



NATIONAL ASSEMBLY

e-NEWS

ISSUE 007

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Leadership**

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Foreword



It is a great pleasure to write the foreword for the 7th Issue of the National Assembly E-Newsletter.

Bearing in mind that the National Assembly has continued to transact business both in the plenary and in committees amidst the threat of the Covid-19 pandemic several steps have been taken to ensure the safety of Honourable Members and that of members of staff. Our top story highlights the steps taken to ensure conformity with the health protocols as outlined by the Ministry of Health and the World Health Organization (WHO).

In this issue, we have a story on the swearing-in of Hon. Rachel Ameso as a female non-MP Parliamentary Service Commissioner. Commissioner Ameso replaces Commissioner (Dr) Lonah Mumelo whose term expired after serving the Commission for a term of six years.

During the period covered under this issue, the Speaker of the National Assembly Hon. Justin Muturi met the leadership of the County Assemblies Forum (CAF). For details of what was discussed in this meeting turn to page 7.

On the Bill digest section, information about the Referendum Bill (2020) sponsored by the Chairperson Justice and Legal Affairs Committee (JLAC) has been broken down for all our readers to better understand the issues the Bill seeks to address.

Are you aware that Members of Parliament who do not belong to any political party or coalition, better known as Independent Members of Parliament, have a right to serve in Parliamentary Committees? Can the leadership of the Majority Party or that of the Minority Party have discharge powers over such Members? To get a clear position on these questions turn to page 19 and read the Speaker's guidelines on the same.

Still on the matter of discharge of duties, turn to an article on pages 20 and 21 to read about the Speaker's guidelines on the procedure for revocation of appointment of a Member of the Parliamentary Service Commission.

For these and much more welcome.

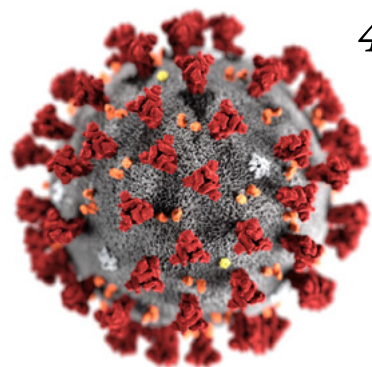
Mr. Michael R. Sialai, EBS
Clerk of The National Assembly of Kenya

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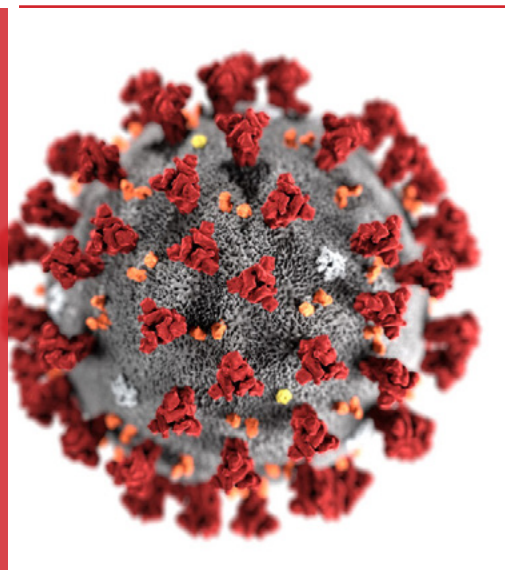
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House institutes Measures in Response to the Covid-19 Pandemic

The Corona Virus disease (COVID-19) was declared a global pandemic in March 2020 by the World Health Organisation (WHO). The pandemic has affected the manner in which Parliaments all over the world conduct their business and the National Assembly of Kenya has been no exception. The unprecedented circumstances occasioned by the pandemic have required that the National Assembly reengineers its operations and the manner in which it conducts its business. Notably, whereas the Executive has put in place measures to cushion the citizenry against the pandemic, it is the Legislature that is expected to institute the legal frameworks to actualize the actions.



In order to re-align its operations, the National Assembly has taken various administrative steps to ensure continued operations. On 2nd April 2020 and 11th April, 2020 the Speaker of the National Assembly issued Guidelines on the conduct of sittings of the House and Committee meetings during the COVID-19 Pandemic period (No.2 of 2020 & Supplementary I). The Guidelines have been in use in the sittings of the National Assembly undertaken

since April 14, 2020. The Guidelines made changes including –

a. The National Assembly Chamber which has a sitting capacity of four hundred and eighteen (418) has now been reduced to only 60 seats, to adhere to the social distancing protocols. There are now fifty-three (53) seats that have been marked in the Chamber for use by the Members excluding the reserved seats.



b. Each seat has been assigned a number which is accessible on first-register-first-occupy basis except for seats designated for the Leader of Majority Party, Leader of Minority Party, the Deputy Speaker, the Majority Party Whip, the Minority Party Whip and a Member scheduled to move a business listed in the Order Paper for the particular sitting.

c. Attendance to the sittings of the House is on rotational basis while reflecting the party representation in the House. Members desiring to attend the sittings of the House are required to register through a BULK SMS service operated by the Clerk of the National Assembly. Except for the designated seats, priority of allocation of the rest of the seats is accorded to Members who have expressed desire to attend by way of registration.

d. There are three (3) designated holding/waiting areas to accommodate other Members desirous of participating in proceedings as they wait for the opportunity to access the Chamber upon vacation of a seat by a Member. Each previously used seat is sanitized before occupation by another Member. The designated holding areas are located within the precincts of Parliament Buildings. Members seated at any of the designated holding areas are, upon request, allowed to contribute to debate, and vote.



e. Committee sittings are held only in designated meeting rooms in line with recommendations of the Ministry of Health. The Committee rooms can only be occupied by a maximum of nine persons at any given time from the usual more than thirty persons.

2. On 6th May 2020, the National Assembly amended the Standing Orders through the adoption of the Fourth Report of the Procedure & House Rules Committee on Amendments to the Standing Orders to Facilitate Virtual Sittings of the House and its Committees. The amendment to the Standing Orders allow for the incorporation of virtual participation of Members in the proceedings of the House and its

Committees during exceptional circumstances that prevent normal operations. The Procedure & House Rules Committee is developing the necessary Guidelines to support the implementation of the amended Standing Orders.

3. The procurement process for an appropriate technological system for fully virtual proceeding is ongoing and will be concluded in due course.

4. The National Assembly has adopted working-from-home measures for Members of staff to reduce interactions and risk of cross-infection.

5. The institution has been conducting voluntary testing sessions within the precincts including in April and June/July in conjunction with the Ministry of Health. Further, sanitizers have been placed throughout the buildings, hand washing stations installed and enforcement of the wearing of face masks to conform to the public health guidelines is ongoing.

6. Additionally, fumigation, disinfection and sanitization exercises have continually been carried out in conjunction with the Ministry of Health, the latest having been undertaken on Friday, 26th June 2020 at the Chamber, committee rooms, all offices, prayer rooms and all common areas. These measures continue to be upheld during this difficult time.

7. In the Speaker's latest directive –

a. If a Member of Parliament or staff has come in contact with a COVID-19 case or suspected case, they are advised to undertake the voluntary testing as responsible citizens. Depending on the results, one is advised to self-isolate and notify the Speaker's Office immediately.

b. Members of Parliament and staff are also encouraged to undertake the voluntary tests.

c. Hon. Members of Parliament are reminded to also encourage their staff including drivers and security officers to undertake the tests and more importantly, to wear face masks whenever in public.

d. All committees are dissuaded from holding physical meetings and instead encouraged to have virtual meetings as practicable as possible. No physical meetings are to be held without complying with the Ministry of Health guidelines and the Speaker's authorization.

Parliamentary Service Commission Welcomes a New Commissioner



Hon. Rachael Ameso taking the oath of office as administered by the Speaker of the National Assembly and Chairperson of the Parliamentary Service Commission Hon. Justin B. Muturi.

Parliament has appointed Hon. Rachael Ameso Amolo as a Commissioner of the Parliamentary Service Commission (PSC). Hon. Ameso was appointed on 25th June, 2020 and her appointment gazetted on 26th June, 2020.

Commissioner Ameso took her oath of office on 1st July, 2020, at a ceremony presided over by the Speaker of the National Assembly, Hon. Justin B. Muturi who is also the chairperson of PSC. The ceremony which took place at County Hall, Mini Chamber, Parliament Buildings was attended by several Commissioners and senior Parliamentary officials.

Those present during the function were; the Vice Chairperson, Hon. Dr. Naomi Shaban, Hon. Adan Keynan, Hon. Benson Momanyi, Hon. George Khan-iri, Hon. Aaron Cheruiyot, Hon. Samuel Chepkonga, the Clerk of the Senate Mr. Jeremiah Nyegenye, the Clerk of the National Assembly, Mr. Michael Sialai and the Director General Parliamentary Joint Services, Mr. Clement Nyandiere.

The position of female non-MP Member of the PSC fell vacant following the expiry of the term of the immediate former holder of the position, Dr. Lonah Mumelo whose term expired on 17th March, 2020.

Out of a total of 70 applicants for this position, eight candidates were shortlisted as having met the requirements set out in the Constitution and Parliamentary Service Commission Act (2019) and subsequently interviewed. Hon. Commissioner Ameso ranked the highest in the interviews and her name was forwarded to the National Assembly and the Senate for appointment.

The Commissioner, who previously served as the County Member of Parliament for Kakamega County, welcomed her appointment and gave her assurance that she would serve the Commission with dedication. "I am coming to serve the Commission with dedication and to add value to an already brilliant Commission", she said during her speech after the swearing in ceremony.

According to Article 127(2) and (3) of the Constitution, the Parliamentary Service shall consist of; the Speaker of the National Assembly as the Chairperson, a Vice Chairperson elected by the Commission from among its Members, seven members appointed by Parliament, one man and one woman appointed by Parliament from among persons who are experienced in public affairs but are non-Members of Parliament and the Clerk of the Senate as the Secretary of the Commission.

Speaker Muturi meets CAF Officials; pledges House Support Towards Quest for Enhanced County Assemblies' Autonomy



From the right, CAF Vice-chair, Hon. Hon. Florence Mwangangi, The Speaker of the National Assembly, Hon. Justin Muturi, CAF Chair, Hon. Wahome Ndegwa, Tinderet MCA, Kipkurui Chepkwony and CAF CEO, Ms. Judy Oduma.

The Speaker of the National Assembly, Hon. Justin Muturi has pledged the support of the National Assembly towards enhancing the autonomy of the County Assemblies through legislation.

Speaking when he met the leadership of the County Assemblies' Forum (CAF) led by the Chair, Hon. Wahome Ndegwa, Speaker Muturi underscored the role of independence of County Assemblies in the promotion of their effectiveness in overseeing the County Governments, and in ultimately strengthening devolution in Kenya.

"It is prudent that County Assemblies gain political and financial autonomy from the County Executive, which is critical for effective discharge of your Mandate. This will strengthen your oversight role and avert situations where manipulation by the County Executive cripples your ability to execute your mandate", observed Speaker Muturi.

The CAF leadership in a memorandum to the National Assembly had sought among others, the support of the House in the enactment of the County

Ward (Equitable Development) Bill, and in establishing financial autonomy of County Assemblies to facilitate the effective execution of their mandate.

While stressing the need for the County Ward Bill to be enacted into law, the CAF leadership noted that the bill would be key in ensuring that development is achieved equitably across their counties. They cited cases where some areas which are deemed to be unfriendly to the County Governments have been receiving skewed budgetary allocations thus slowing developments.

They also highlighted cases where budgetary allocations with regard to capital investments are heavily concentrated at the County Headquarters, to the chagrin of County Assemblies who according to the law can only alter their County Budgets to the ceiling of 1%.

The County Ward (Equitable Development) Bill, 2018, which mirrors the National Government Constituencies' Development Fund (which is currently implemented under the patron-ship of the Members of the National Assembly) is sponsored by the Senate



Majority Whip, Sen. Irungu Kang'ata. The bill is currently under consideration by the National Assembly after the Senate referred it there for concurrence.

"The County Budget making cycle has become a war point between Governors and County Speakers. While certain county assemblies may pronounce themselves on irreducible minimums with regard to allocations going to roads, health or even water, they are not based on any legal framework and they may be vetoed by Governors without any recourse from the Assemblies", noted Hon. Wahome.

With regard to the financial autonomy of County Assemblies, the Chairman further expressed their difficulties in ensuring certain mandatory operations are met this hindering their effective discharge of duties. They noted that lack of autonomy leaves them at the mercies of County executives, thus compromising their capacity to oversight the executive.

The Senate Committee on Devolution has already made a legislative proposal to amend section 119 of the Public Finance Management Act ,2012, thus guaranteeing county assemblies autonomy from the county executives in their finances, but this requires the concurrence of both Houses to be enacted.

The meeting also deliberated on the proposal by CAF for its entrenchment in law as the National Commission for County Legislatures with operational autonomy and funding from the exchequer, and a proposal for the provision of Pensions for Members of County

Assemblies, both of which require critical support from the National Assembly.

CAF further expressed their reservations with regard to the Impeachment Procedure Bill that introduces procedural safeguards with regard to the removal of County Speakers and Deputy Speakers from office, and which was recently passed by the Houses of Parliament and is awaiting assent.

Meanwhile, Speaker Muturi and CAF leadership noted that there is need for the Independent Electoral and Boundaries Commission (IEBC) to streamline the nomination process to the County Assemblies. In the past, Governors who are largely believed to influence nominations to the country assemblies, have been accused of using these nominees as protégés to undermine the independence of County Speakers and their deputies.

"The process of nomination to County Assemblies is very critical and IEBC ought to streamline it. I am told in some instances the number of nominees is more than half of the elected representatives, ultimately undermining the democratic principle of representation", Speaker Muturi noted.

Hon. Ndegwa who currently serves as the Speaker of the Nyandarua County Assembly was accompanied by Machakos County Assembly Speaker, Hon. Florence Mwangangi, Tinderet MCA Kipkurui Chepkwony and CAF CEO, Ms. Judy Oduma.

House approves nominee for Auditor General after a Successful Vetting Process



Ms. Nancy Janet Kabui Gathungu takes oath as the Auditor General

The Office of the Auditor General finally got an occupant after falling vacant in August 2019. The second Auditor General of the Republic of Kenya, Ms. Nancy Janet Kabui Gathungu was sworn into the Office by the Chief Justice Hon. David Maraga on Friday, 17th July, 2020. This is after she had been vetted by the Departmental Committee on Finance and National Planning and her appointment approved by the National Assembly.

Prior to her appointment, Ms. Gathungu was working as the Director of Audit in the Office of the Auditor General. She had previously worked as the Financial Auditor, Assistant Director of Audit and Deputy Director of Audit in the Office. She also worked at Kenyatta National Hospital as a Chief Internal Auditor and as a Senior Internal Auditor. She began her career journey as the Provincial Schools Auditor for Central Province in the Ministry of Education.

H.E. the President forwarded the name of Ms. Gathungu as the nominee for the position of Audi-

tor-General to the Speaker for approval by the National Assembly pursuant to Article 229(1) of the Constitution on Friday, 19th June, 2020 and the Speaker subsequently referred the name to the Departmental Committee on Finance and National Planning on Tuesday, 23rd June, 2020 to conduct approval hearings pursuant to Standing Order 42.

Consequently, the Clerk of the National Assembly wrote to Ms. Gathungu informing her of her nomination by H.E. the President and requested her to appear for vetting by the Departmental Committee on Finance and National Planning on Friday, 3rd July, 2020. The Clerk also wrote to the Kenya Revenue Authority (KRA), the Higher Education Loans Board (HELB), Ethics and Anti-Corruption Commission (EACC), Office of the Registrar of Political Parties (ORPP) and Directorate of Criminal Investigations (DCI) requesting for the status of the nominee in regards to tax compliance, higher education loan repayment status, leadership and integrity, affiliation to any political party and criminal records. All the five

institutions cleared the nominee.

Further, the Clerk on Wednesday, 24th June, 2020 placed a notification in the print media informing the general public of the intention of the Committee to conduct an approval hearing as provided for by Article 118(1)(a)(b) and (2) of the Constitution and Section 6(4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The notification gave provision for the submission of memoranda on the suitability or otherwise, of the nominee by Tuesday, 30th June, 2020 at 5.00 pm. The Committee received memoranda from civil society groups including Constitution and Reform Education Consortium (CRECO), National Taxpayers Association (NTA), Transparency International Kenya, Africa Centre for Open Governance (AFRICOG), Centre for Enhancing Democracy and Good Governance and Kenyans for Justice challenging the process of appointment of the Auditor-General and the role of the Public Service Commission vis-à-vis the independence of the Office of the Auditor-General.

However, the memoranda were inadmissible because they did not meet the requirements of section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), which provides that a statement contesting the suitability of a candidate to hold an office should be written on oath.

Ms. Gathungu appeared before the Committee on Friday 3rd July, 2020 at 10.00 am for the approval hearing where the Committee examined her suitability based on the criteria set out by the Public Appointments (Parliamentary Approval) Act, 2011. She was interviewed on her academic credentials, relevant experience, knowledge of sector issues as well as leadership and integrity. Based on her performance during the vetting exercise the Committee found that she has wealth of experience to serve as the Auditor-General, having worked in the Office for close to eighteen (18) years and rising through the ranks to the position of Director of Audit. She also demonstrated extensive knowledge in auditing as well as public finance, and met all the minimum qualifications required by Article 229(2) of the Constitution and Section 11 of the Public Audit Act, 2015. She also met the educational requirements for the position. Additionally, she demonstrated tenacity to hold the position from the manner in which she responded to questions posed by Members.

During vetting, Ms. Gathungu informed the Committee that if appointed as the Auditor-General, she would improve service delivery at the Office by

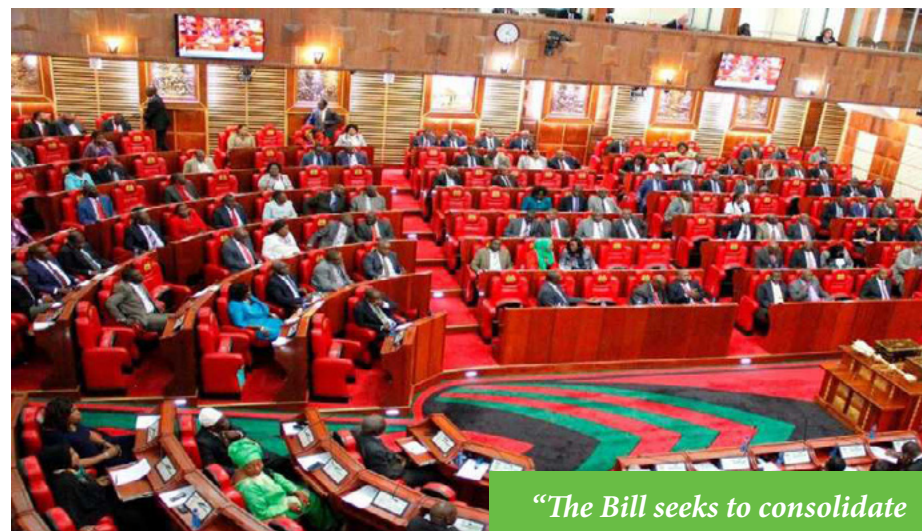
increasing engagement with audit teams in order to identify the challenges that they experience. She further pledged to develop ways of mitigating them so as to improve the quality of auditing. She also undertook to ensure that all the audit queries raised in audit reports relating to governance, compliance, financial accounting among others, are categorized in order to find solutions for them. Additionally, she will work closely with public offices in order to ensure that recommendations in audit reports from Parliament and the Office of the Auditor General are implemented. During her submission to the Committee, she assured the Members that she would encourage the use of e-procurement platforms in order to reduce cases of embezzlement of public funds.

Asked how she would ensure that the Office of the Auditor General submits timely financial reports on accounts of entities, she observed that the entities to be audited have increased tremendously over the years thereby delaying the production of timely audit reports and hence putting pressure on the personnel. She however noted that due to financial constraints, the possibility of hiring more staff may not be an option. As such, she suggested that there is need to develop ways of optimizing performance with the current establishment in order to produce the reports in a timely manner.

Members noted with concern that the Office of the Auditor General, which is one of the most crucial oversight offices in the country had been vacant for close to a year exposing public funds to embezzlement. They noted that it is paramount for the Public Audit Act, 2015 to be amended in order to ensure that there is no vacuum in the Office when the incumbent's term comes to an end. Ms. Gathungu informed the Committee that a committee/taskforce had been set up in the Office of the Auditor General to look at areas in the Act that need to be amended and this would be one of the proposals that they would make.

Having considered the suitability, capacity and integrity of the nominee and pursuant to Article 250(2) of the Constitution, Sections 5 and 11 of the Public Audit Act (No. 34 of 2015) and Section 8(2) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Committee recommended that the National Assembly approves the nomination and subsequent appointment of Ms. Nancy Janet Kabui Gathungu as the Auditor-General. The House approved her nomination on Wednesday, 15th July, 2020 and she was subsequently appointed as the Auditor-General by H.E. the President.

The Referendum Law: A Timely Law for Conduct of Referenda



“The Bill seeks to consolidate the law relating to conduct of referenda, provide for a transparent and fair process of obtaining a clear expression of the will of people, and establish the procedures for the conduct of referenda. The Bill also provides for the referendum committees and establishes a level playing field for the opposers and supporters of a referendum question, provides for equal public funding, limits expenditure in a reasonable manner for the public good, and affords the people an opportunity to make decisions based on information from both points of view.”

A comprehensive law will be in place soon to govern the conduct of referenda. This is if the Referendum (No. 2) Bill, 2020 (National Assembly Bill No. 14 of 2020) sponsored by the Chairperson of the Justice and Legal Affairs Committee (“JLAC Referendum Bill”) is enacted into law by the National Assembly.

The Bill seeks to consolidate the law relating to conduct of referenda, provide for a transparent and fair process of obtaining a clear expression of the will of people, and establish the procedures for the conduct of referenda. The Bill also provides for the referendum committees and establishes a level playing field for the opposers and supporters of a referendum question; provides for equal public funding, limits expenditure in a reasonable manner for the public good, and affords the people an opportunity to make decisions based on information from both points of view.

Although Part V of the Elections Act, 2011 provides for the conduct of referendum, the six provisions are not comprehensive enough hence the Bill.

Conduct of referendum

Part II of the Bill provides for the conduct of referendum. It elucidates the procedure to be followed in holding a referendum to amend the Constitution by

both parliamentary initiative and popular initiative. It provides for the need for participation and inclusivity of people on a Bill to amend the Constitution. It also caters for divergent opinions on a Bill. The Bill provides for national referendum on any issue, other than a referendum to amend the Constitution, and a local referendum by a county government. The local referendum may include local issues such as county laws and petitions; or planning and investment decisions affecting the county for a which a petition has been raised.

The Bill provides that a person intending to campaign for or against the referendum question shall form one national referendum committee and may form one referendum committee in every constituency.

The Bill also provides that a question shall be approved by a referendum if at least twenty per cent of the registered voters in each of at least half of the counties vote in the referendum and the amendment is supported by a simple majority of the citizens voting in the referendum.

Referendum petitions

The Bill also provides for referendum petitions. This applies to petitions that question the validity of a referendum and those that seek a declaration concerning any matter relating to the referendum. A referendum petition shall be heard and determined within six months of the date of lodging the petition. Further, the Bill provides that the conduct, result and validity of a referendum may be challenged by a petition to the High Court.

The election offences provided for in the Election Offences Act apply with necessary modifications to a referendum.

THE BILL IN A SNAPSHOT

Bill's Title: The Referendum (No. 2) Bill, 2020 (National Assembly Bill No. 14 of 2020)

Publication Date: 29th May 2020

First Reading: 18th June 2020

Sponsoring Member: Chairperson, Justice and Legal Affairs Committee

Departmental Committee: Justice and Legal Affairs Committee

Bill due for Second Reading

The Bill was First Read on 18th June 2020 and has been committed to the Justice and Legal Affairs Committee which is considering it and will table its report.

Pursuant to standing order 127(3) of the National Assembly Standing Orders, the Justice and Legal Affairs Committee shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits its report to the National Assembly.

In addition, pursuant to standing order 127(4) of the National Assembly Standing Orders, the Committee is required to submit its report to the House within twenty-one calendar days of the committal of the Bill to the Committee.

Members of the public may submit any comments on the Bill to the Office of the Clerk of the National Assembly, 1st Floor, Main Parliament Buildings, Nairobi, Kenya, through P.O. Box 41842-00100, Nairobi, Kenya or email clerk@parliament.go.ke.

Since the Bill concerns county governments, once it is passed by the House, it will be submitted to the Senate for its consideration.

The Bill is available on the Parliament of Kenya website (www.parliament.go.ke). It is accessible on the following link.

Similar Referendum Bill

There is also a similar Bill— Referendum Bill, 2020 (National Assembly Bill No. 11 of 2020)— sponsored by the Chairperson of the Constitutional Implementation Oversight Committee, Hon. Jeremiah Kioni ("CIOOC Referendum Bill"). The Bill was published on 8th May 2020. It was First Read on 6th June 2020 and has been committed to the Constitutional Implementation Oversight Committee. The Bill is under consideration by the Committee.



Unpackaging the Public Finance Management (Amendment) (No.2) Bill (N.A. Bill No.23 of 2020).



The Public Finance Management (Amendment) (No. 2) Bill (National Assembly Bills No. 23 of 2020) was published on Thursday, 9th July, 2020. Despite the Bill not having been read a First Time as required by the National Assembly Standing Order Number 126, the House in its sitting held on Thursday, 2nd July, 2020 resolved that during the period of Short Recess of the Second Part of the Session, should any Bill be published, the Speaker shall refer the Bill to the relevant Committee pursuant to the provisions of Standing Order 127(3). Subsequently, the Bill was committed to the Departmental Committee on Finance and National Planning and submitted for public participation through newspaper adverts on Monday, 13th July, 2020 before it was read a First Time on Wednesday, 15th July, 2020.

The Bill has five clauses and seeks to amend the Public Finance Management Act, 2012, in order to pro-

vide for guarantees by the Cabinet Secretary for loans advanced to micro, small and medium enterprises (MSMEs). The MSMEs have been identified as pivotal in accelerating economic development, investment as well as creation of employment opportunities. However, most of these enterprises usually struggle with access to credit to boost their investment, partly because of stringent measures put in place by banks such as provision of security, lack of systematic data and clear understanding of the market niche, among other bottlenecks. Therefore, the amendments proposed in the Bill aim at introducing a reprieve to the sector, especially at this time when the sector has been heavily hit by the COVID-19 pandemic. The five clauses of the Bill propose the following amendments:-

Clause 1 provides for the short title of the Bill.

Clause 2 introduces the definition of Medium enterprises as those with annual turnover not exceeding

Kshs. 100 million, employing between 51 and 250 employees, the total assets and financial to be determined by the Cabinet Secretary (the investment in plant and machinery in manufacturing sector does not exceed Kshs. 250 million while the service sector and farming enterprises does not exceed Kshs. 125 million). It references the definitions of Micro and Small enterprises to those in the Micro and Small Enterprises Act, 2012.

Clause 3 proposes amendment to Section 32 of the Act so as to provide for the submission of information, on request, to Parliament by the Cabinet Secretary regarding the credit guarantees given to private borrowers who are MSMEs.

Clause 4 contains the main substance of the policy issue and proposes to amend Section 58 (2)(c) of the Act which provides for the guaranteeing of loans to private borrowers upon provision of sufficient security. The Bill provides relaxed requirements for loans to MSMEs to be guaranteed by the Cabinet Secretary such as; if the borrower is an MSME, is in compliance with the relevant tax laws, is registered by a county government and possesses a valid business permit or trade license and agrees in writing to adhere to the provisions of law and other conditions attendant to the guarantee. It also provides that the guarantee shall be for a portion of the credit within the established credit guarantee scheme and it shall be for partial mitigation of credit default risk. Additionally, the clause provides that regulations shall prescribe the modus operandi of the scheme such as the eligible

institutions for providing credit, eligible enterprises, conditions for credit guarantee, the proportion of security required before the partial guarantee among others.

Clause 5 provides for the submission to Parliament of the report and accompanying details on credit guaranteed to the Micro, Small and Medium Enterprises.

In their report tabled in the House on Tuesday, 28th July, 2020, the Departmental Committee on Finance and National Planning observed that if enacted, the Bill will make it possible for MSMEs to access credit which has been one of the biggest challenges that the sector has been faced with; encourage growth of the MSMEs which will in turn help in the quick revival of the Kenyan economy post COVID-19 as it will increase the amount of tax collected by the government; increase employment opportunities for Kenyans and make it possible for people to remain in employment during and after the COVID-19 pandemic; encourage self employment as opposed to the current scenario where most people scramble for the few employment opportunities; encourage Kenyans to think outside the box which will in turn encourage local manufacturing that will increase exports from the country and reduce imports; and encourage value addition of raw products and this will raise the value of products exported by the country hence fetch more revenue to the country.

The Bill was read a Second Time on Tuesday, 28th July, 2020, and considered in the Committee Stage and read a Third Time on Thursday, 30th July, 2020.



BUDGET 2020



Upgrading Infrastructure

Creation of "Kazi Mtaani Programme" and Youth Employment

KSH 15 Billion



Improving Education

Hiring of Educators and School Construction

KSH 7.4 Billion



Enhancing Liquidity to Businesses

Supporting Micro, Small and Medium Enterprises

KSH 3 Billion



Improving Health Outcomes

Hiring of healthcare workers and hospital improvements

KSH 1.7 Billion



Reviving Agriculture and Food Security

Assisting small-scale farmers and the flower industry

KSH 7.9 Billion



Rebuilding the Tourism Sector

Supporting tourism businesses, community conservancies, and hiring of 5,500 community scouts

KSH 5 Billion



Taking care of our Environment

Improving flood control, creation of new water infrastructure and tree planting

KSH 2.4 Billion



Buy Kenya, Build Kenya

Purchasing of locally assembled vehicles and credit provisions for manufacturing SMEs

KSH 1.3 Billion



ABOVE: The Cabinet Secretary for National Treasury and Planning, Hon.(Amb)Ukur Yatani and immediate former Chairperson, Budget and Appropriations Committee, Hon. Kimani Ichungwa pose for a photo ahead of the presentation of the Budget Estimates Highlights by the CS.

BELOW: From left, the Immediate former Chairperson, Departmental Committee on Finance and National Planning, Hon. Joseph Limo, Immediate former leader of the Majority Party, Hon. Aden Duale, the Cabinet Secretary for National Treasury and Planning, Hon.(Amb) Ukur Yatani, the Leader of the Minority Party, Hon. John Mbadi and the Clerk of the National Assembly, Mr. Michael Sialai pose for a photo ahead of the presentation of the Budget Estimates Highlights by the CS.



ABOVE: The Immediate former leader of the Majority Party, Hon. Aden Duale and the Leader of the Minority Party, Hon. John Mbadi receive the the Cabinet Secretary for National Treasury and Planning, Hon.(Amb)Ukur Yatani.

BELOW: Hon. Yatani Presents the highlights of the Budget Estimates to the National Assembly



Advancing Nairobi Addis Relations - Speaker Muturi Hosts the Ethiopian Envoy



The Speaker of the National Assembly Hon. Justin Muturi meets the Ethiopian Ambassador to Kenya, H.E Meles Alem. The Speaker and Ambassador Alem who was making his maiden visit to the National Assembly discussed regional matters and the need to establish cooperation between their legislatures.



Parliamentary Parties barred from discharging independent Members from Committees

On Tuesday, June 23, 2020, the Speaker of the National Assembly guided that a parliamentary party or coalition of parties cannot discharge an independent Member or a Member who does not belong to a parliamentary party from a Select Committee of the House. This guidance was necessitated by a request by the Member for Ugenya, the Hon. David Ochieng, following a notice of intention of discharge from the Departmental Committee on Health by the Minority Party Whip. In his contention, the Member noted that as a member of the Movement for Democracy & Growth Party (MDG), the Minority Party did not have the control over his participation in parliamentary work, including membership to Committees, as the MDG is not a member of the NASA Coalition (Minority Party).

In his ruling, the Speaker observed that the practice of placing political parties at the centre of running parliamentary business has a history stretching back to the 1990's during the clamour for the re-introduction of multiparty democracy that saw the emergence of numerous political parties. As a result, political parties took centre stage in the running of the affairs of the House, including composition of the few Committees that were in place at the time. Indeed, the focus of the legislative and oversight functions of the House shifted from the plenary of the House to the Committees.

At that time, the Rules of Procedure which had been amended just before the 1992 elections only contemplated two factions in the House, that is, the Ruling Party and the Official Opposition Party.

While appreciating the multi-party structure of Kenya's political landscape, the Speaker reiterated the need for the inclusion of all in parliamentary business as a constitutional requirement. In this regard,

the Speaker noted that a Member belonging to a party other than a parliamentary party is equally entitled to serve in a Committee of the House and that pursuant to the Standing Orders, the composition of committees ought to reflect the political composition of the Legislature. The Speaker further observed that it would be incorrect to assume that the Constitution or the Standing Orders envisaged that Committees are a preserve of parliamentary parties, to the exclusion of the Independent Members and Members belonging to small parties.

Consequently, the Speaker ruled that neither the Minority Party, nor the Majority Party may exercise the discharge powers under Standing Order 176 on an independent Member or a Member not belonging to a parliamentary party.

In view of the continued misinterpretation of the Standing Orders by assuming that all committees' slots are reserved for the exclusive distribution to the membership of parliamentary parties, thereby alienating the Independent Members and Members belonging to parties other than parliamentary parties, the Speaker directed that the Committee on Selection in consultation with the Procedure & House Rules Committee devise a criteria for nomination of Members to Committees that guarantees that Members who belong to parties other than Parliamentary parties and Independent Members also get their rightful share Committee slots. This would include proposals for registration of desired committee(s) and the use of lots as a means of determining how to place such Members in their entitled slots. The Procedure & House Rules Committee is also to propose the manner of re-allocations of the slots in Committees, corporately reserved for Independent Members and parties other than parliamentary parties.

Speaker issues Guidance on Procedure for the Revocation of the Appointment of a Member of the Parliamentary Service Commission (PSC)



The Speaker of the National Assembly, Hon. Justin Muturi has guided the House on the procedure for the removal of a member of the Parliamentary Service Commission noting the distinct differences with that of other constitutional Commissions. The guidance was precipitated by a request for direction from the Member for Rarieda, the Hon. Dr. Otiende Amollo, MP.

The Member for Rarieda had on June 02, 2020, sought guidance from the Speaker on, among other things, the applicable constitutional provisions with regard to the removal of a Member of the Parliamentary Service Commission (PSC) noting that the question of the procedure for removal from office of a Member PSC is one that touches on the Constitution, the Parliamentary Service Act, 2019, and the

Standing Orders and therefore requires clear demarcation. Specifically, the Member sought the guidance of the Speaker on whether the removal of a Member of Parliament, or the non-Member of Parliament from the office of a Member of the Parliamentary Service Commission ought to be proceeded with, in accordance with the provisions of Article 251 of the Constitution as read together with Standing Order 230 or otherwise as provided for in section 10 of the Parliamentary Service Act, 2019.

In his Communication to the House, the Speaker observed that, as set out in Article 127 of the Constitution, the Parliamentary Service Commission is slightly different from the other constitutional commissions and departs from the general provisions of Chapter Fifteen of the Constitution in various specific aspects including the following—

1. Membership - the Parliamentary Service Commission comprises of ten (10) Members whereas the general composition of a constitutional commission is a minimum of three (3) Members and a maximum of nine (9) Members;

2. Appointment process – while the general rule on the process of appointment of all members of Commissions and holders of independent offices is by an advertisement, conduct of interviews, forwarding of recommendations for nomination and eventually appointment by the President with the approval of the National Assembly alone, the appointment of members of the Parliamentary Service Commission starts and ends in Parliament, with the appointment being made by the two Houses;

3. Term of service – whereas Article 251 of the Constitution prescribes a standard single six-year term for Members of other Commissions and holders of Independent Offices and a general procedure for removal from office that may be initiated by any person, Article 127 of the Constitution ties the term of office of a Member of the Parliamentary Service Commission to the term of Parliament unless either a person ceases to be a Member of Parliament or upon the re-

vocation of their appointment by Parliament for both the member and non-member of parliament.

4. Composition – unlike other constitutional commissions, the membership of the Parliamentary Service Commission is largely drawn from Members of Parliament and indeed out of the ten Members of the Commission, eight are Members of the Parliament;

5. Political parties involvement – the Parliamentary Service Commission and the Commission on Revenue Allocation are the only constitutional commissions in which Political Parties largely nominate the membership;

6. Eligibility for re-appointment – whereas in the case of all other Commissions, members are not eligible for re-appointment upon serving for a term of six years, in the case of the Parliamentary Service Commission, once a term of a Member of Parliament ends, if the Member is re-elected, such a Member is still eligible for re-appointment to the Commission subject to a fresh process of re-appointment being undertaken by the Houses. This was the case in respect of the Member for Eldas Constituency, the Hon. Adan Keynan, MP, who is now serving his third consecutive term in the Commission;

7. Secretary to the Commission – unlike other Commissions where the secretary is also the chief executive officer, under Article 250(12) of the Constitution, in the case of the Parliamentary Service Commission, under Article 127(3), the authority of the Clerk of the Senate is limited to being the Secretary to the Commission; and,

8. Removal process – whereas for all other constitutional commissions, Article 251 on the removal process applies to all members of a Commission and does not distinguish between a Member and a Chairperson, the Constitution provides specific procedures for the removal of the Speaker of the National Assembly who serves as the Chairperson of the Parliamentary Service Commission and the Chief Justice who is the Chairperson of the Judicial Service Commission at Articles 106(2)(c) and 168, respectively.

Consequently, the Speaker guided that –

1. The procedure for the removal of a member of the Parliamentary Service Commission is as provided for in section 10 of the Parliamentary Service Act, 2019 which is by a Motion proposed by Member of Parliament on any of the grounds specified;

2. The motion for removal of a Member of the Parliamentary Service Commission can be filed in either House of Parliament. However, for good order and in keeping with bicameral practice, a Motion for removal of a Commissioner ought to start from the House that the Commissioner serves as a Member. Such sequence, would neatly sit with the provisions of Standing Order 257 regarding the process of consent to a request for appearance of a Member of one House before the other House or before a Committee of the other House;

3. Any person may petition a Member of Parliament to initiate the process of removal of a Member of the Parliamentary Service Commission as envisaged under section 10 of the Parliamentary Service Act, 2019;

4. Additionally, the initiation of the progress of revocation of the appointment of a Member of the Parliamentary Commission is not the sole prerogative of a parliamentary party or coalition of parties which nominated the member for appointment. Any Member, whether from the same party of coalition of parties or not can initiate the process;

5. For purposes of admissibility, a Notice of Motion for the revocation of the appointment of a member of the Parliamentary Service Commission must meet the thresholds set by the Courts, the Standing Orders and House precedents regarding what constitutes gross violation of the Constitution or gross misconduct under the Constitution. This includes the requirement for the Notice of Motion to —

(a) indicate the grounds which the member of the commission is in breach;

(b) state with a degree of precision the provisions of the Constitution or any other written law that have been alleged to be violated, where the specified grounds relate to violation of the Constitution or any other law; and,

(c) indicate the nexus between the member and the alleged grounds on which revocation or removal is sought.

6. The removal process under section 10 of the Parliamentary Service Act, 2019 must also be guided by the provisions of Article 47 of the Constitution and the Fair Administrative Action Act, 2015.

Court Dismisses petition on the election of Hon. Justin Muturi in 2017 as Speaker



The High Court has dismissed with costs a petition challenging the election of Speaker of the National Assembly Hon. Justin Muturi.

In a ruling delivered electronically on 30th July, 2020 by Justice Makau, the Court upheld the respondents' preliminary objections challenging its jurisdictions and dismissed the petition with costs to the respondents. He ruled that the Court lacked jurisdiction to entertain the petitioner's prayers and ordered that the Costs of the petition to the National Assembly, Speaker Justin Muturi and the Clerk of the National Assembly, as respondents be borne by the petitioner.

The petitioner, Dr. Noah Migudo Winja had challenged the election of Hon. Justin Muturi as the Speaker of the National Assembly of the 12th Parliament of Kenya. In his petition, Mr. Winja requested the High Court to nullify the elections claiming that 'the elections had been conducted without the required quorum thereby rendering it outside the provisions of the Constitution and the Standing Orders'. He had further requested that the High Court orders the Clerk of the National Assembly to declare him as the only candidate who was duly qualified for the said elections, thereby naming him the Speaker of the National Assembly of the 12th Parliament.

Mr. Winja had named Speaker Muturi, the National Assembly, the Attorney General and the Clerk of the National Assembly, Mr. Michael Sialai as the respondents.

On their part, the respondents argued that the cited Francis Ole Kaparo case is in *Paris materia* with the petition and lacked jurisdiction because under the Constitution and the Standing Orders of the National Assembly, the election of the Speaker of the National Assembly "is a matter to do with internal arrangements of Parliament, adding that the doctrine of Separation of Powers demands that the Courts do not interfere with such arrangements".

Further, the respondents submitted that actions taken by the Clerk of the National Assembly in his capacity as the Returning Officer of the said elections, are done by him in the discharge of his functions as the Returning Officer of the said elections, and which actions the Court lacks jurisdiction to overturn. They also argued that Courts are required to show restraint to the independence of the legislature, more so when it comes to questioning Parliamentary procedures as long as they do not breach the Constitution or are not in excess of their mandate.

With the petition dismissed, the Court seems to have set an important principle on matters challenging the election of Speakers of Houses of Parliament. The ruling now underscores the fact that under the Constitution and the Standing Orders of the National Assembly, the election of Speaker of any House of Parliament "is a matter to do with internal arrangements of Parliament with the doctrine of Separation of Powers demands, they are not to be interfered with.

House Approves Pension Plan for Former Lawmakers



The Parliamentary Pensions (Amendment) Bill (National Assembly Bills No. 45 of 2019) was sponsored by the Leader of the Minority Party, Hon. (CPA) John Ng'ong'o Mbadi, EGH, MP and published on 21st June, 2019. The Bill was read a First Time on Wednesday, 3rd July, 2019 pursuant to Standing Order 127.

The principal object of the Bill is to amend the Parliamentary Pensions Act, Cap. 196. It proposes to raise the amount of pension due to former Members of Parliament who served between 1st July, 1984 and 1st January, 2001 to a minimum sum of Kenya Shillings one hundred thousand. This is in light of the fact that despite serving the nation, some former Members of Parliament are languishing in poverty and there is need to take care of their welfare.

Clause 1 of the Bill provides for the short title of the Bill while Clause 2 provides for the amendment to

section 8 of the Principal Act to provide that a former Member of Parliament who, having served in Parliament between 1st July, 1984 and 1st January, 2001 and is entitled to pension under this section and whose monthly pension amounts to less than one hundred thousand shillings, shall be entitled to a monthly pension of one hundred thousand shillings.

These changes are in line with the recommendations of the Akiwumi Tribunal which was appointed in January 2009 by the Parliamentary Service Commission to review the terms and conditions of service of the Members and employees of Parliament. The Tribunal submitted its report on 12th November, 2009 in which one of its recommendations was that the five hundred former Members of Parliament (whose number is currently about three hundred and seventy) be paid the equivalent of one thousand dollars each as living pension with effect from 1st July, 2010.

The Parliamentary Service Commission adopted the

report in June 2010 and resolved that any of the said former Members of Parliament earning a monthly pension of less than one hundred thousand shillings should be paid a monthly pension of one hundred thousand shillings.

In processing the Bill, the Departmental Committee on Finance and National Planning established that:-

1. The Akiwumi Tribunal recommended enhanced pension, by way of improved terms and conditions of service for MPs and employees of Parliament and living pension of Kshs. 100,000 per month for former MPs who served from 1984 upwards;

2. in 1999, an amendment was made to the Parliamentary Pensions Act, Cap. 196 where the provisions of Section 8 of the Act were amended setting the period applicable for pensions to one term. However, a subsequent amendment was done through a Statute Law (Miscellaneous Amendments) Act (No. 2) of 2002 effectively increasing the period to two terms. This meant that the former MPs who would have been eligible for pension having served for one term were locked out. Following this amendment, the affected former MPs went to Court and the matter was ruled that Parliament had acted ultra vires by denying the former legislators what was rightfully granted to them through the Justice Akiwumi Tribunal. The ruling was however never implemented;

3. in 2002, a tribunal headed by Justice Cockar recommended ex-gratia payment of Kenya Shillings five hundred thousand to one million. This amount was expected to be paid to all former MPs. However, only those that served between the period of 1963 to 1983 were paid ex-gratia since at that time there was no pension. Those that served between 1984 to 2001 were left out;

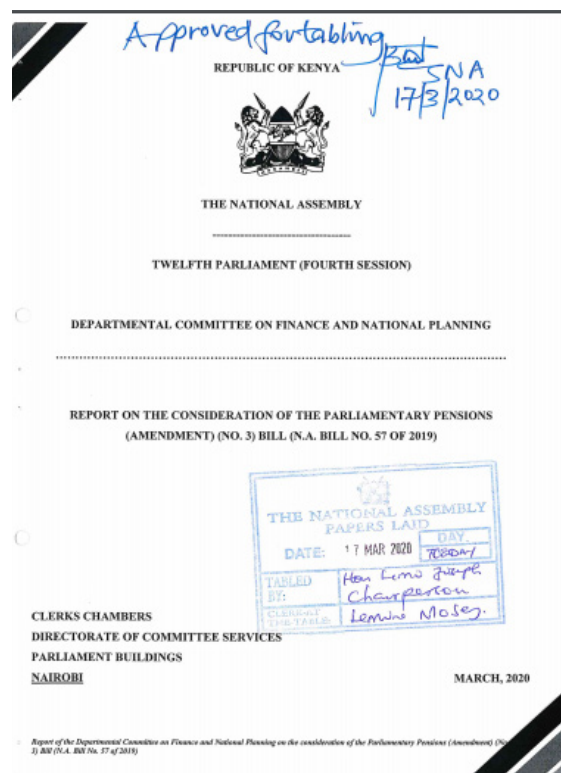
4. Former Parliamentarians Association of Kenya (FOPAK) petitioned Parliament in 2016 to implement the enhanced living pension as recommended by the Akiwumi Tribunal.

They also proposed that the minimum pensionable age be reduced to forty (40) years to take care of MPs who serve at a young age;

5. Members who had served in the 7th Parliament earn a pension of between KSh. 2000 and Kshs. 8,000 and therefore most of them are living in deplorable conditions and some had passed on due to inability to pay their medical bills; and

6. The figure of Kshs. 100,000 had been arrived at from a recommendation made by the Commonwealth Parliamentary Association in 2009 that former MPs from Parliaments in the Association should be paid a minimum of \$1000.

The Bill was read a Second Time on Tuesday, 12th November, 2019 and considered in the Committee Stage and read a Third Time on Wednesday, 5th August, 2020. The Bill now awaits assent from the President.



House leadership as of July 2020



The Hon. Justin B. Muturi, EGH, M.P.
Speaker of The National Assembly

The Hon. Moses Cheboi, M.P.
Deputy Speaker



The Hon. (Dr.) Amos Kimunya, EGH, M.P.
Leader of the Majority Party



The Hon. John Mbadi, M.P.
Leader of the Minority Party

Hon. Jimmy Angwenyi, MP
Deputy Leader of Majority Party



Hon. Robert Mbui, MP
Deputy Leader of the Minority Party



Hon. Emmanuel Wangwe
Majority Whip



Hon. Richard Maoka Maore
Deputy Majority Whip



Hon. Junet Sheikh Nuh
Minority Party Whip



Hon. (Dr.) Eseli Simiyu
Deputy Majority Party Whip

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1. The Hon. Moses Cheboi, M.P. - Deputy Speaker / Chairperson



Speaker Muturi Congratulates the CPA Secretary General-Elect



New Secretary-General of the Commonwealth Parliamentary Association (CPA) appointed.



The Speaker of the National Assembly, Hon. Justin Muturi, has sent a congratulatory message to the Commonwealth Parliamentary Association Secretary General-Elect, Mr. Stephen Twigg, following his nomination to the position by the Executive Committee of the Commonwealth Parliamentary Association (CPA).

In his congratulatory message, Speaker Muturi noted that Mr. Twigg had led an illustrious career as a legislator and thus would bring with him invaluable experience to the association.

"I wish to take this earliest opportunity to send my hearty congratulations to Mr. Twigg following this appointment. I am delighted that the Secretary-General elect has not only led an illustrious career as a legislator, but has also been actively involved in Parliamentary strengthening programs. This invaluable experience will therefore come in handy in furthering the work of the Association and deepening the Commonwealth's commitment to the highest standards of democratic governance across the Commonwealth Community", Speaker Muturi noted.

Speaker Muturi who is the current chairman of Executive Committee of the CPA, Africa Region, pledged the region's support to the Secretary General-Elect.

"On behalf of the CPA Africa Region, we welcome the appointment of Mr. Twigg and look forward to working with him in the furtherance of our reform agenda for the betterment of our association. Mr. Twigg has our unreserved support as he prepares to assume office later in August", submitted Speaker Muturi.

The CPA Executive Committee approved the new CPA Secretary-General Elect, acting in the capacity of the General Assembly, as mandated by the 64th General Assembly held in Kampala, Uganda on 28 September 2019. The CPA Executive Committee is made up of representatives from the nine regions of the CPA: Africa; Asia; Australia; British Islands and Mediterranean; Canada; Caribbean, Americas and Atlantic; India; Pacific; South-East Asia.

The Chairperson of the CPA Executive Committee and Deputy Speaker of the National Assembly of Cameroon, Hon. Emilia Monjowa Lifaka, MP, said: "On behalf of the Commonwealth Parliamentary Association, we welcome the appointment of the new CPA Secretary-General Elect, and the CPA Executive Committee and CPA Headquarters Secretariat look forward to working with Mr Stephen Twigg to further the work of the Association in parliamentary strengthening across the Commonwealth. His

long-standing parliamentary experience will be valuable to the Association."

The new CPA Secretary-General Elect is expected to take up his appointment from 1 August 2020, for a fixed term of four years. Mr. Twigg is a former UK Parliamentarian, who was elected to the Parliament of the United Kingdom as a Member of Parliament from 1997 to 2005 (Enfield Southgate) and from 2010 to 2019 (Liverpool West Derby). During his parliamentary career, he held several senior positions including Chairperson of the International Development Select Committee, Minister for Schools and a range of Shadow Front Bench roles.

The Speaker also thanked the Acting Secretary General, Mr. Jarvis Matiyas for his service and commitment during the period the association did not have a substantive office holder.

Since September 2019, Mr Jarvis Matiya has been the Acting CPA Secretary-General and Director of Operations, a position that he will continue to hold

until the new CPA Secretary-General Elect takes up his new position from 1 August 2020. The position was previously held by Mr. Karimulla Akbar Khan a UK/Guyanese lawyer who was appointed during the 61st General Assembly of the Commonwealth Parliamentary Association (CPA) in 2015, but took office on January 1, 2016 serving through 2019.

The CPA, founded in 1911, is a membership association and parliamentary wing of the Commonwealth, which brings together Commonwealth Parliamentarians and parliamentary staff, who are united by a community of interest, respect for the rule of law and individual rights and freedoms, and by the pursuit of the positive ideals of parliamentary democracy. The CPA membership is made up of CPA Branches in 180 Commonwealth Parliaments and Legislatures at national, state, provincial and territorial levels and it offers a vast opportunity for Parliamentarians and parliamentary staff to collaborate on issues of mutual interest and to share good practice.

Congratulations Stephen Twigg



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