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KENYA NATIONAL ASSEMBLY

Tabled on 7/3/2012
by Chair, ~~to~~ ^{Local}
Authorities Committee
at 2 (Afternoon)

Speaker	_____
Deputy Speaker	_____
Clerk N.A.	_____
D/Clerk	_____
P. C. A.	_____

Opaid

TENTH PARLIAMENT – FOURTH SESSION

DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

REPORT OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES ON
THE PRESIDENTIAL MEMORANDUM ON THE COUNTY GOVERNMENTS BILL,
2012

CLERK'S CHAMBERS
NATIONAL ASSMBLY
NAIROBI

7TH MARCH, 2012

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PREFACE

The Departmental Committee on Local Authorities (herein after referred to as ‘the Committee’) was established pursuant to provisions of Standing Order No. 198 and mandated to among other things, investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments. The Committee is also mandated to study and review all legislation referred to it and make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee is comprised of the following Members:-

1. Hon. David Ngugi, M.P. - **Chairman**
2. Hon. Mahamud Sirat, M.P – **Vice Chairman**
3. Hon. Shakeel Shabir, M.P.
4. Hon. Fahim Twaha, M.P
5. Hon. Joshua Kutuny, M.P.
6. Hon. Gideon Mung’aro, M.P.
7. Hon. Mwalimu Mwahima, M.P.
8. Hon. Gideon Konchella, M.P.
9. Hon. Ali Hassan Joho, M.P.
10. Hon. Zakayo Cheruiyot, MP
11. Hon. Oyugi Magwanga, MP

The County Governments Bill was published by the Deputy Prime Minister and Minister for Local Government on 18th January, 2012. It was introduced formally in parliament through a first reading on 14th February, 2012 after which it was referred to the Committee for scrutiny. Debate on the Bill continued and the National Assembly passed the Bill on the night of Thursday, 23rd February, 2012 incorporating

in it a number of amendments meant to enrich the Bill. It is important to note at this juncture that the National Assembly sat late into the night due to the Constitutional timelines which required the Bill to be enacted by 27th February, 2012.

The Bill was then forwarded to the President for assent but the President while exercising powers given to him by article 46 (4) of the former Constitution refused to assent to the Bill and submitted a memorandum to the Speaker of the National Assembly indicating two clauses that he wanted reconsidered by the National Assembly.

The Speaker after receiving the President's memorandum referred it to the Departmental Committee on Local Authorities by direction in the House on Wednesday, 29th March and gave the Committee seven days to consider the memorandum and submit a report to the House.

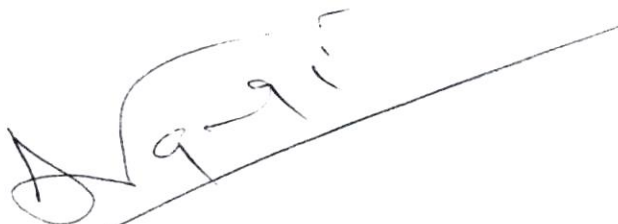
The Committee after receiving the memorandum considered the issue of lapse of time as had been raised in the House (article 261 and the fifth schedule) when the memorandum was laid. The Committee thereafter invited and met with the following stakeholders in parliament on Monday, 5th March, 2012 to discuss with them and get their opinion on the contents of the President's memorandum:

- a) The Commission for the Implementation of the Constitution (CIC)
- b) The Minister of State for Provincial Administration and Internal Security
- c) The Minister for justice, National Cohesion and Integration Commission
- d) The Deputy Prime Minister and Minister for Local Government
- e) The Permanent Secretary, Ministry of Local Government

My sincere thanks go to the Committee Members for the immense efforts they put in this work, sometimes working through lunch time and late in to the evening and the above stakeholders for appearing before the committee despite the short notice to them.

The Committee thereafter analyzed the views from the stakeholders and resolved to recommend to the House acceptance of the memorandum from H.E. the President subject to incorporation of some amendments which have been discussed and agreed upon by the stakeholders.

This report therefore contains amendments proposed by Committee Members to the President's Memorandum having considered and incorporated views from the abovementioned stakeholders. It is my pleasure therefore, to present this report to the House and commend it for adoption.

A handwritten signature in black ink, appearing to read 'D. Ngugi', is written over a diagonal line that extends from the bottom left towards the top right.

HON. DAVID NGUGI, MP,
CHAIRMAN, DEPARTMENTAL COMMITTEE ON LOCAL
AUTHORITIES

CONSIDERATION OF LAPSE OF TIME:

Mr. Speaker,

The Committee considered the issue of lapse of time (18 months) provided by the Constitution (the fifth schedule) within which Parliament should have enacted the laws required to bring into effect chapter 11 of the Constitution in order to determine whether the Committee acting on behalf of the House had capacity to consider the president's memorandum out of time after the Speaker had referred it to the Committee.

In considering the above, the Committee noted that the Executive had in all intents and purposes violated article 261 (4) which required that the Attorney General in consultation with the Commission for the Implementation of the Constitution prepare the relevant Bills and table them before parliament as soon as reasonably practicable for parliament to enact the legislation within the period specified. The Committee wishes to remind the House that the County Governments Bill was published on 18th January, 2012 while parliament resumed its sessions on 14th February, 2012 and therefore only had 13 calendar days to consider the three devolution Bills including involving the public in their scrutiny before 27th February, 2012.

The Committee aware of the deadline therefore, resolved to scrutinize the Bills even before they had been referred to it and before parliament had resumed sessions on 14th February and thereafter held a workshop with stakeholders in order to receive the views of the public from 17th to 18th February, 2012. The Committee submitted its report on the scrutiny of the three devolution Bills to parliament on Wednesday, 22nd February, 2012. It is also important to note that Parliament extended its sitting hours on Thursday, 23rd in order to conclude debate on the three devolution Bills and

therefore finalized the three Bills exhaustively before the 27th February deadline despite the fact that the Executive had delayed publication of the Bills.

Be that as it may, the Committee considered the Constitutional provisions regarding time specifications before resolving to continue with consideration of the President's memorandum.

The Committee considered the import of Article 261(1) of the Constitution as read with article 261 (3)(b) which was referred to by Members:

Article 261 (1) reads thus: *"Parliament shall enact any legislation required by this Constitution to be enacted to govern a particular matter within the period specified in the Fifth Schedule, commencing on the effective date"* while Article 261 (3)(b) provides thus: *"The power of the National Assembly contemplated under clause (2) may be exercised only in exceptional circumstances to be certified by the Speaker of the National Assembly."*

The Committee noted that the above provisions require Parliament to enact the legislations envisaged within the timeline provided in the sixth schedule and to seek extension of the time if exceptional circumstances arise that may prevent parliament from failing to meet the deadline. The Committee is also aware of the fact that under the former constitution, parliament consisted of the president and the national assembly and therefore though the National Assembly had passed the law, the President who is part of the National Assembly had not assented to it meaning parliament had failed to enact the law within the provided timelines.

The question that the Committee considered was what the consequences of failing to meet the constitutional deadline are. Can the National Assembly seek extension of time after the time provided has lapsed or can the National Assembly proceed and

discharge its duty even after expiry of time considering that there is no express provision in Article 261 barring parliament from continuing with its work even after the expiry of the constitutional deadline.

The Constitution in Article 261 (6) provides that a consequence of failure by parliament to enact the required laws within the specified time is recourse in court by any person in which case the court as **at the first instance** could direct parliament to enact the required legislation within a given time failure to which the Chief Justice shall advise the President to dissolve parliament. This article implies that parliament cannot be stopped from performing its duty even if it is out of time and even if a person went to petition the High court, the first order would be to compel parliament to undertake its legislative duty.

The Committee therefore resolved to continue with its work as directed by the Speaker on 29th March and went ahead to consider the President's memorandum which has resulted in this report.

PROPOSALS FROM STAKEHOLDERS

1. Commission for the Implementation of the Constitution

Clause 31(1)(k): Functions of the County Governor

The Chairman of the CIC stated as follows:

- That there is no County equivalent of the National Security Council and that CIC had earlier on recommended its deletion but somehow the clause was retained in subsequent publications. That on the devolution Bills, the CIC did not have a post-cabinet review and that is where the lapse may have occurred.
- That the Police Services under the 4th Schedule is a function of national government and in the Counties, there will be two coordinators of police, a representative of the AP and the Regular police which are under the Inspector General which is an independent office and cannot be under the County Government.
- That article 6 of the Constitution provides that the two levels of government are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. That the Constitution envisages that there are functions of the national government which will be performed at the county level and this will require mutual consultations and cooperation.
- That the provision of the law that offends the constitution is the referral to the equivalent of the national Security Council at the county level, which body does not exist.
- That the National Security Council Act has not come to parliament yet and there is therefore need to have a clause in it making it mandatory for National government to consult the Governor-
- That the Committee should accept the president's proposal to delete and amend by saying "governor shall consult national government in accordance with article 6".

Clause 54: Further structures of decentralization and the Provincial Administration

- That the fourth schedule allocates functions to county governments and national governments.

- That article 235 of the constitution gives the respective governments powers to employ their own staff and the National government cannot employ staff on behalf of county governments.
- That section 17 of the sixth schedule requires that National Government to restructure the provincial administration to accord with and respect the system of devolved government established under this Constitution and therefore there should be no fear that the provincial administration will interfere with the role of the county governments.
- That the Transitional Authority will identify the functions to be undertaken by the county governments and that of the national governments including how to transfer functions from one level of government to the other.

2. Minister of state for Provincial Administration and Internal Security

Clause 31(1)(k): Functions of the County Governor

The Minister for Internal Security stated as follows:

- That there must have been an oversight in cabinet to allow clause 31 (1) (k) in the Bill because after passing the National Police Service Act, the governor only chairs the County Policing Authority and not other police services. That when the Bill came to parliament, the minister was not in the country and therefore the issue was overlooked but the Constitution identifies the functions that can be given to the national and county governments.
- That most Members of Parliament supported the Constitution enactment and to give the provincial administration duties afterwards is going against the constitution and parliament should first of all amend the constitution.
- That there is need to review the role of the Inspector General of Police in the National Police Authority Act and see if there is any role regarding security that the Governor can be accorded without violating the constitution.

Clause 54: Further structures of decentralization and the Provincial Administration

- That the Ministry is working on a draft law and intends to organize a stakeholder's workshop very soon to reach consensus and that the restructuring will reflect the provisions of the constitution on respect for devolved governments.
- The Constitution talks of National government restructuring the provincial administration and not devolving the same. However, question is whether the current government can restructure the provincial administration since what is presently in Kenya is the central government and what is designated the national and county government will only come in after the next general elections.
- The minister informed the Committee that the Bill to restructure the provincial administration will be subjected to a wide spectrum of stakeholders including the Committee on Local Authorities and the CIC and that should be within a month's time and therefore this fear should not arise. That further to the

above, schedule 4 of the Constitution is quite clear on the functions of both levels of government and none can usurp the role of the other.

- That the Public Financial Management Bill has a consultative framework (intergovernmental body) that allows officers of the County government to work with officers of the national government.
- That there is need for Members of parliament to ensure the Constitution is respected even as they undertake their duty. The Minister stated that he would not be opposed to any amendment of the president's memorandum so long as it reflected the spirit of article 6 (2) of the Constitution.

3. Permanent Secretary Ministry of Local Government

Clause 31(1)(k): Functions of the County Governor

- (i) (K) of Clause 31(I)(K) had been picked from the National Police Service Act which provides for a body on security (County Policing Authority) chaired by the Governor and the deletion of the clause as proposed by the President would not be fatal.
- (ii) The 4th Schedule of the constitution places security functions under the national government and this cannot be abrogated without concurrence of the national government;
- (iii) Article 6 and 189 of the constitution requires consultations and cooperation between the national and county governments which would also apply upon deletion 31(I)(K);

Clause 54: Provincial Administration

- (i) The amendment proposes to restructure the so called provincial administration which contravenes section 17 of the sixth schedule to the constitution.
- (ii) That the article generated a lot of heat during the development of the constitution and the compromise position was to make a provision for restructuring the provincial administration within 5 years.

4. Minister for Justice, National Cohesion and Constitutional Affairs

The Minister admitted that he had input in the presidential memorandum and told the Committee the following with respect to the two clauses:

Clause 31(I)(K)

- (i) In as much as he supported the presidential arguments for deletion of the clause he was of the view that a consultative forum on security issues be created at county level in the County Governments legislation which would be chaired by the Governor.

Clause 54

- (ii) He opined that not all governors will be from the same party as the president and they may on certain occasions be competitors. He therefore argued that it was wrong to make a cadre of provincial administrators report to the governor yet they are also supposed to serve the national government headed by the president. He pointed out that the process of restructuring should be consultative and should not lead to a parallel government at the county in form of provincial administration. He also opined that the next president should be allowed to take part in its restructuring so that there is a link between the two levels of government as provided for in section 17 of the sixth schedule.
- (iii) He also stressed that the county governments should be allowed to legislate and make own decisions especially on decentralized units and other matters as expressed in Article 185(2) of the constitution. He advised the committee to borrow examples from the USA and Switzerland which have fully implemented devolution.

RECOMMENDATIONS BY THE COMMITTEE

RE: THE COUNTY GOVERNMENTS BILL, 2012 - NOTICE OF PROPOSED AMENDMENTS DURING RE-CONSIDERATION OF THE BILL AND THE PRESIDENT'S MEMORANDUM AT THE COMMITTEE STAGE

NOTICE is given that the President having submitted a memorandum to the Speaker proposing amendments to the County Governments Bill, 2012 in terms of section 46(4) of the Constitution, I intend, pursuant to section 46 (5) (a) of the Constitution, to move the following amendments to the Bill during its reconsideration by the National Assembly-

Clause 54

THAT the amendment proposed to clause 54 of the Bill be amended by re-numbering the proposed clause 54 as sub clause (1) and inserting the following new sub clauses-

(2) There is established for every county a forum to be known as the county intergovernmental forum which shall be chaired by the governor or in his or her absence, the deputy governor, or in the absence of both, a member of the county executive committee designated by the governor.

(3) The county intergovernmental forum shall consist of-

(a) the heads of all departments of the National Government rendering services in the county; and

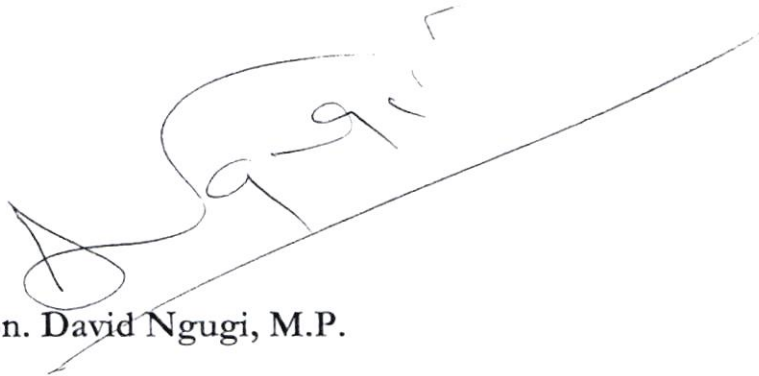
(b) the county executive committee members or their nominees appointed by them in writing.

(4) The intergovernmental forum shall pursuant to the Fourth Schedule (Articles 185(2), 186(1), 187(2)) of the Constitution be responsible for-

- (a) harmonization of services rendered in the county;
- (b) coordination of development activities in the county;
- (c) coordination of intergovernmental functions; and
- (d) such other functions as may be provided for by or under any law.

(5) The governor shall chair such other committee or other forum as may be established at the county level pursuant to Articles 6(2), 189 (2) and 239 (5) of the Constitution

(6) The governor shall receive regular briefings from the county security committee referred to under section 41 (1)(d) of the National Police Service Act, 2011.

A handwritten signature in black ink, appearing to read 'David Ngugi', is written over a diagonal line that extends from the bottom left towards the top right of the page.

Hon. David Ngugi, M.P.

Chairperson, Departmental Committee on Local Authorities

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL
COMMITTEE ON LOCAL AUTHORITIES HELD ON WEDNESDAY 7TH
MARCH 2012, IN THE MEMBER'S BAR, MAIN PARLIAMENT
BUILDINGS AT 10.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Mohamud Sirat, MP - Vice-Chairman
Hon. Oyugi Magwanga, MP
Hon. Shakeel Shabbir, MP
Hon. Joshua Kutuny, MP
Hon. Zakayo Cheruiyot, MP
Hon. Masoud Mwahima, MP

ABSENT WITH APOLOGY

Hon. Ali Hassan Joho, MP
Hon. Fahim Twaha, MP
Hon. Gideon Mung'aro, MP
Hon. Gideon Konchella, MP

IN ATTENDANCE

Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant
Mr. Shadrack Makokha - Parliamentary Intern

MIN. NO./SC2/224/2012: - **Preliminaries**

The Chairman called the meeting to order at 10.25 am and opened the meeting with a word of prayer.

MIN. NO./SC2/225/2012: - **Adoption of Agenda**

Members adopted the agenda of the meeting being:

- i) Adoption of the report of the Committee on the President's memorandum

MIN. NO./SC2/225/2012: - **Adoption of Committee Report**

The Chairman took the Members through the report of the Committee explaining the import of the proposed amendments.

Members then adopted the report of the Committee noting the reservations of one Member, Hon. Shakeel Shabbir, MP who insisted that the report contain an additional sub-clause stating as follows:

The Senate shall represent the County governments in the restructuring process to be brought into effect by the National government as envisaged in section 17 of the sixth schedule.

MIN. NO./SC2/226/2012: - Any Other Business and Adjournment

There being no other business to transact, the Chairman adjourned the meeting at 1.15 pm.

SIGNATURE.....
(Chairperson)

DATE 7/03/2012

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 5TH MARCH 2012 (with Minister for Local Government), IN THE MAIN RESTAURANT, MAIN PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Mohamud Sirat, MP - Vice-Chairman
Hon. Oyugi Magwanga, MP
Hon. Shakeel Shabbir, MP
Hon. Joshua Kutuny, MP

ABSENT WITH APOLOGY

Hon. Masoud Mwahima, MP
Hon. Ali Hassan Joho, MP
Hon. Zakayo Cheruiyot, MP
Hon. Fahim Twaha, MP
Hon. Gideon Mung'aro, MP
Hon. Gideon Konchella, MP

IN ATTENDANCE

Mr. Musalia Mudavadi, MP - Deputy PM & Minister for Local Government
Mr. Edward Libendi - Clerk Assistant
Mr. Shadrack Makokha - Parliamentary Intern

MIN. NO./SC2/221/2012: - **Preliminaries**

The Chairman called the meeting to order at 10.25 am and opened the meeting with a word of prayer. He welcomed Minister for Local Government to the meeting informing him that the meeting was called to consult with the Minister on the appropriate action to take regarding the President's memorandum on the County Governments Bill and that the Committee did not want antagonism but to find an agreeable solution.

MIN. NO./SC2/222/2012:

- Opinion of the Minister

The Chairman briefed the Minister on the deliberations the Committee had held with the Ministers for Internal Security, Minister for Justice, the CIC Chair and the Permanent Secretary in the Ministry of Local Government. The Chairman informed him that after the consultations, the Committee had resolved as follows:

Clause 31(1)(k): Functions of the County Governor

- (i) To accept deletion of the clause by the President and replace it with a clause that will require the Governor to chair the County Policing Authority established in the National Police Service Act and to receive regular briefs from the County Security Committee.

Clause 54

That the Committee had resolved to recommend acceptance of the President's proposal but to add another sub-clause which proposed establishment of an intergovernmental forum bringing together the public servants working for the national government in the county governments and the executive committee members, which forum shall be chaired by the Governor.

Response by the Minister

The Minister agreed in principle with the Committee and requested that the Committee proceed and draft the amendments and share the contents with the Minister for concurrence before tabling in the House.

MIN. NO./SC2/223/2012:

- Any Other Business and Adjournment

There being no other business to transact, the Chairman adjourned the meeting at 11.15 am.

SIGNATURE.....


(Chairperson)

DATE

7/03/2012

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 5TH MARCH 2012 (with PS Local Government and Minister for Justice), IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Mohamud Sirat, MP - Vice-Chairman
Hon. Oyugi Magwanga, MP
Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

Hon. Masoud Mwachima, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Joshua Kutuny, MP
Hon. Zakayo Cheruiyot, MP
Hon. Fahim Twaha, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Mr. Mutula Kilonzo, MP - Minister for Justice and Constitutional Affairs
Mr. Gichira Kibara - Permanent Secretary, Ministry of Justice
Prof. Karega Mutahi - Permanent Secretary, Ministry of Local Government
Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant
Mr. Shadrack Makokha - Parliamentary Intern

MIN. NO./SC2/216/2012: - **Preliminaries**

The Chairman called the meeting to order at 2.45 pm and opened the meeting with a word of prayer. He welcomed the Permanent Secretary, Ministry of Local Government and the Minister for Justice, National Cohesion and Constitutional Affairs to the meeting.

MIN. NO./SC2/217/2012:

- **Adoption of agenda**

Members adopted the days agenda which was to meet with the following stakeholders to get their views on the Presidential Memorandum on the County Governments Bill, 2012:

- a) Meeting with Permanent Secretary in the Ministry of Local Government
- b) Meeting with Minister for Justice, National Cohesion and Constitutional Affairs

MIN. NO./SC2/218/2012:

- **Opinion of Prof. Kareha Mutahi, PS
Local Government**

The Permanent Secretary told the Committee the following:

Clause 31(1)(k): Functions of the County Governor

- (i) (K) of Clause 31(I)(K) had been picked from the National Police Service Act which provides for a body on security (County Policing Authority) chaired by the Governor and the deletion of the clause as proposed by the President would not be fatal.
- (ii) The 4th Schedule of the constitution places security functions under the national government and this cannot be abrogated without concurrence of the national government;
- (iii) Article 6 and 189 of the constitution requires consultations and cooperation between the national and county governments which would also apply upon deletion 31(I)(K);

Clause 54: Provincial Administration

- (i) The amendment proposes to restructure the so called provincial administration which contravenes section 17 of the sixth schedule to the constitution.
- (ii) That the article generated a lot of heat during the development of the constitution and the compromise position was to make a provision for restructuring the provincial administration within 5 years.

MIN. NO./SC2/219/2012:

- **Opinion of Mr. Mutula Kilonzo,
Minister for Justice and Constitutional
Affairs**

The Minister admitted that he had input in the presidential memorandum and told the Committee the following with respect to the two clauses:

Clause 31(I)(K)

(i) In as much as he supported the presidential arguments for deletion of the clause he was of the view that a consultative forum on security issues be created at county level in the County Governments legislation which would be chaired by the Governor.

Clause 54

(ii) Concurred with the President

(iii) He began by stating that devolution is not represented by provincial administration which currently has no legal status. He opined that not all governors will be from the same party as the president and they may on certain occasions be competitors. He therefore argued that it was wrong to make a cadre of provincial administrators report to the governor yet they are also supposed to serve the national government headed by the president. He pointed out that the process of restructuring should be consultative and should not lead to a parallel government at the county in form of provincial administration. He also opined that the next president should be allowed to take part in its restructuring so that there is a link between the two levels of government as provided for in section 17 of the sixth schedule.

(iv) He also stressed that the county governments should be allowed to legislate and make own decisions especially on decentralized units and other matters as expressed in Article 185(2) of the constitution. He advised the committee to borrow examples from the USA and Switzerland which have fully implemented devolution.

MIN. NO./SC2/220/2012: - **Any Other Business and Adjournment**

There being no other business to transact, the Chairman adjourned the meeting at 5.00 pm.

SIGNATURE.....

(Chairperson)

DATE

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 5TH MARCH 2012 (with Minister Internal Security), IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 12.45 PM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Mohamud Sirat, MP - Vice-Chairman
Hon. Oyugi Magwanga, MP
Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

Hon. Masoud Mwachima, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Joshua Kutuny, MP
Hon. Zakayo Cheruiyot, MP
Hon. Fahim Twaha, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Prof. George Saitoti, MP - Minister for Provincial Administration and Internal Security
Mr. Mutea Iringo - Ag. Permanent Secretary, Internal Security & Provincial Administration
Mr. Okioma - Director, Provincial Administration
Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant
Mr. Shadrack Makokha - Parliamentary Intern

MIN. NO./SC2/212/2012: - **Preliminaries**

The Chairman called the meeting to order at 12.45 pm and opened the meeting with a word of prayer. He welcomed the Minister for Internal Security and his team of officers and thereafter introduced the committee members present.

MIN. NO./SC2/214/2012:

- Opinion of Minister on the
President's Memorandum

Clause 31(1)(k): Functions of the County Governor

The Minister for Internal Security stated as follows:

- That there must have been an oversight in cabinet to allow clause 31 (1) (k) in the Bill because after passing the National Police Service Act, the governor only chairs the County Policing Authority and not other police services. That when the Bill came to parliament, the minister was not in the country and therefore the issue was overlooked but the Constitution identifies the functions that can be given to the national and county governments.
- That most Members of Parliament supported the Constitution enactment and to give the provincial administration duties afterwards is going against the constitution and parliament should first of all amend the constitution.
- That there is need to review the role of the Inspector General of Police in the National Police Authority Act and see if there is any role regarding security that the Governor can be accorded without violating the constitution.

Clause 54: Further structures of decentralization and the Provincial Administration

The Committee enquired from the Minister what the government intended to do with the provincial administration and how this arm will operate after the next general elections and the Minister responded as follows:

- That the Ministry is working on a draft law and intends to organize a stakeholder's workshop very soon to reach consensus and that the restructuring will reflect the provisions of the constitution on respect for devolved governments.
- The Constitution talks of National government restructuring the provincial administration and not devolving the same. However, question is whether the current government can restructure the provincial administration since what is presently in Kenya is the central government and what is designated the national and county government will only come in after the next general elections.

Members also wanted to know whether through the provincial administration system, the National Executive intended to colonize the county governments indirectly

The minister informed the Committee that the Bill to restructure the provincial administration will be subjected to a wide spectrum of stakeholders including the Committee on Local Authorities and the CIC and that should be within a month's time and therefore this fear should not arise. That further to the above, schedule 4 of the Constitution is quite clear on the functions of both levels of government and none can usurp the role of the other.

That the Public Financial Management Bill has a consultative framework (intergovernmental body) that allows officers of the County government to work with officers of the national government.

That there is need for Members of parliament to ensure the Constitution is respected even as they undertake their duty. The Minister stated that he would not be opposed to any amendment of the president's memorandum so long as it reflected the spirit of article 6 (2) of the Constitution.

The Minister conceded that he had provided input in the crafting of the presidential memorandum and therefore would not wish it amended but would still be open to any amendment that respected the constitution.

MIN. NO./SC2/215/2012: - Any Other Business and Adjournment

There being no other business to transact, the Chairman adjourned the meeting at 1.30 pm.

SIGNATURE.....

(Chairperson)

DATE

MINUTES OF THE 47TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 5TH MARCH 2012 (with CIC), IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Mohamud Sirat, MP - Vice-Chairman
Hon. Oyugi Magwanga, MP
Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

Hon. Masoud Mwachima, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Joshua Kutuny, MP
Hon. Zakayo Cheruiyot, MP
Hon. Fahim Twaha, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Mr. Charles Nyachae - Chairman, CIC
Prof. Peter Wanyande - Member, CIC
Dr. Florence Omoosa - Member, CIC
Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant
Mr. Shadrack Makokha - Parliamentary Intern

MIN. NO./SC2/208/2012: - **Preliminaries**

The Chairman called the meeting to order at 11.30 am and opened the meeting with a word of prayer. He welcomed the Chairman and members of the Commission on Implementation of the Constitution (CIC), introduced the committee members present and thereafter requested the CIC chairman to introduce his team .

MIN. NO./SC2/209/2012:

- Adoption of Agenda

Members adopted the day's agenda which included meeting with various stakeholders to understand from them the import of the President's memorandum on the County Governments Bill, 2012.

MIN. NO./SC2/210/2012:

- Opinion of the CIC

Clause 31(1)(k): Functions of the County Governor

The Chairman of the CIC stated as follows:

- That there is no County equivalent of the National Security Council and that CIC had earlier on recommended its deletion but somehow the clause was retained in subsequent publications. That on the devolution Bills, the CIC did not have a post-cabinet review and that is where the lapse may have occurred.

Intervention by Members

That the National Police Service Act, section 41 establishes the County Policing Authority which is chaired by the Governor and the president's memorandum offends this.

Response by CIC

- That the Police Services under the 4th Schedule is a function of national government and in the Counties, there will be two coordinators of police, a representative of the AP and the Regular police which are under the Inspector General which is an independent office and cannot be under the County Government.
- That article 6 of the Constitution provides that the two levels of government are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. That the Constitution envisages that there are functions of the national government which will be performed at the county level and this will require mutual consultations and cooperation.
- That the provision of the law that offends the constitution is the referral to the equivalent of the national Security Council at the county level, which body does not exist.
- That the National Security Council Act has not come to parliament yet and there is therefore need to have a clause in it making it mandatory for National government to consult the Governor-*The CIC therefore requested the Committee to accept president's proposal to delete and amend by saying "governor shall consult national government in accordance with article 6"*.

Clause 54: Further structures of decentralization and the Provincial Administration

Members stated that parliament's worry is the establishment of parallel governments in the counties which risks undermining of democratically elected leaders at the county level. That parliament as part of national government envisaged in section 17 of the sixth schedule amended the law to give the provincial administration jobs to do.

- That the fourth schedule allocates functions to county governments and national governments.
- That article 235 of the constitution gives the respective governments powers to employ their own staff and the National government cannot employ staff on behalf of county governments.
- That section 17 of the sixth schedule requires that National Government to restructure the provincial administration to accord with and respect the system of devolved government established under this Constitution and therefore there should be no fear that the provincial administration will interfere with the role of the county governments.
- That the Transitional Authority will identify the functions to be undertaken by the county governments and that of the national governments including how to transfer functions from one level of government to the other.

MIN. NO./SC2/211/2012: - Any Other Business and Adjournment

The CIC concluded by saying that the original clause 48 and 52 of the County Governments Bill if reinstated would address most of the concerns of Members. That there is need for the National Government Bill to facilitate devolution and incorporate in it requirement for consultations between national and county governments. There being no other business to transact, the Chairman adjourned the meeting at 12.40 pm.

SIGNATURE.....
(Chairperson)

DATE 7/03/2012