

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(THIRD SESSION)



NCCA/TJ/PL/2024(24)

21ST MAY 2024

PAPER LAID

SUBJECT: REPORT OF COMMITTEE

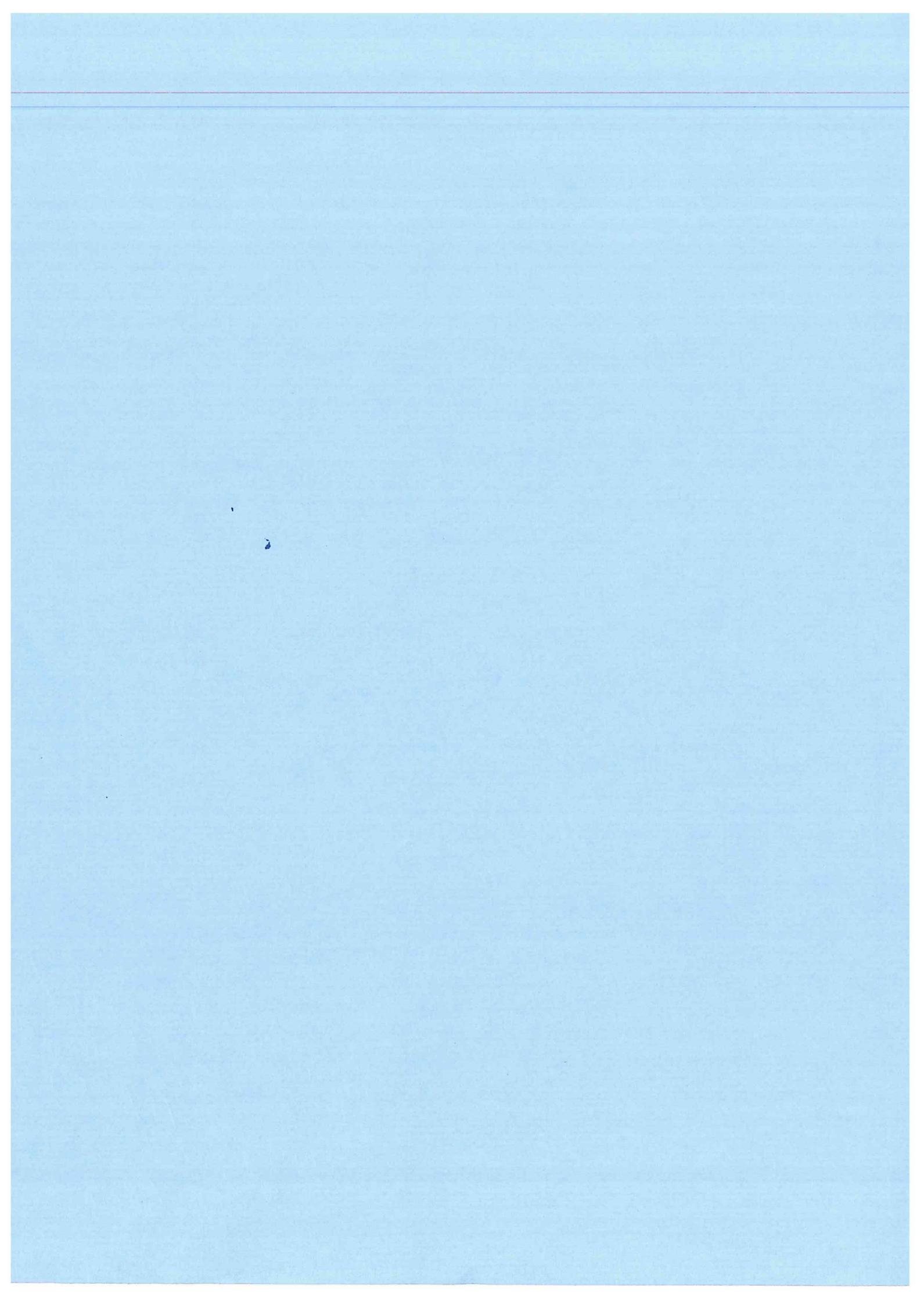
Pursuant to Section 9 of Public Appointments (County Assemblies Approval) Act, 2017; and Standing Orders 48 (4) and 209 (6)(f), I beg to lay of the following Paper on the Table of this Assembly, today Tuesday 21st May 2024:

— **THE REPORT OF THE SECTORAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON VETTING OF CHIEF OFFICER NOMINEE FOR BOROUGHES AND SUB-COUNTY ADMINISTRATION.**

(Chairperson, Sectoral Committee on Justice and Legal Affairs)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

*Paper laid on 21/05/24
by Hon. Jared Akano
Chairperson (JLAC)
21/05/2024*



NCCA/TJ/NTC/2024(9)

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY

(THIRD SESSION)

21st May 2024



NOTICE OF MOTION

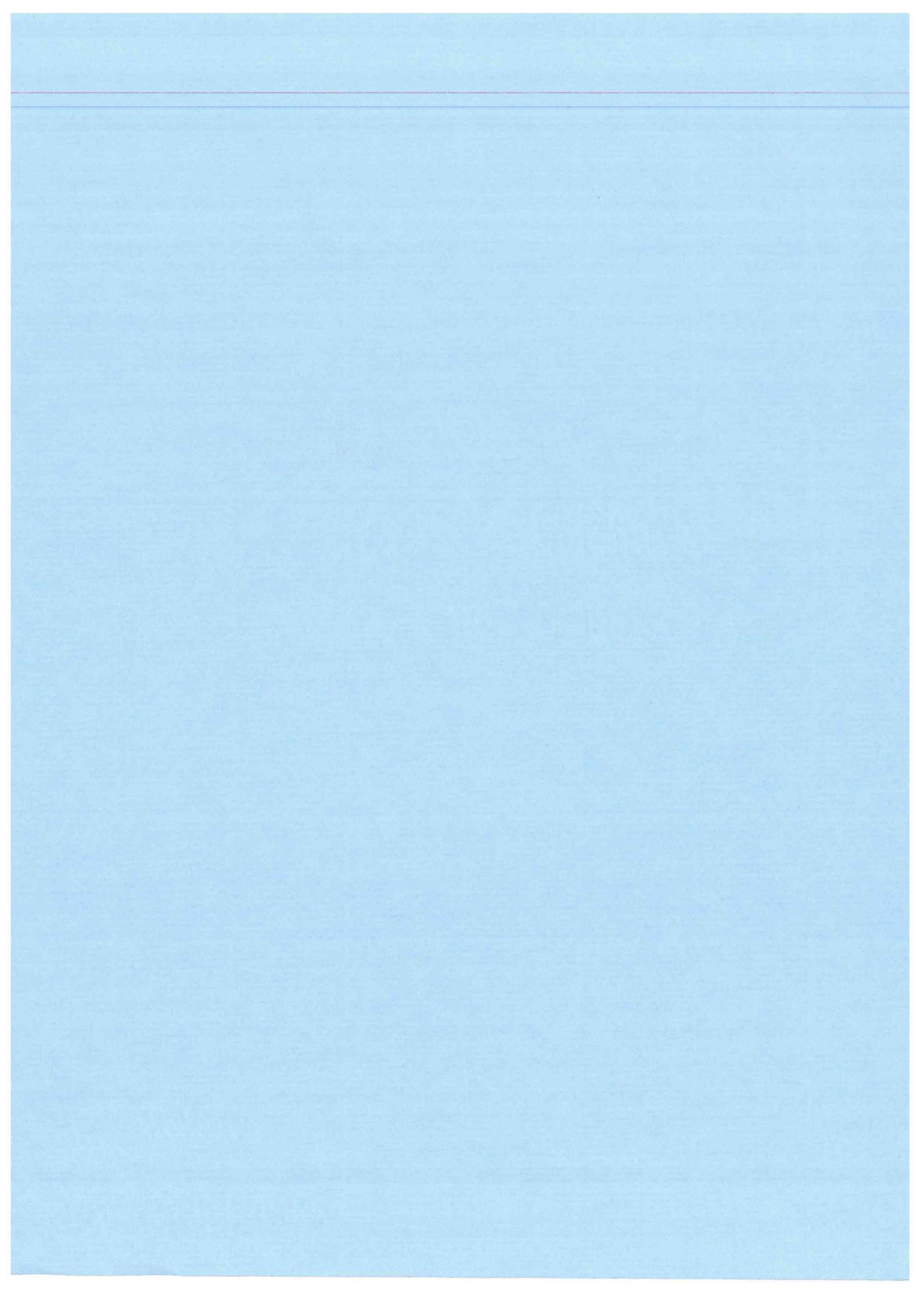
Subject: Adoption of report of a Committee

Hon. Speaker, I beg to give notice of the following motion:-

THAT, taking into consideration the findings of the Sectoral Committee on Justice and Legal Affairs in its Report on the *Vetting of Nominee for Approval as Chief Officer*, laid on the Table of the Assembly on Tuesday, 21st May, 2024 and pursuant to the provisions of Section 45 (1)(b) of the County Governments Act, 2012; Sections 3 and 9 of the Public Appointments (County Assemblies Approval) Act, 2017; and Standing Order 48 (4) and 209(6)(f), this Assembly **approves** the appointment of Bernard Muia as Chief Officer for Boroughs and Sub-County Administration.

(Chairperson, Sectoral Committee on Justice and Legal Affairs)

Patrick Gwani
on 21/05/2024
[Signature]
21/05/2024



Nairobi City County Assembly



Sectoral Committee on Justice & Legal Affairs Committee

Report on the vetting of nominees for appointment to the office of Chief Officer Boroughs and Sub-County Administration

*Pursuant to Section 45 of the County Government Act 2012 &
Section 10(1) of the Public Appointments (County Assemblies
Approval) Act, 2017*



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ANNEXES

1. Annexure (1)–Clearance Certificates

- a. Kenya Revenue Authority
- b. Higher Education Loans Board
- c. Ethics and Anti-Corruption Commission
- d. Directorate of Criminal Investigations (DCI)

2. Annexure (2)

- i. Adoption Minutes

3. Annexure (3) – Curricula Vitae

- i. Mr. Benard Muia





1.0 EXECUTIVE SUMMARY

- 1.1.1 Pursuant to Article 179(2) (b) of the Constitution and Section 45 (a) and (b) of the County Governments Act, 2012, **H.E. the Governor** vide a letter Ref: **XV-IV-MMXX1** received on **15th April 2024** forwarded to the Speaker of the Nairobi City County Assembly the names of nominees for the position of County Chief Officers for vetting various Assembly Committees.
- 1.1.2 Pursuant to Standing Order No. 45, the **Message** on nomination of Mr. Benard Muia was conveyed in the County Assembly by the **Hon. Speaker** on **16th April 2024** and the name was subsequently **committed to the Sectoral Justice and Legal Affairs Committees for vetting and reporting within Twenty-One (21) sitting days** in accordance with Section 9(1) of the Public Appointments (County Assemblies Approval) Act, 2017 (*hereinafter referred to as "the Act"*) and pursuant to Standing Order No. 48(1).
- 1.1.3 In this regard, the name of Mr. Bernard Muia was committed to the Sectoral Committee on Justice and Legal Affairs as a nominee for Chief Officer, Boroughs and Sub-County Administration.
- 1.1.4 Consequently, pursuant to Section 7(4) of the Public Appointments (*County Assemblies Approval*) Act, 2017, the Clerk of the County Assembly placed an advertisement in the local dailies, particularly the **Daily Nation and the Standard Newspaper of 23rd April 2024** inviting the public to submit memoranda by way of written statements on oath (sworn affidavits) on the suitability or otherwise of the nominees in conformity with Section 7(10) of the Act.
- 1.1.5 The Clerk further notified the general public that the approval hearings of the nominees Pursuant to Section 7 of the Public Appointments (*County Assemblies Approvals*) Act, 2017 held on **23rd April, 2024**.
- 1.1.6 At the time of Committee hearings, **NO** memorandum had been received by the Office of the Clerk with regard to suitability or otherwise of the nominees as contemplated in Section 7 (10) of the Public Appointments (*County Assemblies Approvals*) Act, 2017
- 1.1.7. Having conducted the approval hearings, the Committee made the following observations with respect to the nomination of: -
- a) **Mr. Benard Muia nominee for Chief Officer for Boroughs & Sub-County Administration**
 - i) The nominee Mr. Benard Kiala, was born in 1968 Masinga, Machakos County;
 - ii) He enrolled for a Bachelors of Arts degree in Anthropology from the University of Nairobi which saw him graduate in 1992 with a second Class Honors;
 - iii) Upon graduation, he was employed as a Management Trainee in Trade Bank;





- iv) In 1994, he was employed at the Stanbic Bank as an operations officer up until 2002 where he resigned in pursuit of personal business;
- v) He ventured in business up to the year 2012 where he successfully contested for a political seat as the first Deputy Governor for Machakos County; and,
- vi) As at the vetting period, he was serving the Parliamentary Service Commission (PSC) as a Senior Research Officer.

Conclusion

- The Committee also noted that the said nominee while serving as the Deputy Governor, Machakos County, was impeached by the Machakos County Assembly on account of abuse of office and nepotism.
- Hon. Speaker, as it is in the public domain, the Senate considered the impeachment and found the allegations levelled against the nominee then as baseless and mere witch-hunt.

1.1.8 On the foregoing, the Committee having concluded the approval hearings; Pursuant to Article 179(2)(b) of the Constitution of Kenya 2010; Section 35 of the County Government Act, 2012; Section 9 of the Public Appointments (*County Assemblies Approval*) Act, 2017 and Standing Order 209(f) the Committee hereby recommends that the Assembly as follows;

APPROVES the nomination of **MR. BENARD MUIA** for appointment as **CHIEF OFFICER FOR BOROUGHES AND SUB COUNTY ADMINISTRATION** by His Excellency the Governor;

1.1.9 Sincere appreciation goes to the Twenty three (23) Members and the Two (2) officers serving the Sectoral Committee on Justice and Legal Affairs Committee for the passion and commitment demonstrated during the vetting exercise.

1.2.0 On behalf of the Sectoral Committee on Justice and Legal Affairs, it is my sincere pleasure and duty to present to this Report of the vetting of the nominee for appointment to the position of Chief Officer, Boroughs and Sub-County Administration to the Assembly for adoption pursuant to Standing Orders of the Assembly and other enabling laws forthwith.

Sign 

Hon. Jared Akama, MCA
(Chairperson, Sectoral Committee on Justice and Legal Affairs)

Dated this ^{15th} day of... MAY 2024





2.0 SECTORAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Committee Mandate

- 2.1.1 The Sectoral Committee on Justice and Legal Affairs is one of the Sectoral Committees established pursuant to provisions of Standing Order 209 of the Nairobi City County Assembly Standing Orders.
- 2.1.2 The Committee's mandate pursuant to the provision of Standing Order 209 –Third Schedule is, amongst others, to investigate, inquire into and report on all matters relating to; “*Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights; city inspectorate and enforcement.*”

Committee Membership

- 2.1.3 The Sectoral Committee Justice and Legal affairs Committee comprises of the following Members of the Nairobi City County Assembly;

Table 2: List of the Committee Members

List of the Justice and legal Affairs Committee Members	
No.	Member
1.	Hon. Jared Akama Ondieki, MCA
2.	Hon. Suleiman Hamisi Maleya, MCA
3.	Hon. Anthony Kiragu, MCA
4.	Hon. Fathiya Abdilahi Mohamed, MCA
5.	Hon. Peter Owera Oluoch, MCA
6.	Hon. Maurice Ochieng, MCA
7.	Hon. Perpetua Mponjiwa, MCA
8.	Hon. Hellen Awuor, MCA
9.	Hon. Ami Perez Ambala, MCA
10.	Hon. Silas Matara Ong'wae, MCA
11.	Hon. Agnes Wambui, MCA
12.	Hon. Asli Mohamed, MCA
13.	Hon. Emmy Khatemeshi, MCA
14.	Hon. Clarence Munga, MCA
15.	Hon. Mwaura Samora, MCA
16.	Hon. Diana Katile Mwangagi, MCA
17.	Hon. Virginia Kang'ethe, MCA
18.	Hon. Clement Ng'ang'a, MCA
19.	Hon. Deonysias Mwangi, MCA
20.	Hon. Joseph Ndung'u, MCA
21.	Hon. Francis Kimondo, MCA
22.	Hon. Doreen Mugambi, MCA
23.	Hon. Stephen Kimani Mugo, MCA

Committee Secretariat



2.1.4. The Committee is under the technical facilitation of the following officers;-

Table 3: List of Justice and Legal Affairs Sectoral Committee Secretariat

Justice and Legal Affairs Committee			
Secretariat			
No.	Officer	Title	
i.	Ms. Hellen Mutie	Senior Assistant	Clerk
ii.	Mr. Adam Kibet Kibwana	Senior Assistant	Clerk

1.4 Committee's Oversight Sectors;

1.4.1 The Sectoral Committee on Justice and Legal Affairs oversight the following tabulated Sectors;-

Table 4: List of the Departments under the Committee's Oversight

No.	Sector
1.	Office of the Governor
2.	Office of the County Secretary
3.	Office of the County Attorney
4.	Inspectorate Services/ Security and Compliance
5.	Boroughs and Sub-County Administration
6.	Internal Audit

3.0 BACKGROUND;

3.1 Referral of the nominees to the Committee.

3.1.1 Pursuant to Article 179(2) (b) of the Constitution, Section 45 (a) and (b) of the County Governments Act, 2012, and Standing Order No. 48 as read with Standing Order No. 209, the Hon. Speaker on the 17th April, 2024 committed the name of the nominee for the position of Chief Officer Boroughs and Sub County Administration; **Mr. Benard Muia** to the Sectoral Committee on Justice and Legal Affairs for vetting.

3.1.2 Section 9(1) of the Public Appointments (County Assemblies Approval) Act, 2017, the Sectoral Committee on Energy was required to vet and report to the Assembly within 21 days the suitability or otherwise of the nominees in





conformity with Section 7(10) of the) of the Public Appointments (County Assemblies Approval) Act, 2017.

3.2 Notification to the Public.

- 3.2.1 Article 196(b) of the Constitution of Kenya provides that the County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees.
- 3.2.2 Section 7 of the Public Appointments (County Assemblies Approvals) Act, 2017 requires the Committee by notice in at least one newspaper of national circulation, notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing including hearing dates being Monday 6th May, 2024.
- 3.2.3 Further Section 7(10) of the Act 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”*.

3.3 Notification to nominees.

- 3.3.1 On Tuesday 23rd April, 2024, the Clerk invited the nominees in writing and through the print media, for the approval hearings in accordance with Section 7 (4) of the Public Appointments (County Assemblies Approvals) Act, 2017.
- 3.3.1 Further, the nominee through communication via bulk SMS messaging system were requested to **complete and return questionnaire forms together with their curriculum vitae and relevant supporting documents** to the Office of the Clerk of the County Assembly between **9.00 forenoon and 5.00 afternoon on or before Thursday 30th April, 2024**.
- 3.3.2 From the notice, the nominee was further reminded to appear before the Committee **with original copies of the underlisted documents;-**
- i. Curriculum vitae;
 - ii. Academic Certificates and testimonials;
 - iii. Certificate of Good Conduct from the Police;
 - iv. Clearance from the Higher Education Loans Board;
 - v. Clearance from the Kenya Revenue Authority;
 - vi. Clearance from the Ethics and Anti-Corruption Commission;

3.4 Clearance and compliance required.

- 3.4.1 On Friday 3rd May, 2024, the Clerk wrote to the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI), Kenya Revenue Authority (KRA) vide letter Ref: **NCCA/04/24/(048)** requesting for reports with respect to the nominees on the following matters: -





- (a) Ethics and integrity;
- (b) Tax compliance; and
- (c) Criminal records.

3.5 Constitutional and Statutory Requirements.

3.5.1 The Constitution gives guidelines on how to appoint persons to public office which include observing the following: -

- (a) *Two-Thirds Gender Rule*
- (b) *Representation of Regional and Ethnic Balance*
- (c) *Leadership and Integrity.*

3.6 Memorandum from Members of Public.

3.6.1 Pursuant to Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017 which 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*”

3.6.2 The Clerk placed an advertisement in the print media on **23rd April, 2024** inviting the public to submit memoranda by way of written statements on oath (sworn affidavits) on the suitability or otherwise of the nominees in conformity with Section 7(10) of the Act.

3.6.3 In this regard by close of business **Friday, 3rd May 2024**, the Committee had **NOT** received any memoranda for or against the nominees under consideration.

3.7 Vetting Criteria.

3.7.1 In conducting the vetting process, the Sectoral Committee on Justice and Legal Affairs examined the nominees against the following criteria, amongst others, as set out in the Public Appointments (County Assemblies Approval) Act No. 5 of 2017;-

- i. Academic qualifications.
- ii. Employment record
- iii. Professional associations.
- iv. Potential conflict of interest.
- v. Knowledge of the relevant subject.
- vi. Overall suitability for the position.
- vii. Tax compliance.
- viii. Integrity.





4.0 APPROVAL HEARINGS OF THE NOMINEE

4.1. Approval Hearing;

4.1.1 During its Sitting held on **Monday, 6th May 2024 at 11.30am** at Committee Room 10, Assembly Precincts, City Hall Buildings, the Committee conducted face to face interview with the nominee as highlighted below.

4.2 APPEARANCE BEFORE THE COMMITTEE BY MR. BENARD MUIA – NOMINEE FOR CHIEF OFFICER BOROUGH AND SUB-COUNTY ADMINISTRATION

4.2.1 The Chief Officer nominee for the Boroughs and Sub-County Administration Mr. Benard Muia, appeared before the Committee on Monday, 6th May 2024 at 11.30am for vetting and whose submission under oath were as follows;

Table 5: Submission by Mr. Benard Muia

Nominee : Mr. Benard Muia – Borough and Sub-County Administrating

Highlights of responses

- i) Introduced himself as Mr. Benard Kiala, born in 1968 Masinga, Machakos County;
- ii) He enrolled for his Kenya Certificate of Education (KCE) in Masinga Boys Secondary School in 1985 where he obtained Division One, before proceeding for the then Kenya Advance Certificate of Education (KCAE) in Thika High School where he completed 1987 with a pass;
- iii) He thereafter enrolled for a Bachelors of Arts degree in Anthropology from the University of Nairobi which saw him graduate in 1992 with a second Class Honors;
- iv) Upon graduation, he was employed as a Management Trainee in Trade Bank;
- v) In 1994, he was employed at the Stanbic Bank as an operations officer up until 2002 where he resigned in pursuit of personal business;
- vi) He ventured in business up to the year 2012 where he successfully contested for a political seat as the first Deputy Governor for Machakos County;
- vii) As at the vetting period, he was serving the Parliamentary Service Commission (PSC) as a Senior Research Officer.

Plenary Questions

- i. A Member sought to understand what academic qualification the nominee possessed and its significance on the applied position;





- In response, the nominee informed that Committee that he obtained Bachelors of Arts Degree in Anthropology from the University of Nairobi, and being a three year course, he did sociology, anthropology and economic, in third year making anthropology and economics as a major.
- ii. With regards to the experience and relevance of the same to the applied position; The nominee informed the Committee as follows, that;-
- He acknowledged the position of the Chief Officer was the accounting officer of the entity;
 - He indicated that he had worked in bank for at least 13 years, hence he was able to deal with financial and accounting matters as a sector accounting officer;
 - Having been served as the then Deputy Governor for Machakos County he understood the levels of devolution from Boroughs, sub-County to village levels making him up to the task.
- iii. A Member sought clarity on his understanding of Boroughs system being a new phenomenon yet to be legislated.
- In response, the nominee informed the Committee that Borough was an administrative unit within devolution level; and,
 - He noted that the County has proposed to establish six (6) at least borough units;
 - He further indicated that Boroughs Units were created to ensure further decentralization of services closer to *mwanainchi*;
 - The nominee sited jurisdictions where such Boroughs system had been tried and worked, these being the United States of America (US) and in the United Kingdom (UK). He further pointed out that in other counties, the similar units (boroughs) are regarded as municipalities;
 - On the legislative aspect and legal underpinning, the nominee informed the Committee that under County Government Act, 2013, devolution and decentralization starts from County Head Quarters (HQ), to Sub-County and eventually Wards, it was prudent in his opinion that Nairobi County being a complex and unique county, it be allowed to develop such legislation for effective service delivery.
- iv. Asked if he understood the position he had applied for and the sector at large, the nominee acknowledged the accounting role, implementation of plans and policies and that sector would champion for devolution which aims at devolving services closer to the people. He added that he would focus on boroughs empowerment.





- v. When asked what experiences he would bring to the sector and to point out some of the responsibilities of Chief Officer he responded that his main duties would be;
- Managing and supervising, working on policies and implementation of plans;
 - Working with other chief officers and the staff working at the ward levels and boroughs units towards achievement of the overall organizational role;
 - Budget implementation and Audit; The development of policies and plans;
 - Service delivery;
 - Developmental activities to empower the community;
 - Provision and maintenance of infrastructure and facilities of public services; and
 - Exercise any functions and powers delegated by the County Public Service Board under section 86
- vi. About his Long term goals; the nominee indicated as follows, that;-
- He would see devolution work in Nairobi being the business, diplomatic and economic hub both east Africa and globally; and,
 - By making Nairobi capital City a vibrant County, the nation shall be vibrant as well as see Nairobi work;
- vii. On his personal contribution either in the past towards promotion of devolution in the County, the nominee stated that he stated that he would press for;
- Resource allocation through advocacy on the County Revenue Allocation Funds by the National Government to the County Government; and,
 - Through the Committee, he will ensure that, there would be focus on the smallest units of devolution being the Ward and Village administration.
- viii. A member pointed out that the Ward being the smallest unit of devolution, they are not well facilitated, with the Boroughs and Sub- County Administration Sector being the face of devolution, the nominee was asked what he would do different to ensure that the wards remain vibrant? In response, the nominee responded as follows, that;-
- He may not know what is not being done currently but with his experience from another jurisdiction, he was aware that it was at the Ward level that key decisions are made;
 - He would ensure that project identification and development shall all be executed at the ward level to ensure relevance and sustainability of such projects; and,
 - Priority and focus be given to projects identified at the grassroots level during public participation exercise.





- ix. A member sought to understand from his past history as the Deputy Governor, how he would isolate politics and public service without being biased and if he had interacted with the boroughs system in the County Government of Nairobi? In response, the nominee responded as follows, that;-
- On reconciliation of the position with politics, political and non-political representations are both geared towards service delivery and that the position would give him an opportunity to serve the public without favoring one political divide;
 - Being a profession, it enables him to have and understand limits
 - He will be reporting to the County Executive Committee Member in charge of the Sector hence he will embrace team work and consultation; and,
 - He has not had a chance to go to the physical infrastructure of the County Boroughs system but he understands the zoning concept being – Easter, Central, Northern, South Eastern, Western boroughs
- x. Asked if he has ever resided in Nairobi as a resident to be in a position to comprehend issues facing residents? The nominee informed the Committee that he first came to Nairobi in 1988 and has a home in Embakasi East in Utawala where he used to reside even while serving as the Deputy Governor for the neighboring Machakos County;
- xi. A member noted that the nominee while serving as a Deputy Governor was once impeached by the County Assembly of Machakos County on grounds of abuse of office and nepotism and if he would be entrusted with the new assignment. In response, the nominee informed the Committee as follows, that;-
- The impeachment process was as a result of politics and the allegations were not substantiated and as such the Senate acquitted him; and
 - If approved he would work closely with the County Assembly and County Executive to ensure smooth working and cordial relation;
- xii. When asked for his professional background and if he was a Member of any professional body or Association, the nominee responded as follows, that;-
- He is a banker by experience but in academic, his background was anthropology and economics;
 - He was not a Member of any professional body save for a political party (WIPER).
- xiii. When asked why he chose to accept a low paying job of a Chief Officer having served in the past in the Capacity of Deputy Governor, the nominee indicate that he intended to adjust himself accordingly should he be approved for the said position;
- xiv. When asked if he attended the interview for Chief Officer position as scheduled on 6th December, 2023, he responded as follows, that;-





- The said interviews for the Chief Officers was held on 13th December 2023 and that he was out of the Country during that moment but was able to attend to the interview virtually.

- xv. A Member sought to clarity on the unrecorded events in the nominees Curriculum Vitae cumulating to 6 years. The nominee clarified that after he was not able to be re-elected, he ventured in business.
- xvi. As to whether the nominee was able to work under pressure, balance personal and work interest, the nominee assured the Committee that if granted the opportunity, he would be able to work impartial accordance with the existing laws and his work priority would be to serve the interest of Nairobi County residents.
- xvii. As to the nominees net worth. The nominee informed the Committee that his net worth was Ksh. 50 Million with his pending bills, arrears, gratuity and salaries for four (4) years in Machakos County which is yet to be paid amounting to Ksh. 45 Million.

5.0 GENERAL OBSERVATIONS

5.1.1 The Committee having considered the nominee's filled Questionnaire pursuant to the Public Appointments (County Assemblies Approval) Act, 2017, his Curricula Vitae and having heard his oral submissions during the vetting exercise made the following observations:

- i) The Committee noted that the said nominee while serving as the Deputy Governor, Machakos County, was impeached by the Machakos County Assembly on account of abuse of office and nepotism. The Committee noted that the Senate considered the impeachment and found the allegations leveled against the nominee then as baseless and lacked merit.
- ii) The nominee satisfies the requirements of Chapter Six of the Constitution of Kenya on leadership as integrity resulting from;-
 - a) Valid clearance from the Ethics and Anti-Corruption Commission (EACC);
 - b) Valid good conduct certificate from the Directorate of Criminal Investigations (DCI);
 - c) Compliance Certificate from the Kenya Revenue Authority (KRA);
 - d) Clearance Certificate from the Higher Education Loans Board (HELB);
 - e) The nominee has not been charged or convicted by a Court of Law in the past three (3) years; and,





f) The nominee did not exhibit any potential conflict of interest.

ii) The nominee exhibited impressive knowledge of topical issues touching on the respective dockets and have the requisite abilities, qualifications and experience.

6.0 COMMITTEE RECOMMENDATIONS.

6.1.1 Pursuant to Article 179(2) (b) of the Constitution, Section 45 of the County Governments Act, 2012, Section 9 of the Public Appointments (County Assemblies Approval) Act, 2017, and Standing Order No. 209 (f) of the Nairobi City County Assembly Standing Orders, the Committee recommends that the Assembly;-

APPROVES the nomination of **MR. BENARD MUIA** for appointment as **CHIEF OFFICER FOR BOROUGHES AND SUB COUNTY ADMINISTRATION** by His Excellency the Governor.

