

(and) 26/08/2011



PARLIAMENT  
OF KENYA  
LIBRARY

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT

FOURTH SESSION (2011)

---

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT  
COMMITTEE

REPORT

ON THE APPROVAL OF PROF. GITHU MUIGAI FOR  
APPOINTMENT AS THE ATTORNEY-GENERAL

---

Clerk's Chambers,  
Parliament Buildings,  
NAIROBI.

AUGUST, 2011

**Mr. Speaker Sir,**

The Constitutional Implementation Oversight Committee is a select committee established under Section 4 of the Sixth Schedule of the Constitution with a mandate of overseeing the implementation of the Constitution and which among other things:-

- (a) Shall receive regular reports from the Commission on the Implementation of the Constitution on the implementation of this 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.*

## **COMMITTEE MEMBERSHIP**

The Committee as constituted by the House on 5<sup>th</sup> October, 2010 comprises the following members:-

- |  |                         |
|--|-------------------------|
| 1. The Hon. Hussein Mohammed Abdikadir, M.P. | <b>Chairperson</b>      |
| 2. The Hon. Millie Odhiambo, M.P.            | <b>Vice-Chairperson</b> |
| 3. The Hon. Beth Mugo, EGH, M.P.             |                         |
| 4. The Hon. Chirau Ali Mwakwere, EGH, M.P.   |                         |
| 5. The Hon. Martha Wangari Karua, EGH, M.P.  |                         |
| 6. The Hon. (Prof.) Phillip Kaloki, M.P.     |                         |
| 7. The Hon. (Dr.) Kilemi Mwiria, M.P.        |                         |
| 8. The Hon. Charles Kilonzo, M.P.            |                         |
| 9. The Hon. Ekwere Ethuro, M.P.              |                         |
| 10. The Hon. Cecily Mbarire, M.P.            |                         |

11. The Hon. (Dr.) Eseli Simiyu, M.P.
12. The Hon. Moriasi Ombui, M.P.
13. The Hon. Amina Abdalla, M.P.
14. The Hon. David M. Ngugi, M.P.
15. The Hon. Ababu Namwamba, M.P.
16. The Hon. Danson Mwazo, M.P.
17. The Hon. Sophia Abdi, M.P.
18. The Hon. (Dr.) Joyce Laboso, M.P.
19. The Hon. Joseph Kasaine Nkaiserry, M.P.
20. The Hon. Charles Onyancha, M.P.
21. The Hon. Alfred Khang'ati, M.P.
22. The Hon. John Mbadi, M.P.
23. The Hon. Elizabeth Ongoro, M.P.
24. The Hon. Rev. Julius Murgor, M.P.
25. The Hon. Lucas K. Chepkitony, M.P.
26. The Hon. Benedict Fondo Gunda, M.P.
27. The Hon. Rachel Shebesh, M.P.

**Mr. Speaker Sir,**

On the 24<sup>th</sup> August, 2011 you informed the House that H.E the President had after consultation with the Rt. Hon. Prime Minister nominated Prof. Githu Muigai for approval by the National Assembly pursuant to the provisions of Article 156(2) read together with Section 31(7) of the Six Schedule to the Constitution.

You then directed that the name and Curriculum Vitae of the nominee be referred to the Constitutional Implementation Oversight Committee (CIOC) for consideration prior to approval by the House and that it tables its report on the nominee on Thursday, 25<sup>th</sup> August, 2011.

As directed, the Committee held a meeting with the nominee on Thursday 25<sup>th</sup> August, 2011 at 10.00a.m. The Nominee made submissions on his suitability to serve as the Attorney-General. The Committee deliberated on the suitability of the nominee to serve in the office he has been nominated for and found him qualified for appointment as the Attorney-General. The Committee also considered two memoranda received, one in support of the nominees and one opposing the appointment of Prof. Githu Muigai as the Attorney-General.

## Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the media for coverage of its proceedings during the vetting process.

Mr. Speaker Sir,

It is my pleasant and privilege, on behalf of the Constitutional Implementation Oversight Committee, to present and commend this report on the approval of Prof. Githu Muigai for appointment as the Attorney-General, to the House for adoption pursuant to the Communication from the Chair made on Wednesday, 24<sup>th</sup> August, 2011 and in accordance with Article 156 (2) of the Constitution.

SIGNED.....

HON. ABDIKADIR HUSSEIN MOHAMED, M.P  
CHAIRPERSON

DATE: .....26. 08. 2011.....

## BACKGROUND

1. Section 31 (7) of the Sixth Schedule to the Constitution provides that the Attorney-General shall continue in office for a period of no more than twelve months after the effective date and that subsequent appointments to that office shall be made under the constitution. The effective date being 27<sup>th</sup> August, 2010, then this means a new Attorney-General is required to be appointed on or before on 27<sup>th</sup> August, 2011.
2. On 28<sup>th</sup> January, 2011, H.E the President nominated persons to serve in the constitutional offices of Chief Justice (CJ), Attorney General (AG), Director of Public Prosecutions (DPP) and Controller of Budget. However, the matter raised issues on the nomination process as required by the Constitution. The matter ended in the High Court (*Nairobi High Court Petition No 16 of 2011*) where the process was found to be unconstitutional.
3. On 22<sup>nd</sup> February, 2011 H.E the President withdrew the list of nominees to constitutional offices and stated that he would hold consultations with the Rt. Honourable Prime Minister on the nomination of the Attorney-General.
4. In a letter dated 23<sup>rd</sup> August, 2011 to the Clerk of the National Assembly, the Permanent Secretary, Secretary to the Cabinet and Head of Public Service, informed that H.E the President in consultation with the Rt. Hon. Prime Minister had nominated Prof. Githu Muigai for appointment as the Attorney General.
5. The Honourable Speaker directed the Constitution Implementation Oversight Committee to submit its recommendations on the nomination to the House on Thursday, 25<sup>th</sup> August 2011.
6. The office of the Attorney-General is established under Article 156 of the Constitution which also sets out the functions of the holder of the office as follows:-
  - 156 (4) The Attorney-General-*
    - (a) Is the principle legal advisor to the Government;*
    - (b) Shall represent the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings; and*
    - (c) Shall perform any other functions conferred on the office by an Act of Parliament or by the President.*
  - (5) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.*

*(6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.*

*(7) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.*

7. The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice and are set out in Article 166 (3) (a) of the Constitution as follows:-

*166 (3) The Chief Justice and other judges of the Supreme Court shall be appointed from among persons who have-*

*(a) at least fifteen years experience as a superior court judge; or*

*(b) at least fifteen years experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field; or*

*(c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years.*

#### **CONSIDERATION OF PROF. GITHU MUIGAI FOR APPROVAL FOR APPOINTMENT AS ATTORNEY-GENERAL**

8. At a meeting held on 25<sup>th</sup> August, 2011, the Committee examined the nominee against the criteria set out in the Second Schedule to the *Commission on the Implementation of the Constitution Act, 2010* (Criteria for vetting/approval of nominees for appointment to public office by the National Assembly). That criterion requires nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests among other issues.

9. The Committee having considered the curriculum vitae of Prof. Githu Muigai, and having heard his submissions during the interview, made the following observations on his nomination for appointment as the Attorney General:-

i). Prof. Githu Muigai is a Kenyan citizen born on 31<sup>st</sup> January, 1960 and he holds a Doctor of Philosophy from the University of Nairobi, Masters in Laws – Columbia University Law School, New York, a Bachelor of Laws degree from the University of Nairobi and a Diploma in Law, Legal Practice – Kenya School of Law.

ii). He is a Senior Partner, Mohammed Muigai Advocates; UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance since 1988. He has been a Professor

University of Nairobi for 20 years (Currently on leave of absence); Judge to the African Court on Human Rights and People Rights (2008 - 2010); Commissioner CKRC (2000 - 2005) and Director at Longhorn Kenya Ltd, Delta Corporations Ltd, Kenya School of Professional Studies, International Legal Resources, Halifax Capital Corporation and Jurisconsults Ltd.

- iii). He is a recognized authority on business regulatory matters and in international commercial arbitration. Practice Areas Commercial Litigation and Arbitration, Constitutional and Administrative Law, Information and Communications Technology Law, Insurance and Banking Law, Investments Law.
- iv). He has been involved in several Institutional Review and Design including Kenya School of law, Council of Legal Education in Kenya, Director of Public Prosecutions Office and United Nations Development Office and, Commercial and Transactional Advisory at Kenya Pipeline Company, Kenya Petroleum Refineries Limited, Ministry of Energy, KenGen, Kenya Shell Ltd, Investments and Mortgages Bank Ltd, Pan African Insurance Company Ltd among others.
- v). He is a member; Law Society of Kenya, East African Law Society, International Commission of Jurists, Chartered Institute of Arbitrators, American Association of Trial Lawyers, Institute of Public Secretaries and International Bar Association.
- vi). He holds honours and awards as a visiting Associate Professor of Law at Widener University Law School, Delaware USA, 1995; the Law Society of Kenya Roll of Honour, 2009; Ford Foundation Fellow, 1991 – 1992; Fulbright Scholar: 1985 – 1986 (U.S.A); and the Gandhi Smarak prize for best final year student, University of Nairobi – 1984; Hamilton, Harrison and Mathews prize for best graduating student – 1984 and Kaplan & Stratton Advocates, prize for the best final year student – 1984.
- vii). He has published many papers including, The Role of Law and the Challenge of Democracy (1988), Political Jurisprudence or Neutral Principles. Another look at the Problem of Constitutional interpretation (2003) and Towards a theory of Constitutional Amendments (2004) among many others.
- viii). He has fully complied with his tax obligations to the State and has never been adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

- ix). He is not a member of any political party and has never been charged in a court of law.
10. The committee, nonetheless, wishes to bring to the attention of the House some allegation that was brought to its attention in the course of vetting Prof. Muigai. The Committee received a memorandum that Prof. Muigai, through M/s Mohammed Muigai & Co. Advocates, while acting for Kenya Medical Research Institute (KEMRI) was in contempt of court by advising KEMRI to disregard a court order from the Industrial Court (*Trade Dispute No. 142 of 2010 – Dr. Rashid Aman & Another vs The Minister for Public Health and Sanitation & 2 others*) restraining the Minister for Public Health and Sanitation, the Attorney General and the Chairman of KEMRI Board of Management from recruiting a new Chief Executive.
11. On scrutinizing the documents presented before it, the Committee noted that the Industrial Court had granted an interim order on 26<sup>th</sup> February, 2010. The orders lapsed after 14 days and the applicants did not apply for an extension. Further the Committee noted that although the firm of Mohammed Muigai & Co Advocates, in which Prof. Muigai is a Senior Partner, was on record, Prof. Muigai did not himself prosecute the matter.
12. The Committee observed that there were no orders prohibiting the recruitment of the Chief Executive Officer of KEMRI and there were no orders stopping the Minister for Public Health and Sanitation from appointing the successful candidate. Therefore, the process was not in any way in contempt of the court as had been alleged but was done in the knowledge that the interim orders had lapsed.



**RECOMMENDATIONS OF THE COMMITTEE**

13. The Committee deliberated on the suitability of Prof. Githu Muigai for appointment as the Attorney General and noted that as a practitioner, Prof. Muigai is a principled advocate, one who is courteous and respectful and that he has rightly earned the respect of his professional colleagues and further that these attributes serve him well when he is appointed to the office of the Attorney General. Consequently, the Committee makes the following unanimous recommendation:-

**THAT**, pursuant to Article 156 (2) of the Constitution, this House approves Prof. Githu Muigai for appointment as the Attorney- General.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

**MINUTES OF THE FORTY THIRD SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON THURSDAY 25<sup>TH</sup> AUGUST, 2011 AT 10.00 AM.**

---

**PRESENT:**

1. The Hon. Hussein Mohammed Abdikadir, M.P. **Chairperson**
2. The Hon. Beth Mugo, EGH, M.P.
3. The Hon. Martha Wangari Karua, EGH, M.P.
4. The Hon. Rev. Julius Murgor, M.P.
5. The Hon. John Mbadi, M.P.
6. The Hon. Joseph Kasaine Nkaiserry, M.P.
7. The Hon. (Dr.) Kilemi Mwiria, M. P.
8. The Hon. Ekwee Ethuro, M.P.
9. The Hon. Lucas K. Chepkitony, M.P.
10. The Hon. Charles Onyancha, M.P.
11. The Hon. Rachel Shebesh, M. P.
12. The Hon. Ababu Namwamba, M.P.
13. The Hon. Elizabeth Ongoro, M.P.
14. The Hon. Benedict Fondo Gunda, M.P.
15. The Hon. Charles Kilonzo, M.P.
16. The Hon. Moriasi Ombui, M.P.
17. The Hon. Amina Abdalla, M.P.
18. The Hon. David M. Ngugi, M.P.
19. The Hon. (Dr.) Eseli Simiyu, M.P.
20. The Hon. Sophia Abdi, M.P.
21. The Hon. (Dr.) Joyce Laboso, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Millie Odhiambo, M.P.
2. The Hon. Chirau Ali Mwakwere, EGH, M.P.
3. The Hon. Danson Mwazo, M.P.

**Vice-Chairperson**

**ABSENT**

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Alfred Khang'ati, M.P.
3. The Hon. (Prof.) Phillip Kaloki, M.P.

**IN ATTENDANCE**

1. Hon. Kiema Kilonzo, MP
2. Ms. Eunice Gichangi
3. Mrs. Rebecca Tonkei
4. Mr. Zakayo Mogere
5. Mrs Lucy Wanjohi
6. Mr. Oscar Namulanda
7. Ms. Caroline Kinyua

**NATIONAL ASSEMBLY**

- Member of Parliament
- Senior Legal Council
- Research Officer I
- Second Clerk Assistant
- Second Clerk Assistant
- Third Clerk Assistant
- Third Clerk Assistant

**MIN. NO. 149/2011: PRELIMINARIES**

The meeting was opened with a word of prayer from the Hon. Elizabeth Ongoro, MP.

**MIN. NO. 150/2011: VETTING OF PROF. GITHU MUIGAI FOR APPOINTMENT AS THE ATTORNEY-GENERAL**

The Chairperson welcomed the nominee to the meeting and instructed the administration of Oath. The nominee was informed that the Vetting Procedure was being done in accordance with Article 156 (2) of the Constitution. Thereafter the Chairperson asked the nominee to take the Committee through the information requested in the Second Schedule to the Commission for the Implementation of the Constitution Act, 2010.

Prof. Githu Muigai informed the Committee that he is a Kenyan citizen born in Pumwani, Nairobi on January 31<sup>st</sup>, 1960 and that:

- (i) He holds a Doctor of Philosophy from the University of Nairobi, Masters in Laws – Columbia University Law School, New York, Diploma in Law, Legal Practice – Kenya School of Law and a Bachelor of Laws degree from the University of Nairobi.
- (ii) He is a Senior Partner, Mohammed Muigai Advocates; UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance from 1988 to date. He has been a Professor, University of Nairobi for 20 years (Currently on leave absence); Judge to the African Court on Human Rights and People Rights (2008 - 2010); Commissioner CKRC (2000 - 2005) and Director at Longhorn Kenya Ltd, Delta Corporations Ltd, Kenya School of Professional Studies, International Legal Resources, Halifax Capital Corporation and Jurisconsults Ltd.
- (iii) He has been Lead Advisor, Lead Consultant, Co-lead Consultant, Key Consultant and Draftsman and, Team Leader in developing Laws to assist the Presidency and Cabinet Office Affairs, Ministry of Justice, National Cohesion and Constitutional Affairs, East African Community and several other legal reform and legislative drafting including Media Bill, 2007 and Tourism Bill, 2007.
- (iv) He has been involved in several Institutional Review and Design including Kenya School of law, Council of Legal Education in Kenya, Director of Public Prosecutions Office and United Nations Development Office and, Commercial and Transactional Advisory at Kenya Pipeline Company, Kenya Petroleum Refineries Limited, Ministry of Energy, KenGen, Kenya Shell Ltd, Investments and Mortgage Bank Ltd, Pan African Insurance Company Ltd among others.
- (v) He is a member; Law Society of Kenya, east African Law Society, International Commission of Jurists, Chartered Institute of Arbitrators, American Association of Trial Lawyers, Institute of Public Secretaries and International Bar Association.
- (vi) He holds honours and awards as a visiting Associate Professor of Law at Widener University Law School, Delaware USA, 1995; the Law Society of Kenya Roll of Honour, 2009; Ford Foundation Fellow, 1991 – 1992; Fulbright Scholar: 1985 – 1986 (U.S.A); and the Gandhi Smarak prize for best final year student, University of Nairobi – 1984;

Hamilton, Harrison and Mathews prize for best graduating student – 1984 and Kaplan & Stratton Advocates, prize for the best final year student – 1984.

- (vii) He has published many papers including, The Role of Law and the Challenge of Democracy (1988), Political Jurisprudence or Neutral Principles. Another look at the Problem of Constitutional interpretation (2003) and Towards a theory of Constitutional Amendments (2004) among many others.
- (viii) He has fully complied with his tax obligations to the State and has never been adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- (ix) He is not a member of any political party and has never been charged in a court of law.

Members also sought clarifications from Prof. Githu Muigai on the following issues:-

- (i) His opinion on the functions and performance of the office of the Attorney- General;
- (ii) His capacity to accommodate the face of Kenya in terms employment in the State Law office.
- (iii) What would he do to ensure there is no delay in generation of bills to the floor of the House by the Executive in implementation of the Constitution
- (iv) If he is related to the Kenyatta family

In response, Prof. Githu Muigai informed the Committee that he is not related to the Kenyatta family and that:-

- (i) The Attorney General is the principal legal adviser to the Government and that the current holder of the office has worked under very specific historical period and very specific underlying circumstances so he handled the cases best in his own wisdom.
- (ii) He believes in diversity and he will ensure there is complete face of Kenya in the State Law office and ensure there is no corruption in the office by improving the staff welfare.
- (iii) He believes he will bring the required change to the office to the expectations of the Kenyan people and treat the office as a Law Firm that has to perform well and win cases for government to attract more clients. If the office requires re energizing he will do the necessary in conjunction with the Commission for the Implementation of the Constitution (CIC) to make sure bills are brought to the House in and on time.
- (iv) He will perform the duties of the Attorney General with the diligence required and with impartiality required to uphold the integrity of the office. He will be representing the government as a State Party and do an honest and professional job

**MIN. NO. 151/2011: DELIBERATIONS BY THE COMMITTEE ON THE NOMINEE**

The Committee deliberated on a memoranda opposing the appointment of Prof. Muigai as the Attorney-General on the grounds that there were no orders prohibiting the recruitment of the Chief Executive Officer of KEMRI and there were no orders stopping the Minister for Public Health and Sanitation from appointing the successful candidate. Therefore, the process was not in any way in contempt of the court as had been alleged but was done in the knowledge that the interim orders had lapsed.

The Committee deliberated on the nominee and unanimously agreed that he was highly qualified for the appointment to the office. The approval for the appointment of the nominee was proposed by Hon. Rachel Shebesh, MP and seconded by Hon. Amina Abdalla, MP.

**MIN. NO. 152/2011: DELIBERATIONS ON THE REPORT OF THE SUB COMMITTEE ON THE ELECTIONS BILL, 2011**

The Committee deliberated on the sub committee's report on the Elections Bill, 2011 and upheld the following proposed amendments:-

***Clause 2***

**THAT** clause 2 of the Bill be amended by deleting the definition of "party list" and substituting therefor the following new definition-

"party list" means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 29, 35, 36, 37 and 38 .

***Clause 5***

**THAT** clause 5 of the Bill be amended-

- (a) in sub-clause (1) by deleting the word "may" appearing after the words "under this Act" and substituting therefor the word "shall";
- (b) in paragraph (a) of sub-clause (1) by inserting the words "or an election under Article 138(5) of the Constitution" after the words "general election";
- (c) by inserting the following new sub-clause after sub-clause (1)-

"(1A) Despite sub-section (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area".

(d) in sub-clause (4) by deleting the word “amendment” appearing after the words “to the Commission for” and substituting therefor the words “inclusion in the Principal Register of Voters”.

**Clause 6**

THAT clause 6 of the Bill be amended-

(a) in sub-clause (2) by inserting the words “at least” after the words “for a period of”;  
and

(b) in sub-clause (3) by inserting the words “being not less than thirty days before an election” after the words “as soon as practicable thereafter”.

**Clause 10**

THAT clause 10 of the Bill be amended by inserting the words “a valid voter’s card issued to the person in respect of that registration and” after the words “and who produces”.

**Clause 12**

THAT clause 12 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

“Subject to the Constitution, a claim under sub-section (1) shall be determined by the registration officer in the prescribed manner, and an appeal shall lie in the prescribed manner, to the Principal Magistrates Court on matters of fact and law and to the High Court on matters of law”.

**Clause 13**

THAT clause 13 of the Bill be deleted.

**Clause 14**

THAT clause 14 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “three months” appearing after the words “under this Act at least” and substituting therefor the words “forty-five days”;

(b) in sub-clause (3) by deleting the words “each political party” appearing after the words “days upon which” and substituting therefor the words “political parties”; and

(c) by inserting the following new sub-clause-

“(4) In nominating the candidates for an election under sub-section (1), a political party shall ensure that not more than two-thirds of its nominees are of the same gender”.

### ***Clause 15***

**THAT** clause 15 of the Bill be amended in sub-clause (1)-

(a) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”;  
and

(b) by inserting the following new paragraph after paragraph (a)-

“(ab) in the case of an election under Article 138(5) of the Constitution, at least twenty-one days before the date of the election;”.

### ***Clause 16***

**THAT** clause 16 of the Bill be amended by inserting the following proviso after sub-clause (1)-

“Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission”.

### ***Clause 17***

**THAT** clause 17 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause-

“(2) The notice referred to under sub-section (1) shall be in the prescribed form and shall specify-

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the parliamentary election; and

(c) the day or days on which the poll shall be taken for the election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b)".

### ***Clause 18***

**THAT** clause 18 of the Bill be amended-

(a) in sub-clause (1) by deleting the words "at least two newspapers" appearing after the words "in the Gazette and in" and substituting therefor the words "electronic and print media"; and

(b) by deleting paragraph (a) of sub-clause (2) and substituting therefor the following-

"(a) the day for the nomination of candidates for the county governor election".

### ***Clause 19***

**THAT** clause 19 of the Bill be amended by inserting the following -

"Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission".

### ***Clause 20***

**THAT** clause 20 of the Bill be amended-

(a) in sub-clause (1) by deleting the words "at least two newspapers" appearing after the words "in the Gazette and in" and substituting therefor the words "electronic and print media"; and

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause-

"(2) The notice referred to under sub-section (1) shall be in the prescribed form and shall specify-

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the county elections; and



(c) the day or days on which the poll shall be taken for the county election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b)".

**Clause 21**

**THAT** clause 21 of the Bill be amended- by deleting the words "other media" appearing after the words "in the electronic and" and substituting therefor the words "print media of national circulation".

**Clause 22**

**THAT** clause 22 of the Bill be amended in sub-clause (3) by inserting the following new paragraphs after paragraph (d)-

"(e) where the office holder seriously violates the Constitution ;

(f) in the case of gross misconduct on the part of the office holder;

(g) where the office holder is incapable, owing to physical or mental infirmity, to perform the functions of the office;

(h) where the office holder is bankrupt; and

(i) where the office holder is sentenced to a term of imprisonment of six months or more".

**Clause 23**

**THAT** clause 23 of the Bill be amended by deleting the marginal note and substituting the following new marginal note-

"Qualifications for nomination of candidates".

**Clause 24**

**THAT** clause 24 of the Bill be amended in sub-clause (1) by inserting the following new paragraph after paragraph (b)-

"(ba) holds a degree from a recognized university;"; and

**Clause 25**

**THAT** clause 25 of the Bill

### ***Clause 27***

**THAT** clause 27 of the Bill be amended-

(a) by re-numbering the existing provision as sub-clause (1); and

(b) by inserting the following new sub-clause after sub-clause (1)-

“(2) Sub-section (1) shall not apply to a fundraising for a person who is contesting an election under this Act or to a fundraising for a political party.

### ***Clause 30***

**THAT** clause 30 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “the supporters of” appearing at the beginning of the clause and substituting therefor the words “the persons who nominate”; and

(b) in sub-clause (2) by deleting the words “the supporters of” appearing at the beginning of the clause and substituting therefor the words “the persons who nominate”.

### ***Clause 32***

**THAT** clause 32 of the Bill be amended-

(a) in sub-clause (1) by deleting paragraph (a); and

(b) by deleting sub-clause (2).

### ***Clause 36***

**THAT** clause 36 of the Bill be amended by inserting the words “on the same day as the day designated for submission to the Commission by political parties of nominations of candidates for an election” after the words “submit its party list to the Commission”.

### ***Clause 37***

**THAT** sub-clause (1) of clause 37 of the Bill be amended-

(a) in paragraph (a), by deleting the words “twenty four” appearing after the words “shall include” and substituting therefor the word “twelve”;

(b) in paragraph (b), by deleting the words “thirty two” appearing after the words “shall include” and substituting therefor the word “sixteen”;

- (c) in paragraph (c), by deleting the word “four” appearing after the words “shall include” and substituting therefor the word “two”;
- (d) in paragraph (d), by deleting the word “four” appearing after the words “shall include” and substituting therefor the word “two”;
- (e) in paragraph (e) by deleting the word “twice” appearing after the words “candidates reflecting”; and
- (f) in paragraph (f) of sub-clause (1) by deleting the words “and the youth” appearing after the words “persons with disability”.

#### ***Clause 40***

**THAT** clause 40 of the Bill be amended by-

- (a) deleting the words “seven days” appearing after the words “an election within” and substituting therefor the word “immediately”; and
- (b) by deleting sub-clause (3) and substituting therefor the following new sub-clause-  
“(3) The Commission shall announce the provisional and final results in the order in which the tallying of the results in completed”.

#### ***Clause 43***

**THAT** clause 43 of the Bill be amended by inserting the following new sub-clauses after sub-clause (4)-

- “(5) A public officer who intends to contest an election under this Act shall resign from public office at least seven months before the date of the election”.
- (6) This section shall not apply to-
  - (a) the President;
  - (b) the Prime Minister;
  - (c) the Deputy President;
  - (d) a member of Parliament;
  - (e) a county governor;
  - (f) a deputy county governor;
  - (g) a member of a county assembly.

#### ***Clause 46***

**THAT** clause 46 of the Bill be amended by-

- (a) deleting sub-clause (2) and substituting therefor the following new sub-clause-  
“(2) A member of Parliament may be recalled where the member-

- (a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;
  - (b) is found, after due process of the law, to have mismanaged public resources;
  - (c) is convicted of an offence under this Act.
- (b) inserting the following new sub-clause after sub-clause (5)-
- “(6) A person who unsuccessfully contested an election under this Act shall not be eligible, directly or indirectly, to initiate a petition under this section”.

**Clause 47**

**THAT** clause 47 of the Bill be amended-

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause-
  - “(1) A recall under section 46 shall be initiated by a petition which shall be filed with the Commission and which shall be-
    - (a) in writing;
    - (b) signed by a petitioner who-
      - (i) is a voter in the constituency or county in respect of which the recall is sought; and
      - (ii) was registered to vote in the election in respect of which the recall is sought;
    - (c) accompanied by an order of the High Court issued in terms of section 46(3)”;
- (b) in paragraph (b) of sub-clause (2) by deleting all the words appearing after the words “represent at least” and substituting therefor the words “thirty per cent of the registered voters”;
- (c) in paragraph (c) of sub-clause (2) by deleting the words “prescribed fee” and substituting therefor the words “the fee prescribed for an election petition”; and
- (d) in sub-clause (3) by deleting all the words appearing after the words “shall contain the names of” and substituting therefor the words “at least fifteen per cent of the voters in more than half of the wards in the county or the constituency, as appropriate”.

***Clause 49***

**THAT** clause 49 of the Bill be amended by deleting the word “vote” appearing after the words “number of voters who” and substituting therefor the word “concur”.

***Clause 50***

**THAT** clause 50 of the Bill be amended in sub-clause (5) by deleting the words “in the electronic media and in at least one newspaper” and substituting therefor the words “in the print and electronic media”.

***Clause 51***

**THAT** clause 51 of the Bill be amended in sub-clause (1) by deleting the words “in the electronic media and in at least one newspaper” and substituting therefor the words “in the print and electronic media”.

***Clause 52***

**THAT** clause 52 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause-

“(1) Where a referendum question requires a “yes” or no “answer”, persons intending to campaign for or against the referendum question shall form such national referendum committees and constituency referendum committees as are necessary”.

***Clause 58***

**THAT** clause 58 of the Bill be amended-

- (a) in sub-clause (3) by inserting the words “a member or officer of the Commission or” at the beginning of the sub-clause; and
- (b) by deleting sub-clause (4).

***Clause 60***

**THAT** sub-clause (1) of clause 60 of the Bill be amended-

- (a) in paragraph (h) by inserting the words “where required under this Act or any other law to declare the result of an election” at the commencement of the paragraph; and

(b) in paragraph (i) by inserting the words “except in the case of a member, officer or person authorized so to do,” at the commencement of the paragraph.

**Clause 61**

**THAT** clause 61 of the Bill be amended-

- (a) in paragraph (a) of sub-clause (2) by deleting the word “voting station” appearing after the words “secrecy of the” and inserting therefor the word “ballot”;
- (b) in sub-clause (6) by deleting the word “voting” appearing after the word “secrecy of the” and substituting therefor the word “ballot”; and
- (c) in sub-clause (7) by deleting the word “voting” appearing after the word “secrecy of the” and substituting therefor the word “ballot”.

**Clause 64**

**THAT** clause 64 of the Bill be amended by deleting paragraph (a) of sub-clause (1).

**Clause 65**

**THAT** clause 65 of the Bill be amended in paragraph (c) of sub-clause (1) by inserting the word “unlawfully” after the words “in any manner”.

**Clause 68**

**THAT** clause 68 of the Bill be amended-

- (a) in sub-clause (1) by-
  - (i) deleting paragraph (c);
  - (ii) deleting paragraph (n); and
  - (iii) in paragraph (o) by deleting the word “false” appearing after the words “in nay manner whatsoever”.
  - (iv) in item (iii) of paragraph (o) by inserting the word “unlawfully” after the word “otherwise”; and
- (b) by deleting sub-clause (2).

### ***Clause 70***

**THAT** clause 70 of the Bill be amended-

(a) by inserting the following new clause after clause (1)-

“(1A) Upon the filing of an election petition in respect of an electoral area and prior to the conclusion of a by-election in respect of that electoral area where a court determines that a by-election is to be held, it shall be an offence to-

- (a) knowingly register voters in the electoral area in which the by-election is to be held;
- (b) knowingly cause the registration of voters in the electoral area in which the by-election is to be held; or
- (c) transfer voters in substantial numbers to the electoral area in which a by-election is to be held.

(b) in sub-clause (6) by deleting the word “votes” appearing after the words “for the purpose of conveying the” and substituting therefor the word “voters”.

### ***Clause 72***

**THAT** clause 72 of the Bill be deleted.

### ***Clause 74***

**THAT** clause 74 of the Bill be amended-

- (a) in sub-clause (1) by deleting the word “incites” appearing after the words “engages in or” and substituting therefor the words “knowingly aids or abets”; and
- (b) in sub-clause (5) by inserting the words “where the presidential candidate knowingly abets or aids in the election offence.

### ***Clause 75***

**THAT** clause 75 of the Bill be amended-

- (a) in sub-clause (1) by inserting the words “of such a nature as to make it impossible for an election to proceed” after the words “where election offences”; and
- (b) by deleting sub-clause (4).

### ***Clause 76***

**THAT** clause 76 of the Bill be amended-

(a) by renumbering the present provision as sub-clause (1); and

(b) by inserting the following new sub-clauses after sub-clause (1)-

“(2) An electoral dispute under sub-section (1) shall be determined within seven days of the lodging of the dispute with the Commission.

(3) Notwithstanding sub-section (2), where a dispute under sub-section (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable”.

### ***Clause 85***

**THAT** clause 85 of the Bill be amended by inserting the word “a minor” after the words “by reason of”.

### ***Clause 86***

**THAT** clause 86 of the Bill be deleted and substituted with the following new clause-

“An election court shall award the costs of and incidental to a petition and such costs shall follow the cause.

### ***Clause 108***

**THAT** clause 108 of the Bill be amended by inserting the following new sub-clause after sub-clause (2)-

“(3) A person who is convicted of an offence under this Act shall not be eligible for election or nomination in an election under this Act for a period of ten years following the date of conviction”.

### ***Clause 109***

**THAT** clause 109 of the Bill be amended by inserting the following new sub-clause after sub-clause (2)-



“(3) A member of the Commission or any person designated by the Commission shall have the power to impound or to order the impounding of any state resources that are used in an election campaign”.

**Clause 111**

**THAT** clause 111 of the Bill be amended in paragraph (z) of sub-clause (1) by inserting the words “with reasonable grounds” after the word “provide”.

**Second Schedule**

**THAT** the Second Schedule be amended by-

- (a) deleting item (e) of paragraph 6; and
- (b) deleting paragraph 9.

**MIN. NO. 153/2011: ADJOURNMENT**

The Chairperson adjourned the meeting at Fifty minutes past One O'clock

**SIGN:**.....

**(CHAIRPERSON)**

**DATE:**.....

# PROF. GITHU MUIGAI

LLB (HONS), LLM (COL) PHD, FCIARB

NAIROBI

4<sup>TH</sup> FLOOR, K - REP CENTRE

WOOD AVENUE

P.O. Box 61323 - 00200

TEL: (254)-2397401/2/3

FAX: (254)-2397404

E-Mail: [gm@nohannedmuigai.com](mailto:gm@nohannedmuigai.com)

---

## CURRICULUM VITAE

Date of Birth: 31<sup>st</sup> January 1960

Years of Practice: 25

Nationality: Kenyan

### KEY QUALIFICATIONS:

I have extensive experience in constitutional law and have been a Commissioner with the former Constitution of Kenya Review Commission where I advised on Constitution making in other jurisdictions. Additionally, I have researched and taught at the University of Nairobi for over 20 years on the following key topics: Constitutional law, Theories in Democracy /Governance and their applicability in Africa; Human Rights theory and practice; and the question of ethnicity and the social foundations of law. I was also appointed as a Judge to the African Court on Human Rights and People Rights between the years 2008 to 2010 and I am an ICC Defence Counsel.

---

### MEMBERSHIP IN PROFESSIONAL SOCIETIES AND AFFILIATIONS:

- Law Society of Kenya;
- East African Law Society;
- International Commission of Jurists;
- Chartered Institute of Arbitrators;
- American Association of Trial Lawyers;
- Institute of Public Secretaries; and
- International Bar Association.

### ACADEMIC CERTIFICATES AND DEGREES:

1. Certificate of Primary Education - 1973;
2. East African Certificate of Education -1977;
3. East African Advanced Certificate of Education -1979,

4. Bachelor of Laws. (LLB, Hons)-1984;
5. Diploma in Legal Practice (Dip Law)-1985;
6. Master of Laws (LLM)-1986;
7. Doctor of Philosophy (PhD)-2001.

#### ACADEMIC DISTINCTIONS AND AWARDS:

- i) Best Student E.A.A.C.E. Class of 1979-Meru School.
  - ii) Best Student, First Year Law Class, University of Nairobi - 1980.
  - iii) Winner, the Hamilton, Harrison and Mathews Advocates Prize for best Law Student: 1981.
  - iv) Best Student ,Third Year law Class, University of Nairobi-1984
  - v) Winner of the Hamilton, Harrison and Mathews prize for best graduating Student: 1984.
  - vi) Winner of the Kaplan & Stratton Advocates, prize for the best final year Student. 1984
  - vii) Winner of the Gandhi Smarak prize for best final year student, University of Nairobi: 1984
  - viii) Fulbright Scholar: 1985 - 1986 (U.S.A.)
  - ix) Ford Foundation Fellow: - 1991 - 1992.
  - x) Visiting Associate Professor of Law, Widener University Law School, Delaware USA. Fall Semester 1995.
- 

#### EMPLOYMENT RECORD:

- Senior Partner, Mohammed Muigai Advocates - 1988 to the present day;
  - UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance - 2008 to present day;
  - Professor, University of Nairobi - 20 years (Currently on leave of absence);
  - Judge to the African Court on Human Rights and People Rights (2008 - 2010),
  - Associate Professor, Widener University Law School, Annual Summer, International Law Institute, Nairobi, Kenya.
  - Ex-Chancellor to the Bishop, Diocese of Mount Kenya South, Church of the Province of Kenya
- 

#### EXPERIENCE:

My experience includes:-

1) Legal Reform & Legislative Drafting

- Lead Advisor to the Office of the President (Presidency and Cabinet Affairs Office) on the implementation of the New Constitution (2010);
- Lead Consultant in the provision of Technical Support and Advice on the Constitutional Reform Process for the Ministry of Justice, National Cohesion and Constitutional Affairs (ongoing);
- Lead Consultant to the Ministry of Justice, National Cohesion and Constitutional Affairs in the Development of a National Legal Aid and Awareness Strategy (ongoing);
- Co-lead Consultant, in the Investment Climate Facility for Africa (ICF) funded project for the formulation of an EAC policy on anti-counterfeiting, anti-piracy and other intellectual property rights violations and recommendation of a draft law and the necessary legal framework to apply across the EAC Partner States (2008 - 2009);
- Key Consultant, retained by the East Africa community together with Japan Telecommunications Engineering and Consulting Service (JTEC) to provide consultancy services in carrying out a detailed analysis aimed at implementing an integrated East Africa Broadband ICT Infrastructure Network (EAC-BIN) that will provide cross border connectivity between EAC Partner States and link up with global gateways through submarine cable systems. The initiative is expected to be implemented within the Connect Africa framework before end of 2010 (2009 - 2010);
- Key Consultant and Draftsman, in the review of the Kenya Communications Regulations 2007 in light of the Kenya Communications (Amendment Act) 2009. (March - July 2009);
- Team Leader & Lead Draftsman, retained by the Agricultural Sector Coordination Unit, in the EU funded Legal Consultancy on the Review of the Legal & Regulatory Framework for the Agricultural Sector (June - July 2009);
- Lead Consultant, in the GTZ funded assignment for: the 'Audit of Judgments/ Rulings and Prosecutorial Decisions on Corruption Cases in Kenya'. The key objective of this assignment was to work towards establishing an effective advocacy strategy which will include concrete legal reforms in Anti-corruption Laws with a view to ensure efficiency in prosecuting and sustaining corruption cases in our judicial system (May - August 2009);
- Key Consultant in reviewing and drafting the following Legislative Instruments:
  - o Media Bill 2007;
  - o Tourism Bill, 2007;

- Kenya Communication Regulations, 2007;
- The Gender Laws Bill – Including the Marriage Bill, The Domestic Protection Bill, The Matrimonial Property Bill and the Equal Opportunities Bill all of 2007;
- Kenya School of Law Bill, 2005;
- Penal Law Amendment Act, 2003;
- Regulations under the Sugar Act, 2005;
- Legal Expert and Draftsman, for the Transitional Charter of the Federal Republic of Somalia (2007);
- Key Consultant, review of the major rules and regulations for the Office of the Attorney General and the Council of Legal Education (2005 - 2006);
- Commissioner, to the Constitutional Review Commission where he was specially charged with the legal drafting of the Draft Constitution of the Republic of Kenya. (2000 - 2005);
- Facilitator, during the Workshop on Judicial Reform in Africa - a World Bank distance learning programme (September - December 2003.);
- Key Consultant, for a project undertaken under the auspices of United Nations Development Project in collaboration with the Attorney General's Office , where he chaired the Task Force on Laws Affecting Women – Proposals for and Draft Bill on the reform of Family Law in Kenya (1998 - 1999); and
- Key Consultant, to the Friedrich-Naumann-Stiftung Foundation, in the study of Constitutional Changes in a Multiparty Kenya (September 1992).

## 2) Dispute Resolution

I have been extensively involved in complex and high profile litigation and arbitration and have represented clients in various complex disputes, which clients include the Government of Kenya, the Communications Commission of Kenya, Safaricom Limited, Nation Media Group, Radio Africa Ltd, Longhorn Publishers, Electoral Commission of Kenya, Kenya Anti-Corruption Commission and the Kenya Airports Authority. Major cases include:

- *Andrew Omitatah Okoti & 5 Ors v the Attorney General, the Committee of Experts and the Interim Independent Elections Commission*, Constitutional Petition No 5 of 2010 (Unreported)
- *Kenya Anti-Corruption Commission v Deepak Chamaniai Kamani*, Civil Appeal No. 152 of 2009;

- *Hon Peter Anyang' Nyongo & 2 Ors v the Minister for Finance & Anor* Civil App 273 of 2007 (UR 165/2007); and
- *Macharia v Electoral Commission of Kenya & 3 Ors*, (2008) 2 KLR (EP).

### 3) Institutional Review & Design

- Facilitator, Workshop on Programme & Curriculum Development for The Advocacy Programme; Sponsored by GJLOS and Council for Legal Education: Proposed Programme & Curriculum and Rational at the Kenya school of Law (2008);
- Facilitator, Workshop on Programme & Curriculum Development for The Advocacy Programme; Sponsored by GJLOS and Council for Legal Education: Presentation on Clinical Programme, Pupilage and Mode of Examinations (2008);
- Chairman, of the Task force for Legal Education in Kenya. The task force wrote a report on the development of a policy and legal framework for legal education. The task Force also made recommendations as to the structure, role and functions of the Council of Legal Education in Kenya (2005);
- Key Consultant, to the Director of Public Prosecutions' Office in the programme involving Developing a Prosecutors Training Curriculum & Manual, Code of Conduct and National Prosecution Policy (2005 - 2006);
- Consultant, in conjunction with the Tanzanian Law Society and UNDP in developing policy proposals for the establishment and institutional design of Tanzania school of Law (2002); and
- Key Consultant, in the study undertaken jointly by the judiciary and UNDP regarding Case Flow and Case load Management in Kenyan Courts (1998).

### 4) Commercial and Transactional Advisory

- Legal Advisor, to Kenya Pipeline Company (KPC) over various issues arising from the operation of Oil Marketer Account at its facilities, following the placing into receivership of Triton Petroleum Company Ltd, 2009;
- Legal Advisor, to KPC, Kenya Petroleum Refineries Ltd (KPRL) and the Ministry of Energy over disputes over tariffs in the petroleum sub-sector, 2009;
- Legal Advisor, to Kenya Electricity Generating Company Limited (KenGen) in a multilateral loan transaction of US\$ 40,800,000.00 from the European Union Bank, 2005 - to date;
- Legal Advisor, on a project finance assignment to the Kenya Electricity Generating Company on a Euro 30,000,000 million facility from the French Development Agency (AFD), 2007 - to date;

- Legal Advisor, Ecobank Transnational Incorporated on the 75% share Acquisition in EABS Bank Limited for US\$ 10 million, 2007 - 2008;
- Legal Advisor, in the multi asset acquisition and transfer of three local Air Service Operators to Executive Turbines Holdings Limited of South Africa as purchaser's counsel 2007;
- Legal Advisor, to the Capital Markets Authority in their investigation into insider trading at Uchumi Supermarkets in Kenya, 2007;
- Legal Advisor to Safaricom Limited on public enquiries before the Parliamentary Investment Committee, 2007;
- Legal Advisor, in the Public Listing of Safaricom Limited - Advising on the issuer of prospectus by Safaricom vis-à-vis the Government 2007 -2008;
- Legal Advisor, to the Communications Commission of Kenya on the complex and multiple disputes that arose from the Licensing process of the third GSM service provider - the legality of modification of a license for Econet Wireless Kenya Limited 2006-2007;
- Legal Advisor, to the Kenya Airports Authority in a Construction Contract with China Wi Yu Company Limited for the expansion of Jomo Kenyatta International Airport 2006 - 2008;
- Legal Advisor, to Barclays Bank of Kenya and Standard Chartered Bank Limited on strategies of resolving problems associated with non performing loan portfolios and recovery thereof, 2005-2006;
- Legal Advisor, to Kenya Electricity Generating Company Limited (KenGen) in the months preceding it's Initial Public Offer ("IPO") on aspects of outstanding claims by and against the company by various suppliers, the prospects of such claims and recommendations on how to conclude such claims. These legal opinions were necessary to enable the company to rationalise its financial statements before the IPO and involved conducting detailed due diligence analysis into the Company affairs, 2005;
- Legal Advisor, to Telkom Kenya Limited in a first of its kind Voice Termination Dispute and network trespass brought by a Licensed Communications Commission of Kenya ISP Provider. The suit plaintiff sought to use the Company's network to provide Voice over Internet Protocol Call services without the company's authorization or knowledge, 2006;
- Legal Advisor to AIG Insurance Company Limited in the merger and acquisition involving ALICO Kenya Limited. The transaction involved the sale of the general

insurance business of ALICO Kenya Limited to AIG Kenya Limited and the sale of shares in ALICO Kenya Limited to CFC Group Limited, 2004;

- Legal Advisor, to Kenya Shell Limited on issues relating to the operations of multi national oil companies within the regulatory framework of Kenyan law by providing legal advice on compliance requirements, 2004;
- Legal Advisor, to Kenya Shell Limited on issues relating to the operations of multi national oil companies within the regulatory framework of Kenyan law by providing legal advice on compliance requirements, 2004;
- Legal Advisor, to Investments and Mortgages Bank of Kenya Limited in a constitutional reference and a judicial review application regarding the worker's rights after the acquisition of Biashara Bank Limited by I&M Bank Limited, 2003;
- Legal Advisor, to Pan African Insurance Company Limited on the rights issue and the preparation of relevant transaction documents in respect of the sale of shares in Pan African Insurance Limited to Africa Life of South Africa and the preparation of Management Contract between the two companies, 2002;
- Legal Advisor, on the restructuring of the Kenya Commercial Bank Staff Pension Scheme by drafting the relevant scheme documentation and supervised the reconstitution of the investment portfolio as part of the wider scheme to privatize the Kenya Commercial Bank Limited, 2002;
- Legal Advisor, to Kenya Airports Authority (K.A.A.) in a dispute with Kenya Pipeline Company Limited over fuel uplift levy between the years 2002 to 2004. Undertook the arbitration, formulation and prosecution of KAA's claim and drafted a comprehensive contract for future use by the parties, 2002-2004;
- Legal Advisor, to the Deposit Protection Fund and the Ministry of Finance on restructuring of various collapsed financial institutions. The assignment involved extensive due diligence into the affairs of the institutions concerned including Dama Bank Ltd and Finance Bank Ltd amongst others, 2001-2004;
- Legal Advisor to East African Development Bank in relation to the recovery of USD 15 million in a commercial Arbitration in Tanzania, 2000

##### 5) Papers

- *"The Rule of Law and the Challenge of Democracy"*: (A paper presented at the International Commission of Jurists, Kenya Section seminar on Law and Society Nyeri February 1988);



- *"Constitutional Government and Human Rights in Kenya"* (A paper presented at a conference on Constitutional Government and Human Rights in Africa , Maseru, Lesotho, October 1989);
- *"International Relations and Democratic Pluralism"* (A paper presented at a conference on Democracy in Africa, Dakar, Senegal, November 1990);
- *"From the Governor to the Imperial President : Constitutional Transformation and the Crises of Governance in Kenya "*(A paper presented at the Ford Foundation workshop on Governance in East Africa - Nairobi, April 1992);
- *"Amending the Constitution : The Lessons from History"* (A paper presented at an International Commission of Jurists conference on Freedom of Association, Expression and Assembly, Mombasa. May 1992);
- *"Constitutional Amendment and the Constitutional Amendment process in Kenya 1964-1992. A Study in the Politics of the Constitution"* (PhD Thesis, University of Nairobi 2001):
- *"Constitutional Government and Human Rights in Kenya"* in, 1990 *University of Lesotho Law Journal*;
- *"The Judiciary in Kenya and the search for a Philosophy of Law"* in 1991 *Journal of Human Rights Law and Practice*;
- *"Ethnicity and the renewal of Competitive Politics in Kenya"* in Harvey Glickman (editor) *Ethnic Conflict and Democratization in Africa: (Ass Press 1995)*;
- *"Legal Constitutional Reforms to Facilitate Multi-Party Democracy: The case of Kenya"*, *Law and the Struggle for Democracy in East Africa*, Onyango, Kibwana and Peter EDS, Clarion Press 1996;
- *"Visits under International Humanitarian Law"* (a paper presented at the International workshop on Visiting Mechanisms - International Law. Verification, Monitoring and Prevention, 23<sup>rd</sup> to 24<sup>th</sup> September 1999, Geneva);
- *"The Challenge of Legal Education in Kenya in the 21<sup>st</sup> Century"* (a paper presented at the ICJ symposium on the proposed reforms of the Judiciary, 19<sup>th</sup> August 1999)
- *"Jomo Kenyatta and the Rise of the Ethno-nationalist State in Kenya"* in Bruce Berman(ED) *Ethnicity and Democracy in Africa* (Ohio University Press, 2003);

- *“Political Jurisprudence or Neutral Principles. Another look at the Problem of Constitutional interpretation”* East Africa Law Journal, 2003; and
  - *“Towards a theory of Constitutional Amendments”* East African Journal of Human Rights, 2004.
- 

Certification: I, the undersigned certify that these data correctly describe me my qualifications and my experience.

GITHU MUIGAI