

PARLIAMENT OF KENYA

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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

REPORT

ON THE STUDY VISIT TO SWITZERLAND AT THE GENEVA CENTRE FOR SECURITY
SECTOR GOVERNANCE – DCAF FROM 21ST – 27TH MAY 2023

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 SEP 2023	DAY: Thursday
TABLED BY:	Hon Gathoni Wamuchomba, A.S.C, MP Chairperson
CLERK AT THE TABLE:	Aime Shubuto

The Directorate of Audit, Appropriations and
Other Select Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

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ABBREVIATIONS

M.P – Member of Parliament

CIOC - Constitutional Implementation Oversight Committee

COAJ - Commission on Administrative Justice

HSC-Head of State Commendation

UN –United Nations

DCAF - Geneva Centre for Security Sector Governance

GICHD-Geneva International Centre for Humanitarian Demining

GCSP-Geneva Centre for Security Policy

UNITAR- United Nations Institute for Training and Research

SDG- Sustainable Development Goals

CHAIRPERSON'S FOREWORD

The Constitutional Implementation Oversight Committee derives its mandate from Schedule Six section 4 of the Constitution of Kenya which provides for the Parliamentary Select Committee. The Committee is responsible for overseeing the implementation of the Constitution.

The Constitutional Implementation Oversight Committee was invited to accompany the Commission on Administrative Justice (COAJ) for a study visit at the Geneva Centre for Security Sector –DCAF, Office of the United Nations Ombudsman and Mediation Services –Geneva on training exchange programs through the United Nations Institute for Training and Research-UNITAR.

The Geneva Centre for Security Sector –DCAF is a Swiss foundation with broad international support, established in 2000 on the initiative of the Swiss government. Along with its sister centres GICHD-Geneva International Centre for Humanitarian Demining and GCSP-Geneva Centre for Security Policy, DCAF is headquartered in the 'Maison de la Paix' in the heart of Geneva. The Geneva Centre for Security Sector is dedicated to making states and people safer through more effective and accountable security and justice. Since 2000, the centre has facilitated, driven and shaped security sector reform (SSR) policy and programming around the world.

The visit to Geneva offered an opportunity for the Commission on Administrative Justice and the Committee to interact and learn best practices from the United Nations complaint mechanisms and investigations in the United Nations system.

The Committee was represented by a delegation comprised of the following members and staff-

- (i) Hon. Hon. William Kamket, MP- Leader of Delegation
- (ii) Hon. Karitho Kiili, M.P
- (iii) Mr. Abenayo Wasike –Principal Clerk Assistant II /Delegation Secretary

I take this opportunity to express my gratitude to members of the delegation, Office of the Commission on Administrative Justice (Ombudsman) for the invitation and coordination which enabled the Parliamentary Delegation to be part of the global participants.

The Committee also wishes to express special gratitude to the office of the Clerk of the National Assembly for the support accorded to Members of the Committee and the staff, in the execution of its mandate.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the members of the delegation who undertook the study visit and for their contribution towards the preparation of this Report.

On behalf of the Constitutional Implementation Oversight Committee, it is my pleasant privilege and honor to present to this House the Report of the Committee on its study visit to the Geneva Centre for Security Sector –DCAF.

Hon. Gathoni Wamuchomba, HSC, MP

1.0 PREFACE

1.1 Mandate of the Committee

1. The oversight of State organs is amongst the roles assigned to the National Assembly under Art 95 of the Constitution, In fulfillment of this role the Committee adopted a work plan to engage with commissions and independent offices on matters related to their mandates in implementation of the Constitution.
2. The Constitutional Implementation Oversight Committee derives its mandate from Schedule Six section 4 of the Constitution of Kenya which provides for the Parliamentary Select Committee.
3. The Constitutional Implementation Oversight Committee is responsible for overseeing implementation of the Constitution and which, among other things-
 - (a) received regular reports from the Commission on the Implementation of the Constitution including reports concerning-
 - (i) the preparation of the legislation required by this Constitution and any challenges in that regard;
 - (ii). the process of establishing the new commissions;
 - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and
 - (v) any impediments to the process of implementing this Constitution;
 - (b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and
 - (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.

1.2 Membership of the Committee

1. The Constitutional Implementation Oversight Committee was constituted on 27th October 2023 as follows;

Chairperson

Hon. Wamuchomba Gathoni, HSC, M.P

Githunguri Constituency

UDA Party

Vice-Chairperson

Hon. William Kamket, M.P.

Tiati Constituency

KANU – Party

Hon. Silvanus Onyiego Osoro, CBS M.P.

South Mugirango Constituency

UDA

Hon. Aramat Lemanken, M.P

Narok East Constituency

UDA

Hon. Benjamin Langat Kipkirui, M.P.

Ainamoi Constituency

UDA

Hon. Jesca Mbalu Nduku Kiko, CBS M.P.

Kibwezi Constituency

WIPER PARTY

Hon. George Risa Sunkuyia, M.P.

Kajiado West Constituency

UDA

Hon. Patrick Ntwiga Munen M.P.

Chuka, Igambang'ombe Constituency

UDA

Hon. Peter Oscar Nabulindo, M.P.

Matungu Constituency

ODM

Hon. Lawrence Aburi Mpuru, M.P

Tigania East Constituency

NOPEU

Hon. Jackson Lentoijoni Lekumontare M.P.

Samburu East Constituency

KANU

Hon. Charles Nguna Ngusya, M.P.

Mwingi West Constituency

WIPER PARTY

Hon. Ruth Odinga, M.P.

Kisumu (CWR)

ODM

Hon. Hamisi Kakuta Maimai, M.P.

Kajiado East Constituency

ODM

Hon. John Murumba Chikati, M.P.

Tongaren Constituency

FORD-K

Hon. Geoffrey Ekesa Mulanya, M.P.

Nambale Constituency

Independent

Hon. Patrick Osero Kibangendi, M.P.

Borabu Constituency

ODM

Hon. Daniel Karitho Kiili, M.P

Igembe Central Constituency

JUBILEE

Hon. Ali Abdisarat Khalif. M.P

Tigania West Constituency

UDA

Hon. Betty Njeri Maina M.P

Kipipiri Constituency

UDA

Hon. John Gitonga Mukunji Mwaniki M.P.

Manyatta Constituency

UDA

Hon. Augustine Mwafrika Kamande M.P

Thika Town Constituency

UDA

Hon. Harun Mohamed Umulkher, M.P

Nominated

ODM

1.3 Committee Secretariat

2. The Committee secretariat is as follows-

Mr. Abenayo Wasike
Principal Clerk Assistant II
Lead Clerk

Ms. Grace Apale Odedere
Clerk Assistant III

Ms Emma Essendi
Legal Counsel

Catherine Mukunyi
Senior Serjant -at- Arms

Ms. Lilian Aluga
Public Relation Officer

Mr. Kelvin Lengasi
Audio Officer

Ms. Ivy Maritim
Media Relation Officer

Mr. Alvin Ochieng
Researcher

Ms. Felistus Otwabe
Hansard Reporter

2 BACKGROUND

3. The Commission on Administrative Justice (CAJ) is a Constitutional Commission established under Article 59(4) of the Constitution and the Commission on Administrative Justice Act, 2011. The Commission has two broad mandates that extend to both the National and County Governments; to promote administrative justice in the public sector by addressing all forms of maladministration and to provide oversight in the implementation of the right to access to information provided under Article 35 of the Constitution, and the Access to Information Act, 2016. Further, the Commission promotes the right to fair administrative action as espoused under Article 47 of the Constitution and the Fair Administrative Action Act, 2015.
4. The Commission hosted a delegation from Geneva Centre for Security Sector Governance from 14th to 18th June 2021 comprising of Mr. Hans Born, Assistant Director and Head of Policy and Research Department and Mr. Luka Glusac. The main objective of the study visit was to get views and opinions from stakeholders on introduction and establishment of a military ombudsman in the Country.
5. The proposal to have a military ombudsman in Kenya had been influenced by the number of complaints lodged against the military on maladministration issues in the Country.
6. The objective of DCAF is to assist partner states and nations to improve governance of the security sector for the promotion of human rights and prevention of maladministration issues in the security sector. DCAF undertakes capacity building by training stakeholders in the security sector such as Parliament, Ombudsman institutions and the military. Besides, DCAF has been working with security providers, security overseers, Parliament and Ombuds institutions for a period of 10 years.
7. The Commission organized meetings with several stakeholders including Parliament of Kenya. The meeting with Parliament had representation from three parliamentary committees of Defence, Delegated Legislation and Justice and Legal Affairs Committee.
8. The military ombudsman initiative is gaining acceptance internationally since human rights abuses are prevalent in the military and that confidentiality over military matters must be protected at all costs because of national security. The matters of external aggressions also need to be handled with care.

9. The Court martial processes in place are adversarial making the processes taking too long to conclude.
10. At the end of the meeting, the MPs strongly recommended that they should undertake benchmarking in the countries mentioned by DCAF so as to better understand the military ombudsman and as such, develop and adopt the most suitable model for the Country.
11. The DCAF and CAJ teams held a meeting to chart a way forward on the project. From the meeting, it was agreed that further engagements be organized by DCAF, CAJ and the other stakeholders. The engagements were to involve benchmarking activities, consultative meetings and setting up of a technical working committee.
12. As a continuation of the stakeholder engagements held in 2021, the Chairperson and the Commission Secretary participated in high-level meetings with three members from the Constitutional Implementation Oversight Committee of the National Assembly in May 2023 in Geneva.

2.1 Geneva Centre for Security Sector Governance (DCAF)

13. The Kenyan delegation led by the Chairperson Hon. Florence Kajuju held high level meetings with **Nathalie Chuard**; Director of the Geneva Centre for Security Sector Governance, DCAF, **Hans Born**; Assistant Director and Head of the Policy and Research Department, **Daniel Reimers**; Programme Manager and **Ajla Kuduzovic**; Project Officer.
14. There were discussions on possible areas of collaboration between the Commission and DCAF. DCAF will support the Commission in the following ways:
 - (i) Provide technical support on how to use SDG 16 as an M&E framework. The main point here is to use the SDG 16 framework with its targets and indicators to develop an efficient M&E framework for the organisation while also supporting the monitoring and reporting of SDG 16 by state authorities through developing national and local indicators and collecting data for SDGs reporting mechanisms like the voluntary national reviews.
 - (ii) Provide technical support, and possibly resources, to advance specific interventions by CAJ that relate to SDG 16 and have emerged as necessary/relevant through the sensitization workshop and follow-up discussions.

15. The meetings were held at DCAF Headquarters, Maison de la Paix in Geneva and formed the basis for the upcoming scoping mission to Kenya scheduled for 21st to 25th August by representatives from DCAF.

2.2 The United Nations Ombudsman and Mediation Services Geneva Regional Office

16. The delegation held a meeting with **Mr. Nicholas Theotocatos**; United Nations Ombudsman in Geneva Regional Office. Among the deliberations were; introduction of the Commission on Administrative Justice, Ombudsman Kenya, UN Ombudsman mandate and operations, Possible areas of collaboration & partnerships.

17. The delegation was informed that;

- a) There are various models of military ombudsman that the military can look at. For example the South African model where a retired general is appointed to head.
- b) There is need to interact with experts from countries with the military ombudsman office to share their experiences with Kenya.
- c) A shared vision of establishing the military ombudsman can be translated into action through consultation with stakeholders and resource mobilization initiatives.
- d) There are several ombudsman institutions in several institutions and variations from one jurisdiction to another such as Sweden and South Africa among others.
- e) The UN Ombudsman and Mediation Service office has branches around the world in Nairobi-Kenya, Entebbe-Uganda, Santiago-Chile, Bamako-Mali, Bangkok-Thailand and New York-USA. The offices were spread close to areas where the UN was involved in conflict resolution initiatives.
- f) That the European Union has a conflict resolution mechanism placing emphasis on prevention and mediation.
- g) In some jurisdictions like Canada, Banks have internal conflict resolution mechanisms.
- h) The UN disputes tribunal is the UN disputes appeal tribunal. The UN has employed lawyers to help staff bring up complaints the UN within the UN system internally.
- i) The UN encourages people to know their legal rights and explore alternatives such as mediation.

j) The UN Ombudsman has five year tenure renewable once and cannot work for the UN Secretariat again.

k) The UN Ombudsman is based in New York and is a high office within the UN system.

18. Mr. Theodoratos undertook to brief his hierarchy in New York to explore how Kenya can improve its structures and systems to address internal conflicts.

2.3 Ombuds Institutions for the Armed Forces

19. This involved a briefing by **Dr. Hans Born** of the Centre for security, development and Rule of law as setting up Ombuds institutions for armed forces as follows;

a) We have Ombudsman to deal with the Judiciary, the regular civilian ombudsman and military ombudsman.

b) Countries without military ombudsman can learn from other jurisdictions with similar institutions.

c) The Centre for Security, development and the rule of law can collaborate with countries such as Kenya to get Generals from other jurisdictions to share their experiences.

d) Jurisdictions with armed forces ombudsman include German, South Africa, Austria, Norway and Canada.

e) Dr. Hans also undertook to organise a programme through DCAF on sustainable development goals and security.

2.4 Permanent Mission of the Republic of Kenya to the United Nations

20. The delegation paid a courtesy call on the Permanent Representative of the Republic of Kenya to the United Nations Office at Geneva, **Amb. Dr. Cleopa Kilonzo Mailu**.

21. The ambassador informed members that;

- 1) It is important members of Parliament international engagements to be informed on best global practices in execution of their mandate.
- 2) Parliament should pass legislation proposed by agencies including commissions and independent offices
- 3) Geneva is a critical centre to the international community .It is the focal point in the United Nation system before resolutions are passed by the UN in New York.
- 4) Parliament and the executive need consistency in delegations engaged at the international level to help individual capacity growth of participants.It also contributes to ascendancy of individuals for appointment to head regional and global inter-governmental organisations.
- 5) Parliament need to inform citizens on the role of Kenyan missions abroad.
- 6) The world is a global village and there is a lot of international engagement that requires diplomatic missions to play an active facilitative role. This calls for sufficient financial support in budgetary allocations.

3.0 COMMITTEE'S OBSERVATIONS

The delegation made the following observations;

- 1) The military is a unique institution and needs an independent office to address complaints unique to them.
- 2) Ombuds institutions for the armed forces are mandated to receive complaints from currently serving members of the armed forces, as well as from non-professional members (such as conscripts) in many cases.
- 3) Many Ombuds institutions may receive complaints from, among others: veterans; family and friends; and members of the public regardless of their relationship to the armed forces
- 4) Ombuds institutions for the armed forces mainly deal with a wide variety of complaints, many of which can be placed within three categories- human rights protection, prevention of maladministration, and compliance with criminal and international humanitarian law.
- 5) The implementation of recommendations made by Ombuds institutions is critical to the effectiveness of the concerned institutions.
- 6) If relevant bodies fail to implement or refuse to take notice of recommendations made by Ombuds institutions, this may undermine the entire complaint handling and investigation process.
- 7) Ombuds institutions are generally aimed at producing recommendations; they aim to resolve issues independently and impartially, and to prevent their recurrence, rather than to punish an offender or an individual act of wrongdoing.
- 8) The costs and formalities of pursuing a complaint in a court can be rather high, whereas Ombuds institutions' services are offered free of charge and are far more informal than a typical court proceeding.

4.0 COMMITTEE'S RECOMMENDATIONS

The Committee recommended as follows;

- 1) The office of the Commission on Administrative Justice should work in consultation with Parliament and the military to explore how the military Ombuds office can be established in Kenya.
- 2) The establishment of an Ombuds institution for the armed forces, the creation of such an institution should be an inclusive, multistakeholder process that considers the interests and needs of all relevant parties
- 3) The COAJ should organise a workshop that brings together a wide spectrum of stakeholders and experts.
- 4) A meeting of stakeholders should set up a working group to develop the modalities of establishing the Military ombudsman office.
- 5) The COAJ should formulate a working draft on the military ombudsman by end of the year.
- 6) The COAJ should organise consultations with the Office of the Attorney General and Department of Justice and the Ministry of Defence to be part of the working group to develop a draft model for Kenya.

Signed

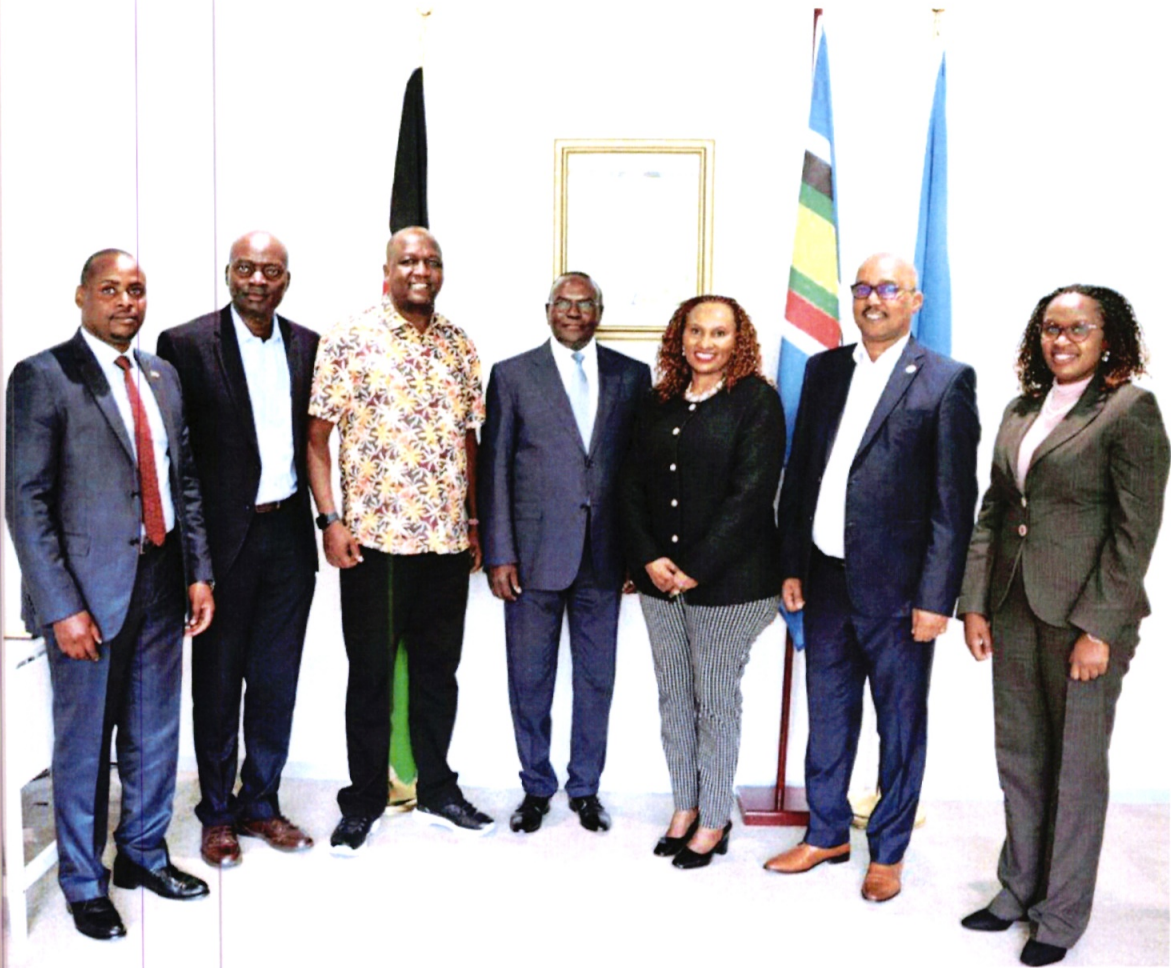


Date.....

28/9/23

Hon. Gathoni Wamuchomba, HSC, MP

Constitutional Implementation Oversight Committee



At the Kenya Mission at the United Nations Office in Geneva



At the Geneva Centre for Security Sector Governance (DCAF)

**MINUTES OF THE 12TH SITTING OF CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE HELD ON TUESDAY 26TH SEPTEMBER, 2023 AT 12:30 PM AT
SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDING.**

PRESENT

1. Hon. Wamuchomba Gathoni, HSC, M.P. – **Chairperson**
2. Hon. William Kamket, M.P.- **Vice Chairperson**
3. Hon. Patrick Osero Kibagendi, MP
4. Hon. Peter Oscar Nabulindo M.P.
5. Hon. Betty Njeri Maina, M.P.
6. Hon. Charles Nguna Ngusya, M.P
7. Hon. John Gitonga Mukunji Mwaniki, M.P
8. Hon. Geoffrey Ekesa Mulanya, M.P
9. Hon. Jessica Mbalu Nduku, CBS,M.P.
10. Hon. George Risa Sunkuyia,M.P
11. Hon. Ruth Odinga, M.P.
12. Hon. Augustine Mwafrika Kamande, M.P
13. Hon. John Murumba Chikati, M.P
14. Hon. Lawrence Aburi Mpuru M.P.

ABSENT WITH APOLOGIES

1. Hon.Silvanus Onyiego Osoro, CBS,M.P
2. Hon. Aramat Lemanken, M.P.
3. Hon. Jackson Lentoijoni Lekumontare, M.P
4. Hon. Harun Mohammed Umulkher, M.P.
5. Hon. Ali Abdisirat Khalif, M.P
6. Hon. Benjamin Langat Kipkirui, M.P.
7. Hon. Daniel Karitho Kiili, M.P.
8. Hon. Hamisi Kakuta Maimai, M.P
9. Hon. Harun Mohammed Umulkher, M.P

SECRETARIAT

1. Mr. Abenayo Wasike- Principal Clerk Assistant II
5. Ms. Ivy Maritim – Media Relations Officer III
6. Ms. Lilian Aluga – Public Relations Officer

Min No. CIOC/1/2023

Preliminaries

The Chairperson called the meeting to order at 12.50 p.m. and said a word of prayer. She welcomed all the members present and thanked them for resuming committee sittings after long recess.

The Chairperson briefed members on the agenda being adoption of the Committee report on a study visit to Switzerland at the Geneva Centre for Security Sector Governance.

Min No. CIOC/2/2023 Consideration of Report on a Study Visit to Switzerland

Members made the following observations;

- 1) The military is a unique institution and needs an independent office to address complaints unique to them.

- 2) Ombuds institutions for the armed forces are mandated to receive complaints from currently serving members of the armed forces, as well as from non-professional members (such as conscripts) in many cases.
- 3) Many Ombuds institutions may receive complaints from, among others: veterans; family and friends; and members of the public regardless of their relationship to the armed forces
- 4) Ombuds institutions for the armed forces mainly deal with a wide variety of complaints, many of which can be placed within three categories- human rights protection, prevention of maladministration, and compliance with criminal and international humanitarian law.
- 5) The implementation of recommendations made by Ombuds institutions is critical to the effectiveness of the concerned institutions.
- 6) If relevant bodies fail to implement or refuse to take notice of recommendations made by Ombuds institutions, this may undermine the entire complaint handling and investigation process.
- 7) Ombuds institutions are generally aimed at producing recommendations; they aim to resolve issues independently and impartially, and to prevent their recurrence, rather than to punish an offender or an individual act of wrongdoing.
- 8) The costs and formalities of pursuing a complaint in a court can be rather high, whereas Ombuds institutions' services are offered free of charge and are far more informal than a typical court proceeding.

The Committee recommended that;

- 1) The office of the Commission on Administrative Justice should work in consultation with Parliament and the military to explore how the military Ombuds office can be established in Kenya.
- 2) The establishment of an Ombuds institution for the armed forces, the creation of such an institution should be an inclusive, multistakeholder process that considers the interests and needs of all relevant parties
- 3) The COAJ should organise a workshop that brings together a wide spectrum of stakeholders and experts.
- 4) A meeting of stakeholders should set up a working group to develop the modalities of establishing the Military ombudsman office.
- 5) The COAJ should formulate a working draft on the military ombudsman by end of the year.
- 6) The COAJ should organise consultations with the Office of the Attorney General and Department of Justice and the Ministry of Defence to be part of the working group to develop a draft model for Kenya.

Min No. CIOC/3/2023: Adoption of Report on a Study Visit to Switzerland

The report was unanimously adopted by members having been proposed by **Hon.Geoffrey Ekesa Mulanya, M.P** and seconded by **Hon.Ruth Odinga, M.P.**

Min No. CIOC/4/2023 Any Other Business



The Chairperson informed members that the Cabinet Secretary, Ministry of Interior and National Administration confirmed that he will appear before the Committee on 12th October, 2023.

The Secretariat was directed to work with the National Land Commission to organise a retreat as resolved during the meeting held at Sarova Stanley Hotel.

Min No. CIOC/5/2023

Adjournment

The meeting was adjourned at 1.30 p.m

Signed..........Date..........

Hon. Wamuchomba Gathoni, HSC, M.P.
Chairperson

KENYA NATIONAL ASSEMBLY




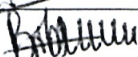
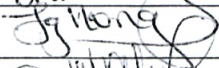
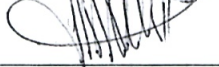
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER FOR MEMBERS

Date. 26/9/23 Venue. Small Dining, new wing, parliament Building

Agenda. ADOPTION OF REPORT ON STUDY VISIT TO GENEVA - SWITZERLAND

NO.	NAME	SIGNATURE
1	Hon. Wamuchomba Gathoni, HSC, M.P. Chairperson	
2	Hon. William Kamket, M.P. Vice Chairperson	
3	Hon. Silvanus Onyiego Osoro, CBS, M.P.	
4	Hon. Aramat Lemanken, M.P.	
5	Hon. Benjamin Langat Kipkirui, M.P.	
6	Hon. Jessica Mbalu Nduku, CBS, M.P.	
7	Hon. George Risa Sunkuyia, M.P.	
8	Hon. Patrick Ntwiga Munene, M.P.	
9	Hon. Peter Oscar Nabulindo, M.P.	
10	Hon. Lawrence Aburi Mpuru, M.P.	
11	Hon. Jackson Lentoijoni Lekumontare, M.P.	
12	Hon. Charles Nguna Ngusya, M.P.	
13	Hon. Ruth Odinga, M.P.	
14	Hon. Hamisi Kakuta Maimai, M.P.	
15	Hon. John Murumba Chikati, M.P.	
16	Hon. Geoffrey Ekesa Mulanya, M.P.	

17	Hon. Patrick Esero Kibagendi, M.P.	
18	Hon. Daniel Karitho Kiili, M.P.	
19	Hon. Ali, Abdisirat Khalif, M.P.	
20	Hon. Betty Njeri Maina, M.P.	
21	Hon. John Gitonga Mukunji Mwaniki, M.P.	
22	Hon. Augustine Mwafrika Kamande, M.P.	
23	Hon. Harun Mohamed Umulkher, M.P.	

Committee Clerk... 

Date 28-9-2023

Director-AAOSC... 

Date... 28/9/2023

