensure that the Fund is managed by qualified staff. He highlighted the Fund's positive aspects, such as encouraging savings, with 30% of each loan going into savings, and its contribution to retirement benefits and healthcare.
998. The nominee stated that while social assistance is essential and the government has a responsibility to support its citizens, the Hustler Fund is not under the purview of social assistance but is focused on MSMEs. He explained that the Ministry's core function is to create an enabling environment for MSMEs, ensuring their registration and formalisation, but it does not provide direct funding.

On digitalisation of the Women Enterprise Fund (WEF)

999. The nominee acknowledged the concerns about access to the **Women Enterprise Fund (WEF)** in a digitalised format. He noted WEF beneficiaries who are not familiar with digital platforms may face challenges and undertook to evaluate the proposal and if viable, he would sensitize and assist women adapt to the digital landscape. He also pointed to the possibility of collaborating with organisations to provide smartphones to facilitate transactions.

On resourcing the Micro and Small Enterprises Authority (MSEA)

1000. The nominee explained that MSMEs were previously scattered across various Ministries, but the current administration had consolidated them under one Ministry for more effective management. He noted that MSMEs

are self-financing institutions, and the Ministry's role is to support their formalisation, registration, licensing, and training to ensure financial literacy. He clarified that the Ministry does not allocate funds directly to MSMEs, as they are expected to secure financing from financial institutions or government-created funds.

On inclusion into cooperatives

1001. The nominee stated that cooperatives are among the oldest institutions in the country and are largely self-financing. He informed the Committee that the Ministry's role is to ensure that cooperatives operate transparently and are accountable to their members. The Ministry also provides oversight, facilitates access to affordable funds, and offers audit services. The nominee noted that management issues have plagued cooperatives, with only ten thousand (10,000) out of the thirty thousand (30,000) registered cooperatives being active. He committed to encouraging MPs to support the registration of more cooperatives, as they are essential to the economic structure, with MSMEs serving as the pillar.
1002. The nominee stated that cooperatives exist in rural areas as well as urban areas, noting that even informal groups like "mama mbogas" participate in cooperative-like activities such as table banking, which can eventually grow into larger cooperatives. He expressed his commitment to visiting constituencies and sensitizing people on the benefits of forming cooperatives to ensure broader participation.

On handling of the 2019 nurses' strike

1003. The nominee stated that he could not speak to the situation in other counties, as health is a devolved function, and nurses work for their respective counties. However, he recalled that in Kakamega County, nurses went on strike in solidarity with their colleagues in Kirinyaga County, despite working for Kakamega County. When the matter was taken to court, the nurses were ordered to resume work, but they did not comply for three months. As a result, the nominee decided not to pay them for the period they were on strike in accordance with the law.

On regulation of digital lenders

1004. The nominee informed the Committee that punitive practices by digital lenders had contributed to the collapse of some cooperatives which struggled to repay high-interest loans. To address this, he emphasised the importance of cooperatives forming a central liquidity facility, where they can pool their resources and borrow at lower interest rates. This approach

would help cooperatives avoid the pitfalls of expensive loans and support their financial stability.

On measures to revive the Constituency Industrial Development Centres

1005. The nominee noted that an attempt had been made to establish industrial centres in every constituency, with about two hundred (200) of them completed. These centres were intended to accommodate MSMEs by providing shared facilities that are too costly for individual businesses to afford. However, he clarified that these centres fall under the Ministry of Trade, so he could not fully respond to the question but expressed his willingness to support their development.

On the Coffee Cherry Fund

1006. The nominee noted that the coffee industry had faced long-standing issues, particularly due to mismanagement, which had led to farmers not repaying loans. As a result, the government has had to write off debts repeatedly. However, the nominee stated that the government could not continue this practice due to limited resources. He emphasized the need to address management issues within the coffee sector to ensure that funds advanced to farmers are repaid and that the system for recovering loans is strengthened.

On the New Kenya Co-operative Creameries (KCC)

1007. The nominee stated that the challenges facing the New KCC were caused by management issues. He emphasised the importance of establishing proper structures within KCC to detect and address mismanagement promptly, ensuring the company's sustainability and reducing the need for continued government intervention.

On regulation of cooperatives

1008. The nominee noted that cooperatives are currently self-regulated but there is a need for greater oversight and regulation to prevent members from defaulting on loans. He pointed to the possibility of introducing legislative measures to support this, ensuring that SACCO members borrow within their means and that cooperatives remain financially stable.

On pyramid schemes

1009. The nominee submitted that Kenyans are frequently conned by pyramid schemes, which is why the government is introducing funds to protect its people and ensure they are not deceived.

On corruption within the Kenya Union of Savings & Credit Co-operatives (KUSCCO)

1010. The nominee submitted that the original KUSCCO is under receivership, and the new entity is also struggling, having lost approximately Kshs 10 billion of public money due to corruption. He emphasised the need for thorough follow-up to recover the money and for the government to take strong action against those who embezzled funds from KUSCCO. If approved for appointment, the nominee would introduce a deposit protection or guarantee fund that will give members some financial recourse in the event of institutional collapse.

On Shariah compliant MSMEs

1011. The nominee submitted that there is a need for a product within the Hustler Fund that complies with Shariah law to cater to the significant Muslim population that is currently unsupported by the Fund due to its interest component.

On linking Vision 2030 to MSMEs and Cooperatives

1012. The nominee stated that Vision 2030 is a very useful document. However, there was need to deviate from the Vision to address changes. For instance, cooperatives were categorised under financial services and were not given sufficient emphasis.

On consolidation of Women, Youth, and Uwezo Funds

1013. The nominee stated that these funds have been put under the Ministry of Cooperatives and MSMEs, except for the Youth Fund, which has been taken to the Ministry of Youth Affairs. These funds were established to address specific issues at the time. The nominee proposed the consolidation of the funds for easier management.

On the debt situation of cooperative societies

1014. The nominee stated that cooperatives are usually self-financing. The government invests in umbrella cooperatives such as those for dairy and sugar, to ensure farmers are paid. This is why the government is ready to write off debts due to the special priority of these commodities. However, the government cannot continue writing off debts indefinitely and must investigate the underlying causes of problems in cooperatives.

On the office of the Commissioner of Cooperatives

1015. The nominee submitted that he would address the issues and make the office of the Commissioner of Cooperatives more effective in execution of its mandate.

On the letter by EACC

1016. In response to the allegations raised by the EACC, the nominee asserted that the accusations were unfounded and that the EACC has never formally requested him to provide a statement on the matter. The nominee explained that during his five-year tenure as a Cabinet Minister and subsequent ten years as a Governor, he had never been implicated in any corrupt activities.

1017. The nominee stated that the visit by EACC officers to his home in August 2023, was unrelated to corruption. The visit was focused on his political activities and affiliations in the Azimio coalition. He denied knowledge of the corruption allegations, stating that he learnt about them through the media.

1018. He further submitted that his Advocate had sought conservatory orders to protect him and his family from harassment by EACC officers, who sought to freeze his funds for the purchase of property. He also emphasised that he has never been formally contacted by the ODPP regarding prosecution for any offence.

Committee's Observations on the Memoranda

1019. In relation to the clearance certificate for EACC, the Committee observed that **Article 157(6) of the Constitution** exclusively vests the Director of Public Prosecutions with the power to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.

1020. The DPP has formally communicated that from the records as at 1st August, 2024, there are no active criminal proceedings relating to the nominee.

1021. Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President.

1022. That there is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law

4.18.3 Committee Observations on the Suitability of the Nominee

1023. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, the memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development –

- 1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1956 in Kakamega County and does not hold dual citizenship.
- 2) **THAT**, the nominee was a Governor of Kakamega County from 2013 to 2022. Previously, he served as the Minister of State for Planning Development and Vision 2030 from 2008 to 2013 and Member of Parliament, Butere Constituency from 2002 to 2013. He also served as the Chief Financial Controller at Kenya Aerotech Company Limited between 1996 and 2003; and Senior Audit Manager at Earnest Young between 1995 and 1980.
- 3) The nominee is a Fellow Certified Practicing Accountant (FCPA) and a Certified Public Accountant (CPA-K) and holds a Master of Business Administration Finance Option from the University of Nairobi attained in 2002 and a Bachelor of Commerce (B. Com) from the University of Nairobi in 1980. The nominee is on the verge of completing his Doctor of Philosophy Degree (Ph.D. in Economics) from the University of Dar es Salaam, Tanzania. The nominee sat for the Kenya Certificate of Education (KCE) in 1976 at Kisii School and O- Level in 1974 at Butere Boys High School. His academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.
- 4) **THAT**, the nominee obtained clearance from the following statutory bodies; the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- 5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.

- 6) **THAT**, the nominee does not hold office in any political party.
- 7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- 8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Micro, Small and Medium Enterprises (MSMEs) Development.

4.19 Hon. Justin Bedan Muturi, EGH – Nominee Cabinet Secretary for Public Service and Human Capital Development

1024. The nominee appeared before the Committee on 4th August 2024 and was vetted under oath to examine his suitability or otherwise. The Committee noted the following—

4.19.1 Questions from the General Questionnaire

Citizenship, Date and Place of Birth

1025. The nominee is a male Kenyan citizen and was born on 28th April 1956 in Embu County. The nominee confirmed that he is a citizen of Kenya by birth and did not hold dual citizenship.

Academic and Professional Qualifications

1026. The nominee holds a Postgraduate Diploma in Law from the Kenya School of Law, and a Bachelors of Laws Degree from the University of Nairobi. He also possesses the Kenya Advanced Certificate of Education and the Kenya Certificate of Education from Kangaru High School, and a Certificate of Primary Education from Kanyuombora Primary School.

Employment Record and Work Experience

1027. The nominee is a distinguished lawyer, and a seasoned politician possessing extensive experience in the Law sector and served as the Attorney General of Kenya from October 2022 to July 2024. He also served as the Speaker of the National Assembly and the Chairperson of the Parliamentary Service Commission from 2013 to 2022.

1028. The nominee was the Chairperson of the Centre for Multi-Party Democracy from 2011 to 2013, a Member of Parliament for Siakago

Constituency from 1999 to 2007 and a magistrate of the Judiciary of Kenya from 1982 to 1997.

Honours and Awards

1029. The nominee stated that he had been awarded the presidential award of Elder of the Golden Hear (-EGH) in 2013.

Professional Association and Memberships

1030. The nominee is a member of the Law Society of Kenya. He informed the Committee that he had been a member and official of the Kenya Magistrates and Judges Association (1982-1999) and Chairman of the Nairobi Region of the Association (1991-1999).

Published Writings

1031. During his tenure as a speaker of the National Assembly, the nominee issued rulings and guidelines that shaped the operations of the Houses and they include:

- a) *The place of Independent Members of Parliament and Small Parties in Committees of the House;*
- b) *The Manner of considering Statutory Instruments;*
- c) *On the relations between the Executive and the Legislature and the manner of considering censure motions against State Officers;*
- d) *Financial Procedure including the place of recommendations of Departmental Committees in the Reports of Budget & Appropriations Committee on the National Budget Estimates;*
- e) *On the consideration of Presidential Memoranda on Bills including joint consideration with the Senate; and*
- f) *Manner of considering reports submitted to Parliament by Constitutional Commissions and Independent Offices.*

Public Office, Political Activities and Affiliations

1032. The nominee stated that he had been the Party leader of the Democratic Party before being appointed the Attorney General of Kenya. Previously he had been elected as the Speaker of the National Assembly, had served as an elected Member of Parliament, and elected the National Organizing Secretary of the Kenya African National Union (KANU).

Integrity

1033. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

1034. During his previous approval hearing for appointment as the Attorney General in 2022, the nominee estimated his net worth to be approximately Kshs. 761.3 million.

1035. The nominee stated his net worth was approximately Kshs. 801.8million which include land, properties and SACCO shares.

Potential Conflict of Interest

1036. The nominee stated that he did not have any persons, categories of litigation or financial arrangements that are likely to present potential conflict of interest when they assume the office of cabinet Secretary for Public Service & Human Capital Development.

Pro-bono/Charity Work

1037. The nominee did not indicate if he had been involved in any pro-bono or charity work.

4.19.2 General and Sector-Specific Questions to the Nominee

1038. The Committee posed several questions to the nominee on his suitability for appointment as Cabinet Secretary for Public Service and Human Capital Development. The nominee responded as follows:

On the Public Service Internship Programme

1039. The nominee confirmed that implementation of the Public Service Internship Program had faced challenges. In his view, the program should be re-engineered to Kenya National Internship Programs to include the private sector and accommodate the varied skills of Kenyans not entirely suited for the public service. He indicated that participation by the private sector can be incentivized to afford more youth opportunities for internship.

1040. While noting that full absorption of interns in the public service is impossible, the nominee acknowledged that the government has a duty to provide employment opportunities. He pledged that, if approved, he would prioritize the absorption of the interns in the public service. In

addition, he noted that he would identify creative ways of ensuring the interns find job placement.

On compliance with Public Service Values and Principles

1041. The nominee stated that the values and principles of public service enshrined in Article 232 of the Constitution on representation of Kenya's diverse communities to ensure diversity in the public service. He made reference to his tenure as Chairperson of the Parliamentary Service Commission where he successfully achieved diversity in recruitment and ensured representation of marginalized groups. He noted that he would urge the PSC to adopt a similar model.

On the allegation that his advice was being ignored by the government during his tenure as the Attorney General

1042. The nominee clarified that the allegation was not correct and attributed this to misinformation by the media. He confirmed that most times his advice was implemented save for a few incidences by ministries.

On the relationship between the Office of the AG and PSC during his tenure as AG

1043. The nominee stated that there was need for autonomy in the recruitment of State Counsels at the State Law Office. He noted that this decision was aimed at ensuring recruitment of State Counsel was geared towards meeting the needs of the State Law Office. He added that he would continue to develop the human resource department at the State Law Office. In light of this, he assured the Committee that his relationship with the PSC would not be strained, if approved.

On adherence to the retirement age

1044. Referring to the findings from his assessment of the situation at the public service, the nominee informed the Committee that there were only ten persons over 60 years serving in the public service. In addressing the matter, he committed to adhering to the law.

On practical solutions to regional and ethnic balance in the public service

1045. The nominee indicated that he would adhere to the Constitution and possibly introduce regular audits to ascertain compliance to the requirement of regional and ethnic balance in the public service. It was his view that publicizing the outcome of the audits would restore public trust in the government.

On the recurrent sacking of county employees by successive county administration

1046. The nominee was of the opinion that recruitment audits would be crucial in addressing the recurrent sacking of county employees upon the assumption of office by new regimes. He added that the PSC is mandated to, through the County Public Service Board, assist county governments in implementing good recruitment practices.

On appeals taking too long at the PSC

1047. Acknowledging the lengthy appeals in the PSC, the nominee stated that Article 234(5) of the Constitution mandates the PSC to delegate any of its functions to other public authorities. In this regard, the PSC has delegated the human resource function to the Ministries which in his view has not been undertaken properly. The nominee, therefore, committed to leverage technology to streamline the procedure of appeal.

On his resignation as Attorney-General

1048. The nominee confirmed that he resigned from office to assist the President to reorganize his Cabinet as provided for in law.

On NYS

1049. The nominee attributed alleged malpractices in NYS recruitment to a governance issue which, in his view, can be addressed by Parliament through its oversight role. He indicated that he would collaborate with Parliament when summoned over NYS matters.

On his priority reforms

1050. The nominee submitted that his priority reforms in the Ministry for Public Service and Human Capital Development include: institutionalization of the performance management program to hold public officers accountable; introduce a reward scheme to recognize and reward good performance; and to improve customer service.

On ensuring compliance with the laws on the two-third gender rule

1051. Reiterating the requirement for inclusivity enshrined in Article 232 of the Constitution, the nominee indicated that he was committed to ensuring the inclusion of the youth, women and PWDs in the public service. It was his commitment that he would adhere to the law.

On compliance with the schemes of service

1052. The nominee confirmed that the schemes of service still exist but are being implemented in skewed ways resulting in stagnation of public officers in the service. He committed to addressing this, if approved.

On his view on abolition of permanent and pensionable terms in the public service

1053. The nominee submitted that the civil service is the soul of the nation and fundamental in ensuring continuity during transition of governments. In his view, the public service can adopt a fused system incorporating both contractual and permanent and pensionable terms for different cadres.

On the disparities in salary structures between the national and county governments

1054. The nominee submitted that, if approved as Cabinet Secretary he would consult with PSC to address the disparities in remuneration.

On ensuring fairness in the recruitment of the JSS interns

1055. The nominee committed to collaborating with the Ministry of Education and the TSC to implement a transparent mechanism of employment to guarantee fairness in the recruitment process.

On the mental health of public servants

1056. The nominee emphasized the need to fast-track and implement government policy on wellness at the workplace for public servants including mental health.

On the alleged conflict of roles between the PSC and SRC

1057. The nominee noted that the mandates of the two Commissions are distinct under the Constitution. He stated that it is the mandate of the SRC to regularly review and set the remuneration of State Officers while that of the Public Service Commission is to review and make recommendations in respect of conditions for employment in the public service.

On fake academic certificates

1058. The nominee stated that the use of fake documents to seek employment is a criminal offence. He added that he would comply with the law to ensure that those found culpable should be arrested and prosecuted in accordance with the law.

On allegations arising from the Memoranda, the nominee responded as follows:

1059. On the issue of re-appointment to Cabinet after dismissal, the nominee vide Affidavit sworn on 2nd August 2024 responded as follows—

- (a) that Office of the Attorney general is governed by the Office of the Attorney General Act Cap 6A. Section 11 of the Act provides that the Attorney general may resign from office in writing addressed to the President.
- (b) that he resigned in accordance with section 11 of the Office of the Attorney-General Act in consultation with the President to give the President an opportunity to re-organise his Cabinet (Attached copy of Gazette Notice No. 8440 of 12th July 2024;
- (c) that he was not removed from office under section 12 of the Attorney General Act or at all;
- (d) that the President has the prerogative under Article 132(2) and 152(2) of the Constitution to nominate and with the approval of the national Assembly appoint Cabinet Secretaries;

1060. On the issue of the affidavit of **Issac Aluochier** that contested the suitability of the nominee on the grounds that he had been found to have continued to occupy office after his office became vacant pursuant to Article 103(1)(e) of the Constitution and as such, had committed a crime under national law, the nominee responded vide Affidavit sworn on **2nd August, 2024** responded as follows—

- (a) that it was the first time he had become aware of the Arbitration proceedings and the arbitral award;
- (b) that none of the Members of Parliament served the nominee with resignation letters during the period he was the Speaker nor did the nominee receive any communication from the Registrar of political parties to notify him of switching parties by sitting members of Parliament; and

that political party alignments in the runners up to General elections and pronouncements by individuals in political gatherings by sitting members of Parliament about party loyalty did not come under the supervision of the Speaker; and did not amount to anything much to warrant intervention by the Speaker of the National Assembly.

1061. On the issue of the **two-thirds gender rule**, the nominee responded that—

- (a) the duty and prerogative to nominate members of the Cabinet lies with H. E the President as per Articles 132 and 152 of the Constitution of Kenya;
- (b) the President and his Deputy are not nominated to the Cabinet but sit in the Cabinet by virtue of being the President and the Deputy President;
- (c) the President has duly nominated only 21 persons for appointment upon vetting by the National Assembly, six (6) out of the 21 nominated persons is a number more or less a third of the Constitutional imperative;
- (d) the National Assembly has stated that it is working on finding a legislative formula to implement the principle. Accordingly, the Principle in Article 27(8) has not yet crystalized and it only remains a guiding principle;
- (e) further, nominees are merely, nominees and are yet to be approved and appointed and as such the contestation is pre-mature and can only be considered once the approvals and appointments are done;
- (f) the Deponents have not demonstrated how the President's exercise of powers donated under Articles 132 and 152 have contravened any of the Provisions of Article 27 of the Constitution; and
- (g) the proposed Cabinet does not form the entire executive arm of the government as suggested by the Deponents and there remains still other opportunities within the executive to fill and satisfy the third gender principle.

Observations on Memoranda Submitted Against the Nominee

1062. The Committee noted that—

- a) The nominee resigned in accordance with section 11 of the Office of the Attorney-General Act as evidenced in the attached copy of Gazette Notice No. 8440 of 12th July 2024;
- b) Articles 132(2) and 152(2) of the Constitution of Kenya vest the power to constitute Cabinet solely on the President;
- c) The nominee was not dismissed under the provisions of Article 75(2) of the Constitution and is therefore not disqualified from holding any other state office;

- d) That there is no legal provision that bars the President from re-appointing any person who has not been indicted as being unfit to hold office under Article 75 of the Constitution or any relevant law; and
- e) Article 105(1)(b) of the Constitution vests the High Court with jurisdiction to determine any question whether the seat of a member has become vacant. Accordingly, the question on whether the nominees violated Articles 103(1)(e) and 194(1)(e) of the Constitution was a question to be determined by the High Court and therefore the arbitrator, Isaac Aluochier, did not have jurisdiction to conduct the arbitral proceedings.

4.19.3 Committee Observations on the Suitability of the Nominee

1063. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, his curriculum vitae, memoranda from the public and having heard his oral submission during the approval hearing, made the following observations on his suitability for appointment as Cabinet Secretary for Public Service and Human Capital Development –

- 1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since he is a Kenyan citizen born in 1956 in Embu County and does not hold dual citizenship.
- 2) **THAT**, the nominee served is a distinguished lawyer, and a seasoned politician possessing extensive experience in the Law sector and served as the Attorney General of Kenya from October 2022 to July 2024. He also served as the Speaker of the National Assembly and the Chairperson of the Parliamentary Service Commission from 2013 to 2022. The nominee was the Chairperson of the Centre for Multi-Party Democracy from 2011 to 2013, a Member of Parliament for Siakago Constituency from 1999 to 2007 and a magistrate of the Judiciary of Kenya from 1982 to 1997.
- 3) The nominee holds is an Advocate of the High Court and holds a Bachelors of Laws Degree from the University of Nairobi and a Postgraduate Diploma in Law from the Kenya School of Law. He also possesses the Kenya Advanced Certificate of Education and the Kenya Certificate of Education from Kangaru High School, and a Certificate of Primary Education from Kanyuombora Primary School. His academic credentials, professional training and

experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.

- 4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Education Loans Board (HELB).
- 5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.
- 6) **THAT**, the nominee does not hold office in any political party.
- 7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- 8) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues touching on government and has the requisite abilities, qualifications and experience to serve as the Cabinet Secretary for Public Service and Human Capital Development.

4.20 Ms. Stella Soi Lang'at – Nominee Cabinet Secretary for Gender, Culture, The Arts and Heritage

1064. The nominee appeared before the Committee on 4th August 2024 and was vetted under oath to examine her suitability or otherwise. The Committee noted the following:

4.20.1 Questions from the General Questionnaire

Citizenship, Date and place of Birth

1065. The nominee is a female Kenyan citizen born on 2nd August 1970 in Kericho County. The nominee confirmed that she is a citizen of Kenya by birth and does not hold dual citizenship.

Academic and Professional Qualifications

1066. The nominee holds a Master in Public Administration (Executive) from Moi University (2008-2009), a Bachelor of Arts degree (Political Science) from

the University of Nairobi (1990-1993), a Diploma in Business Management from the Kenya Institute of Management (1996) and a Certificate in Computer Studies from Wote Institute (1992).

1067. In addition the nominee has attained several professional qualifications including –Certified Professional Mediator from Dispute and conflict Resolution International, Kenya (2021), Strategic Management Programme from Eastern and Southern African Management Institute, Arusha Tanzania (2014), Strategic Leadership and Development from Kenya Institute of Administration (2010), Certificate Course in ISO internal Quality Auditors from Human Resource Solutions (2008), Paramilitary and leadership course for Administrative Officers from Administration police training College, Embakasi (2007), Senior Management Course from Kenya Institute of Administration (2006), Advanced Management and Administration Course from African Institute of Management Science Accra, Ghana (2006), Gender Mainstreaming in Kenyan Universities from Kenya Utalii College (2004), Advance Public Administration Course No.6/2003 from Kenya Institute of Administration (2003), Achieving outstanding Performance and Strategic Planning and Management from Graduate School of Business Administration, University of Witwatersrand, Johannesburg, S.A (2002), Public Sector Financial Planning and Control and The Perfect Personal Assistant Course from the Management Advisors of London (MAL) U.K. (2000).

Employment Record

1068. The nominee possesses relevant experience in public service having served as Director, Administration in the Ministry of Interior and Coordination of National Government (March-July 2024), Director, Administration in the State Department of Housing and Urban Development (October 2021 to February, 2024), County Secretary and Head of Public Service, Bomet County Government (April 2020 to October 2021), Senior Deputy County Commissioner II; Deputy County Commissioner, Sameta, Kisii County and Mwingi Sub County (March 2015 to February, 2019) Under Secretary, Office of the Attorney General/State Law Office (Feb 2014 to March 2015), Interim County Secretary and Head of Public Service, Narok County Government/transition Authority (Feb 2013 to Feb 2014).
1069. In addition the nominee has served as the Principal Administrative Officer, Witness protection Agency (August 2011 to February 2013), Under Secretary, Office of the Attorney General/State Law Office (Jan 2010 to Aug 2010), Senior Assistant Secretary/Personal Assistant to the Permanent Secretary (June 2008 to January 2010), Assistant Secretary

1/Administration, Ministry of Labour and Human Resource Development (May 2005 to June 2008), Assistant Secretary I, Personal Assistant to the Minister, Ministry of Gender, Sport, Culture and Social Services (February 2003 to May 2005), Assistant Secretary/Administration, Office of the President, Directorate of Personnel Management (September 2000-January 2003), Assistant Secretary/Finance Division, Office of the President Directorate of Personnel Management (DPM) Civil Service Reform Programme (April 1999 to June 2000), Assistant Secretary/ PA to Permanent Secretary Director, Directorate of Personnel Management. (April 1998 to March 1999), Assistant Secretary/Finance, Ministry of Water Resources (January 1998 to April 1998), District Officer III, Meru District Headquarters, Office of the President, Provincial Administration Department (July 1997 to Dec 1997), and Personnel Officer, Agriculture Development Corporation (July 1994 to December 1995).

Honours and Awards

1070. The nominee was recognized by UNIPASS for supporting students to study abroad. She was also awarded a Certificate of Appreciation for excellence in service delivery at the State Law Office in 2008/2009.

Professional Association and Memberships

1071. The nominee is a member of the Kenya Association for Public Administration and Management since 20th April 2020. She is also the Vice-Chairperson of the Mau Tea Multipurpose Cooperative Society based in Kericho Town and a Zonal Director for Bureti Sub-County.

Published writings

1072. The nominee has no published writings.

Public Office, Political Activities and Affiliations

1073. The nominee indicated that she is a career civil servant serving as a Director of Administration at the State Department of Foreign Affairs since 11th June 1997.
1074. The nominee submitted that she is not a member neither does she hold office in any of any political party.

Integrity

1075. The nominee had neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the last three years. The nominee has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

Income and Net Worth

1076. The nominee estimated her net worth to be Kshs. 70,000,000 comprising immovable property, investment in shares, rental income and livestock. She submitted that her current sources of income include salary, rental income and farming.

Potential Conflict of Interest

1077. The nominee declared that she currently did not have any persons or matters that would present a potential conflict of interest. Additionally, she submitted that she would recuse herself from presiding over any matter that may be subject of conflict of interest.

4.20.2 General and Sector-Specific Questions to the Nominee

1078. The Committee posed several questions to the nominee on her suitability for appointment as Cabinet Secretary for Gender, Culture, The Arts and Heritage. The nominee responded as follows:

On navigating the challenges in the implementation of the two-thirds gender principle in Kenya

1079. The nominee informed the Committee that the two-thirds gender principle is enshrined in the Constitution. She noted that the National Gender and Equality Commission has some initiatives. She said that the Ministry she has been nominated will help

On eradicating female genital mutilation and early marriages

1080. The nominee stated that FGM and early marriages, emanate from the levels of poverty in our communities. Eradicating FGM would be addressed by empowering men because for a girl to successfully progress and grow to be a person depended on by the society, it takes a man. It was her opinion that without the support of a father, man or male figure in a family, women cannot do much in terms of empowerment and protection of girls.

On supporting the boychild

1081. The nominee informed the Committee that the boychild faces significant challenges including drug abuse, poor mental health and unemployment. She emphasized the need for deliberate efforts to rehabilitate and reorient affected boys by providing them with the requisite technical training in Technical Vocational Education and Training (TVETs) institutions and job opportunities.

On femicide

1082. The nominee was of the view that addressing femicide requires extensive research on tackling mental health issues, counselling and promoting values through family and community engagement. She noted that the boychild should be encouraged as empowered girls are unmarried because the boys supposed to marry them are doing drugs or are involved in femicide cases. She stated that she would collaborate with the relevant stakeholders including the Police and the Witness Protection Agency.

On preserving and promoting Kenya's cultural heritage

1083. The nominee informed the Committee that promoting cultural heritage involves creating awareness and establishing cultural centres in every county. She stated that these centres would serve as hubs for showcasing artefacts and performing arts to both local and international markets.

1084. The nominee added that strengthening institutions like the Kenya Copyright Board and the Kenya Cultural Centre would be essential to protect artists' rights and provide platforms for their work.

1085. The nominee further informed the Committee that her vision would involve marketing and branding Kenya to highlight its rich cultural heritage. This would include leveraging international platforms to showcase our culture and heritage. Additionally, she would sensitize local communities on the importance of preserving their cultural heritage and ensure the documentation of our rich languages and traditions in digital form for future preservation. These efforts would enhance tourism and generate revenue for the country.

On the challenges facing museums in Kenya

1086. The nominee stated that she would enhance the National Museum of Kenya in repatriating stolen artefacts and documenting our national heritage. She would market these sites, improve infrastructure and ensure sustainable practices to attract more tourists and generate revenue. Furthermore, she noted that collaborating with local communities to maintain and promote cultural sites is vital.

On what distinguishes the nominee from her predecessors in the Ministry

1087. The nominee informed the Committee that she has extensive experience in public administration and a deep understanding of gender issues, and is committed to transparency, accountability and fair competition. She

would prioritize strengthening the Kenya Copyright Board, supporting cultural centers and ensuring inclusive growth and empowerment for all communities.

On access to justice by gender-based violence (GBV) survivors

1088. The nominee stated that GBV survivors often face challenges in accessing justice due to social stigma and inadequate support systems. She stated that she would collaborate with the relevant state agencies and ensure proper implementation of existing laws. Additionally, the nominee stated that she would support the establishment of specialized courts for GBV cases and training of police officers to handle these cases with sensitivity in order to improve the justice system for victims of GBV.

On protecting and promoting Kenya's cultural heritage

1089. The nominee informed the Committee that protecting and promoting Kenya's cultural artifacts and traditional knowledge involves ensuring proper documentation and safeguarding these assets. She stated that establishing cultural centers in each county, promoting local artisans and creating platforms for showcasing artefacts would help preserve our heritage. In her view, collaborating with international organizations to repatriate stolen artefacts and ensuring legal protection for indigenous knowledge are essential steps.

On gender desks at police stations

1090. The nominee informed the Committee that gender desks at police stations are crucial for handling GBV cases however, they are marred with staffing issues. She stated that she would ensure that both male and female officers are trained and assigned to these desks to handle cases sensitively and effectively. This would improve the support system for victims of GBV and ensure successful prosecutions.

On UNESCO World Heritage Sites in Kenya and their preservation

1091. The nominee stated that Kenya boasts a number of heritage sites. She mentioned that these sites should be carefully preserved through regulated visits to ensure their protection and maintain their historical and cultural significance for future generations.

On growth and enriching the Ministry for the benefit of the people

1092. The nominee informed the Committee that she brings extensive experience in gender issues and understanding to the Ministry. She would focus on the the Kenya Copyright Board. She would also uphold the values and principles she possesses as a career civil servant, striving to ensure fair promotion of staff within the sector. Additionally, her approach would focus on leveraging her background to drive meaningful growth and enrichment for the Ministry and the people of Kenya.

On the significance of the Gede Ruins as a newly-enlisted UNESCO World Heritage Site

1093. The nominee stated that Gede Ruins' enlistment as a UNESCO World Heritage Site in 2024 is significant as it accentuates the historical and cultural importance of this site. She stated that recognition of the site would help preserve the ruins.

On the nominee serving across various ministries without notable promotions and often for short periods

1094. The nominee stated that in the public service, staff rotation is common practice and typically, one works in a single station for no more than three years. She mentioned that progression from one job grade to another requires specific training and capacity-building programs. The nominee informed the Committee that her career path reflects this system of rotation and the necessary training to advance through various job grades.

On the rise in GBV cases especially in the rural areas

1095. The nominee informed the Committee that GBV is indeed a significant challenge. She stated that to stabilize and create a violence-free environment, she would focus on creating awareness and shaping perceptions through village elders and councils of elders. This grassroots approach would help in educating communities and altering attitudes towards GBV.

On establishing a national dress in Kenya

1096. The nominee stated that establishing a national dress is enhances national pride and supports local tailors. She mentioned that a task force had been formed to develop the national dress through a consultative

process, ensuring it represents our diverse cultural heritage while boosting local economic activities.

On the status of the Multi-Sectoral Working Group's proposal in Parliament

1097. The nominee informed the Committee that the proposals of the Multi-Sectoral Working Group arising out of the National Dialogue Committee (NADCO) Report is still under consideration in Parliament. She stated that she intends to actively persuade Members of Parliament to support this proposal as it has the potential to be a significant game changer for women in our country. She also stated that securing legislative backing is crucial to advancing gender equality and addressing the critical issues facing women.

4.20.3 Committee Observations on the Suitability of the Nominee

1098. The Committee having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, her curriculum vitae, memoranda from the public and having heard her oral submission during the approval hearing, made the following observations on her suitability for appointment as Cabinet Secretary for Gender, Culture, The Arts and Heritage—

- 1) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a Kenyan citizen born in 1970 in Kericho County and does not hold dual citizenship.
- 2) **THAT**, the nominee possesses extensive experience in public service having served as Director, Administration in the Ministry of Interior and Coordination of National Government (March- Jul 2024); Director, Administration in the State Department of Housing and Urban Development (October 2021 to February, 2024); County Secretary and Head of Public Service, Bomet County Government (April 2020 to October 2021); Senior Deputy County Commissioner II; Deputy County Commissioner, Sameta, Kisii County and Mwingi Sub County (March 2015 to February, 2019); Under Secretary, Office of the Attorney General/State Law Office (Feb 2014 to March 2015); and Interim County Secretary and Head of Public Service, Narok County Government/transition Authority (Feb 2013 to Feb 2014), among other roles in public service.
- 3) The nominee holds a Masters in Public Administration (Executive) from Moi University (2008-2009), a Bachelor of Arts (Majoring in Political Science) from the University of Nairobi (1990-1993), a Diploma in Business Management from the Kenya Institute of Management (1996) and a Certificate in Computer Studies from Wote Institute (1992). In addition the nominee has attained several

professional qualifications including Certified Professional Mediator from Dispute and conflict Resolution International, Kenya (2021), Strategic Management Programme from Eastern and Southern African Management Institute, Arusha Tanzania (2014); and Strategic Leadership and Development from Kenya Institute of Administration (2010), among other certifications. Her academic credentials, professional training and experience thus comply with sections 6(7) and 7 of the Public Appointments (Parliamentary Approval) Act.

- 4) **THAT**, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity having obtained clearance from the following statutory bodies; the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Educations Loan Board (HELB).
- 5) **THAT**, the nominee has neither been charged in a court of law nor adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry in the past three years.
- 6) **THAT**, the nominee does not hold office in any political party.
- 7) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- 8) **THAT**, the nominee's experience in the public service is marked by frequent job transitions in various roles. All the six (6) different postings that the nominee has held do not require any long-term strategic planning. As a result she has not become grounded in any specific leadership role in the public service;
- 9) **THAT**, the nominee failed to demonstrate adequate knowledge of topical, administrative and technical issues touching on the Ministry of Gender, Culture, The Arts and Heritage to which she has been nominated;
- 10) **THAT**, the nominee is unsuitable for the position to which she was nominated as she was unable to respond in a satisfactory manner to the queries raised during the approval hearing relating to Gender, Heritage and Culture;
- 11) **THAT**, the Ministry is strategically important and is tasked with overseeing critical national policies and services.
- 12) **THAT**, the Ministry requires leadership with a strong strategic vision, cultural sensitivity, and a deep understanding of policy management.

13) **THAT**, given the Ministry's functions and mandate, a person seeking to head it must be an effective communicator, innovative, and committed to promoting cultural heritage and gender equality. The nominee failed to exhibit any of these qualities to the committee's satisfaction.

CHAPTER FIVE

5 COMMITTEE OBSERVATIONS

1099. Pursuant to sections 6(7),6(8) and 7 of the Public Appointments (Parliamentary Approval) Act, the Committee observed that—

- (1) The following nominees demonstrated knowledge of topical, administrative and technical issues touching on the portfolios to which they had been nominated; and had the requisite abilities, academic qualifications and professional experience to be approved for appointment—
 - (a) **Hon. (Prof.) Kithure Kindiki, EGH** as Cabinet Secretary for Interior and National Administration;
 - (b) **Dr. Debra Mlongo Barasa** as Cabinet Secretary for Health;
 - (c) **Hon. Alice Wahome, EGH** as Cabinet Secretary for Lands, Public Works, Housing and Urban Development;
 - (d) **Mr. Julius Migos Ogamba** as Cabinet Secretary for Education;
 - (e) **Hon. Roselinda Soipan Tuya, EGH** as Cabinet Secretary for Defence;
 - (f) **Dr. Andrew Mwhia Karanja** - as Cabinet Secretary for Agriculture and Livestock Development;
 - (g) **Hon. Aden Bare Duale, EGH** as Cabinet Secretary for Environment, Climate Change and Forestry;
 - (h) **Mr. Eric Murithi Mugaa** as Cabinet Secretary for Water, Sanitation and Irrigation;
 - (i) **Mr. Davis Chirchir, EGH** as Cabinet Secretary for Roads and Transport;
 - (j) **Dr. Margaret Nyambura Ndung'u** as Cabinet Secretary for Information, Communication and the Digital Economy;
 - (k) **Hon. John Mbadi Ng'ongo, EGH** as Cabinet Secretary for The National Treasury and Economic Planning;
 - (l) **Hon. Salim Mvurya Mgala, EGH** as Cabinet Secretary for Investments, Trade and Industry;
 - (m) **Ms. Rebecca Miano, EGH** as Cabinet Secretary for Tourism and Wildlife;

- (n) **Hon. James Opiyo Wandayi, EGH** as Cabinet Secretary for Energy and Petroleum;
- (o) **Hon. Onesimus Kipchumba Murkomen, EGH** as Cabinet Secretary for Youth affairs, Creative Economy and Sports;
- (p) **Hon. Hassan Ali Joho, EGH** as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs;
- (q) **Hon. (Dr.) Alfred Nganga Mutua, EGH** as Cabinet Secretary for Labour and Social Protection;
- (r) **Hon. Wycliffe Ambetsa Oparanyah, EGH** as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises Development; and
- (s) **Hon. Justin Bedan Muturi, EGH** as Cabinet Secretary for Public Service and Human Capital Development.

(2) **THAT Ms. Stella Soi Lang'at** did NOT demonstrate adequate knowledge of topical, administrative and technical issues touching on the portfolio to which she had been nominated; and lacked the requisite abilities, and qualities to be approved for appointment to the office of Cabinet Secretary for Gender, Culture, The Arts and Heritage.

1100. The Committee also noted that it may be necessary for H. E. the President to consider invoking the provisions of Article 152(5)(a) of the Constitution to reassign the approved nominees to portfolios that match their qualities and competencies after appraising their performance.

CHAPTER SIX

6 COMMITTEE RECOMMENDATIONS

1101. Having considered the suitability of the nominees for appointment during the approval hearings pursuant to Article 152(2) of the Constitution and sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, Cap 7F and Standing Order 204(4) of the National Assembly Standing Orders the Committee recommends that this House—

(1) **Approves** the following nominees for appointment as Cabinet Secretaries for the stated ministerial portfolios in the Cabinet of the Government of Kenya—

- (a) **Hon. (Prof.) Kithure Kindiki, EGH** as Cabinet Secretary for Interior and National Administration;
- (b) **Dr. Debra Mlongo Barasa** as Cabinet Secretary for Health;
- (c) **Hon. Alice Wahome, EGH** as Cabinet Secretary for Lands, Public Works, Housing and Urban Development;
- (d) **Mr. Julius Migos Ogamba** as Cabinet Secretary for Education;
- (e) **Hon. Roselinda Soipan Tuya, EGH** as Cabinet Secretary for Defence;
- (f) **Dr. Andrew Mwhia Karanja** - as Cabinet Secretary for Agriculture and Livestock Development;
- (g) **Hon. Aden Bare Duale, EGH** as Cabinet Secretary for Environment, Climate Change and Forestry;
- (h) **Mr. Eric Murithi Mugaa** as Cabinet Secretary for Water, Sanitation and Irrigation;
- (i) **Mr. Davis Chirchir, EGH** as Cabinet Secretary for Roads and Transport;
- (j) **Dr. Margaret Nyambura Ndung'u** as Cabinet Secretary for Information, Communication and the Digital Economy;
- (k) **Hon. John Mbadi Ng'ongo, EGH** as Cabinet Secretary for The National Treasury and Economic Planning;
- (l) **Hon. Salim Mvurya Mgala, EGH** as Cabinet Secretary for Investments, Trade and Industry;
- (m) **Ms. Rebecca Miano, EGH** as Cabinet Secretary for Tourism and Wildlife;

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1. Having considered the suitability of the nominees for appointment during the approval hearings pursuant to Article 152(2) of the Constitution and sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, Cap 7F and Standing Order 204(4) of the National Assembly Standing Orders the Committee recommends that this House—

(1) **Approves** the following nominees for appointment as Cabinet Secretaries for the stated ministerial portfolios in the Cabinet of the Government of Kenya—

- (a) **Hon. (Prof.) Kithure Kindiki, EGH** as Cabinet Secretary for Interior and National Administration;
- (b) **Dr. Debra Mlongo Barasa** as Cabinet Secretary for Health;
- (c) **Hon. Alice Wahome, EGH** as Cabinet Secretary for Lands, Public Works, Housing and Urban Development;
- (d) **Mr. Julius Migos Ogamba** as Cabinet Secretary for Education;
- (e) **Hon. Roselinda Soipan Tuya, EGH** as Cabinet Secretary for Defence;
- (f) **Dr. Andrew Mwiha Karanja** - as Cabinet Secretary for Agriculture and Livestock Development;
- (g) **Hon. Aden Bare Duale, EGH** as Cabinet Secretary for Environment, Climate Change and Forestry;
- (h) **Mr. Eric Murithi Mugaa** as Cabinet Secretary for Water, Sanitation and Irrigation;
- (i) **Mr. Davis Chirchir, EGH** as Cabinet Secretary for Roads and Transport;
- (j) **Dr. Margaret Nyambura Ndung'u** as Cabinet Secretary for Information, Communication and the Digital Economy;
- (k) **Hon. John Mbadi Ng'ongo, EGH** as Cabinet Secretary for The National Treasury and Economic Planning;
- (l) **Hon. Salim Mvurya Mgala, EGH** as Cabinet Secretary for Investments, Trade and Industry;
- (m) **Ms. Rebecca Miano, EGH** as Cabinet Secretary for Tourism and Wildlife;

- (n) **Hon. James Opiyo Wandayi, EGH** as Cabinet Secretary for Energy and Petroleum;
 - (o) **Hon. Onesimus Kipchumba Murkomen, EGH** as Cabinet Secretary for Youth affairs, Creative Economy and Sports;
 - (p) **Hon. Hassan Ali Joho, EGH** as Cabinet Secretary for Mining, Blue Economy and Maritime Affairs;
 - (q) **Hon. (Dr.) Alfred Nganga Mutua, EGH** as Cabinet Secretary for Labour and Social Protection;
 - (r) **Hon. Wycliffe Ambetsa Oparanyah, EGH** as Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises Development; and
 - (s) **Hon. Justin Bedan Muturi, EGH** as Cabinet Secretary for Public Service and Human Capital Development; and
- (2) **Rejects** the nomination of **Ms. Stella Soi Lang'at** for appointment as Cabinet Secretary for Gender, Culture, The Arts and Heritage

Signed..... Wetang'ula Date..... 7/8/24

RT. HON. (DR.) MOSES M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY/ CHAIRPERSON
COMMITTEE ON APPOINTMENTS