



Approved for tabling.
SNA
6/6/23

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN
RELATIONS

REPORT ON THE APPROVAL HEARING OF MR. NOORDIN MOHAMMED HAJI, CBS,
OGW, THE NOMINEE FOR APPOINTMENT AS DIRECTOR-GENERAL OF THE NATIONAL
INTELLIGENCE SERVICE.

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 JUN 2023	DAY: Tuesday
TABLED BY:	Hon. Nelson Koech (Chairperson, Committee on Defence, Intelligence and Foreign Relations)
CLERK-AT THE TABLE:	Inzogu Mwale

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI.

JUNE, 2023

TABLE OF CONTENTS

.....	1
LIST OF ABBREVIATIONS AND ACRONYMS	4
LIST OF ANNEXURES	5
CHAIRPERSON’S FOREWORD	6
CHAPTER ONE	8
1 PREFACE	8
1.1 Establishment and Mandate of the Committee.....	8
1.2 Committee Subjects.....	8
1.3 Committee Membership.....	9
1.4 Committee Secretariat.....	10
CHAPTER TWO	11
2 BACKGROUND INFORMATION	11
2.1 Legal Framework.....	11
2.2 Message from H.E. the President.....	14
2.3 Speaker’s Communication and Referral to the Committee.....	15
2.4 Notification to the Public.....	15
2.5 Analysis of Memoranda Received.....	15
2.6 Notification to the Nominee.....	20
2.7 Clearance Requirements.....	20
2.8 Committee proceedings.....	21
CHAPTER THREE	22
3 APPROVAL HEARING	22
3.1 Submissions by Mr. Noordin Mohamed Haji.....	22
CHAPTER FOUR	31
4 OBSERVATIONS AND FINDINGS	31
CHAPTER FIVE	33
5 RECOMMENDATION	33

LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Attorney General
AGOA	-	African Growth and Opportunity Act
ANC	-	Amani National Congress
APA	-	Africa Prosecutors Association
DCI	-	Directorate of Criminal Investigations
DG	-	Director General
DPP	-	Director of Public Prosecutions
EAAP	-	East Africa Association of Prosecutors
EACC	-	Ethics and Anti-corruption Commission
HELB	-	Higher Education Loans Board
IAP	-	International Association of Prosecutors
IGAD	-	Intergovernmental Authority on Development
IPOA	-	Independent Policing Oversight Authority
KRA	-	Kenya Revenue Authority
LLM	-	Masters in Law
MDAs	-	Ministries, Departments and Agencies
NIS	-	National Intelligence Service
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecution
ORPP	-	Office of the Registrar of Political Parties
PAPAA	-	Public Appointment (Parliamentary Approval) Act
UDA	-	United Democratic Alliance
UNEP	-	United Nations Environment Programme
WDM-K	-	Wiper Democratic Movement-Kenya

LIST OF ANNEXURES

- Annexure 1: Signed List of Members who attended the Sitting which considered and adopted the Report
- Annexure 2: Minutes of Sittings of the Committee
- Annexure 3: Letter of notification from H.E. the President nominating Mr. Noordin Haji, CBS for appointment as Director-General of the National Intelligence Service
- Annexure 4: Advertisement notifying the public of the approval hearings
- Annexure 5: Letters from the Clerk of the National Assembly inviting the nominee for the approval hearing
- Annexure 6: Letters from the Clerk of the National Assembly to KRA, EACC, DCI, HELB and ORPP requesting for information on the nominee
- Annexure 7: Letters of clearance from EACC, KRA, DCI, ORPP and HELB
- Annexure 8: Nominee's Curriculum Vitae
- Annexure 9: Nominee's Certificates and Testimonials
- Annexure 10: Memoranda contesting the suitability of the Nominee
- Annexure 11: Nominee's Replying Affidavits to Memoranda contesting his suitability

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Defence, Intelligence and Foreign Relations during the approval hearing of **Mr. Noordin Mohammed Haji, CBS, OGW** nominee for appointment as Director-General of the National Intelligence Service on Tuesday, 30th May 2023.

Through a letter dated **18th May 2023**, H.E. the President notified the National Assembly of the nomination of Mr. Noordin Haji as Director-General of the National Intelligence Service. The Hon Speaker vide a communication made on **Friday 19th May 2023** conveyed to the Members of the National Assembly the Message from H.E. the President. The Speaker subsequently referred the nominees' curriculum vitae, and testimonials to the Departmental Committee on Defence, Intelligence and Foreign Relations for approval hearings. While referring the matter to the Committee, the Speaker directed that the Committee undertakes the vetting exercise in accordance with the Public Appointments Parliamentary Approval Act (No. 33 of 2011).

In compliance with Article 118 of the Constitution and Section 6(4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Clerk of the National Assembly placed an advertisement in the print media on **Saturday, 20th May 2023** informing the public of the nomination, date, time and place of the approval hearing. He also invited the public to submit memoranda by way of written statements on oath (affidavit) on the suitability of the nominee in conformity with Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The memoranda were to be received on or before **Monday, 29th May 2023** at 5.00 p.m.

The Committee received twenty-six (26) memoranda on the nominee; four (4) against and twenty-two (22) in favour of the nominee's suitability.

Further, the Clerk of the National Assembly wrote to Kenya Revenue Authority (KRA), Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI), Higher Education Loans Board (HELB) and Office of the Registrar of Political Parties (ORPP) seeking references and background checks relating to the suitability of the nominee and all responded in the affirmative.

The nominee appeared before the Committee on Tuesday, 30th May 2023 at 2.30 p.m. for approval hearing. The Committee examined his suitability based on the criteria set out in Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). In addition, the Committee examined his academic credentials, relevant experience, knowledge of sector issues and on leadership and integrity. The Committee paid due regard to the procedure used to arrive at the nominee; any constitutional or statutory requirements relating to the office of Director-General of the NIS and suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the Agency.

The Committee, having conducted the approval hearing of the nominee, observed that the nominee meets the requirements for appointment as Director-General of the NIS and due process was followed in the nomination process as provided for under Article 242 of the Constitution, Section 7(1) of the National Intelligence Service Act, 2012 and the Public Appointments (Parliamentary Approval Act) (No. 33 of 2011). The Committee therefore recommends that the National Assembly **APPROVES** the nomination of Mr. Noordin Haji, CBS, OGW for appointment as Director-General of the National Intelligence Service.

The Committee registers its appreciation to the Offices of the Speaker and that of the Clerk of the National Assembly for the logistical support extended during the vetting process.

In addition, the Committee thanks the nominee for his cooperation during the vetting process. Finally, the Committee appreciates KRA, EACC, DCI, HELB, and ORPP for providing references and background checks relating to the suitability of the nominees.

I acknowledge and appreciate Members of the Committee for their patience, sacrifice and commitment which enabled the Committee to complete the task within the required timelines.

On behalf of the Departmental Committee on Defence, Intelligence and Foreign Relations, and pursuant to Article 242 of the Constitution, Section 7(1) of the National Intelligence Service Act, 2012 and Section 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and provisions of Standing Orders 45(4) and 199(6), it is my pleasant duty to present the Report of the Committee on the approval hearing of Mr. Noordin Mohammed Yusuf Haji's nomination for appointment as Director-General of the National Intelligence Service.

Hon. Nelson Koech, MP.

Chairperson, Departmental Committee on Defence Intelligence and Foreign Relations

CHAPTER ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Defence Intelligence and Foreign is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** includes, among others, **“to vet and report on all appointments where the Constitution or any other law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments).**

1.2 Committee Subjects

2. In accordance with the Second Schedule of the Standing Orders, the subjects of the Committee are: Defence, intelligence, foreign relations, diplomatic and consular services, international boundaries including territorial waters, international relations, and veteran affairs.
3. In executing its mandate, the Committee oversees the following government Ministries, Departments, and Agencies (MDAs):
 - a) The Ministry of Defence;
 - b) The Ministry of Foreign and Diaspora Affairs;
 - c) The State Department for East African Community Affairs (EAC); and
 - d) The National Intelligence Service.

1.3 Committee Membership

4. The Departmental Committee on Defence, Intelligence, and Foreign Relations was constituted by the House on 27th October 2022 and comprise the following Members:

Chairperson

Hon. Koech Nelson, M.P.

Belgut Constituency

UDA Party

Vice-Chairperson

Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.

Mandera North Constituency

UDM Party

Members

Hon. Wanjira Martha Wangari, M.P.
Gilgil Constituency
UDA Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
UDA Party

Hon. Hassan Abdi Yusuf, MP
Kamkunji Constituency
Jubilee Party

Hon. Kwenya Thuku Zachary, MP
Kinangop Constituency
Jubilee Party

Hon. Odhiambo Millie G. Akoth, MP
Suba North Constituency
ODM Party

Hon. Logova Sloya Clement, MP
Sabatia Constituency
UDA Party

Hon. Kanchory Elijah Memusi, MP
Kajiado Central Constituency
ODM Party

Hon. Ikana Fredrick Lusuli, MP
Shinyalu Constituency
ANC Party

Hon. (Dr.) Kasalu Irene Muthoni, MP
Kitui County
WDM-K

Hon. Mohamed A. Hussein, MP
Lagdera Constituency
ODM Party

Hon. Kirima Moses Nguchine, MP
Imenti Central Constituency
UDA Party

Hon. Teresia Wanjiru Mwangi, MP
Nominated Member
UDA Party

Hon. Luyai Caleb Amisi, MP
Saboti Constituency
ODM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Dennis Mogare Ogechi
First Clerk Assistant/Head of Secretariat

Ms. Clarah Kimeli
Principal Legal Counsel II

Ms. Winfred Kambua Kilonzo
Clerk Assistant III

Dr. Donald Manyala, PhD
Research Officer I

Mr. Edwin Machuki
Fiscal Analyst III

Ms. Roselyne Ndegi
Senior Serjeant-at-Arms

Ms. Rhoda Muchori
Hansard Reporter III

Mr. Murimi Mwangi
Media Relations Officer III

Mr. John Ng'ang'a
Audio Recording Officer

CHAPTER TWO

2 BACKGROUND INFORMATION

2.1 Legal Framework

a) Establishment of the Office of Director General, National Intelligence Service

6. Article 242 of the Constitution establishes the National Intelligence Service and provides that:
 - (1) There is established the National Intelligence Service.
 - (2) The National Intelligence Service—
 - (a) is responsible for security intelligence and counter intelligence to enhance national security in accordance with this Constitution; and
 - (b) performs any other functions prescribed by national legislation.
7. The National Intelligence Service (NIS) is also designated as one of the National Security Organs pursuant to Article 239(1) of the Constitution. Under Article 239(2), the primary object of the national security organs and security system is to promote and guarantee national security in accordance with the principles mentioned in Article 238(2).
8. The Constitution further provides that in performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not—
 - (a) act in a partisan manner;
 - (b) further any interest of a political party or cause; or
 - (c) prejudice a political interest or political cause that is legitimate under the Constitution.
9. The procedure for appointment and approval of the Director-General of the NIS is laid out under Section 7 of the National Intelligence Service Act (No. 28 of 2012) which provides as follows—
 - (1) *There shall be a Director-General of the Service who shall, with the approval of the National Assembly, be appointed by the President.*
 - (2) *The President shall nominate a person for appointment as the Director-General and submit the name of the nominee to the National Assembly.*
 - (3) *The National Assembly shall, within fourteen days after it first meets after receiving the names of the nominee—*
 - (a) *consider the suitability of the nominee;*
 - (b) *either approve or reject the nominee for appointment; and*
 - (c) *the Speaker shall notify the President of the decision of the National Assembly.*

b) Qualification for appointment as the Director-General

10. Section 8 of the National Intelligence Service Act provides that—
 - (1) *A person is qualified for appointment as the Director-General if the person –*
 - a) *is a citizen of Kenya;*
 - b) *holds a degree from a university recognized in Kenya;*
 - c) *has knowledge and at least fifteen years' experience in intelligence;*

- d) *has knowledge and at least fifteen years' experience in intelligence or national security;*
- e) *has served in a senior management position in the Service or public service for at least ten years; and*
- f) *meets the requirements of Chapter Six of the Constitution.*

(2) *A person is not qualified for appointment as Director-General if that person —*

- a) *is a member of Parliament, a member of a county assembly, a governor or a deputy governor;*
- b) *has, in the immediate preceding period of five years, served as a Member of Parliament, a member of a county assembly, a governor, a deputy governor, a trade union official or held an office in a political party;*
- c) *holds dual citizenship;*
- d) *has been convicted of a criminal offence and has been sentenced to imprisonment for a term exceeding six months without an option of a fine;*
- e) *has previously been removed from office for contravening the provisions of the Constitution or any other written law; or*
- f) *is an undischarged bankrupt.*

c) Functions and powers of the Director-General of the National Intelligence Service

11. Section 9 of the National Intelligence Service provides that:

(1) *The Director-General shall —*

- (a) *be responsible for the overall, management and administration of the Service;*
- (b) *be responsible for the overall operational control of the Service;*
- (c) *be the principal advisor to the President and Government on national security based on security intelligence and counter intelligence to enhance national security;*
- (d) *report to the President, the National Security Council and the Cabinet Secretary on threats and potential threats to national security and national interests as is appropriate;*
- (e) *take all necessary steps to ensure that the actions of the Service are limited to what is necessary for the proper performance of its functions under the Constitution, this Act or any other written law and that no information is gathered or disclosed by the Service except in so far as may be necessary for the proper performance of its functions;*
- (f) *ensure that the Service is not, in the performance of its functions, influenced by considerations not relevant to such functions and that no act is performed that could give rise to any reasonable suspicion that the Service is concerned in furthering, protecting or undermining the interests of any person, particular section of the population or of any political party or other organization in Kenya;*
- (g) *as far as is reasonably practicable, take steps to ensure that classified information, intelligence collection methods, Service operations, sources of information and identity of members of the Service are protected from disclosure otherwise than in the strict performance of the functions of the Service under the Constitution and this Act;*
- (h) *participate in the formulation of national intelligence policy and strategy;*

- (i) *make recommendations to the Cabinet Secretary on the formulation of the policy and implement the national intelligence policy and strategy;*
- (j) *ensure effective utilization of resources as required by Article 201 of the Constitution;*
- (k) *undertake education, training and development of members of the Service;*
- (l) *oversee the development of mechanisms to ensure that members of the Service discharge their functions and exercise of their powers in accordance with the Constitution, this Act and any other written law;*
- (m) *administer, control and manage the Service as a disciplined civilian service;*
- (n) *put in place mechanisms, steps and systems —*
 - (i) *to ensure that the members of the Service are not unduly influenced in the performance of the functions of the Service;*
 - (ii) *to ensure that the Service is impartial in the execution of its functions;*
 - (iii) *to prevent disclosure of the operations of the Service;*
 - (iv) *to prevent disclosure of classified information;*
 - (v) *to protect the identity of sources of information to the Service;*
 - (vi) *to protect the identity of members of the Service;*
 - (vii) *to prevent unauthorized access to the premises of the Service; and*
 - (viii) *to prevent interference with any installations of the Service; and*
- (o) *perform any other lawful function as may be assigned by the President or the Cabinet Secretary or any other written law.*

- (2) *The Director-General shall have all the powers necessary or expedient for the performance of his or her functions under the Constitution, this Act or any other written law.*
- (3) *The Director-General may, in writing, delegate any power or assign any function conferred upon him or her under this Act or any other written law to a member of the Service.*
- (4) *The delegation of a power or assignment of a function under subsection (3) shall not prevent the Director-General from exercising the power or discharging the function in question in person.*

d) Term of office for the Director General of the National Intelligence Service

12. Section 9 of the National Intelligence Service states that:

- (1) *The Director-General shall hold office for a term of five years and may be eligible for re-appointment for one further term.*
- (2) *Notwithstanding subsection (1) the President shall remove the Director: General from office on the following grounds—*
 - (a) *violation of the Constitution, this Act or any other written law including contravention of Chapter Six;*
 - (b) *gross misconduct whether in the performance of the office holders' functions or otherwise;*
 - (c) *if the Director-General is convicted*

13. In light of this, H.E. the President nominated **Mr Noordin Mohamed Haji, CBS, OGW** for appointment as Director-General for the National Intelligence Service.

14. The Departmental Committee on Defence, Intelligence, and Foreign Relations was assigned the role of conducting the vetting of the aforesaid nominee.

e) The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011)

15. Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) provides for issues that the relevant House of Parliament (in this case, the National Assembly) is supposed to consider in relation to any nomination. These issues include:

- i. the procedure used to arrive at the nominee;
- ii. any constitutional or statutory requirements relating to the office in question; and
- iii. the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which the nomination is being made.

16. Further to the provisions of the National Intelligence Service Act, 2012, the schedule to the PAPAA provides for the criteria to guide the Committee. These are:

- i. Education, employment record;
- ii. Public office, political activities, and affiliations;
- iii. Deferred income or future benefits;
- iv. Sources of income, tax status, and statement of net worth;
- v. Potential conflicts of interest;
- vi. Pro bono or charity work;
- vii. Whether the nominee has been charged in a court of law or convicted; and
- viii. Adverse mention in an investigatory report of a Parliamentary Committee or Commission.

17. On the approval hearing, Section 6 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) provides as follows:

- i. An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity, and background (section 6(7), PAPAA);
- ii. The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate (section 6(8), PAPAA);
- iii. Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated (section 6(9), PAPAA); and
- iv. A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall end (section 6(10), PAPAA).

2.2 Message from H.E. the President

18. H.E. the President on **Thursday 18th May 2023** communicated the name of the nominee for appointment to the position of Director-General of the National Intelligence Service to the Speaker for approval by the National Assembly pursuant to the provisions of section 7 of the National Intelligence Service Act, as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011.

2.3 Speaker's Communication and Referral to the Committee

19. By a resolution made on 15th February, 2023 pursuant to provisions of Standing Orders 41 and 42, the House ordered that during the short and Long recess of the Second Session, upon receipt of any Message from the Senate, or upon receipt of any **name of a person nominated for appointment to a state or public office from the President** or any other office in the National Executive, the Speaker shall forthwith refer such Message to the relevant Committee for consideration, without having to recall the House, and report such fact to the House upon resumption.
20. Therefore, pursuant to the provisions of Standing Order No. 42, and the resolution of the House of 15th February 2023, the Speaker of the National Assembly on **Friday, 19th May 2023** notified all Members of the National Assembly of the message from H.E. the President regarding the nominee for appointment as the Director-General of the National Intelligence Service.
21. In accordance with Standing Order 45(1), the Speaker referred the name of the nominee, his curriculum vitae to the Departmental Committee on Defence Intelligence and Foreign Affairs to conduct approval hearings.
22. While referring the matter to the Committee, the Speaker directed that the Committee undertakes the vetting exercise within twenty-eight (28) days pursuant to Section 8 of the Public Appointments Parliamentary Approval Act (No. 33 of 2011). The Speaker further directed the Clerk of the National Assembly to facilitate the Committee to undertake the exercise and prepare the Message for formal conveyance to the House upon resumption of its Regular Sittings on Tuesday, 6th June, 2023.

2.4 Notification to the Public

23. Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) provides that “any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated”.
24. The Clerk of the National Assembly on **Saturday 20th May 2023** placed a notification in the print media informing the public of the intention of the Committee to conduct approval hearings, 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), which allows public participation in committee proceedings. The notification gave provision for the submission of memoranda, by way of written statements on oath (affidavit) on the suitability or otherwise of the nominee, to be received by **29th May 2023 at 5.00 pm**. The Committee received twenty-six (26) memoranda. Four (4) of the memoranda were contesting the suitability of the nominee while twenty-two (22) were in favour of the suitability of the nominee.

2.5 Analysis of Memoranda Received

25. The Clerk of the National Assembly received the following submissions:

Submissions contesting the suitability of the Nominee

- (1) Submission from a **Mr. "John"** on Saturday, 20th May 2023 6:35 PM EAT through email stating that the nominee was unsuitable to hold such a position because he was coerced to vindicate state officers and is thus incompetent, he failed in integrity did not promote public confidence in his office. However, there was no attachment to the email, implying the submission wasn't on oath thus inadmissible.
- (2) Submission from **Eliud Karanja Matindi**, a resident of Poole, United Kingdom, made on oath. The submission was challenging the nomination of Mr. Noordin Haji on the ground that he failed to protect the independence of the Office of ODPP, disregarding the public interest of administration of justice and failed to avoid abuse of legal process. Alleged violations stated in the memorandum are:
 - a) Discontinued criminal proceedings against Aisha Jumwa Karisa Katana in Criminal Case no. MCAC 6/2020 DPP -vs Aisha Jumwa and 7 others;
 - b) Failure to defend the Constitution of Kenya and the law by refusing to submit a report to the Committee on Appointments notifying the Committee on the pending criminal proceedings against Hon. Aisha Jumwa Karisa Katana;
 - c) The nominee has four pending petitions for removal as ODPP filed at the Public Service Commission;
 - d) Documents in support of the submissions included –
 - (i) A copy of a petition filed in court HCC HC PET E492/2022 challenging his integrity and background;
 - (ii) Grounds of opposition in response to the 5th Respondents grounds of Preliminary objection; and
 - (iii) A copy of the petition filed at the Public Service Commission challenging the nominee's removal.

The Committee observed that the submission was made on oath, therefore admissible. The nominee was served upon with the submissions on the 30th May 2023 in the morning hours where he filed a response to the Clerk of the National Assembly by way of a Replying Affidavit. The nominee stated that the matter of HCC Petition No E492/2022 was pending before court and the same will be coming up for highlighting of submissions on 8th June, 2023.

- (3) Submissions from **Ms. Sheila Masinde**, the Executive Director, Transparency International raising the unsuitability of the nominee on the grounds of-
 - a) Withdrawal of cases by the nominee;
 - b) Failure to file cases only after sufficient evidence to sustain prosecution;
 - c) Withdrawing cases without publicly available and sufficient reasons, notably-
 - (i) Republic -Vs- Geoffrey Mwangi, former CEO NHIF; Withdrawn in January, 2023. Justification by the ODPP was lack of evidence to sustain the charges;
 - (ii) Republic -Vs- Ben Chumo and others; Withdrawn in October, 2022 the ODPP cited that the DCI failed to conduct a proper investigations and avail sufficient evidence that could sustain a conviction;

- (iii) Republic -Vs- Rigathi Gachagua & 9 Others; withdrawn in October 2022 the ODPP the DCI failed to conduct a proper investigations and avail sufficient evidence that could sustain a conviction;
 - (iv) Republic -Vs- Dr. Ken Tarus the ODPP alleged that after reviewing the evidence tendered no offence had been revealed against Mr. Tarus;
 - (v) Republic -Vs- Aisha Jumwa the ODPP alleged insufficient evidence to sustain the prosecution;
 - (vi) Republic -Vs- Mary Wambui the ODPP dropped the case in January 2022 on the tax evasion case citing negotiations with KRA whereas the firearm case was dropped in 2022 and no information supplied for dropping the case;
 - (vii) Republic -Vs- Michael Kamau and 2 others the case was withdrawn in May 2023 for insufficient evidence on the charges after a review of the evidence;
 - (viii) Republic -Vs- Moses Lenolkual an application was made in October 2022 to withdraw the charges for insufficient evidence however the same application was withdrawn by the ODPP office.
- d) The submissions are alleging incompetence, lack of independence in decision-making, unprofessionalism, and gross misconduct. The Submission has been made on oath therefore admissible.
- e) The nominee was served upon with the submissions on 30th May 2023 in the morning hours where he filed a response to the Clerk of the National Assembly by way of a Replying Affidavit.
- f) Regarding the cases withdrawn by the DPP, the nominee stated that prosecution made an application for withdrawal before the court on the cases listed and reasons for withdrawal canvassed before the court who, having been satisfied with the grounds by the ODPP granted the application for withdrawal.
- g) The nominee further stated that he was not under any external pressure in making the application but did so in compliance with the Constitution and the ODPP Act.
- h) Regarding the integrity award by Transparency International, the nominee stated that he has discontinued utilizing the same and will promptly return the same to the Board of Transparency International.
- i) The nominee informed the Committee further that most of the cases filed at the Public Service Commission had been withdrawn, and if there were any pending, due process will be followed.
- (4) Submission by way of a letter from **Stephen Magira** dated 24th May 2023 and received on 25th May 2023. In the letter, it is alleged that the nominee was mentioned adversely in a court judgment in Criminal Case No. 257 of 2017. The Committee, however, observed that the letter was not a statement under oath and therefore not admissible.

2.5.2 Committee's observation on submissions against the nominee's suitability.

26. The Committee made the following observations on the submissions against the suitability of the nominee:

- a) The submission by Mr. Stephen Magira was not under oath and therefore inadmissible.
- b) Regarding the submission by Eliud Karanja Matindi, he had filed a petition in Court HCC 492/2022 challenging the integrity of Noordin Haji in discharging his duties as the Director of Public Prosecution. This matter has not been fully determined by the Court.
- c) Regarding submissions by the Transparency International and Eliud Karanja Matindi-

On the alleged issue of integrity, the Leadership and Integrity Act empowers the Ethics and Anti-Corruption Commission to oversee the implementation and enforcement thereof. It is thus incumbent that any person, who feels that the Act has been contravened, ought to move the relevant bodies charged with the mandate under the Act. The Committee further notes that the Clerk of the National Assembly wrote to the EACC on the 23rd May 2023 to submit on the suitability of the nominee and in turn received a letter from the EACC dated 29th May, 2023 and referenced EACC.7/10/5VOL XXIII (119) indicating that the Commission has not undertaken any investigations pursuant to its mandate nor has it recommended prosecution against Noordin Haji, CBS of ID No. 115 21421, based on records available as at 29th May 2023.

- d) Further, regarding submissions by Transparency International and Eliud Karanja Matindi, the Committee observed that the procedure for removal of the DPP on any ground whatsoever is stated under Article 158 of the Constitution that provides as follows:

(1) The Director of Public Prosecutions may be removed from office only on the grounds of-

- (a) inability to perform the functions of office arising from mental or physical incapacity;*

(b) non-compliance with Chapter Six;

(c) bankruptcy;

(d) incompetence; or

(e) gross misconduct or misbehaviour.

(2) A person desiring the removal of the Director of Public Prosecutions may present a petition to the Public Service Commission which, shall be in writing, setting out the alleged facts constituting the grounds for the removal of the Director.

(3) The Public Service Commission shall consider the petition and, if it is satisfied that it discloses the existence of a ground under clause (1), it shall send the petition to the President.

(4) On receipt and examination of the petition, the President shall, within fourteen days, suspend the Director of Public Prosecutions from office pending action by the President in accordance with clause (5) and shall, acting in accordance with the advice of the Public Service Commission, appoint a tribunal consisting of--

- (a) four members from among persons who hold or have held office as a judge of a superior court, or who are qualified to be appointed as such;
 - (b) one advocate of at least fifteen years' standing nominated by the statutory body responsible for the professional regulation of advocates; and
 - (c) two other persons with experience in public affairs.
- (5) The tribunal shall inquire into the matter expeditiously and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.
- (6) A Director of Public Prosecutions who is suspended from office under clause (4) shall be entitled to half of his or her remuneration until removed from, or reinstated in, office.
- (7) A tribunal appointed under clause (4) shall elect a chairperson from among its members.
- (8) A tribunal appointed under clause (4) shall be responsible for the regulation of its proceedings.

This process that is enshrined in the Constitution has not been exhausted.

2.5.3 Submissions in support of the Nominee

27. The following entities submitted in favour of the nominee; however, the submissions were not given on oath and therefore inadmissible:

- (a) Creative Estate Group;
- (b) Extermination Rebellion;
- (c) Families Against Hit and Run org;
- (d) Consortium of Grass Civil Society Organizations;
- (e) Helping Hands Organization;
- (f) Let's Change the World;
- (g) Manyara Regional Civil Society Network;
- (h) Submissions by Duncan Ondimu, OGW Senior Prosecution Counsel in charge of Narok County;
- (i) Youth Voice Kenya Mathare Social Justice Coalition Secretariat;
- (j) Eastern Africa Association of Prosecutors signed by Hon. Lady Justice Jane Frances;
- (k) Regional Center for Mapping Complex; and
- (l) Public Interest Group

28. The following entities submitted memoranda recommending the nominee's approval to the post he had been nominated to. They were made on oath and therefore admissible: -

- (a) Nakuru County Public Opinion Consultative Initiative;
- (b) Joseph Riungu, Senior Prosecution Counsel Makadara Law Courts;
- (c) Chacha Odera, Advocate of the High Court of Kenya;
- (d) Henry Shitanda Namiti- Patron Bunge la Wananchi;
- (e) Nakuru Residents Association sworn by Eliasif Obiero Magoma;
- (f) Jacinta Nyamosi and 57 other ODPP staff;

29. The following submissions were made on oath; however, they were made out of time-

- (a) Mercy Gatheru, OGW Prosecution Counsel, submitted 30th May, 2023;

- (b) Martin Otieno Obuo, submitted on the 2nd June, 2023;
- (c) Catherine Mwaniki, submitted on the 30th May 2023;
- (d) Peter Kiprop and Alexander Jami Yamina submitted on the 30th May 2023.

2.6 Notification to the Nominee

- 30. The Clerk of the National Assembly on **Monday, 22nd May 2023** through a letter Ref. No. NA/DDC/DIFR/2023 (042) informed the nominee of the nomination by H.E. the President and requested him to appear for vetting by the Departmental Committee on Defence Intelligence and Foreign Affairs on **Tuesday, 30th May 2023** in the Mini Chamber, County Hall, Parliament Buildings at **2.30pm**.
- 31. The Clerk of the National Assembly further requested the nominee to bring with him his clearance certificates from the Kenya Revenue Authority (KRA), the Higher Education Loans Board (HELB), Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI) and Office of the Registrar of Political Parties (ORPP).

2.7 Clearance Requirements

- 32. The Clerk of the National Assembly 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 tax, education loans, integrity, affiliation to political parties and criminal record status of the nominees.
- 33. On matters of ethics and integrity, the Ethics and Anti-Corruption Commission (EACC) vide a letter dated 29th May, 2023 and referenced EACC.7/10/5VOL XXIII (119) indicated that the Commission had not undertaken any investigations pursuant to its mandate nor has it recommended prosecution against Noordin Haji, CBS of ID No. 115 21421, based on records available as at 29th May 2023.
- 34. With regard to tax compliance, the Kenya Revenue Authority (KRA) confirmed vide a letter Ref. No. **KRA/5/1002/5/(9038)**, dated **30th May 2023**, that the nominee was tax compliant.
- 35. The Directorate of Criminal Investigations (DCI) through a letter Ref. No. **DCI/CRO/SEC/6/7/2/A/VOL.XII/144**, dated **26th May 2023** stated that the Police Clearance Certificate for the nominee was genuinely issued and had negative results in both the nominal index and criminal data base of the DCI.
- 36. The Higher Education Loans Board (HELB) vide a letter dated **30th May 2023**, and referenced HELB/RR/112009/V/241 stated that the nominee had was not a beneficiary of the GOK/HELB loan scheme.
- 37. On the issue of party affiliation, pursuant to Article 77(2) of the Constitution, the Office of the Registrar of Political Parties (ORPP), vide Ref. No. **RPP/ORG/34 Vol. VII (5) dated 25th May 2023** indicated that the nominee was not an official nor a member of any political party.

2.8 Committee proceedings

38. The Committee having received the name of the nominee was obligated to conduct approval hearings and make a determination of the nominees' suitability or otherwise within twenty-eight (28) days as provided for in section 8 (1) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011).
39. The Committee held three (3) sittings during which it was briefed on the approval hearing process; examined and reviewed the nominees' Curriculum Vitae, certificates and testimonials; conducted the approval hearing; and finally sat to consider and adopt this Report.

CHAPTER THREE

3 APPROVAL HEARING

40. The Committee conducted an approval hearing for the nominee on **Tuesday, 30th May 2023**. In conducting the hearing, the Committee was guided by, among others, the Constitution, the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), and the National Assembly Standing Orders.
41. The Committee examined the nominees using the guidelines in the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). Particularly, the Committee considered the following in vetting the nominee:
- i. Academic qualifications;
 - ii. Employment record and work experience;
 - iii. Professional association;
 - iv. Public office, political activities, and affiliations;
 - v. Potential conflict of interest;
 - vi. Suitability to the position;
 - vii. Tax compliance;
 - viii. Vision and leadership;
 - ix. Integrity;
 - x. Expectations and Key priorities.

3.1 Submissions by Mr. Noordin Mohamed Haji

42. Mr. Noordin Mohamed Haji appeared before the Committee on Tuesday 30th May, 2023 and was orally interviewed by the Committee. He responded to questions as follows:

Opening Remarks

43. The nominee, in his opening statement, expressed gratitude to the Commander-In-Chief, His Excellency the President Dr. William Samoei Ruto for having confidence in him and nominating him to lead a critical organization at a time the country and the world was facing an increasingly complex and dynamic threats and challenges.
44. The nominee noted that his entire life had been shaped by public service. He was born into a family which saw public service as the greatest embodiment of patriotism which endeavored to inculcate in him a sense of duty to his beloved country, Kenya. The nominee further noted that growing up in that family, success meant carrying forward the great tradition of serving Kenya with integrity, fairness, humility and non-discrimination.
45. While thanking parliament for having confirmed him as the DPP in 2018, the nominee pointed out that the foundation of his strategy for the ODPP rested on three pillars: Recasting, Relearning and Retooling. He noted that “Recasting” centered on the Collaboration, Cooperation, and Coordination approach and it resulted in the establishment of a synergistic relationship within the criminal justice

sector. The “Re-learning” strategy focused on building the technical skills and expertise of staff to enhance the ODPP’s capacity to effectively deliver on its mandate. Lastly, as part of the “Re-tooling” strategy, the nominee prioritized strengthening the infrastructural and operational capacity of the ODPP.

46. The nominee thanked the staff of the ODPP for the privilege to lead them and for the wonderful partnership. He averred that he considered the role of DPP as crucial in according him the requisite preparation for the position he has been nominate to. As the DPP, the nominee noted that he became a consumer of intelligence products and benefited from insights provided by NIS. This provided a 360-degree vantage point in which he could see the opportunities and challenges within the wider National security architecture and more importantly he gained perspectives on how intelligence reports need to be improved and developed with the aim of enhancing their usefulness to better serve the needs of end users.
47. While concluding on the opening remarks, the nominee committed himself, if confirmed, to fulfill his duties with utmost dedication and in strict adherence to the law. He acknowledged that he will be the first Director General from the Post-Independence Generation, and as such he bears a significant responsibility, which extends beyond helping to safeguard the hopes and dreams of an entire generation, of service to the nation as a bridge between the past and the future.

Place of Birth

48. Mr. Haji is a Kenyan citizen, of Identity Card Number 11521421, born on 3rd July 1973.

On Education Background

49. The nominee holds a Master’s degree in National Security Policy with Merit from the Australian National University and another Masters in Law (LLM) from the University of Wales, Cardiff (1997), a Bachelor of Law (LLB) from University of Wales, Cardiff (1996). He did his ‘A’ levels at Bronte College Canada and ‘O’ levels at Greenstead’s High School. He sat for his Kenya Certificate of Primary Education (1987) and Kenya Certificate of Secondary Education (1989) in Moi Primary School and Moi High School Kabarak respectively.

On Work experience/career progression

50. The nominee has worked in various places in his career life in various capacities. He has been the Director of Public Prosecutions since 2018 to date. He had also served as the Deputy Director, Counter Organized Crime, National Intelligence Service (NIS) From (June 2016-2017); the Deputy Director, Administration, and Internal division, (NIS) from January 2015 to June 2016; the Head Somalia Stabilization; the Principal Intelligence Officer- External Division, (NIS) from 2010 to 2013; the Head Countering Violent Extremism Assistant Intelligence Officer Director General’s Coordination Office from 2009 to 2010. Head Legal Department, National Security Intelligence Service (NSIS), Principal legal Advisor to the Director General between 2005 and 2009 Deputy Head Legal Department, National Security Intelligence Service from Dec 2000 to July 2005).

51. Mr. Haji also served as a State Counsel at the Attorney General’s Office attached to the Treaties and Agreements Department from January 2000 to December 2000. He did his Pupillage as an Advocate

at Seth & Wathigo Advocates between October 1998 and January 2000. The nominee taught International Law at Moi University in 1998 and also worked at African Muslim Agency as a field officer from January to September 1993.

On Professional Associations and Affiliations

52. Mr. Haji is a Notary Public of the High Court of Kenya (2011); Commissioner of Oaths of the High Court of Kenya (2011); Registered Certified Public Secretary and Member of the Institute of Certified Secretaries of Kenya (Member No. R/CPSB2537) (2011).
53. Furthermore, the nominee is a Member of the International Association of Prosecutors (IAP) where he was appointed as the Vice President (Representative of the Africa and Indian Ocean Region) from 23rd October 2022 to date. He is also a member of the African Association of Prosecutors (APA) having been nominated as an Executive Committee Member from 2019 to date. Lastly, he is a member of the Eastern Africa Association of Prosecutors (EAAP), and nominated as the President from 2nd March 2023 to date.

On Honors and Awards

54. Mr Haji has been named the ICJ Kenya Jurist of the Year (2021) for commitment in championing Access to Justice. Further, he was awarded the 2020 Public Sector Lawyer of the Year at the Nairobi Legal Awards; the 2019 Star Person of the Year Award by the Star; and the 2019 Distinguished Taxpayers Award.
55. The nominee has also been recognized and awarded the Chief of the Order of the Burning Spear (CBS) in 2018; and the Order of the Grand Warrior (OGW) in 2012.

On Published Writings

56. The nominee published a dissertation on Force Majeure Clauses in English CIF Contracts, in September 1997 and several prosecution guidelines that include: Diversion Guidelines; Plea Bargain Guidelines; Inter-Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing; ODPP Compendium on Electoral Justice; Practice Directions on Cases Right to Privacy for Children and Rights of Subjects to Legal Representation; A Prosecutors guide to children in the criminal justice system; SOP on Investigation and Prosecution of Serious Human Rights Violations Committed by Police Officers; Rapid reference guide on the prosecution of sexual and gender - based violence cases in Kenya; Specimen Charge Sheet under the Preparation of Torture Act, 2017 and Prosecution Rapid Reference Guide; Standard Operating procedures on investigation and prosecution of serious human rights violations committed by police officers; and Police accountability case digest.
57. Furthermore, he has published ODPP transformation and change management manuals that include: Office of Change Management Framework; Leadership Framework: Thought and servant leadership; Code of Conduct and Ethics; Human Resource Policies and Procedures Manual; Succession planning policy; and Stakeholder Engagement Strategy. On Digital Transformation, publications include: *Uadilifu* case management system user manual; and Guidelines on central case intake. Finally, on Prosecution Training Institute he has contributed to the Diploma in Public Prosecutions.

58. Memoranda or policy statements the nominee had prepared or contributed to include: Decision to Charge Guidelines; Excellence Charter: Our Strategic Commitment 2020 – 2023; Report on the 16th Annual General Meeting and Conference of Africa Prosecutors' Association (APA); Report on the 9th Annual General Meeting of the EAAP and Eastern Africa Prosecutors' Conference; The Constitution of the Eastern Africa Association of Prosecutors; Activities undertaken by the Office of the Director of Public Prosecutions, Kenya in support of the International Association of Prosecutors' Objectives; Presentation on the Challenges Faced in Countering Corruption in Africa-Turning Intelligence into Evidence presented on 16th June 2022 at the National Intelligence Service; and a Presentation on International Cooperation Across Different Legal Systems - presented in 2019 at the International Association of Prosecutors Conference held in Buenos Aires, Argentina.

On Deferred Income/Future Benefits; Sources of Income and Statement of Net Worth

59. The nominee submitted that he expects to share an inheritance with his siblings that will form part of his future benefits. Further, he receives an annual salary of Kes. 9 million; Kes. 12 million from family business, and he is worth Kes. 466 million.

On managing potential conflict of interest

60. The nominee submitted that, guided by the provisions of section 24 of the National Intelligence Service Act No. 28 of 2012, Section 16 of the Leadership and Integrity Act No. 19 of 2012, and Rule 10 of the Leadership and Integrity Regulations 2015; the best recourse is to avoid situations where personal interests would conflict or appear to conflict with his official duties. In the case of a potential conflict of interest, he would declare the personal interest in conflict with his official duties in the prescribed form provided under the Leadership and Integrity Regulations, 2015 to the Ethics and Anti-Corruption Commission to give directions on the appropriate action he should take to avoid the same where he would comply with the directions issued and refrain from participating in the matter of conflict.

61. Where an issue of potential conflict of interest is to be discussed in a meeting, the nominee quipped that he would declare the interest at the beginning of the meeting or before the issue is deliberated upon for the same to be recorded in the minutes. He would also register the particulars of the interests as prescribed in the Regulations in the register of conflict of interest and notify the Commission of any changes in the registrable interests.

OTHER ISSUES UNDER CONSIDERATION

62. To examine the suitability or otherwise of the nominee, the Committee posed questions to the nominee in various thematic areas, and his responses are recorded hereunder:

On his vision for NIS if approved

63. The nominee indicated that his vision for NIS was to advance its capabilities to provide timely, relevant and actionable intelligence by building a skilled and capable workforce that is adaptable, resilient, innovative and able to address the ever-evolving threats that we face.

64. The nominee further submitted that his strategic vision will be centered on people's systems and processes. He noted that the vision transcends two different timelines i.e., there is a part of Kenya that lives in the 21st century, where technology can be leveraged upon in collecting intelligence and

securing our national security interests while there are also some parts of the country, especially in the northern part where we are still trapped in the late 20th and early 19th century where there's no infrastructure. In these areas, threats are different which calls for a refocus on how intelligence is collected. Under these areas, human is at the core of intelligence gathering i.e., collection of intelligence that focuses on human intelligence and not collection of intelligence that solely depends on technology. Because in essence, if we're over dependent on technology, we are not going to be able to address various threats that that we face as a country.

65. In addition, the nominee noted that we must recognize that we live in a global world and because of that we are also dependent on technology and other systems that I will leverage to make NIS fit for purpose in carrying out its mandate.

On dropping numerous cases as the DPP, and what he would do differently as the DG of NIS to restore the public confidence on his integrity and independence

66. The nominee submitted that Article 157 (6-11) of the Constitution is very clear on the roles of the powers of the DPP. Specifically, Section 6(c) envisages that the Director of Public Prosecution can withdraw cases where there's a want of evidence or where there's an abuse of processes under the Constitution. Thus, the decision to withdraw the cases was made independently by the nominee and the teams that he works with. The nominee quipped that, for instance, in some of the withdrawn cases affidavits were submitted to say that they produced evidence that was not complete and in some instances some of the evidence was tampered with and even forged.

67. The nominee further indicated that it was important to note that as per Article 157(8) of the Constitution, when the ODPP withdraws a case, it does not do so, solely by himself, but the magistrate and the court plays a role by reviewing the submitted evidence and the reasons for withdrawal that the DPP has tabled before court. Therefore, it is the court that decides whether the DPP can withdraw that case or not. There are certain instances where the courts have refused and ODPP had to go back to the drawing board and continue to prosecute. Therefore, the nominee posed, that withdrawal of cases is not a decision that he makes solely by himself, but it's a decision that it involves other institutions, that oversight the power that has been given to the DPP.

On numerous Petitions filed against him in courts and at the Public Service Commission for his removal from office

68. The nominee averred that there have been several petitions against him as the DPP and all of them have been withdrawn. They were orchestrated for his removal, basically because he was able to say no and being able to be firm that the decision to charge rests with the DPP and not anybody else under the Constitution.

69. The nominee noted that were he to succumb to the pressures and the coercion that was there, perceived or not, then he would have not been able to make independent decisions that he believes he has been able to make even though those cases and the withdrawals would have brought a dent on his career. The bold decisions made was in furtherance of the rule of law and he must safeguard against miscarriage of justice and it doesn't matter who that person is, whether it's a person of interest, whether it is it is a senior citizen in the country or not and that is a decision that he made and he does not regret

making it. The nominee assured that it was the same boldness that he aims to maintain if confirmed as the Director General of the National Intelligence Service.

On the Auditor General's FY 2021/22 audit report, which raised an issue on underutilized office space for the ODPP leased office spaces in Mombasa and Machakos Counties where the ODPP may have incurred an estimated loss of KES.77.89 million.

70. The nominee submitted that the issue raised in the Auditor General's report and the underutilization of office space, came about because of the Covid-19 pandemic. He noted that the office had planned as a whole to collapse some of the offices within these regions and have them centralized because his argument was that as legal officers, if they had adequate transport then they could be able to move up to courts wherever they are. In the process of that they had started acquiring offices that were big enough to allow for accommodation. However, they did not manage to realize that because of the Covid-19 pandemic. Therefore, as a result, when the auditors came in, they felt that the space was lost. However, there was no actual money that was lost. The nominee noted that the space did not belong to him or his family or friends or cronies, for any allegations of misappropriation to hold water. The nominee noted that the offices were properly acquired. He however, apologized if it was felt that the ODPP had lost the money, but because of the pandemic that came in, there were certain issues that were beyond our control.
71. The nominee noted that in the event that the Auditor Generals' report progresses and recommends his prosecution being the Accounting Officer at ODPP, and the Chief Prosecutor, he wouldn't be conflicted since there are safeguards provided for in the Constitution of Kenya and the ODPP Act. He further stated that he can be investigated and prosecuted, even if he is out of office as the DPP. He added that he has got clean audit reports for the last four years and this was an isolated issue.

On fighting corruption

72. The Committee sought to ascertain the nominee's resolve in fighting corruption, with the perception that he was doing very little as the DPP in fighting corruption and considering that insecurity and corruption can break a country. The nominee submitted that he did a lot as DPP to fight corruption and assured that efforts were put in place to ensure that prosecutions were more effective in the corruption cases which had very positive impact on the country at large.
73. The nominee submitted that during his tenure, the highest court award in a corruption case was issued after successful prosecutions which he gladly took credit. Further in his present and future engagements as an individual officer, he submitted that he always observed Chapter Six of the Constitution.
74. The nominee further noted that another great achievement was the advisory opinion that defined a state and public officer, and pursuing the concept of "following the money" while prosecuting corruption cases.

On where to draw the line between free media and information gathering via intelligence by spies as regards espionage

75. The nominee informed the Committee that supporting free media and intelligence gathering would be defined with the kind of intelligence that would be collected. The nominee noted that they will analyse the evidence that is brought and see whether indeed that person is undertaking espionage whilst respecting the role of free media which he plans to respect if given that opportunity to serve as the Director General.
76. The nominee submitted that espionage can be undertaken through what you call covert i.e., somebody can come as a media practitioner, they can come as a doctor, they can pretend that they are businessmen, they can pretend to be anything. Yet they are collecting intelligence. As per the Constitution, the role of NIS is to collect security intelligence and counter-intelligence information. He noted that the NIS has a whole department division called Counterintelligence that collects counterintelligence. So, if a person has taken cover that there are media practitioners, we will get the intelligence and we will table the evidence so that, that person can be stopped and prosecuted in a court of law for undertaking espionage.
77. The nominee submitted that we live in a global system, and we must interact with international community and find ways of working with countries that share similar visions as Kenya. Therefore, we are bound to work with them even in the collection of intelligence because it adds value, and it gives us that multiplier effect of being effective in self-guarding our national security interests.

On how he will leverage partnerships with other security institutions

78. On the issue of partnerships, the nominee submitted that, partnerships are going to be critical and it is one of the strategies that he was going to implore. He noted that as the DPP, he was elected the Vice-Chairperson of the National Council Member Station of Justice because of the input that he had put in helping the Chief Justice.
79. The nominee quipped that in building synergy and coordination collaboration within the criminal justice system, he was also elected as the President of the Eastern African Association of Prosecutors because of the partnership that ODPP managed to bring between Kenya and other Eastern African countries.
80. He further noted that the threat of terrorism requires us to work in connection with other nations, both regionally and internationally. To leverage the partnerships, he submitted that he will have to analyze the kind of cooperation we're going to undertake and evaluate the value that it will add in discharging NIS mandate.

On the perception that the NIS is too elitist and not keen on local intelligence and possible remedy

81. The nominee submitted that the NIS has an array of human resources that is not 100% elitist. His goal is to be able to build on the diversity of the human resource that we have based on the threats that we are likely to face. In that way, the nominee stated that the recruitment processes will have to be relooked at in terms of who the target persons are. He noted that they will have to target a cadre that is professional in terms of the requirements and the professional caps that would need to fill it, but will also have to have a cadre that can be able to cover the different facets of the country and this therefore means that we will have low cadre in the sense that we might have to recruit people who

have just finished form 4 and should not confine the service to individuals who only have diplomas and degrees. The nominee noted that in that way we will try to cast the net much wider to get a bigger spectrum of human resource fit for NIS purpose.

82. On a related issue of the NIS perceived to be no longer keen on local intelligence for example the Shakahola matter where hundreds of Kenyans died in the hands of cult leaders, the nominee submitted that NIS gave intelligence that was actioned upon and even when the ODPP was able to prosecute some of the involved individuals including one Pastor McKenzie. However, the court gave him bail and was later released on insufficient evidence, thus weaknesses in the entire criminal justice need to be sealed. As a solution, the nominee submitted that intelligence needs to be converted into evidence in order to be useful in the war against crime.
83. The nominee also submitted that, traditionally, violence and terrorism had been viewed as being brought about by Islamic extremism. However, with the happenings of Shakahola, it is evident that the net needs to be cast wider, thus will actively seek a multi-agency partnership in addressing such emerging security threats.

On how he plans to work with the executive whilst remaining independent of the executive

84. The nominee noted that the DG NIS is a member of the National Security Council headed by the President who is the leader of the Executive. If confirmed as the DG for NIS, the nominee submitted that he will try to bring a balance so that it is not a complete executive affair. To ensure independence, NIS will strive to give intelligence and it's supposed to be apolitical.
85. Moreover, for there to be independence, the nominee underscored that the most important thing is being able to observe Chapter 6 of the Constitution by ensuring that there is integrity in what we are doing. The balance is brought about by the different oversight bodies that exist. The nominee quipped that if confirmed as DG, he will ensure that the NIS produces intelligence that is appropriate, accurate and timely and that it adds value, and that it is not there to be used for the benefit of any.
86. The nominee noted that his appointment is not a reward by His Excellency the President and thus would not compromise on his independence of mind and would be ready to point out wrongs to the president.

On Proliferation of small arms and extra-judicial killings in Northern Kenya

87. The nominee noted that extra-judicial killings were illegal and unconstitutional, as such they should not be entertained at all. He stated that the ODPP together with IPOA have been able to bring over one hundred and fifty (150) police officers to account for their actions attaching responsibility to the police commanders. He also noted that of all the cases brought before the DPP, only one case mentioned the NIS. Thus, he will ensure that NIS operates within the confines of the law.
88. The nominee further noted that the fight against illicit arms in NIS fell under the Internal Division department and not the department he headed of Counter-Terrorism, thus he cannot be held to account. However, he submitted that he will ensure that Hum-Int is adequate enough to help stem the proliferation of small arms especially in border counties neighbouring unstable countries in the region.

89. The nominee however averred that a long-lasting solution would include active involvement in helping to stabilize the region by fostering peace so that arms do not find their way to Kenya. This therefore calls for cooperation with international countries and redefining how to deal with the threats in the neighbourhood.

On how NIS can support the economy and fight tax evasion

90. The nominee submitted that he will strive to ensure that NIS collects active and timely intelligence to advise the government on how to solidify gains in the economy. Furthermore, the nominee stated that he will leverage technology advances in intelligence spectrum to help KRA ensure taxes are paid to enable the country to become self-sufficient. This will be achieved through actionable intelligence for KRA to use when collecting taxes.

Closing remarks

91. In his closing remarks, the nominee assured Kenyans and the Committee that NIS under his leadership will continue being professional and efficient and operate within the law to ensure that the intelligence that is produced is used for the benefit of the national security of this country.

92. He further noted that he will pursue the implementation of Section 66 of the NIS Act on the Complaints Board, which hasn't been implemented since the promulgation of the law.

93. He finally committed that he will honour parliament invites to appear before the Committee in person and cooperate with the Committee in attaining its mandate on oversight.

CHAPTER FOUR

4 OBSERVATIONS AND FINDINGS

94. The Committee observations were guided by:

(1) Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) in terms of issues for consideration as follows:

- a) the procedure used to arrive at the nominee;
- b) any constitutional or statutory requirements relating to the office in question; and
- c) suitability of the nominees for the appointment proposed having regard to whether the nominees' abilities, experience, and qualities meet the needs of the body to which the nomination is made.

(2) Section 8 (1) and (2) of the National Intelligence Service Act, 2012 which provides for the qualifications of the Director-General of the National Intelligence Service.

95. The Committee made the following observations and findings:

(1) **THAT**, the procedure used to arrive at the nominee accords with Section 7 (2) of the National Intelligence Service Act (No. 28 of 2012) which provides that "*the President shall nominate a person for appointment as the Director-General and submit the name of the nominee to the National Assembly*". Indeed H.E. the President on Thursday 18th May 2023 communicated the name of the nominee for appointment to the position of Director-General of the National Intelligence Service to the Speaker for approval by the National Assembly.

(2) **THAT**, the nominee meets the requirements of Chapter Six (6) of the Constitution on leadership and integrity having been cleared from the following statutory bodies: the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Education Loans Board (HELB).

(3) **THAT**, in accordance with Article 78(1) and (2) of the Constitution and Section 8 (1) (a) of the National Intelligence Service Act, 2012, the nominee is eligible for appointment as a state officer since he is a Kenyan citizen and does not hold dual citizenship.

(4) **THAT**, the nominee complies with Section 8(1)(b) of the National Intelligence Service Act, 2012 which requires that the Director-General holds a degree from a university recognized in Kenya. Indeed, he holds a Master's degree in National Security Policy with Merit from the Australian National University (2014); a Masters in Law (LLM) from the University of Wales, Cardiff (1997), and a Bachelor of Law (LLB) from University of Wales, Cardiff (1996).

(5) **THAT**, the nominee has held the following positions: Director of Public Prosecutions (March 2018 to date), Deputy Director of Counter Organized Crime at the NIS (June 2016 to 2017); Deputy Director of Administration in the Internal Division of the NIS (January 2015 to June

2016); Head of Somalia Stabilization at the NIS (2010 to 2013); Head Countering Violent Extremism at NIS (2009 to 2010); Head of Legal Department at the NIS (2005 to 2009); Deputy Head of Legal Department at the NIS (2000 to 2005); State Counsel with the Attorney General's Office (January to December 2000); Pupillage and Advocate at Seth & Wathigo Advocates (October 1998 to January 2000); and Tutorial Fellow at Moi University (1998). He therefore meets the requirements of Section 8(1)(c) and (d) of the National Intelligence Service Act, 2012 having served for eighteen (18) years at the NIS.


- (6) **THAT**, the nominee has not been charged in a court of law in the past three years, a requirement under the Schedule to the Public Appointment (Parliamentary Approval) Act.
- (7) **THAT**, the nominee does not hold office in any political party, a requirement under the Schedule to the Public Appointment (Parliamentary Approval) Act.
- (8) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), Article 76 (financial probity), and Article 77 of the Constitution (on restriction of activities of State Officers).
- (9) **THAT**, during the approval hearing, the nominee demonstrated knowledge of topical, administrative, and technical issues touching on government and has the requisite abilities, qualifications, and experience to serve as the Director General of the National Intelligence Service.
- (10) **THAT**, with regard to submissions contesting the suitability of the Nominee:
 - (a) the submission by Mr. Stephen Magira was not given on oath and therefore not admissible.
 - (b) regarding the submissions by Eliud Karanja Matindi, he had filed a petition in Court HCC 492/2022 challenging the integrity of Noordin Haji in discharging his duties as the Director of Public Prosecution. This matter was yet to be fully determined by the Court.
 - (c) regarding submissions by the Transparency International and Eliud Karanja Matindi- On the alleged issue of integrity, the Leadership and Integrity Act empowers the Ethics and Anti-Corruption Commission to oversee the implementation and enforcement thereof. It is thus incumbent that any person, who feels that the Act has been contravened, to move the relevant bodies charged with the mandate under the Act. The Committee further notes that the Clerk of the National Assembly wrote to the EACC on the 24th May 2023 to submit on the suitability of the nominee and in turn received a letter from the EACC dated 29th May, 2023 and referenced EACC.7/10/5VOL XXIII (119) indicating that the Commission has not undertaken any investigations pursuant to its mandate nor has it recommended prosecution against Noordin Haji, CBS of ID No. 115 21421, based on records available as at 29th May 2023.
 - (d) further, regarding submissions by Transparency International and Eliud Karanja Matindi, the Committee observed that the procedure for removal of the DPP on any ground is enshrined in Article 158 of the Constitution and that the process had not been exhausted.

CHAPTER FIVE

5 RECOMMENDATION

96. Having considered the suitability, capacity, and integrity of the nominee, and pursuant to Section 8(2) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) as read together with Section 7 (1) of the National Intelligence Service Act, 2012, the Committee recommends that:

The National Assembly APPROVES the nomination of Mr. Noordin Mohamed Haji, CBS, OGW for appointment as the Director-General of the National Intelligence Service.

SIGNED.......... DATE..... 06/06/23.....

**THE HON. NELSON KOECH, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS**

Annexure 1:

**Signed List of Members who attended the Sitting which
considered and adopted the Report**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION - 2023
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN
RELATIONS.

REPORT ADOPTION LIST

CONSIDERATION AND ADOPTION OF THE REPORT ON THE APPROVAL
HEARING OF MR. NOORDIN HAJI, CBS, OGW, NOMINEE FOR
APPOINTMENT AS DIRECTOR GENERAL OF THE NATIONAL
INTELLIGENCE SERVICE.

We, the Members of the Departmental Committee on Defence, Intelligence, and Foreign Relations, have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Saturday 2nd June, 2023.**

	NAME	SIGNATURE
1.	The Hon. Koech Nelson, M.P. (Chairperson)	
2.	The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P. (Vice Chairperson)	
3.	The Hon. Hassan Abdi Yusuf, M.P	
4.	The Hon. Wanjira Martha Wangari, M.P	
5.	The Hon. Odhiambo Millie Grace Akoth, MP	
6.	The Hon. Kanchory Elijah Memusi, MP	
7.	The Hon. (Dr.) Kasalu Irene Muthoni, M.P	
8.	The Hon. Kirima Moses Nguchine, M.P	
9.	The Hon. Kandie Joshua Chepyegon, M.P	
10.	The Hon. Kwenya Thuku Zachary, M.P	
11.	The Hon. Luyai Caleb Amisi, M.P	
12.	The Hon. Teresia Wanjiru Mwangi, M.P	
13.	The Hon. Logova Sloya Clement, M.P	
14.	The Hon. Ikana Fredrick Lusuli, M.P	
15.	The Hon. Mohamed Abdikadir Hussein, M.P	

Annexure 2:
Minutes of Sitzings of the Committee

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS HELD ON SATURDAY 3RD JUNE, 2023 AT 10.00 AM AT THE BOMA HOTEL, NAIROBI.

PRESENT

1. **The Hon. Koech Nelson, M.P.** - **Chairperson**
2. **The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.** - **Vice Chairperson**
3. The Hon. Hassan Abdi Yusuf, M.P
4. The Hon. Wanjira Martha Wangari, M.P
5. The Hon. Luyai Caleb Amisi, M.P
6. The Hon. Kanchory Elijah Memusi, MP
7. The Hon. Kirima Moses Nguchine, M.P
8. The Hon. Kandie Joshua Chepyegon, M.P
9. The Hon. (Dr.) Kasalu Irene Muthoni, M.P
10. The Hon. Kwenya Thuku Zachary, M.P
11. The Hon. Ikana Fredrick Lusuli, M.P
12. The Hon. Mohamed Abdikadir Hussein, M.P
13. The Hon. Logova Sloya Clement, M.P
14. The Hon. Teresia Wanjiru Mwangi, M.P

APOLOGIES

1. The Hon. Odhiambo Millie Grace Akoth, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY

1. Mr. Peter K. Chemweno - Director, Departmental Committees
2. Mr. Dennis Mogare Ogechi - Clerk Assistant I
3. Ms. Winfred K. Kilonzo - Clerk Assistant III
4. Ms. Clara Kimeli - Principal Legal Counsel II
5. Dr. Donald Manyala - Research Officer I
6. Ms. Rose Njuki - Senior Sargent- At-Arms
7. Mr. John Nganga - Audio Officer I
8. Ms. Lydia Nyagol - Secretary

AGENDA

1. Preliminaries – Prayers, Adoption of the Agenda
2. **Consideration and Adoption of the Report on the Approval Hearing of Mr. Noordin Haji, CBS, OGW, Nominee for appointment as Director General of the National Intelligence Service.**
3. Any Other Business
4. Adjournment/Date of the next Sitting

MIN.NO. DDC/DIFR/197/2023:

PRELIMINARIES

The meeting was called to order at 10:20 a.m. and a prayer was said. The Chairperson stated that the main agenda of the meeting was the consideration and adoption of the Committee Report on the Approval Hearing of Mr. Noordin Haji, CBS, OGW, a nominee for appointment as Director General of the National Intelligence Service.

The agenda was adopted after being proposed by Hon. Wanjira Martha Wangari, M.P and seconded by Hon. Ikana Fredrick Lusuli, M.P.

MIN.NO. DDC/DIFR/198/2023:

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmation of the Minutes for the previous Sitting was deferred to the next Sitting.

MIN.NO. DDC/DIFR/199/2023:

CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE APPROVAL HEARING OF MR. NOORDIN HAJI, CBS, OGW, A NOMINEE FOR APPOINTMENT AS DIRECTOR GENERAL OF THE NATIONAL INTELLIGENCE SERVICE.

The Committee Report on the approval hearing of Mr. Noordin Haji, CBS, OGW, the nominee for appointment as Director-General of the National Intelligence Service was considered and adopted after being proposed by Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P. and seconded by Hon. Ikana Fredrick Lusuli, M.P.

It was adopted with the following observations and recommendations:

OBSERVATIONS

The Committee made the following observations and findings:

- (1) THAT, the procedure used to arrive at the nominee accords with Section 7 (2) of the National Intelligence Service Act (No. 28 of 2012) which provides that "*the President shall nominate a person for appointment as the Director-General and submit the name of the nominee to the National Assembly*". Indeed H.E. the President on Thursday 18th May 2023 communicated the name of the nominee for appointment to the position of Director-General of the National Intelligence Service to the Speaker for approval by the National Assembly.
- (2) THAT, the nominee meets the requirements of Chapter Six (6) of the Constitution on leadership and integrity having been cleared from the following statutory bodies: the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), Office of the Registrar of Political Parties (ORPP) and the Higher Education Loans Board (HELB).
- (3) THAT, in accordance with Article 78(1) and (2) of the Constitution and Section 8 (1) (a) of the National Intelligence Service Act, 2012, the nominee is eligible for appointment as a state officer since he is a Kenyan citizen and does not hold dual citizenship.

- (4) THAT, the nominee complies with Section 8(1)(b) of the National Intelligence Service Act, 2012 which requires that the Director-General holds a degree from a university recognized in Kenya. Indeed, he holds a Master's degree in National Security Policy with Merit from the Australian National University (2014); a Masters in Law (LLM) from the University of Wales, Cardiff (1997), and a Bachelor of Law (LLB) from University of Wales, Cardiff (1996).
- (5) THAT, the nominee has held the following positions: Director of Public Prosecutions (March 2018 to date), Deputy Director of Counter Organized Crime at the NIS (June 2016 to 2017); Deputy Director of Administration in the Internal Division of the NIS (January 2015 to June 2016); Head of Somalia Stabilization at the NIS (2010 to 2013); Head Countering Violent Extremism at NIS (2009 to 2010); Head of Legal Department at the NIS (2005 to 2009); Deputy Head of Legal Department at the NIS (2000 to 2005); State Counsel with the Attorney General's Office (January to December 2000); Pupillage and Advocate at Seth & Wathigo Advocates (October 1998 to January 2000); and Tutorial Fellow at Moi University (1998). He therefore meets the requirements of Section 8(1)(c) and (d) of the National Intelligence Service Act, 2012 having served for eighteen (18) years at the NIS.
- (6) THAT, the nominee has not been charged in a court of law in the past three years, a requirement under the Schedule to the Public Appointment (Parliamentary Approval) Act.
- (7) THAT, the nominee does not hold office in any political party, a requirement under the Schedule to the Public Appointment (Parliamentary Approval) Act.
- (8) THAT, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (conflict of interest), Article 76 (financial probity), and Article 77 of the Constitution (on restriction of activities of State Officers).
- (9) THAT, during the approval hearing, the nominee demonstrated knowledge of topical, administrative, and technical issues touching on government and has the requisite abilities, qualifications, and experience to serve as the Director General of the National Intelligence Service.
- (10) THAT, with regard to submissions contesting the suitability of the Nominee:
- (a) the submission by Mr. Stephen Magira was not given on oath and therefore not admissible.
 - (b) regarding the submissions by Eliud Karanja Matindi, he had filed a petition in Court HCC 492/2022 challenging the integrity of Noordin Haji in discharging his duties as the Director of Public Prosecution. This matter was yet to be fully determined by the Court.
 - (c) regarding submissions by the Transparency International and Eliud Karanja Matindi- On the alleged issue of integrity, the Leadership and Integrity Act empowers the Ethics and Anti-Corruption Commission to oversee the implementation and enforcement thereof. It is thus incumbent that any person, who feels that the Act has been contravened, to move the relevant bodies charged with the mandate under the Act. The Committee further notes that the Clerk of the National Assembly wrote to the EACC on the 24th May 2023 to submit on the suitability of the nominee and in turn received a letter from the EACC dated 29th May, 2023 and referenced EACC.7/10/5VOL XXIII (119) indicating that the Commission has not undertaken any investigations pursuant to its mandate nor has it recommended prosecution against Noordin Haji, CBS of ID No. 115 21421, based on records available as at 29th May 2023.

- (d) further, regarding submissions by Transparency International and Eliud Karanja Matindi, the Committee observed that the procedure for removal of the DPP on any ground is enshrined in Article 158 of the Constitution and that the process had not been exhausted.

RECOMMENDATION

Having considered the suitability, capacity, and integrity of the nominee, and pursuant to Section 8(2) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) as read together with Section 7 (1) of the National Intelligence Service Act, 2012, the Committee recommended that: **The National Assembly APPROVES the nomination of Mr. Noordin Mohamed Haji, CBS, OGW for appointment as the Director-General of the National Intelligence Service.**

MIN.NO. DDC/DIFR/200/2023:

ADJOURNMENT

There being no other business, the meeting was adjourned at 4.45 pm.

SIGNED:  DATE: 6/06/23

**THE HON. NELSON KOECH, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE
AND FOREIGN RELATIONS**

Annexure 3:

**Letter of notification from H.E. the President nominating
Mr. Noordin Haji, CBS for appointment as Director-General
of the National Intelligence Service**



EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

CONFIDENTIAL

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

Ref. No. **OP/CAB.26/4A.VOL.I/(86)**
and date

.....**18th May, 2023**.. 20.....

Hon. Moses F. M. Wetangula, EGH
Speaker
The National Assembly
Parliament of Kenya
Parliament Building
NAIROBI

Dear

TRANSMITTAL

NOMINATION FOR APPOINTMENT TO THE POSITION OF DIRECTOR-GENERAL, NATIONAL INTELLIGENCE SERVICE (NIS)

You are most graciously notified that **His Excellency Hon. William Samoei Ruto PhD., C.G.H.**, President and Commander-in-Chief of the Kenya Defence Forces, has nominated **Mr. Noordin Haji, CBS** for appointment as the Director-General of the National Intelligence Service.

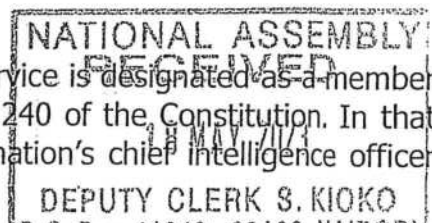
The nomination and transmittal to the National Assembly is pursuant to **Section 7(1) of the National Intelligence Service Act** (No. 28 of 2012). That provision of law sets out the process of appointment of the Director-General of the National Intelligence Service thusly:

"There shall be a Director-General of the Service who shall, with the approval of the National Assembly, be appointed by the President."

In that regard, and in fulfillment of the procedure set out in **Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act** (Act No. 33 of 2011), we submit to the National Assembly the Presidential Nomination of Mr. Noordin Haji, CBS to the National Assembly.

The Director-General of the National Intelligence Service is designated as a member of the National Security Council pursuant to Article 240 of the Constitution. In that regard, and in recognition of the mandate of the nation's chief intelligence officer

CONFIDENTIAL



CONFIDENTIAL

within our national security infrastructure, the National Assembly is requested to prioritize the consideration of the nominee.

To aid Parliament in its consideration and approval processes, we have the pleasure to forward herewith the **Certificate of Presidential Nomination (No. 11 of 2023)**, together with the Nominee's Curriculum Vitae and Testimonials.

Yours

FELIX K. KOSKEI
CHIEF OF STAFF &
HEAD OF THE PUBLIC SERVICE

Copy to: **Hon. Ichungwa A. Kimani, MP, MGH**
Majority Leader
The National Assembly
Parliament Building
NAIROBI

Mr. Samuel J. Njoroge
Clerk
The National Assembly
Parliament Building
NAIROBI



Mr. Arthur A. Osiya, EBS
Principal Administrative Secretary
Executive Office of the President
NAIROBI

Mr. Jasper Mbiuki, CBS
Head of Cabinet Secretariat
Executive Office of the President
NAIROBI

CONFIDENTIAL



**PRESIDENTIAL
NOMINATION NO. 11 of 2023**

THE CONSTITUTION OF KENYA

THE NATIONAL INTELLIGENCE SERVICE ACT
(No. 28 of 2012)

**NOMINATION
for
STATE APPOINTMENT**

DIRECTOR-GENERAL

IN EXERCISE of the powers conferred by section 7 (1) of the National Intelligence Service Act, **I, WILLIAM SAMOEI RUTO**, President and Commander-in-Chief of the Kenya Defence Forces nominates –

NOORDIN HAJI

for appointment as the Director-General of the National Intelligence Service.

ISSUED under the **HAND AND SEAL** of the President at State House, **NAIROBI** this **SIXTEENTH** day of **MAY** in the year of our Lord **TWO THOUSAND AND TWENTY-THREE**.



WILLIAM SAMOEI RUTO,
President.

Annexure 4:

Advertisement notifying the public of the approval hearings



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT - SECOND SESSION - 2023

IN THE MATTER OF APPROVAL BY THE NATIONAL ASSEMBLY OF THE PERSON NOMINATED FOR APPOINTMENT TO THE POSITION OF DIRECTOR-GENERAL, NATIONAL INTELLIGENCE SERVICE (NIS)

NOTIFICATION TO THE GENERAL PUBLIC ON THE APPROVAL HEARING AND SUBMISSION OF MEMORANDA

WHEREAS, pursuant to the provisions of Section 7 (1) of the National Intelligence Service Act (No. 28 of 2012), H.E the President, notified the National Assembly of the nomination of Mr. Noordin Haji, CBS for appointment as the Director-General of the National Intelligence Service.

IT IS NOTIFIED to the general public that pursuant to the provisions of Article 118(1)(b) of the Constitution, Section 7(1) of the National Intelligence Service Act, 2012 and section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011, the Departmental Committee on Defence, Intelligence and Foreign Relations of the National Assembly shall conduct the approval hearing (vetting) of the nominee for appointment as the Director-General, National Intelligence Service on Tuesday 30th May 2023 in the Mini-Chamber, County Hall, Parliament Buildings.

AND WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation in the legislative and other business of Parliament and its Committees and Section 6(9) of the Parliamentary Appointments (Parliamentary Approval) Act, 2011 provides that *"any person may prior to the approval hearing and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated"*.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Departmental Committee on Defence, Intelligence and Foreign Relations hereby invites members of the public to submit any representations they may have, by way of written statements on oath (affidavits) with supporting evidence contesting the suitability of the nominee for appointment as the Director-General, National Intelligence Service.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke; to be received on or before Monday, 29th May, 2023 by 5.00pm.

IT IS FURTHER NOTIFIED THAT, the nominee is required to:

1. appear for the approval hearing with the original identity card, academic and professional certificates and other relevant testimonials; and
2. obtain letters/certificates of compliance from the following institutions:
 - a. Ethics and Anti-Corruption Commission;
 - b. Kenya Revenue Authority;
 - c. Higher Education Loans Board;
 - d. Directorate of Criminal Investigations; and
 - e. Office of the Registrar of Political Parties.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
20th May, 2023

Annexure 5:

**Letters from the Clerk of the National Assembly inviting the
nominee for the approval hearing**



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

URGENT

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

NA/DDC/DIFR/2023 (042)

23rd May, 2023

Mr. Noordin Haji, CBS
P.O. Box 76609 – 00508
NAIROBI.

Email: nmyahaji@gmail.com

Dear *Mr*,

**RE: INVITATION FOR VETTING BY THE DEPARTMENTAL COMMITTEE ON
DEFENCE, INTELLIGENCE, AND FOREIGN RELATIONS.**

Following your nomination by H.E. the President for approval by the National Assembly for appointment as Director-General of the National Intelligence Service, the Departmental Committee on Defence, Intelligence and Foreign Relations hereby invites you for an approval hearing (vetting) pursuant to Section 6(3) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The approval hearing will be held on **Tuesday, 30th May, 2023** in the **Mini Chamber, County Hall, Parliament Buildings** at **2.30 pm**.

Kindly fill out the attached Questionnaire, as required by the Public Appointments (Parliamentary Approval) Act, 2011, and return it on or before **Monday, 29th May, 2023**. You are required to appear before the Committee with your original national identity card, academic and professional certificates and any other relevant documents and testimonials. In addition, you should appear with letters or certificates of clearance from the following institutions:

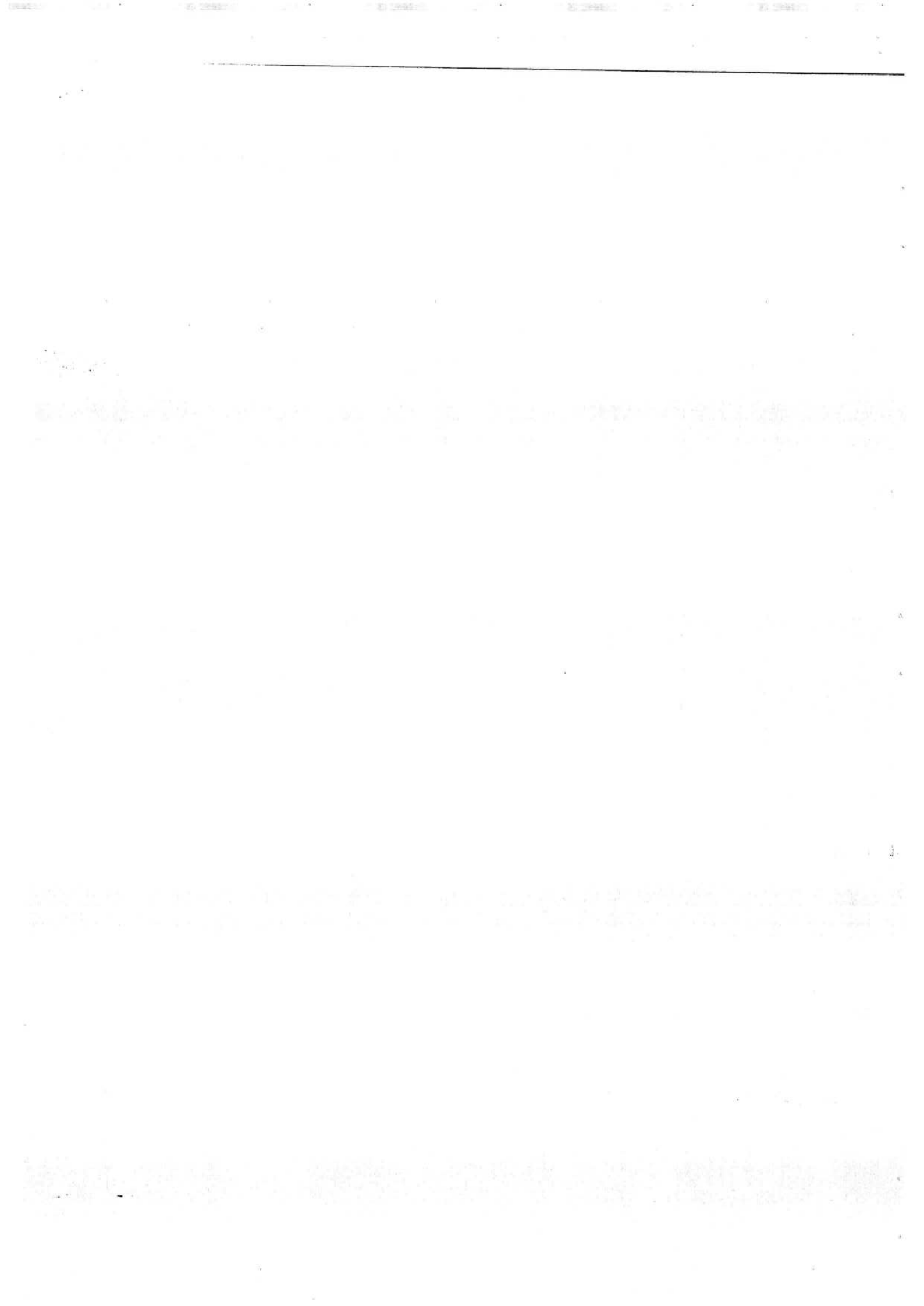
- a) Ethics and Anti-Corruption Commission;
- b) Kenya Revenue Authority;
- c) Higher Education Loans Board;
- d) Directorate of Criminal Investigations; and
- e) Office of the Registrar of Political Parties.

The Liaison Officers on this subject are **Mr. Dennis Mogare**, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and **Ms. Winfred Kilonzo**, Tel. 0720571777 or email winfred.kilonzo@parliament.go.ke.

Yours

Sincerely,

GEORGE GAZEMBA, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY



Annexure 6:

**Letters from the Clerk of the National Assembly to KRA,
EACC, DCI, HELB and ORPP requesting for information
on the nominee**



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

URGENT

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

NA/DDC/DIFR/2023 (047)

23rd May, 2023

Mrs. Rispah Simiyu, EBS
Ag. Commissioner General
Kenya Revenue Authority
Times Tower, 30th Floor, Haile Selassie Avenue
NAIROBI

Dear *Madam,*

RE: REQUEST FOR INFORMATION ON MR. NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS THE DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

Article 124(4) of the Constitution provides that “when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the House”.

The Departmental Committee on Defence, Intelligence and Foreign Relations is established by Standing Order 216 of the National Assembly and mandated, amongst others, “to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)”.

In this regard, the Committee shall conduct an approval hearing (vetting) of Mr. Noordin Haji, CBS, of ID No: 11521421 and KRA PIN: A002798514C, nominee for appointment as the Director-General of the National Intelligence Service on Tuesday 30th May, 2023.

Pursuant to Section 7(b) of the Public Appointment (Parliamentary Approval) Act, 2011 the Committee is mandated to consider whether the nominee has met all the constitutional and statutory requirements relating to the office in question in terms of compliance with the principles of leadership and integrity as set out in Chapter Six of the Constitution.

This is therefore to request you to provide a report on tax compliance by the nominee. This information will assist the Committee in effectively executing its mandate. Kindly forward the information to the undersigned on or before Monday, 29th May, 2023.

The Liaison Officers on this subject are **Mr. Dennis Mogare**, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and **Ms. Winfred Kilonzo**, Tel. 0720571777 or email winfred.kilonzo@parliament.go.ke.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to be 'G. Gazemba', written over a large, hand-drawn oval scribble.

GEORGE GAZEMBA, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

URGENT

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

NA/DDC/DIFR/2023 (044)

23rd May, 2023

Ms. Anne Njeri Nderitu, CBS
Registrar of Political Parties
Office of the Registrar of Political Parties
P.O Box 1131-00606
Lions Place, 1st Floor
Karuna Close, Waiyaki Way Westlands
NAIROBI

Dear *Madam,*

RE: REQUEST FOR INFORMATION ON MR. NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

Article 124(4) of the Constitution provides that “when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the House”.

The Departmental Committee on Defence, Intelligence and Foreign Relations is established by Standing Order 216 of the National Assembly and mandated, amongst others, “to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)”.

In this regard, the Committee shall conduct an approval hearing (vetting) of Mr. Noordin Haji, CBS, of ID No: 11521421 and KRA PIN: A002798514C, nominee for appointment as the Director-General of the National Intelligence Service on Tuesday 30th May, 2023.


Pursuant to Section 7(b) of the Public Appointment (Parliamentary Approval) Act, 2011, the Committee is mandated to consider whether the nominee has met all the constitutional and statutory requirements relating to the office in question in terms of compliance with the principles of leadership and integrity as set out in Chapter Six of the Constitution.

In view of the provisions of Article 77(2) of the Constitution which prohibits State Officers from holding office in a political party, this is therefore to request you to provide any information on whether the nominee holds an office in a political party. This information will assist the Committee in effectively discharging its mandate.

Kindly forward the information to the undersigned on or before Monday, 29th May, 2023.

The Liaison Officers on this subject are **Mr. Dennis Mogare**, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and **Ms. Winfred Kilonzo**, Tel. 0720571777 or email winfred.kilonzo@parliament.go.ke.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to be 'G. Gazemba', written over a large, hand-drawn oval. The signature is stylized and includes a horizontal line extending to the right.

GEORGE GAZEMBA, ACIarb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

URGENT

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

NA/DDC/DIFR/2023 (046)

23rd May, 2023

Mr. Mohamed I. Amin, EBS, OGW, 'ndc' (K)
Director, Directorate of Criminal Investigations
P.O Box 30036-00100
Mazingira Complex – Kiambu Road
NAIROBI

Dear ,

RE: REQUEST FOR INFORMATION ON MR. NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS THE DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

Article 124(4) of the Constitution provides that “when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the House”.

The Departmental Committee on Defence, Intelligence and Foreign Relations is established by Standing Order 216 of the National Assembly and mandated, amongst others, “to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)”.

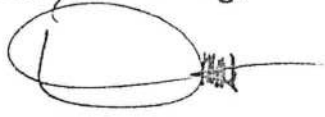
In this regard, the Committee shall conduct an approval hearing (vetting) of Mr. Noordin Haji, CBS, of ID No: 11521421 and KRA PIN: A002798514C, nominee for appointment as the Director-General of the National Intelligence Service on Tuesday 30th May, 2023.

Pursuant to Section 7(b) of the Public Appointment (Parliamentary Approval) Act, 2011 the Committee is mandated to consider whether the nominee has met all the constitutional and statutory requirements relating to the office in question in terms of compliance with the principles of leadership and integrity as set out in Chapter Six of the Constitution.

This is therefore to request you to provide information on whether the nominee has been adversely mentioned in any investigation carried out by the Directorate. Kindly forward the information to the undersigned on or before Monday, 29th May, 2023.

The Liaison Officers on this subject are Mr. Dennis Mogare, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and Ms. Winfred Kilonzo, Tel. 0720571777 or email winfred.kilonzo@parliament.go.ke.

Yours *Sincerely,*

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line.

GEORGE GAZEMBA, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK



P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

NA/DDC/DIFR/2023 (045)

23rd May, 2023

Mr. Twalib A. Mbarak, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission
Integrity Centre, Milimani/Valley Road Junction
P.O Box 61130-00200
NAIROBI

Dear *SW*,

RE: REQUEST FOR INFORMATION ON MR. NOORDIN HAJI - A NOMINEE FOR APPOINTMENT AS THE DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

Article 124(4) of the Constitution provides that “when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the House”.

The Departmental Committee on Defence, Intelligence and Foreign Relations is established by Standing Order 216 of the National Assembly and mandated, amongst others, “to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)”.

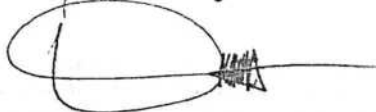
In this regard, the Committee shall conduct an approval hearing (vetting) of Mr. Noordin Haji, CBS, of ID No: 11521421 and KRA PIN: A002798514C, nominee for appointment as the Director-General of the National Intelligence Service on Tuesday 30th May, 2023.

Pursuant to Section 7(b) of the Public Appointment (Parliamentary Approval) Act, 2011 the Committee is mandated to consider whether the nominee has met all the constitutional and statutory requirements relating to the office in question in terms of compliance with the principles of leadership and integrity as set out in Chapter Six of the Constitution.

This is therefore to request you to provide any adverse information touching on the integrity of the nominee that may be in possession of the Commission. Such information will assist the Committee in effectively executing its mandate. Kindly forward the information to the undersigned on or before Monday, 29th May, 2023.

The Liaison Officers on this subject are Mr. Dennis Mogare, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and Ms. Winfred Kilonzo, Tel. 0720571777 or email winfred.kilonzo@parliament.go.ke.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to read 'Gazemba', with a large, stylized circular flourish to the left and a horizontal line extending to the right.

GEORGE GAZEMBA, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

URGENT

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

NA/DDC/DIFR/2023 (043)

23rd May, 2023

Mr. Charles Ringera
Chief Executive Officer
Higher Education Loans Board
Anniversary Towers, University Way
NAIROBI.

Dear *CR*,

RE: REQUEST FOR INFORMATION ON MR. NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

Article 124(4) of the Constitution provides that “when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the House”.

The Departmental Committee on Defence, Intelligence and Foreign Relations is established by Standing Order 216 of the National Assembly and mandated, amongst others, “to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)”.

In this regard, the Committee is scheduled to conduct an approval hearing (vetting) of Mr. Noordin Haji, CBS, of ID No: 11521421 and KRA PIN: A002798514C, nominee for appointment as the Director-General of the National Intelligence Service on Tuesday 30th May, 2023.

Pursuant to Section 7(b) of the Public Appointment (Parliamentary Approval) Act, 2011 the Committee is mandated to consider whether the nominee has met all the constitutional and statutory requirements relating to the office in question in terms of compliance with the principles of leadership and integrity as set out in Chapter Six of the Constitution.

This is to request that you provide a report on the repayment of any loans that may have been advanced by the Commission to the said nominee. Kindly forward the information to the undersigned on or before Monday, 29th May, 2023.

The Liaison Officers on this subject are Mr. Dennis Mogare, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and Ms. Winfred Kilonzo, Tel. 0720571777 or email winfred.kilonzo@parliament.go.ke.

Yours *Sincerely,*

GEORGE GAZEMBA, ACIArb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY

Annexure 7:

**Letters of clearance from EACC, KRA, DCI, ORPP and
HELB**



*D. C. H. 1001
8/31/05*

ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya
TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000
FAX: 254 (020) 2240954 EMAIL: eacc@integrity.go.ke WEBSITE: www.eacc.go.ke

When replying please quote:

Our Ref: EACC.7/10/5 VOL XXIII (119)

29th May 2023

Mr. Samuel Njoroge

Clerk of the National Assembly
Clerk's Chambers
Main Parliament Buildings
P O Box 41842 - 00100

NAIROBI

*Dennis Mogahe
to facilitate
Lq M/LN
2/6/23*

Dear *Mr. Njoroge,*

RE: REQUEST FOR INFORMATION ON MR. NOORDIN HAJI - A NOMINEE FOR APPOINTMENT AS THE DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

Your letter referenced NA/DDC/DIFR/2023/045 dated 23rd May 2023, on the above subject matter refers.

Please note that the Commission has not undertaken any investigations pursuant to its mandate nor has it recommended prosecution against **Noordin Haji, CBS of ID No. 11521421.**

The information provided herein is based on records available as at **29th May 2023.**

Abdi A. Mohamud, MBS
Deputy Chief Executive Officer
FOR: SECRETARY/CHIEF EXECUTIVE OFFICER

LK/TK





KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/5(9038)

30th May 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
P. O. Box 41842 – 00100
Parliament Buildings
NAIROBI

Dear *Clerk,*

Dennis Mogahe
to facilitate
up to 2/6/23

D 10/1001
8
3/1/05

REQUEST FOR INFORMATION ON MR. NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS THE DIRECTOR GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

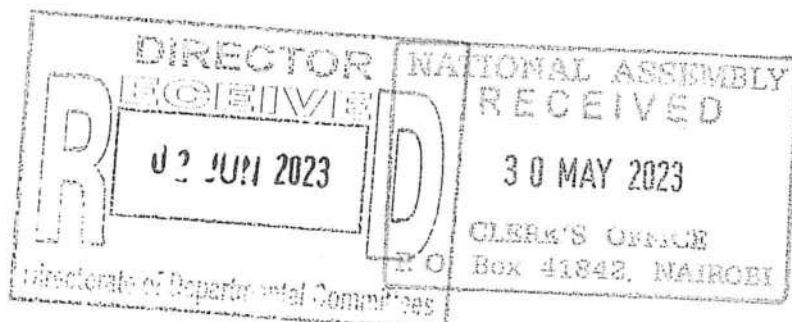
Reference is made to your letter Ref. No. NA/DDC/DIFR/2023 (047) dated 23th May 2023 in respect to the compliance status of Mr. Noordin Haji shortlisted for the position of Director General of the National Intelligence Service.

The compliance status of the candidate is as follows.

S/No.	Name.	ID/ Passport Number.	Pin number.	Compliance Status.
1.	Mr. Noordin Haji	11521421	A002798514C	Compliant

Yours sincerely,

[Signature]
FCCA, CS Rispah Simiyu (Mrs.) Advocate, EBS
AG. COMMISSIONER GENERAL





HIGHER EDUCATION LOANS BOARD

Tel: 0711052000
E-mail: contactcentre@helb.co.ke
Website: www.helb.co.ke

Anniversary Towers
University Way
P.O Box 69489-00400
Nairobi, Kenya

HELB/RR/112009/V/241

30th May 2023

Mr. Samuel Njoroge, MBS
Clerk of the National Assembly
Parliament Buildings,
P.O Box 41842-00100
NAIROBI.

Dear 

CLEARANCE FOR NOMINEE APPOINTED AS DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE.

We acknowledge with appreciation receipt of your letter **Ref. No. NA/DDC/F&NP/2023/043** dated **24th May 2023** requesting the Higher Education Loans Board to provide a report on repayment of HELB loans that may have been advanced to Mr. Noordin Hajj, CBS, for purposes of vetting for appointment to the position of Director General-NIS.

The Higher Education Loans Board wishes to inform you that **Mr. Noordin Hajj, CBS (ID No. 11521421)** was not a beneficiary of GOK/HELB University Loan.

We kindly urge you to continue encouraging applicants to seek their compliance certificate from the Board as part of testimonials and conformity to Chapter Six of the Constitution of Kenya.

We to thank you most sincerely for allowing us provide you this information. This kind of collaboration goes a long way in assisting HELB finance needy Kenyans pursuing higher education now and in the future.

Yours 

FCPA CHARLES RINGERA
CHIEF EXECUTIVE OFFICER



ISO 9001:2015 Certified.





REPUBLIC OF KENYA

Telephone: +254(0)204022000
Mobile: 0772281357
Email: info@orpp.or.ke
Website: www.orpp.or.ke
When replying please quote



Lion Place, 1st & 4th Floor
Off Waiyaki Way
P.O. Box 1131-00606
Sarit Centre, Nairobi.

Ref: RPP/ORG/34 VOL. VII (5)

Date: 25th May, 2023

Clerk of the National Assembly,
Main Parliament Buildings,
P.O. Box 41842 – 00100,
NAIROBI.

Attn: George Gazemba, ACI Arb, CPM

Dennis Mogahe
pls facilitate
2/6/23

O. O. O. O.
31/05

Dear Sir,

RE: REQUEST FOR INFORMATION ON NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS DIRECTOR-GENERAL OF THE NATIONAL INTELIGENCE SERVICE

Reference is made to letter Ref No. NA/DDC/DIFR/2023 (044) dated 23rd May, 2023 on the above subject matter.

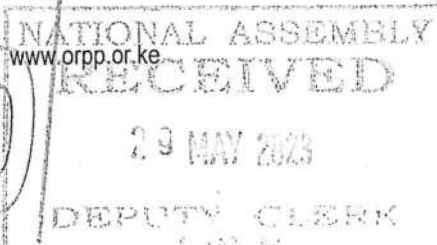
Pursuant to Article 77 (2) and according to the records held by this Office as at 25th May 2023, Mr. Noordin Haji of ID No. 11521421 is NOT an official nor a member of any registered political party in Kenya.

Yours faithfully,

Ann N. Nderitu, CBS
Registrar of Political Parties/CEO



@ORPPKenya



ORPPKenya



NATIONAL POLICE SERVICE

Telegrams: "CRIMINAL". Nairobi
Email: director@cid.go.ke
Telephone: 0202603724, 020343312



Directorate of Criminal Investigations,
Mazingira House Kiambu Road
P.O. Box 30063-00100,
NAIROBI

DIRECTORATE OF CRIMINAL INVESTIGATIONS

DCI/CRO/SEC/6/7/2/A/VOL.XII/144

26th May, 2023

Clerk of the National Assembly
P O Box 41842-00100
NAIROBI

Attn: George Gazemba, ACI Arb, CPM

REQUEST FOR INFORMATION ON MR. NOORDIN HAJI, NOMINEE FOR APPOINTMENT AS THE DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE

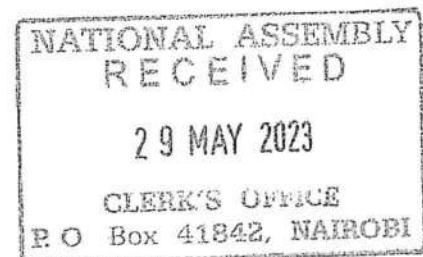
Refer to your letter Ref. NA/DDC/DIFR/2023 (048) dated 23rd May, 2023 on the above subject

We write to confirm that the below listed person applied for Police Clearance Certificate on the indicated date and was **genuinely issued** as follows:

S/NO.	NAME	ID NO.	DCI REF.NO	DATE OF ISSUE
1.	Mr. Noordin Mohamed Yusuf Haji, CBS	11521421	PCC-R7TR38YZ	23/05/23

It is deemed that as at the date of issuance of the police clearance certificate to the applicant, there was **negative result** from both our nominal index and criminal database.

Mohamed I. Amin, EBS, OGW, 'ndc' (K)
DIRECTOR OF CRIMINAL INVESTIGATIONS



Annexure 8:
Nominee's Curriculum Vitae

NOORDIN MOHAMED HAJI, CBS, OGW

**DIRECTOR OF PUBLIC PROSECUTIONS
ADVOCATE OF THE HIGH COURT OF KENYA**

P.O BOX 76609-00508, Nairobi | Phone: (254) 733 500 210 | Email: nmyhaji@gmail.com

CAREER OBJECTIVES

An Advocate of the High Court of Kenya with 24 years post- admission experience, and leverage my experience, knowledge and associations as a Director of Public Prosecutions and National security professional to safeguard and promote our collective national interests.

KEY LEADERSHIP POSITIONS

- National Council on Administration of Justice (NCAJ) – Vice Chairperson
- International Association of Prosecutors (IAP) – Nominated for Vice President (Representative of the Africa and Indian Ocean Region)
- African Association of Prosecutors (APA) – Executive Committee Member
- Eastern Africa Association of Prosecutors (EAAP) – President

PROFESSIONAL EXPERIENCE

- Director of Public Prosecutions
- Assistant Director Counter Organised Crime with the National Intelligence Service
- Head, Legal Department with National Security Intelligence Service
- Treaties & Agreements Lead Drafter on AGOA
- Lead Legal Advisor and the Attorney General's Representative to the Conference of Parties (COP 5) at UNEP
- Co- Chair of the IGAD Joint Committee on Somalia Stabilization
- State Counsel with the Attorney General's Office
- Prosecutions and Investigation Advisor to the National Police Service, NIS, Asset Recovery Agency on Organized Crime
- Moi University Tutorial Fellow

Mar 2018- to date: Director of Public Prosecutions

The main responsibilities as the Chief Government Prosecuting Authority entails:

- Exercise State powers of prosecutions
- Chief legal advisor to the Government on all criminal matters
- Directing investigations and supervises the conduct of criminal and anti-corruption investigations,
- Handling international relation matters including extradition and Mutual Legal Assistance
- Advising government ministries, departments and state corporations on matters pertaining to the application and development of criminal law
- Appointing, training and gazetting public prosecutors
- Facilitating victims of crime and witnesses during prosecution
- Contributing to the development and implementation of policies, procedures and law reform,
- Undertaking reporting to the President and Parliament on the performance and overall fulfillment of the object and purpose of the ODPP.

Key Achievements:

- Establishment of the Prosecution Training Institute (PTI) to equip officers with requisite skills and expertise
- Development of the Uadilifu Case Management and the Electronic Document Filing System that is integrated with the Judiciary
- Enhanced collaboration between the ODPP, regional and international partners leading to the signing of MoUs with the Republics of Ethiopia, Mozambique, Qatar, Brazil, the Kingdom of Saudi Arabia, and Morocco as well as the Attorney, General's Alliance
- As the current Secretary General of the East Africa Association of Prosecutors (EAAP), spearheaded the expansion of the Association's membership to include all countries in the greater Eastern Africa Region
- Improved coordination of the criminal justice system through collaboration with other key players and stakeholders nationally and internationally, leading to the

appointment as the first Vice- Chairperson of the National Council on the Administration of Justice (NCAJ)

- Reviewed ODPP Structure to make it responsive to the emerging trends and enhance efficiency and effectiveness in the delivery of the Office's mandate
- Enhancing the fight against corruption by prosecution of high- profile cases.
- Development of key policy documents and guidelines to enhance delivery of prosecution services such as Plea- bargaining and Diversion as alternatives to prosecution to expedite the trial process.
- Decongesting prisons through the All for Justice Initiative that expedited cases by petty offenders
- Establishing a robust public engagement and outreach strategy that has demystified the Office
- Improvement of working conditions of ODPP Staff
- Enhanced quality of prosecution services
- Commended by H.E Kersti Kaljulaid, President of Estonia on the 76th Session of the United Nations General Assembly for my efforts towards digitizing operations at the ODPP

Jun 2016 - 2017: Deputy Director; Counter Organized Crime, National Intelligence Service(NIS)

- Reporting to the Director General NIS on organized crime including drug trafficking, human trafficking, wildlife crimes, money laundering, cybercrime, corruption and emerging organized crimes
- Responsible for efficient coordination and utilization of Human, Financial and Material resources in the Department
- Legal and Strategic Advisor to the Director General NIS on organized crime responsible for initiating, implementing policies and reviewing legislation on countering organized crime.
- Coordinating and collection and collating of strategic intelligence on organized crime impacting directly of National Security
- Heading coordination of interagency operations on organized crime including converting intelligence into evidence, collaborating the Office of the Director of Public Prosecutions on investigation and prosecution of crimes.
- Responsible for non- law enforcement inter- agence collaboration such as the Kenya Revenue Authority, Counterfeit Agency, Asset Recovery Agency, Central Bank of Kenya, Financial Reporting Centre.
- Leading liaison with international law enforcement partners in combating organized crime including strengthening capacity with local agencies.

Jan 2015 – Jun 2016: Deputy Director; Administration Internal Division.(NIS)

- Reporting to the Director General and Director Internal on all administrative matters within the Division
- Responsible for efficient coordination and utilization of Human, Financial and Material resources in the Division
- Coordination and preparation of annual budget plans and requirements and their implementation.
- Chairing the Divisional Disciplinary Committee
- Chair of the Divisional Promotions boards.
- Policy formulation and coordination human resource management, deployment and development

Key Achievements:

- Spearheaded and implemented the rationalization of the Divisions' Human, Financial and Material resources to align with the devolved system of Governance.

2010 - 2013: Head Somalia Stabilization; Principal Intelligence Officer - External Division,(NIS)

Co- chair to the IGAD Joint Committee on the grand stabilization of Somalia against Al- Shabaab activities in Somalia with the mandate of:

- Heading Kenya's political/diplomatic cooperation with UN, AU, EU, IGAD, Somalia, Ethiopia, Italy, UK and USA.
- Ensured Kenya's interest in securing its borders through the creation of buffer zones across Somalia.
- Stabilizing southern Somalia.
- Establishing Federal States as per the Somali Constitution.
- Demobilizing and integrating militias into the federal states paramilitary and the Somali National Army.
- Overseeing and facilitating the operationalization of the Jubaland regional government.
- Engaging and liaising with the International Community (UN, EU, AU and others).
- Management of Electoral Process in Jubaland.
- Conflict Resolution and Management among diverse clans.
- Sensitization and awareness creation among various clans.
- Drafting model constitution and laws to govern Federal regional states of Somalia especially Jubaland.
- Attending UN, AU and IGAD summits on Somalia
- Peace building, cross-border communities' cooperation and reconstruction efforts.
- Preparing briefs and updates for IGAD, its member states and GOK on the process

Key Achievements:

- Successfully established the Jubaland Federal State of Somalia
- Established the first Jubaland parliament and civil service. Oversaw the election of

its President and the demobilization and integration of militias into the Somali National Army.

- This was realized through effective cooperation and coordination with IGAD member States in combating Al-Shabaab and strengthening the Federal Government of Somalia

**2009- 2010: Head Countering Violent Extremism, Assistant Principal Intelligence Officer-
Director General's Coordination Office**

- Coordinating, designing and formulating counter extremism programs.
- Directing collection of intelligence, data and analyzing trends on violent extremism.
- Spearheaded Public Relations and Media engagements.
- Development of influence and outreach programs.
- Coordinating with international partners in developing the 1st key pilot projects in countering violent extremism.
- Liaison with the media on highlighting the effects and impact of violent extremism and rehabilitating victims.
- Formulating national cohesion and peace programs within affected communities.
- Headed Muslim leaders' and community dialogue and cooperation with the Security Sector.

Key Achievements

- Establishment of the first Counter- Violent Extremism Programme

2005 - 2009: Head Legal Department, National Security Intelligence Service (NSIS).

Principal legal Advisor to the Director General

- Oversighted all intelligence operations
- Principal Legal Counsel for the Service and interlocutor between the Service, and key Government Departments
- Provided leadership and guidance to the legal department
- Advised and supervised all legal matters pertaining to the Service

- Management of all external legal matters
- Liaison with international partners on legal matters
- Special Duties;
 - Headed the development of training and legal programs for Southern Sudan Intelligence
- Member and Legal advisor to the Procurement board
- Member and Legal advisor to the Retirement and Medical Schemes Board

Key Achievements

Operationalised and implemented human rights procedures for the Service. Was charged with special duties to assist the Southern Sudanese Intelligence undertake their first intelligence training and drafting laws to govern them.

Dec 2000- July 2005: Deputy Head Legal Department, National Security Intelligence Service

- Assigned by the Director General to establish the first legal office
- Provided guidance and oversight on operational intelligence collection including converting intelligence into evidence for purposes of prosecution.
- Drafted the first Disciplinary Rules and Regulations for the Service.
- Coordinated with the Attorney General's Office on Civil and Criminal Matters
- Established the Retirement and Benefits Super-annuation scheme
- Operationalized the Procurement Rules and Regulations.
- Coordination of legal matters with international partners
- Oversighted issuance and execution of warrants

Key Achievements

- Establishment of a fully- fledged Legal Department and introduction of Legal Concepts for Intelligence Collection in Kenya.

**Jan 2000- Dec 2000: State Counsel at the Attorney General's Office-
Government of Kenya, (Attached to the Treaties and
Agreements Department**

- Represented the Attorney General as a Legal Advisor to inter- ministerial meetings.
- Drafted, interpreted and negotiated agreements and treaties on behalf of various Government departments including giving advice to the Attorney General's Office through the Chief State Counsel on legal matters.
- Attended arbitration proceedings on behalf of the Government of Kenya.

Key Achievements:

- Negotiated and drafted AGOA (The African Growth and Opportunity Act), Rules and Procedures that facilitated Kenya's first access to the USA market in textiles and Preferential Treatment.

Oct 1998- Jan 2000: Pupillage and Advocate, Seth & Wathigo Advocates

- Drafting documents relating to sale purchases agreements, sale and lease back transactions and bank securities.
- Advising drafting and processing documents and cases for defence in criminal cases
- Appearing in court for clients on criminal matters

May 1998: Tutorial Fellow at Moi University, Eldoret

- Taught international law

Jan- Sept 1993: African Muslim Agency

- Worked as a Field Officer with the Head Office in Nairobi
- Also participated in projects initiated by the Agency, which included voluntary work for the orphans and the less fortunate and relocation of Somali refugees in Northern Kenya.

EDUCATIONAL EXPERIENCE

- 2014: Australian National University**
Masters of National Security Policy with Merit (MNSPO)
- 1998: Kenya School of Law**
Diploma
- 1996- 1997: University of Wales, Cardiff**
LLM
- 1993- 1996: University of Wales, Cardiff**
LLB Hons
- 1991- 1992: Bronte College of Canada**
'A' Levels- Ontario Secondary School Diploma
- 1989- 1991: Greensteads High School**
'O' Levels- University of Cambridge General Certificate of Education
- 1988- 1989: Moi High School Kabarak**
- 1987: Moi Primary School**

PROFESSIONAL QUALIFICATIONS AND AWARDS

- 2018:** Chief of the Order of the Burning Spear (CBS)
- 2012:** Order of the Grand Warrior (OGW) – awarded by H.E. the President of the Republic of Kenya.
- 2011:** Notary Public – High Court of Kenya.
- 2011:** Commissioner of Oaths of the High Court of Kenya.
- 2011:** Registered Certified Public Secretary and Member of the Institute of Certified Secretaries of Kenya.
- 2009:** Public Relations and Media Engagement Certificate
- 2008:** Corporate Governance Certificate
- Jan – Mar 2007:** Chevening Fellowship Award for studies in – Democracy, Rule of Law and Security.

- Jan – Mar 2007:** University of Birmingham Certificate in Democracy, Rule of Law and Security.
- Aug – Oct 2001:** Certificate in Human Rights by University of Lund and the Raoul Wallenberg Institute of Human Rights.
- Jan – Feb 2000:** Certificate of Achievement for Basic Intelligence Course National Intelligence Academy, Kenya.
- 1999:** Admitted to the High Court as an Advocate of the High Court of Kenya.

AWARDS

- Named the ICJ Kenya Jurist of the Year (2021) for commitment in championing Access to Justice.
- Awarded the 2020 Public Sector Lawyer of the Year at the Nairobi Legal Awards
- 2019 Star Person of the Year Award by the Star.
- 2019 Distinguished Taxpayers Award
- 2018 Chief of the Order of the Burning Spear (CBS)
- 2012 Order of the Grand Warrior (OGW)

MEMBERSHIP TO PROFESSIONAL BODIES

- Law Society of Kenya (LSK) Member No 4061/99
- Certified Public Secretary Member No. R/CPSB2537
- International Association of Prosecutors

REFEREES

Maj. Gen. (Rtd.) Philip Kameru, EGH

Director General
National Intelligence Service
P. O Box 30091- 00100
Nairobi, Kenya

Joseph Boinnet, MGH

Rtd. Inspector General of the National Police Service
Deputy National Security Advisor, Executive Office of the President
Tel. No. 0715167146

Mahboub Maalim, CBS

Former Executive Secretary
Inter- Governmental Authority for Development (IGAD)
Djibouti
(254) 722 711 326

Annexure 9:
Nominee's Certificates and Testimonials



THE AUSTRALIAN NATIONAL UNIVERSITY

THIS IS TO CERTIFY THAT
FOLLOWING THE COMPLETION OF
AN APPROVED PROGRAM OF STUDY

Noordin Mohamed Haji

WAS ON THE SEVENTEENTH DAY OF DECEMBER 2014
AWARDED THE DEGREE OF

Master of
National Security Policy

WITH MERIT

GIVEN UNDER THE SEAL OF THE AUSTRALIAN NATIONAL UNIVERSITY
ON THE TWENTY-FIRST DAY OF FEBRUARY 2018



Chancellor

Vice - Chancellor

**The Council of Legal Education
Kenya School of Law**



This is to certify that

Haji Noordin Mohamed Y.

who was admitted to the Kenya School of Law in

September 1997

has duly passed the examinations of the Council of Legal Education

for admission to the Roll of Advocates of the High Court of Kenya and having

satisfactorily completed a course of instruction under the pupillage programme

in accordance with Section 13 of the Advocates Act was awarded a

Postgraduate Diploma in Law

in

December 1998

A handwritten signature in black ink, appearing to read 'M. M. M. M.', written over a dotted line.

Director/Secretary, Council of Legal Education

A handwritten signature in black ink, appearing to read 'E. N. N.', written over a dotted line.

Chairman, Council of Legal Education



REPUBLIC OF KENYA

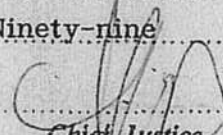
HIGH COURT OF KENYA

CERTIFICATE OF ADMISSION

This is to certify that NOORDIN MOHAMED HAJI

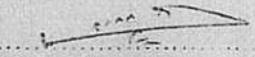
having this day signed the Roll of Advocates of the High Court of Kenya is admitted to practise as an Advocate of the High Court and is entitled to practise in the Courts Subordinate thereto, as from the 21st day of October, 1999.

Given under my hand and the Seal of the High Court of Kenya at Nairobi this twenty-first day of October in the Year of Our Lord One Thousand Nine Hundred and Ninety-nine

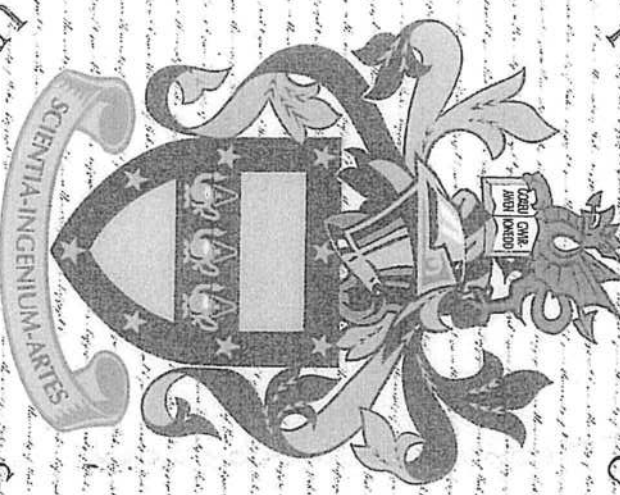

Chief Justice,
High Court of Kenya

Certified that the name of the said NOORDIN MOHAMED HAJI has this day been entered on the Roll of Advocates on payment of the prescribed fee.

Dated this 21st day of October, 1999.


~~Registrar~~ Registrar

PRIIFYSGOL CYMRU



UNIVERSITY OF WALES



Ardystir drwy hyn ddarford derbyn
NOORDIN MOHAMED HAJI
o **BRIIFYSGOL CYMRU, CAERDYDD**
i radd
ATHRO YN Y CYFREITHIAU
mewn **AGWEDDAU CYFREITHIOL MATERION ARFOROL**
ar 14 Gorffennaf 1998

It is hereby certified that
NOORDIN MOHAMED HAJI
of **UNIVERSITY OF WALES, CARDIFF**
has been admitted to the degree of
MASTER OF LAWS
in **LEGAL ASPECTS OF MARINE AFFAIRS**
on 14 July 1998

[Signature]

VICE-CHANCELLOR
IS-GANGHELLOR

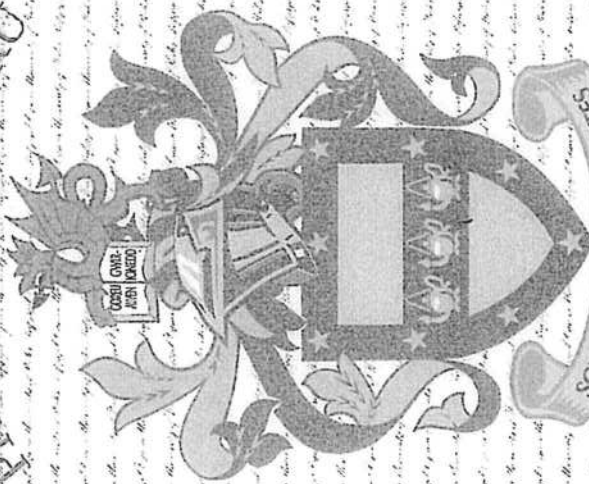
[Signature]

SECRETARY GENERAL
YSGRIFENNDD CYFRREDINOL

[Signature]

SENIOR VICE CHANCELLOR
IS-GANGHELLOR HYN

PRIFYSGOL CYMRU



UNIVERSITY OF WALES

PRIFYSGOL CYMRU
Ardystir drwy hyn ddarford derbyn
NOORDIN MOHAMED HAJI
o BRIFYSGOL CYMRU, COLEG CAERDYDD
i radd
BAGLOR YN Y CYFREITHIAU
gydag ANRHYDEDD AIL-DDOSBARTH, RHAN 2
ar 8 Gorffennaf 1996

It is hereby certified that

NOORDIN MOHAMED HAJI
of **UNIVERSITY OF WALES COLLEGE OF CARDIFF**
has been admitted to the degree of
BACHELOR OF LAWS
with **SECOND CLASS HONOURS, DIVISION 2**
on 8 July 1996



Kath S. Jones

Jeffrey S. Piskhand

IS-GANGHELOR HYN
SENIOR VICE-CHANCELLOR

YSGRIFENNYDD CYFFREDINOL
SECRETARY GENERAL

CHEVENING FELLOWSHIP

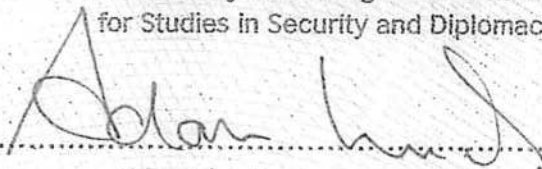
This is to certify that

Noordin Mohamed Haji

has completed a Chevening Fellowship
awarded by the
Foreign and Commonwealth Office of the United Kingdom
for studies in

Democracy, the Rule of Law and Security

at the
University of Birmingham's Centre
for Studies in Security and Diplomacy



for the Secretary of State for
Foreign and Commonwealth Affairs of the United Kingdom.



Foreign &
Commonwealth
Office



UNIVERSITY OF
BIRMINGHAM

This is to certify that

Noordin Mohamed Haji

Completed a Programme in

Democracy, the Rule of Law and Security

from

8 January – 30 March 2007

Organised by the Centre for Studies in Security and Diplomacy,
University of Birmingham, on behalf of the
Foreign and Commonwealth Office

Sir David Logan, KCMG
Director, Centre for Studies in
Security and Diplomacy
University of Birmingham

Professor Michael Clarke, CBE MA DL
Vice-Principal
University of Birmingham





Raoul Wallenberg Institute
of Human Rights and Humanitarian Law



LUND
UNIVERSITY

CERTIFICATE OF ATTENDANCE

This is to certify that

Noordin M. Haji

completed the programme on

ADMINISTRATION OF JUSTICE IN KENYA III

Held in:

Eldoret from 5th -10th August ,2001,
Lund/Stockholm, 2nd -15th September, 2001 and,
Machakos from 22nd - 26th October, 2001.

Organized by:

The Raoul Wallenberg Institute of Human Rights
and Humanitarian Law, Lund University, Sweden,
in collaboration with the Directorate of Personnel Management, Kenya
under the auspices of the Swedish International Development

Co-operation Agency (SIDA)

The Programme covered the following areas:

1. Administration of Justice in Kenya
2. International Human Rights Law
3. African Charter and Customary Law
4. Human Rights of Women and Children
5. Human Rights and Law Enforcement Personnel
6. Good Governance and Human Rights
7. Human Rights and HIV/AIDS
8. International Humanitarian Law
9. Study Visits to Organisations involved in Administration of Justice and the Protection of Human Rights in Kenya and Sweden.

PP *Gudmundur Alfredsson*

Prof. Gudmundur Alfredsson
DIRECTOR
RAOUL WALLENBERG INSTITUTE

Inga Björk-Klevby

Ambassador Inga Björk-Klevby
SWEDISH AMBASSADOR TO KENYA

Wanjala-wa-Muricho

Wanjala-wa-Muricho, OGW
for: PERMANENT SECRETARY/DIRECTOR
DIRECTORATE OF PERSONNEL
MANAGEMENT

UNIVERSITY OF
BIRMINGHAM

Certificate of Attendance

this is to confirm that

Noordin Mohamed Haji

attended the following course at
the Media Centre

Experts in their Field

Media Masterclass Series

2007

Sue Primmer

Director

Karen de Wetwood

Course tutor

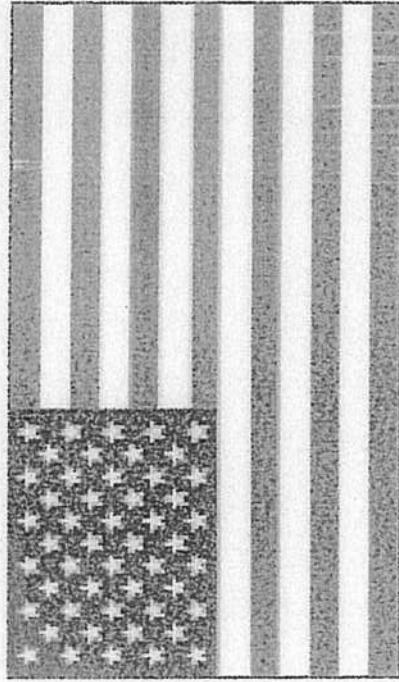
United States of America

This certificate is presented to

NORDIN MOHAMED HAJI

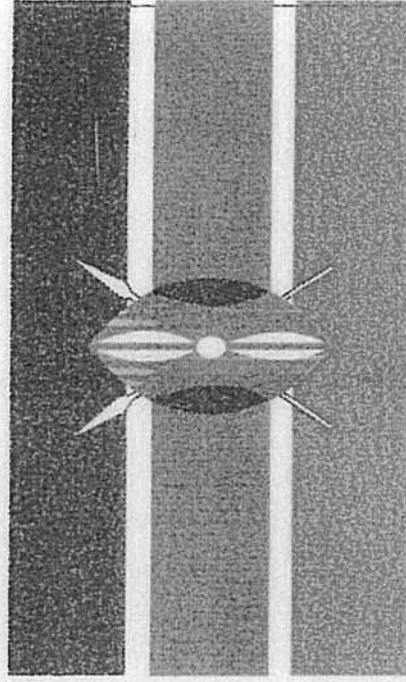
For completion of training in

Psychological Operations



12-16 January 2009

Course Date



A handwritten signature in black ink, appearing to read "John D.", is written over the seal and extends to the right.

Instructor



Certificate No. 0194

NATIONAL SECURITY INTELLIGENCE SERVICE

CERTIFICATE OF ACHIEVEMENT

is awarded to

Noordin Mohamed Haji

for successfully completing

Basic Intelligence course No A2/2001

from *22nd January, 2001* to *16th February, 2001*

Director
National Intelligence Academy

Director General
National Security Intelligence Service

This certificate is void if it is in any way altered, erased or defaced



BRONTE COLLEGE OF CANADA • BRONTE COLLEGE OF CANADA

BRONTE COLLEGE OF CANADA • BRONTE COLLEGE OF CANADA • BRONTE COLLEGE OF CANADA • BRONTE COLLEGE OF CANADA

Certificate

of

Scholarship Achievement

Ontario Academic Credits

Bronte College of Canada

Noordin M. Haji

Principal

April 92

Date

BRONTE COLLEGE OF CANADA • BRONTE COLLEGE OF CANADA



Ontario Secondary School Diploma Diplôme d'études secondaires de l'Ontario

This Diploma is granted to
Ce diplôme est décerné à

Noordin M. Haji

a student of
élève de

Bronte College of Canada

who has fulfilled the requirements for the Ontario Secondary School Diploma
in accordance with the provisions of the Ministry of Education, Ontario

qui a rempli les exigences prescrites pour l'obtention du diplôme d'études secondaires de l'Ontario,
en vertu des dispositions du ministère de l'Éducation de l'Ontario

Dated at Oakville, Ontario
Délivré à _____

the 20th day of December 19 91
ce _____ jour de _____

[Signature]
Minister of Education/Ministre de l'Éducation

[Signature]
Principal of School/Directeur ou directrice de l'école



HIGH COURT OF KENYA

THE OATHS AND STATUTORY DECLARATIONS ACT (CAP.15)
LAWS OF KENYA

A COMMISSION

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING:

BE IT KNOWN that on the fourteenth day of May two thousand and twelve, **NOORDIN MOHAMED HAJI**, an Advocate of the High Court of Kenya, was appointed to be a Commissioner for Oaths under the above mentioned Act for as long as he continues to practice as such Advocate and this Commission is not revoked.

Given under my hand and the Seal of the Court this 14th day of May, 2012 at Nairobi.

CHIEF JUSTICE &
PRESIDENT OF THE SUPREME
COURT OF KENYA



GOVERNMENT OF KENYA

HIGH COURT OF KENYA

CERTIFICATE OF ENROLMENT OF NOTARY PUBLIC

(Issued under section 4(1) of the Notaries Public Act).

This is to certify that **NOORDIN MOHAMED HAJI**, has this day been enrolled as a Notary Public and is hereby authorized to perform within Kenya up to 31st December, 2012, the functions and duties commonly performed by a Notary Public in the United Kingdom.

Dated at Nairobi this 14th Day of May, 2012.


CHIEF REGISTRAR JUDICIARY



NIS HQS INTERNAL MEMO
C. K. MBURU, MBS
Ag. Director of Intelligence
External Division

sd/cb
Forwarded to
MW Haji
Congratulations
Hm 24/7

PHONE: 30583

EXT/ADM/PERS/3 VOL.2 (45)

23rd July, 2013

PF: 00000044

NOORDIN MOHAMED HAJI

HONOURS AND AWARDS
JAMHURI DAY 12th DECEMBER 2012

Forwarded herewith, please find a Certificate, a copy of the Kenya Gazette Notice and a Warrant Form for the award of OGW conferred to you by H.E the President on Jamhuri Day 12th December, 2012 for your retention.

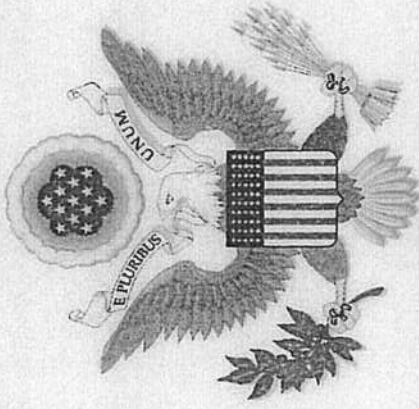
2. I also take this opportunity on behalf of the Service to congratulate you for a job well done, which earned you the honour.

C. K. MBURU, MBS
Ag. DIRECTOR OF INTELLIGENCE
EXTERNAL DIVISION

Encls (3).



The United States of America

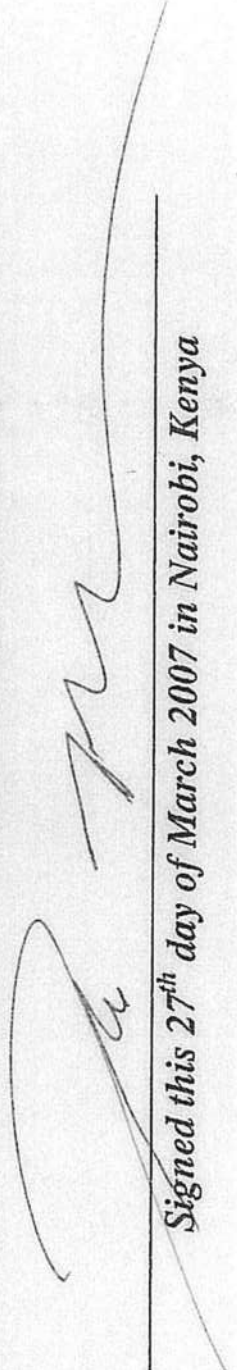


Certificate of Appreciation

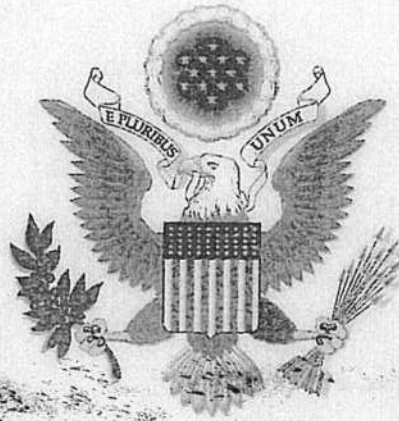
is awarded to

Mr. Noordin Haji

**In recognition of your cooperation, professionalism and
assistance in the fight against terrorism**


Signed this 27th day of March 2007 in Nairobi, Kenya

The United States of America



Certificate of Appreciation

is presented to

NOORDIN MOHAMMED HAJI

for your contribution as Guest Instructor for
Human Rights to the Overseas Training Program's instruction for

Site & Document Exploitation



July 2002

Richard Grayson
Director of Overseas Training



Certificate

OF RECOGNITION

PROUDLY PRESENTED TO

Noordin Haji CBS, OGW

For his outstanding achievement in promoting service delivery and justice to the people of Kenya as the Director of Public Prosecution

A handwritten signature in black ink, appearing to read "E. Muriuki".

EPHANTUS MUGO MURIUKI
CHAIRMAN



STAREHE COMMUNITY



Certificate of Appreciation

THE FOLLOWING AWARD IS GIVEN TO

Mr. Noordin Haji

For initiating reforms in the
Office of the Director of Public Prosecution
which have enhanced on the delivery of justice to
the common mwananchi



Moses Odera

SECRETARY GENERAL
Kenya Youth Peace Forum

Annexure 10:

Memoranda contesting the suitability of the Nominee

Email print out

Zimbra

From: John <johnkanyi2003@gmail.com>
To: cna <cna@parliament.go.ke>
Date: Saturday, 20 May 2023 6:35 PM EAT
Subject: REGARDING VETTING OF Noordin Haji

As a concerned citizen I believe **Mr Noordin Haji** for millions of reasons he is **unsuitable** to hold such a position. One major reason having confirmed he was coerced to vindicate state officers literally shows how incompetent he is. Knowing very well his office is supposed to be independent as per 2010 constitution he failed in integrity in fact in chapter 6 of our constitution elaborate clearly how a state officer should observe

Authority assigned to a State officer--

(a) is a public trust to be exercised in a manner that--

- (i) is consistent with the purposes and objects of this Constitution;**
- (ii) demonstrates respect for the people;**
- (iii) brings honour to the nation and dignity to the office; and**
- (iv) promotes public confidence in the integrity of the office;**

In all this **Mr Noordin Haji** failed even to promote public confidence in that office.

This should worry us a lot knowing very well the office he is about to be vetted for is sensitive and a slight compromise could jeopardize security matters in our country.

thankyou Regards
JOHN

← Reply ←← Reply to All → Forward

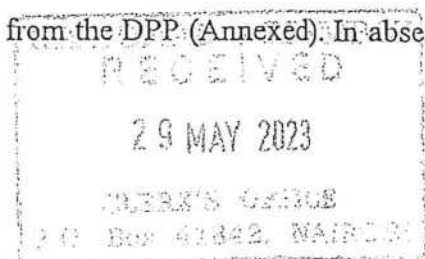
IN THE MATTER OF THE OATHS & STATUTORY DECLARATIONS ACT

CAP 15 LAWS OF KENYA

AFFIDAVIT

I, Sheila Masinde of National Identity card number 21951950 and resident of Nairobi, Kenya in the Republic of Kenya do make oath and state as follows: -

1. THAT I am a Kenyan adult of sound mind and understating and competent to swear this affidavit.
2. THAT I am the Executive Director of Transparency International Kenya, hereinafter referred to as TI-Kenya, and swear this Affidavit on the behalf of Transparency International Kenya for which I am competent to.
3. THAT TI-Kenya is a not-for-profit organisation established and registered in Kenya with the aim of developing a transparent and corruption-free society through good governance and social justice initiatives.
4. THAT TI-Kenya swears and submits this affidavit in response to a call for Public Participation/Submission of Memoranda to the National Assembly in the Matter of Approval by the National Assembly of the Person Nominated (Mr. Noordin Haji) for Appointment to the Position of Director General, National Intelligence Service.
5. THAT we submit this affidavit raising grounds on the unsuitability of the nominee, Mr. Noordin Haji, for public office for violating legal and constitutional provisions while serving as the Director of Public Prosecution.
6. THAT Mr. Haji's actions/omissions during his tenure as the DPP specifically on the questionable withdrawal of cases violated various legal and constitutional provisions that ought to have guided his work.
7. THAT whilst the DPP has authority to withdraw cases for legal reasons, this must be done within the confines of the law.
8. THAT further, the DPP has a constitutional and legal duty to file cases only after sufficient evidence to sustain the prosecution is available and cannot purport to withdraw cases on the basis of the same evidence that was deemed fit at the time of filing
9. THAT professionalism and accountability demand that any change of position such as sufficiency of evidence to sustain a prosecution must be backed by a professional, empirical and scientific analysis of the evidence. Such analysis must incorporate consultation with other key experts including the Prosecution Counsel who has been prosecuting the matter before court.
10. THAT TI-Kenya has unsuccessfully sought this information from the DPP (Annexed). In absence of



such information, it can be concluded that the DPP made such decisions unilaterally or unscientifically.

11. THAT some of the cases Mr. Haji has withdrawn without publicly available and sufficient reasons include the following;

No	Case Parties	Charges	Case Stage	When the case was dropped	Justification used by DPP
1	Geoffrey Mwangi (former CEO, NHIF) and 17 others	Loss of public funds relating to the award of an NHIF contract to an online payment company, Web Tribe Limited, for provision of an integrated Revenue collection system for NHIF. Conferring a benefit of Sh253 million to the company.	Hearing	January 2023	The DPP cited lack of sufficient evidence to sustain the charges. <i>In July 2022 Mr. Mwangi had attempted to have the charges against him terminated, but the DPP argued that the decision to charge him was based on sufficient evidence. The court then dismissed Mr. Mwangi's request, holding that the DPP had demonstrated that the decision to charge was based on sufficient evidence and was not instigated by any other motive other than the public interest.</i>
2	R. V Ben Chumo & others	Wilful failure to comply with procurement laws Conspiracy to commit an offence Aiding the commission of a felony Conspiracy to defeat justice Fraudulent acquisition of public property	Hearing – at least 34 witnesses had been heard & about 4 were remaining	October 2022	The DPP alleged that the DCI failed to conduct proper investigations and avail sufficient evidence that could secure a conviction. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before sufficient evidence was availed to him.</i>
3	Rigathi Gachagua & 9 others	Conspiracy to commit an offence of corruption Money laundering Fraudulent acquisition of public property Conflict of interest	Hearing	November 2022	DPP alleged insufficient evidence due to incomplete investigations <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before sufficient evidence was availed to him.</i>



4	R v Dr. Ken Tarus (former KPLC MD) & 8 others	Conspiracy to commit an economic crime by failing to comply with the procedures and guidelines relating to procurement Wilful failure to comply with the law relating to management of public funds as the accounting officer of KP	Hearing		The DPP alleged that after reviewing the evidence tendered, no offence had been revealed against Mr. Taurus. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before sufficient evidence was availed to him.</i>
5	Aisha Jumwa (CS Ministry of Public Service, Gender and Affirmative Action)	Committing to conspire fraud by misappropriating CDF funds in 2018		October 2022	DPP alleged insufficient evidence to sustain the prosecution. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before sufficient evidence was availed to him.</i>
6	R V Mary Wambui (Communications Authority of Kenya chairperson) and Purma Holdings Limited & another	Faced 2 criminal trials; A tax evasion case & illegal possession of a firearm:	Submissions	Tax evasion dropped in January 2022 Firearm case dropped in Dec 2022	DPP told the court that there were negotiations with KRA. <i>Tax evasion is a criminal offence therefore this case should have proceeded in court.</i> No information available on reasons for dropping case
7	R v Michael Kamau & 2 others	Abuse of office and failure to comply with guidelines relating to the management of public funds	Hearing; 9 witnesses already testified	May 2023	DPP informed the court that he had insufficient evidence to sustain the charges after review of the evidence. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before</i>



					<i>sufficient evidence was availed to him.</i>
8	R vs Moses Lenolkulal & 10 others	Abuse of office and conspiracy to commit an economic crime	Hearing	Application to withdraw made in October 2022. Application to withdraw abandoned within days.	DPP informed the court that he had insufficient evidence to sustain the charges after reviewing the evidence available. In October 2022, DPP made an application to withdraw the charges, a few days later, DPP abandoned this application for withdrawal and informed the court that the evidence was sufficient. <i>It points to incompetence through his inability to make a solid decision on sufficiency of evidence. 3 different positions on sufficiency taken in the course of a case; During filing, during notice to withdraw, and during abandonment of notice to withdraw.</i>

12. **THAT** independence and discretion to file or withdraw cases does not imply working in darkness and without any accountability mechanisms.
13. **THAT** in any event, Mr. Haji has publicly through national media, confessed to filing cases under pressure; clearly in violation of constitutional principles of independence demanded of his office.
14. **THAT** the above incidents point to incompetence, possible lack of independence in decision making, unprofessionalism, and gross misconduct through violation of the following;
 - i. Failure to exercise authority in a manner that promotes public confidence in the integrity of the office contrary to Article 73 of the Constitution of Kenya;
 - a. The questionable withdrawal of prosecution of cases against politically exposed persons fails to inspire public confidence in the DPP's commitment to execute his mandate effectively and satisfactorily.
 - b. The DPP's actions have demonstrated a failure to act in the public interest and in the interests of justice.
 - ii. Lack of objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by favouritism, other improper motives, or corrupt practices contrary to Article 73(2)(b) of the constitution.
 - a. The DPP's withdrawal of charges against some specific individuals who have clear political connections without withdrawals against their co-accused as evidenced in several instances points to blatant favouritism, and failure to ensure fairness and uniformity in the prosecution of all cases.
 - b. The DPP's withdrawal of prosecution of cases affecting a category of people, within a set timeframe, is discriminatory behaviour which casts doubt on his independence.
 - c. The DPP has publicly confessed to acting under influence and bowing to pressure to file cases without sufficient evidence contrary to Article 157(10) of the constitution

4	R v Dr. Ken Tarus (former KPLC MD) & 8 others	Conspiracy to commit an economic crime by failing to comply with the procedures and guidelines relating to procurement Wilful failure to comply with the law relating to management of public funds as the accounting officer of KP	Hearing		The DPP alleged that after reviewing the evidence tendered, no offence had been revealed against Mr. Taurus. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before sufficient evidence was availed to him.</i>
5	Aisha Jumwa (CS Ministry of Public Service, Gender and Affirmative Action)	Committing to conspire fraud by misappropriating CDF funds in 2018		October 2022	DPP alleged insufficient evidence to sustain the prosecution. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before sufficient evidence was availed to him.</i>
6	R V Mary Wambui (Communications Authority of Kenya chairperson) and Purma Holdings Limited & another	Faced 2 criminal trials; A tax evasion case & illegal possession of a firearm:	Submissions	Tax evasion dropped in January 2022 Firearm case dropped in Dec 2022	DPP told the court that there were negotiations with KRA. <i>Tax evasion is a criminal offence therefore this case should have proceeded in court.</i> No information available on reasons for dropping case
7	R v Michael Kamau & 2 others	Abuse of office and failure to comply with guidelines relating to the management of public funds	Hearing; 9 witnesses already testified	May 2023	DPP informed the court that he had insufficient evidence to sustain the charges after review of the evidence. <i>This goes against decision to charge guidelines and prosecutorial practice requiring evidence to meet threshold before filing. It also points to incompetence through his filing and sustaining the case before</i>

- d. Failure to make proper legal judgement on the ripeness of cases for trial and subsequent withdrawal of cases without any substantial change in evidence or circumstances. Whereas the law allows the DPP to withdraw cases, such decision must be guided by public interest, the interests of justice and, the need to avoid abuse of the legal process. It is important to note that none of these reasons were expressly given by the DPP to inform the withdrawals. Most withdrawals have been on evidentiary basis, which is an indication of failure to apply expert analysis prior to the decision to charge.
 - e. Failure to undertake objective analysis of cases and ensure evidential thresholds have been met, before making the decision to charge.
 - f. Failure to review the cases involving decision to charge based on the threshold test within fourteen days of making the decision, leading to wastage of public resources.
 - g. Failure to ensure the right person is charged with the correct offence, backed by evidence.
 - h. Failure to ensure that the investigation file is sufficiently composed before pursuing prosecution, thus failing to make an informed decision to charge.
- iii. Incompetence contrary to Article 75(2)(a) and 158(1)(d) and violation of Decision to Charge Guidelines
- a. Failure to make proper legal judgement on the ripeness of cases for trial and subsequent withdrawal of cases without any substantial change in evidence or circumstances. Whereas the law allows the DPP to withdraw cases, such decision must be guided by public interest, the interests of justice and, the need to avoid abuse of the legal process. It is important to note that none of these reasons were expressly given by the DPP to inform the withdrawals. Most withdrawals have been on evidentiary basis, which is an indication of failure to apply expert analysis prior to the decision to charge.
 - b. Failure to undertake objective analysis of cases and ensure evidential thresholds have been met, before making the decision to charge.
 - c. Failure to review the cases involving decision to charge based on the threshold test within fourteen days of making the decision, leading to wastage of public resources.
 - d. Failure to ensure the right person is charged with the correct offence, backed by evidence.
 - e. Failure to ensure that the investigation file is sufficiently composed before pursuing prosecution, thus failing to make an informed decision to charge.
- iv. Gross misconduct or behaviour
- a. The DPP's actions in withdrawing prosecution of cases against politically exposed persons have demonstrated a failure to ensure the quality of prosecutorial decisions and act with independence, integrity and professionalism in the administration of justice, therefore wasting public resources including human and monetary resources expended in investigations, prosecution and adjudication processes.
 - b. Exercising preferential treatment in handling prosecution of some cases of politically exposed persons as highlighted in this petition. The withdrawal of prosecution of cases affecting a category of people, within a set timeframe, is discriminatory behaviour amounting to gross misconduct or misbehaviour.
 - c. Abuse of prosecutorial powers entrusted to the DPP, through failure to ensure that there is sufficient evidence to provide a realistic prospect of conviction against a suspect on each charge, before making the decision to charge.
 - d. Acting in contravention of the Constitution, ODPP Act 2013, and ODPP's Guidelines on Decision to Charge 2019. Despite the provisions of the law and developed guidelines and policies to prevent the institution of criminal proceedings in cases with insufficient evidence, the DPP has acted in contravention of these policies and guidelines as highlighted in this affidavit, therefore leading to abuse of the legal system and erosion of public trust in the system.

15. **THAT** it is our position that Mr. Haji does not meet the standards of Chapter 6 of the Constitution on Leadership and Integrity on the basis of his actions on corruption cases articulated herein and his nomination to the aforementioned position should NOT be approved.
16. **THAT** it is our position that Mr. Haji has shown incompetence, favoritism and unprofessionalism during his tenure as DPP and his nomination to the aforementioned position should NOT be approved.
17. **THAT** to the best of our knowledge, there have been at least 4 petitions filed to the Public Service Commission seeking the removal of Mr. Haji from office since his appointment in office in 2018.
18. **THAT** it is our position that Mr. Haji's record while serving as DPP renders him unsuitable to hold any public office in Kenya.
19. **THAT** we also wish to notify the vetting committee and the National Assembly that TI-Kenya has recalled a Leadership Integrity award issued to Mr. Haji in 2019 after his failure to adhere to prosecutorial guidelines and the constitution became evident.
20. **THAT** what is deponed herein is true to the best of my knowledge save wherein I have received information or stated my belief and the sources of such information and the grounds of such belief are provided.

SWORN at Nairobi by the said)

SHEILA MASINDE)

Sheila Masinde

This ...29th ...day of May 2023

BEFORE ME: NELSON L. NGAIRA
 ADVOCATE
 & COMMISSIONER FOR OATHS
 Admission No. P.105/2013/718
 P. O. Box 30887
 NAIROBI

COMMISSIONER FOR OATHS

DRAWN BY:

Sheila Masinde

c/o

Transparency International Kenya

Kindaruma Rd, Off Ring Rd, Kilimani

Gate No. 713; Suite No. 4

Tel +254-20-2727763/5 | 0722 296 589



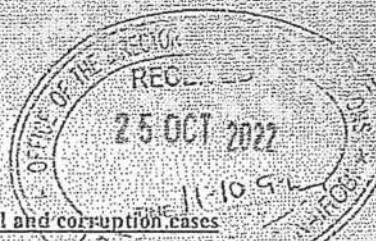
TRANSPARENCY
INTERNATIONAL
KENYA

Transparency International Kenya
Kindaruma Rd, Off Ring Rd, Kilimani
Gate No. 713; Suite No. 4
Tel +254-20-2727763/5 | 0722-296-589
Email: transparency@tikenya.org
<http://www.tikenya.org>

Date: 25th October 2022

To:

Mr. Noordin Hajji,
Director of Public Prosecutions,
Office of the Director of Public Prosecutions,



Dear Mr. Hajji,

RE: Request for Information on withdrawal of criminal and corruption cases

The above matter refers. We write on behalf of the National Integrity Alliance. The National Integrity Alliance (NIA) is a citizen-centred integrity and anti-corruption coalition comprising Transparency International Kenya, Inuka Kenya Ni Sisi! Ltd, Mzalendo Trust, Kenya Human Rights Commission and The Institute of Social Accountability. NIA seeks to promote the realization of constitutional ethical and moral standards into public office.

Our attention has been drawn to reports circulating in the media, indicating that your office has taken the following action in regard to corruption cases: Withdrawn Ksh 19 million graft charges against Aisha Jumwa; withdrawn the graft case against former Kenya Power Managing Director, Ben Chumo and 10 others; and made an application to withdraw and subsequently reinstated charges against former Samburu Governor Moses Kasaine Lenolkulal.

We note that information pertaining to the reasons informing action taken on the above cases, as well as other cases involving high profile individuals, have been scanty. Your office has been on record on several occasions that it only files charges in court when fully satisfied that the cases have met the evidentiary threshold to secure a conviction which in criminal cases must be beyond reasonable doubt. You have also been known to often refer files back to investigative agencies to supply further information and/or evidence before any prosecutorial action is taken. It is therefore our legitimate assumption and expectation that the aforementioned cases met your high evidentiary threshold before they were filed.

We remind you of your constitutional duty to ensure public interest as an overriding interest in every decision undertaken in your capacity. The Constitution also places high professional standards for your office to ensure accountability for administrative acts, high standards of professional ethics, transparency and provision of timely, accurate information, to the public among other principles.

We therefore make a formal request for information and attach a formal application on the reasons that informed your handling of the above matters. We request that this information is shared with us within the next one week in view of the ongoing vetting and interviews for public appointment, involving some of the accused individuals.

Sincerely,

Sheila Masinde,
Executive Director,
Transparency International Kenya
On behalf of the National Integrity Alliance

Cc:

Chairperson,
Commission on Administrative Justice.

Access to Information Request Template

Art. 35 Constitution of Kenya; s.4 -12 Access to Information Act, 2016

(This form should be filled in duplicate)

SECTION A (to be filled by applicant)

Date of request	17 th October 2022
Name of the Applicant (If institution, name of citizen in charge)	Sheila Masinde c/o Transparency International Kenya
Applicant(s)' national ID card number	N/A
Applicant(s)' Email	transparency@tikenya.org
Phone	0202727763/5
Name of the public or private entity (PE)(from whom information is being requested)	Office of the Director of Public prosecution
Chief Executive Officer/designate/the head of entity / information access officer (if known)	The Director of Public Prosecution
Description of the required information: Identify the documents as specifically as possible:	
<ol style="list-style-type: none"> 1. Details of reasons that informed the withdrawal of corruption and abuse of office charges against Former Malindi MP Aisha Jumwa involving misappropriation of Malindi NGCDF funds 2. Details of reasons that led to the realization that evidence used to initiate fraud charges against former Kenya Power Managing Director and 10 others was insufficient, and, any subsequent action or decision to conduct further investigation. 3. Details of reasons that led to the withdrawal and subsequent reinstatement of corruption charges against former Samburu Governor, Moses Lenolkulal. 4. Copies of the aforementioned cases' investigation files properly redacted. 	
Relevant period of information (dd/mm/yy)	From: N/A

	To:
Preferred form of access (tick appropriately)	i. Inspection <input type="checkbox"/> ii. Hard copies <input checked="" type="checkbox"/> iii. Soft copies <input checked="" type="checkbox"/> iv. Entity's website <input checked="" type="checkbox"/> v. Other <input type="checkbox"/>
Is the information needed relating to a matter of life or liberty?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, the expected date of response is 2 Days
If information is needed before the legal deadline of 21 days, State the expected date of response	30 th October 2022
State briefly why response is urgent:	Possibility of violation of the Constitution and urgent rapid response action needed
Signature (applicant): <i>[Signature]</i>	Date: 25th October 2022



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2732090/2732240
Mobile: 0723202888/ 0787880580
Fax: 2243524/2251808
Email: info@odpp.go.ke
When replying please quote:

Ref. ODPP/ES/ GEN

Sheila Masinde,
Executive Director,
Transparency International Kenya,
Kindaruma Rd, Off Ring Rd, Kilimani,
Gate NO. 713; Suite No. 4,
NAIROBI
Email: transparency@tikenya.org

ODPP House, Upper hill
Ragati Road
P.O. BOX 30701 - 00100
NAIROBI, KENYA



Date: 27th October, 2022

RE: REQUEST FOR INFORMATION ON WITHDRAWAL OF CRIMINAL AND CORRUPTION CASES

Reference is made to the above matter.

I have been directed by the the Director of Public Prosecutions to acknowledge receipt of your letter dated 25th October, 2022 whose contents have been duly noted.

The Office of the Director of Public Prosecutions is an **independent office** established under **Article 157** of the Constitution of Kenya.

Further, Article **157(6)** of the Constitution provides that, "*the Director of Public Prosecutions shall exercise State powers of prosecution and may:*

- a) *institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;*
- b) *take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and*

c) *subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b)."*

In addition, **Article 157(8) of the Constitution of Kenya** states that "*the Director of Public Prosecutions may not discontinue a prosecution without the permission of the court*". Furthermore, **Article 157(10)** states that, "*the Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority*".

In view of the foregoing, the reasons for the withdrawal of the above-mentioned cases were canvassed before the learned magistrate (s) who delivered rulings accordingly. In the premises, you are at liberty to make the necessary application before court to obtain the proceedings and ruling which are public documents.



GRACE MURUNGI, OGW
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
FOR: DIRECTOR OF PUBLIC PROSECUTIONS

Copy to: Chairperson on Administrative Justice

D/DC
Please deal.
Sgl.
25/05/23

STEPHEN V. MANGIRA
ID No. 20129581
Nairobi.

Wednesday, 24th May 2023

To whom it may concern

Dennis Mogale

Dear sirs,

pls facilitate
up mt w
24/5/23

RE: FITNESS OF NOORDIN HAJI TO HOLD PUBLIC OFFICE

I refer to the above matter.

I write to express my deep concerns in regards to the suitability of Noordin Haji to hold public office. As a concerned citizen and a responsible member of society, I believe it is essential to bring this matter to your attention and consideration for appropriate action in accordance with our laws under Chapter Six of the Kenyan Constitution.

My concerns come from the malicious experience in his direct authority. This was sometime 2017 which resulted in **Criminal case 257 of 2017** filed in Mombasa Shanzu. At the time, I identified him as being party to a group of people who illegally conducted themselves in official capacity to deprive me of my liberty and property. The said Noordin Haji was the engineer of the great injustice occasioned to me. I *have attached the Judgment for the case herewith respectively. See page 37,39,43,46,47 and 53.*

In the case, he was the mentioned adversely as the individual who undertook a sham and compromised investigation. He saw to it that the evidence being cars registration number KCK 444B-Land Cruiser, KCK 444A- Prado, KCJ 596H-Toyota Velfire, KCH 723Z, Toyota Alphard, KBP 768Q-BMW saloon, KBV 628K, Toyota station wagon, KCK 768Q, BMW station wagon and money were seized in his presence and or by himself. Although **kshs. 20,600,000.00** was seized at the time he only disclosed the amount as being **kshs. 18,500,000.00**. **Kshs. 2,100,000.00** went missing.

On numerous occasions he had an opportunity to relieve me of the allegation. Instead, he detained me for several days and during the material time of my detainment in Mombasa he raided my residence in Kericho without search warrants. I lodged a case against his conduct in **Petition Number 4 Of 2019**. The court found his conduct an infringement on my Constitutional rights. I was awarded damages amounting to **kshs. 1,200,000.00**. *I have attached the judgement for the case herewith for ease of your reference.*

He persisted with charges for which at all material time, I have had to bear with deprivation of property being of several motor vehicles as well as the said money. I am yet to recover the said property. This was all within his knowledge.



Further, Noordin Haji has demonstrated a series of actions and behaviours that raise serious doubts about his capacity to fulfil the duties and responsibilities effectively required of a public official. To this end, as the Director of Public Prosecutions, he withdrew several high-profile criminal cases that touch on powerful individuals with scandalous allegations. This action eroded public trust and confidence in judicial processes and more so his ability to carry out his duties with honesty and transparency. His justification on for the said action contradicts the very position he held during the sham allegation that caused me so much agitation in the said cases.

Given the gravity of these concerns, I respectfully request that appropriate action be taken. It is essential for the integrity and reputation of our government institutions that individuals in positions of power are held to the highest standards of conduct and accountability.

I urge you to uphold a transparent and impartial consideration to assess the fitness of Noordin Haji to hold public office. This process should involve a comprehensive evaluation of his conduct, ethical standards, performance, and ability to serve the best interests of the public.

I trust that you will give due consideration to the concerns raised in this letter. It is my hope that appropriate action will be taken to rectify the situation, restore public trust, and ensure that our community is served by officials who are truly fit to hold office.

Thank you for your attention to this matter. I look forward to your action to address these concerns in the near future.

Sincerely,
Stephen V. Mangira



awtinga@gmail.com

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY OF KENYA

NATIONAL ASSEMBLY
RECEIVED

30 MAY 2023

CLERK'S OFFICE
P. O. Box 41842, NAIROBI

SUBMISSION OF STATEMENT CONTESTING THE SUITABILITY OF MR NOORDIN HAJI, CBS, TO BE APPROVED FOR APPOINTMENT TO THE OFFICE OF DIRECTOR-GENERAL, NATIONAL INTELLIGENCE SERVICE.

I, ELIUD KARANJA MATINDI, an adult citizen of Kenya, presently resident in POOLE in the local authority area of Bournemouth, Christchurch and Poole in the United Kingdom of Great Britain and Northern Ireland, hereby solemnly makes oath and states **THAT:**

- 1.** I submit this statement contesting the suitability of MR NOORDIN HAJI, CBS [hereinafter also referred to as "*the candidate*"] to be approved by the National Assembly for appointment as the **DIRECTOR-GENERAL, NATIONAL INTELLIGENCE SERVICE**, to which he has been nominated.
- 2.** I am the petitioner in the High Court of Kenya's Petition HCCHRPET E492 OF 2022, dated 01.11.2022.
- 3.** In that Petition, I have enjoined the candidate, MR NOORDIN HAJI, CBS, in his personal capacity, as the **5TH RESPONDENT**.
- 4.** In that petition, I am challenging the candidate's personal integrity and background in the discharge of his duties and powers as the Director of Public Prosecutions [DPP], including as required by Articles 1, 2[1, 2 and 4], 3[1], 10, 157 and 232 of the Constitution and all other provisions of the law.
- 5.** The allegations against the candidate include that he violated his oath of office and failed to protect the independence of the office of the DPP, disregarded the public interest, the interests of administration of justice and failed to prevent and avoid abuse of legal process.
- 6.** The alleged violations arose as a result of the decision by the candidate to discontinue the criminal proceedings against **AISHA JUMWA KARISA KATANA**, in Mombasa Criminal Case No. [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others].

7. The petition further alleges that the candidate failed to defend the Constitution of Kenya and the law by refusing to submit a report to the Committee on Appointments, notifying the Committee of any criminal proceedings against **AISHA JUMWA KARISA KATANA** instituted by or known to the **OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS [ODPP]**. This was despite the **NATIONAL ASSEMBLY'S COMMITTEE ON APPOINTMENTS** requesting the **ODPP** to submit a report to the Committee on Appointments as part of the vetting process of the candidates, including the **AISHA JUMWA KARISA KATANA**. The candidate was, even on his own motion, under a constitutional duty to submit the information requested as part of his duty to uphold and protect the Constitution.
8. The candidate, through his counsel on record, has filed a preliminary objection to his enjoinder in the suit. The preliminary objection is dated **19.12.2022**.
9. I, in turn, have contested the candidate's preliminary objection by filing Grounds of Opposition in response, dated **01.02.2023**.
10. Highlighting of submissions in relation to the candidate's preliminary objection, the Petitioner's Grounds of Opposition thereto and other interlocutory matters in that petition is scheduled for **08.06.2023**, after which a ruling will be delivered, including whether the candidate's enjoinder in the Petition in his personal capacity, should be upheld.
11. I am also aware that the candidate's personal integrity and background is the subject of at least **four [4]** other petitions seeking his removal from office as the Director of Public Prosecutions in accordance with **Article 158** of the Constitution as read together with **Section 76** of the **Public Service Commission Act, 2017**, and the applicable regulations.
12. While the candidate does not have an unfettered constitutional right to be approved for appointment as the **DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE**, he has chosen to contest and stalled expeditious hearing and determination of the contestations impugning his personal integrity, competence and suitability to continue holding the office of the DPP, including vide the **four[4]** outstanding petitions before the **PUBLIC SERVICE COMMISSION**.

13. Under these circumstances, the National Assembly should reject the nomination of the candidate for appointment as the **DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE** until the questions that have been raised regarding the candidate's personal integrity, competence, suitability and background as a serving State officer, are investigated and concluded in accordance with the law.

14. Approval by the National Assembly and the subsequent appointment of the candidate as the **DIRECTOR-GENERAL OF THE NATIONAL INTELLIGENCE SERVICE**, notwithstanding unresolved questions about his personal integrity and background, would breach the Constitution of Kenya, including **Articles 1, 2, 3, 10, 73, 74, 75, 94, 95, 232, 238 and 259[1]**.

15. In support of this statement, I submit the following documents [marked as **ANNEXURE EXHIBIT - EKM**] as evidence:

- i. A copy of my petition **HCCHRPET E492/2022** dated **01.11.2022**, impugning, among others, the personal integrity and background of **NOORDIN HAJI, CBS**, and his failure to comply with constitutional requirements in the discharge of his role as the DPP – **pages 1 – 45**.
- ii. A copy of my Notice of Motion Application dated **01.11.2022** filed alongside my petition, **HCCHRPET E492/2022**, impugning , among others, the personal integrity and background of **NOORDIN HAJI, CBS**, and his failure to comply with constitutional requirements in the discharge of his role as the DPP – **pages 46 – 57**.
- iii. A copy of the Preliminary Objection to the Application and Petition in **HCCHRPET E492/2022**, filed by **NOORDIN HAJI, CBS** – **pages 58 – 60**.
- iv. A copy of my Grounds of Opposition in response to the Preliminary Objection filed by **NOORDIN HAJI, CBS**, in **HCCHRPET E492/2022** – **pages 61 – 71**.
- v. Case activity details regarding petition **HCCHRPET E492/2022**, including highlighting of submissions on with regards to interlocutory matters, including the Preliminary Objection raised by **NOORDIN HAJI, CBS**, scheduled for **08.06.2023** – **page 72**.

- vi. Details of ongoing proceedings in **HCCHRPETMISC/E037/2021**, in which **NOORDIN HAJI, CBS**, has challenged two petitions submitted to the Public Service Commission seeking his removal from the office of DPP in accordance with **Article 158** of the Constitution, as read together with **Section 76** of the **Public Service Commission Act, 2017**, and the applicable regulations. This includes scheduled highlighting of submissions in the matter on **07.06.2023 – pages 73 – 75**.
- vii. Copy of an article published online by the Nation Africa, an established news organisation in Kenya, on **18.04.2023**, reporting on proceedings in **HCCHRPETMISC/E037/2021** on **18.04.2023**. The article is also available online at URL - <https://nation.africa/kenya/news/psc-pushes-to-hear-petitions-to-remove-haji-from-office-4203856> [last accessed on **26.05.2023**] – **page 76**.
- viii. Copy of an article published online by Capital FM, an established news organisation in Kenya, on **01.11.2021**, reporting of a third petition for the removal of **NOORDIN HAJI, CBS**, as the DPP, submitted to the Public Service Commission. The article is also available online at URL - <https://www.capitalfm.co.ke/news/2021/11/third-petition-filed-at-psc-seeking-removal-of-dpp-haji-for-abuse-of-office> [last accessed on **26.05.2023**] – **page 77**.
- ix. Copy of a petition dated **22.05.2023** presented to and received by the Public Service Commission on behalf of the National Integrity Alliance [NIA], seeking the removal of **NOORDIN HAJI CBS**, as the DPP, in accordance with **Article 158** of the Constitution, as read together with **Section 76** of the **Public Service Commission Act, 2017**, and the applicable regulations – **pages 78 – 87**.

16. This statement and the supporting evidence have been provided to the Clerk of the National Assembly of Kenya through the E-mail addresses – clerk.nationalassembly@parliament.go.ke and cna@parliament.go.ke

17. What is deponed to hereinabove is true to the best of my knowledge, save for what has been deponed to on information and belief, the sources and grounds whereof have been respectively specified.

Matindi EAD

MADE UNDER OATH AND SIGNED BY THE SAID ELIUD KARANJA MATINDI, ON THIS 26TH DAY OF MAY, 2023, AT 27 BASCOTT ROAD, BOURNEMOUTH, BH11 8RJ, IN THE LOCAL AUTHORITY AREA OF BOURNEMOUTH, CHRISTCHURCH AND POOLE, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, IN THE PRESENCE OF PAUL WINTLE, NOTARY PUBLIC.



DRAWN AND SUBMITTED BY:

Paul Wintle, Notary Public
27 Bascott Road Bournemouth
Dorset BH11 8RJ
0044 1202 267815

ELIUD KARANJA MATINDI

Contact address for the purpose of these submissions: Bavance13@gmail.com

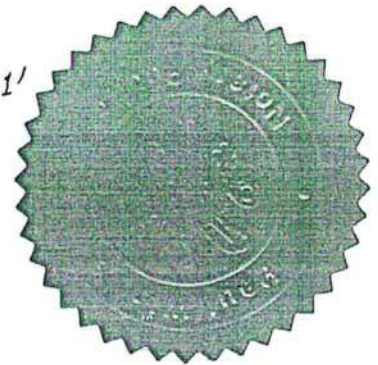
SUBMITTED TO:

**THE CLERK OF THE NATIONAL ASSEMBLY OF KENYA VIA E-MAIL –
clerk.nationalassembly@parliament.go.ke and cna@parliament.go.ke**

ANNEXURE

EXHIBIT - EKM

This is the Annexure referred to as 'EKM1'
In the affidavit of Elinor Karanja Matindi
sworn this 26th day of May 2023
Before me.



Paul Wintle, Notary Public
27 Bascott Road Bournemouth
Dorset BH11 8RJ
0044 1202 267818

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. XX OF 2022

IN THE MATTER OF: ARTICLES 1, 2, 3, 4, 10, 19, 20, 21, 22, 23, 25, 27, 28, 35, 50, 73, 74, 75, 80, 93, 94, 95, 118, 124, 129, 130, 131, 132, 152, 153, 156, 157, 159, 160, 162, 165, 171, 172, 232, 248, 249, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED THREAT TO AND VIOLATION OF ARTICLES 1, 2(1) AND (2), 3, 4, 10, 73, 74, 75, 94(4), 95(2) AND (5), 131(2), 132(2)(a), 152(2) AND (4)(a), 153(4)(a), 156(6), 157(6), (9), (10) AND (11), 232(1) AND (2) AND 259 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED THREAT TO AND VIOLATION OF THE BILL OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 19, 20, 21, 24, 27, 28, 29, 33, 34, 35, 43, 53, 54, 55, 56 AND 57 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED CONTRAVENTION OF SECTIONS 6, 7, 8 AND 12, PUBLIC APPOINTMENTS [PARLIAMENTARY APPROVAL] ACT, 2011, SECTIONS 3, 4, 7, 8, 9, 10, 11 AND 12, LEADERSHIP AND INTEGRITY ACT, 2012, SECTIONS 4, 5, 6, 23 AND 25, OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT, 2013, SECTIONS 3, 4, 5, 6, 7, 8 AND 9, PUBLIC SERVICE [VALUES AND PRINCIPLES] ACT, 2015 AND SECTIONS 3, 4, 5, 8 AND 9, ACCESS TO INFORMATION ACT, 2016.

IN THE MATTER OF: STANDING ORDER NO. 204, STANDING ORDERS OF THE NATIONAL ASSEMBLY OF KENYA [6TH EDITION - 07.06.2022].

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE NOMINATION, AND, WITH THE APPROVAL OF THE NATIONAL ASSEMBLY, APPOINTMENT, BY H.E. THE PRESIDENT OF THE REPUBLIC OF KENYA, OF AISHA JUMWA KARISA KATANA TO THE OFFICE OF CABINET SECRETARY, CABINET SECRETARY, PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE RECOMMENDATION BY THE COMMITTEE ON APPOINTMENTS, FOR THE APPROVAL, BY THE NATIONAL ASSEMBLY, OF AISHA JUMWA KARISA KATANA FOR APPOINTMENT TO THE OFFICE OF CABINET SECRETARY, PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE APPROVAL BY THE NATIONAL ASSEMBLY, UPON THE RECOMMENDATION BY ITS COMMITTEE ON APPOINTMENTS, OF AISHA JUMWA KARISA KATANA FOR THE OFFICE OF CABINET SECRETARY, PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE REFUSAL BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO SUBMIT A REPORT TO THE COMMITTEE ON APPOINTMENTS, SETTING OUT THE STATUS OF CRIMINAL PROSECUTION OF AISHA JUMWA

KARISA KATANA, AS PART OF THE COMMITTEE'S VETTING PROCESS.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE DECISION BY MR NOORDIN M. HAJI, DIRECTOR OF PUBLIC PROSECUTIONS, TO WITHDRAW CRIMINAL PROCEEDINGS AGAINST AISHA JUMWA KARISA KATANA, IN MOMBASA CRIMINAL CASE NO. MCAC 6/2020 – DPP – VS – AISHA JUMWA AND 7 OTHERS.

IN THE MATTER OF: OATH OF OFFICE OF STATE AND PUBLIC OFFICERS AND DUTY TO RESPECT, UPHOLD AND DEFEND THE CONSTITUTION OF KENYA.

IN THE MATTER OF: THE DOCTRINES OF LEGITIMATE EXPECTATION, ULTRA VIRES AND VOID AB INITIO.

BETWEEN

ELIUD KARANJA MATINDI-----PETITIONER

~VERSUS~

H.E. THE PRESIDENT OF THE REPUBLIC OF KENYA-----1ST RESPONDENT

COMMITTEE ON APPOINTMENTS, NATIONAL ASSEMBLY OF KENYA-----
-----2ND RESPONDENTS

NATIONAL ASSEMBLY OF KENYA-----3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION-----4TH RESPONDENT

NOORDIN M. HAJI-----5TH RESPONDENT

HON. ATTORNEY GENERAL OF THE REPUBLIC OF KENYA-6TH RESPONDENT

AND

AISHA JUMWA KARISA KATANA-----1ST INTERESTED PARTY

COMMISSION ON ADMINISTRATIVE JUSTICE-----2ND INTERESTED PARTY

JUDICIAL SERVICE COMMISSION-----3RD INTERESTED PARTY

PETITION

THE HONOURABLE JUDGE
THE HIGH COURT OF KENYA
NAIROBI

THE HUMBLE PETITION OF ELIUD KARANJA MATINDI, [HEREINAFTER REFERRED TO AS “THE PETITIONER”], IS AS FOLLOWS:

A. PARTICULARS OF THE PETITIONER.

1. The PETITIONER, ELIUD KARANJA MATINDI, is an adult citizen of Kenya, currently resident in POOLE in the local authority area of Bournemouth, Christchurch and Poole in the United Kingdom of Great Britain and Northern Ireland. He is a public-spirited individual, a champion and defender of the Constitution of Kenya, 2010. He desires to see full and faithful implementation of the Constitution, as the only basis for the realisation of aspirations of the people of Kenya for a government and society that is based on the essential values of human rights, equality, freedom, democracy, social justice and

the rule of law. He brings this suit on own behalf in the public interest in defence of the Constitution.

2. The Petitioner's address of service for the purpose of this Petition is by E-mail address bavance13@gmail.com.

B. PARTICULARS OF THE RESPONDENTS.

3. The 1ST RESPONDENT, H.E. PRESIDENT OF THE REPUBLIC OF KENYA, is a State officer established under Article 130 of the Constitution, as read together with Articles 136, 138 and 141 of the Constitution.
4. Under Articles 132[2][a] and 152[2], the President is empowered to nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.
5. The President is sued in this petition for failing to respect, uphold, defend and safeguard the Constitution of Kenya by nominating for approval by the National Assembly and, upon the approval, appointing AISHA JUMWA KARISA KATANA [the 1st Interested Party] as a Cabinet Secretary, a person who did not meet the constitutional and statutory requirements for nomination, approval and appointment to be a Cabinet Secretary. The 1st Interested Party was and remains the subject of criminal proceedings as a suspect throughout the whole period - the dates of her nomination, vetting by the Committee, recommendation for appointment, approval, appointment and assumption to the office of a Cabinet Secretary.
6. The address of service for the 1st Respondent is through the 6th Respondent, the Hon. Attorney-General.
7. The 2ND RESPONDENT, THE COMMITTEE ON APPOINTMENTS, NATIONAL ASSEMBLY OF KENYA, is a committee of the National Assembly of Kenya established under Standing Order No. 204 of the National Assembly's Standing Orders.

8. The Committee considers, for approval by the House, appointments under **Articles 152(2)** of the Constitution.
9. The Committee has been sued in this Petition for failing to defend and protect the Constitution and promote the democratic governance of the Republic by recommending to the National Assembly to approve the nomination of the 1st Interested Party as a Cabinet Secretary, notwithstanding her being unsuitable for nomination and recommendation for approval to be a Cabinet Secretary on account of unresolved, credible questions about her personal integrity and background. The 1st Interested Party was and is the subject of criminal proceedings as a suspect through-out the whole period - the dates of her nomination, vetting by the Committee, recommendation for appointment, approval, and appointment.
10. The Committee has further been sued for failing to uphold the Constitution, including **Articles 10 and 118**, and acting as a mere rubber-stamp without paying any regard or taking into account the outcome of public participation as required by the Constitution and the law. Notwithstanding receiving at least four statements contesting the suitability of the 1st Interested Party to hold the office of a Cabinet Secretary in accordance with **Sections 6 and 7, Public Appointments [Parliamentary Approval] Act, 2011** the Committee took not the slightest notice of those submissions in reaching its decision to recommend the approval of the 1st Interested Party for appointment. This fact is borne out including by the complete lack of any record of action or discussion by the Committee in its Report in relation to the submissions.
11. The Committee is further sued for unconstitutionally and unlawfully failing to use the powers donated by **Section 12, Public Appointments [Parliamentary Approval] Act, 2011**, to enforce its decision and require the 4th and 5th Respondents provide information it believed was needed to enable it to discharge its constitutional mandate.
12. **The address of service for the 2nd Respondent is through the 3rd Respondent, the National Assembly.**
13. **The 3RD RESPONDENT, THE NATIONAL ASSEMBLY OF KENYA**, is a constitutional body established by **Article 93** of the Constitution.

- 14.** The 3rd Respondent's role includes protecting the Constitution of Kenya, promoting democratic governance of the Republic and approving, for appointment by the President, individuals nominated to the office of Cabinet Secretary, by the President.
- 15.** The 3rd Respondent has been sued herein for failing to defend and protect the Constitution and promote the democratic governance of the Republic by approving the 2nd Respondent's recommendation for appointment by the President of **AISHA JUMWA KARISA KATANA** [the 1st Interested Party] to be a Cabinet Secretary, notwithstanding her being unsuitable for nomination, approval and appointment to be a Cabinet Secretary on account of credible evidence impugning her personal integrity and background. The 1st Interested Party was and is the subject of criminal proceedings as a suspect throughout the whole period - the dates of her nomination, vetting by the Committee, recommendation for appointment, approval, and appointment.
- 16.** The 3rd Respondent's address of service for the purpose of this Petition, on its own behalf and on behalf of the 2nd Respondent, is through E-mail address – nationalassembly.litigation@gmail.com.
- 17.** The **4TH RESPONDENT, the DIRECTOR OF PUBLIC PROSECUTIONS [DPP]**, is a constitutional office established by **Article 157[1]** of the Constitution.
- 18.** The DPP's constitutional obligations include exercising State powers of prosecution and may institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed and, subject to constitutional edicts, discontinue at any stage before judgement is delivered, any criminal proceedings instituted by the DPP or taken over by the DPP under specified circumstances.
- 19.** The DPP, in exercising the powers conferred by the Constitution, is required to have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. Further, the DPP is required to exercise the constitutional mandate independent of direction or control of any person or authority.

20. The DPP has been sued herein for unconstitutionally surrendering and subordinating the independence of the office to and acting at the behest of third parties.
21. The 4th Respondent is further sued herein for exercising his powers for unconstitutional and improper purposes by withdrawing the criminal charges against **AISHA JUMWA KARISA KATANA** in Mombasa Criminal Case No. [MCAC 6/2020 – DPP – Vs- **AISHA JUMWA and 7 Others**].
22. The above withdrawal came about notwithstanding that the DPP had been satisfied there was sufficient evidence to charge **AISHA JUMWA KARISA KATANA** and her co-accused with specified offences and that it was in the public interest to bring the charges. In addition, the prosecutions were proceedings as intended, including the testifying of some of the prosecution witnesses, until the DPP decided to suddenly and inexplicably withdraw the charges, after the nomination of the suspect to be a Cabinet Secretary.
23. The 4th Respondent is, as an independent constitutional body, further sued in this Petition for failing to defend the Constitution of Kenya and the law by refusing to submit a report to the Committee on Appointments on any criminal prosecutions instituted by it [the 4th Respondent] as part of the Committee's vetting procedure of the 1st Interested Party. This was despite the 2nd Respondent requesting the 4th Respondent to submit a report to the Committee on Appointments as part of the vetting process of the candidates, including the 1st Interested Party. The 4th Respondent was, even on its own motion, under a constitutional duty to submit the information requested. The 1st Interested Party was and is the subject of criminal proceedings instituted and conducted by the 4th Respondent as a suspect through-out the whole period - the dates of her nomination, vetting by the Committee, recommendation for appointment, approval, and appointment.
24. The address of service for the 4th Respondent is by E-mail address to info@odpp.go.ke.
25. The **5TH RESPONDENT, NOORDIN M. HAJI**, is the current DPP appointed to office in accordance with Article 157[2] of the Constitution as read together with Section 8, Office of the Director of Public Prosecutions Act, 2013.

26. As a State officer, the 5th Respondent is required to carry out the functions of the office in strict compliance with the Constitution and the law, including but not limited to upholding and protecting the integrity and independence of the office, protecting the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

27. The 5th Respondent is sued herein for violating his oath of office and failing to protect the independence of the office of the DPP, disregarding the public interest, the interests of administration of justice and failing to prevent and avoid abuse of legal process. These violations arose as a result of the decision by the 5th Respondent to discontinue the criminal proceedings against the 1st Interested Party, **AISHA JUMWA KARISA KATANA**, in Mombasa Criminal Case No. [MCAC 6/2020 – DPP – Vs- **AISHA JUMWA and 7 Others**]

28. The above withdrawal came about notwithstanding that the 5th Respondent had been satisfied there was sufficient evidence to charge **AISHA JUMWA KARISA KATANA** and her co-accused with offences under the **Anti-Corruption and Economic Crimes Act, 2003** and the **Proceeds of Crime and Anti-Money Laundering Act, 2009** and that it was in the public interest to confirm the charges. In addition, these prosecutions were proceedings as intended, including the testifying of some of the prosecution witnesses, until the 5th Respondent decided to suddenly and inexplicably withdraw the charges after the nomination of the 1st Interested Party to be a Cabinet Secretary.

29. The 5th Respondent, as the head of the 4th Respondent, is further sued in this Petition for failing to defend the Constitution of Kenya and the law by refusing to submit a report to the Committee on Appointments, notifying the Committee of any criminal proceedings against the 1st Interested Party instituted by or known to the 4th Respondent. This was despite the 2nd Respondent requesting the 4th Respondent to submit a report to the Committee on Appointments as part of the vetting process of the candidates, including the 1st Interested Party. The 5th Respondent was, even on his own motion, under a constitutional duty to submit the information requested. The 1st Interested Party was and is the subject of criminal proceedings as a suspect through-out the whole period - the dates

of her nomination, vetting by the Committee, recommendation for appointment, approval, and appointment.

30. The address of service for the 5th Respondent is the same as the 4th Respondent by E-mail address to info@odpp.go.ke.

31. The 6TH, RESPONDENT, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA, is a State officer and head of the constitutional office established by Article 156 of the Constitution.

32. The 6th Respondent is sued in this Petition as the principal legal adviser to the Government, with the responsibility for ensuring compliance by the Government of Kenya with the Constitution and all the other laws of Kenya.

33. The 6th Respondent is also sued as the representative of the President in these proceedings. Further the 6th Respondent is enjoined herein as the representative of the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings.

34. Additionally, the 5th Respondent is sued for failing to discharge his duty to promote, protect and uphold the rule of law and defend the public interest.

35. The 6th Respondent's address of service for the purposes of this Petition is by E-mail addresses: slo@ag.go.ke, info@ag.go.ke and communications@ag.go.ke.

C. PARTICULARS OF THE INTERESTED PARTIES.

36. The 1ST INTERESTED PARTY, AISHA JUMWA KARISA KATANA, is a member of the national executive of the Republic established under Article 130 of the Constitution. She holds the office as the Cabinet Secretary, Public Service, Gender and Affirmative Action, following her nomination by H.E. the President and, upon approval by the National Assembly, appointment to that office. The nomination, approval and appointment were all undertaken pursuant to Articles 132[2][a] and 152[2] of the

Constitution, the Public Appointments [Parliamentary Approval] Act, 2011, and the Standing Orders of the National Assembly of Kenya.

37. Prior to the above nomination, approval and appointment, the 1st Interested Party was a State officer and member of the National Assembly, representing the constituency of Malindi between 31.08.2017 to 09.08.2022.

38. The 1st Interested Party has been enjoined in this Petition as she has an identifiable stake or legal interest in the proceedings.

39. The 1st Interested Party's address of service for the purpose of these proceedings is through the 6th Respondent.

40. The 2ND INTERESTED PARTY, COMMISSION ON ADMINISTRATIVE JUSTICE is a constitutional commission established pursuant to Article 59(4) of the Constitution of Kenya, as read together with Articles 248(2)(a), 249 and 253, and Sections 3 and 4 of the Commission on Administrative Justice Act, 2011.

41. The 2ND INTERESTED PARTY has been enjoined in these proceedings as the enforcement agency for the purposes of the right to access to information as provided by Section 2 of the Access to Information Act, 2016.

42. The 2nd Interested Party's address of service for the purpose of these proceedings is by their publicised contact E-mail address – info@ombudsman.go.ke.

43. The 3RD INTERESTED PARTY, JUDICIAL SERVICE COMMISSION, is a State organ established by Article 171[1] of the Constitution.

44. Its functions and objects, as set out in Article 172, [as read together with Articles 248 and 249 of the Constitution], is to promote and facilitate the independence and accountability of the judiciary, the effective and transparent administration of justice, protect the sovereignty of the people, secure observance by all State organs of democratic values and principles and promote constitutionalism.

45. The 3rd Interested Party has been enjoined in this Petition, in view of its functions and objects, in the context of the decision by the 4th and 5th Respondents to exercise the powers granted by Article 157 and withdraw criminal proceedings against the 1st Interested Party in AISHA JUMWA KARISA KATANA - Mombasa Criminal Case No. [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others]. The discontinued prosecution was with the permission of the court.

46. The address of service for the 3rd Interested Party for the purpose of these proceedings is by their publicised contact E-mail address jscsecretariat@jsc.go.ke.

D. THE PETITIONER'S STANDING TO COMMENCE THESE PROCEEDINGS AND THE HONOURABLE COURT'S JURISDICTION.

47. As stated in the PREAMBLE of the Constitution of Kenya, the Petitioner, alongside the other people of Kenya, aspires for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

48. Under Article 3(1) of the Constitution of Kenya, the Petitioner, the Respondents, the 1st Interested Party and this Honourable Court are all under an obligation to respect, uphold and defend the Constitution.

49. Under Article 22 of the Constitution of Kenya, the Petitioner has the right to institute court proceedings, including in the public interest, claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.

50. Under Article 23 of the Constitution of Kenya, this Honourable Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation, or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

51. Under Article 165(3)(b), (d)(i), (ii) and (iii) of the Constitution of Kenya, the High Court has jurisdiction to hear, among others, any question respecting the interpretation of the Constitution, including the determination of the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened, whether

any law is inconsistent with or in contravention of the Constitution, whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of the Constitution on any matter relating to the constitutional powers of State organs in respect of county governments.

52. Under **Article 258** of the Constitution of Kenya, the Petitioner has the right to institute court proceedings, including in the public interest, claiming that the Constitution has been contravened, or is threatened with contravention.

53. Articles **1(3)(c)**, **4(2)**, **10**, **20(3)** and **(4)**, **22**, **23**, **50(1)**, **159**, **165**, **258** and **259** of the Constitution of Kenya, as read together with **Section 5, High Court (Organization and Administration) Act, 2015**, vest jurisdiction in the High Court, to, inter alia, hear any question regarding the violation of rights and fundamental freedoms, determining if acts or omissions are constitutional and the interpretation of the Constitution, including questions of contradiction between any law and the Constitution, and to protect the Constitution from any threats or violations.

E. THE FACTS RELIED UPON IN THIS PETITION.

54. It is a matter of public record and notoriety that the 1st Interested Party, **AISHA JUMWA KARISA KATANA**, a former State officer [as Member of the National Assembly (MNA) seat for Malindi constituency], is/has been the subject of criminal charges for alleged serious offences.

55. In a press statement dated **27.08.2020** and published by the Office of the Director of Public Prosecutions [ODPP] through its verified Twitter account - **@ODPP_KE** - it was announced that **AISHA JUMWA KARISA KATANA**, the then MNA for Malindi constituency, would, together with others, be charged with offences under the **Anti-Corruption and Economic Crimes Act, 2003** and the **Proceeds of Crime and Anti-Money Laundering Act, 2009**.

56. On **14.10.2020**, ODPP [in a message published through its verified Twitter account - **@ODPP_KE**], confirmed its Mombasa regional head, **Alloys Kemo**, had approved

murder and assault charges against AISHA JUMWA [then an MNA for Malindi constituency] and Geoffrey Okuto Otieno, over the fatal shooting of a man and injury of several people during October 2019 Ganda by-election.

57. On 23.10.2020, ODPP [in a message published through its verified Twitter account - @ODPP_KE], provided information about the progress of the court proceedings in relation to the murder and assault charges against AISHA JUMWA [then an MNA for Malindi constituency] and Geoffrey Okuto Otieno, after the fatal shooting of a man and injury of several people during October 2019 Ganda by-election.

58. On 08.12.2020, ODPP [in a message published through its verified Twitter account - @ODPP_KE], provided information about the progress of the criminal proceedings against AISHA JUMWA [then MNA for Malindi constituency] and 70(sic) others who had been charged with offences under the **Anti-Corruption and Economic Crimes Act, 2003** and the **Proceeds of Crime and Anti-Money Laundering Act, 2009**.

59. In an article published online by K-24 TV [a news platform and broadcaster in Kenya] on 16.08.2022, it was reported that a warrant of arrest had been issued against AISHA JUMWA KATANA in relation to criminal proceedings under the **Anti-Corruption and Economic Crimes Act, 2003** and the **Proceeds of Crime and Anti-Money Laundering Act, 2009**.

60. The case against AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others] was listed in the weekly cause-list for hearing at the Mombasa Magistrate's Criminal Court on Monday, 03.10.2022

61. In an article published on 07.10.2022 by the People Daily newspaper, it was reported that the matter listed for hearing on 03.10.2022 at Mombasa Magistrate's Criminal Court was scheduled to be mentioned on 07.10.2022.

62. As of 27.09.2022 [the date of the nomination by H.E. President William S. Ruto, for, AISHA JUMWA KARISA KATANA, as a Cabinet Secretary, Public Service, Gender And Affirmative Action], criminal proceedings against the 1st Interested Party were still ongoing and no verdict had been reached.

63. On 28.09.2022, the Petitioner submitted a request, under **Article 35** of the Constitution as read together with the **Access to Information Act, 2016**, for information from the 4th Respondent about the Cabinet Secretary nominees announced by H.E. the President on 27.09.2022. The request for information to the 4th Respondent was copied to the 2nd Interested Party, the oversight and enforcement agency for the **Access to Information Act, 2016**, for their early information and appropriate guidance.
64. On 04.10.2022, the Petitioner received a copy of the letter sent to the 4th Respondent by the 2nd Interested Party, urging the 4th Respondent to respond to the request for information soonest in line with **Section 9[4]** of the Act.
65. As of the date of this Petition, receipt of the requested information had neither been acknowledged nor the information provided by the 4th Respondent.
66. It should be noted that, under **Section 28[3][c] of the Act**, an information access officer who fails to respond to a request for information within the prescribed time commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or both. The Petitioner notes that the powers for prosecution of offences under the Act repose on the 4th Respondent.
67. On 12.10.2022 and, under inexplicable and unexplained circumstances, the 4th Respondent, through the 5th Respondent, withdrew the criminal case against **AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others]**. This withdrawal was notwithstanding the fact at least two prosecution witnesses had already testified in the matter. Further, barely two months earlier, the 4th and 5th Respondents were seeking orders to get the 1st Interested Party to be remanded in custody pending the completion of the criminal proceedings.
68. On 12.10.2022, the Petitioner submitted a request for information under **Article 35** of the Constitution, as read together with the **Access to Information Act, 2016**, to the 4th Respondent. The request asked for, among others, a confirmation of the withdrawal of the charges and the reasons that informed the withdrawal decision.

69. As of the date this Petition, the request for information has neither been acknowledged by the 4th Respondent not been honoured.

70. On **14.10.2022** and, in response to a call for submission of written statements on oath contesting the suitability of persons nominated by H.E. the President pursuant to powers donated by, among others, Article 152[2] of the Constitution, for approval by the National Assembly, the Petitioner herein submitted his sworn statement and notarised supporting bundle of evidence, both dated **13.10.2022**. The statement and supporting evidence contested the suitability of the 1st Interested Party herein to be nominated, approved and, if approved, appointed as a Cabinet Secretary in the National Executive of the Republic.

71. On **15.10.2022** [as recorded in the 2nd Respondent's Report after conducting the vetting of the 1st Interested Party and the other candidates], the Clerk of the National Assembly of Kenya wrote to the 4th and 5th Respondents requesting a status report on whether there were any pending criminal proceedings against the twenty-four nominees. Just like with regards to the Petitioner's request dated **28.09.2022** for the same information, the 4th and 5th Respondents refused to supply the requested information to the 2nd Respondent.

72. On **18.10.2022**, the date the 1st Interested Party herein appeared before the 2nd Respondent for her vetting, the 4th Respondent issued a statement via their verified Twitter account - **@ODPP_KE** – confirming that the murder and assault charges against **AISHA JUMWA** [then an MNA for Malindi constituency], were still ongoing.

73. On **25.10.2022**, the 2nd Respondent tabled their Report in the National Assembly after carrying out a vetting exercise of the 1st Interested Party and the other nominees.

74. Vetting proceedings with regards to the 1st Interested Party are contained from pages **75 to 81** of the Report.

75. The Report, in relation to the 1st Interested Party herein, records, among others, that:

- a. She has never been charged in any court of law [paragraph 365/page 76.]
This is despite the fact the 1st Interested Party was the subject of at least two

criminal prosecutions at the date of her nomination and one at the date of her appearance before the vetting Committee;

- b. She stated that most of the cases facing her were politically motivated [paragraph 367/page 77.] There are no further details in the report setting out what cases the 1st Interested Party believes[d] are/were politically motivated, the basis for the belief or action taken by the 1st Interested Party to remedy the alleged abuse of the justice system to her detriment;
- c. The 1st Interested Party, in her replying affidavit responding to statements [submitted on oath by Mr Davis Malombe, Ms Sheila Masinde and the Petitioner herein contesting her suitability to hold the office of a Cabinet Secretary] questioned various procedural aspects of those statements – paragraph 374/pages 77 - 79. This was notwithstanding the Committee holding the submitted statements complied with the requirements of the law – paragraphs 42, 44 and 50/page 24 and 50. There is no record that, based on the 1st Interested Party Party's objections, the Committee changed its decision regarding the admissibility of the submitted statements;
- d. In her replying affidavit, the 1st Interested Party is recorded as stating that the charges against her in the **Anti-Corruption Case No. 6 of 2020** were withdrawn by the DPP on **12.10.2022**. There is no further information on the circumstances or reasons leading to the withdrawal of those charges;
- e. The 1st Interested Party is recorded stating that the graft charges against her were politically motivated. There is no record of the basis for this belief or action taken by the 1st Interested Party seeking redress for the alleged abuse of the judicial system for political purposes;
- f. The 1st Interested Party is recorded confirming that, as of the date of swearing the replying affidavit, she was still facing murder charges;

- g. The 1st Interested Party is recorded as deponing that the criminal prosecutions against her would not pose any legal hurdle as **Article 50[2]** of the Constitution guarantees her the right to be presumed innocent until the contrary is proved;
- h. The 1st Interested Party is recorded as deponing that, as she was not the only public or State officer facing criminal charges, it would be discriminatory and against fairness and constitutionalism for that fact to be used against her;
- i. The 1st Interested Party is recorded as deponing that she should not be denied the opportunity to serve the country as she enjoyed the right to be presumed innocent and a fair trial;
- j. The 1st Interested Party is recorded as deponing that the statements contesting her suitability to hold the office as a Cabinet Secretary are frivolous, ill-advised and motivated by malice and bad faith. The Report has no record of evidence tendered by the 1st Interested Party to support the deposition;
- k. The 1st Interested Party is recorded as admitting her previous conduct in relation to past utterances put into question her conduct as a State officer, contrary to Chapter Six of the Constitution and the Public Officer Ethics Act. The 1st Interested Party is recorded as saying that, if appointed, she would endeavour to conduct her public and private affairs in accordance with Chapter Six of the Constitution.

76. Further and, in addition to the foregoing, the Report records that, in its observation of the suitability of the 1st Interested Party to be appointed to be a Cabinet Secretary, the Committee observed, among others, that *the 1st Interested Party has been charged in a court of law in the last three years of various offences but has not been convicted in any of them.*

77. The above observation contradicted the 1st Interested Party's submission on the same as recorded at **paragraph 365/page 76** of the Report. This raised the veracity of the information provided by the 1st Interested Party to the Committee, further raising questions about her personal integrity, ethics and suitability. There is no record of this discrepancy

being considered by the Committee in its deliberations and decision to recommend the approval of the 1st Interested Party.

78. There is no record in the Report of any information from the DPP, setting out the criminal charges against the 1st Interested Party or reasons for withdrawal of the criminal proceedings alleging corruption and misuse of public funds. The Report records results from the Directorate of Criminal Investigations, indicating positive results for the offences of murder and conspiracy to commit corruption.

79. There is further no record, in the Report, that the Committee considered and reached a view on the written submissions from members of the public, including the Petitioner herein, contesting the suitability of the 1st Interested Party to be appointed as a Cabinet Secretary on the basis of her personal integrity and background, based on the criminal prosecutions she was facing as of the date of her nomination for the position. There is further no record in the Report of the Committee's views on the matters deponed in the 1st Interested Party's affidavit in response to the contestations of her suitability to be appointed as a Cabinet Secretary.

80. The Report records that, to reach its decision, the Committee based its decision to recommend the approval of the 1st Interested Party only on the basis of the 1st Interested Party's filled questionnaire pursuant to **Section 6(8) of the Public Appointments (Parliamentary Approval) Act**, [which stated, under **Integrity**, that the 1st Interested Party had not been charged in a court of law, despite her being the subject of two criminal prosecutions as of the date of her nomination], her curriculum vitae and her oral submission during the approval hearing.

81. Notwithstanding the above reasons which provided credible grounds to suggest the 1st Interested Party's personal integrity and suitability was impugned, thereby making her unsuitable for approval, a majority of the members of the Committee on Appointments approved the nomination of the 1st Interested Party for appointment as Cabinet Secretary for Public Service, Gender & Affirmative Action by H.E the President of the Republic of Kenya.

82. A minority of members of the Committee did not approve the nomination of the 1st Interested Party for appointment as Cabinet Secretary for Public Service, Gender & Affirmative Action by H.E the President of the Republic of Kenya as they did not believe she met the constitutional requirements for personal integrity and suitability. This was on the basis of the gravity of the active criminal cases against her.

83. It is a matter of general information and public record that, on 26.10.2022, the National Assembly of Kenya adopted the recommendation from its Committee on Appointments for the 1st Interested Party to be approved for appointment as the Cabinet Secretary for Public Services, Gender and Affirmative Action.

84. On 26.10.2022 vide a Special Issue of the Kenya Gazette Notice No. 13033 of the same date, H.E. the President of the Republic appointed the 1st Interested Party to be a Cabinet Secretary, effective 27.10.2022. The 1st Interested Party was sworn to and assumed the office of Cabinet Secretary on 27.10.2022.

85. It is a matter of general knowledge and notoriety that, on 30.10.2022, the 5th Respondent, in a wide-ranging interview with KTN News Kenya, an established television network in Kenya, admitted to, among others, succumbing to external influence and pressure in the discharge of his constitutional powers and duties. This included “being pushed by the DCI, through the media” to charge suspects with alleged offences. The interview was widely publicised ahead of the live transmission, including by the 4th Respondent through its verified Twitter account - @ODPP_KE.

F. THE LEGAL BASIS AND FOUNDATIONS OF THIS PETITION INCLUDE:

86. Article 1 of the Constitution which provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. The people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives. The Article further delegates the people’s sovereign powers to other State organs, including the Executive and the Judiciary. The delegated sovereign power is required to be exercised in accordance with the Constitution.

87. Article 2 of the Constitution which provides for the supremacy of the Constitution and that it binds all persons and all State organs at both levels of government. The Article further decrees that no person may claim or exercise State authority except as authorised under the Constitution.

88. Article 3 of the Constitution which states that every person has an obligation to respect, uphold and defend the Constitution. The Article additionally declares as unlawful any attempt to establish a government otherwise than in compliance with the Constitution.

89. Article 4 of the Constitution which declares Kenya as a sovereign, democratic Republic, founded on the national values and principles of governance set out in Article 10.

90. Article 10(1) of the Constitution which states that the national values and principles of governance, as set out in Article 10 (2), bind all State organs, State officers, public officers and all persons whenever any of them applies or interpret the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

91. Article 10 (2) of the Constitution which states that the national values and principles of governance include patriotism, national unity, the rule of law, democracy, participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, protection of the marginalised, good governance, integrity, transparency and accountability.

92. Article 19 of the Constitution which declares that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities, to promote social justice and the realisation of the potential of all human beings. The Article further provides that the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the State, do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law (except to the extent that they are inconsistent with Chapter Four of the Constitution), and are subject only to the limitations contemplated in the Constitution.

93. **Article 20** of the Constitution which states, among others, that the Bill of Rights applies to all law, binds all State organs and all persons and that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

94. **Article 21** of the Constitution which, among others, imposes a mandatory, positive duty on the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. The Article requires the State to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under **Article 43**. This duty includes ensuring legislative or administrative actions, whether by the State or by any other person, do not threaten, undermine or regress the rights guaranteed under **Article 43**. The Article further imposes a duty on all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities and members of particular ethnic, religious or cultural communities.

95. **Article 22** of the Constitution, as read together with **Article 258**, which states that every person has the right to institute court proceedings, including acting in the public interest, claiming that a right or fundamental freedom in the Bill of Rights and/or other provisions of the Constitution have been denied, violated or infringed, or are threatened with contravention.

96. **Article 23** of the Constitution, as read together with **Article 165**, which vests this Honourable Court with the jurisdiction to hear and determine applications for redress of a denial, violation, infringement of, or threat to a right or fundamental freedom or other provisions of the Constitution. It also provides the remedies that the court can award in its endeavour to enforce the Bill of Rights.

97. **Article 24** of the Constitution which sets out the permissible circumstances that a right or fundamental freedom in the Bill of Rights may be limited.

98. **Article 25** of the Constitution which sets out what rights and fundamental freedoms shall not be limited under any circumstances. These include freedom from torture and cruel, inhuman or degrading treatment or punishment and the right to a fair trial.

99. **Article 27** of the Constitution which enshrines equality and freedom from discrimination. Whereas the Article prohibits discrimination on any ground, binds the State and all persons, it allows the State to take legislative and other actions, including affirmative action programmes policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

100. **Article 28** of the Constitution which enshrines every person's right to inherent dignity and the right to have that dignity respected and protected.

101. **Article 29** of the Constitution which, among others, outlaws any form of violence from either public or private sources, torture in any manner, whether physical or psychological, corporal punishment, cruel, inhuman or degrading treatment or punishment.

102. **Article 35(1)** of the Constitution which enshrines the right of every citizen to access information held by the State and by another person and required for the exercise or protection of any right or fundamental freedom. **Article 35(3)** further requires the State to publish and publicise any important information affecting the nation.

103. **Article 43** which guarantees the right to economic and social rights. These include the right to highest attainable standard of health, accessible and adequate housing, reasonable standards of sanitation, freedom from hunger, adequate food of acceptable quality, clean and safe water in adequate quantities, social security and education.

104. **Article 47** which enacts the right to fair administrative action.

105. **Article 48** which enshrines the State's duty to ensure access to justice for all persons.

106. **Article 50(1)** of the Constitution which provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

- 107.** Article 53 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by children.
- 108.** Article 54 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by persons with disabilities.
- 109.** Article 55 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by the youth.
- 110.** Article 56 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by minorities and marginalised groups.
- 111.** Article 57 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by older members of society.
- 112.** Article 73 which, among others, enshrines that authority assigned to a State officer is a public trust to be exercised in a manner that is consistent with the purposes and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office. Further this authority vests in the State officer the responsibility to serve the people, rather than the power to rule them.
- 113.** Additionally, Article 73 enacts that the guiding principles of leadership and integrity include selection on the basis of personal integrity, competence and suitability. Decision-making must be objective, impartial, not influenced by nepotism, favouritism, other improper motives or corrupt practices. Service must be selfless, based solely on the public interest, honesty in the execution of public duties, declaration of personal interests that may conflict with public duties, accountability to the public for decisions and actions, discipline and commitment in service to the people.
- 114.** Article 74 of the Constitution, which requires a person, before assuming a State office, acting in a State office or performing any functions of a State office, to take and subscribe the oath or affirmation of office in a manner and form prescribed by the Constitution or under an Act of Parliament.

115. Article 75 of the Constitution, which sets the expected standards of conduct of State officers, whether in public and official life, in private, life or in association with others. These include avoiding conflict between personal interests and public or official duties, compromising any public or official interest in favour of a personal interest, or behaving in a manner that demeans the office the officer holds. The Article further provides mechanisms for upholding its provisions and those of Articles 76, 77 and 78[2]. Sanctions for proven breach of the provisions include dismissal or removal from office. Persons dismissed or removed from office for contravening the Article are disqualified from holding any other State office.

116. Article 80 of the Constitution which among others, require enactment of legislation to, with the necessary modifications, apply the provisions of Chapter Six of the Constitution to public officers.

117. Article 93 of the Constitution which establishes the National Assembly as part of the Parliament of Kenya.

118. Article 94 of the Constitution which sets out the role of Parliament, including a duty to protect the Constitution and promote the democratic governance of the Republic.

119. Article 95 of the Constitution which sets out the role of the National Assembly, including exercising oversight of State organs.

120. Article 118 of the Constitution, which enshrines a duty on the National Assembly, as part of Parliament, to facilitate public participation and involvement in its legislative and other businesses, including those of its committees.

121. Article 124 of the Constitution which provides for establishment of committees of Parliament and Standing Orders.

122. Article 129 of the Constitution which sets out the principles of executive authority, including that it is delegated authority from the people of Kenya, which must be exercised in accordance with the Constitution and in a manner compatible with the principle of service to the people of Kenya and for their well-being and benefit.

123. Article 130 of the Constitution which, among others, establishes the National Executive of the Republic, comprising the President, the Deputy President and the rest of the Cabinet.

124. Article 131 of the Constitution which sets out the authority of the President, including exercising the delegated executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries. Further, the enactment requires the President to, among others, respect, uphold and safeguard the Constitution and ensure the protection of human rights and fundamental freedoms and the rule of law.

125. Article 132 of the Constitution, which, among others, empowers the President to nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries. The Article further empowers the President to direct and coordinate the functions of ministries and government departments and, by a decision published in the Gazette, to assign responsibility for the implementation and administration of any Act of Parliament to a Cabinet Secretary, to the extent not inconsistent with any Act of Parliament.

126. Article 141 of the Constitution which regulates the assumption of office by the President, including the taking and subscribing the oath or affirmation of allegiance and the oath or affirmation for the execution of the functions of the office as prescribed in the Third Schedule of the Constitution.

127. Article 152 of the Constitution which provides for the Cabinet of the Republic of Kenya, including the nomination and, with the approval of the National Assembly, appointment by the President, of Cabinet Secretaries. The Article also prescribes the requirement for a Cabinet Secretary to swear or affirm their faithfulness to the people and the Republic of Kenya and their obedience to the Constitution, in accordance with the Third Schedule of the Constitution, before they assume office.

128. Article 153 of the Constitution which provides for the decisions, responsibilities and accountability [individually and collectively] of the Cabinet, including that Cabinet Secretaries must act in accordance with the Constitution.

- 129.** Article 156 of the Constitution which establishes and sets out the duties, powers and responsibilities of the Attorney-General.
- 130.** Article 157 of the Constitution which, among others, establishes the office of Director of Public Prosecutions, the office's constitutional independence, its powers and duties, including the requirement for the Director to have regard to the public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.
- 131.** Article 159 of the Constitution that provides for judicial authority, which is derived from the people, and vests in, and shall be exercised by, the courts and tribunals established by or under the Constitution.
- 132.** Article 160 of the Constitution which, among others, enacts for the independence of the Judiciary in its exercise of judicial authority.
- 133.** Article 161 of the Constitution which, among others, constitutes members of the Judiciary.
- 134.** Article 165(1) and (3) of the Constitution which, among others, establishes this Honourable Court and vests it with jurisdiction to hear and determine this Petition.
- 135.** Article 171 of the Constitution which establishes the Judicial Service Commission [JSC.]
- 136.** Article 172 of the Constitution which sets out the functions of the Judicial Service Commission as promoting and facilitating the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice.
- 137.** Article 232 of the Constitution which provides for, among others, the values and principles of public service, including high standards of professional ethics, responsive, prompt, effective, impartial and equitable provision of services, involvement of the people in the process of policy making, accountability for administrative acts, transparency and provision to the public of timely, accurate information. The Article further provides that the values and principles of public service apply to public service in all State organs in

both levels of government and to all State corporations, including the Respondents and the 1st Interested Party.

138. Article 248 of the Constitution which establishes JSC as one of the independent constitutional commissions.

139. Article 249 of the Constitution which sets out, among others, the objects, independence and authority of the JSC as one of the independent constitutional commissions. These objects are protecting the sovereignty of the people, securing observance by all State organs of democratic values and principles and promoting constitutionalism.

140. Article 258 of the Constitution, which enshrines the right of every person to institute court proceedings, including in the public interest, claiming that the Constitution has been contravened or is threatened with contravention.

141. Article 259 of the Constitution which provides, among others, that the Constitution shall be interpreted in a manner that:

- a. Promotes its purposes, values and principles;
- b. Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- c. Permits the development of the law; and
- d. Contributes to good governance.

142. Article 260 of the Constitution which provides for the interpretation of the Constitution.

143. Additional legal foundations for the Petition include:

- a. Sections 6, 7, 8 and 12, Public Appointments [Parliamentary Approval] Act, 2011;
- b. Sections 3, 4, 7, 8, 9, 10, 11 and 12, Leadership and Integrity Act, 2012;

- c. Sections 4, 5, 6, 23 and 25, Office of The Director Of Public Prosecutions Act, 2013;
- d. Sections 3, 4, 5, 6, 7, 8 and 9, Public Service [Values and Principles] Act, 2015;
- e. Sections 3, 4, 5, 8 and 9, Access to Information Act, 2016.
- f. Standing Order No. 204, Standing Orders of The National Assembly of Kenya.

G. NATURE OF INJURY CAUSED TO THE PETITIONER AND THE GENERAL PUBLIC DUE TO THE VIOLATIONS OR INFRINGEMENT OF AND THREATS TO THE CONSTITUTION, [INCLUDING THE BILL OF RIGHTS], STATUTES, REGULATIONS AND OTHER APPLICABLE LAWS AND RULES.

144. The nomination by H.E the President, the recommendation by the Committee on Appointments, the approval by the National Assembly, the appointment by H.E the President and assumption to office of Cabinet Secretary by **AISHA JUMWA KARISA KATANA**, the 1st Interested Party herein, notwithstanding serious and credible allegations of her lack of personal integrity, background and suitability, including as evidenced by her being the subject of criminal prosecutions at the dates of her nomination, vetting, approval, appointment and assumption to office of Cabinet Secretary, is a gross and egregious violation of the Constitution of Kenya and laws.

145. It is the Petitioner's case that the Respondents and the 1st Interested Party, individually and collectively have, by participating, through acts or omissions, in the process that resulted in the appointment of the 1st Interested Party as a Cabinet Secretary, despite her being the subject of criminal proceedings in a court of competent jurisdiction, including for alleged murder, failed to defend and have overthrown the Constitution of Kenya by establishing a government otherwise that in accordance with the Constitution, contrary to **Article 3** of the supreme law.

146. Taking into account that the alleged offences were committed by the 1st Interested Party when she was already a State officers, there are very strong grounds to suggest she was unsuitable to be nominated, recommended for approval, approved, appointed and sworn to the office of Cabinet Secretary.

147. The nomination, recommendation, approval, appointment and assumption to office of Cabinet Secretary by the 1st Interested Party, despite her being the subject of prosecution for alleged offences, including murder and assault, therefore, violated the following constitutional provisions:

- a. The sovereignty of the people of Kenya under **Article 1**. It was never the intention of the people of Kenya that the Respondents, in exercise of the delegated authority, would oversee a process whose outcome would lead to the appointment of a person actively under prosecution for , among other offences, murder and assault as at the dates of their nomination, recommendation for and approval for appointment, appointment and assumption to office, as a Cabinet Secretary of the Republic, the highest, collective, Executive decision-making organ for the whole of the Republic.
- b. The process culminating in the appointment of the 1st Interested Party as a Cabinet Secretary, despite criminal charges against her, violated **Article 2[1] and [2]**. None of the agencies involved in the process leading to the assumption to office of the 1st Interested Party had the authority to lead to that outcome, based on the unresolved questions regarding the personal integrity and suitability of the 1st Interested Party.
- c. The Respondents and the 1st Interested Party violated **Article 3** of the Constitution. Individually and collectively, they were obliged to ensure that a person who had active court cases, including for allegations of murder and assault, was not appointed to be a Cabinet Secretary of the Republic of Kenya. This duty extended to the 4th and 5th Respondents who, by virtue of **Articles 73, 74, 75 and 157** of the Constitution, were obliged to submit a report, on own motion, to the 2nd Respondent, as part of the vetting process of the 1st

Interested Party. Their failure to do so was a gross violation of their constitutional duties, including the duty to have regard to the public interest, the interests of the administration of justice and the need to avoid abuse of the legal process.

- d. The appointment of the 1st Interested Party to office of Cabinet Secretary, including the process leading to that appointment is a travesty and a gross violation of the binding national values and principles of governance of the Republic. It can never have been the intention or expectation of the people of Kenya, when they enacted **Article 10** of the Constitution, that a process which led to a person facing criminal allegations, including murder and assault, being appointed as a Cabinet Secretary, met the requirements of the rule of law, democracy, human dignity, equity, social justice, inclusiveness, equality, human rights, protection of the marginalised, good governance, integrity, transparency and accountability. It was, instead, the intention and expectation of the people of Kenya that, in upholding the binding national values and principles of governance, a person charged with alleged offences, including murder and assault, would not be nominated, recommended for approval, approved, appointed and sworn to office as a Cabinet Secretary. The Respondents and the 1st Interested Party have failed to uphold these provisions.
- e. In addition, in reaching its decision to recommend the approval of the 1st Interested Party for appointment, the 2nd Respondent completely ignored public participation and written submissions from the public contesting the suitability of the 1st Interested Party on the basis of her personal integrity, background and suitability. The 2nd Respondent and, by extension, the 3rd Respondent, reduced the approval process as a mere rubber-stamping exercise at the behest of the 1st Respondent, devoid of any meaningful impact or effect in upholding the national values and principles of governance and the constitutional purposes, values and principles, including personal integrity of State officers.

- f. The appointment of the 1st Interested Party to office of a Cabinet Secretary, despite her personal integrity being in question owing to criminal proceedings, is a violation and a threat of violation of the Bill of Rights, including **Articles 19, 20, 21, 22, 27, 28, 43, 47, 53, 54, 55, 56 and 57**. The criminal allegations facing the 1st Interested Party are so serious as to provide reasons to believe that she would be unable to uphold the rights and fundamental freedoms enshrined in the Bill of Rights. This is especially so with regards to the ministry that she is expected to lead – Ministry of Public Services, Gender and Affirmative Action. In any event, whichever ministry the 1st Interested Party would end up leading, her personal integrity would have been of paramount importance. Credible allegations suggesting she lacked such integrity, including as evidenced by the fact she was the subject of active criminal prosecutions through-out the period from nomination to assumption to office, precluded her from being suitable for appointment.

- g. The appointment of the 1st Interested Party as a Cabinet Minister, despite her facing criminal prosecutions, including for alleged murder and assault, is a gross violation of **Article 73** of the Constitution. The appointment is wholly inconsistent with the purposes and objects of the Constitution [including the national values and principles of governance], is disrespectful of the people of Kenya, dishonours the nation and dignity to the office of Cabinet Secretary and undermines public confidence in the integrity of the office. Individuals facing prosecution, including for allegations of murder and assault, do not belong in the office of a Cabinet Secretary of the Republic of Kenya, notwithstanding the constitutional presumption of innocence until proven guilty.

- h. The paramount considerations, including as permitted under **Article 24** of the Constitution, is to preserve and protect the integrity of the office of Cabinet Secretary in particular and the Cabinet of the Republic in general. The Respondents and the 1st Interested Party, by their acts and omissions leading to the appointment of the 1st Interested Party as a Cabinet Secretary, have chosen to rule the people of Kenya rather than discharge their responsibility to serve. The 1st Interested Party, like all other citizens of Kenya, does not have a

constitutional right to be selected for nomination and, if approved, appointed to a State or public office through the exercise of powers granted to an appointing authority, without a competitive recruitment process and outside the provisions of the Constitution and the law.

- i. The Respondents violated their oath of office as State officers by presiding over and being party to the process that led to the 1st Interested Party being sworn to office as a Cabinet Secretary. This included the failure by the 4th and 5th Respondents to submit reports to the 2nd Respondent setting out the nature of the criminal proceedings against the 1st Interested Party and the stage of those proceedings at the dates of her nomination and vetting. This violation was contrary to **Articles 74 and 75**.
- j. Further, as the subject of criminal prosecution as at the date of subscribing to her oath of office, the 1st Interested Party has already violated her oath of office as a Cabinet Secretary as there are legitimate questions about her personal integrity as a Cabinet Secretary. Under these circumstances, she cannot conduct herself in the manner required by **Articles 73 and 75**. By approving the recommendation for the appointment, the 3rd Respondent has, likewise, violated the Constitution as it cannot now turn around and seek the removal of the 1st Interested Party from office on the grounds of violating the Constitution as provided under **Article 152[6]**.
- k. It is notable that the offences for which the 1st Interested Party is facing criminal prosecutions, were allegedly committed while the 1st Interested Party was a State officer as a member of the National Assembly, who had taken the oath of office as required by **Article 73**. There was, therefore, no basis to overlook this consideration in the process leading to the appointment to the office as a Cabinet Secretary.
- l. The approval process of the 1st Interested Party conducted by the 2nd Respondent and as recorded in their report dated **25.10.2022**, was a sham and a gross violation of **Article 94** of the Constitution. On the basis of the record

of the proceedings as set out in the Report, including the submissions by the 1st Interested Party and the observations of the 2nd Respondent, it is simply inexplicable how the 2nd Respondent formed the view that the 1st Interested Party was suitable to be recommended for approval to be a Cabinet Secretary.

- m. The approval, by the 3rd Respondent, of the 1st Interested Party to be appointed as nominated as recommended by the 2nd Respondent, was equally a violation of **Article 94** unconstitutional and of no legal consequences.
- n. Having approved the appointment to be a Cabinet Secretary a person who was being prosecuted for offences, including murder and assault, the 3rd Respondent forfeited, for the duration of the term of office of the 1st Respondent, the nominating and appointing authority, all ability to defend and protect the Constitution and promote the democratic governance of the Republic.
- o. The approval, by the 3rd Respondent, for the appointment of the 1st Interested Party as a Cabinet Secretary notwithstanding credible questions about her personal integrity as evidenced by criminal prosecutions, was further a violation of **Article 95** of the Constitution, including the delegated sovereign powers under **Article 1**. The approval irredeemably compromises the ability of the 3rd Respondent to discharge its duty to review the conduct and exercise oversight over the office of the President, the 1st Interested Party and the Cabinet of the Republic as mandated by **Article 95[5]** of the Constitution.
- p. Inclusion of the 1st Interested Party in the National Executive of the Republic, notwithstanding the criminal allegations against at the time of the nomination, recommendation for approval, approval, appointment and assumption to office, is a violation of **Articles 129** and **130** of the Constitution. Her questionable personal integrity precluded her and, by extension, the rest of the National Executive, from being able to exercise executive authority in accordance with the Constitution.

- q. The President breached his oath of office and failed to respect, uphold and safeguard the Constitution when he nominated and, with the approval of the National Assembly, appointed the 1st Interested Party as a Cabinet Secretary. Through-out this process, there were serious and credible questions about the personal integrity and suitability of the 1st Interested Party to be a Cabinet Secretary. This was evidenced by the fact that the 1st Interested Party was the subject of criminal prosecutions, including for alleged offences of murder and assault. The President's actions were therefore a violation and an abuse of the delegated authority and functions as set out in **Articles 131, 132, 141 and 152** of the Constitution.
- r. The appointment of the 1st Interested Party to be a Cabinet Secretary is a breach of **Article 153** of the Constitution. The fact she was the subject of criminal prosecution, on the dates of her nomination, recommendation for approval, approval, appointment and assumption to office, means she cannot act in accordance with the Constitution. Unresolved questions about her personal integrity and suitability precludes her from meeting this constitutional imperative.
- s. By standing by and allowing the process that led to the assumption to the office of Cabinet Secretary of the 1st Interested Party, despite credible questions touching on her personal integrity and suitability, the Respondents, including the 6th Respondent, violated **Article 156** of the Constitution. This included failure to promote, protect, and uphold the rule of law and defending the public interest.
- t. The 4th and 5th Respondents' role in the process leading up to the appointment of the 1st Interested Party to be a Cabinet Secretary has been a gross violation of the Constitution, including **Article 157**. Despite being fully seized with the facts of the criminal proceedings facing the 1st Interested Party from the date of nomination and receiving a request from the 2nd Respondent to provide a status report on each of the nominees, including the 1st Interested Party, the 4th and 5th Respondent unconstitutionally refused to provide the information to the

Committee on Appointments to enable the Committee discharge its constitutional duty. Such information would have enabled the Committee to be fully aware of the facts, circumstances and status of those criminal cases.

- u. An equally egregious breach of the Constitution was the decision by the 4th and 5th Respondents to drop criminal charges against the 1st Interested Party in **AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others]**. This was despite the decision of the 5th Respondent to authorise the institution of the charges and the fact some prosecution witnesses had already testified in the matter. The only plausible explanation why the charges were dropped is because the 5th Respondent unconstitutionally acceded to the direction and control of other persons or authority in the exercise of his powers and functions after the nomination of the 1st Interested Party. The inexplicable decision by the 5th Respondent to withdraw the criminal charges against the 1st Interested Party was against the public interest, the interests of the administration of justice and an abuse and a failure to prevent and avoid abuse of the legal process.
- v. The decision by the 4th and 5th Respondents to withdraw the criminal proceedings against the 1st Interested Party part-way through the proceedings and only after her nomination to be a Cabinet Secretary, was a serious and unconstitutional assault on the authority and independence of the Judiciary of Kenya, including contrary to **Articles 1, 159 and 160** of the Constitution. The only rational explanation of the 4th and 5th Respondents' decision to withdraw the proceedings, contrary to constitutional edicts, is because they surrendered their independence and succumbed to unconstitutional, outside influence.
- w. Appointment of the 1st Interested Party to the office of Cabinet Secretary while facing credible questions about her personal integrity and suitability, is a breach of **Article 232** of the Constitution. A person facing criminal allegations, including for murder and assault in court, cannot meet any of the required values and principles of public service, including high standards of professional ethics, accountability for administrative acts, transparency and provision to the public of timely, accurate information.

- x. The process that led to the appointment of the 1st Interested Party to office of Cabinet Secretary, notwithstanding the fact she was facing criminal prosecution, including for murder and assault, breached **Article 259** of the Constitution.

148. Further breaches of the law occasioned by the nomination, recommendation for approval, approval, appointment and assumption to the office of Cabinet Secretary by the 1st Interested Party include:

- a. A failure to observe and uphold **Sections 6, 7, 8 and 12, Public Appointments [Parliamentary Approval] Act, 2011;**
- b. A failure to observe and uphold **Sections 3, 4, 7, 8, 9, 10, 11 and 12, Leadership and Integrity Act, 2012;**
- c. A failure to observe and uphold **Sections 3, 4, 5, 6, 14, 23 and 25, Office of The Director Of Public Prosecutions Act, 2013;**
- d. A failure to observe and uphold **Sections 5, 6, 7, 8 and 9, Public Service [Values and Principles] Act, 2015;**
- e. A failure to observe and uphold **Sections 3, 4, 5, 8 and 9, Access to Information Act, 2016.**

149. The overriding duty of the Respondents and the 1st Interested Party was to interpret and apply the Constitution in a manner that promoted its purpose, values and principles, including the integrity of the Cabinet, the integrity of individual members of the Cabinet, and the Constitution of Kenya. This was over and above the powers of nomination by the President, approval by the National Assembly and, upon approval, appointment by the President, of the 1st Interested Party to the Cabinet.

150. The overriding duty of H.E. the President and the National Assembly to uphold the Constitution of Kenya, including the duty protect the integrity of the office of the Cabinet

Secretary, the independence of the Office of the Director of Public Prosecutions and the Judiciary, is notwithstanding that 1st Interested Party is yet to be found guilty of the serious criminal allegations levelled against her.

H. CASES RELATED TO ISSUES IN THE PETITION

151. The Petitioner confirms there is no case pending in any court involving the parties herein and over the same subject matters raised hereof.

I. ISSUES IN DISPUTE TO BE RESOLVED BY THE APPLICATION OF LAW BY THIS HONOURABLE COURT.

152. On the basis of the above and the evidence in support, the Petitioner humbly requests and invites this Honourable Court, by application of law, to decide:

- a. Whether the 1st Interested Party was eligible for nomination, approval and appointment to be a Cabinet Secretary, as, at the dates of the nomination, vetting, approval for appointment, appointment and assumption to office, she facing criminal prosecutions, including for alleged murder and assault, thereby raising credible grounds to impugn her personal integrity, background and suitability.
- b. Whether H.E. the President violated the Constitution and the law by nominating, for approval by the National Assembly and, upon approval, appointing and presiding over assumption to office by the 1st Interested Party to be a Cabinet Secretary, despite knowing that the 1st Interested Party was facing criminal prosecutions for alleged corruption, murder and assault at the date of the nomination and appointment and that there were, therefore, credible grounds to suggest the 1st Interested Party lacked personal integrity and suitability to be nominated and, if approved, appointed to be a Cabinet Secretary.
- c. Whether the 2nd Respondent failed to carry out its constitutional mandated and, thereby, violated the Constitution and the law, by recommending to the 3rd

Respondent to approve the 1st Interested Party for appointment as a Cabinet Secretary, despite knowing that the 1st Interested Party was facing criminal prosecutions, including for alleged corruption, murder and assault at the date of the nomination and there was, therefore, credible grounds to suggest the 1st Interested Party lacked personal integrity and suitability to be so recommended.

- d. Whether 2nd Respondent failed to carry out its constitutional mandated and, thereby violated the Constitution and the law, by failing to require a report from the Office of the Director of Public Prosecutions on whether the 1st Interested Party was the subject of a criminal prosecution under the powers granted under Article 157 of the Constitution and any other laws, at the date of her nomination. This information was deemed to have been necessary to assess the 1st Interested Party's suitability for nomination, approval and, if approved, appointment, with regards to her personal integrity and background.
- e. Whether, based on the record of the report prepared by the 2nd Respondent after vetting the 1st Interested Party, the 2nd Respondent's decision to recommend approval of the 1st Interested Party, was constitutionally and statutorily founded.
- f. Whether the 2nd Respondent failed to carry out its constitutional mandate and, thereby violated the Constitution and the law by failing to take into account the submitted written statements contesting the suitability of the 1st Interested Party to be recommended for approval and appointment to the office of Cabinet Secretary
- g. Whether the 3rd Respondent violated the Constitution and the law by approving the 1st Interested Party for appointment as a Cabinet Secretary, based on the recommendations of the 2nd Respondent, despite knowing that the 1st Interested Party was facing criminal prosecutions for alleged corruption, murder and assault at the date of the nomination and there was, therefore,

credible grounds to suggest the 1st Interested Party lacked personal integrity and suitability.

- h. Whether the 4th and 5th Respondents violated the Constitution and the law by not submitting a report to the 2nd Respondent, setting out the details and status of criminal proceedings against the 1st Interested Party that were ongoing at the dates of her nomination and vetting by the 2nd Respondent.
- i. Whether the 4th and 5th Respondents violated the Constitution and the law by inexplicably dropping criminal charges against the 1st Interested Party in AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others], and only after the nomination of the 1st Interested Party to be a Cabinet Secretary, notwithstanding previous decision of the 5th Respondent to authorise the institution of the charges and the fact some prosecution witnesses had already testified in the matter.
- j. Whether the Respondents should, jointly and severally, be required pay the Petitioner's costs for the Petition.

J. RELIEFS SOUGHT BY THE PETITIONER.

153. REASONS WHEREFORE, THE Petitioner therefore humbly prays for DECLARATIONS AND DETERMINATIONS THAT:

- a. The 1st Interested Party was ineligible for nomination, approval and appointment to be a Cabinet Secretary, as, at the dates of the nomination, vetting, approval for appointment, appointment and assumption to office, she facing criminal prosecutions, including for alleged murder and assault, thereby raising credible grounds to impugn her personal integrity, background and suitability.
- b. H.E. the President violated the Constitution and the law by nominating, for approval by the National Assembly and, upon approval, appointing and

presiding over assumption to office by the 1st Interested Party to be a Cabinet Secretary, despite knowing that the 1st Interested Party was facing criminal prosecutions for alleged corruption, murder and assault at the date of the nomination and appointment and that there were, therefore, credible grounds to suggest the 1st Interested Party lacked personal integrity and suitability to be nominated and, if approved, appointed to be a Cabinet Secretary.

- c. The 2nd Respondent failed to carry out its constitutional mandated and, thereby, violated the Constitution and the law, by recommending to the 3rd Respondent to approve the 1st Interested Party for appointment as a Cabinet Secretary, despite knowing that the 1st Interested Party was facing criminal prosecutions, including for alleged corruption, murder and assault at the date of the nomination and there was, therefore, credible grounds to suggest the 1st Interested Party lacked personal integrity and suitability to be so recommended.
- d. The 2nd Respondent failed to carry out its constitutional mandated and, thereby, violated the Constitution and the law, by failing to require a report from the Office of the Director of Public Prosecutions on whether the 1st Interested Party was the subject of a criminal prosecution under the powers granted under **Article 157** of the Constitution and any other laws, at the date of her nomination. This information was deemed to have been necessary to assess the 1st Interested Party's suitability for nomination, approval and, if approved, appointment, with regards to her personal integrity and background.
- e. Based on the record of the report prepared by the 2nd Respondent after vetting the 1st Interested Party, the 2nd Respondent's decision to recommend approval of the 1st Interested Party, was not constitutionally and statutorily founded.
- f. The 2nd Respondent failed to carry out its constitutional mandate and, thereby, violated the Constitution and the law by failing to take into account the submitted written statements contesting the suitability of the 1st Interested Party to be recommended for approval and appointment to the office of Cabinet Secretary

- g. The 3rd Respondent violated the Constitution and the law by approving the 1st Interested Party for appointment as a Cabinet Secretary, based on the recommendations of the 2nd Respondent, despite knowing that the 1st Interested Party was facing criminal prosecutions for alleged corruption, murder and assault at the date of the nomination and there was, therefore, credible grounds to suggest the 1st Interested Party lacked personal integrity and suitability.
- h. The 4th and 5th Respondents violated the Constitution and the law by not submitting a report to the 2nd Respondent, setting out the details and status of criminal proceedings against the 1st Interested Party that were ongoing at the dates of her nomination and vetting by the 2nd Respondent.
- i. The 4th and 5th Respondents violated the Constitution and the law by inexplicably dropping criminal charges against the 1st Interested Party in **AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others]**, and only after the nomination of the 1st Interested Party to be a Cabinet Secretary, notwithstanding previous decision of the 5th Respondent to authorise the institution of the charges and the fact some prosecution witnesses had already testified in the matter.
- j. The Respondents should, jointly and severally, pay the Petitioner's costs for the Petition.

154. UPON THE ABOVE DECLARATIONS, THIS HONOURABLE COURT BE PLEASED TO ISSUE AN ORDER:

- a. **QUASHING** the nomination, by H.E. the President, of the 1st Interested Party, to be a Cabinet Secretary.
- b. **QUASHING** the recommendation by the 2nd Respondent for the 1st Interested Party to be approved for appointment as a Cabinet Secretary.

- c. QUASHING the approval by the 3rd Respondent for the 1st Interested Party to appointed as a Cabinet Secretary.
- d. QUASHING the appointment, by H.E. the President vide Kenya Gazette Notice No. 13033 dated 26.10.2022, of the 1st Interested Party, as a Cabinet Secretary.
- e. QUASHING the decision by the 4th and 5th Respondents to discontinue the criminal proceedings against the 1st Interested Party in AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others].
- f. REQUIRING the 4th and 5th Respondents to proceed with the criminal proceedings against the 1st Interested Party in AISHA JUMWA and 7(sic) Others [MCAC 6/2020 – DPP – Vs- AISHA JUMWA and 7 Others] in strict adherence to the constitutional and legal requirements, including Articles 10[2], 157[10] and [11] and 259[1] of the Constitution.
- g. COMPELLING the Respondents, jointly and severally, to pay the Petitioner's costs of this suit.
- h. ANY SUCH OTHER ORDERS OR DIRECTIONS that this Honourable Court may deem just and fit to grant to meet the exigencies of justice and the requirements of the Constitution of Kenya, 2010.

WHICH PETITION is supported by the accompanying affidavit of ELIUD KARANJA MATINDI, and such other reasons, grounds and arguments as shall be adduced at the hearing hereof.

SIGNED AND DATED at POOLE, in the local authority area of Bournemouth, Christchurch and Poole, United Kingdom of Great Britain and Northern Ireland on this 1st DAY OF NOVEMBER, 2022:



ELIUD KARANJA MATINDI, PETITIONER

DRAWN AND FILED BY:

ELIUD KARANJA MATINDI, PETITIONER, AND WHOSE ADDRESS OF SERVICE FOR THE PURPOSE OF THESE PROCEEDINGS IS BY E-MAIL ADDRESS - Bavance13@gmail.com

TO BE SERVED UPON:

1. 1ST RESPONDENT - H.E., THE PRESIDENT OF THE REPUBLIC OF KENYA - 1st Respondent is through the 6th Respondent, the Hon. Attorney-General.
2. 2ND RESPONDENT – COMMITTEE ON APPOINTMENTS - The address of service for the 2nd Respondent is through the 3rd Respondent, the NATIONAL ASSEMBLY OF KENYA.
3. 3RD RESPONDENT – NATIONAL ASSEMBLY OF KENYA - The address of service for the 3rd Respondent for the purpose of this Petition, on its own behalf and on behalf of the 2ND RESPONDENT, is by E-mail address: nationalassembly.litigation@gmail.com.
4. 4TH RESPONDENT – DIRECTOR OF PUBLIC PROSECUTIONS - The address of service for the 4th Respondent for the purpose of this Petition, on its own behalf and on behalf of the 5TH RESPONDENT, is by E-mail address: info@odpp.go.ke.
5. 5TH RESPONDENT, NOORDIN M. HAJI – The address of service for the 5th Respondent is through the 4th Respondent, the DIRECTOR OF PUBLIC PROSECUTIONS.
6. 6TH RESPONDENT, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA - The 6th Respondent's address of service for the purpose of this Petition, on its own behalf and on behalf of the 1ST RESPONDENT and the 1ST INTERESTED

PARTY, is by E-mail addresses: slo@ag.go.ke, info@ag.go.ke and communications@ag.go.ke.

7. 1ST INTERESTED PARTY, AISHA JUMWA KARISA KATANA – The address of service for the 1st Interested Party is through the 6th Respondent, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA.
8. 2ND INTERESTED PARTY, COMMISSION ON ADMINISTRATIVE JUSTICE - The 2nd Interested Party's address of service for the purpose of these proceedings is by their publicised contact E-mail address – info@ombudsman.go.ke.
9. 3RD INTERESTED PARTY, JUDICIAL SERVICE COMMISSION - The 3rd Interested Party's address of service for the purpose of these proceedings is by their publicised contact E-mail address - jscsecretariat@jsc.go.ke.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. XX OF 2022

IN THE MATTER OF: ARTICLES 1, 2, 3, 4, 10, 19, 20, 21, 22, 23, 25, 27, 28, 35, 50, 73, 74, 75, 93, 94, 95, 118, 124, 129, 130, 131, 132, 152, 153, 156, 157, 159, 160, 162, 165, 171, 172, 232, 248, 249, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED THREAT TO AND VIOLATION OF ARTICLES 1, 2(1) AND (2), 3, 4, 10, 73, 74, 75, 94(4), 95(2) AND (5), 131(2), 132(2)(a), 152(2) AND (4)(a), 153(4)(a), 156(6), 157(6), (9), (10) AND (11), 232(1) AND (2) AND 259 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED THREAT TO AND VIOLATION OF THE BILL OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 19, 20, 21, 24, 27, 28, 29, 33, 34, 35, 43, 53, 54, 55, 56 AND 57 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED CONTRAVENTION OF SECTIONS 6, 7, 8 AND 12, PUBLIC APPOINTMENTS [PARLIAMENTARY APPROVAL] ACT, 2011, SECTIONS 3, 4, 7, 8, 9, 10, 11 AND 12, LEADERSHIP AND INTEGRITY ACT, 2012, SECTIONS 4, 5, 6, 23 AND 25, OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT, 2013, SECTIONS 3, 4, 5, 6, 7, 8 AND 9, PUBLIC SERVICE [VALUES AND PRINCIPLES] ACT, 2015 AND SECTIONS 3, 4, 5, 8 AND 9, ACCESS TO INFORMATION ACT, 2016.

IN THE MATTER OF: STANDING ORDER NO. 204, STANDING ORDERS OF THE NATIONAL ASSEMBLY OF KENYA [6TH EDITION - 07.06.2022].

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE NOMINATION, AND, WITH THE APPROVAL OF THE NATIONAL ASSEMBLY, APPOINTMENT, BY H.E. THE PRESIDENT OF THE REPUBLIC OF KENYA, OF AISHA JUMWA KARISA KATANA TO THE OFFICE OF CABINET SECRETARY, CABINET SECRETARY, PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE RECOMMENDATION BY THE COMMITTEE ON APPOINTMENTS, FOR THE APPROVAL, BY THE NATIONAL ASSEMBLY, OF AISHA JUMWA KARISA KATANA FOR APPOINTMENT TO THE OFFICE OF CABINET SECRETARY, PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE APPROVAL BY THE NATIONAL ASSEMBLY, UPON THE RECOMMENDATION BY ITS COMMITTEE ON APPOINTMENTS, OF AISHA JUMWA KARISA KATANA FOR THE OFFICE OF CABINET SECRETARY, PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE REFUSAL BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO SUBMIT A REPORT TO THE COMMITTEE ON APPOINTMENTS, SETTING OUT THE STATUS OF CRIMINAL PROSECUTION OF AISHA JUMWA KARISA KATANA, AS PART OF THE COMMITTEE'S VETTING PROCESS.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF THE DECISION BY MR NOORDIN M. HAJI, DIRECTOR OF PUBLIC PROSECUTIONS, TO WITHDRAW CRIMINAL PROCEEDINGS AGAINST AISHA JUMWA KARISA KATANA, IN MOMBASA CRIMINAL CASE NO. MCAC 6/2020 – DPP – VS – AISHA JUMWA AND 7 OTHERS.

IN THE MATTER OF: OATH OF OFFICE OF STATE AND PUBLIC OFFICERS AND DUTY TO RESPECT, UPHOLD AND DEFEND THE CONSTITUTION OF KENYA.

IN THE MATTER OF: THE DOCTRINES OF LEGITIMATE EXPECTATION, ULTRA VIRES AND VOID AB INITIO.

BETWEEN

ELIUD KARANJA MATINDI-----PETITIONER

~VERSUS~

H.E. THE PRESIDENT OF THE REPUBLIC OF KENYA-----1ST RESPONDENT

COMMITTEE ON APPOINTMENTS, NATIONAL ASSEMBLY OF KENYA-----
-----2ND RESPONDENTS

NATIONAL ASSEMBLY OF KENYA-----3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION-----4TH RESPONDENT

NOORDIN M. HAJI-----5TH RESPONDENT

HON. ATTORNEY GENERAL OF THE REPUBLIC OF KENYA-6TH RESPONDENT

AND

AISHA JUMWA KARISA KATANA-----1ST INTERESTED PARTY

COMMISSION ON ADMINISTRATIVE JUSTICE-----2ND INTERESTED PARTY

JUDICIAL SERVICE COMMISSION-----3RD INTERESTED PARTY

NOTICE OF MOTION APPLICATION

[PURSUANT TO Articles 20, 21, 22, 23(3), 48, 50(1), 159(2)(d), 165, 258 and 259(1) of the Constitution of Kenya, 2010, Rules 3, 4, 8, 10, 11, 13, 15, 18 and 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and all other enabling provisions of the Law.]

TAKE NOTICE that this Honourable Court will be moved on the _____ day of _____, 2022 at 9.00 o'clock in the forenoon or soon thereafter for the hearing of an application by the Applicant/counsel for the Applicant for **ORDERS THAT:**

- 1.** This Application should be certified as urgent and deserving to be heard *ex parte* in the first instance and service hereof be dispensed with as its object will be defeated unless it is so certified and heard expeditiously.
- 2.** The Honourable Court be pleased to certify that the Petition raises substantial questions of law and forthwith refer the Petition to Her Lordship the Chief Justice for assignment of an uneven number of judges, being not less than three, to hear and determine it pursuant to **Article 165(4)** of the Constitution of Kenya, 2010.
- 3.** Consequent to the grant of the prayers above, the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.

4. Costs be in the cause.

WHICH APPLICATION, supported by the affidavit of **ELIUD KARANJA MATINDI** annexed hereto, is founded on the following grounds and provisions of law listed hereunder, the nature of the case, and other grounds and reasons to be adduced at the hearing hereof **THAT:**

5. The constitutional validity of the appointment and assumption to the office of Cabinet Secretary by the 1st Interested Party needs to be determined at the earliest opportunity to safeguard the integrity of the Constitution of Kenya.
6. The matter herein meets the objective standard by which the discretion of this Court should be exercised judicially to certify the Petition as raising a substantial question of law.
7. The Petition involves **substantial questions** of law regarding the interpretation, determination and application of the Constitution, touching on alleged violation of the Constitution of Kenya, including **Articles 1, 10, 73, 74, 75, 94, 95, 118, 129, 131, 132, 152, 157, 159, 160, 172, 232, 249 and 259.**
8. The issues in the Petition go to the heart of implementing and upholding cardinal provisions of the Constitution, including the establishment of a government in accordance with the Constitution and the required and expected standard of personal integrity, suitability and ethical behaviour that must be possessed and demonstrated by appointed State and public officers.
9. The expectation and desires of the people of Kenya is that individuals facing credible questions regarding their personal integrity and suitability to be appointed as State or public officers ought not to be so appointed until the questions have been categorically answered in the negative. This applies irrespective of whether the appointment is at the discretion of the appointing authority or after a competitive recruitment process.
10. The Petition, in addition, engages the question of whether oversight agencies such as the 3rd Respondent can discharge their constitutional functions when they have already compromised their ability to do so by approving for appointment individuals whose personal integrity are impugned by the fact of being subject of ongoing criminal prosecution for alleged offences, including murder and assault.

- 11.** The Petition further engages fundamental principles of application and discharge of constitutional powers and duties by independent State offices and officers, including the 4th and 5th Respondents and the 3rd Interested Party, within constitutional the framework. This includes as provided under the national values and principles of governance under **Article 10[2] and 259[1]** and the sanctity and confidence of the people of Kenya in the administration of the justice system, including the criminal justice system.
- 12.** The extent of the exercise of the powers granted by the 4th and 5th Respondents to discontinue criminal cases and the role of the 3rd Interested Party to ensure the exercise of these powers accord with their constitutional duty arises for determination in this Petition.
- 13.** Additionally, the Petition raises the question of the proper discharge of the duty by the 4th and 5th Respondents, as State agencies enjoying institutional constitutional independence, to comply with request for information from another constitutional agency such as the 2nd and 3rd Respondents, to enable the latter to equally discharge their constitutional mandate such as vetting of candidates nominated for constitutional and, where appropriate, statutory offices.
- 14.** The Petitioner avers that though the expression "substantial question of law" is not defined in the Constitution, it is possible to discern the true meaning and connotation of this important expression from the Constitution itself, and from various judicial pronouncements on the matter from other jurisdictions where the question of the substantial question of law is well settled.
- 15.** The test laid down by the Supreme Court of India in *Sir Chunilal V. Mehta and Sons Ltd. v Century Spinning and Manufacturing Co. Ltd.* to determine whether a substantial question of law is involved are:
- a. Whether directly or indirectly it affects the substantial rights of the parties.
 - b. Whether the question is of general public importance.
 - c. Whether it is an open question in the sense that the issue has not been settled by pronouncement of the highest court in the land.

- d. The issue is not free from difficulty; or
- e. It calls for a discussion for alternative view.

16. Precisely, in Chunilal V. Mehta vs Century Spinning and Manufacturing Co. AIR 1962 SC 1314 the Supreme Court of India held that was held that:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it ... directly and substantially affects the rights of the parties and if so settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably whether it is either an open question in the sense that it is not finally absurd the question would not be a substantial of law.”

17. In Santosh Hazari vs. Purushottam Tiwari (2001) 3 SCC 179 it was held that:

"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involved in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable

obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any *lis*."

18. In *Okiya Omtatah Okoiti & Another vs Anne Waiguru, The Cabinet Secretary, Devolution and Planning & 3 Others [2015] eKLR*, the Court of Appeal held:

By Article 165 (4) of the Constitution, the High Court can certify a matter as one that raises a substantial question of law if there is a question as to "whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened" or where it involves a question regarding "the interpretation of this Constitution including the determination of (i) the question whether any law is inconsistent with or in contravention of this Constitution; (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution..."

19. In *Okiya Omtatah Okoiti & Another vs. Anne Waiguru* (supra), the Court of Appeal stated:

"The question therefore arises as to whether the jurisprudence arising from a determination of a question of law by a court comprising three or more judges would be of equal weight as a question of law that is determined by a court comprising of just one judge.

Our preliminary view in answer to this question is that while both the courts envisaged would be exercising the same jurisdiction, the decision of three or more judges would have more jurisprudential weight than the decision of a single judge. To our minds, the inclusion of Article 165(4) of the Constitution, requiring that a matter of substantial importance be heard by a bench of more than three judges, infers that a substantial question will yield a substantial decision, and as such that decision would bear more weight."

20. In *Okiya Omtatah Okoiti & 4 others v Attorney General & others [2019] eKLR*, the High Court (Odunga J.) held:

“7. ... it is clear that the only constitutional provision that expressly permits the constitution of bench of more than one High Court judge is Article 165(4). Under that provision, for the matter to be referred to the Chief Justice for the said purpose the High Court must certify that the matter raises a substantial question of law:

1. Whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; or
2. That it involves a question respecting the interpretation of the Constitution and under this is included (i) the question whether any law is inconsistent with or in contravention of the Constitution; (ii) the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution; (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and (iv) a question relating to conflict of laws under Article 191.”

21. In Okiya Omtatah Okoiti & another v Anne Waiguru - Cabinet Secretary, Devolution and Planning & 3 others [2017] eKLR, the Court of Appeal held:

“42. There are, in our view, parallels to be drawn between certification for purposes Article 163(4)(b) of the Constitution and certification for purposes of Article 165(4) notwithstanding that the drafters of the Constitution, in providing for certification of matters for purposes of appeal to the Supreme Court under Article 163(4)(b) stipulated that a matter should be of “general public importance”. The word, “substantial” in its ordinary meaning, means “of considerable importance”. There is therefore wisdom to be gained from the pronouncements of the Supreme Court of Kenya respecting interpretation of Article 163(4)(b). In Hermanus Phillipus Steyn v Giovanni Gnechi- Ruscone [2013] eKLR the Supreme Court of Kenya pronounced governing principles for purposes of certification under Article 163(4)(b) some of which are

relevant in the context of certification under Article 165(4). Drawing therefrom, we adopt, with modification, the following principles:

- i. For a case to be certified as one involving a substantial point of law, the intending applicant must satisfy the Court that the issue to be canvassed is one the determination of which affects the parties and transcends the circumstances of the particular case and has a significant bearing on the public interest.
- ii. The applicant must show that there is a state of uncertainty in the law.
- iii. The matter to be certified must fall within the terms of Article 165 (3)(b) or (d) of the Constitution.
- iv. The applicant has an obligation to identify and concisely set out the specific substantial question.

22. Grant of the orders sought herein will advance the cause of justice.

23. Granting the orders will not prejudice the Respondents and the Interested Parties in any way under the law.

24. This Honourable Court has unfettered powers and jurisdiction to make the orders sought.

25. It is meet and just, for purposes of justice and equity and the overarching purpose of constitutional integrity and rule of law, to make the orders sought.

DATED at POOLE, in the local authority area of Bournemouth, Christchurch and Poole, United Kingdom of Great Britain and Northern Ireland on this 1ST DAY OF NOVEMBER, 2022.



ELIUD KARANJA MATINDI, APPLICANT/PETITIONER

DRAWN AND FILED BY:

ELIUD KARANJA MATINDI, APPLICANT/PETITIONER, AND WHOSE ADDRESS OF SERVICE FOR THE PURPOSE OF THESE PROCEEDINGS IS BY E-MAIL ADDRESS - Bavance13@gmail.com

TO BE SERVED UPON:

1. **1ST RESPONDENT - H.E., THE PRESIDENT OF THE REPUBLIC OF KENYA** - 1st Respondent is through the 6th Respondent, the Hon. Attorney-General.
2. **2ND RESPONDENT – COMMITTEE ON APPOINTMENTS** - The address of service for the 2nd Respondent is through the 3rd Respondent, the NATIONAL ASSEMBLY OF KENYA.
3. **3RD RESPONDENT – NATIONAL ASSEMBLY OF KENYA** - The address of service for the 3rd Respondent for the purpose of this Petition, on its own behalf and on behalf of the 2ND RESPONDENT, is by E-mail address: nationalassembly.litigation@gmail.com.
4. **4TH RESPONDENT – DIRECTOR OF PUBLIC PROSECUTIONS** - The address of service for the 4th Respondent for the purpose of this Petition, on its own behalf and on behalf of the 5TH RESPONDENT, is by E-mail address: info@odpp.go.ke.
5. **5TH RESPONDENT, NOORDIN M. HAJI** – The address of service for the 5th Respondent is through the 4th Respondent, the DIRECTOR OF PUBLIC PROSECUTIONS.
6. **6TH RESPONDENT, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA** - The 6th Respondent's address of service for the purpose of this Petition, on its own behalf and on behalf of the 1ST RESPONDENT and the 1ST INTERESTED PARTY, is by E-mail addresses: slo@ag.go.ke, info@ag.go.ke and communications@ag.go.ke.

7. 1ST INTERESTED PARTY, AISHA JUMWA KARISA KATANA – The address of service for the 1st Interested Party is through the 6th Respondent, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA.
8. 2ND INTERESTED PARTY, COMMISSION ON ADMINISTRATIVE JUSTICE - The 2nd Interested Party's address of service for the purpose of these proceedings is by their publicised contact E-mail address – info@ombudsman.go.ke.
9. 3RD INTERESTED PARTY, JUDICIAL SERVICE COMMISSION - The 3rd Interested Party's address of service for the purpose of these proceedings is by their publicised contact E-mail address - jscsecretariat@jsc.go.ke.

NB: If any person served does not appear at the time and place abovementioned, such orders shall be made and proceedings taken as the court deems just and expedient.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. E492 OF 2022

ELIUD KARANJA MATINDI.....PETITIONER/ APPLICANT

VERSUS

H.E. THE PRESIDENT OF THE REPUBLIC OF KENYA.....1ST RESPONDENT
COMMITTEE ON APPOINTMENTS,
NATIONAL ASSEMBLY OF KENYA.....2ND RESPONDENT
NATIONAL ASSEMBLY OF KENYA.....3RD RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....4TH RESPONDENT
NOORDIN M. HAJI.....5TH RESPONDENT
HON. ATTORNEY GENERAL.....6TH RESPONDENT

AND

AISHA JUMWA KARISA KATANA.....1ST INTERESTED PARTY
COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND INTERESTED PARTY
JUDICIAL SERVICE COMMISSION.....3RD INTERESTED PARTY

5TH RESPONDENT'S PRELIMINARY OBJECTION TO THE
APPLICATION AND PETITION DATED 1ST NOVEMBER 2022

TAKE NOTICE that the 5th Respondent herein raises a preliminary objection in respect of the Application and Petition dated 1st November 2022 and ought to be struck out *in limine* on the GROUNDS:

1. THAT the 5th Respondent has been sued in his personal capacity by the Petitioner and orders sought against him, whereas Article 157 (1) of the Constitution establishes the Office of the Director of Public Prosecutions as a constitutional office.
2. THAT the 5th Respondent should be struck from the pleadings as the orders sought against him are not enforceable in his personal capacity.

3. **THAT** the Application and Petition are vague, amorphous and ambiguous thus an abuse of the court process.
4. **THAT** the 5th Respondent be struck off from the pleadings *suo sponte*.

DATED at NAIROBI this 19th DAY OF DECEMBER 2022



.....
TAIB A TAIB

ADVOCATES FOR THE 5th RESPONDENT

DRAWN & FILED BY:



Taib A Taib

Advocates

Crescent Business Centre, 8th Floor

Crescent Close, Off Parklands Road

P O Box 2105-00606

Nairobi

Practice Certificate No. LSK/2022/00443

Admission No. P.105/1849/88

Telephone: +254 717 300211, +254 700 038309

Email: taib@taibadvocates.com

Our Reference: 1/

TO BE SERVED UPON:

1. **Eliud Karanja Matindi**
Bournemouth, Christchurch and Poole

United Kingdom
Email: bavance13@gmail.com

2. The Hon. Attorney General

Sheria House, 7th Floor,
Harambee Avenue,
P.O. Box 40112-00100

NAIROBI.

Email: info@ag.go.ke

3. The Clerk, National Assembly

Parliament Building

NAIROBI.

Email: clerk@parliament.go.ke

4. J.O. Magolo & Company Advocates

5th Floor, Electricity House

Nkrumah Road

P.O. 935 -80100

MOMBASA.

Email: magolojared@yahoo.com

5. The Commission on Administrative Justice

2nd Floor, West end Towers

Opposite Aga Khan High School on Waiyaki Way- Westlands

P.O. Box 20414-00200

NAIROBI.

Email: info@ombudsman.go.ke

6. Judicial Service Commission

Kenya Re-Insurance Plaza

Taifa Road

NAIROBI.

Email: jscsecretariat@jsc.go.ke

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. E492 OF 2022

ELIUD KARANJA MATINDI-----PETITIONER

~VERSUS~

H.E. THE PRESIDENT OF THE REPUBLIC OF KENYA-----1ST RESPONDENT

COMMITTEE ON APPOINTMENTS, NATIONAL ASSEMBLY OF KENYA-----
-----2ND RESPONDENTS

NATIONAL ASSEMBLY OF KENYA-----3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION-----4TH RESPONDENT

NOORDIN M. HAJI-----5TH RESPONDENT

HON. ATTORNEY GENERAL OF THE REPUBLIC OF KENYA-6TH RESPONDENT

AND

AISHA JUMWA KARISA KATANA-----1ST INTERESTED PARTY

COMMISSION ON ADMINISTRATIVE JUSTICE-----2ND INTERESTED PARTY

JUDICIAL SERVICE COMMISSION-----3RD INTERESTED PARTY

PETITIONER'S GROUNDS OF OPPOSITION IN RESPONSE TO THE 5TH
RESPONDENT'S GROUNDS OF PRELIMINARY OBJECTIONS DATED
19.12.2022.

May it please this Honourable Court,

A. INTRODUCTION.

- 1.** The Petitioner makes these submissions in response to the 5th Respondent's Preliminary Objections to his Application and Petition, both dated **01.11.2022**.

- 2.** In his Grounds of Preliminary Objections dated **19.12.2022**, the 5th Respondent prays for the **Application** and **Petition** to be struck out *in limine* on the grounds that:
 - a. The 5th Respondent has been sued in his personal capacity by the Petitioner and orders sought against him, whereas **Article 157 (1)** of the Constitution establishes the Office of the Director of Public Prosecutions as a constitutional office.

 - b. The 5th Respondent should be struck from the pleadings as the orders sought against him are not enforceable in his personal capacity.

 - c. The Application and Petition are vague, amorphous and ambiguous thus an abuse of the court process.

 - d. The 5th Respondent be struck off from the pleadings *suo sponte*.

- 3.** By choosing to raise a preliminary objection against the Application and Petition, the 5th Respondent accepts the facts adduced in support of both the Application and the Petition. These facts include his own admission, on national television, that he made decisions in the execution of his constitutional and statutory duties on extraneous considerations, including political pressure from third parties. The facts on this are further corroborated by the 1st Interested Party in her Replying Affidavit to the Application and Petition.

- 4.** Notwithstanding the above admissions, the 4th and 5th Respondents have also filed Replying Affidavits in response to the Application and the Petition, both dated **19.12.2022**.

5. The Petitioner submits that, by filing Replying Affidavits disputing the facts adduced in the Application and the Petition, the 5th Respondent cannot, at the same time, file a preliminary objection against the same Application and Petition.
6. Either the 5th Petitioner accepts that the facts of the Application and Petition as deposed by the Petitioner are correct but, nonetheless, wishes the Application and the Petition to be dismissed summarily as a matter of law, or he disputes the facts adduced in support of the Application and the Petition, hence the need to file Replying Affidavits to dispute and challenge the Petitioner's depositions.
7. To meet the requirements of the Constitution, including **Articles 24, 159, 165 and 259**, it is impermissible for the 5th Respondent to seek and be allowed to hedge his bets, depending on which way he thinks the wind will be blowing. He must either accept all the facts pleaded by the Petitioner and thus be entitled to raise a preliminary objection, or he disputes some or all of the facts pleaded by the Petitioner, thus his decision to submit the Replying Affidavits in response to the Application and the Petition to counter the factual basis of the Application and the Petition.
8. By filing Replying Affidavits in response to the Petitioner's Application and Petition, the 4th and 5th Respondents effectively withdrew and abandoned the 5th Respondent's Preliminary Objection. A preliminary objection cannot be raised if any fact has to be ascertained, as the 4th and 5th Respondents have sought to do by filing Replying Affidavits to the Application and the Petition

B. INVALIDITY OF THE 5TH RESPONDENT'S GROUNDS OF PRELIMINARY OBJECTIONS.

9. In addition to the foregoing, the Petitioner submits that the Grounds of Preliminary Objections raised by the 5th Respondent against the Application and the Petition are incurably defective and fall significantly short of what the law requires for a preliminary objection to succeed and defeat the Petitioner's constitutional rights under **Article 50[1]** of the Constitution and lock him out from the Honourable Court's jurisdiction to hear and determine the Application and Petition on their merits. The claimed grounds do not meet the mandatory requirements decreed by **Article 24** of the Constitution.

10. In *Gladys Pereruan v Betty Chepkorir [2020] eKLR*, the High Court at Eldoret opined:

"19. The purpose of a preliminary objection was broadly discussed in Charles Onchari Ogoti v. Safaricom Ltd & anor [2020]eklr as follows:

"[9] This court is aware of the leading decision on Preliminary Objections where [t]he Court of Appeal for East Africa, then the highest court for purposes of this jurisdiction and the others in East Africa in Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd. (1969) EA 696, where Law J.A. and Newbold P. (both with whom Duffus V-P agreed), respectively at 700 and 701, held as follows:

Law, JA.:

"So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection on the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

Newbold, P.:

"A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop."

20. The preliminary objection if allowed may dispose off the entire suit without giving parties the opportunity to be heard. This has to be done with caution that the court has a duty to hear all parties and determine the case on merit. In addition this court has also a duty to safeguard itself against abuse of its process."

11. The claimed misjoinder of the 5th Respondent in the Application and Petition [which, the Petitioner submits, is unfounded] would not, even if upheld, *dispose off the entire suit without giving parties the opportunity to be heard.*

12. Rule 5[b], *The Constitution Of Kenya (Protection Of Rights And Fundamental Freedoms) Practice And Procedure Rules, 2013*, enacts that:

"(b) A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute."

13. A misjoinder or non-joinder of a party to proceedings, even where founded, cannot sustain a preliminary objection as the Honourable Court has discretion on how to deal with the claimed misjoinder/non-joinder as part of the substantive proceedings.

14. In *Okiya Omtatah Okiiti v James R Njenga & 19 others [2022] eKLR*, it was held that:

"105. The next issue is whether the 2nd Respondent is a legal person capable of being sued. According to the 1st and 2nd Respondents, it is now trite law that only a legal person is capable of suing or being sued before a court of law. The 2nd Respondent herein is not an incorporated body which can assume capacity to sue or be sued in its own name in any legal proceedings as it is just a department in the structure and establishment of the 1st Respondent and therefore not a person whether incorporated or unincorporated capable of suing or being sued before a court of law.

106. To this, the Petitioner retorted that the 2nd Respondent is established under Article 33 (a) of the Agricultural Society's Constitution as the Supreme body of the society and under Article 35 (j) thereof, the Council has "exclusive power to initiate in the name of registered Trustees of the

Society any legal proceedings on behalf of the Society or provide defence for any proceedings against the Society.

107. It is noteworthy that this objection was taken as a preliminary objection. That ground of objection, in my view, amounts to misjoinder of parties. Rule 5(b) of Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (otherwise known as “the Mutunga Rules”) provides that:

A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute.

108. What I understand that rule to be saying is that even where there is misjoinder or nonjoinder, the discretion as to the manner of dealing with the matter is left to the Court. Since preliminary objection is not permissible where the discretion of the court is called upon, this point, as a preliminary objection, cannot be sustained. [Emphasis added.]

110. The question is therefore whether the alleged misjoinder even if true, is capable of disposing of the suit. In *Garden Square Limited vs. Sammy Boit Kogo & Another Nairobi (Milimani) HCCC No. 1266 of 2003 [2003] KLR 20*, the Court held, a holding I associate myself with, that misjoinder is not a proper point of preliminary objection for misjoinder cannot itself defeat the suit and should be canvassed in a substantive application for striking out the name since a preliminary point of law is a pure point of law which if successfully taken, would have the effect of disposing the suit or application entirely. [Emphasis added.]

111. Therefore, a preliminary objection is only competent where its success would dispose of the whole suit. In this case, the success of the preliminary objection will only lead to the striking out of the 2nd Respondent but would leave the petition largely intact. Accordingly, that ground was not properly taken as a preliminary objection.” [Added emphasis.]

15. In this case, the success of the preliminary objections will only lead to the striking out of the 5th Respondent but would leave the Application and Petition largely intact. Accordingly, that ground cannot properly be taken as a preliminary objection.

16. The 5th Respondent's allegations that the Petitioner's Application and Petition are vague, amorphous and ambiguous thus an abuse of the court process, are unsustainable as Preliminary Objection. They are mere expressions of unsupported opinion. Their veracity, which the Petitioner contests, can only be determined as part of the substantive and merit evaluation of the Application, the Petition, the supporting evidence and submissions.

17. On the basis of the above alone, the Petitioner submits that the 5th Respondent's Grounds of Preliminary Objections dated 19.12.2022 are incurably defective, unsustainable and stand to be dismissed.

18. The Petitioner, however, goes further and submits that, as a substantive matter of law, he had no choice but to enjoin the 5th Respondent, as the natural person currently in office as the Director of Public Prosecutions, in the Application and Petition herein in his personal capacity.

19. The **office** of Director of Public Prosecutions established under **Article 157[1]** of the Constitution is wholly and unequivocally vested in the natural person for the time being appointed under **Article 157[2]** of the Constitution, as given further effect by **Office of the Director of Public Prosecutions Act, 2013**.

20. **The claimed "Office" of the Director of Public Prosecutions does not exist as a separate, juridical and legal entity under the Laws of Kenya.** No such office has been incorporated as a body corporate with perpetual succession and a seal, capable of suing or being sued in its corporate name, expressly by the Constitution of Kenya, the **Office of the Director of Public Prosecutions Act, 2013**, or any other written law.

21. The **office of Director of Public Prosecutions** is **not** one of the commissions and independent offices explicitly incorporated under **Articles 248** and **253** of the Constitution.

22. Neither is it incorporated as a body corporate with perpetual succession and a seal, capable of suing or being sued in its corporate name, under the **Office of the Director of Public Prosecutions Act, 2013**, “*An Act of Parliament to give effect to Articles 157 and 158 of the Constitution and for connected purposes*”, nor any other law currently in force in the Republic. It therefore does not exist as a separate legal entity under the laws of Kenya and its legal personality cannot be presumed.

23. Being a mere unincorporated corporation with no recognised, independent legal personality, the 4th Respondent cannot sue or be sued in its own name. Neither can it be held accountable for breaches of the Constitution and the law in its own name. This can only be done by enjoining the 5th Petitioner, its highest-ranking person with the requisite legal capacity, in the Application and Petition herein.

24. In *Football Kenya Federation v Kenyan Premier League Limited & 4 others [2015] eKLR*, it was confirmed:

“The 1st respondent has cited a plethora of decisions that have determined that point of law and all are unanimous without exception that an [un]incorporated society cannot sue and be sued in its own name, but that its officials or trustees can institute suit on behalf of the society.”

25. When Parliament enacted the **Office of the Director of Public Prosecutions Act, 2013**, pursuant to its constitutional mandate under **Article 94** of the Constitution, it deliberately chose not to give the office of Director of Public Prosecutions a legal personality independent and separate from that of the natural person for the time being occupying that office. Parliament intended the holder of that office, at the time in question, to bear personal responsibility for the discharge of the office’s constitutional and statutory duties and functions.

26. Under the above circumstances, therefore, the Petitioner had no choice, as a matter of law, but to enjoin 5th Respondent in his personal capacity, being the highest-ranking natural person, above whom there is no one else in the office of Director of Public Prosecutions, to bear legal responsibility on behalf of the 4th Respondent.

27. Having taken the oath of office as required under **Article 74** of the Constitution, in his personal capacity and in the full knowledge of the provisions of the Constitution and the

law regarding legal personalities, it is not open to the 5th Respondent to claim that there is another, more competent legal person in the office of the Director of Public Prosecutions, to answer for his acts and omissions in the discharge of his constitutional and statutory duties.

28. Even as the 5th Respondent tries to escape being held legally responsible for his and the 4th Respondent's breach of the Constitution and the law, he has failed to identify a more competent, legal person to be enjoined, on his behalf and on behalf of the 4th Respondent, in the Application and the Petition.

C. CONCLUSION.

29. On the basis of the above submissions, the supporting authorities and the submissions in support of the Application already on the record, the Petitioner submits that the 5th Respondent's Grounds of Preliminary Objections dated 19.12.2022, are unfounded.

30. *"The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop."*

31. The Petitioner, therefore, humbly submits and prays for the 5th Respondent's Grounds of Preliminary Objections dated 19.12.2022 to be dismissed, with orders as to costs.

DATED at POOLE, in the local authority area of Bournemouth, Christchurch and Poole, United Kingdom of Great Britain and Northern Ireland, on this 1ST DAY OF FEBRUARY, 2023.

matindi eliud

ELIUD KARANJA MATINDI, APPLICANT/PETITIONER

DRAWN AND FILED BY:

ELIUD KARANJA MATINDI, APPLICANT/PETITIONER, AND WHOSE ADDRESS OF SERVICE FOR THE PURPOSE OF THESE PROCEEDINGS IS BY EMAIL ADDRESS Bavance13@gmail.com

TO BE SERVED UPON:

1. 1ST RESPONDENT - H.E., THE PRESIDENT OF THE REPUBLIC OF KENYA - 1st Respondent is through the 6th Respondent, the Hon. Attorney-General.
2. 2ND RESPONDENT – COMMITTEE ON APPOINTMENTS - The address of service for the 2nd Respondent is through the 3rd Respondent, the NATIONAL ASSEMBLY OF KENYA.
3. 3RD RESPONDENT – NATIONAL ASSEMBLY OF KENYA - The address of service for the 3rd Respondent for the purpose of this Petition, on its own behalf and on behalf of the 2ND RESPONDENT, is by E-mail address: nationalassembly.litigation@gmail.com.
4. 4TH RESPONDENT – DIRECTOR OF PUBLIC PROSECUTIONS - The address of service for the 4th Respondent for the purpose of this Petition, on its own behalf and on behalf of the 5TH RESPONDENT, is by E-mail address: info@odpp.go.ke.
5. 5TH RESPONDENT, NOORDIN M. HAJI – The address of service for the 5th Respondent is through their legal representative's notified E-mail address – taib@taibadvocates.com
6. 6TH RESPONDENT, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA - The 6th Respondent's address of service for the purpose of this Petition, on its own behalf and on behalf of the 1ST RESPONDENT and the 1ST INTERESTED PARTY, is by E-mail addresses: slo@ag.go.ke, info@ag.go.ke and communications@ag.go.ke.
7. 1ST INTERESTED PARTY, AISHA JUMWA KARISA KATANA – The address of service for the 1st Interested Party is through the 6th Respondent, HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA and via E-mails addresses omaridanstan@yahoo.com and shadrackwambui@gmail.com
8. 2ND INTERESTED PARTY, COMMISSION ON ADMINISTRATIVE JUSTICE - The 2nd Interested Party's address of service for the purpose of these proceedings is

through the E-mail address of their Counsel on record, FLORENCE MUMBI MWIKYA - f.mumbi@ombudsman.go.ke.

9. 3RD INTERESTED PARTY, JUDICIAL SERVICE COMMISSION - The 3rd Interested Party's address of service for the purpose of these proceedings is by their publicised contact E-mail address - jscsecretariat@isc.go.ke.

Case Number: 56K92022

Case Name: HCCHRPET/E492/2022

Case: Eliud Matindi VS Judicial Service Commission AND National Asse

Case Summary: [Faint text]

Case Activities

Show 10 v entries

NO.	Activity	Activity Date	Court Room	Actioned To
1.	Highlighting of Submissions	08 Jun 2023	COURT 6	Lady Justice P Thande
2.	Mention	20 Apr 2023	COURT 6	Lady Justice P Thande
3.	Mention	09 Feb 2023	COURT 6	Lady Justice P Thande
4.	Directions	05 Dec 2022	COURT 6	Lady Justice P Thande

Tap here to see case details

Case Number: HCCHRPETM

Citation: Odpp AND Noordin Mohamed Yusuf Haji VS Ibrahim
Van Straten AND 4 Others

Tracking Number: PFJK2

Case Summary

Parties

Case Activities

Invoice

Receipts

Case Details

Parties

Odpp AND Noordin Mohamed Yusuf Haji VS Ibrahim Ndung'u
Ndirangu AND Gabriel Hannah Van Straten AND 4 Others

Case Type

Constitution and Human Rights Petitions Miscellaneous

Case Number

HCCHRPETMISC/E037/2021

Filing Date

27-Oct-2021 02:10:24

Description

1. This Application be certified as extremely urgent, and service thereof be orders be issued as prayed below.

2. A conservatory order be and is hereby issued suspending the 3rd against the Petitioners and communicated on 19th October 2021 in r the 19th October 2021 in respect of the 2nd Respondent's petition be in the proceedings, pending the hearing and determination of both t

3. A conservatory order be and is hereby issued restraining the 3rd and/or determining the two petitions lodged against the Petitioners 1st Respondent's petition and on the 19th of October 2021 in respect final determination of this Application and the Petition herein.

4. A conservatory order be and is hereby issued restraining the 3rd

Tap here to see case details

Case Number: HCCHRPETMISC/E037/2021

Citation: Odpp AND Noordin Mohamed Yusuf Haji VS Ibrahim Ndung'u Ndirangu
Van Straten AND 4 Others

Tracking Number: PFJK2021

Case Summary Parties Case Activities Litigation Receipts

Case Parties

NO.	Category	Party Type	Party Name	Firm/Agent
1	Individuals	1st Respondent	GABRIEL HANNAH VAN STRATEN	
2	Individuals	3rd Respondent	PUBLIC SERVICE COMMISSION	
3	Individuals	1st Interested Party	SARAH WAIRIMU KAMOTHO	Murgor & Murgor Advocate
4	Individuals	2nd Interested Party	PETER KARANJA	
5	Individuals	3rd Interested Party	JUSTICE SANKALE OLE KANTAI	Manyanze Wanvama &

Tap here to see case details

Case Number: HCCHR/

**Citation: Odpp AND Noordin Mohamed Yusuf Haji VS
Van Straten AN**

Tracking Number

[Case Summary](#) [Parties](#) [Case Activities](#) [Invoice](#) [Receipts](#)

Case Activ

NO.	Activity	Activity Date	Court Room
1.	Highlighting of Submissions	2023-06-07	Court Room 2 Ground Floor
2.	Mention	2023-04-18	Court Room 2 Ground Floor
3.	Mention	2023-03-30	Court Room 2 Ground Floor
4.	Mention	2023-03-17	Court Room 2 Ground Floor
5.	Mention	2023-03-07	Court Room 2 Ground Floor
6.	Mention	2023-02-09	Court Room 2 Ground Floor
7.	Mention	2023-02-07	Court Room 2 Ground Floor
8.	Mention	2022-10-11	Chamber 127.1st Floor

PSC pushes to hear petitions to remove Haji from office

Joseph Wangui

5-6 minutes

The Public Service Commission wants court to set aside orders barred it from commencing the process of hearing petitions to remove Director of Public Prosecutions Noordin Haji from office over allegations of gross misconduct.

The PSC on Tuesday, April 17 told the High Court that the prohibitory orders issued in October 2021 were hindering the commission from discharging its mandate.

The orders barred the Commission from considering petitions lodged by late Tob Cohen's sister Gabriel Van Straten and Ibrat Ndung'u Ndirangu against Mr Haji over alleged failure to perform his duties by charging a murder suspect.



Third petition filed at PSC seeking removal of DPP Haji for abuse of office

IRENE MWANGI

4-5 minutes

NAIROBI, Kenya Nov 1-A third petition seeking the removal of Director of Public Prosecutions (DPP) Noordin Haji from office has been filed at the Public Service Commission (PSC) by a Nairobi businessman.

The petitioner, Ahmed Noorani, who is a director of Jack and Jill supermarket accused the DPP of lacking impartiality and exercising preferential treatment in handling his case which, he said, amounts to abuse of office.

Two petitions are still pending at the PSC, one filed by the late Cohen's family and another by another businessman but Haji has already obtained court orders restraining the PSC from hearing them.

According to the latest petition filed by Noorani, Haji has declared



PETITION TO THE PUBLIC SERVICE COMMISSION FOR REMOVAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP) FROM OFFICE PURSUANT TO ARTICLE 158 OF THE CONSTITUTION OF KENYA AND OTHER ENABLING LAWS

A. THE PARTIES

1. The National Integrity Alliance (NIA), a citizen-centered integrity and anti-corruption coalition comprising Transparency International Kenya (TI-Kenya), Inuka Kenya Ni Sisi!, The Institute for Social Accountability (TISA), and the Kenya Human Rights Commission (KHRC) files this petition on their own behalf and on the behalf of the public. The petition seeks the removal of the Director of Public Prosecutions on grounds set out in the Constitution of Kenya 2010 and explicitly set out hereunder.
2. The Director of Public Prosecutions (DPP) is a state officer appointed in accordance with the tenets of Article 157(2) of the Constitution of Kenya 2010 and section 8 of the Office of the Director of Public Prosecutions Act, 2013. The Director of Public Prosecutions exercises State powers of prosecution and may institute, undertake, take over, continue or discontinue criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.

B. CONSTITUTIONAL AND LEGAL FOUNDATION

Constitution of Kenya, 2010

3. Article 1(1) of the Constitution states that all sovereign power belongs to the people of Kenya and shall only be exercised in accordance with the Constitution.
4. Article 10(1) provides the national values and principles of governance bind all State organs, State officers, public officers and all persons whenever any of them— (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions.
5. Article 10(2) sets out the national values and principles of governance which include the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability.
6. Article 73(1) provides that the authority assigned to a State officer is a public trust to be exercised in a manner that— (i) is consistent with the purposes and objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings honour to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office; and (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.
7. Article 73 (2) highlights the guiding principles of leadership and integrity which include— (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections; (b) objectivity and impartiality in decision making, and in ensuring decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices; (c) selfless service based solely on the public interest,

- demonstrated by— (i) honesty in the execution of public duties; and (ii) the declaration of any personal interest may conflict with public duties; (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.
8. Article 75(1) prescribes that a State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids— (c) demeaning the office the officer holds.
 9. Article 75(2) provides that a person who contravenes clause (1) shall be subject to the applicable disciplinary procedure for the relevant office; and may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.
 10. Article 157(10) stipulates that the Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.
 11. Article 157(11) provides that in exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.
 12. Article 158(1) sets out that the Director of Public Prosecutions may be removed from office only on the grounds of— (b) non-compliance with Chapter Six; (d) incompetence; or (e) gross misconduct or misbehaviour.
 13. Article 232(1) sets out the values and principles of public service which includes high standards of professional ethics.

Office of the Director of Public Prosecutions Act (No. 2 of 2013)

14. Section 4 provides that in fulfilling its mandate, the Office shall be guided by the Constitution and the following fundamental principles— (d) promotion of public confidence in the integrity of the Office; (f) the need to serve the cause of justice, prevent abuse of the legal process and public interest; and (i) promotion of constitutionalism.
15. Section 6 (b) provides that pursuant to Article 157 (10) of the Constitution, the Director shall not be under the direction or control of any person or authority in the exercise of his or her powers or functions under the Constitution, this Act or any other written law; and be subject only to the Constitution and the law.
16. Section 9 provides that the Director may be removed from office in accordance with Article 158 of the Constitution.

Public Officer Ethics Act, 2003

17. Section 9(1) stipulates that a public officer shall carry out his duties in a way that maintains public confidence in the integrity of his office.

Leadership and Integrity Act, 2012

18. Section 7(1) provides that a State officer shall respect and abide by the Constitution and the law. (2) A State officer shall carry out the duties of the office in accordance with the law.
19. Section 8 provides that a State office is a position of public trust and the authority and responsibility vested in a State officer shall be exercised by the State officer in the best interest of the people of Kenya.
20. Section 9 further provides that subject to the Constitution and any other law, a State officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.
21. Section 11 provides that a State officer shall— a) carry out duties of the office in a manner that maintains public confidence in the integrity of the office; and (e) if the State officer is a member of a professional body, observe and subscribe to the ethical and professional requirements of body in so far as the requirements do not contravene the Constitution or this Act.
22. Section 24 provides that a State officer shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and shall not practise favouritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

Guidelines on Decision to Charge, 2019

23. The Office of the Director of Public Prosecutions has developed the Decision to Charge Guidelines 2019, anchored on Article 157 of the Constitution, the National Prosecution Policy and the General Prosecution Guidelines. The Guidelines have been developed with the goal of ensuring the quality of prosecutorial decisions, accountability of prosecutors, and transparency of prosecutorial processes and decisions to the right holders

C. FACTUAL BACKGROUND

24. The position of the DPP is a senior position which requires its occupant to have qualifications same as those for appointment as a judge of the High Court. For the avoidance of doubt, the qualifications of a judge of the High Court as per Article 166(5) of the Constitution are as follows;
 - a. at least ten years' experience as a superior court judge or professionally qualified magistrate; or
 - b. at least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; or
 - c. held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.
25. The recruitment of the DPP is a thorough, intensive and extensive process that is designed to select the most competent and impressive professional among a pool of experts. The office holder should be able to make informed, reliable, and solid professional decisions in dispensing his or her mandate including making decisions on whether to open charges against suspected individuals.

26. It is required that the DPP, being a State officer, is well familiar with and abides by the requirements of Chapter Six of the Constitution on Leadership and Integrity, Article 10 of the Constitution on National Values and Principles of Governance, Articles 157 and 158 of the Constitution which establish the office of the DPP and provides the frameworks for its operations, provisions of the Leadership and Integrity Act, and all relevant Codes of Conduct applicable to the DPP functions.
27. The DPP is required to make decisions free from external influence, whether political, personal or otherwise and in accordance with constitutional principles. The DPP is expected to espouse the values of transparency, personal integrity, accountability to the public for decisions and actions, consideration of public interest in decision making, competence, objectivity and impartiality in decision making.
28. It is further expected that every decision made by the DPP will be guided by the Constitution, attendant statutes, and expert analysis of the evidence available. This includes the most elemental decision; the decision to charge.
29. The Office of the Director of Public Prosecutions has developed the Decision to Charge Guidelines 2019, anchored on Article 157 of the Constitution and General Prosecution Guidelines.
30. The Guidelines provide that a decision to charge should only be made after the prosecution's determination that the evidence availed by an investigator or investigative agency is sufficient to warrant the institution of prosecution proceedings against an accused person in a court of law.
31. Further, the Guidelines expressly provide that the standard required in making the decision to charge is whether there is a reasonable prospect of conviction. The prosecutor must consider key evidence and certain minimum requirements of a file which would apply depending on which test is applied.
32. Therefore, if the evidence is not sufficient, then it follows that the suspected person should not be charged.
33. In recent months, the DPP has made various applications to withdraw from prosecution of several active cases in court, on grounds of insufficient evidence to sustain a prosecution. This is despite the law requiring that the DPP does not initiate prosecutions until and unless he is convinced that the evidence available is admissible and sufficient; and presents a reasonable prospect of conviction.
34. In this petition, the petitioners have identified and highlighted seven (7) cases involving politically exposed persons for which the DPP has successfully withdrawn prosecution despite their advancement to various stages including hearing.
35. The matrix below denotes some of the cases that the DPP has withdrawn involving politically exposed persons, and the reasons for their withdrawal;

No	Case no.	Case Parties	Charges	Amount Involved (ksh)	Case Stage	When the case was dropped	Justification used by DPP	Exonerated person
1		Geoffrey Mwangi (former CEO, NHIF) and 17 others	Loss of public funds relating to the award of an NHIF contract to an online payment company, Web Tribe Limited, for provision of an integrated Revenue collection system for NHIF. Conferring a benefit of Sh253 million to the company.	1.1 Billion	Hearing	January 2023	The DPP cited lack of sufficient evidence to sustain the charges. In July 2022 Mr. Mwangi had attempted to have the charges against him terminated, but the DPP argued that the decision to charge him was based on sufficient evidence. The court then dismissed Mr. Mwangi's request, holding that the DPP had demonstrated that the decision to charge was based on sufficient evidence and was not instigated by any other motive other than the public interest.	Geoffrey Mwangi.
2	ACC 26/2018	R. V Ben Chumo & others	Willful failure to comply with procurement laws Conspiracy to commit an offence Aiding the commission of a felony Conspiracy to defeat justice Fraudulent acquisition of public property	400 million	Hearing – at least 34 witnesses had been heard & about 4 were remaining	October 2022	The DPP alleged that the DCI failed to conduct proper investigations and avail sufficient evidence that could secure a conviction.	Ben Chumo

3		Rigathi Gachagua & 9 others	Conspiracy to commit an offence of corruption Money laundering Fraudulent acquisition of public property Conflict of Interest	7.3 billion	Hearing	November 2022	DPP alleged insufficient evidence due to Incomplete investigations IO said he investigated under pressure hence did not undertake comprehensive investigations	Rigathi Gachagua
4	ACCR/25/2018	R v Dr. Ken Tarus (former KPLC MD) & 8 others	Conspiracy to commit an economic crime by failing to comply with the procedures and guidelines relating to procurement Willful failure to comply with the law relating to management of public funds as the accounting officer of KP	159 million	Hearing		The DPP alleged that after reviewing the evidence tendered, no offence had been revealed against Mr. Taurus	Ken Tarus
5		Aisha Jumwa (CS Ministry of Public Service, Gender and Affirmative Action)	Committing to conspire fraud by misappropriating CDF funds in 2018	19 Million		October 2022	DPP alleged insufficient evidence.	Aisha Jumwa
6	Millimani ACC 1/2020	Mike Mbuvi Gideon K'loko Sonko & others	Conspiracy to commit an offence of corruption; namely the embezzlement of public funds	20 million	Hearing	December 2022	Acquitted for failure of prosecution to prove the case to answer. The court noted that the charge sheet was defective	Mike Sonko

7	ACC/E028/2021	R V Mary Wambui (Communications Authority of Kenya chairperson) and Purma Holdings Limited & another	Conflict of interest	Faced 2 criminal trials; A tax evasion case & illegal possession of a firearm:	2.2 Billion	Submissions	Tax evasion dropped in January 2022 Firearm case dropped in Dec 2022	DPP told the court that there were negotiations with KRA	Mary Wambui
---	---------------	--	----------------------	--	-------------	-------------	---	--	-------------

36. All of the highlighted cases involve politically exposed persons, and the withdrawal of their prosecution has been undertaken after the new government came into office.
37. In some of the cases, only the politically exposed person has had the charges against them withdrawn, and not all accused persons.
38. The law requires that the DPP should only make the decision to charge if the evidence available is admissible and sufficient.
39. Since key evidence has to be made available at the point of charge, to inform the determination on whether to charge or not, the DPP's assertions that there was insufficient evidence in the highlighted cases to secure a conviction are questionable and point to incompetence or abuse of prosecutorial powers in the instituting of prosecution proceedings in the first place.
40. If indeed the decision to charge was made correctly and as per the law, the DPP ought to have resubmitted the investigative files to relevant agencies to seal the gaps, instead of withdrawing prosecution of the cases.
41. Further, if the charges were only preferred after expert analysis of evidence and determination based on the evidence that there were reasonable prospects of securing a conviction, the withdrawal of charges raises questions on how expert analysis by the same prosecution can reach a different conclusion without any significant changes in evidence or circumstances.
42. In the event that charges were preferred after application of the threshold test, then the DPP ought to have ensured that all the four requirements set out in the Decision to Charge Guidelines were met, namely: There are reasonable grounds to believe that the suspect has committed the offence, further evidence can be obtained to provide a realistic prospect of conviction, the seriousness or the circumstances of the case justifies the making of an immediate charging decision and it is in the public interest to charge the suspect.
43. It should be noted that the threshold test should only be applied in rare and unique circumstances, and the DPP ought to have reviewed any cases involving decision to charge based on the threshold test within fourteen days of making the decision. Majority of the cases as highlighted were withdrawn at advanced stages of prosecution.
44. Based on the facts and issues set out, the petitioners aver that the DPP failed to follow set out guidelines on decision to charge, acted in contravention of the law and against the interests of justice and the public interest, and failed to promote public trust and confidence in the office he holds.

D. GROUNDS FOR REMOVAL

1. Non-compliance with Chapter Six of the Constitution
 - i) Failure to exercise authority in a manner that promotes public confidence in the integrity of the office contrary to Article 73 of the Constitution of Kenya;
 - a. The withdrawal of prosecution of cases against politically exposed persons fails to inspire public confidence in the DPP's commitment to execute his mandate effectively and satisfactorily.
 - b. The DPP's actions have demonstrated a failure to act in the public interest and in the interests of justice.

- ii) Lack of objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by favoritism, other improper motives, or corrupt practices;
 - a. The DPP's withdrawal of charges against specific individuals who have clear political connections without withdrawals against their co-accused as evidenced in several instances points to blatant favoritism, and failure to ensure fairness and uniformity in the prosecution of all cases.
 - b. The DPP's withdrawal of prosecution of cases affecting a category of people, within a set timeframe, is discriminatory behaviour which casts doubt on his independence.

2. Incompetence;

- i) Failure to make proper legal judgement on the ripeness of cases for trial and subsequent withdrawal of cases without any substantial change in evidence or circumstances. Whereas the law allows the DPP to withdraw cases, such decision must be guided by public interest, the interests of justice and, the need to avoid abuse of the legal process. It is important to note that none of these reasons were expressly given by the DPP to inform the withdrawals. Most withdrawals have been on evidentiary basis, which is an indication of failure to apply expert analysis prior to the decision to charge.
- ii) Failure to undertake objective analysis of cases and ensure evidential thresholds have been met, before making the decision to charge.
- iii) Failure to review the cases involving decision to charge based on the threshold test within fourteen days of making the decision, leading to wastage of public resources.
- iv) Failure to ensure the right person is charged with the correct offence, backed by evidence.
- v) Failure to ensure that the investigation file is sufficiently composed before pursuing prosecution, thus failing to make an informed decision to charge

3. Gross misconduct or behavior

- vi) The DPP's actions in withdrawing prosecution of cases against politically exposed persons have demonstrated a failure to ensure the quality of prosecutorial decisions and act with independence, integrity and professionalism in the administration of justice, therefore wasting courts' and public resources.
- vii) Exercising preferential treatment in handling prosecution of some cases of politically exposed persons as highlighted in this petition. The withdrawal of prosecution of cases affecting a category of people, within a set timeframe, is discriminatory behaviour amounting to gross misconduct or misbehaviour.
- viii) Abuse of prosecutorial powers entrusted to the DPP, through failure to ensure that there is sufficient evidence to provide a realistic prospect of conviction against a suspect on each charge, before making the decision to charge.
- ix) Acting in contravention of the Constitution, ODPP Act 2013, and ODPP's Guidelines on Decision to Charge 2019. Despite the provisions of the law and developed guidelines and policies to prevent institution of criminal proceedings in cases with insufficient evidence, the DPP has acted in contravention of these

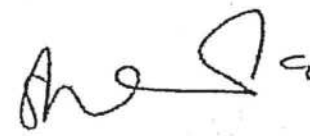
E. RELIEFS SOUGHT

REASONS WHEREOF, THE PETITIONERS PRAYS FOR ORDERS THAT:


- a) A declaration that the Director of Public Prosecutions violated the Constitution of Kenya 2010, the Office of the Director of Public Prosecutions Act, the Public Officer Ethics Act 2003, the Leadership and Integrity Act 2012 and the Decision to Charge Guidelines 2019;
- b) An order recommending the removal of the Director of Public Prosecutions under grounds of gross misconduct, incompetence and non-compliance with Chapter six of the Constitution and subsequent forwarding of the petition to the President.

F. PETITIONERS

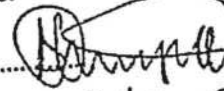
Transparency International Kenya

..... Sheila Marinde 

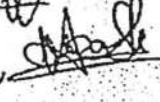
Kenya Human Rights Commission

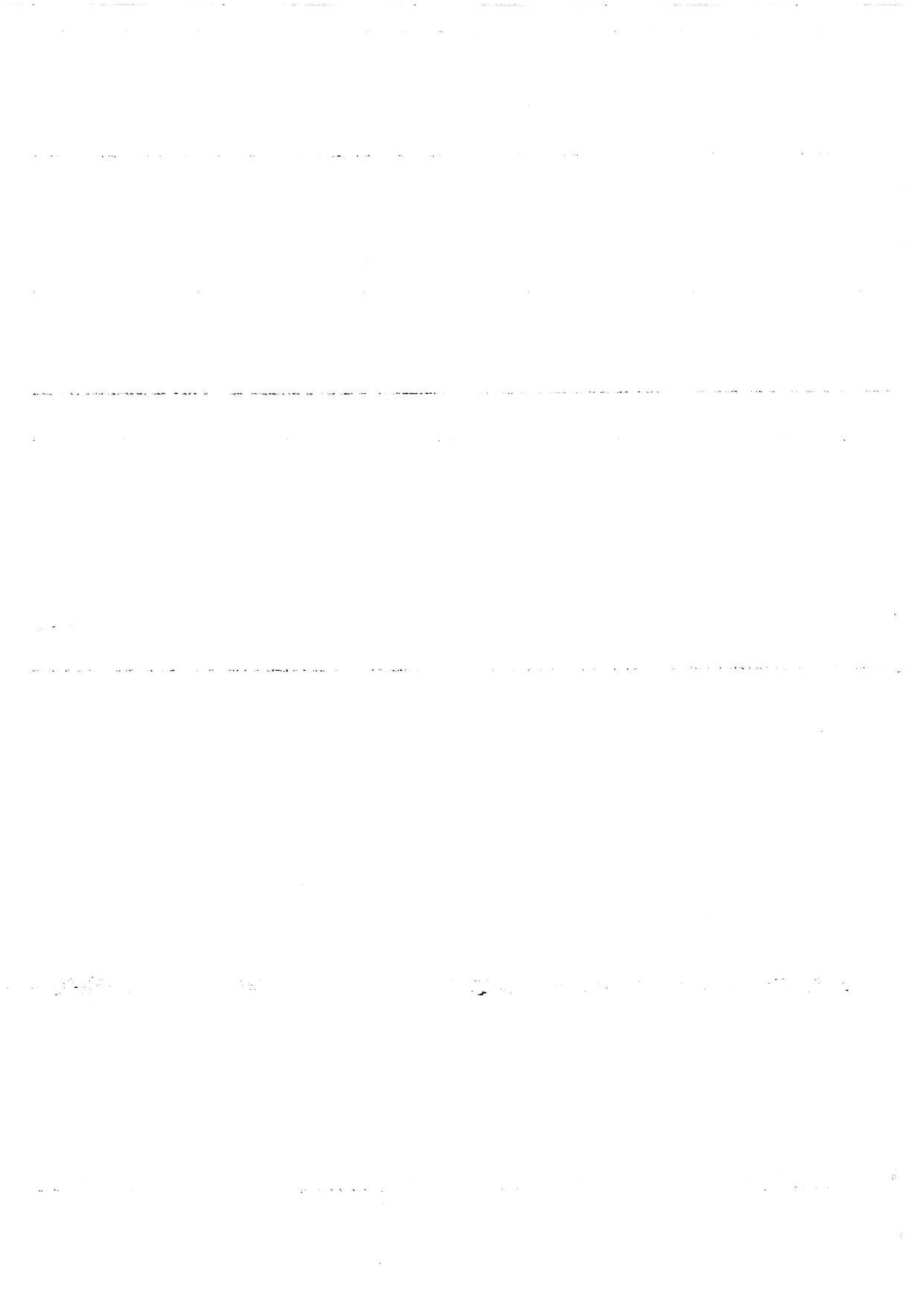
..... Davis Maitome 

The Institute for Social Accountability

..... DIANA GICHENGO 

Inuka Kenya Ni Sisi!

..... KAWIVE, WAMBUA - DCEO,  22/5/2023



Annexure 11:

**Nominee's Replying Affidavits to Memoranda contesting his
suitability**

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION – 2023

**IN THE MATTER OF APPROVAL BY THE NATIONAL
ASSEMBLY OF THE PERSON NOMINATED FOR
APPOINTMENT TO THE POSITION OF DIRECTOR GENERAL,
NATIONAL INTELLIGENCE SERVICE (NIS)**

REPLYING AFFIDAVIT

I, NOORDIN MOHAMMED HAJI, the Director of Public Prosecutions (hereinafter the DPP) do hereby make oath and solemnly swear, and state as follows:

- 1. THAT** I am a male adult of sound mind, a Kenyan Citizen by birth, an Advocate of the High Court of Kenya.
- 2. THAT** I swear this affidavit both in opposition and in response to the aforesaid Affidavit by Sheila Masinde, the Executive Director of Transparency International.
- 3. THAT** I was duly appointed as the Director of Public Prosecutions in the Republic of Kenya (hereinafter referred to as “or DPP”) on the 28th of March 2018 vide Gazette Notice No. 2940 dated 16th March 2018.
- 4. THAT** I have been nominated by His Excellency The President of the Republic of Kenya to be the next Director General of the National Intelligence Service, as evidenced by the Presidential Notification dated 16th May, 2023.
- 5. THAT** Article 157 (6) of the Constitution imparts State powers of prosecution on the DPP, where he may;

- a. Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.*
 - b. Take-over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority, and*
 - c. Discontinue at any stage before judgment is delivered any criminal proceedings instituted by the DPP or taken over by the DPP, with the permission of the court.*
6. **THAT** in response to paragraphs 5,6,7,8,9,10, 11 and 12 of the Affidavit, the prosecution made an application for withdrawal before the learned court of the cases listed therein, and the reasons for withdrawal were canvassed before the court who, having been satisfied with the grounds granted the application for withdrawal. Furthermore, the rulings of the listed cases are public records.
7. **THAT** in response to paragraph 13 and 16, the Office of the Director of Public Prosecutions is independent and at no point did I state that I made the decision to charge based on external pressure. In addition, the Decision to Charge and/ or withdrawal of any matter has been based on facts, evidence and the law in compliance with the Constitution of Kenya, the ODPP Act, 2013 and any other laws.
8. **THAT** in response to paragraph 14 and 15, in adherence to the principles of fair hearing and due process, I anticipate an invitation from the board of Transparency International, granting me with the opportunity to present our perspective. In the interim period, I have discontinued the utilization of the award and will promptly return it upon the board's determination.



9. **THAT** in response to paragraph 17, all petitions against my person at the Public Service Commission have been withdrawn and I have no knowledge of any other petitions seeking my removal.

10. **THAT** what is deponed herein is true to the best of my knowledge, information and belief.

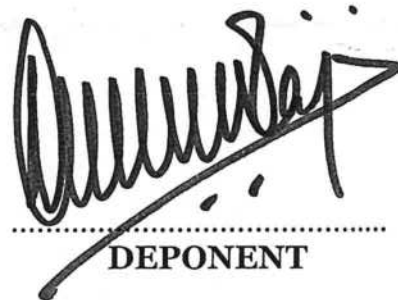
SWORN AT NAIROBI this 30th day of May, 2023

By the said **NOORDIN MOHAMMED HAJI**

BEFORE ME

MASAKE SHABAAN ALEX
COMMISSIONER FOR OATHS
P. O. Box 48655 - 00100

**COMMISSIONER FOR OATHS
/MAGISTRATE**



.....
DEPONENT

DRAWN & FILED BY:-
NOORDIN M. HAJI CBS, OGW
P.O. BOX 76609- 0508
NAIROBI
KENYA

TO BE SERVED UPON;
THE CLERK OF THE NATIONAL ASSEMBLY,
P.O. BOX 41842-00100,
NAIROBI.
E-MAIL: cna@parliament.go.ke

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY OF KENYA

SUBMISSION OF STATEMENT CONTESTING THE SUITABILITY OF
MR NOORDIN HAJI, CBS, TO BE APPROVED FOR APPOINTMENT
TO THE OFFICE OF DIRECTOR-GENERAL, NATIONAL
INTELLIGENCE SERVICE

REPLYING AFFIDAVIT TO SUBMISSION OF STATEMENT
CONTESTING THE SUITABILITY OF MR NOORDIN HAJI, CBS, TO
BE APPROVED FOR APPOINTMENT TO THE OFFICE OF
DIRECTOR-GENERAL, NATIONAL INTELLIGENCE SERVICE BY
ELIUD KARANAJA MATINDI DATED 26TH DAY OF MAY, 2023

I, **Noordin Mohammed Haji**, Director of Public Prosecutions (hereinafter the DPP) at the Office of the Director of Public Prosecutions (ODPP) and of Post Office Box Nairobi do hereby make oath and solemnly swear and state as follows:

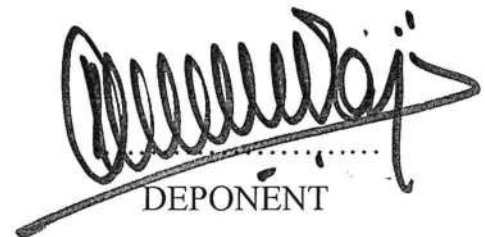
1. **THAT** I am a male adult of sound mind, a Kenyan Citizen by birth, an Advocate of the High Court of Kenya and the 1st Respondent herein.
2. **THAT** I was duly appointed as the Director of Public Prosecutions in the Republic of Kenya (hereinafter referred to as “the 1st Respondent or DPP”) on the 28th of March 2018 vide Gazette Notice No. 2940 dated 16th March 2018 a copy of which is annexed hereto and marked as “NMH 001”.
3. **THAT** mentioned matter is in court and the issues raised in this affidavit are pending before the High Court in HCCR. Pet no. 492/2022.
4. **THAT** ODPP has filed its various responses to the same (*annexed hereto and marked NMH 1 are copies of the said responses*)
5. **THAT** matter is coming up for highlight of submissions on 8th June, 2023 before Hon. Lady Justice Thande.

6. **THAT** I swear this affidavit in opposition to the submission of statement made under oath and signed by Eluid Matindi Karanja on 26th May, 2023 at 27 Bascot Road, Bournemout, BH11 8RJ, in the Local Authority area of Bournemouth, Christchurch and Poole, United Kingdom, Great Britain and Northern Ireland in the presence of Paul Wintle Notary Public.

7. **THAT** what is deponed herein is true to the best of my knowledge, information and belief other than where sources have been disclosed.

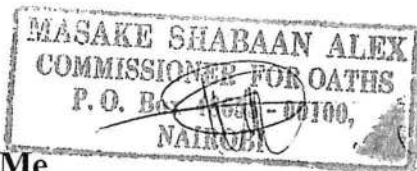
SWORN at **NAIROBI** by the said]

NOORDIN M. HAJI]



DEPONENT

On this **30TH** day of **MAY**, 2023]



Before Me]

Magistrate/Commissioner for Oaths]

Drawn By:

NOORDIN MOHAMMED HAJI

NAIROBI