

REPUBLIC OF KENYA



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SNA
14/9/23


THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

REPORT ON THE APPROVAL HEARING OF MR. RENSON MULELE INGONGA, OGW,
NOMINEE FOR APPROVAL FOR APPOINTMENT AS DIRECTOR OF PUBLIC
PROSECUTIONS (DPP).

 THE NATIONAL ASSEMBLY PAPERS T A I D	
DATE:	14 SEP 2023
	DAY: Thursday
TABLED BY:	Hon George Mwangi, MP Chairperson, Justice & Legal Affairs
CLERK AT THE TABLE:	TRACY CHEBET

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

SEPTEMBER, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

DCI	-	Directorate of Criminal Investigations
DPP	-	Director of Public Prosecutions
EACC	-	Ethics and Anti-Corruption Commission
H.E.	-	His Excellency
HELB	-	Higher Education Loans Board
IQA	-	Internal Quality Assurance
KRA	-	Kenya Revenue Authority
MCCP	-	Maendeleo Chap Chap Party
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecutions
OGW	-	Order of the Grand Warrior
ORPP	-	Office of the Registrar of Political Parties
PAPAA	-	Public Appointments (Parliamentary Approval) Act
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on the approval hearing of Mr. Renson Mulele Ingonga, OGW, nominee for approval for appointment by the House as the Director of Public Prosecutions. The nomination was forwarded by H.E. the President and communicated to the House by the Rt Hon Speaker on Thursday, 17th August, 2023.

Pursuant to Section 8(4)(f) of the Office of the Director of Public Prosecutions Act, 2013, the Chairperson of the Selection Panel forwarded to the appointing authority, H.E The President, the names of three shortlisted applicants for nomination as Director of Public Prosecutions vide letter of Ref. No. *PSC/SEC/93/71Vol. VI(82)* dated 3rd August, 2023. Consequently, in exercise of powers conferred by Article 157(2) of the Constitution, Section 8(5) of the Office of the Director of Public Prosecutions Act, 2013 as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, the Head of Public Service vide letter of Ref. No. *OP/CAB.26/4A VOL. II/(40)* dated 15th August, 2023, notified the National Assembly of the nomination of Mr. Renson Mulele Ingonga, OGW, as Director of Public Prosecutions.

The Rt. Hon. Speaker vide Communication No. 015 of 2023 dated Thursday 17th August, 2023 conveyed to the House the Message from the H.E The President and subsequently referred the name of the nominee and his *Curriculum Vitae* to the Departmental Committee on Justice and Legal Affairs for approval hearing and reporting to the House. 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, 2011 and table its report before the House. The Rt. Hon. Speaker further directed the Clerk of the National Assembly to notify the nominee and the general public of the time and place of holding the approval hearing, by placing advertisement in 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, 2011, the Committee placed an advertisement in the print media on Thursday 24th August, 2023 informing the public of the nomination, date, time and place of the approval hearing. The Committee invited the public to submit memoranda by way of written statements on oath (*affidavits*) with supporting evidence on the suitability or otherwise of the nominee to hold office in conformity with Section 6 (9) of the Public Appointments (Parliamentary Approval) Act, 2011. The memoranda were to be received on or before Wednesday 30th August 2023 at 5.00 p.m. (East African Time). By the close of the submission deadline, the Committee had not received any memoranda contesting the suitability of the nominee.

The Committee vide letter of Ref. No. *NA/DDC/JLAC/VETT/2023/0015* dated 24th August 2023 invited the nominee for the approval hearing in accordance with Section 6(3) of the Public Appointments (Parliamentary Approval) Act, 2011. The Committee also conducted reference and background checks with DCI, EACC, HELB, KRA and ORPP regarding the suitability of the nominee to hold office.

The nominee appeared before the Committee on Thursday 31st August 2023 for the approval hearing. The Committee examined him on his suitability to hold office based on the criteria set out in Section 7 of the Public Appointments (Parliamentary Approval) Act, 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, the constitutional and statutory requirements relating

to the office in question and 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 Office of the Director of Public Prosecutions.

Committee Recommendation

The Committee, having conducted the nominee's approval hearing, observed that due process was followed in his nomination as required by Section 8 of the Office of the Director of Public Prosecutions Act, 2013 as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011. The Committee, therefore, recommends that the National Assembly approves the nomination of Mr. Renson Mulele Ingonga, OGW for appointment as Director of the Public Prosecutions.

Acknowledgements

The Committee registers its appreciation to the Office of the Speaker, Office of the Clerk of the National Assembly, Office of the Director of Departmental Committees and the Committee Secretariat for the logistical support extended to it during the approval hearing.

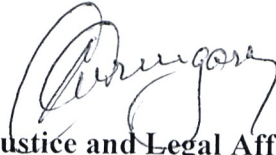
In addition, the Committee thanks the nominee for his cooperation during the Parliamentary approval hearing process. Finally, the Committee appreciates the offices of DCI, EACC, HELB, KRA and ORPP for providing references and background checks relating to the suitability of the nominee.

Finally, I wish to express gratitude to Committee Members for their patience, sacrifice and commitment which enabled the Committee to complete the task within the set timelines.

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to Section 8(6) of the Office of the Director of Public Prosecutions Act, 2013, Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011 and provisions of Standing Order 45 (1), it is my pleasure to present to the House the Report of the Committee on the Approval Hearing of Mr. Renson Mulele Ingonga, OGW, Nominee for Appointment as Director of Public Prosecutions for debate and adoption.

Hon. George Gitonga Murugara, MP

Chairperson, Departmental Committee on Justice and Legal Affairs



1 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is 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. To, 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 recommendations 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 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:

- a) The Judiciary;

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- b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties;
 - m) The State Law Office, including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
- a) State Department of Correctional Services
 - b) State Law Office and Department of Justice
 - c) The Judiciary
 - d) Judicial Service Commission
 - e) Office of the Director of Public Prosecutions
 - f) Ethics and Anti-Corruption Commission
 - g) Independent Electoral and Boundaries Commission
 - h) Commission on Administrative Justice
 - i) Office of the Registrar of Political Parties
 - j) Witness Protection Agency
 - k) Kenya National Commission on Human Rights
 - l) Kenya Law Reform Commission
 - m) Council of Legal Education

1.3 Committee Membership

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

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency
UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is resourced and facilitated by the following staff:

Mr. Douglas Katho
Clerk Assistant I/Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Vivienne Ogega
Research Officer III

Mr. Stanley Lagat
Senior Serjeant-At-Arms

Ms. Faith Jully
Public Communication Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Antony Kariuki
Serjeant-At-Arms

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Fridah Ngari
Media Relations Officer III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Peter Mutethia
Audio Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Alex Amwata
Hansard Reporter III

Mr. Alvin Ochieng'
Research Officer III

Mr. Silas Opanga
Hansard Reporter III

2 BACKGROUND INFORMATION

2.1 Legal Framework

6. Article 157(1) and (2) of the Constitution provides for the establishment and appointment of the Director of Public Prosecutions as follows:

“(1) There is established the office of Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall be nominated and, with the approval of the National Assembly appointed by the President.”

7. In light of this, H.E., the President nominated Mr. Renson Mulele Ingonga, OGW for approval by the National Assembly for appointment as the DPP.

8. The Departmental Committee on Justice and Legal Affairs was assigned the task of conducting the approval hearing of the nominee and reporting to the House.

9. The Committee was guided by the following provisions of the Constitution and statutes in executing its assignment:

- i. Article 10 of the Constitution on the national values and principles of governance;
- ii. Chapter 6 of the Constitution on leadership and integrity;
- iii. Article 77 of the Constitution on restriction on activities of State Officers;
- iv. Article 78 of the Constitution on dual citizenship;
- v. Article 118 of the Constitution on public participation;
- vi. Article 124(4) of the Constitution on consideration of persons for appointment to public office;
- vii. Article 232 of the Constitution on values and principles of public service;
- viii. The Public Officer Ethics Act (No. 4 of 2003);
- ix. The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- x. The Leadership and Integrity Act (No. 19 of 2012); and
- xi. The Office of the Director of Public Prosecutions Act (No. 2 of 2013).

2.2 Notification of Nomination

10. Pursuant to Section 8(4)(f) of the Officer of the Director of Public Prosecutions Act, 2013, the Public Service Commission forwarded to the appointing authority, H.E the President, the names of three shortlisted applicants for nomination as DPP vide letter Ref. No. *PSC/SEC/93/71 Vol. VI (82)* dated 3rd August 2023.

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11. Consequently, H.E the President nominated Mr. Renson Mulele Ingonga, OGW for approval by the National Assembly for appointment as the DPP

2.3 Message from H.E. the President

12. H.E the President, through the Head of Public Service, vide letter Ref. No. *OP/CAB.26/4A VOL. II/(40)* dated 15th August, 2023, transmitted the name of the nominee for appointment as DPP to the Speaker of the National Assembly for approval by the House pursuant to Article 157(2) of the Constitution, Section 8(5) of the Office of the Director of Public Prosecutions Act, 2013 as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011.

13. The Rt. Hon. Speaker in his Communication issued on Thursday 17th August, 2023 and pursuant to Standing Order No. 42, referred the name of the nominee to the Departmental Committee on Justice and Legal Affairs to conduct approval hearings and submit its report within twenty-eight (28) days.

2.4 Notification to the House and Referral to the Departmental Committee on Justice and Legal Affairs

14. Article 124(4) of the Constitution provides as follows with regard to the approval of public appointments—

“(4) When a House of Parliament considers any appointment for which its approval is required under this Constitution or an Act of Parliament—

(a) the appointment shall be considered by a committee of the relevant House;

(b) the committee’s recommendation shall be tabled in the House for approval;
and

(c) the proceedings of the committee and the House shall be open to the public.”

15. Pursuant to the provisions of Standing Order 42(1), the Speaker, vide Communication No. 015 of 2023 dated Thursday 17th August, 2023 informed the House of the Message from H.E the President regarding the nomination of the DPP for approval by the National Assembly.

16. Pursuant to Section 8(1) of the Public Appointment (Parliamentary Approval) Act, 2011 and Standing Order 45(1), the name and *Curriculum Vitae* of the nominee were referred to the Departmental Committee on Justice and Legal Affairs for approval hearing and reporting to the House.

17. While referring the matter to the Committee, the Speaker directed that the Committee undertakes the approval hearing process within twenty-eight (28) days pursuant to Section 8 of the Public Appointments Parliamentary Approval Act, 2011. The Speaker further directed the Clerk of the National Assembly to notify the nominee and the general public of the time and place of holding the approval hearing.

2.5 Notification to the Public

18. Article 118 as read together with Article 124 (4)(c) of the Constitution provide that Parliament shall facilitate public participation and involvement in the legislative business and other business of Parliament and its Committees, including when considering appointment for which its approval is required.

19. Section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 provides that the Committee shall notify the public of the time and place for holding an approval hearing at least seven days before the hearing.

20. Further, Section 6(9) of the Public 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”.

21. Pursuant to Article 118 of the Constitution as read together with Section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee placed an advertisement in the print media on Thursday 24th August, 2023 inviting the public to submit memoranda by way of written statements on oath (affidavits) on the suitability or otherwise of the nominee to hold office in conformity with Section 6(9) of the Act. The advertisement indicated that the memoranda were to be received by Wednesday 30th August, 2023 at 5.00 p.m. (East African Time). At the close of the submission deadline, the Committee had not received any memoranda contesting the suitability of the nominee to hold office.

22. Further, pursuant to Article 118 of the Constitution, Section 6(4) of the Public Appointment (Parliamentary Approval) Act, 2011 and provisions of Standing Order 45(3), the Committee placed advertisements in the local dailies notifying the general public and inviting Mr. Renson Mulele Ingonga, OGW to attend the approval hearing on Thursday 31st August, 2023 in the Mini-Chamber, County Hall, Parliament Buildings at 10.00 a.m.

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2.6 Notification to the Nominee

23. The Committee vide the advertisement placed in the print media and letter Ref. No. *NA/DDC/JLAC/VETT/2023/0015* dated 24th August 2023 invited the nominee, Mr. Renson Mulele Ingonga, OGW for the approval hearing in accordance with Section 6(3) of the Public Appointments (Parliamentary Approval) Act, 2011.

2.7 Clearance and Compliance Requirements

24. On 24th August 2023, the Committee vide letters Ref No. *NA/DDC/JLAC/VETT/2023/016, NA/DDC/JLAC/VETT/2023/017, NA/DDC/JLAC/VETT/2023/018, NA/DDC/JLAC/VETT/2023/019, NA/DDC/JLAC/VETT/2023/020* sought from DCI, EACC, HELB, KRA and ORPP reports regarding the nominee's:

- a) Criminal record;
- b) Ethics and integrity;
- c) Higher education loan repayment;
- d) Tax compliance; and
- e) Political party affiliation.

25. The following institutions wrote back to the Committee clearing the nominee: DCI vide letter Ref No. *DCI/CRO/SEC/6/7/2/A/VOL. XIII/60* dated 28th August 2023; EACC vide letter Ref No. *EACC.7/10/5 VOL XXIV (411)* dated 30th August 2023; HELB vide letter Ref No. *HELB/RR/112009/2V/263* dated 4th September 2023; KRA vide letter Ref No. *KRA/5/1002/26(9542)* dated 31st August 2023 and ORPP vide letter Ref No. *RPP/ORG/34 VOL. VII (22)* dated 29th August 2023.

26. The nominee also obtained letters and certificates of compliance from the DCI, EACC, HELB, KRA and ORPP annexed to this report as *Annexure 12*.

2.8 Issues for Consideration during the Approval Hearing

27. Section 6(7) and (8) of the Public Appointment (Parliamentary Approval) Act, 2011 provides that:

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

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

28. In addition, Section 7 of the Act stipulates the issues for consideration as:

- a) *the procedure used to arrive at the nominee;*

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- b) *any constitutional or statutory requirements relating to the office in question; and*
- c) *the suitability of the nominee for the appointments 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.*

29. While conducting the approval hearings, the Committee was guided by the provisions of Section 6(7) and (8) and Section 7 of the Public Appointments (Parliamentary Approval) Act, 2011.

a) Procedure for Nomination

30. Section 8 of the Office of the Director of Public Prosecutions Act, 2013 provides for the procedure of appointment as the DPP as follows:

“(1) Whenever a vacancy arises in the Office of the Director, the President shall within fourteen days constitute a selection panel comprising one person from each of the following bodies –

- a) the Office of the President;*
- b) the Office of the Attorney-General;*
- c) the Ministry responsible for Public Service;*
- d) the Kenya National Commission on Human Rights;*
- e) the Law Society of Kenya;*
- f) the Central Organizations of Trade Unions; and*
- g) the Ethics and Anti-Corruption Commission.*

(2) The Public Service Commission shall –

- a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and*
- b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.*

(3) The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the Director.

- (4) *The selection panel shall within fourteen days –*
- a) consider the applications received under subsection (3) to determine compliance with the Constitution;*
 - b) shortlist the applicants;*
 - c) publish the names of the shortlisted applicants and qualified applicants in at least two daily newspapers of national circulation;*
 - d) conduct interviews of the shortlisted applicants;*
 - e) shortlist three successful applicants in the order of merit; and*
 - f) forward the names to the President.*
- (5) *The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4)(f), select one candidate and forward the name of the person so selected to the National Assembly for approval.*
- (6) *The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of the applicant under subsection (5), vet and consider the nominee, and may approve or reject him or her.*
- (7) *Where the National Assembly approves of the nominee, the Speaker of the National Assembly shall forward the name of the approved nominee to the President for appointment.*
- (8) *The President shall, within seven days of receipt of the approved nominee's name from the National Assembly, by notice in the Gazette, appoint the director of Public Prosecutions approved by the National Assembly.*
- (9) *Where the National Assembly rejects the nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit a fresh nomination within 21 days."*

31. Article 157(2) of the Constitution as read together with Section 8(5) of the Office of the Director of Public Prosecutions Act, 2013 confers upon the President the power to appoint one person as the DPP.

32. Section 5(1) of the Public Appointment (Parliamentary Approval) Act, 2011 further requires that the appointing authority, upon nominating a person for appointment, notifies the relevant House of Parliament.

33. In light of this, pursuant to Section 8(5) of the Office of the Director of Public Prosecutions Act, 2013 as read together with Section 5(1) of the Public Appointments (Parliamentary Approval) Act, 2011, H.E the President notified the National Assembly of the nomination of Mr. Renson Mulele Ingonga, OGW for approval for appointment as the DPP.

b) Constitutional and Statutory Requirements

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

i. National Values and Principles of Governance

35. Article 10 of the Constitution provides for the national values and principles of governance which State officers must abide by in discharging their mandate. They 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.

ii. Conduct of State Officers

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

37. Moreover, the Constitution under Article 78 further stipulates that a State officer must not hold dual citizenship but instead shall be a citizen of Kenya only.

38. Article 232 provides for the values and principles of public service as: 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, members of all ethnic groups and persons with disabilities.

39. The Public Officer Ethics Act, 2003 outlines the obligations of a public officer as: professionalism; carrying out duties in accordance with the law; prohibition from unjust enrichment; avoiding conflict of interest; not using the office as an avenue for soliciting or collecting *harambees*; not acting for foreigners; care of property; political neutrality, not practising nepotism or favouritism; giving impartial advice; conducting private affairs in a way that maintains public confidence; not engaging in sexual harassment; and submission of a declaration of income, assets and liabilities once every two years.

iii. Qualifications for Appointment as Director of Public Prosecutions

40. Article 157(3) of the Constitution provides that the qualifications for appointment as DPP are similar to those of a Judge of the High Court. Article 166(5) of the Constitution further provides for the qualifications for appointment as a Judge of the High Court as follows:

“Each judge of the High Court shall be appointed from among persons who have –

- (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 field; or*
- (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.”*

iv. Leadership and Integrity

41. The Committee, in determining the suitability of the nominee, was also guided by Section 6(c) of the Office of the Director of Public Prosecutions Act, 2013 which provides that:

“Pursuant to Article 157(10) of the Constitution, the Director shall –

- (c) be subject only to the Constitution and the law.”*

42. Additionally, the Committee was guided by the provisions on leadership and integrity as stipulated under Chapter Six of the Constitution and the Leadership and Integrity Act, 2012. In particular, Article 73(2) of the Constitution provides that the guiding principles of leadership and integrity include:

- a) selection based on personal integrity, competence and suitability, or election in free and fair elections;*

- b) *objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;*
- c) *selfless service based solely on the public interest, demonstrated by —*
 - i. *honesty in the execution of public duties; and*
 - ii. *the declaration of any personal interest that may conflict with public duties;*
- d) *accountability to the public for decisions and actions; and*
- e) *discipline and commitment in service to the people.*

43. Article 75 of the Constitution requires a State Officer, whether in public or private life to behave in a manner that avoids conflict between personal interest and public official duties. This Article further prohibits a State Officer who has been removed from office under it from holding any other State Office.

44. Article 77(1) of the Constitution prohibits a full-time State Officer from participating in any other gainful employment.

45. Article 77(2) of the Constitution prohibits an appointed State officer from holding office in a political party. Article 78 of the Constitution disqualifies persons who are not Kenyan citizens from appointment as State Officers. Further, a State Officer is barred from holding dual citizenship.

46. In addition, the Committee considered Section 10 of the Leadership and Integrity Act, 2012 which provides that –

“A State officer shall, to the best of their ability—

- (a) carry out the duties of the office efficiently and honestly;*
- (b) carry out the duties in a transparent and accountable manner;*
- (c) keep accurate records and documents relating to the functions of the office; and*
- (d) report truthfully on all matters of the organization which they represent.”*

c) Suitability of the nominee for the proposed appointment having regard to whether the nominee’s abilities, experience and qualities meet the needs of the body to which the nomination is made

47. The suitability of the nominee was assessed after scrutiny of his background, academic credentials and professional qualifications, work and professional experience, personal

integrity as well as his performance during the approval hearing conducted on Thursday 31st August, 2023.

3 APPROVAL HEARING

48. The Committee conducted the approval hearings for the nominee on Thursday 31st August, 2023 and was guided by, among others, the Office of the Director of Public Prosecutions Act, 2013, the Public Appointments (Parliamentary Approval) Act, 2011 and the National Assembly Standing Orders.

3.1 Approval Hearing of Mr Renson Mulele Ingonga, OGW – Nominee for Director of Public Prosecutions

49. Mr. Renson Mulele Ingonga, OGW appeared before the Committee on Thursday 31st August 2023 at 10.00 am, took oath and was orally examined on his suitability or otherwise to hold office.

Personal Background

50. The nominee is a male Kenyan citizen of Identification Card Number 11469976 and does not hold any other citizenship. He was born on 10th July 1973 in Kakamega County.

Academic and Professional Qualifications

51. The nominee is an Advocate of the High Court of Kenya having been admitted to the bar on 7th July, 2005 and possesses professional qualifications in Senior Management Course from the Kenya School of Government, Matuga; Strategic Leadership Development Programme from the Kenya School of Government, Nairobi; Trial Advocacy Training by Lawyers Without Borders from the Kenya School of Monetary Studies, Nairobi; and Public Policy Executive Program from Strathmore University.

52. The nominee holds a Master of Laws from the University of Nairobi; a Postgraduate Diploma in Law from the Kenya School of Law; a Bachelor of Laws from Moi University; a Certificate of Secondary Education from Shikunga Secondary School; and a Certificate of Primary Education from Shivagala Primary School.

Work and Professional Experience

53. The nominee has worked in the following capacities:

- a) as a Senior DPP, ODPP, Garissa from March 2022 to date;
- b) as an Assistant DPP, ODPP, Kiambu from October 2020 to March 2022;

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- c) as an Assistant DPP, ODPP, Kilifi from March 2019 to September 2020;
- d) as a Senior Principal Prosecution Counsel, ODPP, Mombasa from July 2018 to February 2019;
- e) as a Senior Principal Prosecution Counsel, ODPP, Kajiado from June 2014 to July 2018;
- f) as a Senior Assistant Registrar General, Office of the Attorney General, Mombasa from February 2014 to June 2014;
- g) as a Chief Land Registration Officer, Ministry of Lands, Mombasa in February 2014;
- h) as a Senior Land Registration Officer, Ministry of Lands, Mombasa from April 2009 to June 2012;
- i) as a Registrar of Titles, Ministry of Lands, Mombasa from May 2006 to March 2009;
- j) as a Legal Assistant and Associate, Shitsama & Co. Advocates, Kakamega from January 2005 to April 2006; and
- k) as an Assistant Returning Officer, Deputy Presiding Officer and Registration as well as Polling Clerk, Electoral Commission of Kenya (ECK) in 1997 and 2002.

Memberships and Professional Associations

54. The nominee submitted that he is a member of the Law Society of Kenya, the International Association of Prosecutors and the East Africa Association of Prosecutors.
55. The nominee also indicated that he is a member of the Chagamwe Friends Church (Quakers), Kakamega Friends Church (Amalemba), Shivagala Friends Church and Malindi Golf and Country Club.

Honours and Awards

56. The nominee indicated that he was awarded the Order of the Grand Warrior (OGW) on 12th December 2022. He also indicated that he received recognition from the Attorney-General for support during the consideration of Kenya's Third Periodic Report on the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment in Geneva.

Published Writings

57. The nominee indicated that he has published the following:

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- a) Thesis themed ‘Public Interest Litigation in partial fulfilment for the award of Master of Laws Degree.
- b) An article titled ‘Alternative Dispute Resolution in Environmental Disputes’ published in the Journal of Conflict Management and Sustainable Development Issue No. 1, Vol. 2.

Potential Conflict of Interest

58. The nominee declared that he is currently not associated with any persons or matters that would present a potential conflict of interest should he assume the position of DPP. He added that if any conflict of interest arose, he would disclose the same and recuse himself to allow neutral members deal with the issue.

Sources of Income and Net-worth

59. The nominee estimated his net worth to be Ksh. 300 Million held in land. He indicated that his current sources of income include salary, farming activities and rental income.

Pro-bono/Charity Work

60. The nominee is involved in charity work through financial contributions and in kind in church activities in several towns where he has previously worked. He has also been involved in social activities including funerals and *harambees* at the place of work and rural areas.

Integrity

61. The nominee demonstrated integrity. He has not been charged in a court of law or mentioned in any investigatory reports of Parliament or any Commission of Inquiry in the last three (3) years. Further, he has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

3.2 General and Sector-Specific Questions to Mr. Renson Mulele Ingonga, OGW

62. The Committee posed several questions to the nominee on his knowledge of the position of Director of Public Prosecutions. The nominee responded as follows: -

On the withdrawal of high-profile cases

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63. The nominee stated that Article 157 of the Constitution enumerates the mandate of the ODPP and includes the withdrawal of any criminal proceedings before it. He stated that the withdrawal of criminal proceedings is done based on valid reasons and in concurrence with the court.
64. Additionally, he noted that the recent withdrawal of high-profile criminal cases was done after the investigation officers swore that the evidence in question was insufficient and/or was obtained illegally. Furthermore, he stated that cases are withdrawn in an aim to save public monies and in accordance with Section 210 of the Criminal Procedure Code, Cap 75 on the acquittal of accused persons where there is no case to answer. He stated that withdrawal of cases is a practice done countrywide but focus is only placed on cases involving public figures.

On cushioning the ODPP from political interference

65. The nominee stated that, if approved, he would be guided by the Constitution and the rule of law in handling cases and would not succumb to political interference.

On the allegation that the ODPP denies offenders bail and bond

66. The nominee submitted that under the new dispensation, all offences are bailable except terrorism and sexual offences. He noted that, where there are compelling reasons, the ODPP only makes an application to deny a suspect bail but the decision to grant the application is at the court's discretion.

On impartiality in discharging his duties with respect to his personal friends (staff of the ODPP) present during the approval hearing

67. The nominee submitted that he would comply with the set policies and structures in discharging the duties of his office including the appointment, promotion and sanction of members of staff of the office.

On decisions of multi-agency committees and interference with the independence of the ODPP

68. The nominee was of the view that multi-agency committees are aimed at sharing ideas for an effective criminal justice process, for instance, the inclusion of tax experts in tax evasion cases. He added that while multi-agency committees are crucial to realizing a successful criminal justice system, each agency maintains its autonomy.

On the relationship of the ODPP and the DCI

69. The nominee emphasized that he would adopt collegiality in the discharge of his duties through collective training and sensitization of staff of the DCI and the ODPP on the mandate of each agency. He further stated that he would share any administrative issues with the National Council on Administration of Justice (NCAJ) and find viable resolutions on the same.

On the negative perception of the public on the issue of charging

70. The nominee indicated that there are Guidelines on the Decision to Charge that provide for the steps and measures to follow when charging. He emphasized that, if approved, he would ensure that all prosecutors adhere to them. Moreover, he stated that there exists the Internal Quality Assurance (IQA) Department within the Office of the Director of Public Prosecutions that is mandated to deal with the perception of the ODPP. It was his submission that the IQA should be well-capacitated to enable it to adequately discharge this role.

71. Further, he noted that he would seek an additional budgetary allocation to match that of the Judiciary as its counterpart in the administration of justice to enable the ODPP to discharge its role effectively.

On proposals to alter the administrative system of the ODPP to mirror that of the Office of the AG to separate the prosecutorial function from the accounting and administrative functions

72. The nominee stated that the role of the DPP as Accounting Officer does not conflict with the prosecutorial powers the DPP is granted by the Constitution. It was his view that the law adequately provides a procedure through which all Accounting Officers, including the DPP, should be dealt with if they contravene public finance management laws. He added that no one is immune to these laws and that if found culpable of any breach, the law would be followed to the latter.

On the creation of a department similar to the Auditor-General or Ombudsman

73. The nominee reiterated that there the Internal Quality Assurance Department is the equivalent of the Ombudsman. He added that the ODPP is underfunded thus, it was his submission that the IQA should be adequately resourced to effectively discharge its mandate.

On the alleged laxity in charging vandalisers of KPLC property i.e. power lines

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74. The nominee underscored that he would revamp the communication unit within the ODPP. He added that this would be key in enabling the ODPP and other stakeholders to effectively run their operations. He added that the ODPP only has prosecutorial and not investigative powers. He, therefore, stated that he would champion the formation of multi-agency teams including experts from the relevant institutions to allow them to reach informed decisions.

On the harmonization of the ODPP's case management system with that of the Judiciary; the efficiency of technology in the dispensation of justice

75. The nominee underscored that similar to the Judiciary's e-filing and case management system, the ODPP has in place the *Uadilifu* Case Management System that was prepared internally by its ICT personnel. He stated that, unlike the Judiciary, the ODPP had been unable to successfully roll out the system to other areas across the country due to poor funding.

76. He added that the Judiciary recently recruited seventy new magistrates which in turn translates to the need for an additional seventy prosecutors. He emphasized the need for financially equipping the ODPP to enable it to match its activities and personnel with that of the Judiciary for a competent criminal justice system.

On being predisposed to economic harassment

77. The nominee stated that he had handled numerous cases relating to huge amounts of money before and he had never been compromised. He further stated that he has always been guided by Article 232 of the Constitution on the values and principles of public service and, if approved, would continue to adhere to the Constitution and the rule of law.

On the allegation that the ODPP had abdicated its role to charge and left it to the police

78. The nominee clarified that the ODPP has never failed to undertake its duties. He added that no charge sheet can be presented before a court of law without the approval of the ODPP and authorization by the Judiciary. He noted that the decision to charge is followed before any charge sheet is registered in court.

On plea bargaining as a conduit for prosecutors to conspire with suspects

79. The nominee noted that there is a policy on plea-bargaining to which all prosecutors are bound. He stated that the policy underscores transparency as a main principle in plea

bargaining. He added that the suspect, victim, prosecutor and investigating officer must all be involved in the process and that a plea agreement must be prepared and be deposited in court. It was his submission that if properly adhered to, plea bargaining would not be open to misuse.

On whether the ODPP is well-equipped to prosecute serious crimes such as corruption and economic crimes as compared to EACC

80. The nominee submitted that the ODPP is adequately equipped to prosecute serious crimes, however, he stated that this has been crippled by the shortage of staff in the office. He stated that as compared to the EACC, the ODPP is underfunded and thus cannot operate at the same pace. Additionally, he maintained that prosecutorial powers belong to the DPP as provided for in the Constitution. It was his view that the drafters of the Constitution had good reason for delinking prosecution from investigative agencies.

On the use of *maslaha* in dispute resolution

81. The nominee affirmed that during his time at Garissa, he encountered the use of *maslaha* in the resolution of disputes and was of the opinion that it is an efficient means of alternative dispute resolution. He, however, emphasized that *maslaha* should only be used for offences other than terrorism and sexual offences.

On his achievements during his time in Garissa

82. The nominee indicated that while at Garissa, he built synergies with other stakeholders in the justice sector to work as a team to deliver for the common *mwananchi*. He added that he organized meetings between the ODPP and the police to allow for a shared responsibility in the administration of justice. It was his view that prosecution cannot be handled in a silo hence the need for collective accountability. Moreover, he submitted that he accomplished this in other counties in the North Eastern region including Wajir, Mandera, Marsabit and Isiolo.

On the place of Parliament in the discharge of the role of DPP

83. The nominee stated that Parliament would be vital in providing legislative support to put in place feasible laws on the prosecution legal regime. He added that Parliament is charged with the oversight role over the ODPP.

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4 COMMITTEE'S DETERMINATION AS TO WHETHER OR NOT THE NOMINEE SHOULD BE APPROVED BY THE HOUSE FOR APPOINTMENT AS DPP

4.1 Issues for determination

84. The issues for determination as to whether or not the nominee is suitable and should be approved by the House to hold office are provided for by Section 7 of the Public Appointments (Parliamentary Approval) Act, 2011 and are determined as follows-

4.1.1 Procedure used to arrive at the nominee

85. Section 8 of the Office of the Director of Public Prosecutions Act, 2013 provides for the procedure used to arrive at the nominee as:

" (1) Whenever a vacancy arises in the Office of the Director, the President shall within fourteen days constitute a selection panel comprising one person from each of the following bodies—

- (a) the Office of the President;*
- (b) the Office of the Attorney-General;*
- (c) the Ministry responsible for Public Service;*
- (d) the Kenya National Commission on Human Rights;*
- (e) the Law Society of Kenya;*
- (f) the Central Organizations of Trade Unions; and*
- (g) the Ethics and Anti-corruption Commission.*

(2) The Public Service Commission shall—

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and*
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.*

(3) The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the Director.

- (4) *The selection panel shall within fourteen days—*
- (a) *consider the applications received under subsection (3) to determine compliance with the Constitution;*
 - (b) *shortlist the applicants;*
 - (c) *publish the names of the shortlisted applicants and qualified applicants in at least two daily newspapers of national circulation;*
 - (d) *conduct interviews of the shortlisted applicants;*
 - (e) *shortlist three successful applicants in the order of merit; and*
 - (f) *forward the names to the President.*
- (5) *The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4)(f), select one candidate and forward the name of the person so selected to the National Assembly for approval.*
- (6) *The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of the applicant under subsection (5), vet and consider the nominee, and may approve or reject him or her.*
- (7) *Where the National Assembly approves of the nominee, the Speaker of the National Assembly shall forward the name of the approved nominee to the President for appointment.*
- (8) *The President shall, within seven days of receipt of the approved nominee's name from the National Assembly, by notice in the Gazette, appoint the Director of Public Prosecutions approved by the National Assembly.*
- (9) *Where the National Assembly rejects the nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit a fresh nomination within 21 days."*

86. Based on the report of the Selection Panel on the recruitment of the DPP as submitted to the National Assembly and forming annexure 3 of this report, the Committee observed that the procedure used to arrive at the nominee was as set out by Section 8 of the Office of the Director of Public Prosecutions Act, 2013 and in compliance with Article 157 (2) of the Constitution thus proper.

4.1.2 Constitutional and Statutory Requirements

87. The Constitutional and statutory requirements for approval for appointment to hold public office are as set out by Articles 10, 77, 78, 118, 124 and 232 of the Constitution and Sections 3, 4, 5, 6, 7 and 8 of the Public Appointments (Parliamentary Approval) Act, 2013. Having conducted background checks with EACC, DCI, KRA, HELB and ORPP against the nominee and having examined him during the approval hearing on 31st August 2023, the Committee found as follows-

- a) That the nominee is a Kenyan citizen and is not a citizen of any other country and therefore meets the requirement of Article 78(1) of the Constitution;
- b) That the nominee, being an Advocate of the High Court with eighteen years of experience, meets the requirements of Article 157(3) of the Constitution;
- c) That the nominee demonstrated an aspiration for integrity in public service and thus meets the requirements of Chapter Six of the Constitution on leadership and integrity;
- d) The nominee, having been cleared by KRA, HELB, EACC, DCI, ORPP, with regard to tax compliance, higher education loan repayments, ethics and integrity, criminal records and political party affiliations has met the statutory requirements for appointment to the office; and
- e) The Committee having invited the public to submit memoranda under oath on the nominee's suitability to hold office as required by section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, did not receive any memoranda contesting the suitability of the nominee to hold office.

4.1.3 Suitability of the nominee for the proposed appointment having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which the nomination is made

88. The suitability of the nominee was assessed after scrutiny of his background, academic credentials and professional qualifications, work and professional experience, personal integrity as well as his performance during the approval hearing conducted on Thursday 31st August, 2023 and the Committee observed that:


- a) The nominee possesses the relevant experience for the position of Director of Public Prosecutions. The nominee is an Advocate of the High Court and has a vast

experience in the prosecution of criminal matters having served in the Office of the Director of Public Prosecutions since June 2014. A background in law and the criminal justice system is crucial for any person discharging the role of Director of Public Prosecutions.

- b) The nominee demonstrated a clear understanding of the workings, operations and challenges of the Office of the Director of Public Prosecutions. He exhibited knowledge of the mandate and other pertinent issues relating to the Office of the Director of Public Prosecutions.
- c) The nominee identified inadequate funding as a major challenge to the operations of the office. He noted that, if approved, he would seek additional budgetary support from Parliament to optimize the operations of the office.
- d) The nominee exhibited a proper grasp of the limitation of the mandate of the Office of the Director of Public Prosecutions to prosecution of criminal matters. He was clear that the work of the ODPP does not interfere with the investigative role of the Directorate of Criminal Investigations. He recognised a collaborated approach as a fundamental instrument in the dispensation of justice in the criminal justice sector.
- e) The nominee appreciated the role of technology as an essential tool in the efficient delivery of prosecution services. He displayed a commitment to the automation of all ODPP systems and processes in an aim of going paperless. Further, he identified the need for an integrated system for all actors in the criminal justice sector to enhance access to justice in accordance with Article 48 of the Constitution.
- f) The nominee has served as a Senior Assistant Director of Public Prosecutions in various parts of the country including Kilifi, Kiambu and Garissa. His history in public service as an administrative head in different regions denotes his ability to lead and work in and with teams. Proven leadership ability is necessary to the running of an efficient prosecution service.

5 COMMITTEE RECOMMENDATION

89. Having considered the suitability, capacity and integrity of the nominee, and pursuant to Section 8(6) of the Office of the Director of Public Prosecutions Act, 2013 and Section 8(2) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee recommends that the National Assembly **approves** the appointment of **Mr. Renson Mulele Ingonga** to the position of Director of Public Prosecutions by H.E. the President.

SIGNED.......... DATE.....

HON. GEORGE GITONGA MURUGARA, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

