



REPUBLIC OF KENYA

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SNA
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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON LABOUR

.....

REPORT ON: -

THE APPROVAL HEARING OF DR. PHYLLIS WAMBUI WAGACHA,
NOMINEE FOR APPOINTMENT AS MEMBER OF THE SALARIES AND
REMUNERATION COMMISSION (SRC)

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 JUN 2023	DAY: TUESDAY
TABLED BY:	HON. MUCHAMBAI KALEMBA, MP CHAIRPERSON
CLERK-AT THE-TABLE:	IMZSPU MWALE

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2023

TABLE OF CONTENTS

	1
LIST OF ABBREVIATIONS AND ACRONYMS	3
ANNEXURES	4
CHAIRPERSON'S FOREWORD	5
CHAPTER ONE	7
1 PREFACE	7
1.1 Establishment and Mandate of the Committee	7
1.2 Subjects under the Committee	7
1.3 Committee Membership	8
ODM Party Jubilee Party	8
1.4 Committee Secretariat	9
CHAPTER TWO	10
2 BACKGROUND INFORMATION	10
2.1 Legal Framework	10
2.2 Qualifications for appointment as a member of the Salaries and Remuneration Commission	13
2.3 Message from H.E. the President	13
2.4 Speaker's Communication and Committal to the Committee	13
2.5 Notification to the Public	14
2.6 Notification to the Nominee	14
2.7 Clearance Requirements	14
2.8 Report of the Selection Panel by the Public Service Commission on the Nomination of the Member of the Salaries and Remuneration Commission.	14
2.9 Committee proceedings	15
CHAPTER THREE	16
3.0 APPROVAL HEARING	16
3.1 Dr. Phyllis Wambui Wagacha	16
CHAPTER FOUR	19
4.0 OBSERVATIONS AND FINDINGS	19
4.1 Dr. Phyllis Wambui Wagacha	19
CHAPTER FIVE	21
5.0 RECOMMENDATION	21

LIST OF ABBREVIATIONS AND ACRONYMS

H.E.	-	His Excellency
KRA	-	Kenya Revenue Authority
EACC	-	Ethics and Anti-Corruption Commission
DCI	-	Directorate of Criminal Investigations
HELB	-	Higher Education Loans Board
ORPP	-	Office of the Registrar of Political Parties
PAPAA	-	Public Appointments (Parliamentary Approval) Act
UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
KIPPRA	-	Kenya Institute for Public Policy Research and Analysis

ANNEXURES

- Annexure 1: Signed list of Members who attended the sitting which considered and adopted the report
- Annexure 2: Minutes
- Annexure 3: Letter from H.E. the President nominating Dr. Phyllis Wambui Wagacha for approval by the National Assembly
- Annexure 4: Communication from the Speaker
- Annexure 5: Advertisement inviting submission of memoranda from the public and notifying the public and nominee the date and venue of the approval hearings
- Annexure 6: Letter from the Clerk of the National Assembly inviting the nominee for the approval hearing
- Annexure 7: Letters from the Clerk of the National Assembly to KRA, EACC, DCI, HELB and ORPP requesting for clearance reports
- Annexure 8: EACC clearance letter
- Annexure 9: KRA clearance letter
- Annexure 10: DCI clearance letter
- Annexure 11: ORPP clearance letter
- Annexure 12: HELB clearance letter
- Annexure 13: Summary of the nominee's curricula vitae
- Annexure 14: Nominee's testimonials

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Labour on the approval hearing of Dr. Phyllis Wambui Wagacha, nominee for approval for appointment as a member of the Salaries and Remuneration Commission representing the Public Service Commission in the Commission. The nomination was made by H.E. the President and communicated to the House by the Speaker on Tuesday 6th June, 2023.

Pursuant to the provisions of Articles 230(2) (b) (ii) of the Constitution, the Salaries and Remuneration Commission Act, 2011 and section 6 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), H.E. the President notified the National Assembly of the nomination of Dr. Phyllis Wambui Wagacha, for approval for appointment as a member of the Salaries and Remuneration Commission vide a letter dated 25th May, 2023. The Hon. Speaker pursuant to Standing Order 42(1) vide a communication made on Tuesday, 6th June, 2023 conveyed to the House the Message from H.E. the President and subsequently referred the nominee's name, curricula vitae, and the report of the selection panel on her recruitment to the Departmental Committee of Labour to conduct the approval hearings and report to the House.

While referring the nominee to the Committee for approval hearing, the Speaker directed that the Committee undertakes the vetting within twenty-eight (28) days pursuant to section 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The Speaker further directed that the Office of the Clerk of the National Assembly facilitates the Committee to notify the nominee and the general public of the time and place of holding the approval hearing through advertisement in at least two newspapers of nationwide circulation and the Parliamentary website.

In compliance with Article 118 (b) of the Constitution and section 6 (4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Committee published advertisements in the print media on Thursday, 15th June, 2023 informing the public of the nomination, date, time and place of the approval hearing. The Committee also invited the public to submit memoranda by way of written statements on oath (*affidavit*) on the suitability of the nominee to hold office as required by section 6 (9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The memoranda were to be received on or before Thursday, 22nd June, 2023 at 5.00 p.m. (East African Time). At the close of the deadline, the Committee had not received any memorandum for or against the nominee's suitability to hold office.

The Committee also sought references and conducted background checks on the suitability of the nominee to hold office from KRA, EACC, DCI, HELB and ORPP. All the agencies had no opposition to the nominee being appointed to office.

The nominee appeared before the Committee on Friday 23rd June, 2023 for the approval hearing during which the Committee examined her suitability to hold office 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 her 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; constitutional or statutory requirements relating to the office in question 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 Salaries and Remuneration Commission.

The Committee having conducted approval hearing of the nominee regarding her suitability, observed that due process was followed in the recruitment process as provided for under Article 250 of the Constitution and the Public Appointments (Parliamentary Approval Act) (No. 33 of 2011). The Committee however recommends that the National Assembly **rejects** the nomination of Dr. Phyllis Wambui Wagacha for appointment as member of the Salaries and Remuneration Commission, on account of unsuitability due to age.

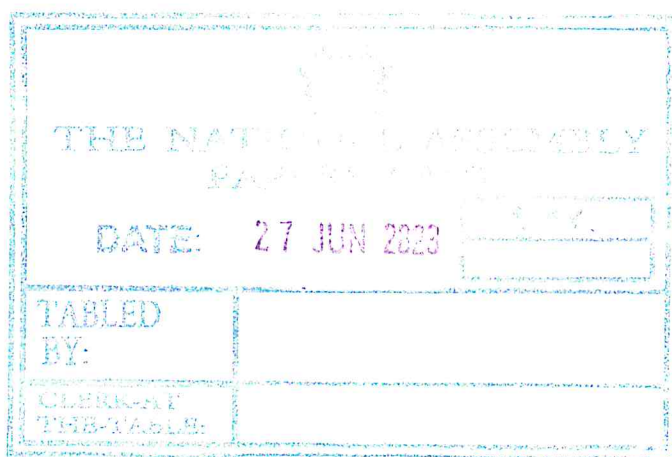
The Committee registers its appreciation to the Offices of the Speaker, the Clerk of the National Assembly, the Director, Departmental Committees and the Committee Secretariat for providing leadership and technical support during the entire Committee processes and proceedings. The Committee also wishes to thank the nominee for her cooperation during the approval hearing process. Finally, the Committee wishes to register its appreciation to KRA, EACC, DCI, HELB and ORPP for providing references and background checks relating to the suitability of the nominee.

I acknowledge and appreciate the 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 Labour, and pursuant to Article 230(2)(b) of the Constitution 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 hearings of Dr. Phyllis Wambui Wagacha, nominee for appointment as member of the Salaries and Remuneration Commission for debate and adoption by the House.

Hon. Eric Muchangi Karemba, MP.

Chairperson, Departmental Committee on Labour



CHAPTER ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Labour is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. *To study and review all legislation referred to it;*
- v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. ***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);***
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, labour, human capital and remuneration, trade union relations and public service.
3. In executing its mandate, the Committee oversees the Ministries of Labour and Social Protection and Public Service, Gender and Affirmative Action.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency

UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency

GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency

ODM Party

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency

ANC Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency

ODM Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency

Jubilee Party

Hon. George Aladwa Omwera,
Makadara Constituency

ODM Party

MP Hon. Catherine Wambiliaga, MP
Bungoma County

FORD-K

Hon. Amina Dika Abdullahi, MP
Tana River Constituency

KANU

Hon. Dorice Aburi Donya, MP
Kisii County

WDM-K

Hon. Patrick Simiyu Barasa, MP
Cherangany Constituency

DAP-K Party

Hon. Mangale Munga Chiforomodo, MP
Lunga Lunga Constituency

UDM Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency

UDA Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County

UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County

UDA Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Ms. Rose M. Wanjohi
Senior Clerk Assistant/Head of Secretariat

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Fredrick Muthengi
Deputy Director PBO

Ms. Christine Odhiambo
Senior Legal Counsel

Ms. Wambui Nyachae
Research Officer III

Mr. Timothy C. Tsungulah
Research Officer III

Ms. Rinha Sainey
Media Relations Officer III

Mr. Alex Amwata
Hansard Officer III

Ms. Zainab Wario
Serjeant-At-Arms II

Mr. Alan Gituku
Serjeant-At-Arms

Ms. Rehema Koech
Audio Officer III

6. The list of Members who attended the sitting which considered and adopted the report forms **annexure 1** of this report while Minutes of sittings of the Committee on the approval hearing proceedings form **annexure 2** of the report.

CHAPTER TWO

2 BACKGROUND INFORMATION

2.1 Legal Framework

7. Article 230(2)(b)(ii) of the Constitution provides that:
 - (2) *The Salaries and Remuneration Commission consists of the following persons appointed by the President-*
 - (b) *one person each nominated by the following bodies from among persons who are not members or employees of those bodies-*
 - (ii) *the Public Service Commission;*
8. In light of the foregoing, H.E. the President nominated Dr. Phyllis Wambui Wagacha for approval by the National Assembly for appointment as a member of the Salaries and Remuneration Commission. H.E. the President notified the National Assembly of the nomination of Dr. Phyllis Wambui Wagacha, for approval for appointment as a member of the Salaries and Remuneration Commission vide a letter dated 25th May, 2023. The Hon. Speaker pursuant to Standing Order 42(1) vide a communication made on Tuesday, 6th June, 2023 conveyed to the House the Message from H.E. the President and subsequently referred the nominee's name, curricula vitae, and the report of the selection panel on her recruitment to the Departmental Committee of Labour to conduct the approval hearing.
9. While conducting the approval hearing, the Committee was guided by the following statutes and Articles of the Constitution-
 - i. The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
 - ii. The Salaries and Remuneration Commission Act (No. 10 of 2011) section 7 on recommendation for appointment as a member of the Commission;
 - iii. Article 10 of the Constitution on the national values and principles of governance;
 - iv. Chapter 6 of the Constitution on leadership and integrity;
 - v. Article 77 of the Constitution on restriction on activities of State Officers;
 - vi. Article 78 of the Constitution on dual citizenship;
 - vii. Article 118 of the Constitution on public participation;
 - viii. Article 232 of the Constitution on values and principles of public service;
 - ix. The Leadership and Integrity Act (Cap. 182);
 - x. The Public Service (Values and Principles) Act (No. 1A of 2015); and
 - xi. The Public Officer Ethics Act (Cap. 183).

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

10. Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), provides for issues which 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 nomination is being made.*

11. Section 6 (7) to (10) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) provides as follows—

(7) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.

(8) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate.

(9) 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.

(10) 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 thereupon lapse.

The Salaries and Remuneration Commission Act (No. 10 of 2011)

12. Section 5 (1) (b) of the Salaries and Remuneration Commission Act provides qualifications that one must have so as to be eligible for appointment as a Member of the Commission. These are:

- a. holds a degree from a university recognized in Kenya;
- b. has knowledge and at least ten years' experience in either—
 - i. finance and administration;
 - ii. public management;
 - iii. economics;
 - iv. human resource management; or
 - v. labour laws;
- c. meets the requirements of Chapter Six of the Constitution; and
- d. has had a distinguished career in their respective fields.

Section 5 (3) provides that a person shall not be qualified for appointment as the chairperson or a member if the person—

- i. is a member of Parliament or County Assembly;
- ii. is a member of a governing body of a political party;
- iii. is a member of a local authority;
- iv. is an undischarged bankrupt; or
- v. has been removed from office for contravening the provisions of the Constitution or any other law.
- vi.

Article 10(2) of the Constitution on national values and principles of governance

13. Article 10(2) of the Constitution provides for the national values and principles of governance which include patriotism, national unity, sharing and devolution of power, 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; and sustainable development.

Chapter 6 of the Constitution (Leadership and Integrity)

14. There are important provisions in Chapter 6 of the Constitution worth pointing out. Article 73 of the Constitution provides that the authority assigned to a state officer (a member of a commission to which chapter fifteen applies being a state officer under Article 260 of the Constitution) *"is a public trust to be exercised in accordance to the Constitution, demonstrate respect for the people, bring honour to the nation and dignity to the office and promote public confidence in the integrity of the office. Also, the State officer shall have the responsibility to serve the people, rather than the power to rule them."*
15. The guiding principles of leadership and integrity are listed as selection based on personal integrity, competence and suitability, objectivity and impartiality in decision making, selfless service based solely on the public interest, accountability and discipline and commitment in service to the people.

Article 77 of the Constitution (Restriction on activities of State officers)

16. Article 77 of the Constitution provides that a full-time State officer shall not participate in any other gainful employment and that any appointed State officer shall not hold office in a political party.

Article 78 of the Constitution on citizenship and leadership

17. Article 78 of the Constitution states that a person is not eligible for election or appointment to a State office unless the person is a citizen of Kenya. It also provides that a State officer or a member of the defence forces shall not hold dual citizenship.

Article 118 of the Constitution on public access and participation

18. Article 118 of the Constitution provides as follows:

1. *Parliament shall:*
 - a) *conduct its business in an open manner, and its sittings and those of its committees shall be in public; and*
 - b) *facilitate public participation and involvement in the legislative and other business of Parliament and its committees.*
2. *Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.*

Article 232 of the Constitution on Values and Principles of Public Service

19. Article 232 of the Constitution provides for the values and principles of public service which include *"high standards of professional ethics; efficient, effective and economic use of resources; 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; fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service of men and women; the members of all ethnic groups; and persons with disabilities."*

The Leadership and Integrity Act (No. 19 of 2012)

20. The Leadership and Integrity Act provides for the obligations of a State officer. These are, among others: to respect and abide by the Constitution and the law, public trust, performance of duties in an honest and accountable manner, professionalism, financial integrity, not to engage in activities

that amount to abuse of office, not misuse public resources, accepting gifts that may compromise the officer's duties, wrongful or unlawful acquisition of property, conflict of interest etc.

The Public Service (Values and Principles) Act, 2015

21. Section 5 of the Public Service (Values and Principles) Act provides that a public officer "*shall maintain high standards of professional ethics, including, being honest; displaying high standards of integrity, transparency, accountability, respect to others, objectivity, patriotism, observance of rule of law.*" (Applies in future upon appointment)

The Public Officer Ethics Act (No. 4 of 2003)

22. The Public Officer Ethics Act provides for obligations to be carried out by a public officer. These include "*professionalism, carrying out duties in accordance with the law, prohibition from unjust enrichment, avoiding conflict of interest, not using office as a venue for soliciting or collecting harambees; not acting for foreigners; care of property; political neutrality, not practicing nepotism or favouritism, giving impartial advice, conducting private affairs in a way that maintains public confidence, bar from sexual harassment, submission of declaration of income, assets and liabilities once every two years*" (section 26). (Applies in future after appointment)

2.2 Qualifications for appointment as a member of the Salaries and Remuneration Commission

23. In conducting the approval hearings, the Committee was guided by Article 230(2)(b)(ii) of the Constitution, section 5 (2) and (3) of the Salaries and Remuneration Act, No. 10 of 2011 and the provisions of section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011).

2.3 Message from H.E. the President

24. H.E. the President on **25th May, 2023** vide letter OP/CAB.26/4A VOL.II(2) (**annexure 3**) communicated the name of the nominee for appointment to the position of Member of the Salaries and Remuneration Commission to the Speaker for approval by the National Assembly pursuant to Articles 230(2)(b)(ii) and 250(2)(c) of the Constitution.

2.4 Speaker's Communication and Committal to the Committee

25. Pursuant to the provisions of Standing Order No. 42, the Speaker of the National Assembly on **Tuesday 6th June, 2023** communicated to the House the message from H.E. the President regarding the nominee for appointment as Member of the Salaries and Remuneration Commission as the representative of the Public Service Commission. The Speaker informed the House that H.E. the President was seeking approval of the National Assembly on the said nomination before the nominee's appointment. (**annexure 4**)
26. In accordance with Standing Order 45(1), the Speaker read the Message from H.E. the President and referred the name of the nominee, her curriculum vitae and report of the Selection Panel from the Parliamentary Service Commission on the recruitment process to the Departmental Committee on Labour to conduct approval hearings.
27. 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 facilitates the Committee to notify the nominee and the general public of the approval hearing through advertisement in two newspapers of nationwide circulation and the Parliamentary Website of the time and place of holding the approval hearings.

2.5 Notification to the Public

28. 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"*.
29. The Committee on Thursday, 15th June, 2023 through the print media notified the general public of its intention to conduct the approval hearing as required 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) (**annexure 5**). The notification provided for the submission of memoranda by way of written statements on oath (*affidavit*) on the suitability or otherwise of the nominee to hold office, by Thursday 22nd June, 2023 at 5.00 pm (East African Time). At the close of the submission deadline, the Committee had not received any memorandum for or against the suitability of the nominee.

2.6 Notification to the Nominee

30. The Committee through the print media on Thursday, 15th June, 2023 and letters Ref. NA/DDC/LABOUR/2023/055 informed the nominee of the nomination by H.E. the President and requested her to appear for vetting on Friday 23rd June, 2023 in the Committee Room 9, 1st Floor, Main Parliament buildings (**annexure 6**). The Committee further requested the nominee to appear for the approval hearing clearance certificates from KRA, HELB, EACC, DCI and ORPP (**annexure 7**).

2.7 Clearance Requirements

31. The Committee sought references and conducted background checks on the suitability of the nominee to hold office from EACC, KRA, DCI, ORPP and HELB. All the agencies cleared the nominee, EACC (letter Ref. EACC.7/10/5 VOL XXIII (145) dated 19th June 2023 (**annexure 8**); KRA (letter Ref. KRA/5/1002/5(9134) dated 16th June 2023 (**annexure 9**); DCI (letter Ref. DCI/CRO/SEC/6/7/2/A/VOL.XII/166 dated 22nd June 2023) (**annexure 10**); ORPP (letter Ref. RPP/ORG/34 VOL. VII (17) dated 19th June 2023 (**annexure 11**) and HELB (letter Ref. HELB/RR/112009/255 dated 16th June 2023) (**annexure 12**).

2.8 Report of the Selection Panel by the Public Service Commission on the Nomination of the Member of the Salaries and Remuneration Commission.

32. Pursuant to Article 230(2)(b)(ii) of the Constitution and section 7(1) of the Salaries and Remuneration Commission Act 2011, the Public Service Commission invited applications from suitably qualified persons for appointment as a member of the Salaries and Remuneration Commission representing the Public Service Commission. The advertisement was published in the print media and on the Commission's Website on 15th March, 2022 with a closing date of 28th March, 2022.

33. The advertisement period lapsed on 28th March, 2022, with a total of two hundred and sixty one (261) persons submitting applications for consideration. The Commission carried out shortlisting on 4th April, 2022 where eight (8) candidates were picked and interviewed on 9th and 10th May, 2022.
34. Pursuant to section 7(2) of the SRC Act, requiring 2 names to be forwarded to the President the Public Service Commission forwarded the names of, Dr. Phyllis Wambui Wagacha and Mr. Japther Kiplimo Rugut, EBS.
35. The Public Service Commission adhered to provisions of the Constitution and the Salaries and Remuneration Commission Act 2011 in the process of advertising, shortlisting and interviewing the candidates.

2.9 Committee proceedings

36. The Committee having received the name of the nominee was obligated to conduct approval hearings and make determination of the nominee's 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).
37. The Committee held two (2) sittings during which it examined and reviewed the nominee's certificates, testimonials as well as conducted approval hearings.

CHAPTER THREE

3.0 APPROVAL HEARING

38. The Committee conducted approval hearing on **Friday, 23rd June, 2023**. In conducting the hearing, the Committee was guided by, among others, the Constitution, the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Salaries and Remuneration Commission Act, No. 10 of 2011, the Public Service (Values and Principles) Act, No. 1A of 2015 and the Standing Orders.
39. The Committee noted the following: -
- i. The nominee had not notified the Clerk of the National Assembly of her withdrawal from the approval process as outlined under section 6 (10) of Public Appointments (Parliamentary Approvals) Act, 2011.
 - ii. The Committee would therefore proceed with the approval hearings on Friday, 23rd June, 2023; and
 - iii. The Committee would examine the nominee against the criteria set out in section 7 of the Public Appointments (Parliamentary Approval) Act, 2011.
40. The Committee examined the nominee using the guidelines set out in the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The Committee also considered the following in vetting the nominee:
- a. Academic qualifications
 - b. Employment record and work experience
 - c. Professional association
 - d. Public office, political activities and affiliations
 - e. Potential conflict of interest
 - f. Suitability to the position
 - g. Tax compliance
 - h. Vision and leadership
 - i. Integrity
 - j. Expectations and Key priorities

3.1 Dr. Phyllis Wambui Wagacha

41. The nominee appeared before the Committee on Friday 23rd June, 2023 at 10.00 am and was orally interviewed under oath pursuant to Article 230 (b) (ii) of the Constitution, the Public Appointments (Parliamentary Approval Act, 2011, Salaries and Remuneration Commission Act 2011, Public Service (Values and Principles) Act, 2015 and the National Assembly Standing Orders. She responded to questions during vetting as follows: -

3.1.1 Personal Background

42. The nominee is a Kenyan citizen of identity card number 7276627 and was born in 1948 in Kiambu County.

3.1.2 Educational Background

43. The nominee holds a PHD in Information Sciences from Moi University, a Master's degree in Library and Information Science from Kenyatta University awarded in 2008, Post Graduate Diploma in Library and Information Science from University College London and BA (Hons) in Sociology and Literature in English from the University of Nairobi.

3.1.3 Work experience/career progression

44. The nominee has worked in the both public and private sectors in her career life in the following capacities:

- i. Director, Optimum Resources International, Nairobi Kenya from 2022
- ii. Manager and head, KIPPRA Library Documentation and information Centre from 1999 to 2010;
- iii. Manager and head, Arifu Centre for Documentation and Information on MSEs from 1994 to 1998;
- iv. Director, Council for the Development of Social Science Research in Africa's Document and Information Centre from 1983 to 1992
- v. Collaborator/Indexer, International Labour Organization (ILO) Library, Geneva, Switzerland from 1981 to 1982;
- vi. Programme Librarian, Diplomacy Training Programme, Graduate Institute of International Studies, University of Geneva and
- vii. Documentalist, Institute for Development Studies and Assistant Librarian, University of Nairobi Parliament of Kenya from 1974 to 1978.

3.1.4 Professional Associations and Affiliations

45. The nominee has been a member of the following associations;

- i. Editor and executive Board member, Kenya Library Association, from 2005 to 2010.
- ii. Steering Committee member, International Co-ordinating Committee of Development Associations (ICCD), Paris, France from 1985-1992.
- iii. Steering Group Member, International Documentation (INTERDOC), Rome, Italy from 1985 to 1992.
- iv. Steering Committee member, International Development Institutes Network from 1983 to 1991.

3.1.5 Clearance Requirements

46. The Committee confirmed that the nominee had been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.

3.1.6 Potential conflict of interest

47. The nominee declared that she had no potential conflict of interest should she be appointed to the position.

3.1.7 Pro bono/Charity work

48. The nominee stated that she is a member of Rotary Club of Kenya.

3.1.8 Statement on Net worth

49. The nominee estimated her net worth to be approximately Kshs. 474,930,000 million.

3.1.9 Integrity

50. The nominee stated that she had not been dismissed or otherwise removed from office for contravening Article 75 of the Constitution. She further stated that she has not been adversely associated with practices that depict bias, favouritism or nepotism in the discharge of public duties.

51. Further, the nominee submitted that she had not been charged in any court of law in the last three years and neither had she been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry in the last three years.

3.1.10 General and Sector Specific questions

The Committee queried the nominee on the following areas

A. On her career accomplishments that make her a prime candidate for the position of a Commissioner in the Salaries and remuneration commissions

52. The nominee submitted that her experience and leadership would be vital in the Salaries and Remuneration Commission in its execution of its mandate. The nominee has managed institutions both in the public and private sectors at different levels of management.

53. The nominee further submitted that she is well read. She informed the Committee that given her experience in information science, she would advocate for establishment of a data centre within the Commission to ensure data is collected, stored and available for evidence-based decision making and future projections.

B. On gaps she has observed within the Salaries and Remuneration Commission and the Public Service Commission that require intervention.

54. The nominee informed the committee that she would advocate for improved productivity and performance in the Public Service. This will lead to a more efficient, productive labour force and attraction and retention of requisite skills. Some of the strategies highlighted include rewards linked to job performance and fair remuneration.

55. The nominee further submitted that she would advocate for improved consideration of special interest groups such as people with disability in the Public Service. This can be done through improved access to assistive devices and equipment.

56. The nominee submitted that despite the Commissions being independent and having distinct mandates, they should all endeavour to work together. The nominee advocated for dialogue between commissions embroiled in disagreements and conflicts to achieve amicable solutions.

D. On the call for improved pay for Members of County Assemblies and job groups classification.

57. The nominee noted the need for adherence by State agencies of the 35 per cent to revenue threshold for the wage bill. She noted the need for progressive review of the salaries and benefits available to the Members of the County Assemblies given their extensive workload.
58. The nominee further informed the Committee on the need for review of job group classification in the public service at both levels of government. This should be done in collaboration with other stakeholders such as the Public Service Commission. She further indicated the need for development of a criteria for classification of special jobs groups such as for elected members of parliament.

E. On her views on retirement age in Kenya and the challenge of youth unemployment

59. The nominee, acknowledging the huge challenge of youth unemployment, informed the Committee that age should not be a hindrance to performance and productivity. The nominee further averred that the number of older people in the public service is relatively low.
60. She further indicated that the government should create a conducive environment for investments and entrepreneurship, which are catalysts for job creation for the unemployed youth.

F. On financial wastage on ghost workers

61. The nominee stated that there has been a problem of ghost workers on payroll especially in the County governments. A lot of resources have been used to pay non-existent employees, illegally enlisted in payroll systems. The nominee, noting the continued financial constraints in the country, submitted that there is a need for a clean-up of the public service payroll system to weed out ghost workers and duplications of tasks.

CHAPTER FOUR

4.0 OBSERVATIONS AND FINDINGS

62. The Committee observations were guided by Article 230(2)(b)(ii) and 250(2)(b) of the Constitution, section 5 of the Salaries and Remuneration Commission Act, 2015 and section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) in terms of issues for consideration as follows:

- 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 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.

63. The Committee, having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, (No. 33 of 2011), the nominee's curriculum vitae and having heard her oral submissions during the approval hearing, made the following observations on the nominee's suitability for appointment as Member of the Salaries and Remuneration Commission-

4.1 Dr. Phyllis Wambui Wagacha

- (i) **THAT**, in accordance with Article 78(1) and (2) of the Constitution, the nominee is eligible for appointment to State Office since she is a Kenyan citizen born in 1948 in Kiambu County and does not hold dual citizenship.
- (ii) **THAT**, the nominee meets the requirements of Chapter Six of the Constitution on leadership and integrity having obtained clearance from the Ethics, and Anti-corruption Commission (EACC), the Kenya Revenue Authority (KRA), The Directorate of Criminal Investigations (DCI) (has been cleared but not issued with a physical police certificate), the Office of Registrar of Political Parties (ORPP) and the Higher Education Loans Board (HELB).
- (iii) **THAT**, the nominee has not been charged in a court of law in the past three years.
- (iv) **THAT**, the nominee does not hold office in any political body.
- (v) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of Article 75(1) (*conflict of Interest*), Article 76 (*financial probity*), Article 77 (*restriction on activities of State Officers*) and Article 78(2) (*dual citizenship*) of the Constitution.
- (vi) **THAT**, the nominee demonstrated knowledge of topical, administrative and technical issues on the Salaries and Remuneration Commission and the Public Service Commission and has the requisite abilities, qualifications and experience to serve as a member of the Commission.
- (vii) **THAT**, the retirement age for Judges and magistrates who are state officers as defined in Article 260 of the Constitution is seventy (70) years and sixty-five (65) years respectively

which is below the current age of the nominee who is currently 75 years old. The position of member, Salaries and Remuneration Commission (SRC) is for a period of six (6) years.

- (viii) **THAT**, under section 70 of public service regulations 2020, subject to the Constitution, section 80 of the Public Service Commission Act (No. 10 of 2017), retirement age for public officers is sixty years; sixty-five years for persons with disability; and such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.
- (ix) **THAT**, further, subject to section 80 (2) of the Public Service Commission Act,(No. 10 of 2017), in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses. In the regulation “rare knowledge, skills and competencies” means knowledge, skills and competencies that are scarce, unique and not readily available in the job market. It is noted that from the recruitment report of PSC, two hundred and sixty-one (261) persons applied and eight (8) were shortlisted. This was not cited as the reason for her nomination in the Recruitment Report from the Public Service Commission as transmitted to the Head of Public Service on 17th May 2023.
- (x) **THAT**, whereas the retirement age does not apply to State officers, the Committee notes that the nominee was nominated to be a member of the Salaries and Remuneration Commission as a representative of the Public Service Commission, which is responsible for setting the mandatory retirement age for public officers.. The Committee therefore notes that there is need for the representative of the Public Service Commission to be below the mandatory retirement age. To this end, the Committee notes that the nominee is not suitable to hold the position of a member of the Salaries and Remuneration Commission on account of age.

CHAPTER FIVE

5.0 RECOMMENDATION

64. The Committee recommends that the National Assembly **rejects** the appointment of **Dr. Phyllis Wambui Wagacha** by H.E. the President as a Member of the Salaries and Remuneration Commission representing the Public Service Commission on account of age.

SIGNED  DATE 27/06/23
HON. ERIC MUCHANGI KAREMBA, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON LABOUR

Annexure 1: Adoption List



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LABOUR
REPORT ADOPTION LIST

We, the members of the Departmental Committee on Labour, have pursuant to Standing Orders 199, adopted this report on the Approval Hearing for Nominee for Member, Salaries and Remuneration Committee and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date:

	NAMES	SIGNATURE
1.	Hon. Karemba Eric Muchangi Njiru, MP-Chair person	
2.	Hon. Muli Fabian Kyule, MP- Vice Chairperson	
3.	Hon. K'Oyoo James Onyango, M.P.	
4.	Hon. Kagesi Kivai Ernest Ogesi, M.P.	
5.	Hon. Kiti Richard Ken Chonga, M.P.	
6.	Hon. Lomwa Joseph Samal, M.P.	
7.	Hon. Omwera George Aladwa, M. P.	
8.	Hon. Wambilianga Catherine Nanjala, MP	
9.	Hon. Abdullahi Amina Dika, M.P.	
10.	Hon. Aburi Donya Dorice, M.P.	
11.	Hon. Barasa Patrick Simiyu , M.P.	
12.	Hon. Chiforomodo Mangale Munga, M.P.	
13.	Hon. Kihungi Peter Irungu, M. P.	
14.	Hon. Sankaire Leah Sopiato, M.P.	
15.	Hon. Siyoi Lillian Chebet, M.P.	

