THE COMMISSION ON ADMINISTRATIVE JUSTICE (Office of the Ombudsman)

OMBUDSMAN

ADVISORY OPINION ON THE CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING PUBLIC APPOINTMENTS REQUIRING COUNTY ASSEMBLY APPROVAL WITHIN THE COUNTY GOVERNMENT OF SIAYA

AUGUST 2026

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INTRODUCTION

1.1 Background

The Commission on Administrative Justice (hereinafter "the Commission" or "CAJ") received a request dated 16th June 2026, vide Reference No. CAS/ADM/43-33, from the County Assembly of Siaya through the Office of the Clerk, Mr. Eric Ogenga, seeking an Advisory Opinion on a series of alleged irregular public appointments made within the County Government of Siaya.

The request was accompanied by the Report of the Committee on Appointments of the County Assembly of Siaya (Third Assembly – Fifth Session) titled *"Irregular Appointments by the Governor"*, dated 10th June 2026. The Committee Report documents several appointments and extensions of tenure which, in the Assembly's view, were undertaken in contravention of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Appointments (County Assemblies Approval) Act, 2017, the Office of the County Attorney Act, 2020, the Leadership and Integrity Act, 2012, and other applicable legal instruments.

The County Assembly further states that despite numerous resolutions, recommendations and advisories issued regarding the impugned appointments, the appointing authority has allegedly failed or declined to implement the Assembly's resolutions, thereby giving rise to concerns regarding compliance with the Constitution, the rule of law, and the institutional relationship between the County Executive and the County Assembly.

1.2 Basis of the Request

The request is made pursuant to Section 8(a), (b) and (h) of the Commission on Administrative Justice Act, 2011, which empowers the Commission to investigate complaints relating to abuse of power, unfair treatment, unlawful, oppressive, irregular or unresponsive official conduct by public bodies and public officers; advise State organs and public institutions on matters relating to administrative justice; and recommend appropriate remedial action where instances of maladministration or non-compliance with the law are established.

The County Assembly specifically requested the Commission to:

i. Investigate the matters raised in the Committee Report;

ii. Provide guidance on the legal and administrative issues arising therefrom; and

iii. Make such findings and recommendations as the Commission considers appropriate in the circumstances.

The County Assembly further requested the Commission to render an opinion on the following issues:

a) Whether the County Assembly has an oversight mandate over appointments to offices requiring its approval;

b) Whether the County Assembly may approve nominees subject to conditions under Section 9(2) of the Public Appointments (County Assemblies Approval) Act, 2017;

c) Whether the County Assembly's findings regarding the impugned appointments are legally sustainable;

d) Whether the appointments complained of contravene the Constitution and applicable statutes;

e) Whether any such contraventions amount to abuse of office, gross misconduct, or violations of the Constitution and other applicable laws by the appointing authority;
f) What sanctions or accountability mechanisms are available where such misconduct is established;
g) Whether the conduct of Mr. George Nying'iro contravenes Section 35(3) of the Leadership and Integrity Act, 2012;
h) What sanctions are available in respect of Mr. George Nying'iro should a contravention be established;
i) Whether the composition of the Siaya County Public Service Board complies with Article 27(8) of the Constitution on the two-thirds gender principle; and
j) Any other appropriate recommendations that the Commission may deem necessary.

1.3 Mandate of the Commission

The Commission on Administrative Justice is an independent Constitutional Commission established under Article 59(4) of the Constitution of Kenya, 2010 and the Commission on Administrative Justice Act, 2011.

Under Section 8 of the Commission on Administrative Justice Act, the Commission is mandated, among other functions, to—

- investigate complaints concerning abuse of power, unfair treatment, manifest injustice, unlawful, oppressive, or unresponsive official conduct by public officers;
- promote administrative justice and good governance within public institutions;
- advise State organs and public institutions on matters relating to administrative justice and good public administration;
- recommend appropriate remedial measures where maladministration or non-compliance with the law is established; and
- promote compliance with the national values and principles of governance and the values and principles of public service under Articles 10 and 232 of the Constitution.

The Commission's advisory jurisdiction extends to providing authoritative guidance on the legality of administrative actions undertaken by public bodies and public officers and recommending appropriate corrective and accountability measures where constitutional or statutory violations are established.

Accordingly, the Commission is properly seized of the matters referred to it by the County Assembly of Siaya.

1.4 Scope of this Advisory Opinion

In rendering this Advisory Opinion, the Commission has considered the request by the County Assembly, the Committee Report and its annexures, the relevant constitutional and statutory provisions, applicable policy instruments, and the principles of constitutional governance, accountability, administrative justice, and the rule of law.

The Commission has confined itself to determining the legality of the impugned appointments and related administrative actions, the scope of the County Assembly's oversight mandate, the consequences of any established contraventions, and the appropriate remedial and accountability measures available under the Constitution and the applicable legal framework.

Where the Commission finds that the conduct of the appointing authority or any public officer amounts to maladministration, abuse of office, gross misconduct, or a gross violation of the Constitution or the law, it shall expressly so state and recommend the appropriate constitutional and statutory accountability mechanisms.

FINDINGS, LEGAL ANALYSIS AND OPINION

Issue: Whether the County Assembly has an Oversight Mandate over Public Appointments Requiring its Approval

Legal Framework

The first issue for determination is whether the County Assembly possesses a constitutional and statutory oversight mandate over appointments to public offices within the County Government where the Constitution or legislation requires its approval.

The Constitution of Kenya, 2010 establishes county governments on the principles of democratic governance, accountability, transparency, checks and balances, and separation of powers. Article 185(3) vests the County Assembly with oversight over the County Executive Committee and all other county executive organs. This oversight function is intended to ensure that executive authority is exercised in accordance with the Constitution and the law and that appointments to public office uphold the principles of merit, integrity, transparency, accountability, and public participation.

Article 179(2)(b) of the Constitution provides that members of the County Executive Committee are appointed by the Governor with the approval of the County Assembly. The requirement for approval is therefore not discretionary but constitutes a mandatory constitutional safeguard intended to ensure legislative oversight over appointments to senior executive offices.

The Constitution must further be read together with Articles 10, 73, 174 and 232, which collectively require that public appointments be undertaken in a manner that promotes good governance, integrity, transparency, accountability, fair competition, merit, and democratic accountability.

These constitutional principles are operationalised through various statutory provisions.

Section 35 of the County Governments Act, 2012 requires every nominee for appointment as a County Executive Committee Member to be approved by the County Assembly before appointment by the Governor.

Section 44(2D)(b) of the County Governments Act, 2012 similarly requires the Governor to submit the name of one qualified applicant to the County Assembly for approval before appointment as County Secretary.

Section 45(1)(b) of the County Governments Act, 2012 provides that County Chief Officers shall be appointed by the Governor with the approval of the County Assembly.

Section 58A of the County Governments Act, 2012 establishes the procedure for the appointment of members of the County Public Service Board and requires nominees forwarded by the Governor to be vetted and approved by the County Assembly before appointment.

Likewise, Section 5 of the Office of the County Attorney Act, 2020 provides that the County Attorney shall be nominated by the Governor and appointed only after receiving the approval of the County Assembly.

The Public Appointments (County Assemblies Approval) Act, 2017 further consolidates and gives effect to this constitutional oversight framework. Section 4 thereof provides in mandatory terms that:

"An appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act."

The Commission notes that the oversight mandate of the County Assembly extends beyond initial appointments.

Section 2 of the County Governments Act defines an appointment to include an acting appointment, reappointment, promotion and redesignation. Similarly, the Public Appointments (County Assemblies Approval) Act defines an appointment to include reappointment to the same office or body.

Accordingly, where the substantive appointment to an office requires County Assembly approval, any subsequent renewal of contract, extension of tenure, acting appointment, redesignation or reappointment to that office equally requires prior approval of the County Assembly. Any contrary interpretation would permit appointing authorities to circumvent the constitutional approval process by repeatedly extending contracts or making successive acting appointments without legislative oversight, thereby defeating both the letter and spirit of the Constitution.

The Commission further observes that County Assembly approval constitutes a substantive constitutional safeguard and is not a procedural formality capable of being waived by the appointing authority. The approval process ensures transparency, public accountability, and legislative scrutiny of persons proposed to hold public office.

Finding and Opinion

Having considered the applicable constitutional and statutory framework, the Commission finds that the County Assembly possesses a mandatory constitutional and statutory oversight mandate over all appointments to offices for which the Constitution or any written law requires its approval.

The Commission further finds that this oversight mandate extends not only to substantive appointments but also to acting appointments, reappointments, redesignations, renewals of contract, and extensions of tenure where the office concerned is one whose substantive appointment is subject to County Assembly approval.

Accordingly, appointments to the offices of County Executive Committee Member, County Secretary, County Chief Officer, County Attorney and members of the County Public Service Board cannot lawfully take effect without the prior approval of the County Assembly.

Any appointment, acting appointment, renewal, extension of contract, redesignation or reappointment undertaken without such approval is contrary to the Constitution, the County Governments Act, 2012, the Public Appointments (County Assemblies Approval) Act, 2017, and any other applicable written law, and is consequently unlawful and void ab initio.

The Governor, as the appointing authority, is under a continuing constitutional obligation to respect and uphold the County Assembly's approval mandate and may not circumvent that mandate through repeated acting appointments, extensions of tenure, contract renewals, or any other administrative mechanism designed to avoid legislative oversight.

ANALYSIS OF THE ALLEGED IRREGULAR APPOINTMENTS, FINDINGS AND LEGAL OPINION

3.1 General Observations

The Commission has carefully considered the Report of the Committee on Appointments, the supporting documentation annexed thereto, the applicable constitutional and statutory framework, and the responses and evidence presented in relation to each of the impugned appointments.

The Commission observes that, although each appointment raises distinct legal issues, a common pattern emerges throughout the matters under review. The impugned appointments are characterised by repeated disregard of the constitutional and statutory requirement for County Assembly approval; unlawful reliance on acting appointments and contract extensions; appointment of persons who did not satisfy the prescribed qualifications; failure to comply with resolutions of the County Assembly; and persistent circumvention of the statutory role of the County Public Service Board.

The cumulative effect of these actions is not merely procedural irregularity but a systematic departure from the constitutional framework governing public appointments within county governments. Such conduct undermines the principles of constitutionalism, accountability, separation of powers, and the rule of law that underpin devolved governance.

The Commission therefore considers each appointment individually before making its overall findings.

3.2 Case I: Appointment of Mr. Peter Asuke as Acting Chief Officer for Tourism, Culture, Sports and Arts

The evidence before the Commission establishes that Mr. Peter Asuke, who substantively served as Deputy Director of Governance and Administration, was appointed to act as Chief Officer for Tourism, Culture, Sports and Arts "until further notice."

The Commission finds that the appointment contravened several mandatory provisions of law.

First, the office of County Chief Officer is one requiring prior approval of the County Assembly under Section 45 of the County Governments Act, 2012. No evidence has been presented demonstrating that such approval was sought or obtained.

Secondly, the acting appointment was made for an indefinite period. Section 64(2) of the County Governments Act requires acting appointments to be for a specified duration, while the applicable Human Resource Manual limits such appointments to a maximum period of six months.

Thirdly, the evidence demonstrates that the appointee did not possess the prescribed academic qualifications for appointment as Chief Officer, contrary to Section 64(1) of the County Governments Act.

Finally, despite the County Assembly declaring the appointment unlawful and calling for corrective action, the appointment remained in force until the officer's retirement.

Finding

The Commission finds that the appointment was unlawful, irregular and void ab initio.

The Commission further finds that the Governor deliberately disregarded the statutory requirement for County Assembly approval and failed to implement the Assembly's resolutions.

This conduct constitutes maladministration and an abuse of the statutory powers of appointment vested in the Governor.

3.3 Case II: Appointment of the County Solicitor as Acting County Attorney

The Commission notes that the offices of County Attorney and County Solicitor are created under different statutory provisions, possess distinct qualifications, discharge separate constitutional and statutory functions, and are subject to different appointment procedures.

Whereas the County Solicitor is competitively recruited by the County Public Service Board, the County Attorney is nominated by the Governor and appointed only upon approval by the County Assembly under Section 5 of the Office of the County Attorney Act, 2020.

The appointment of the County Solicitor to act as County Attorney was undertaken without County Assembly approval and without compliance with the statutory procedure governing appointments to that office.

The Commission further notes that the vacancy arose upon expiry of the substantive office holder's contract, a foreseeable event which afforded sufficient opportunity to undertake a lawful recruitment process.

Finding

The Commission finds that the appointment was unlawful and void.

The continued retention of the officer after the County Assembly had declared the appointment unlawful amounts to deliberate disregard of the constitutional oversight role of the County Assembly.

The Commission further finds that the appointing authority abused the statutory appointment process by bypassing mandatory legal requirements.

3.4 Case III: Appointment of Mr. George Adeya as Director, Governor's Press

The evidence demonstrates that the appointment was undertaken without subjecting the nominee to the suitability process conducted by the County Public Service Board as required under the applicable Transition Authority and Intergovernmental Relations Technical Committee Circulars.

The Commission further notes that the prescribed academic qualifications and professional experience for the office were not demonstrated to have been satisfied.

By directly appointing the officer, the Governor assumed functions reserved in law for the County Public Service Board.

Finding

The Commission finds that the appointment was procedurally unlawful and inconsistent with the constitutional principles of merit, transparency, fair competition and accountability under Articles 10, 73 and 232 of the Constitution.

The Commission further finds that the Governor unlawfully usurped the statutory mandate of the County Public Service Board and disregarded the applicable recruitment framework.

3.5 Case IV: Appointment of Ms. Elizabeth Adongo as Acting County Secretary

The Commission observes that the office of County Secretary is established under Section 44 of the County Governments Act and is distinct from the office of County Chief Officer.

Appointment to the office requires competitive recruitment, nomination by the Governor and approval by the County Assembly.

The evidence establishes that the acting appointment was made without County Assembly approval and without specifying the duration of the appointment.

The Commission further notes that the vacancy arose following expiry of the former County Secretary's contract, thereby requiring the Governor to initiate the statutory recruitment process rather than resort to an indefinite acting appointment.

Finding

The Commission finds that the appointment was unlawful, irregular and contrary to Sections 44 and 64 of the County Governments Act together with Section 4 of the Public Appointments (County Assemblies Approval) Act.

The Commission further finds that the appointment constituted an improper circumvention of the statutory appointment procedure.

3.6 Case V: Continued Appointment and Retention of Mr. George Nying'iro as CEC Member for Finance and Economic Planning

This matter presents the most serious constitutional and legal concerns raised in the reference before the Commission.

The evidence establishes that Mr. George Nying'iro continued occupying the office notwithstanding the expiry of his contract, rejection of his nomination by the County Assembly, cessation of the substantive office upon which the acting appointment had been anchored, and the absence of any lawful appointment capable of conferring authority upon him.

The purported extension issued after expiry of the contract could not revive a contract that had already lapsed. Neither could the appointing authority lawfully extend an acting appointment founded upon a substantive office that had itself ceased to exist.

The Commission further notes that the County Assembly expressly rejected the nomination and directed that another qualified nominee be submitted for approval. Instead of complying with that resolution, the appointing authority retained Mr. Nying'iro in office in complete disregard of the statutory approval process.

Finding

The Commission finds that the purported extension dated 29th May 2026 is null and void ab initio and incapable of conferring any lawful authority upon Mr. George Nying'iro.

The Commission further finds that his continued occupation of office after 31st March 2026 was unlawful and contrary to the County Governments Act, the Public Appointments (County Assemblies Approval) Act and the Leadership and Integrity Act.

The Commission additionally finds that the repeated disregard of the County Assembly's resolutions and continued exercise of executive authority through an unlawfully appointed office holder constitutes maladministration, abuse of office, and a deliberate violation of the constitutional principles governing public appointments.

3.7 Case VI: Constitution of the County Public Service Board

The evidence establishes that following withdrawal of one female nominee, the County Public Service Board presently consists of one woman and five men.

Article 27(8) of the Constitution and Section 58A(15) of the County Governments Act require appointive bodies to comply with the two-thirds gender principle.

The Governor was expressly directed by the County Assembly to submit a replacement female nominee but failed to do so.

Finding

The Commission finds that the present composition of the County Public Service Board is unconstitutional.

The continued operation of the Board in its current composition exposes its decisions to legal challenge and undermines the constitutional requirement for gender equity in public appointments. The Governor's failure to nominate a qualified female candidate from the list submitted by the Selection Panel perpetuates this constitutional violation.

3.8 Overall Finding on the Conduct of the Appointing Authority

Having considered each of the impugned appointments individually and collectively, the Commission finds that the actions of the appointing authority disclose a persistent pattern of disregard for the Constitution and the law.

The repeated failure to seek mandatory County Assembly approval, continued reliance on unlawful acting appointments and contract extensions, disregard of County Assembly resolutions, appointment of persons who failed to meet prescribed qualifications, circumvention of the County Public Service Board, and continued retention of officers without lawful authority demonstrate more than isolated procedural errors.

The Commission finds that this conduct amounts to maladministration within the meaning of the Commission on Administrative Justice Act, 2011.

Further, the Commission finds that the repeated and deliberate disregard of constitutional and statutory requirements governing public appointments constitutes an abuse of office and a gross violation of the Constitution and the law.

Where executive authority is knowingly exercised in disregard of express constitutional and statutory provisions, and in defiance of lawful resolutions of the County Assembly, such conduct ceases to be a mere administrative irregularity and becomes an abuse of public power incompatible with the constitutional obligations imposed upon holders of public office.

Accordingly, the Commission is of the opinion that the conduct established in this Advisory may properly attract the constitutional and statutory accountability mechanisms provided under the Constitution, the Leadership and Integrity Act, 2012, the County Governments Act, 2012, and any other applicable written law.

SANCTIONS, ACCOUNTABILITY MECHANISMS AND RECOMMENDATIONS

Constitutional and Statutory Sanctions

Having found that several appointments were made in contravention of the Constitution and applicable statutes, and that the appointing authority's conduct amounts to maladministration, abuse of office, and a persistent disregard of constitutional and statutory obligations, the Commission now considers the constitutional and statutory accountability mechanisms available to address the established violations.

The Commission observes that public power is held in trust for the people and must be exercised in accordance with the Constitution and the law. Where public officers deliberately disregard constitutional requirements governing public appointments, the

Constitution provides a range of corrective, disciplinary, civil and criminal accountability mechanisms.

Accountability of the Appointing Authority

The Commission finds that the repeated appointment, retention, extension and renewal of office holders without obtaining the mandatory approval of the County Assembly, together with the continued disregard of lawful resolutions of the Assembly, constitutes a persistent violation of the constitutional principles of accountability, transparency, integrity and the rule of law.

Accordingly, the Commission is of the opinion that the following accountability mechanisms are available under the Constitution and the applicable statutory framework.

(a) Revocation of Unlawful Appointments

The Governor should immediately revoke all appointments, acting appointments, contract renewals and extensions found by this Advisory to be unlawful before commencing any lawful appointment process.

An unlawful appointment cannot be regularised while it remains in force. Revocation is therefore a necessary legal prerequisite before any fresh appointment or recruitment process is undertaken.

(b) Fresh Recruitment and Lawful Appointment

Upon revocation of the unlawful appointments, the Governor should immediately commence the applicable statutory recruitment and appointment processes and submit all nominees requiring County Assembly approval for vetting and approval in accordance with the Constitution and the relevant statutes.

(c) Referral to the Ethics and Anti-Corruption Commission

The Commission recommends that the conduct of the appointing authority be referred to the Ethics and Anti-Corruption Commission for investigation into possible violations of the Leadership and Integrity Act, 2012, the Anti-Corruption and Economic Crimes Act, 2003, and any other applicable law arising from the unlawful appointments and continued exercise of public power contrary to the Constitution.

(d) Removal from Office through Constitutional Processes

Where abuse of office, gross misconduct, or a gross violation of the Constitution is established, the Constitution provides mechanisms for the removal of public officers from office through the applicable constitutional processes.

The Commission is of the opinion that the repeated and deliberate disregard of constitutional and statutory provisions governing public appointments, particularly where accompanied by persistent defiance of lawful resolutions of the County Assembly, may constitute conduct capable of invoking the constitutional accountability mechanisms available under Article 181 of the Constitution and Section 33 of the County Governments Act, 2012.

The determination of whether those constitutional thresholds have been met ultimately lies with the institutions constitutionally mandated to exercise those powers.

Accountability of Mr. George Nying'iro

The Commission has found that Mr. George Nying'iro continued to occupy and perform the functions of the office of County Executive Committee Member for Finance and Economic Planning after the expiry of his lawful appointment, after rejection of his nomination by the County Assembly and after cessation of the substantive office upon which the acting appointment had been anchored.

The Commission is therefore of the opinion that the following accountability mechanisms may be invoked.

(a) Investigation under the Leadership and Integrity Act

The conduct of Mr. George Nying'iro should be referred to the Ethics and Anti-Corruption Commission for investigation into possible contraventions of Section 35(3) of the Leadership and Integrity Act, 2012, and any other applicable provisions of law.

(b) Constitutional Removal Processes

Where the competent constitutional organs determine that the established conduct amounts to gross misconduct, abuse of office or a gross violation of the Constitution, the applicable constitutional and statutory removal mechanisms may be invoked.

(c) Recovery of Public Funds

Where it is established that salaries, allowances or other public benefits were paid during periods of unlawful occupation of office, the relevant State agencies should take appropriate steps to determine whether recovery proceedings are warranted in accordance with the law.

Financial Accountability

The unlawful occupation of the office of County Executive Committee Member for Finance and Economic Planning raises significant concerns regarding the legality of financial decisions undertaken during the relevant period.

The Commission therefore recommends that:

i. The Office of the Auditor-General undertake a special audit of all financial transactions, approvals and authorisations undertaken during the period Mr. George Nying'iro unlawfully occupied the office;

ii. The Controller of Budget review all approvals issued during the affected period to determine whether any corrective measures are required;

iii. Where any financial loss is established, the relevant agencies should institute appropriate recovery proceedings in accordance with the Public Finance Management Act, the Public Audit Act and any other applicable law.

4.5 Oversight by the County Assembly

The County Assembly should continue exercising its constitutional oversight mandate under Article 185(3) of the Constitution.

In particular, the Assembly may—

a) require compliance with its resolutions regarding unlawful appointments;

b) decline to approve further nominations where the appointing authority persistently disregards the law;

c) require periodic reports on compliance with this Advisory Opinion;

d) refer any suspected violations of law to the appropriate constitutional commissions and independent offices; and

e) invoke any constitutional accountability mechanisms available to it where circumstances so warrant.

Accordingly, and based on the foregoing analysis, it should be noted that the constitutional and statutory accountability mechanisms discussed above are not intended to be punitive in nature. Rather, they are designed to safeguard constitutional governance, uphold the rule of law, protect public resources, and ensure fidelity to the Constitution and the principles of good governance.

Public appointments must, at all times, be undertaken in strict compliance with the Constitution and the applicable statutory framework. Neither administrative convenience nor executive discretion may be invoked to circumvent mandatory constitutional and statutory requirements governing the exercise of the power of appointment.

Where constitutional office holders knowingly disregard these requirements, accountability is not a matter of discretion but a constitutional imperative. The exercise of public power must always remain subject to the Constitution, and those entrusted with such power are answerable for its lawful exercise through the accountability mechanisms established under the Constitution and the law.

RECOMMENDATIONS

On this basis, pursuant to Article 252 of the Constitution of Kenya, 2010 and Section 8(h) of the Commission on Administrative Justice Act, 2011, the Commission makes the following recommendations:

1. Revocation of Unlawful Appointments

The Governor of Siaya County should immediately revoke all appointments, acting appointments, contract extensions, renewals and redesignations that have been found in this Advisory Opinion to have been made in contravention of the Constitution and applicable law. No unlawful appointment should be regularised while it remains in force.

2. Compliance with County Assembly Approval Requirements

The Governor shall henceforth ensure that every appointment, acting appointment, renewal of contract, extension of tenure, redesignation or reappointment to any office requiring County Assembly approval is submitted to the County Assembly for prior approval in accordance with the Constitution, the County Governments Act, 2012, the Public Appointments (County Assemblies Approval) Act, 2017, the Office of the County Attorney Act, 2020, and any other applicable law.

3. Fresh Recruitment and Appointment

Upon revocation of the unlawful appointments, the Governor should immediately commence lawful recruitment processes for all affected offices and submit qualified nominees to the County Assembly for approval in accordance with the applicable statutory procedures.

4. Appointment of the County Executive Committee Member for Finance and Economic Planning

The Governor should formally revoke the purported extension of the appointment of Mr. George Nying'iro dated 29th May 2026, the same being null and void ab initio, and proceed to nominate a qualified candidate for appointment as County Executive Committee Member for Finance and Economic Planning for consideration and approval by the County Assembly.

5. Appointment of the County Secretary

The Governor should immediately commence the competitive recruitment process for the office of County Secretary in accordance with Section 44 of the County Governments Act, 2012, and submit one qualified nominee to the County Assembly for approval. Pending the substantive appointment, any acting appointment shall strictly comply with Section 64 of the County Governments Act, 2012, including the requirement that the appointment be for a specified period not exceeding the period prescribed by law.

6. Appointment of the Director, Governor's Press

The Governor should submit the appointment process for the Director, Governor's Press to the County Public Service Board for processing in accordance with the applicable law, regulations and Government circulars. Any person appointed must satisfy the prescribed academic qualifications, professional experience and suitability requirements.

7. County Public Service Board

To achieve compliance with Article 27(8) of the Constitution and Section 58A of the County Governments Act, 2012, the Governor should nominate a qualified female candidate from the list previously submitted by the Selection Panel following the concluded recruitment process and forward the nominee to the County Assembly for vetting and approval.

8. Investigation by the Ethics and Anti-Corruption Commission

The conduct of the Governor and Mr. George Nying'iro should be referred to the Ethics and Anti-Corruption Commission for investigation into possible violations of the Leadership and Integrity Act, 2012, the Anti-Corruption and Economic Crimes Act, 2003, and any other applicable law arising from the unlawful appointments and continued occupation of office.

9. Special Audit

The Office of the Auditor-General should undertake a special audit of all financial transactions, approvals and decisions undertaken by or through the Office of the County Executive Committee Member for Finance and Economic Planning during the period commencing 1st April 2026 until the office is lawfully filled.

10. Review of Public Expenditure

The Controller of Budget and other competent oversight institutions should review all expenditure authorised during the period of unlawful occupation of the office of County Executive Committee Member for Finance and Economic Planning and take appropriate action where any irregularity or illegality is established.

11. Recovery of Public Funds

Where investigations establish that salaries, allowances, benefits or any other public funds were paid or received without lawful authority, the appropriate State agencies should institute recovery proceedings in accordance with the Constitution and the applicable law.

12. Constitutional Accountability

In light of the Commission's finding that the repeated disregard of mandatory constitutional and statutory requirements governing public appointments constitutes maladministration, abuse of office and a gross violation of the Constitution, the County Assembly may, where it considers the constitutional threshold to have been met, invoke the appropriate constitutional accountability mechanisms available under Article 181 of the Constitution and Section 33 of the County Governments Act, 2012.

13. Compliance with County Assembly Resolutions

The Governor should comply with all lawful resolutions of the County Assembly relating to public appointments and should refrain from exercising appointment powers in a manner that undermines the Assembly's constitutional oversight mandate.

14. Future Compliance

The Governor, the County Public Service Board, and all public officers within the County Government of Siaya shall ensure that all future appointments are undertaken strictly in accordance with the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Appointments (County Assemblies Approval) Act, 2017, the Office of the County Attorney Act, 2020, the Leadership and Integrity Act, 2012, and all other applicable laws, regulations and policy instruments.

CONCLUSION

In conclusion, the Commission calls upon the Governor, the County Assembly, the County Public Service Board, and all other relevant public authorities within the County Government of Siaya to take all necessary measures to ensure full compliance with this Advisory Opinion. Such measures are essential to safeguard constitutional governance, uphold the rule of law, promote accountability in public administration, and ensure that all public appointments are undertaken strictly in accordance with the Constitution and the applicable legal framework.

In the exercise of our constitutional and statutory mandate, we shall continue to monitor compliance with the principles set out herein in the quest to promote administrative justice and good governance.

Dated this 5th day of August 2026

CHARLES DULO, EBS
CHAIRPERSON

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