

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

TWELFTH PARLIAMENT– SECOND SESSION

**THE DEPARTMENTAL COMMITTEE ON
ADMINISTRATION & NATIONAL SECURITY**

REPORT ON THE VETTING

OF

**MAJ. GEN (RTD) DR. GORDON ODEMO
KIHALANGWANOMINEE, FOR THE APPOINTMENT OF
PRINCIPAL SECRETARY, IMMIGRATION, BORDER
CONTROL AND REGISTRATION OF PERSONS**

**DIRECTORATE COMMITTEESERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI**

FEBRUARY, 2018

CONTENTS

APPENDICES	3
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PREFACE	4
1.0 BACKGROUND.....	9
Committee Meetings	11
Submissions	11
3.0 COMMITTEE FINDINGS	18
4.0 RECOMMENDATION OF THE COMMITTEE.....	19

APPENDICES

- Annex 1-** Adoption list
- Annex 2-** Notification Letter from the appointing authority, His Excellency, The President and Commander In Chief of the Kenya Defence Forces of the Republic of Kenya.
- Annex 3-** Minutes
- Annex 4-** Communication from the Speaker
- Annex 5-** Advertisement inviting Submission of Memoranda from the Public
- Annex 6-** Invitation letter from the Clerk of the National Assembly to the Nominee for vetting by the Departmental Committee on Administration and National Security
- Annex 7-** Schedule of vetting
- Annex 8-** Higher Education Loans Board Compliance Certificate
- Annex 9-** Kenya Revenue Authority Clearance Certificate
- Annex 10-** EACC clearance Letter
- Annex 11-** Copy of the National Identity Card and or Passport
- Annex 12-** Directorate of Criminal Investigations Clearance
- Annex 13-** Curriculum Vitae
- Annex 14-** Vetting Questionnaire
- Annex 15-** Academic and professional Certificates
- Annex 16-** Letter from the Clerk of the National Assembly to the Registrar of Political Parties, Director of Criminal Investigation, Ethics & Anti-Corruption Commission, Higher Education Loans Board, Kenya Revenue Authority
- Annex 17-** Clearance from the Registrar of Political Parties
- Annex 18-** Memoranda Submitted to the Committee

PREFACE

Honorable Speaker,

The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to provisions of Standing Orders 216(1).

The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, inter alia;

- a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and
- b) 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.

Honorable Speaker,

2. In executing its mandate, the Committee oversees the following Ministries and Departments:

- i) The Ministry of Interior & Coordination of National Government
- ii) The National Police Service Commission
- iii) The Independent Policing Oversight Authority
- iv) The Public Service Commission

3. According to Schedule II of the Standing Orders, the Committee is mandated to

Consider the following subjects:

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service,
- vi) Prisons;
- vii) Immigration

The Departmental Committee on Administration and National Security comprises of the following members;

- 1. Hon. Paul Koinange, MP (Chairperson)

2. Hon. John Waluke, MP (Vice-Chairperson)
3. Hon. Athanas Wamunyinyi, MP
4. Hon. Justus Kizito, MP
5. Hon. Makali Mulu, MP
6. Hon. Didmus Wekesa Barasa Mutua, MP
7. Hon. Geoffrey Kingagi Muturi, MP
8. Hon. Marselino Malimo Arbelle, MP
9. Hon. Tecla Chebet Tum, MP
10. Hon. Josphat Kabinga Wachira, MP
11. Hon. Nimrod Mbithuka Mbai, MP
12. Hon. George Theuri, MP
13. Hon. Martin Deric Ngunjiri Wambugu, MP
14. Hon. Abdi Omar Shurie, MP
15. Hon. Yussuf Mucheke Halima, MP
16. Hon. Peter Masara, MP
17. Hon. Ahmed Kolosh Mohammed ,MP
18. Hon. Aduma Owuor, MP
19. Hon. Edward Oku Kaunya, MP

COMMITTEE SECRETARIAT

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|-----------------------|---|------------------------|
| 1. Mr. Daniel Mutunga | - | Principal Clerk I |
| 2. Mr. Abdullahi Aden | - | Senior Clerk Assistant |
| 3. Mr. Joshua Ondari | - | Clerk Assistant III |
| 4. Mr. Sidney Bwire | - | Legal Counsel II |
| 5. Mr. Donald Manyala | - | Researcher Officer |

Honorable Speaker,

5. Article 155(1) of the Constitution of Kenya provides that there is established the Office of the Principal Secretary, which is an office in the public service. Further, Article 155 (3) provides that the President shall nominate a person for appointment as Principal Secretary from among persons recommended by the Public Service Commission; and with approval of the National Assembly, appoint the Principal Secretaries. The duties of Principal Secretaries shall be the administration of a State department.
6. On the 13th of February 2018, Pursuant to Standing Order 42(2) of the National Assembly in your communication, you informed the House that in a message from H. E. the President by way of letter dated 30th January 2018, H. E. the President and Commander in Chief of the Kenya Defence Forces of the Republic of Kenya with respect to appointment of the persons to the various offices of Cabinet Secretaries, Principal Secretaries and of High Commissioners/ Ambassadors of the Republic of Kenya for approval by the House pursuant to Article 155 (3) (b) of the Constitution

Subsequently, you referred the Message from H. E. The President containing the names of the nominees together with their curriculum vitae to the relevant Departmental Committees of the House to conduct the vetting of the nominees. Further, you directed that the Committees deliberate on the nominees and table their reports.

The Maj. Gen (Rtd) Gordon O. Kihlangwa, nominee, Principal Secretary Immigration, Border Control and Registration of Persons was referred to the Departmental Committee on Administration and National Security;

7. The Committee held its sittings on 19th February, 2018 to familiarize themselves with the curriculum vitae of the nominee and to consider memoranda received thereof. On Wednesday 21st February, 2018 the committee held an approval hearing meeting, during which the nominee appeared and was vetted. In conducting the vetting exercise, the Committee made reference to the Constitution, the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, and the Standing Orders. During the exercise, the nominee made submissions on why he should be appointed to the position of Principal Secretary Immigration Border Control and Registration of

8. The Committee, in compliance with the Constitutional and other legal requirements and established procedures for vetting, ensured its meetings were open to the public and covered by the media. The Committee also placed a memorandum in the mainstream print media, and pursuant to Article 118 of the Constitution on 14th February 2018 inviting the public to submit memoranda, in tandem with the law.

Honorable Speaker,

9. The Committee takes this opportunity to thank the Offices of the Speaker and the Clerk of the National Assembly for the logistical support accorded to it during the vetting exercise. The Committee is also grateful to the media for their coverage of the proceedings of the Committee, thus enhancing accountability and transparency of the vetting exercise.

Honorable Speaker,

- 10 The Committee deliberated on the nominees' biodata, curriculum vitae submissions, made by the nominee including and his oral submissions during the vetting at the sitting held on Wednesday 21st February 2018.

The Committee came up with several findings during the vetting exercise. The observations, findings and conclusions guided the Committee in making its final recommendations. The recommendations of the Committee were unanimously agreed upon by the Members during the adoption of the Report on Thursday 22nd February 2018.

On behalf of the Committee, and pursuant to Article 155(3)(b) of the Constitution, Section 8(1) and (2) of the Schedule to the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, and Standing Order no. 199(6), it is my pleasant duty to Table the Report of the Departmental Committee on Administration and National Security, on the vetting of nominee, Maj Gen. (Rtd) Dr. Gordon Kihalangwa, for appointment to the Office of Principal Secretary Immigration, Border Control and Registration of Persons.



SIGNED.....

HON. (HON. PAUL KOINANGE, MP)

(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

DATE..... 27th February 2018

1.0 BACKGROUND

Establishment of the Office of Principal Secretary and nomination

- a) Article 155 of the Constitution provides that;
 - (1) There is established the office of Principal Secretary, which is an office in the public service.
 - (2) Each State department shall be under the administration of a Principal Secretary.
 - (3) The President shall—
 - (a) Nominate a person for appointment as Principal Secretary from among persons recommended by the public service commission
 - (b) With the approval of the National Assembly, appoint Principal Secretaries.

Issues for consideration in conducting the Approval hearing

- c) In conducting the Approval hearing, the Committee was guided by Article 73(2)(a) (b)(c) and (e) of the Constitution, and the provisions of Sections 6 (7) and 7 of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011.

12. Article 73 (2) of the Constitution provides that:

- (2) The guiding principles of leadership and integrity include—
 - (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
 - (b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, 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.

Message from H.E. the President

13. On the 13th February 2018, pursuant to Standing Order 42 (2), the Speaker of the National Assembly conveyed a message to the House from H.E. the President dated 30th January 2018 that Maj. Gen (Rtd) Dr. Gordon Odemo Khilangwa CBS was among the candidates nominated to serve as Principal Secretaries.

Article 155(3)(a) of the Constitution confers upon the President the power to nominate, and subject to approval by the National Assembly, appoint Principal Secretaries.

14. After conveying the message from H. E. the President on the nomination, the Speaker of the National Assembly forwarded the name of the nominee and his curriculum vitae to the Departmental Committee on Administration and National Security to conduct Approval hearings.

Clearance Requirements

15. On Wednesday 14th February 2018, the Clerk of the National Assembly wrote a letter to

- 1) the Office of the Registrar Political Parties
- 2) the Criminal Investigation Department
- 3) the Ethics and Anti-Corruption Commission
- 4) the Higher Education Loans Board (HELB)
- 5) the Kenya Revenue Authority (KRA)

seeking information on the nominee with respect to matters relating to integrity, status of a pending criminal record, tax compliance, an unpaid loan and whether they are officials of a registered political party.

Notification to the Nominee

16. On Wednesday 14th February 2018, the Clerk of the National Assembly, pursuant to Section 6(3) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, notified the nominee in writing that the approval hearing was scheduled to take place on Wednesday 21st February, 2018, in 4th Floor of Continental House Parliament Buildings, at 11:00 am.

17. 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”.
18. On Wednesday, 14th February 2018, the Office of the Clerk published an advertisement via print media inviting the public to present submission and memoranda touching on suitability of the nomination of Maj. Gen (Rtd) Dr. Gordon Kihlangwa as Principal Secretary for the State Department-Immigration, Border Control and Registration of persons by Tuesday, 20th February, 2018 at 5.00 pm. two memoranda were received. Further, the advert notified the public that the Departmental Committee of Administration and National Security would conduct an Approval hearing, pursuant to Article 118 (1)(a)(b) and (2) of the Constitution, Standing Order 198 (1) and Section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011.

Committee Meetings

20. The Committee carried out the vetting exercise on Wednesday 21st February 2018. The committee held two preparatory meetings to familiarize themselves with the curriculum vitae of the nominee examine memoranda and formulate questions for the approval pursuant to the provisions of the Public Appointments (Parliamentary Approval) Act No.33 2011.

Submissions

21. At the close of business on Tuesday 20th February, 2018 the Committee had received the following submissions from

1— Thirdway Alliance Kenya (a registered political party)

2— Kenya National Commission on Human Rights

22. **Thirdway Alliance Kenya** presented a memorandum wherein it submitted that the Committee, while undertaking the exercise of vetting nominees for the position of Principal Secretary should ensure that the process; reflects the role of the National Assembly, adhere to the provisions regulating leadership and integrity, respect the two-thirds gender rule, reflect equitable representation of

special interest groups as well as regional and ethnic diversity of the people of Kenya.

23. The Committee observed that the submission could not be classified as a memorandum because it was not a sworn statement and did not appear to urge the National Assembly to reject or support the approval of the nominee.
24. **The Kenya National Commission on Human Rights** presented a memorandum opposing the nomination of Maj. Gen (Rtd) Dr. Godron Kihalangwa as Principal Secretary for the State Department-Immigration, Border Control and Registration of persons on the grounds that the nominee was found culpable for impunity and violation of the law in Misc. Criminal Application No. 57 of 2018 wherein the High Court found that the Director of Immigration acted together with the Inspector General of Police and the Director of Criminal Investigations to defeat the orders of the court that the required the applicant, Mr. Miguna Miguna to be produced in court so that he could be dealt with in accordance with the law;
25. The Commission concludes its submission by urging Parliament to reject the nominee on the grounds of gross breach of Article 10 of the Constitution (national values and principles of governance), sections of Chapter 6 of the Constitution touching on leadership and integrity, the rule of law (namely Articles 3 (Defence of this Constitution), 28 (Human dignity), 29 (Freedom and security of the person), 40 (Protection of right to property), 43(Economic and social rights), 45 (Family) and 51 (Rights of persons detained, held in custody or imprisoned) of the Constitution, section 7 of the Leadership and Integrity Act that requires a state officer to carry out duties of the office in accordance with the rule of law) and the fundamental human rights of Mr. Miguna Miguna.
26. The Committee observed that;
 - i. upon inquiry it emerged
 - a) There was a subsisting appeal against Misc. Criminal Application No. 57 of 2018. Consequently, the legal process is yet to be exhausted and therefore there was no final determination under Article 75(2) of the

Constitution and the matter was *sub judice* under Standing Order 89 of the National Assembly Standing Orders

- b) The memorandum did not take the form of a sworn statement in accordance with the advert published inviting the public to submit on the same.

Clearance Letters

21. Further, the Committee received letters from the Kenya Revenue Authority, indicating that the nominee was tax compliant, and the Higher Education Loans Board, stating that the Board was not owed any loans by the nominee

The Ethics and Anti-Corruption Commission and the Directorate of Criminal Investigation confirmed that there were no outstanding issues or ongoing investigations against the nominee. The Office of the Registrar of Political Parties confirmed that the nominee was not an official of a registered political party. The nominee also presented before the Committee his Certificates of Good Conduct.

The Vetting Process

22. On Wednesday 21st February, 2018 the Committee held a session with the Principal Secretary nominee. In conducting the vetting exercise, the Committee was guided by, among other documents, the Constitution, the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 and the National Assembly Standing Orders.

2.0 VETTING OF MAJ.GEN (RTD) DR. GORDON ODEMO. KIHALANGWA - PRINCIPAL SECRETARY NOMINEE, IMMIGRATION, BORDER CONTROL AND REGISTRATION OF PERSONS

23. The Committee examined the nominee using the guidelines provided for in the Public Appointments (Parliamentary Approval) Act No. 33 of 2011. The Committee also followed the following criteria in vetting the nominee: -

- i) Academic qualifications
- ii) Employment record and work experience
- iii) Professional association

- iv) Suitability to the position
- v) Tax compliance
- vi) Integrity

24. Maj. Gen (Rtd) Dr. Gordon O. Kihalangwa appeared before the Committee on Wednesday 21st February 2018, the Committee having heard his submissions during the meeting, made the following observations on his nomination to the position of Principal Secretary, Immigration, Border Control and Registration of Persons Ministry of Interior and Coordination of National Government.

Personal Background

He was born in Kakamega County, Married to Madame Christine and they are blessed with three sons namely Marvin, Andricus and Earl aged between 35-22 years.

Academic Background

Doctor of Philosophy in International Studies and Diplomacy, Washington International University (WIU) USA, (Thesis: The Security Implication of Illegal Immigration in Kenya: A case study of Nairobi (2013)

MA in International Studies and Diplomacy, Washington International University (WIU) – USA. (Thesis: Conflict Prevention and Management in IGAD Sub – Region – Sub –Saharan Africa (2011).

Diploma in International Studies- University of Nairobi (UoN) (Thesis: Conflict over Natural Resources: A case study of the River Nile (2005).

Diploma in Strategic Studies- University of Nairobi (UoN) Thesis: Conflict Management by Regional Bodies of Africa; A comparison between IGAD and ECOWAS (2006).

Professional Experience

- i) Director of Immigration Services, Ministry of Interior and Coordination of National Government, - 2014:Maj. Gen (Rtd) Dr. Kihalangwa has been the Director of Immigration Department for three (3) years and 4 months. A Department that was confronted with a lot of challenges that included corruption, poor work ethics and ethnicity all threatening national security.

- ii) To date Maj. Gen (Dr) Kihalangwa has addressed most of the challenges. Notable achievements include the introduction of online immigration services and use of e-citizen. The passport application, e-visa and e-Foreign Nationals Management online has improve service delivery. The cue management system was introduced in January 2015. Besides improving in service delivery, there has been a notable increment in revenue collection that has risen from kshs.7 billion to Kshs. 10.2billion annually. The introduction of e-Passport with advanced security features on 1st September, 2017 was a great achievement.
- iii) The Department is finalizing the Immigration Policy by March 2018 and having the first class for the Institute of Migration Studies in August, 2018. As the Chairman of the Kenya-Somalia Border Securitization Project before it was moved to the Ministry of Defence in 2017, he was able to start the construction of the fence which is currently contributing to security on our border with Somalia as it has diminished porosity.
- iv) During his tenure, the Integrated Population Registration System (IPRS) was officially launched. With the IPRS in place, the data for all citizens will be captured making it the single source of truth.

Achievements

- i) Maj. Gen. (Rtd) Dr. Kihalangwa career in the Defence Forces saw him accomplish many things which includes successful planning and implementation of the modernizing programme of KDF, proper utilization of resources both financial and material, attainment of high standards of discipline, posting of key events and addressing the challenge of housing.
- ii) Maj.Gen (Rtd) Dr. Kihalangwa periodically lectures at both National and Defence Colleges Kenya and National Intelligence Service Academy on issue of security and conflict.
- iii) He was honored with the award of the Chief of the Burning Spear in 2011. Having held various appointments and responsibilities Maj. Gen (Rtd) Dr. Kihalangwa has acquired enormous experience in areas of security, personnel management, development and analysis of policy, project management at various levels.

On the suitability of the nominee for appointment as Principal Secretary, Immigration, Border Control and Registration of Persons

25. The Maj. Gen informed the committee that as the Director of Immigration Department for the last three and half years he is well versed with matters relating to immigration Border Control and Registration of persons which entails the issuance of travel documents, Permits, Citizenship Permanent Residence, and Inter-agency cooperation which makes him suitable for the position.

The Maj Gen. further informed the committee that he has addressed most of the challenges faced by the department and the notable achievements include the introduction of online immigration services and use of e-citizen. The passport application, e-visa and e-Foreign Nationals Management online.

During his tenure he spearheaded the official launching of the Integrated Population Registration System (IPRS) which enables, the data for all citizens to be captured, making it the single source of truth.

On what he will do on his first ninety days in office

26. The Maj. Gen informed the committee that he will undertake a system audit in his first three months in office to overcome the challenges facing the country on Immigration, border control and registration of persons.

With regard to the separation of powers and the relationship he will cultivate with institutions such as the National Assembly, Ethics and Anti-Corruption and the Office of the Auditor General?

27. The Maj Gen. informed the committee that he understands the role of the National Assembly under Article 95 and 125 of the Constitution; he is also well versed with the mandates of the Ethics and Anti-Corruption Commission and the Office of the Auditor General. Respects the rule of law and enjoys cordial relationship with above offices and will always honor their invitation on any matter.

With regard to the total adherence to the Bill of rights pursuant to chapter four of the constitution.

27. The Maj Gen informed the committee that the bill of rights is an integral part of the Kenya's democratic state and is the framework for social, economic and cultural policies, assured the committee of his adherence to the requirement of the Constitution to preserve the dignity of individuals and communities to promote social justice and the realization of the potential of all Kenyans.

Issuance of Identification cards and Passports

29. The nominee informed the Committee that he has always endeavored to fast track the process, and now that the docket of registration of persons is under him, he will always ensure the process is efficient and effective. He however cautioned that the delays in northern Kenya areas are as a result of security checks that have to be carried out to confirm genuine citizens from non-citizens. He further urged members to assist him in educating and ensuring Kenyans have basic documents like birth certificate before applying for a passport.

- 1) On passports he indicated that Kenyans on medical emergencies and urgent travel timelines and VIPs are accorded priority. He also promised to weed out middlemen who have always given them a hard time in efficient delivery of services.
- 2) He noted that the closure of Garissa Passport control office was temporary and with the introduction of E-passport, new offices in Embu, Garissa, Nakuru and Eldoret will be opened.

Border Control & Security.

30. The nominee informed the committee that border control and security has direct impact on the big four agenda of the government. He hopes that the '*nyumbakumi*' initiative works efficiently to help weed out illegal immigrants who are a threat to national security.

On respect of court orders.

31. On the incident of Senator James Orengo and Mr. Jimmi Wanjigi being barred from travelling to Harare, Zimbabwe, the Nominee informed the committee that he had not been served with court orders reversing the suspension of their passport. Consequently, after the Directorate was served with court order the following day, the two were allowed to travel to Zimbabwe.

32. On the deportation of Dr. Miguna Miguna, the Nominee informed the Committee that when Migunu fled the Country to Canada in 1986, he lost his citizenship as Kenya had not yet adopted the dual citizenship system. He further clarified that after the promulgation of the new Constitution, Kenyans who had lost their citizenship as a result of acquiring other nationalities were required to officially apply a fresh to regain their citizenship, something that Dr. Miguna Miguna did not do.
33. On the move to suspend the passport of National Super alliance (NASA) supporters and Members of Parliament the Nominee informed the Committee that a passport is the property of the government and can be withdrawn any time for various reasons. He further told the committee that the Immigration Department wrote letters to 21 people informing them to surrender their passports and only one Member of Parliament surrendered his passport to the Immigration department.

3.0 COMMITTEE FINDINGS

The Committee having considered the curriculum vitae of the nominee and having heard his oral submissions during the vetting exercise, at the sitting held on Wednesday 21st February, 2018 made the following observations;

- i) That; Maj Gen. (Rtd) Dr. Gordon Odemo Kihalangwa nominee had the requisite qualifications, experience which qualifies him for the appointment as a Principal Secretary, Immigration, Border Control and Registration of Persons, Ministry of Interior and Coordination of National Government
- ii) The nominee exhibited impressive knowledge, experience, skills on issues touching on Security, Immigration, Border control and registration of persons.

4.0 RECOMMENDATION OF THE COMMITTEE

Having considered the suitability, capacity and integrity of the nominee, and pursuant to Article 155(3)(a) of the Constitution and Section 8 (2) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, the Committee therefore unanimously recommends that this House approves the nomination and subsequent appointment of Maj. Gen. (Rtd) Dr. Gordon Odemo Kihalangwa to serve as Principal Secretary Immigration, Border Control and Registration of Persons, Ministry of Interior and Coordination of National Government.