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THE NATIONAL ASSEMBLY

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TABLED AT: A. Shibuske	

SELECT COMMITTEE ON IMPLEMENTATION

REPORT ON

THE IMPLEMENTATION STATUS OF THE RESOLUTION OF THE HOUSE REGARDING THE CONDITIONAL APPROVAL OF MS. MWENDE MWINZI FOR APPOINTMENT AS AMBASSADOR OF KENYA TO SEOUL, SOUTH KOREA

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

NOVEMBER, 2019

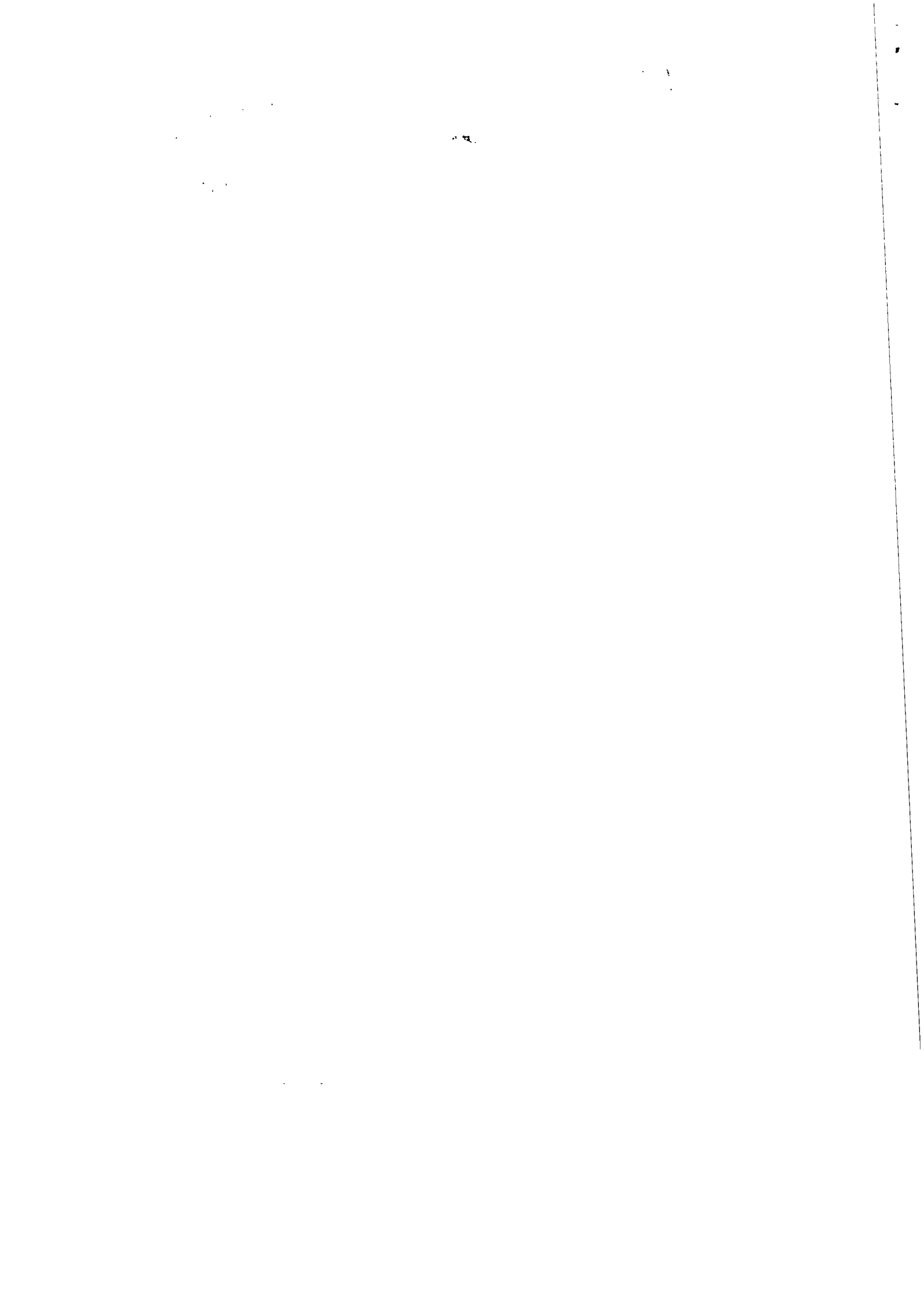


Table of Contents

CHAIRPERSON'S FOREWORD.....	III
1.0 PREFACE.....	V
1.1 Mandate of the Committee.....	V
1.2 Committee Membership.....	VI
1.3 Committee Secretariat.....	VII
2.0 COMMITTEE DELIBERATIONS ON IMPLEMENTATION STATUS OF THE HOUSE RESOLUTION ON THE CONDITIONAL APPROVAL OF MS. MWENDE MWINZI AS AMBASSADOR OF KENYA TO SEOUL, SOUTH KOREA	1
2.1 Background Information	1
2.2 Legal Provisions on Dual Citizenship	3
2.3 Precedence / Case Studies on Dual Citizenship in other Jurisdictions	3
2.4 Precedence / Case Studies on Dual Citizenship in Kenya	4
2.5 Meeting with the Cabinet Secretary for Foreign Affairs and International Trade	5
2.6 Submission by the Cabinet Secretary on whether Ms. Mwende Mwinzi had complied with the House resolution	6
2.7 Nairobi Constitutional Petition No. 367 of 2019 Mwende Maluki Mwinzi V. the Cabinet Secretary Ministry of Foreign Affairs and Attorney General.....	7
3.0 COMMITTEE OBSERVATIONS.....	9
4.0 COMMITTEE RECOMMENDATIONS.....	11

ANNEXURES

- I. Adoption List
- II. Minutes
- III. Submission by the Cabinet Secretary, Ministry of Foreign Affairs forwarding correspondence from Messrs Prof. Tom Ojienda & Associates on behalf of Ms. Mwende Mwinzi
- IV. Certificate on the approval for Persons for appointment as Ambassadors and High Commissioners
- V. Report of the Departmental Committee on Defence and Foreign Relations on the vetting of seven (7) nominees for appointment to the position of Ambassador / High Commissioner

CHAIRPERSON'S FOREWORD

This report covers the findings of the Select Committee on Implementation on the Implementation Status of the House resolution on the conditional approval of Ms. Mwendu Mwinzi for Appointment as the Ambassador to Seoul, South Korea.

On 6th June, 2019, the House, taking into consideration the findings of the Departmental Committee on Defence and Foreign Relations in its Report on the Vetting of Seven (7) Nominees for Approval as High Commissioners and Ambassadors, laid on the Table of the House on Tuesday, June 4, 2019, and pursuant to Article 132(2)(e) of the Constitution and section 8 of the Public Appointments (Parliamentary Approval) Act, 2011, adopted a special motion to approve 6 nominees and put a conditional approval on the 7th nominee, Ms. Mwendu Mwinzi subject to renouncing her citizenship to the United States of America in compliance with the provisions of Article 80(c) of the Constitution, and sections 31 and 52 of the Leadership and Integrity Act, No. 19 of 2012, upon appointment and before taking office.

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

The Speaker directed the Select Committee on Implementation to urgently consider and report on the issues raised by the Hon. Dr. Robert Pukose, M.P in addition to other issues that were canvassed by the other members on the subject matter. The Select Committee on Implementation embarked on the task in earnest and invited the Cabinet Secretary for Foreign Affairs and International Trade, Amb. Monica Juma, DPHIL, CBS to a meeting on Thursday, 12th September, 2019. The Cabinet Secretary made an oral submission and further made a written submission on 23rd September, 2019.

During consideration of the matter, it was brought to the attention of the Committee that Ms. Mwendu Mwinzi had filed a Petition Constitutional and Human Rights Court on 17th September, 2019. She prayed that the court, among others, orders that; a declaration that once the Petitioner was appointed by the President and vetted by Parliament, her appointment was complete and she is entitled to posting to Korea as Ambassador of Kenya; and a declaration that Ambassadors are not state officers within the meaning of Article 260 of the Constitution.

The court made a judgment on the petition on 14th November, 2019 which was considered by the Committee during its Sitting of Tuesday, 20th November, 2019.

In its consideration of the matter the Committee established that despite the decision of the House, the nominee has not renounced her citizenship five months after the House had passed the resolution on her conditional approval.

The Committee registers its appreciation to the Office of the Speaker and the Clerk of the National Assembly for the necessary support and facilitation in the production of this Report.

The Committee hereby presents its findings and recommendations on the implementation status of the resolution of the House made on 6th June, 2019 approving Ms. Mwendu Mwinzi for appointment as the Ambassador to Seoul, South Korea.

Pursuant to Standing Order 199(6), it is, therefore, my pleasant duty and privilege, on behalf of the Committee on Implementation, to lay this Report on the Table of the House.

Hon. Moitalel Ole Kenta, MP

Chairperson, Select Committee on Implementation

2.0 PREFACE

1.1 Mandate of the Committee

1. The Select Committee on Implementation is established pursuant to the provisions of Standing Order 209 of the National Assembly Standing Orders. The Committee is mandated to scrutinize the resolutions of the House (*including adopted Committee reports*), petitions and the undertakings given by the National Executive and examine—
 - a) whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and
 - b) whether or not legislation passed by the House has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary.
2. Further, Standing Order 201 provides that within sixty (60) days of a resolution of the House or adoption of a report of a Select Committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls, shall, provide a report to the relevant Committee of the House in accordance with Article 153(4) (b) of the Constitution.
3. The Committee may also propose to the House, sanctions against any Cabinet Secretary who, without justifiable reasons, fails to report the status of implementation of House Resolutions.

1.2 Committee Membership

4. The Committee membership comprises -

Chairperson

Hon. Moitalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Movement

Vice Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

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

Jubilee Party

Hon. Alois Lentoimaga, MP
Samburu North Constituency

Jubilee Party

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

Jubilee Party

Hon. Onesmas Kimani Ngunjiri, MP
Bahati Constituency

Jubilee Party

Hon. Francis Munyua Waititu, MP
Juja Constituency

Jubilee Party

Hon. Paul Odalo Abuor, MP
Rongo Constituency

Orange Democratic Movement

Hon. Hassan Oda Hulufu, MP
Isiolo North Constituency

Kenya Patriots Party

Hon. Nelson Koech, MP
Belgut Constituency

Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency

Wiper Democratic Movement-Kenya

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Movement

Hon. Joseph Wathigo Manje, MP
Kajiado North Constituency

Jubilee Party

Hon. Johnson Many Naicca, MP
Mumias West Constituency

Orange Democratic Movement

Hon. George Theuri, MP
Embakasi West Constituency

Jubilee Party

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. Owen Yaa Baya, MP
Kilifi North Constituency

Orange Democratic Movement

Hon. Michael Thoya Kingi, MP
Magarini Constituency

Orange Democratic Movement

Hon. Generali Kiprotich Korir, MP
Langata Constituency

Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

Wiper Democratic Movement-Kenya

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

Hon. Jared Okello, MP
Nyando Constituency
Orange Democratic Movement

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

1.3 Committee Secretariat

5. The secretariat facilitating the Committee comprises -

Ms. Tracy Chebet Koskei
Clerk Assistant I / Team Leader

Mr. Abdirahman Hassan
Clerk Assistant II

Mr. Peter Mwaura
Senior Legal Counsel

Mr. Joseph Okong'o
Senior Media Relations Officer

Mr. Eugene Apaa
Research Officer III

Mr. James Muguna
Research Officer III

Ms. Jane Serem
Audio Officer I

Mr. Moses Kariuki
Sergeant-at-Arms

2.0. COMMITTEE DELIBERATIONS ON IMPLEMENTATION STATUS OF THE HOUSE RESOLUTION ON THE CONDITIONAL APPROVAL OF MS. MWENDE MWINZI AS AMBASSADOR OF KENYA TO SEOUL, SOUTH KOREA

2.1 Background Information

6. On 9th May, 2019, H.E. the President, submitted to the National Assembly, a notification of appointment of seven (7) Ambassador/High Commissioner nominees pursuant to Article 132 (2) (e) of the Constitution and section 5 of the Public Appointments (Parliamentary Approval) Act, *No. 33 of 2011*. The names and curriculum vitae of the nominees were committed to the Departmental Committee on Defence and Foreign Relations for vetting and reporting. The Committee vetted the nominees during its Sitting of Tuesday, 28th May, 2019.
7. The Departmental Committee on Defence and Foreign Relations tabled its Report on the vetting of the seven (7) nominees on 6th June, 2019. In the Report, the Committee recommended the approval of six (6) nominees and further recommended that the House approves the 7th nominee, Ms. Mwendu Mwinzi for appointment as the Ambassador to Seoul, South Korea, subject to the nominee renouncing her United States of America citizenship before appointment and before taking office in line with Article 80 (c) of the Constitution as read together with section 31 and section 52 of the Leadership and Integrity Act, *No. 19 of 2012*. The House approved the nominees for appointment based on the recommendations of the Committee.
8. On Tuesday, 10th September, 2019, a Member rose on a point of order to seek guidance regarding the role of the National Assembly in vetting of persons for appointment to various offices, particularly, the authority of the House to approve a nominee conditionally. The Member also alleged that one of the nominees whose approval was conditional and subject to her renouncing the United States of America citizenship, had taken up appointment without renouncing the said citizenship as resolved by the House.
9. The Speaker allowed Members to comment on the matter and the following issues arose:
 - (1) Whether Ms. Mwendu Mwinzi had taken up appointment as ambassador in Seoul, South Korea;
 - (2) Whether Ms. Mwinzi had renounced her citizenship to the United States of America;
 - (3) Whether the conditional approval by the House is Constitutional and lawful; and
 - (4) Whether an Ambassador is a state officer and must therefore conform to the provisions of Article 78 of the Constitution of Kenya, 2010.
10. The Speaker directed the Committee on Implementation to urgently consider and report on the matter. The Committee immediately embarked on the task by inviting the Cabinet Secretary for Foreign Affairs and International Trade, Amb. Monica Juma, DPHIL, CBS to a meeting on Thursday, 12th September, 2019.

11. The Cabinet Secretary, attended the meeting on 12th September, 2019 as scheduled. At the meeting, the Committee directed the Cabinet Secretary to report, to the Committee, within ten (10) days whether Mrs. Mwende Mwinzi had renounced her citizenship to the United States of America.
12. The Cabinet Secretary submitted, through a forwarding letter dated 23rd September, 2019, a letter from Ms. Mwende Mwinzi's advocates Messrs Prof. Tom Ojienda & Associates dated 20th September, 2019 (*Annex III*). The advocates avered that their client, Ms. Mwende Mwinzi, nominee for appointment as ambassador to Seoul, South Korea, would not renounce her USA citizenship. Further the advocates stated that their client had filed a petition in Court seeking the Court's interpretation of the Constitution on the matter.
13. In the Petition, Ms. Mwinzi stated that the House resolution that she renounces her citizenship to the United States of America, upon appointment and before taking office, was unconstitutional, illegal, null and void for reasons that, the position of Ambassador is not a state office in terms of Article 260 of the Constitution of Kenya, 2010.
14. The Petitioner prayed that the Court orders, among others the following:-
 - (i) A declaration that once the Petitioner was appointed by the President and vetted by **Parliament, her appointment was complete and she is entitled to posting to Korea as Ambassador of Kenya**
 - (ii) A declaration that Ambassadors are not state officers within the meaning of **Article 260 of the Constitution.**
 - (iii) A Judicial Review Order of mandamus compelling the respondents herein to Designate and/or post the Petitioner as Kenya's Ambassador to the Republic of Korea.
15. A Judgment on the petition was made on 14th November, 2019 and the information arising from the judgement is contained in this report.

2.2 Legal Provisions on Dual Citizenship

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

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

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

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

(a) judges and members of commissions; or

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

17. Article 260 of the Constitution, does not provide in express terms that a High Commissioner/Ambassador is a state officer.

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

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

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

2.3 Precedence / Case Studies on Dual Citizenship in other Jurisdictions

20. The Committee took note of the following case studies of diplomats and government officials who acquired United States Citizenship at birth but when called to serve in government positions in their native countries, renounced their American citizenship—

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

(2) **David Alwad**, was born in Massachusetts and moved to New Brunswick, Canada with his family while he was still young. His citizenship was *Jus soli* (birth right

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

citizenship). He was named Canada's Consul-General in Boston in April 2015, and renounced U.S.A citizenship to accept the post.²

- (3) **Daphne Barak Erez**, was born to Israeli parents in the U.S.A and later returned with them to Israel, where she grew up. Her citizenship was *Jus soli*. She was named a Justice of the Supreme Court of Israel in January 2012, which required her to give up any foreign citizenship she held. She renounced her U.S.A citizenship.³
- (4) **Ron Dermer**, was born in Florida in 1971. He moved to Israel in 1996, and began the process of becoming a citizen there in 1997. His citizenship was *Jus soli*. In 2005, then-Finance Minister Benjamin Netanyahu appointed him Minister for Economic Affairs in the Israeli embassy in Washington, a post for which he had to renounce his U.S.A citizenship. He is currently Israel's Ambassador to the United States.⁴
- (5) **Luis Alberto Moreno**, was born in Philadelphia to a Colombian father attending medical school at the University of Pennsylvania. He attended his early education in Colombia before coming to the U.S.A for further studies. He renounced U.S.A citizenship in 1998 after President Andrés Pastrana Arango named him Colombia's ambassador to the United States.⁵

2.4 Precedence / Case Studies on Dual Citizenship in Kenya

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

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

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

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

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

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

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

22. The Cabinet Secretary, Amb. Monica Juma, DPHIL, CBS, accompanied by other officials of the Ministry of Foreign Affairs and International Trade appeared before the Committee on 12th September, 2019 and made oral submissions as follows –

- (1) The Cabinet Secretary (CS) informed the Committee that none of the Ambassador/High Commissioner designate had taken up the recent appointments yet, as there is a preparatory process which includes undergoing a comprehensive induction. The nominees underwent a six (6) week induction programme from 14th July to 21st August, 2019 as required in the Foreign Service Regulations. Further, the Ministry is awaiting ‘No Objections’ from the receiving Governments.
- (2) The CS submitted that there is no delay by any nominee to take up appointment. Additionally, Kenya’s Embassy in Seoul, South Korea is fully functional and the diplomatic relationship with South Korea is well serviced. Further, all Kenyan missions are staffed with High Commissioners/Ambassadors and officers who are eminently qualified to represent the country and ensure its interests are represented globally.
- (3) The Ministry is in receipt of appointment letters for all other designates apart from Ms. Mwendu Mwinzi, which is waiting her renouncement of her citizenship to the United States of America.
- (4) The CS further submitted that the responsibility for initiating the process of renouncing of her citizenship to the United States of America does not rest with the Ministry but with the nominee, Ms. Mwendu Mwinzi.
- (5) On Ms. Mwendu Mwinzi attending the induction training, the Cabinet Secretary posited that from her understanding, the Certificate letter received from Parliament communicating the approval of the nominees indicated that Ms. Mwendu Mwinzi had been vetted by the National Assembly and approved based on her suitability and having met all the requirements. The conditionality for approving her nomination was

based on her taking up the appointment as an Ambassador and not undertaking the training.

- (6) Amb. Monica Juma further informed the Committee that in the event that Ms. Mwende Mwinzi does not renounce her citizenship to the United States of America, as set out in the conditional approval, the recruitment process of another Ambassador will have to be initiated in compliance with the law.
- (7) On whether a background check was conducted on the nominees before their names were submitted for vetting, the Committee heard that the pre-qualification process of envoys is undertaken by many government agencies all of which cleared all the nominees, including Ms. Mwende Mwinzi. The Ministry also played its part and recommended the nominees because it deemed them qualified for appointment.
- (8) The Cabinet Secretary stated that the process of approving Ambassadors involves—
 - (i) H.E. the President submitting the names of nominees to the National Assembly for vetting and approval;
 - (ii) vetting is undertaken by the Departmental Committee on Defence and Foreign Relations and subsequently approved by the National Assembly;
 - (iii) communication on the decision of the National Assembly regarding the approval of nominees to the Head of Public Service by way of a Certificate;
 - (iv) induction of designate Ambassadors/ High Commissioners;
 - (v) writing to the receiving country requesting for a 'No Objection' letter;
 - (vi) the Head of Public Service originates appointment letters for the designate Ambassadors/High Commissioners; and
 - (vii) dispatch of the Ambassadors/ High Commissioners to their duty stations.
- (9) Kenya has a total of fifty-nine (59) Missions and Consul Generals; fifty-two (52) head of missions in stations and six (6) embassies are currently without Ambassadors.

2.6 Submission by the Cabinet Secretary on whether Ms. Mwende Mwinzi had complied with the House resolution

23. Following a directive by the Committee that the Cabinet Secretary reaches out to Ms. Mwende Mwinzi regarding her decision to renounce her citizenship to the United States of America, the Cabinet Secretary on Monday, 23rd September, 2019 forwarded a letter from Ms. Mwende Mwinzi.
24. Ms. Mwinzi through her lawyers Messrs Prof. Tom Ojienda & Associates submitted as follows, THAT:-
 - (1) Ms. Mwende Mwinzi went through the vetting process by the National Assembly's Departmental Committee on Defence and Foreign Relations which recommended her

appointment but noted that she had dual citizenship. The Committee thus recommended that she be appointed on condition that she renounces her citizenship to the United States of America.

- (2) The said recommendation by the Departmental Committee on Defence and Foreign Relations was unconstitutional, illegal, null and void for reasons that, the position of Ambassador is not a state office in terms of Article 260 of the Constitution of Kenya, 2010. While the same Article provides that national legislation may establish an office and designate it as a State Office, there is currently no legislation in place which has designated the office of a High Commissioner or an Ambassador to be a State office. If Parliament intended that High Commissioners should be registered as state officers, nothing would be simpler than passing legislation to that effect under Article 260 of the Constitution.
- (3) On account of the above, under the Constitution of Kenya, 2010, the office of Ambassador is not a State office.
- (4) Ms. Mwendu Mwinzi was born in Milwaukee- United States of America and by virtue of the American laws became a citizen by birth. Her citizenship or the process of opting in was a consequence of circumstances out of her control. She did not participate in the decision to be born in the United States of America and she cannot “opt out” of that decision.
- (5) A Petition had been filed before the Constitutional and Human Rights Court on 17th September, 2019, which was intended to give the Court an opportunity to interpret the Constitution.

2.7 Nairobi Constitutional Petition No. 367 of 2019 Mwendu Maluki Mwinzi V. the Cabinet Secretary Ministry of Foreign Affairs and Attorney General

25. Ms. Mwinzi had filed a petition at the Constitutional and Human Rights Court praying that the Court orders that:

- (1) A declaration that once the Petitioner was appointed by the President and vetted by **Parliament, her appointment was complete and she is entitled to posting to Korea as Ambassador of Kenya.**
- (2) A declaration that the Respondents herein have violated **Articles 27, 47, 78, of the Constitution of Kenya, 2010.**
- (3) A declaration that Ambassadors are not state officers within the meaning of **Article 260 of the Constitution.**

(4) A declaration that the Petitioner falls within the provision of **Article 78(3)(b)** and is appointable to a state office in the Republic of Kenya.

(5) A Judicial Review Order of mandamus compelling the respondents herein to Designate and/or post the Petitioner as Kenya's Ambassador to the Republic of Korea.

26. The Court delivered its judgement on 14th November, 2019. In his judgement, the learned Judge Hon. James Makau raised seven issues for determination. Some of the issues are highlighted below:

- (1) **On whether the National Assembly can grant conditional approval of a nominee,** the issue was whether Article 132 (2) of the Constitution and the provisions of the Public Appointments (Parliamentary Approval) Act gives the National Assembly power to grant a conditional approval. The court found that the National Assembly has the discretion to give a conditional approval, contrary to the petitioners assertion that the role of the National Assembly was to either reject or approve the nominee, and that there was no room for the National Assembly to approve with conditions.
- (2) **On whether an ambassador is a state officer and if not whether the issue of dual citizenship still affects her;** the court found that the office of ambassador, though not a state office, is bound by the provisions of section 31 of the Leadership and Integrity Act by dint of section 52 of the Leadership and Integrity Act.
- (3) **On whether the vetting and approval was conducted fairly and within the law;** the court found that the process of vetting and approval of the petitioner, Ms. Mwendu Mwinzi, was conducted fairly and was fair and within the law. The Court also found that a diplomat is charged with the cardinal responsibility of representing the interest of the sending state including the National security and that any individual who owes allegiance to another state ought not be an ambassador unless he/she renounces the citizenship of the foreign state. This is because the risk of a dual citizenship may jeopardize the national interest of the Republic of Kenya against the interest of the foreign state.
- (4) The Court also found the petition to be premature since the approval and appointment process had not been completed. The petition was dismissed.

3.0 COMMITTEE OBSERVATIONS

27. Having considered the Resolution of the House on the foregoing matter, the issues raised by the Members in the House on 10th September, 2019, the oral and written submissions from the stakeholders to the Committee and the Judgement of the High Court in Petition No. 367 of 2019, the Committee makes the following observations-

- (1) The Defence and Foreign Relations Committee tabled its Report on the vetting of the seven (7) nominees on 6th June, 2019 and recommended the approval of Ms. Mwendu Mwinzi for appointment as the Ambassador to Seoul, South Korea, subject to the nominee renouncing her United States of America citizenship before appointment and taking office in line with Article 80 (c) of the Constitution as read together with sections 31 and 52 of the Leadership and Integrity Act, *No. 19 of 2012*.
- (2) Despite the decision of the House, the nominee has not renounced her citizenship five months after the House had passed the resolution on her conditional approval.
- (3) Further, the Cabinet Secretary for Foreign Affairs and International Trade when she appeared before the Committee submitted that the Ministry was in receipt of appointment letters for all other designates except for Ms. Mwendu Mwinzi, as it was awaiting her renouncing her citizenship to the United States of America.
- (4) However, Ms. Mwendu Mwinzi in her submissions to the Committee submitted by the Cabinet Secretary through a letter from Ms. Mwendu Mwinzi's advocates Messrs Prof. Tom Ojienda & Associates averred that their client, Ms. Mwendu Mwinzi, nominee for appointment as ambassador to Seoul, Korea, would not renounce her USA citizenship.
- (5) Thereafter, Ms. Mwendu Mwinzi filed a Petition before the Constitutional and Human Rights Court Petition No. 367 of 2019 on 17th September, 2019 contesting the National Assembly's recommendation that she renounces her American citizenship before taking up office in South Korea.
- (6) In light of paragraphs (4) and (5), it is clear from the conduct of Ms. Mwendu Mwinzi that she has failed or declined to renounce her citizenship to the United States of America as set out in the conditional approval.
- (7) Further, in view of the judgement of the Court in the Petition No. 367 of 2019 which dismissed the petition for being premature as the approval process was not yet complete and further held that the conditional approval was in accordance with the law, it was paramount for the process to be concluded by the House in order to ensure that the decision of the House on the nominee is unequivocal and clear.

- (8) Moreover, despite the provisions of section 349 of the US Immigration and Naturalization Act which allows a US citizen to voluntarily renounce her citizenship, the nominee had not yet renounced her citizenship and could not be forced to do so.
- (9) Whereas the court held that the position of an ambassador was not a state office but a public office, the Court also held that the provisions of sections 31 and 52 of the Leadership and Integrity Act, 2012 which requires public officers to renounce their citizenship prior to taking office in light of the requirements of Article 78(2) of the Constitution also applied to public officers.
- (10) The court judgement was clear that the role of a diplomat is to represent the interests of the sending state including national security and any individual who owes allegiance to another state ought not to be an ambassador as the nominee would face serious conflict of interest in advancing the interests of Kenya against those of the US.
- (11) Consequently, if Ms. Mwendu Mwinzi was to be appointed as an ambassador without the conditions set not being met and cognizant of the fact that she would then be deployed to any country that Kenya has a mission, there would exist serious conflict of interests if for instance on one hand the nominee, as an American citizen was to be deployed to a country whose policy directions are similar to Kenya but averse to American interests or to a country whose policy directions are similar to American interests but averse to Kenyan interests.
- (12) Furthermore, an ambassador deals with highly sensitive and classified national diplomatic and security issues which includes a responsibility for taking and committing a country in crucial policy decisions that are binding internationally and therefore, if Ms. Mwendu Mwinzi was to be appointed as an ambassador there would be certainly a conflict of interest that would arise and compromise the economic and political interests of Kenya.
- (13) The dictates of Article 3 of the Vienna Convention on Diplomatic Relations which enumerates the functions of a diplomatic mission that include protecting in the receiving state, the interests of the sending state and of its nationals, cannot be achieved or attained by the nominee if appointed due to conflict of interests that may arise from her dual citizenship.
- (14) Accordingly, in light of the foregoing, Ms. Mwendu Mwinzi having not renounced her US citizenship is not suitable for appointment to represent, protect, promote and project Kenya's interests as an ambassador.

4.0 COMMITTEE RECOMMENDATIONS

28. In view of the submissions received and the observations made, the Committee recommends, THAT -

- (1) The House rejects the nomination of Ms. Mwendu Mwinzi for appointment as an Ambassador to Seoul, South Korea, for the reason that the nominee has failed to fulfil the condition set for her approval by the House in its resolution of 6th June, 2019; and
- (2) The appointing authority considers initiating the process of nomination of an Ambassador to Seoul, South Korea pursuant to Article 132(2) of the Constitution.

Signed



Date

26/11/2019.

Hon. Moitalel Ole Kenta, MP
Chairperson, Committee on Implementation



ANNEX I: ADOPTION LIST



The National Assembly



12th Parliament-3rd Session-2019

Committee on Implementation

Agenda: *Adoption of the Report on the implementation status of the resolution of the House on conditional approval of Ms. Mwendu Mwangi for appointment as Ambassador to Seoul, South Korea*

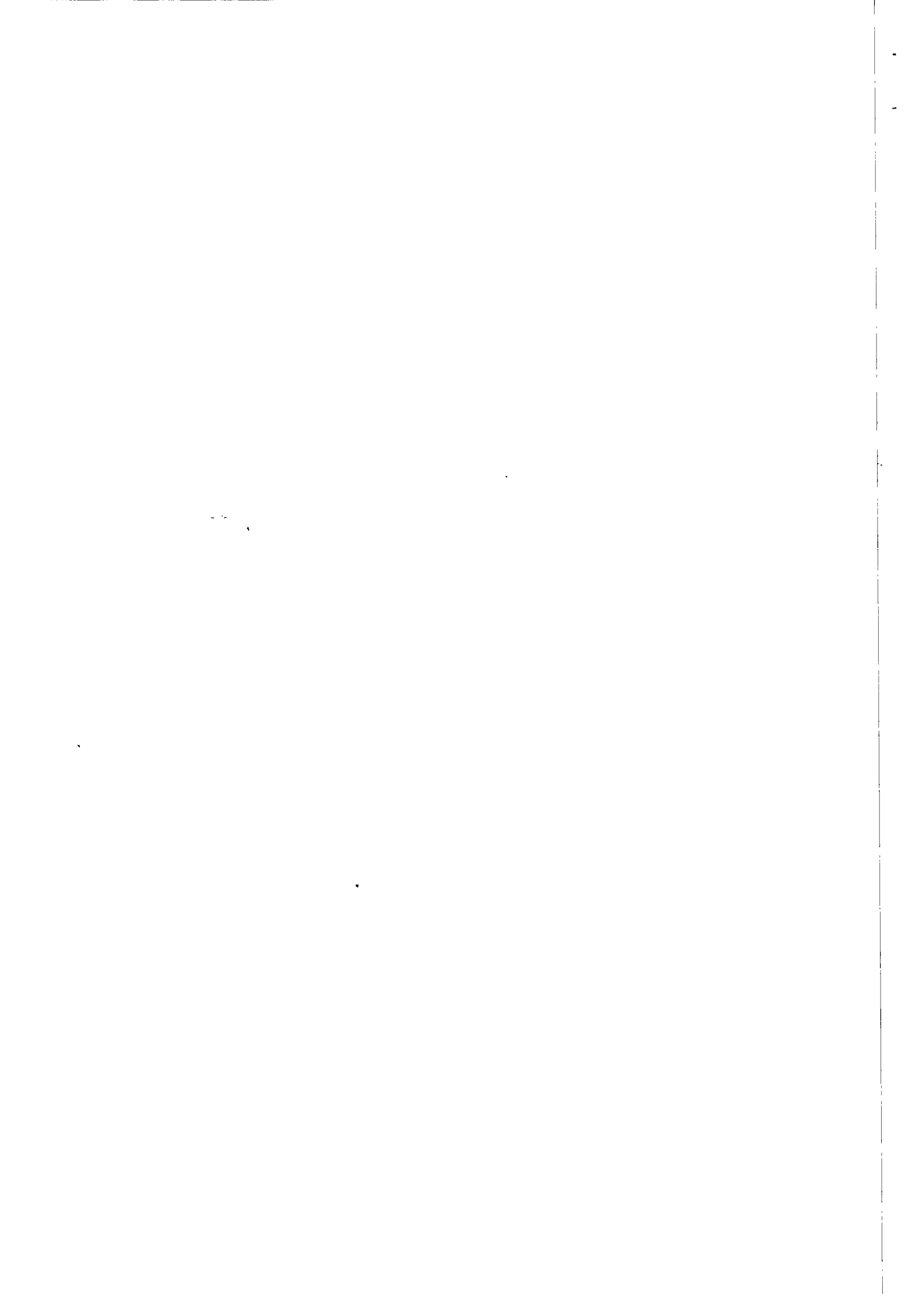
Date: *Tuesday 26-11-2019*

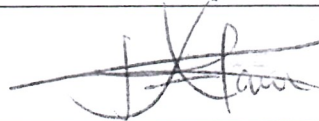
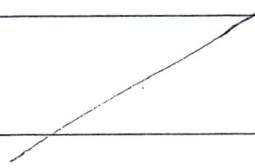
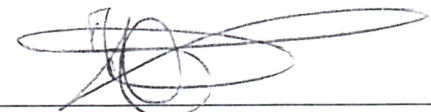

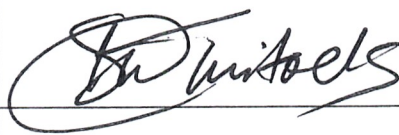
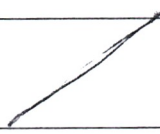

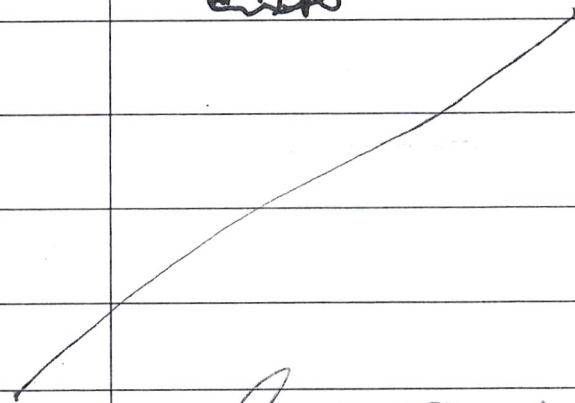
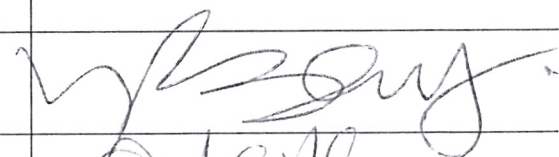
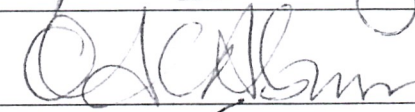

Start Time: *12.10 P.m.*

Venue: *5th Floor Committee Room, Continental House*

End Time: *12:45 P.m.*

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



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

Committee Clerk

Name... Tracy Chebet Koskei

..... E. Koskei

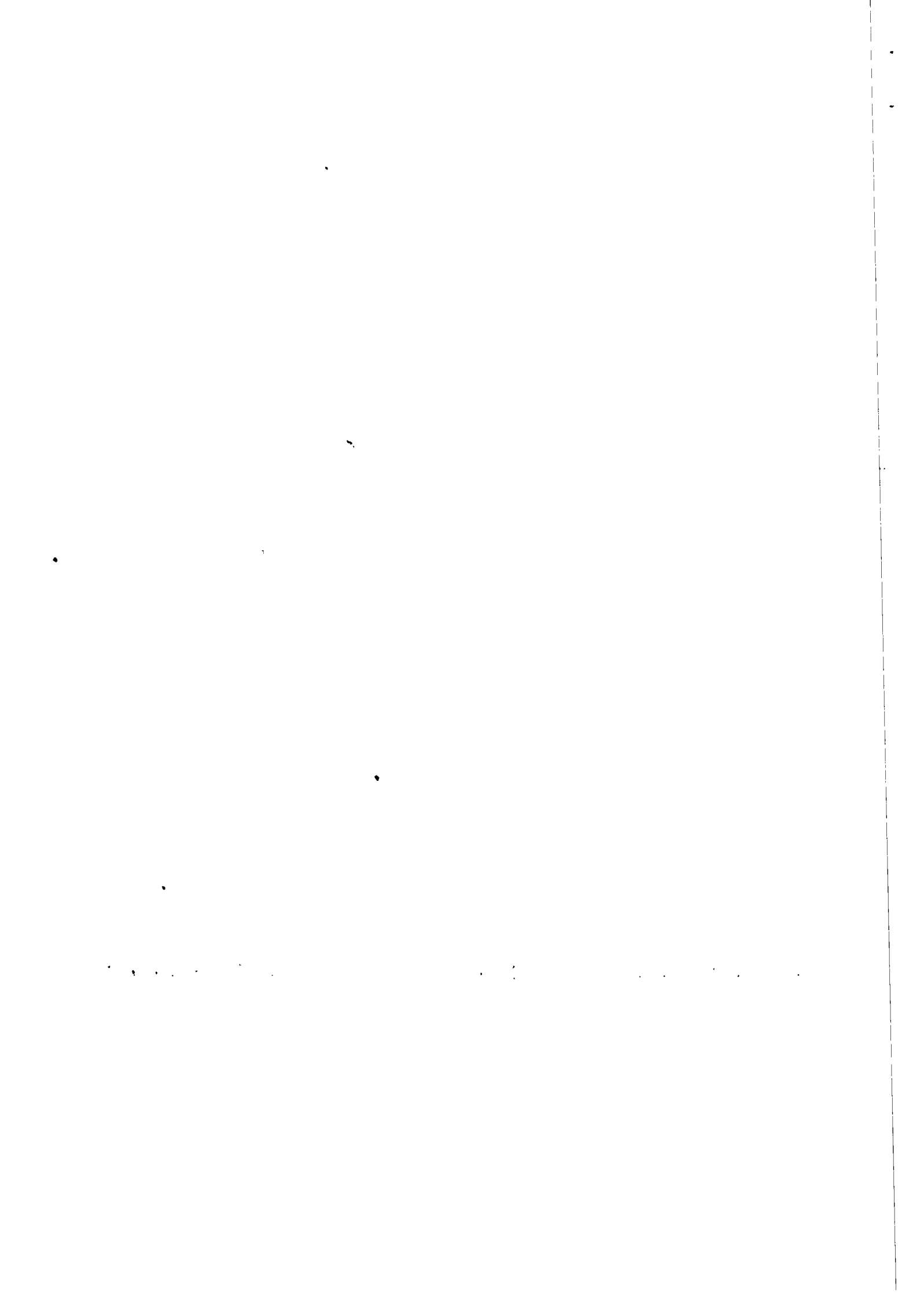
(Signature)

Date... 26th November, 2019

Director Committee Services

(Signature)

Date.....



ANNEX II: MINUTES

MINUTES OF THE 70TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 26TH NOVEMBER, 2019, IN THE COMMITTEE ROOM, ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12.00 PM.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. Richard Onyonka, MP
4. The Hon. Alois Musa Lentoimaga, MP
5. The Hon. (Dr.) James Kipkosgei Murgor, MP
6. The Hon. Maj. (Rtd.) John Waluke Koyi, MP
7. The Hon. Johnson Many Naicca, MP
8. The Hon. Joseph Wathigo Manje, MP
9. The Hon. Paul Simba Arati, MP
10. The Hon. Charles Ngusya Nguna, MP
11. The Hon. (Dr.) Daniel Kamuren Tuitoek, MP
12. The Hon. Hassan Oda Hulufo, MP
13. The Hon. Owen Yaa Baya, MP
14. The Hon. Paul Odalo Abuor, MP

APOLOGIES

1. The Hon. Francis Munyua Waititu, MP
2. The Hon. George Theuri, MP
3. The Hon. Onesmas Kimani Ngunjiri, MP
4. The Hon. Generali Nixon Kiprotich Korir, MP
5. The Hon. Michael Kingi, MP
6. The Hon. Jared Okello, MP
7. The Hon. Joshua Mbithi Mwalyo, MP
8. The Hon. Nelson Koech, MP
9. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

1. Ms. Tracy Chebet Koskei - First Clerk Assistant (Lead Clerk)
2. Mr. Abdirahman G. Hassan - Second Clerk Assistant
3. Mr. Peter Mwaura - Senior Legal Counsel
4. Ms. Zeinab Wario - Sergeant-at-arms
5. Ms. Fatuma Abdi - Audio Officer

MIN. NO.NA/COI/2019/330:

PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past twelve o'clock and said the Prayer. The Agenda for the meeting was adopted as proposed and seconded by the Hon. Johnson Naicca, MP and the Hon. Alois Lentoimaga, MP, respectively.

MIN. NO.NA/COI/2019/331:

CONFIRMATION OF MINUTES

The Agenda item was deferred.

MIN. NO.NA/COI/2019/332:

CONSIDERATION OF THE REPORT ON THE IMPLEMENTATION STATUS OF THE RESOLUTION OF THE HOUSE REGARDING THE CONDITIONAL APPROVAL OF MS. MWENDE MWINZI FOR APPOINTMENT AS AMBASSADOR OF KENYA TO SEOUL, SOUTH KOREA

The Committee considered the report on the implementation status of the resolution of the House regarding the conditional approval of Ms. Mwende Mwinzi for appointment as Ambassador of Kenya to Seoul, South Korea. The following matters arose:

The Hon. Charles Ngusya Nguna, MP declared interest on the matter pursuant to Standing Order 90 of the National Assembly and proposed that Ms. Mwende Mwinzi should be allowed to take her appointment as Ambassador of Kenya to Seoul, South Korea as the Court had ruled that the office of an ambassador is not a state office.

The Committee, following deliberations, unanimously adopted the report after it was proposed by the Hon. Richard Onyonka, MP and seconded by the Hon. Johnson Manya Naicca, MP. The Committee made the following observations and recommendations:

Committee Observations

1. The Defence and Foreign Relations Committee tabled its Report on the vetting of the seven (7) nominees on 6th June, 2019 and recommended the approval of Ms. Mwende Mwinzi for appointment as the Ambassador to Seoul, South Korea, subject to the nominee renouncing her United States of America citizenship before appointment and taking office in line with Article 80 (c) of the Constitution as read together with sections 31 and 52 of the Leadership and Integrity Act, *No. 19 of 2012*.
2. Despite the decision of the House, the nominee has not renounced her citizenship five months after the House had passed the resolution on her conditional approval.

3. Further, the Cabinet Secretary for Foreign Affairs and International Trade when she appeared before the Committee submitted that the Ministry was in receipt of appointment letters for all other designates except for Ms. Mwende Mwinzi, as it was awaiting her renouncing her citizenship to the United States of America.
4. However, Ms. Mwende Mwinzi in her submissions to the Committee submitted by the Cabinet Secretary through a letter from Ms. Mwende Mwinzi's advocates Messrs Prof. Tom Ojienda & Associates averred that their client, Ms. Mwende Mwinzi, nominee for appointment as ambassador to Seoul, Korea, would not renounce her USA citizenship.
5. Thereafter, Ms. Mwende Mwinzi filed a Petition before the Constitutional and Human Rights Court Petition No. 367 of 2019 on 17th September, 2019 contesting the National Assembly's recommendation that she renounces her American citizenship before taking up office in South Korea.
6. In light of paragraphs (4) and (5), it is clear from the conduct of Ms. Mwende Mwinzi that she has failed or declined to renounce her citizenship to the United States of America as set out in the conditional approval.
7. Further, in view of the judgement of the Court in the Petition No. 367 of 2019 which dismissed the petition for being premature as the approval process was not yet complete and further held that the conditional approval was in accordance with the law, it was paramount for the process to be concluded by the House in order to ensure that the decision of the House on the nominee is unequivocal and clear.
8. Moreover, despite the provisions of section 349 of the US Immigration and Naturalization Act which allows a US citizen to voluntarily renounce her citizenship, the nominee had not yet renounced her citizenship and could not be forced to do so.
9. Whereas the court held that the position of an ambassador was not a state office but a public office, the Court also held that the provisions of sections 31 and 52 of the Leadership and Integrity Act, 2012 which requires public officers to renounce their citizenship prior to taking office in light of the requirements of Article 78(2) of the Constitution also applied to public officers.
10. The court judgement was clear that the role of a diplomat is to represent the interests of the sending state including national security and any individual who owes allegiance to another state ought not to be an ambassador as the nominee would face serious conflict of interest in advancing the interests of Kenya against those of the US.
11. Consequently, if Ms. Mwende Mwinzi was to be appointed as an ambassador without the conditions set not being met and cognizant of the fact that she would then be deployed to any country that Kenya has a mission, there would exist serious conflict of interests if for instance on one hand the nominee, as an American citizen was to be deployed to a country whose policy directions are similar to Kenya but averse to American interests or to a country whose policy directions are similar to American interests but averse to Kenyan interests.
12. Furthermore, an ambassador deals with highly sensitive and classified national diplomatic and security issues which includes a responsibility for taking and

committing a country in crucial policy decisions that are binding internationally and therefore, if Ms. Mwendu Mwinzi was to be appointed as an ambassador there would be certainly a conflict of interest that would arise and compromise the economic and political interests of Kenya.

13. The dictates of Article 3 of the Vienna Convention on Diplomatic Relations which enumerates the functions of a diplomatic mission that include protecting in the receiving state, the interests of the sending state and of its nationals, cannot be achieved or attained by the nominee if appointed due to conflict of interests that may arise from her dual citizenship.
14. Accordingly, in light of the foregoing, Ms. Mwendu Mwinzi having not renounced her US citizenship is not suitable for appointment to represent, protect, promote and project Kenya's interests as an ambassador.

Committee Recommendations

In view of the observations made, the Committee made the following recommendations, THAT -

- (1) The House rejects the nomination of Ms. Mwendu Mwinzi for appointment as an Ambassador to Seoul, South Korea, for the reason that the nominee has failed to fulfil the condition set for her approval by the House in its resolution of 6th June, 2019; and
- (2) The appointing authority considers initiating the process of nomination of an Ambassador to Seoul, South Korea pursuant to Article 132(2) of the Constitution.

MIN. NO.NA/COI/2019/334:

ANY OTHER BUSINESS

The Committee was scheduled to meet with the Cabinet Secretary (CS) for Education, to consider implementation status of the Report of the Departmental Committee on Health on the Kenyatta University Teaching and Referral Hospital Project.


However, the CS vide a letter referenced **MOE/CON/3/1**, dated **25th November 2019**, indicated that he will be attending the National Development Implementation and Communication Cabinet Committee Meeting scheduled for the same day. The Ministry thus requested for reschedule of the meeting to a later date.

The Committee considered and acceded to the request by the Cabinet Secretary and resolved to reschedule the meeting to **Thursday 5th December 2019**.

MIN. NO.NA/COI/2019/335:

ADJOURNMENT

There being no other business, the meeting was adjourned at quarter to one o'clock.

Sign.......... Date **26/11/2019**
(Chairperson)

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

PRESENT

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

APOLOGIES

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

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

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

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

PRELIMINARIES

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

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

CONFIRMATION OF MINUTES

The agenda item was deferred.

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

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

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

Committee Observations

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

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

(ii) The conditional approval of Ms. Mwendu Mwinzi by the National Assembly was not open-ended. A decision would have to be made as soon as possible on the matter, particularly in view of the fact that more than three (3) months have lapsed since the House approved the said nominees and public funds already expended for carrying out an induction training for all nominees including Ms. Mwinzi who has made it known that she is not willing to renounce her American citizenship, contrary to the House's resolution on the matter. The Committee reiterates that a diplomat represents the interests of the sending State and must

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

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

Committee Recommendations

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

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

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

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

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

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

MEETING WITH THE EACC
TO CONSIDER THE REPORT
ON TELKOM

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

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

ADJOURNMENT

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

Sign.......... Date.....24/09/2019.....
(Chairperson)

MINUTES OF THE 49TH SITTING OF THE COMMITTEE ON
IMPLEMENTATION HELD ON THURSDAY, 19TH SEPTEMBER, 2019, IN
THE BOARDROOM, ON 11TH FLOOR, PROTECTION HOUSE,
PARLIAMENT BUILDINGS AT 12.00 PM

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Francis Munyua Waititu, MP
3. The Hon. George Theuri, MP
4. The Hon. (Dr.) James Kipkosgei Murgor, MP
5. The Hon. Paul Simba Arati, MP
6. The Hon. Jared Okello, MP

APOLOGIES

1. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
2. The Hon. Richard Onyonka, MP
3. The Hon. Alois Musa Lentoimaga, MP
4. The Hon. Maj. (Rtd.) John Waluke Koyi, MP
5. The Hon. Johnson Many Naicca, MP
6. The Hon. Joseph Wathigo Manje, MP
7. The Hon. Onesmas Kimani Ngunjiri, MP
8. The Hon. Charles Ngusya Nguna, MP
9. The Hon. (Dr.) Daniel Kamuren Tuitoek, MP
10. The Hon. Generali Nixon Kiprotich Korir, MP
11. The Hon. Hassan Oda Hulufu, MP
12. The Hon. Joshua Mbithi Mwalyo, MP
13. The Hon. Michael Kingi, MP
14. The Hon. Nelson Koech, MP
15. The Hon. Owen Yaa Baya, MP
16. The Hon. Paul Odalo Abuor, MP
17. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

1. Ms. Tracy Chebet Koskei - First Clerk Assistant
2. Mr. Peter Mwaura - Senior Legal Counsel
3. Mr. James Muguna - Research Officer III

MIN. NO.NA/COI/2019/236:

PRELIMINARIES

The Chairperson called the meeting to order at five minutes past twelve o'clock and said the Prayer. The Agenda for the meeting was adopted as proposed and seconded by the Hon (Dr.) James Kipkosgei Murgor, MP and the Hon. George Theuri, MP respectively.

MIN. NO.NA/COI/2019/237:

CONFIRMATION OF MINUTES

The Minutes of the 47th Sitting held on Thursday, 12th September 2019 at 4.00pm were confirmed as a true record of the proceedings as proposed and seconded by the Hon. (Dr.) James Kipkosgei Murgor, MP and the Hon. Simba Arati, MP, respectively.

The Minutes of the 48th Sitting held on Tuesday, 17th September 2019 were confirmed as a true record of the proceedings as proposed and seconded by the Hon. George Theuri, MP and the Hon. (Dr.) James Kipkosgei Murgor, MP respectively.

MIN. NO.NA/COI/2019/238:

MATTERS ARISING

The following matter arose:-

Under Min. NO.NA/COI/2019/229: -on the status of the conditional approval of Ms. Mwendu Mwinzi as an Ambassador to Seoul, South Korea:

It was brought to the attention of the Committee that Ms. Mwendu Mwinzi had filed a Petition in Court stating that the recommendation by the Departmental Committee on Defence and Foreign Relations that she renounces her citizenship to the United States of America before taking up appointment as an Ambassador to Seoul, South Korea, was unconstitutional, illegal, null and void for reasons that, the position of Ambassador is not a state office in terms of Article 260 of the Constitution of Kenya, 2010.

Ms. Mwinzi further stated while the same Article (260) provides that national legislation may establish an office and designate it as a State Office, there is currently no legislation in place which has designated the office of a High Commissioner or an Ambassador to be a State office.

In view of the above, the Committee resolved that it prepares a report and recommend that the House **rescinds its recommendation made on 6th June, 2019 to approve the nomination of Ms. Mwendu Mwinzi** for appointment as Ambassador to Seoul, South Korea. Further, the Committee should recommend that the **appointing authority submits another nominee to the National Assembly** for vetting and approval for the position of Ambassador to Seoul, South Korea.

MIN. NO.NA/COI/2019/239:

CONSIDERATION OF
IMPLEMENTATION
STATUS OF VARIOUS
HOUSE RESOLUTIONS

The Committee considered the implementation status of the following House Resolutions;

- i) Report of the Departmental Committee on Environment & Natural Resources on the Inquiry into Forest Resource Management and Logging activities in Kenya; and
- ii) Report of the Departmental Committee on Environment and Natural Resources on the Petition on the Lifting of Ban on Logging and Harvesting of Mangrove Trees in Lamu County.

Following deliberation, the Secretariat was directed to draft a report on the above for consideration by the Committee during its retreat scheduled for Thursday 3rd to Sunday, 6th October 2019.

MIN. NO.NA/COI/2019/240:

ADJOURNMENT

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

Sign.......... Date.....26/09/2019.....

(Chairperson)

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

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. (Dr.) James Kipkosgei Murgor, MP
4. The Hon. Paul Simba Arati, MP
5. The Hon. Onesmas Kimani Ngunjiri, MP
6. The Hon. Generali Nixon Kiprotich Korir, MP
7. The Hon. Paul Odalo Abuor, MP
8. The Hon. Nelson Koech, MP
9. The Hon. Joshua Mbithi Mwalyo, MP
10. The Hon. Michael Kingi, MP
11. The Hon. Charles Ngusya Nguna, MP

APOLOGIES

1. The Hon. Richard Onyonka, MP
2. The Hon. Francis Munyua Waititu, MP
3. The Hon. George Theuri, MP
4. The Hon. Maj. (Rtd.) John Waluke Koyi, MP
5. The Hon. Johnson Many Naicca, MP
6. The Hon. Joseph Wathigo Manje, MP
7. The Hon. Alois Musa Lentoimaga, MP
8. The Hon. (Dr.) Daniel Kamuren Tuitoek, MP
9. The Hon. Hassan Oda Hulufu, MP
10. The Hon. Jared Okello, MP
11. The Hon. Owen Yaa Baya, MP
12. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

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

MINISTRY OF FOREIGN AFFAIRS & INTERNATIONAL TRADE

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

THE NATIONAL ASSEMBLY

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

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

PRELIMINARIES

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

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

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

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

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

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

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

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

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

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

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

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

The process of approving Ambassadors is as follows:

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

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

Committee Concerns

The following matters were raised:

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

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

2. Conflict of interest arising from dual citizenship

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

Committee Resolution

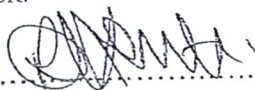
The Committee resolved that the Cabinet Secretary reaches out to Ms. Mwendu Mwinzi on whether she was going to renounce her citizenship to the United States of America or not and communicates her decision to the Committee within ten (10) days or by Monday, 23rd September, 2019.

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

ADJOURNMENT

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

Sign.....



(Chairperson)

Date.....

19/09/2019.

**ANNEX III: SUBMISSION BY THE
CABINET SECRETARY, MINISTRY OF
FOREIGN AFFAIRS FORWARDING
CORRESPONDENCE FROM MESSRS
PROF. TOM OJIENDA & ASSOCIATES
ON BEHALF OF MS. MWENDE MWINZI**

③ Emergency
Please

note
FA
24/9/19

② CHEBET

please deal
FA
24/9/19

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



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

MINISTRY OF FOREIGN AFFAIRS

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

23rd September 2019

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

① Dreams

Please deal.
Giles
24/09/19

Dear Michael Sialai

RE: PARLIAMENTARY QUERY ON MS. MWENDE MWINZI

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

Yours Sueany

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



KENYA
AU ENDORSED CANDIDATE FOR
UN SECURITY COUNCIL
2011-2022

NATIONAL ASSEMBLY
RECEIVED
24 SEP 2019
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

THE NATIONAL ASSEMBLY
RECEIVED
24 SEP 2019
DIRECTOR COMMITTEE SERVICES
Time:.....



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Email: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date



file (copy)

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

MINISTRY OF FOREIGN AFFAIRS

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

13 September 2019

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

Dear

RE: PARLIAMENTARY QUERY

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

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

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

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

Yours

Amb. Monica Juma, DPhil, CBS
CABINET SECRETARY



Prof. Tom
Ojienda
& Associates

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

Date: 17th September, 2019

Our Ref: PTO/MMM/109/19

Your Ref: TBA



Amb. Monica Juma, DPhil, CBS,
CABINET SECRETARY,

Ministry of Foreign Affairs

NAIROBI



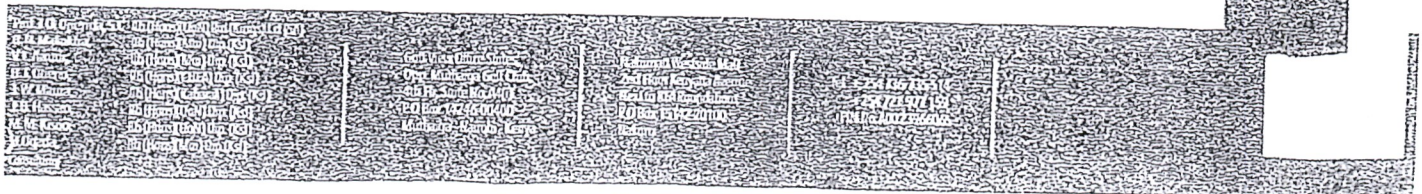
Dear Madam,

RE: PARLIAMENTARY QUERY

Reference is made to the above matter

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

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



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

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

“State office” means any of the following offices—

(a) President;

(b) Deputy President;

(c) Cabinet Secretary;

(d) Member of Parliament;

(e) Judges and Magistrates;

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

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

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

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

government;

(i) Attorney-General;

(j) Director of Public Prosecutions;

- (k) Secretary to the Cabinet;*
- (l) Principal Secretary;*
- (m) Chief of the Kenya Defence Forces;*
- (n) commander of a service of the Kenya Defence Forces;*
- (o) Director-General of the National Intelligence Service;*
- (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or*
- (q) an office established and designated as a State office by national legislation;*

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

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

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

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

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

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

(a) judges and members of commissions; or

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

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

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

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

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

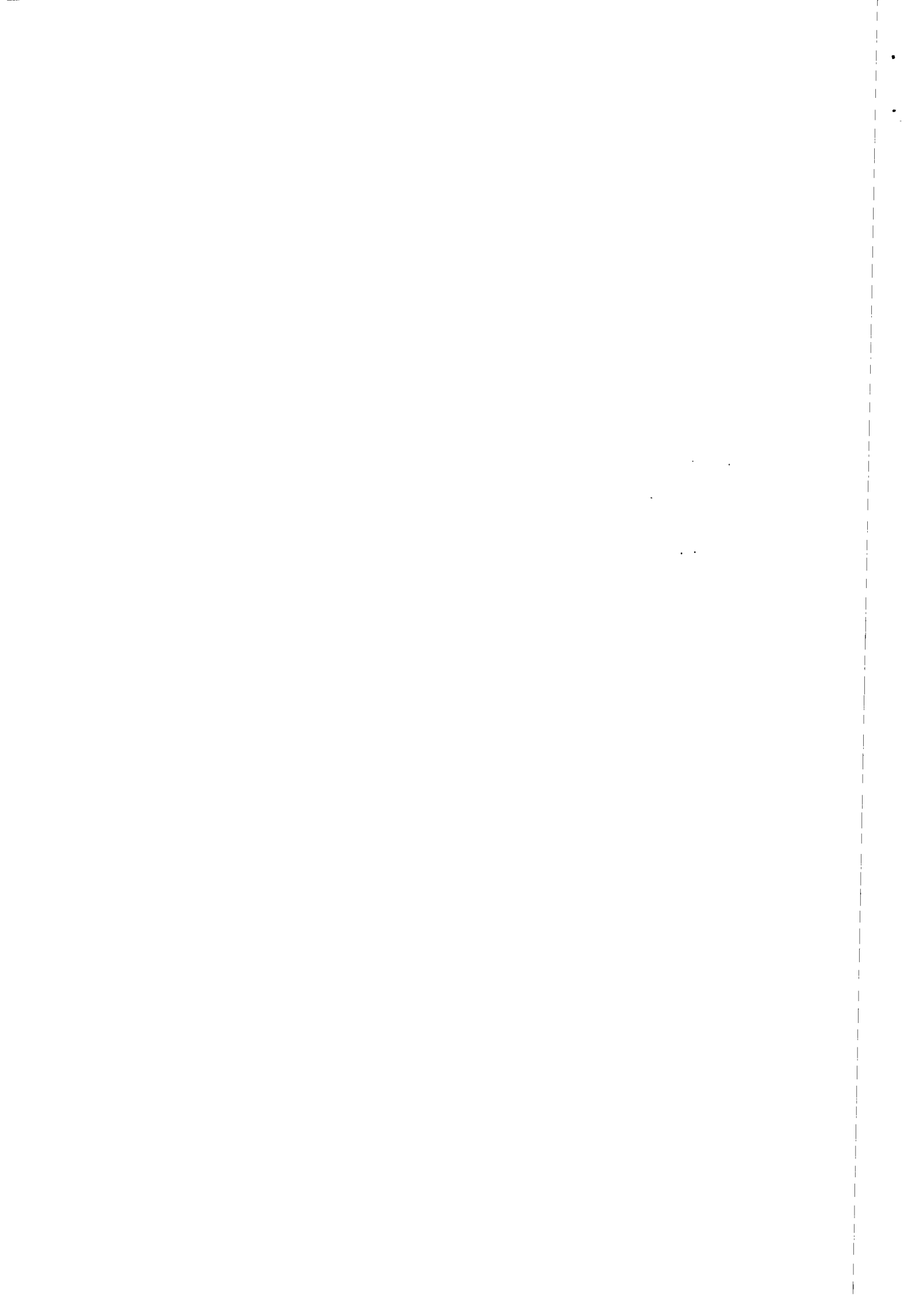
Yours Faithfully

A handwritten signature in black ink, appearing to be 'Tom Ojienda', written in a cursive style.

PROF. TOM OJIENDA & ASSOCIATES



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



REPUBLIC OF KENYA

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



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

When replying, please quote

THE NATIONAL ASSEMBLY

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

6th June, 2019

Dr. Joseph Kinyua, EGH
Head of the Public Service
State House
NAIROBI

Dear *Joseph,*

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

The above-mentioned subject refers.

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

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

Yours,

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

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

Encl.



REPUBLIC OF KENYA

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



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

THE NATIONAL ASSEMBLY

CERTIFICATE

APPROVAL OF PERSONS FOR APPOINTMENT AS AMBASSADORS AND HIGH COMMISSIONERS

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

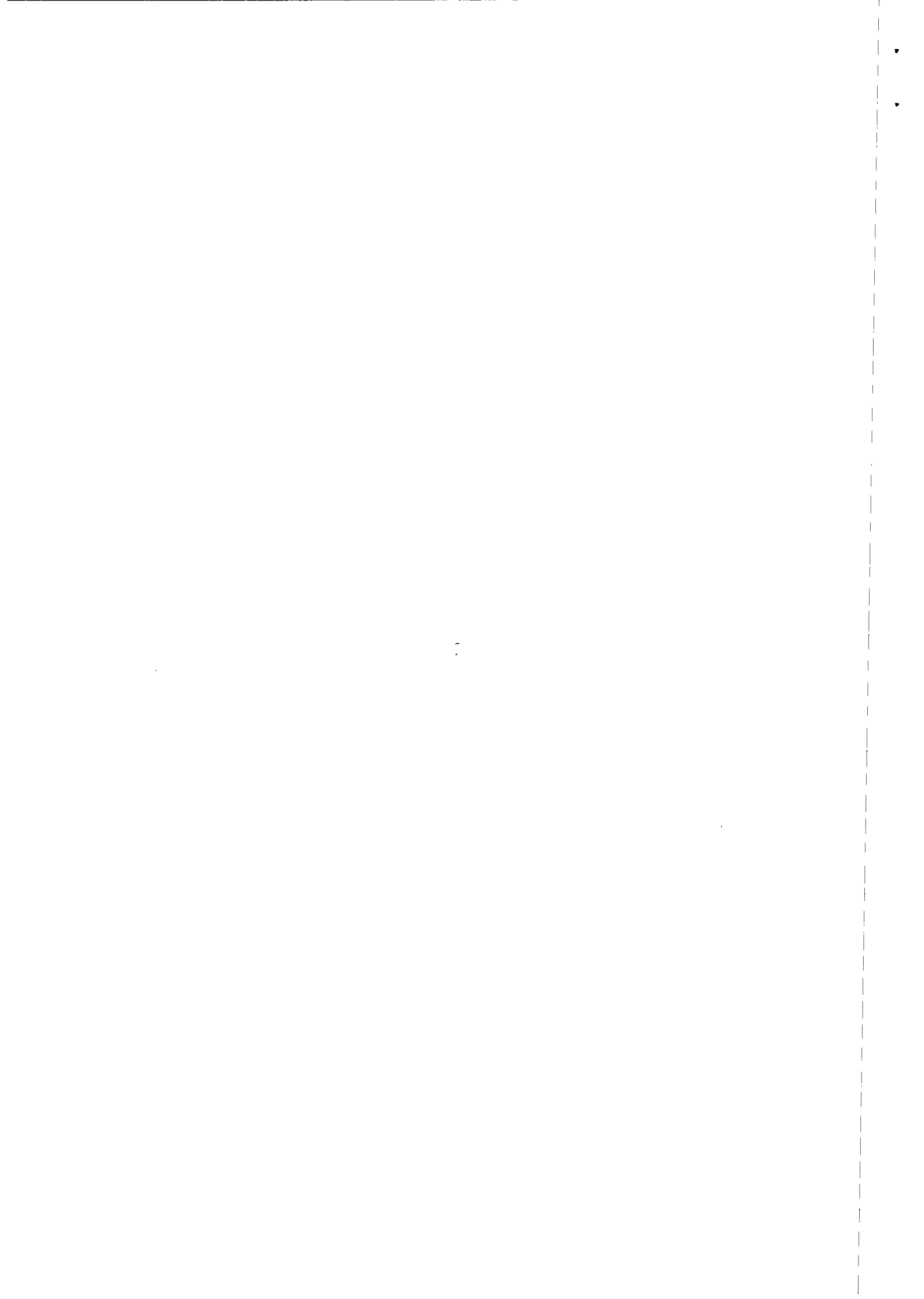
NOW THEREFORE, in accordance with the provisions of section (11) of the Public Appointments (Parliamentary Approval) Act, 2011, the names of the persons so approved as Ambassadors and High Commissioners are as hereunder: -

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

Signature: _____

Clerk of the National Assembly

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



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

