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ELEVENTH PARLIAMENT - THIRD SESSION

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC)

REPORT OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC) ON CONSIDERATION OF EXTENSION OF THE LIFE OF CIC BEYOND 29TH DECEMBER, 2015 PURSUANT TO SECTION 5(7) OF THE SIXTH SCHEDULE TO THE CONSTITUTION



Clerk's Chambers,
National Assembly
Parliament Buildings
NAIROBI-KENYA

NOVEMBER, 2015

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LIST OF ABBREVIATIONS

AG	Attorney-General
CIC	Commission for the Implementation of the Constitution
CIOC	Constitutional Implementation Oversight Committee
CoG	Council of Governors
CRA	Commission on Revenue Allocation
IGBEC	Inter-Governmental Budget and Economic Council
IGRA	Intergovernmental Relations Act
IGRTC	Inter-Governmental Relations Technical Committee
KLRC	Kenya Law Reform Commission
MDA	Ministries, Departments and Agencies
NCGCS	National and County Government Co-ordinating Summit
TA	Transition Authority,
TDGA	Transition to Devolved Government Act

Executive Summary

Mr. Speaker Sir,

The Constitutional Implementation Oversight Committee (CIOC) is a Select Committee of the National Assembly of Kenya mandated with overseeing the implementation of the Constitution and in particular the preparation of the legislation required pursuant to Article 261(1) and the Fifth Schedule to the Constitution of Kenya, 2010 among other things. The current Committee is the second after the First CIOC came to an end following the end of the Tenth Parliament.

In exercise of its mandate, since inception, the First Committee dedicated its efforts and time to overseeing the implementation of the Constitution with regard to preparation of legislations that had One Year, 18 months and Two Years constitutional deadlines; overseeing the process of the establishment of Constitutional Commissions and Independent Offices; overseeing the process of establishing the infrastructure necessary for the proper operation of each county including process of locating county offices and assemblies and establishment and transfers of staff; overseeing the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Sixth Schedule to the Constitution and highlighting any impediments to the process of implementing the Constitution.

Mr. Speaker Sir, as Members would note, the current CIOC has overseen the fruitful preparation and enactment of all the legislations required to be enacted within three, four and five years' time specification as enshrined in the Fifth Schedule to the Constitution.

While considering legislations for enactment under the Fifth Schedule (*See Appendix I*) to the Constitution; to be enacted by 27th August, 2015, the Committee held a series of meetings with the various stakeholders and the relevant Ministries under whose mandate the legislations fall under with a view to have them tabled before Parliament and enacted within the period specified under the Fifth Schedule to the Constitution.

During its 18th meeting held on Tuesday, 18th August, 2015, the Constitutional Implementation Oversight Committee deliberated on the need to review whether all the required legislations under the Fifth Schedule to the Constitution, and as had been highlighted by the Commission for the

Implementation of the Constitution (CIC), had been identified and prepared. The Committee deemed it necessary to have self audit of its work. Subsequently, the Committee resolved to undertake a retreat with the Commission for the Implementation of the Constitution, the Office of the Attorney General and Department of Justice and Kenya Law Reform Commission to undertake an audit-cum-review of all the legislations required to implement the Constitution and which had a Five Years' time specification. The Committee undertook the retreat in Mombasa County from Thursday, 3rd to Sunday, 6th September, 2015.

Mr. Speaker Sir,

The Constitution of Kenya 2010 sets up government institutions. Some of these institutions are empowered with a constitutional mandate of undertaking oversight, providing checks and balances during the constitutional implementation transitional period and some to carry on thereafter.

CIC was needed in the initial phase and within the last five years. Key legislations are in place and what is outstanding has already received input from CIC and only awaits consideration by Parliament. Within those five years, key institutions have been reconstituted and new ones established within the framework of the new Constitution. Some of these are the institutions envisaged to carry on after CIC.

In view of the foregoing, it's the considered view of CIOC that extension of the life of CIC term beyond the stipulated five (5) years, will serve no useful purpose in terms of continued implementation of the Constitution. The need to strengthen other institutions with related mandate overrides the extension. Nevertheless, the role played by CIC was very important and in large measure, CIC assisted Parliament to meet the respective constitutional deadlines faced with time challenges. Otherwise without CIC, these challenges would have proven insurmountable if not dealt with in time.

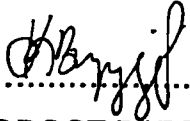
Mr. Speaker Sir,

The Committee records its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitation. Further, the Committee is indebted to the staff of the National Assembly, CIC and the KLRC. It is their commitment and dedication to duty that made the work of the Committee and production of this report possible. I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

Mr. Speaker, Sir,

On behalf of the Committee, It is therefore my pleasant duty and privilege, on behalf of the Committee, to present this Report to the House for consideration and approval.

Signed



THE HON. NJOROGE BAIYA, MP,

CHAIRPERSON,

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

Date:

17th Nov. 2015

1.1 Introduction

The Constitutional Implementation Oversight Committee (CIOC) is constitutional parliamentary Select Committee constituted under section 4 of the Sixth Schedule to the Constitution. The Committee is responsible for overseeing the implementation of this Constitution and which, among other things, the Committee is obligated to consider regular reports from the Commission on the Implementation of the Constitution on the implementation of the Constitution. The Committee also gets reports from the Commission on the preparation of the legislation required by the Constitution and any challenges in that regard; the process of establishing the new commissions; 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; the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Sixth Schedule to the Constitution; and, ~~on any impediments to the process of implementing~~ this Constitution.

1.2 How Does the Committee Work?

In discharging this mandate, the Committee coordinates with the Office of the Attorney-General, the Commission on the Implementation of the Constitution, Kenya Law Reform Commission, concerned Ministries and state Agencies and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution within the specified constitutional time frame. The Committee also takes appropriate action on the reports including addressing any problems in the implementation of the Constitution.

1.3 Committee Membership

The current Constitutional Implementation Oversight Committee was constituted by the House on Thursday, 2nd May, 2013. Currently, the Membership of the Committee is as follows:-

1. Hon. Njoroge Baiya, MP, - **Chairperson**
2. Hon. Moitalel Ole Kenta, MP -**Vice Chairperson**
3. Hon. Ababu Namwamba EGH, MP
4. Hon. Samuel K. Chepkonga, MP
5. Hon. Sabina Wanjiru Chege, MP
6. Hon. Manson Nyamweya, MP
7. Hon. Benson M. Kangara, MP
8. Hon. Omulele Christopher, MP
9. Hon. Grace Jemutai Kiptui, MP

10. Hon. Rose Rwamba Mitaru, MP
 11. Hon. David Kangogo Bowen, MP
 12. Hon. Protus Akuja, M.P.
 13. Hon. Sakwa J. Bunyasi, MP
 14. Hon. Abdul Rahim Dawood, MP
 15. Hon. Peter N. Gitau, MP
 16. Hon. Humphrey K. Njuguna, MP
 17. Hon. James Lomenen, MP
 18. Hon. Mahamud, M. Maalim, MP
 19. Hon. Shakila Abdalla, MP
 20. Hon. Joe M. Mutambu, MP
 21. Hon. Alice Muthoni Wahome, MP
 22. Hon. (Dr.) Dahir Duale Mohammed, MP
 23. Hon. Boniface O. Otsiula, MP
 24. Hon. Mary Wambui Menene, M.P
 25. Hon. Aramat Lemanken, MP
 26. Hon David Gikaria, MP
-
27. Hon. John Lodepe Nakara, MP
 28. Hon. Steven Kariuki, MP

14 Objectives of the Report

Following a retreat of the Committee held in Mombasa County from Thursday, 3rd to Sunday, 6th September, 2015, the Committee deliberated on the process of constitutional implementation; including enactment of pending legislations in light of the 27th August, 2016 deadline; the life of the Commission for the Implementation of the Constitution which is due to expire on 29th December 2015 and assess progress to be achieved by 29th December, 2015. Consequently, the Committee observed that there was need to interrogate the matter and report to the House on the above matters.

The Committee did set out the following objectives of the Report:

- a. To assess the status of the implementation of the Constitution.
- b. To examine whether the life of CIC should be extended beyond 29th December 2015.
- c. To make recommendations to the House on the appropriate measures to be taken with regard to the implementation of the Constitution in light of the 27th August, 2016 deadline.

15 Problem Statement

Firstly, section 5(7) of the Sixth Schedule to the Constitution provides that *"the Commission for the Implementation of the Constitution shall stand dissolved five years after it is established or at the full implementation*

of this Constitution as determined by Parliament, whichever is sooner, but the National Assembly, may by resolution, extend its life". A close reading of this provision clearly illustrates that the term of CIC shall come to an end on 29th December, 2015. This presents a challenge as once CIC stands dissolved on 29th December, 2015, there will be a lacuna on the process of implementing the Constitution which is still an on-going process in particular in light of the extension of the Five Years constitutional deadline by a further one year to 27th August, 2016 by this House.

Secondly, in the event that the Committee does not extend the life of CIC, what options are available to mitigate any impediments and enable the Committee and the House ensure that the Constitution is implemented in full.

Thirdly and without prejudice, noting that most of the legislations required for enactment within ~~Five Years are yet to be enacted and some are not yet tabled before the House, the Committee~~ deemed it necessary to look into ways of expediting these legislations and made some recommendations on the same.

1.6 Justification

In view of the foregoing, there is therefore need to determine whether or not the term of CIC should be extended because although there has been great progress made towards ensuring that key legislations for implementing the Constitution in terms of Article 261 and the Fifth Schedule to the Constitution have been enacted, there are still pending legislations with constitutional deadline that have been reviewed by CIC but are pending before the House at different stages. The mandate of determining the issue herewith is one that falls squarely within the powers of the National Assembly in accordance with section 5(7) of the Sixth Schedule to the Constitution which stipulates that "*.....the National Assembly may, by resolution, extend its (CIC) life".*

The Report is also justified by the fact that, following the extension of the Five Years constitutional deadline by one Year, no further extension can be permitted or allowed by law. As such, the Committee and Parliament must see to it that the pending legislations are developed and enacted by August 27, 2016.

1.7 Assessment of the Status of the Implementation of the Constitution

During its 18th sitting held on 18th August, 2015, the Committee considered a brief on the pending constitutional Bills and observed as follows:-

- (1) The following Bills had already been published-
 - (a) The Community Land Bill, 2015 published on 11/8/2015;
 - (b) The Petroleum Exploration and Production Bill, 2015 published on 11/8/2015;;
 - (c) The Seeds and Plant Varieties (Amendment) Bill, 2015 published on 11/8/2015;;
 - (d) The Organization and Administration of the High Court (Art 165 (1) (1) published on 11/8/2015;
 - (e) The Physical Planning Bill, 2015 published on 11/8/2015;
 - (f) The Small Claims Court Bill, 2015 published on 11/8/2015;
 - (g) The Organization and Administration of Appeal (Art 164) published on 11/8/2015;
 - (h) The Constitution of Kenya (Amendment) Bill, 2015(required to implement the two third gender rule) published on 24/7/2015;
 - (i) The Magistrates Court Bill, 2015 published on 24/7/2015; and
 - (j) The Legal Aid Bill, 2015 published on 26/6/2015
 - (k) The Protection of Traditional Knowledge and Traditional Cultural Expressions Bill, 2015 (Art. 11 (3).
 - (l) The Election Laws (Amendment) Bill, 2015 published on 11/8/2015.
- (2) The following Bills have been forwarded to Parliament and were pending publication at the Government Printers;
 - (a) The Forest Bill, 2015 forwarded on 31st July, 2015;
 - (b) Agreements on National Resources Bill, 2015 forwarded on 7/8/2015;
 - (c) The Land Laws (Amendment) Bill, 2015 which has consolidated the Minimum and Maximum Land Holding Acreage Bill, 2015; the Investigation and Historical Land Injustices Bill 2015 and the Evictions Bill, 2015 forwarded on 7/8/2015.
 - (d) The Energy Bill, 2015 forwarded on 31st July, 2015.
- (3) The Bill on Representation of Marginalized Groups 2015 which the Solicitor General had undertook to forward to Parliament by 7/8/2015 had not been forwarded and the secretariat was tasked to follow up on the same.
- (4) The Data Protection Bill and the Access to Information Bill had also not been forwarded to Parliament. The Committee resolved to invite the Cabinet Secretary for Information

Communication and Technology to apprise them on the status of preparation of the Bill. The Committee however noted that on the Access to Information Bill there is a private member Bill by Hon. Priscilla Nyokabi seeking to implement Article 35 of the Constitution.

(5) The Judiciary Fund Bill and the Succession Bill had also not been forwarded to Parliament.

From the foregoing, the Committee agreed that it was not feasible to enact all the pending Bills at that time within ten days. The Committee agreed that it would be seeking an extension of constitutional timeline pursuant to Article 261(2) of the Constitution as it was practically impossible to pass the pending Bills on or by 27th August, 2015. The Committee agreed to sponsor a Motion to have the National Assembly exercise its powers enunciated under Article 261(2) of the Constitution.

1.7.1 Extension of Constitutional Deadline Pursuant to Article 261(2) of the Constitution

During the Plenary Sitting of the National Assembly held on Wednesday, 19th August, 2015 (afternoon sitting) the House considered the motion below and approved the same without amendments:-

"THAT, Pursuant to the provisions of Article 261(2) of the Constitution, this House resolves to extend the period prescribed for enactment of legislation necessary to give effect to:-

- a. Article 11(3)(a) (*compensation or royalties for the use of cultures and cultural heritage*);
- b. Article 11(3)(b) (*recognition and protection of indigenous seeds and plant varieties, their genetic and diverse characteristics and use by the communities of Kenya*);
- c. Article 63 (*community land*);
- d. Article 66 (*regulation of land use and property*);
- e. Article 67(2)(e) (*investigation and adjudication of claims arising out of historical land injustices*);
- f. Article 68(c)(i) (*minimum and maximum land holding acreage*);
- g. Article 71 (*agreements relating to sharing of natural resources*);
- h. Article 81(b) (*two-thirds gender principle*);
- i. Article 100 (*representation of marginalized groups*);
- j. Article 164(1)(b) (*organization and administration of the Court of Appeal*);
- k. Article 165(1)(b) (*organization and administration of the High Court*);
- l. Article 169(1) (*Subordinate Courts*);
- m. Article 173 (5) (*regulation of the Judiciary Fund*);
- n. Section 17 of the Sixth Schedule of the Constitution (*restructuring of the provincial administration*); and,
- o. any other legislation required under the Constitution to be enacted by Parliament within five years, by a period of twelve (12) months from August 27, 2015"

Following the passage of the resolution of the National Assembly, the Committee resolved to meet various stakeholders with a view of establishing the status of implementation of all required

legislations under the Fifth Schedule to the Constitution; and, recommend to the House on what should be done to ensure the 27th August, 2016 deadline is met.

1.7.2 Audit / Review of Implementation of the Legislations Required under the Fifth Schedule to the Constitution

During the retreat of the Committee with CIC and the Kenya Law reform Commission (KLRC) held on 3rd to 6th September, 2015, the Committee undertook an audit of all legislations required to implement the Constitution as required under Article 261 of the Constitution and the Fifth Schedule to the Constitution. The following is a chapter by chapter analysis of the Constitution detailing the status of the legislation required to implement the Constitution.

	Chapter and Articles	Constitution Timeline	Title of Legislation Developed	Status of the Legislation
CHAPTER TWO-REPUBLIC				
1.	Legislation in respect of culture (Article 11 (3))	Five years	Protection of Traditional Knowledge and Traditional Cultural Expressions Bill, 2015	<i>Bill read a First Time on 19/8/2015</i>
CHAPTER THREE-CITIZENSHIP				
2.	Legislation on citizenship (Article 18)	One year	The Kenya Citizenship and Immigrations Act, 2011	<i>Enacted in August, 2011.</i>
		One year	The Kenya Citizens and Foreign Nationals Management Service Act 2011	<i>Enacted in October, 2011.</i>
CHAPTER FOUR-THE BILL OF RIGHTS				
3.	Freedom of the media (Article 34)	Three years	The Media Council Act, 2013	<i>Enacted in December, 2013.</i>
		Three years	The Kenya Information Communications (Amendment) Act	<i>Enacted in December, 2013</i>
4.	Family (Article 45)	Five years	Marriage Act 2014	<i>Enacted in May, 2014.</i>
		Five years	Matrimonial Property Act, 2013	<i>Enacted in December, 2013.</i>
		Five years	Protection Against Domestic Violence Bill, 2013	<i>Enacted in May, 2015.</i>
5.	Consumer Protection (Article 46)	Four years	Consumer Protection Act, 2012 (Article 46)	<i>Enacted in December 2012.</i>
6.	Fair administrative action (Article 47)	Four years	Fair Administrative Action Act, 2014	<i>Enacted in May, 2015.</i>
7.	Fair hearing (Article 50)	Four years	The Victims Protection Act, 2014	<i>Enacted in December, 2014.</i>
8.	Rights of persons detained, held in custody or detained (Article 51)	Four years	Persons Deprived of Liberty Act, 2014	<i>Enacted in December, 2014.</i>

9.	Kenya National Human Rights and Equality Commission (Article 59)	One year	Kenya National Commission on Human Rights Act, 2011	<i>Enacted in August, 2011.</i>
		One year	The National Gender and Equality Commission Act, 2011	<i>Enacted in August, 2011.</i>
		One year	The Commission on Administrative Justice Act, 2011	<i>Enacted in August, 2011.</i>
CHAPTER FIVE-LAND AND ENVIRONMENT				
10.	Community land (Article 63)	Five years	The Community Land Bill, 2015	<i>Bill read a First Time on 19/8/2015.</i>
11.	Regulation of land use and property (Article 66)	Five years	Physical Planning Bill, 2015	<i>Bill read a First Time on 19/8/2015</i>
12.	Legislation on land (Article 68)	18 months	The Land Registration Act, 2012	<i>Enacted April, 2012.</i>
		18 months	The Land Act, 2012	<i>Enacted April, 2012.</i>
		18 months	National Land Commission Act, 2012	<i>Enacted April, 2012.</i>
13.	Agreements relating to natural resources (Article 71)	Five years	Agreements Relating to Natural Resources (Classifications of Transactions subject to Ratification) Bill 2015	<i>Bill read a First Time on 14/10/2015.</i>
14.	Legislation regarding environment (Article 72)	Four years	Environment Management and Coordination (Amendment) Bill, 2014	<i>Enacted in May, 2015</i>
CHAPTER SIX-LEADERSHIP AND INTEGRITY				
15.	Ethics and anti-corruption commission (Article 79)	One year	The Ethics and Anti-Corruption Commission Act, 2011 (Article 79)	<i>Enacted in August 2011.</i>
16.	Legislation on leadership (Article 80)	Two years	The Leadership and Integrity Act, 2012 (Article 80)	<i>Enacted in August 2012.</i>

CHAPTER SEVEN-REPRESENTATION OF THE PEOPLE

17.	Legislation on elections (Article 82)	One year	The Elections Act, 2011	<i>Enacted in August, 2011.</i>
18.	Electoral Disputes (Article 87)	One year	The Elections Act, 2011	<i>Enacted in August, 2011.</i>
19.	Independent Electoral and Boundaries Commission (Article 88)	One year	The Independent Electoral and Boundaries Commission Act, 2011	<i>Enacted in July, 2011.</i>
20.	Legislation on political parties (Article 92)	One year	The Political Parties Act, 2011	<i>Enacted in August, 2011.</i>

CHAPTER EIGHT-THE LEGISLATURE

21.	Promotion of Marginalised Groups (Article 100)	Five years	Election Laws (Amendment) Bill, 2015	<i>Bill read a First Time on 14/10/2015</i>
22.	Vacation of office of member of Parliament (Article 103)	One year	The Elections Act, 2011	<i>Enacted in August, 2011.</i>
23.	Right of recall (Article 104)	Two years	The Elections Act, 2011	<i>Enacted in August, 2011.</i>
24.	Determination of questions of membership of Parliament (Article 105)	Two years	The Elections Act, 2011	<i>Enacted in August, 2011.</i>
25.	Right to petition Parliament (Article 119)	Two years	The Petition to Parliament (Procedure) Act, 2012	<i>Enacted in August, 2012.</i>

CHAPTER NINE-THE EXECUTIVE

26.	Power of mercy (Article 133)	One year	The Power of Mercy Act, 2011	<i>Enacted in August 2011.</i>
27.	Assumption of office of president (Article 141)	Two years	The Assumption of the Office of the President Act, 2012	<i>Enacted in August, 2012.</i>

CHAPTER TEN-JUDICIARY

28.	System of courts (Article 162)	One year	The Industrial Court Act, 2011	<i>Enacted in August, 2011.</i>
		One year	The Environment and Land Court Act, 2011	<i>Enacted in August, 2011.</i>

		One year	The Supreme Court Act, 2011 (Article 163)	<i>Enacted in June, 2011.</i>
29.	Removal from office (Article 168) (of Judges)	One year	Judicial Service Act, 2011.	<i>Enacted in June, 2011.</i>
30.	Judiciary Fund (Article 173)	Two years	Judiciary Fund Bill, 2015 (to amend the JSC Act, 2011)	<i>Bill not yet forwarded to Parliament.</i>
31.	Vetting of judges and magistrates (Sixth schedule, Section 23)	One year	The Vetting of Judges and Magistrate Act, 2011	<i>Enacted in August, 2011.</i>
CHAPTER ELEVEN-DEVOLVED GOVERNMENT				
32.	Speaker of a county assembly (Article 178)	One year	County Government Act, 2012	<i>Enacted in July, 2012.</i>
33.	Urban areas and cities (Article 183)	One year	Urban areas and Cities: The Urban Areas and Cities Act, 2012 (Article 184)	<i>Enacted in August, 2011.</i>
34.	Support for county governments (Article 190)	Three years	County Government Act, 2012	<i>Enacted in July, 2012.</i>
		Three years	Public Finance Management Act, 2012	<i>Enacted in July, 2012.</i>
		Three years	Intergovernmental Relations Act, 2012	<i>Enacted in February, 2012.</i>
35.	Removal of a county governor (Article 181)	18 months	County Government Act, 2012	<i>Enacted in July, 2012.</i>
36.	Vacation of office of member of county assembly (Article 194)	18 months	County Government Act, 2012	<i>Enacted in July, 2012.</i>
		18 months	Leadership and Integrity Act, 2012	<i>Enacted in August, 2012.</i>
		18 months	Elections Act, 2011	<i>Enacted in August, 2011.</i>
37.	Public participation and county assembly powers, privileges and immunities (Article 196)	Three years	County Government Act, 2012	<i>Enacted in July, 2012.</i>
38.	County assembly gender balance and diversity (Article 197)	Three years	County Governments Act, 2012	<i>Enacted in July, 2012.</i>
39.	Legislation giving effect to	18 months	The Transition to Devolved Government Act, 2012	<i>Enacted in February, 2012.</i>

	Provisions relating to Devolved Government (Article 200 and Sixth Schedule, section 15)	18 months	The Intergovernmental Relations Act, 2012	Enacted in February, 2012.
		18 months	The County Government Act, 2012	Enacted in June, 2012.

CHAPTER TWELVE- PUBLIC FINANCE

40.	Revenue Funds for county governments (Article 207)	18 months		Provided for in the Public Finance Management (PFM) Act, 2012.
41.	Contingencies Fund (Article 208)	One year		Provided for in the Public Finance Management (PFM) Act, 2012.
42.	Loan guarantees by national government (Article 213)	One year		Provided for in the Public Finance Management (PFM) Act, 2012.
43.	Financial control (Article 225)	Two years		Provided for in the Public Finance Management (PFM) Act, 2012.
44.	Accounts and audit of public entities (Article 226)	Four years	Public Audit Bill, 2014	Presidential Memorandum passed on to the National Assembly on 10/6/2015 & forwarded to the Senate for consideration. Joint Committee formed to review memorandum. National Assembly fully accommodated the President reservations on 23/6/2015. Awaiting Senate determination on the same.
45.	Procurement of public goods and services (Article 227)	Four years	Public Procurement and Asset Disposal Bill, 2014	Presidential Memorandum passed on to the National Assembly on 10/6/2015 & forwarded to the Senate for consideration. Joint Committee formed to review memorandum. National Assembly fully accommodated the President reservations on 18/6/2015. Awaiting Senate determination on the same.

CHAPTER THIRTEEN –PUBLIC SERVICE

46.	Values and principles of public service (Article 232)	Four years	Public Service (Values and Principles) Act, 2014	Enacted in May, 2015
			The Public Service Commission Act, 2012	Enacted August, 2012.

CHAPTER FOURTEEN –NATIONAL SECURITY

47.	National security organs (Article 239)	Two years	National Intelligence Service Act, 2012 (Article 239/242)	Enacted in August, 2012.
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		Two years	National Security Council Act, 2012 (Article 239)	<i>Enacted in August, 2012.</i>
		Two years	Kenya Defence Forces Act, 2012 (Article 232, 239 / 241)	<i>Enacted in August, 2012.</i>
48.	Command of the National Police Service (Article 245)	Two years	National Police Service Act, 2011 (Article 245)	<i>Enacted in August, 2011.</i>
		Two years	Independent Police Oversight Authority Act, 2011	<i>Enacted in November, 2011.</i>
GENERAL- ANY OTHER LEGISLATION- YEAR FIVE BILLS				
49.	The Forest Conservation and Management Bill, 2015 (<i>Art.72</i>)			<i>Bill read a First Time on 19/8/2015</i>
50.	The Minimum and Maximum Land Holding Acreage Bill, 2015 (<i>Art. 68 (c)(i)</i>)			<i>Proposals incorporated in the Land Laws(Amendment) Bill, 2015 which was read a First Time on 27/8/2015.</i>
51.	The Investigation and Historical Land Injustices Bill 2015 (<i>Art.67(2)(e)</i>) and s.15, <i>National Land Commission Act</i>)			<i>Proposals incorporated in the Land Laws(Amendment) Bill, 2015 which was read a First Time on 27/8/2015.</i>
52.	The Evictions Bill, 2015 (<i>Art. 68</i>)			<i>Proposals incorporated in the Land Laws(Amendment) Bill, 2015 which was read a First Time on 27/8/2015.</i>
53.	The Energy Bill, 2015			<i>Bill read a First Time on 20/8/2015.</i>
54.	The Petroleum Exploration and Production Bill, 2015			<i>Bill read a Second Time on 29/10/2015. (Debate ongoing)</i>
55.	The Two-Third Gender Principle Bill, 2015 (<i>Art. 81</i>)			<i>The Constitution of Kenya (Amendment) Bill, 2015 read a First Time on 30/7/2015 and the Elections Laws (Amendment) Bill, 2015 Bill published on 6/8/2015 and will be read a First Time upon enactment of the Constitution of Kenya (Amendment) Bill, 2015.</i>
56.	The Seeds and Plant Varieties (Amendment) Bill, 2015. (<i>Art. 11(3)(b)</i>)			<i>Bill read a First Time on 27/8/2015</i>
57.	The Organization and Administration of Appeal, 2015 (<i>Art. 164(1)(b)</i>)			<i>Bill read a Second Time on 22/10/2015. Committee stage: Pending</i>
58.	The Small Claims Court Bill, 2015			<i>Bill read a Second Time on 14/10/2015. Committee stage: Pending</i>
59.	The Organization and Administration of the High Court, 2015 (<i>Art. 165(1)(b)</i>)			<i>Bill read a Second Time on 13/10/2015. Committee stage: Pending</i>

60.	The Legal Aid Bill, 2015	<i>Bill read a First Time 28/7/2015.</i>
61.	The Magistrates Court Bill, 2015	<i>Bill read a Second Time on 8/10/2015. Committee stage pending.</i>
62.	The Succession Bill, 2015	<i>Bill not yet forwarded to Parliament</i>
63.	The Culture Bill, 2015	<i>Bill not yet forwarded to Parliament</i>
64.	Report on compliance with <i>section 17 of the Sixth Schedule of the CoK, 2010 (restructuring of the provincial administration).</i>	Report not yet forwarded to Parliament.

1.7.3 Observations Made by the Committee on Legislations Required under the Fifth Schedule to the Constitution

In light of the above, the Committee observes that the following Bills are yet to be forwarded to Parliament-

1. The Judiciary Fund Bill, 2015;
2. The Culture Bill, 2015; and
3. The Succession Bill, 2015.
4. The Report on compliance with section 17 of the Sixth Schedule of the Constitution of Kenya, 2010 (restructuring of the provincial administration) is also still pending.

1.7.4 Other Observations Made by the Committee but NOT Related Legislations Required under the Fifth Schedule to the Constitution

The Committee also made the following observations:

- a) Owing to the fact that there was no legal framework to guide the conduct of a referendum, it was necessary to have a Referendum Law.
- b) The entire Statute Book consisting of all enacted legislations by promulgation date to bring it to compliance with the new Constitution needs comprehensive review;
- c) The report contemplated under section 17 of the Sixth Schedule to the Constitution on the restructuring of the provincial administration to accord with and respect the system of devolved government established under the Constitution of Kenya was yet to be developed by the relevant Ministry;

- d) The Campaign Financing Act, 2013 and the National Values and Principles Act, 2015 were yet to be operationalized; and,
- e) The life of the Commission for the Implementation of the Constitution (CIC) was coming to an end on 29th December, 2015.

1.7.5 Way-Forward by the Committee on the Assessment of the Status of the Implementation of the Constitution

During its 21st sitting held on Saturday, 5th September, 2015, the Constitutional Implementation Oversight Committee (CIOC) deliberated on the matter of implementation of pending legislations with a Five Years time specification and suggested that:-

- a) All the pending legislations required under the Fifth schedule to the Constitution should be given priority for consideration by the House;
- b) Owing to the fact that there was no legal framework to guide on a referendum, the Office of the Attorney General in consultation with the Commission for the Implementation of the Constitution (CIC), the Independent Electoral and Boundaries Commission, the Kenya Law Reform Commission and other relevant stakeholders should develop a legislative proposal on a referendum law;
- c) The Kenya Law Reform Commission through the Office of the Attorney General prepares a draft proposal for a comprehensive review of the Statute Book for consideration by the CIOC and onward recommendation to Parliament;
- d) The Cabinet Secretary for Interior and Co-ordination of National Government should table before Parliament the report contemplated under section 17 of the Sixth Schedule to the Constitution on the restructuring of the provincial administration to accord with and respect the system of devolved government established under the Constitution of Kenya;
- e) The Office of the Attorney General should operationalize the Campaign Financing Act, 2013 and the National Values and Principles Act, 2015 with immediate effect; and,
- f) The life of CIC should be examined in light of the resolution by the House to extend constitutional implementation deadline by a further One Year.

1.8 Expiry of the Term of the Commission for the Implementation of the Constitution (CIC)

Granted that the term of the CIC was coming to an end on 29th December, 2015, the Committee resolved to meet with various stakeholders to examine whether the life of CIC should be extended beyond 29th December 2015. The Committee resolved to get the views of the Commission for the Implementation of the Constitution (CIC), the Kenya Law Reform Commission (KLRC) and the Attorney-General so that by the Committee could make a recommendation(s) to the House which are based on facts and involvement of the key stakeholders in the constitutional implementation process. The submissions of the stakeholders is as follows-

1.8.4 Submission by Kenya Law Reform Commission on the Expiry of the Term of CIC

In a letter dated 14th October, 2015 of REF No. KLRC/RES/27, the KLRC forwarded a written memorandum on the 'Dissolution of the Commission for the Implementation of the Constitution'. The detailed memorandum (*See Appendix II*) outlined the position/view of the KLRC on the life of CIC beyond their term. The key highlights of the KLRC memorandum are as follows:

- a) The KLRC is mandated by the Constitution of Kenya, 2010 under the Sixth Schedule to coordinate with the Commission for the Implementation of the Constitution and the Attorney-General in the preparation of legislation that required to give effect to the Constitution. However, together with the Office of the Attorney-General, the Kenya Law Reform Commission have the primary responsibility under the Constitution, the Office of the Attorney-General Act and the Kenya Law Reform Commission Act to prepare for tabling in Parliament, the legislation required to implement the Constitution;
- b) The constitutional and statutory role of the Commission for the Implementation of the Constitution has been monitoring and oversight;
- c) The constitutional implementation process has been such that after the Office of the Attorney-General and Kenya Law Reform Commission have developed the legislation, the draft Bills are forwarded to the Commission for the Implementation of the Constitution where they arrange for round-table meeting(s) with the Office of the Attorney-General, Kenya Law Reform Commission and the respective Government Ministries, Departments

and Agencies (MDA) to vet the constitutionality of the legislation. Once the Round-Table meeting has approved the Bill with or without amendments, the same is then forwarded to the Office of the Attorney-General for onward transmission to the Cabinet. Once the Cabinet approves the Bill, the same is forwarded to Parliament for enactment;

d) 27th August 2015 marked the end of the Five Years transitional period of constitutional implementation. As of this date, all the constitutional implementation laws that required to be prepared under the Fifth Schedule and various other specific Articles of the Constitution requiring specific legislation had been prepared jointly by the Office of the Attorney General and the Kenya Law Reform Commission. They had also been discussed at the respective Round table meetings chaired by the CIC;

e) The majority of the legislation has been enacted by Parliament except for the twelve pieces of legislation, and The National Assembly has already passed a resolution extending by one year, the period for the enactment of these pieces of legislation. These laws have however undergone the usual stakeholder consultation. They have also been cleared at the Round table chaired by CIC. All that remains is for Parliament to debate and enact the legislation;

f) The other principal function of the Commission for the Implementation of the Constitution is monitoring the implementation of the System of Devolved Government. During the last five years of the constitutional implementation period, other Constitutional and Statutory Commissions and Institutions have been established to monitor the implementation of Devolution. The Institutions include: The National Treasury, The Ministry of Devolution and Planning, The Commission on Revenue Allocation (CRA), The Transition Authority, The Council of Governors (CoG), The National and County Government Co-ordinating Summit (NCGCS), The Inter-Governmental Relations Technical Committee (IGRTC) and the Inter-Governmental Budget and Economic Council (IGBEC). All these institutions are in place and are already performing their assigned functions;

g) Law reform and Constitutional implementation is an ongoing process. It is not time bound. The five year transitional period which ended on 27th August, 2015, was intended to be a period for establishing the institutional mechanisms for continuous Constitutional implementation well beyond the transition period. It is important to note that although CIC has commendably discharged its assigned responsibilities, the framers of the Constitution

recognized its time bound mandate. The lapse of CIC mandate must not occasion an unnecessary lacuna. This is because in keeping with the reality that our constitutional implementation framework is heavily dependent on policy, legislative, institutional and policy reforms, the constitutional and statutory mandate and design of KLRC is such that it should be able to ensure continuity in this regard. It must however be pointed out that KLRC will require the support of the relevant constitutional Commissions, State Organs and other Intergovernmental structures to ensure full implementation of the Constitution going forward; and,

- h) As has already been confirmed by the CIC, these institutional frameworks have already been put in place and they are working. What remains, is to strengthen them so that they can effectively perform their assigned tasks. It is noteworthy to observe that the Presidential Taskforce on Reform of Parastatals advised against the proliferation of Government Agencies with overlapping mandates.

The KLRC recommends that the term of CIC should not be extended upon expiry on 29th December, 2015. Policy consistency would require that once CIC mandate expires by effluxion of time, its residual functions, if any, should be carried out by the remaining institutions namely, the Office of the Attorney General and Kenya Law Reform Commission which have the constitutional and statutory mandate to do so.

1.8.5 Submission by the Commission for the Implementation of the Constitution (CIC) on the Expiry of its Term

In a paid up advert in the "Daily Nation Newspaper" of 29th September 2015, CIC Commissioners expressly stated that they will not be seeking for an extension of their life once it expires on 29th December, 2015. The Committee did observe that, in another instance some Commissioners are reported to have called for an extension of the term of CIC. In light of these uncertainties, the Committee invited CIC to categorically state their stance on the matter.

In a way of memorandum dated 9th October 2015, CIC stated that the Commission was established as an Independent Commission to exercise the following mandates:-

- a) Facilitate, monitor, and oversee the preparation of legislation and administrative procedures necessary to implement the Constitution;
- b) Reporting on the progress of implementation of the Constitution and in particular impediments thereto to Parliament;
- c) Working with other Constitutional Commissions and Independent Offices to ensure compliance with the letter and spirit of the Constitution; and,
- d) Monitoring the implementation of the system of devolved government.

CIC affirms that, there have been significant milestones of success in the process of implementation of the Constitution which include:

- a) Most of the legislations necessary to implement the Constitution had been enacted by Parliament;
- b) Devolution is on track and many of the institutional mechanisms for its success are in place;
- c) Service delivery in many counties has improved and the public involvement in the governance process has been enhanced; and,
- d) The Constitutional Commissions and Independent Offices are largely carrying out their individual mandates effectively.

Despite the above successes, CIC highlighted to the Committee that following challenges were still being faced:-

- a) Some legislation including the law relating to the two thirds gender principle was not enacted within the five-year timeline set out in the Constitution. The National Assembly has however extended the period for the passage of the pending legislation by one year;
- b) Most of the legislation passed has no enabling regulations despite the Constitution and the specific legislation requiring them to be in place so as to implement the enacted laws;
- c) Laws that were passed since 2010 have provisions that were either unconstitutional, have been ineffective or incapable of achieving their intentions. Many of these are being reviewed but require continual monitoring to ensure that meet the dictates of the Constitution;
- d) New laws are being passed by Parliament that negate the letter and spirit of the Constitution (COK) 2010 or are outright unconstitutional;

- e) The transition to the system of devolved government continues to suffer under legal and institutional challenges that require continual oversight;
- f) Civic awareness on the Constitution and critical laws remains low. Neither the national nor the County governments are putting in any significant resources to ensure civic education;
- g) Public participation in governance is largely absent or at best tokenistic;
- h) The provisions of Chapter 6 are routinely violated or ignored as public officers carry out their duties;
- i) On devolution, we have noted with concern the abuse of power and misuse of public resources by some county governments and failure by most of them to decentralize to lower sub-county units;
- j) The retention of numerous Parastatals that carry out county government functions and ~~utilize extensive public funds is not only unconstitutional but a severe drain on scarce~~ public resources; and,
- k) There is increased impunity and disrespect for the rule of law

CIC recognizes that the National Assembly and the Senate are constitutionally mandated to determine if the Constitution has been fully implemented and the National Assembly is constitutionally mandated to determine whether there is need to extend the term of CIC. Generally, Parliament, as one of the oversight bodies, and in terms of its general mandate, has the ultimate responsibility to decide how to ensure the effective monitoring and facilitation of the implementation of the Constitution, beyond CIC.

CIC's view is that the outstanding issues outlined above clearly show that the key components of the Constitution are yet to be fully implemented and as such it would be prudent and effective to extend their term. CIC argues that, such an extension would facilitate the necessary institutional continuity and also retain the safeguards that come from the status of CIC as an independent body under Chapter 15 of the Constitution. In the event such an extension is not granted, CIC proposes the need to revise the CIC Act to enable the secretariat to remain in office for a few months to facilitate the winding up and handover of assets and documents after the end of the term.

CIC also stated that, if for any reason the National Assembly deems it unnecessary to extend their term, there would be need to create an institutional framework for monitoring and facilitating the effective implementation of the Constitution after their exit.

CIC recognizes several institutions, including the Kenya Law Reform Commission have been set up that can pursue some of the outstanding matters, BUT adds that many of these institutions require increased capacity and strengthening. CIC goes further to say that, some would also need to transform their ethos so as to align them with CoK 2010 and there would also be need to review the institutions' constituting statutes to enable them carry out the residual CIC mandate effectively.

In concluding their submissions, CIC stated that, in order to give the National Assembly the opportunity to address this matter on a purely objective basis unclouded by their views on the individuals currently serving as Chairperson and Members of the Commission, as Commissioners currently serving at CIC, they will not seek for an extension of their term of office and they will leave at the expiry of the five-year term, which expires on the 29th of December 2015.

In a nut shell, CIC will not seek for extension of their term of office and they will leave at the expiry of the five-year term, which expires on the 29th of December 2015 unless the National Assembly deems it necessary to extend their term.

1.8.6 Submission by the Attorney General (AG) on the Expiry of Term of the CIC

During a retreat of the Committee held in Naivasha from 15th to 18th October, 2015 with the Office of the Attorney General and Department of Justice and the KLRC, the Committee directed the AG to submit his opinion with regard to the expiry of term of the CIC.

Vide a letter dated 26th October 2015, referenced AG/CONF/6/E/227, the Attorney General submitted that:

- a) The Commission for the Implementation of the Constitution (CIC) was established under section 5(6) to the sixth schedule of the Constitution with a clear mandate that ends on 31st December 2015;
- b) The *raison d'être* for CIC's establishment and its fulfillment thereof was to support the implementation of the Constitution in very specific terms, that is, *by monitoring, facilitating and overseeing development of legislation and administrative procedures to implement the Constitution*. CIC was to do so through coordinating with the Attorney-General and the Kenya Law Reform

- Commission to table the required legislation(s) and report every three months to the Constitutional Implementation Oversight Committee (CIOC) on implementation progress;
- c) CIC was established as an additional support structure to the executive and parliamentary mandate of constitutional implementation, noting that these pre-existing organs would need the extra support during the distinct short term assignment over and above their regular functions; and,
 - d) The second core function envisioned of CIC was to monitor the implementation of the system of devolved government as provided in section 15(2)(d) of the sixth schedule.

The considered view of the AG is that the *raison d'être* of CIC's establishment has been fulfilled and that any existing processes are to be determined with no further action of the CIC. The AG elaborates to the Committee as follows:-

- a) The legislation anticipated in the Fifth Schedule to the Constitution is largely in place, and the requisite drafts of anticipated legislation that are yet to be enacted have been developed and forwarded to Parliament for consideration and/or in the alternative, have been reviewed and endorsed by CIC for this purpose. The AG states that, CIC has no role in the parliamentary debate and enactment of legislation, and consequently, has no further input into bills currently before Parliament or due to be tabled before the House by the Attorney General.
- b) It is imperative that a review of any Bill currently before CIC is interrogated as to their alignment to the Fifth Schedule in order to determine the propriety and relevance of their continued engagement.
- c) Parliament has, in recognizing the required time-frame for enacting the remaining legislations, extended the period thereof in line with the terms of Article 262(2) of the Constitution for one year. During this period, Parliament will consider the Bills before it, and deal accordingly.
- d) With regards to monitoring the implementation of devolution, it is to be noted that the transfer of functions was anticipated in section 15 of the sixth schedule to the Constitution, and consequently given further legislative effect through the Transition to Devolved Government Act (TDGA) and the Intergovernmental Relations Act (IGRA). The transfer of functions was effected by the Transition Authority established under the TDGA and consequently, the Transition Authority and by extension CIC is *functus officio* to all transferred

functions, or the transfer of additional functions would be the subject of inter-governmental agreement.

- e) All pending transfers especially the transfer of roads, cultural activities, public entertainment and public amenities etc are matters pending adjudication before the High Court and consequently the national government agencies including the Office of the Attorney General stands to be guided accordingly. The function of CIC in this regard is therefore moot.

On whether a lacuna exists with the exit of CIC, the AG has this to say:-

- a. All organs of government are required to implement the Constitution, but the framers found it fit to establish a facilitative body to aid the transition to a new constitutional order. The Constitution further established distinct offices mandated to implement the Constitution, i.e. the Office of Attorney General.

- b. The Office of the Attorney General and the Kenya Law Reform Commission are established to among other duties draft legislations to be tabled in Parliament and promote the conformity and compliance of laws.
- c. Upon review of the functions and powers of the Attorney General, and the KLRC, once can clearly discern that the role of the CIC could only be facilitative of the transition to a new constitutional order in a transient and auxiliary framework.
- d. Consequently, the exit of CIC is unlikely to be detrimental to the defined expectations. This position, coupled with the fact that the key legislation anticipated in the fifth schedule have been enacted and/or are under the final stages of parliamentary consideration, render the continued existence of the CIC untenable. The structuring of the office of AG and KLRC as currently designed do not require any review to undertake the function of Constitution monitoring, and no other bodies are necessary for this purpose. These offices only require the enhancement of necessary human, financial and other resources to facilitate their mandates. The winding up of CIC in this regard and the natural reallocation of their assigned resources to these agencies would form an initial start in supporting their functions accordingly.

Finally, on operational framework for winding down CIC, the AG submits that-

- a. The AG and KLRC as currently constituted are designed to undertake the function of monitoring implementation of laws, including the Constitution once CIC exits. Creating any other institution for this purpose would be imprudent and a misuse of public resources contrary to Art. 201 of the Constitution.
 - b. The winding down of CIC and the takeover of its current operations and staff would be a purely administrative process. The office of the AG as the mandated executive agency would take over the assets, operations and staff of CIC subject to existing rules and regulations.
 - c. It is also to be noted that a core of CIC's technical staff were seconded staff from executive agencies including the Office of AG, and consequently, a winding up of operations would necessitate resumption of duties accordingly, relevant protocols would then apply for other staff who were employed on contract and/or such other terms.
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In conclusion, the AG observes that the CIC has fulfilled its mandate, and Parliament has enacted a majority of the new laws required to implement the Constitution. Further, the remaining legal texts have left the purview of CIC's engagement and now lie with Parliament to give them legal effect. The AG therefore recommends that there are no further tasks warranting an extension of the term of CIC and it should be disbanded at the expiry of its term.

1.9 Findings of the Committee

During its 31st sitting held on Monday, 16th November, 2015, the Committee made the following findings:-

- a) The term of the Commission will to an end on 29th December 2015 and that the National Assembly needs to determine the life of CIC in light of the extension of the constitutional deadline.
- b) The Constitution gave CIC a specific mandate to be delivered within a specified timeline of five years, a period which it was to midwife the implementation process and support other state organs responsible for the implementation of the Constitution. Largely, this has been achieved.
- c) The Sixth Schedule to the Constitution set the term of CIC at five (5) years from its establishment or full implementation of the Constitution as determined by Parliament. On

19th August, 2015, the National Assembly resolved to extend the deadline for enactment of legislations with a Five Years time specification by one year to 27th August, 2016. By so doing, the National Assembly attested to the fact that there is still pending work on implementation of the Constitution as contemplated by Section 5(7) of the 6th Schedule to the Constitution.

- d) Most institutions envisaged by the Constitution have been set up.
 - e) In carrying out its mandate, CIC worked hand in hand with the Attorney General and the Kenya Law Reform Commission, both institutions with capacity to implement the Constitution as required. In this tripartite arrangement, CIC facilitated round-table meetings to vet and enhance the constitutionality of legislation and further incorporate a framework of public participation.
 - f) It was the very intention and design of the Constitution to have CIC as a temporary institution.
-
- g) For legislations required under the Fifth Schedule to the Constitution with a Five Years' time specification, most of the legislations have been prepared, passed through the stakeholders and are now before Parliament save for legislations on Judiciary Fund; Succession; and, Report on restructuring of the Report on compliance with section 17 of the Sixth Schedule of the Constitution of Kenya, 2010 (restructuring of the provincial administration) still pending.
 - h) All the pending legislations required under the Fifth schedule to the Constitution should be given priority for consideration by the House so that the deadline of 27th August , 2016 can be met.
 - i) There is need to develop legislation on the conduct of referendum.
 - j) There is need to review the Statute Book to align the various statutes with the Constitution.
 - k) The Cabinet Secretary for Interior and Co-ordination of National Government should table before Parliament the report contemplated under section 17 of the Sixth Schedule to the Constitution on the restructuring of the provincial administration to accord with and respect the system of devolved government established under the Constitution of Kenya.
 - l) The Office of the Attorney General should operationalize the Campaign Financing Act, 2013 and the National Values and Principles Act, 2015 with immediate effect.

- m) In light of the progress realized and stages of legislations pending enactment; and considering that the implementation of the Constitution is a continuous process that goes beyond five years, the Committee finds no sufficient reason to support the life of CIC.

1.10 Recommendations of the Committee

During its 32nd sitting held on Monday, 16th November, 2015, the Constitutional Implementation Oversight Committee (CIOC) deliberated on the above findings and recommends:-

- a) THAT, the life of CIC should not be extended.
- b) THAT, in light of paragraph (a) the country should focus on supporting and strengthening other institutions charged with respective constitutional implementation mandate. In this regard, Parliament should support the strengthening of the Kenya Law Reform Commission (KLRC) including enhancing the Commission's legal and operational autonomy, capacity and budgetary support to augment its ability to carry on with its mandate. Further, the Office of the Attorney General should facilitate the administrative and functional takeover of CIC upon the expiry of its term.

1.11 Adoption of the Report by Members the Committee

At its 33rd sitting held on Monday, 16th November, 2015, the following members of the Committee appended their signatures against their names as an indication of their agreement with the contents of this report and adopted the same for tabling before the House for consideration and approval.

1. The Hon. Njoroge Baiya, MP, Chairperson
2. The Hon. Moitalel Ole Kenta, MP, Vice Chairperson
3. The Hon. Ababu Namwamba EGH, MP
4. The Hon. Sakwa J. Bunyasi, MP
5. The Hon. Omulele Christopher, MP
6. The Hon. Joe M. Mutambu, MP
7. The Hon. Grace Jemutai Kiptui, MP
8. The Hon. Alice Muthoni Wahome, MP

9. The Hon. Sabina W. Chege, MP
 10. The Hon. Steven Kariuki, MP
 11. The Hon. Humphrey K. Njuguna, MP
 12. The Hon. Rose Rwamba Mitaru, MP
 13. The Hon. Benson M. Kangara, MP
 14. The Hon. James Lomenen, MP
 15. The Hon. John Lodepe Nakara, MP
 16. The Hon. Aramat Lemanken, MP
 17. The Hon. Mary Wambui, M.P.
 18. The Hon. Mahamud, M. Maalim, MP
 19. The Hon. Manson Nyamweya, MP
 20. The Hon David Gikaria, MP
 21. The Hon. Boniface O. Otsiula, MP
 22. The Hon. Bowen, David Kangogo, MP
-
23. The Hon. Shakila Abdalla, MP
 24. The Hon. Protus Akuja, MP
 25. The Hon. (Dr.) Dahir Duale Mohammed, MP
 26. The Hon. Peter N. Gitau, MP
 27. The Hon. Abdul Rahim Dawood, MP
 28. The Hon. Samuel K. Chepkonga, MP

APPENDIX I

FIFTH SCHEDULE

(Article 261 (1))

LEGISLATION TO BE ENACTED BY PARLIAMENT

<i>Chapter and Article</i>	<i>Time Specification</i>
CHAPTER TWO REPUBLIC	
Legislation in respect of culture (Article 11 (3))	Five years
CHAPTER THREE CITIZENSHIP	
Legislation on citizenship (Article 18)	One year
CHAPTER FOUR THE BILL OF RIGHTS	
Freedom of the media (Article 34)	Three years
Family (Article 45)	Five years
Consumer protection (Article 46)	Four years
Fair administrative action (Article 47)	Four years
Fair hearing (Article 50)	Four years
Rights of persons detained, held in custody or detained (Article 51)	Four years
Kenya National Human Rights and Equality Commission (Article 59)	One year
CHAPTER FIVE LAND AND ENVIRONMENT	
Community land (Article 63)	Five years
Regulation of land use and property (Article 66)	Five years
Legislation on land (Article 68)	18 months
Agreements relating to natural resources (Article 71)	Five years
Legislation regarding environment (Article 72)	Four years
CHAPTER SIX LEADERSHIP AND INTEGRITY	
Ethics and anti-corruption commission (Article 79)	One year
Legislation on leadership (Article 80)	Two years
CHAPTER SEVEN REPRESENTATION OF THE PEOPLE	
Legislation on elections (Article 82)	One year
Electoral disputes (Article 87)	One year
Independent Electoral and Boundaries Commission (Article 88)	One year
Legislation on political parties (Article 92)	One year
CHAPTER EIGHT THE LEGISLATURE	
Promotion of representation of marginalised groups (Article 100)	Five years
Vacation of office of member of Parliament (Article 103)	One year
Right of recall (Article 104)	Two years

APPENDIX II

KENYA LAW REFORM COMMISSION



"A vibrant Agency for responsive Law Reform"

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www.info@klrc.go.ke

When replying please quote

Ref. No. **KLRC/RES/27**

and Date



KENYA LAW REFORM COMMISSION
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4 TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

14th October, 2015

Hon. Ekwere Ethuro
Speaker of the Senate
Parliament Buildings
NAIROBI

Hon. Justin Muturi
Speaker of the National Assembly
Parliament Buildings
NAIROBI

Dear *Hon Chepkonga MP*

RE: DISSOLUTION OF THE COMMISSION FOR IMPLEMENTATION OF THE CONSTITUTION

The Kenya Law Reform Commission is mandated by Section 5(6)(b) of the Constitution to work with the Commission for Implementation of the Constitution (CIC) in preparing for tabling in Parliament, the legislation required to implement the Constitution.

During the last five years, the Commission has worked closely with CIC and the Office of the Attorney-General in the preparation of the legislation required under the 5th Schedule and the respective Articles of the Constitution requiring any additional legislation.

The transitional five year period of constitutional implementation has now expired. The constitutional mandate of CIC expires on 29th December, 2015. As one of the organs of implementation of the Constitution, KLRC has sought engagement with CIC to discuss the way forward on constitutional implementation after expiry of its mandate in December 2015. CIC has not been available to discuss the issue with us.

We have now seen various Press Statements issued by CIC Commissioners recusing themselves from holding office in the event of any possible extension of the term of CIC by Parliament. As an active participant in the constitutional implementation process, KLRC wishes to submit its proposals to Parliament on the way forward regarding the constitutional implementation process post CIC.

We attach our detailed proposal on the way forward for consideration by the Parliament. We are willing to appear before the Constitutional Implementation Oversight Committee of the National Assembly to make any clarifications that the Committee may require.

As always, we sincerely thank the leadership of Parliament for continued support to the Commission.

Yours *Sincerely*

Mbaga N. Ngang'a
Mbaga N. Ngang'a
CHAIRPERSON

CC. Prof. Githu Muigai, FCIA,rb, SC
The Hon. Attorney-General
Attorney-General's Chambers
Sheria House
NAIROBI

Mr. Joseph Kinyua, CBS
Chief of Staff & Head of the Public Service
Harambee House
NAIROBI

Hon. Aden B. Duale
Leader of the Majority
The National Assembly
Parliament Building
NAIROBI

The Hon. Prof. Kithure Kindiki
Leader of the Majority
The Senate
Parliament Building
NAIROBI

Hon. Amos Wako, EGH,FCI Arb., SC, MP
Chairman
Senate Committee on Legal Affairs & Human Rights
NAIROBI

✓ Hon. Samuel Kiprono Chepkonga, M.P.
Chairman
Committee on Judicial & Legal Affairs
Parliament Building
NAIROBI

Hon. Njoroge Baiya
Chairman
Constitutional Implementation Oversight Committee
The National Assembly
Parliament Building
NAIROBI



TRANSITION AFTER DISSOLUTION OF THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

1. The Kenya Law Reform Commission (KLRC) is established by the Kenya Law Reform Commission Act, 2014 as a successor to the Law Reform Commission formerly established under the Law Reform Commission Act (Chapter 3 of the Laws of Kenya) now repealed. The Commission is a body corporate with perpetual succession and serves both National and County Governments in matters of law reform.
2. ~~The Commission is mandated by the Constitution of Kenya, 2010 under the Sixth Schedule to coordinate with the Commission for the Implementation of the Constitution and the Attorney-General in the preparation of legislation required to give effect to the Constitution. Further, the establishing Act mandates the Commission to provide advice and offer technical assistance and information to the National and County Governments with regard to the reform or amendment of a branch of law. In addition, the County Governments Act, 2012 anticipates that the Commission will assist County Governments in the preparation and reform of their legislation.~~
3. In reference to an advertisement by the Commission for the Implementation of the Constitution (CIC) in the Nation and Standard Newspaper Dailies of 29th September, 2015 and several Press Statements attributed to the Chairperson of the Commission for the Implementation of the Constitution (CIC) and the Constitutional Implementation Oversight Committee (CIOC) of the National Assembly concerning the dissolution of CIC after the expiry of its term pursuant to the provisions of Section (5)(7) of the Sixth Schedule to the Constitution, the KLRC wishes to make the following observations:
4. The Office of the Attorney-General and the Kenya Law Reform Commission have the primary responsibility under the Constitution, the Office of the Attorney-General Act and the Kenya Law Reform Commission Act to prepare for tabling in Parliament, the legislation required to implement the Constitution. Under the framework legislation governing their operations, the Office of the Attorney-General and Kenya Law Reform Commission have operational independence but with direct reporting responsibilities to Parliament.

5. The constitutional and statutory role of the Commission for the Implementation of the Constitution has been monitoring and oversight. In the course of the last five years of constitutional implementation, the Office of the Attorney-General, Kenya Law Reform Commission and the Commission for the Implementation of the Constitution have worked well in the development of legislation required to implement the Constitution. The Office of the Attorney-General and Kenya Law Reform Commission have in this regard worked with the respective Government Ministries, Departments and Agencies (MDAs) in initiating and developing these pieces of legislation.
6. The constitutional implementation process has been such that after the Office of the Attorney-General and Kenya Law Reform Commission have developed the legislation, the Draft Bills are forwarded to the Commission for the Implementation of the Constitution where they arrange for round-table meeting with the Office of the Attorney-General, Kenya Law Reform Commission and the respective MDA to vet the constitutionality of the legislation. Once the Round-Table Meeting has approved the Bill with or without amendments, the same is then forwarded to the Office of the Attorney-General for onward transmission to the Cabinet. Once the Cabinet approves the Bill, the same is forwarded to Parliament for enactment.
7. 27th August 2015 marked the end of the five years transitional period of constitutional implementation. As of this date, all the constitutional implementation laws required to be prepared under the Fifth Schedule and various other specific Articles of the Constitution requiring specific legislation had been prepared jointly by the Office of the Attorney General and the Kenya Law Reform Commission. They had also been discussed at the respective Round table meetings chaired by the CIC. The majority of the legislation has been enacted by Parliament except for the twelve pieces of legislation listed as follows:-
 - a) Article 11(3)(a) (compensation or royalties for the use of cultures and cultural heritage);
 - b) Article 11(3)(b) (recognition and protection of indigenous seeds and plant varieties. Their genetic and diverse characteristics and use by the communities of Kenya);
 - c) Article 63 (community land)
 - d) Article 66 (regulation of land use and property);

- e) Article 67(2)(e) (Investigation and adjudication of claims arising out of historical land injustices);
- f) Article 68(c)(i) (minimum and maximum land holding acreage);
- g) Article 71 (agreements relating to sharing of natural resources);
- h) Article 81(b) (two-thirds gender principle)
- i) Article 100 (representation of marginalized groups);
- j) Article 164(1)(b) (organization and administration of the Court of Appeal);
- k) Article 165(1)(b) (organization and administration of the High Court);

l) Article 169(1) (Subordinate Courts);

m) Article 173(5) (regulation of the Judiciary Fund); and

n) Section 17 of the Sixth Schedule of the Constitution
(Restructuring of the provincial administration)

8. The National Assembly has already passed a resolution extending by one year, the period for the enactment of these pieces of legislation. These laws have however undergone the usual stakeholder consultation. They have also been cleared at the Round table chaired by CIC. All that remains is for Parliament to debate and enact the legislation.
9. It cannot be overemphasized that the development and preparation of the legislation implementing the Constitution has been a collaborative effort by the three institutions. None of them may therefore appropriate for themselves a bigger role than the others.
10. The other principal function of the Commission for the Implementation of the Constitution is monitoring the implementation of the System of Devolved Government. During the last five years of the constitutional implementation period, other Constitutional and Statutory Commissions and Institutions have been established to monitor the implementation of Devolution.

11. The Institutions include: The National Treasury, The Ministry of Devolution and Planning, The Commission on Revenue Allocation, The Transition Authority, The Council of Governors, The National and County Government Co-ordinating Summit, The Inter-Governmental Relations Technical Committee and the Inter-Governmental Budget and Economic Council. All these institutions are in place and are already performing their assigned functions.
12. Since the National Assembly extended by one year the period for enactment of the twelve pieces of legislation referred to hereinbefore, there have been press statements attributed to the Constitutional Implementation Oversight Committee of the National Assembly and the Legal Affairs and Human Rights Committee of the Senate, to the effect that the mandate of the CIC should be extended for a further period of two years to ensure full implementation of the Constitution. At the same time, there have been other press statements purportedly issued by Members of Parliament opposed to any extension of the CIC term of office. In the press statement issued on 29th September 2015, the CIC Commissioners have expressly stated that they will not seek for an extension of their mandate. The Commissioners soon thereafter changed their mind. In another Press Statement contained in the Sunday Nation issue of 11th October 2015, the Commissioners are reported to have called for an extension of the term of CIC.
13. As one of the constitutional implementation organs, the Kenya Law Reform Commission would also wish to place on record its considered opinion for consideration by the Government and Parliament on the way forward after dissolution of CIC.
14. Constitutional implementation is a process, not an event. Throughout the Commonwealth and in many African countries, nations have established Law Reform Commissions, with the mandate of undertaking continuous review and reform of their laws to ensure their consolidation and that they conform to the needs of their societies. Following the practice in these other jurisdictions, Kenya established its Law Reform Commission under the Law Reform Commission Act of 1982. During the first twenty years of its existence, the Law Reform Commission was just one of departments in the Office of the Attorney General. It lacked operational autonomy, was understaffed and underfunded. It could not achieve much in terms of law reform.
15. In 2003, the Commission was reconstituted and transferred to the newly created Ministry of Justice and Constitutional Affairs. It commenced on the major project of reform of business laws, which ultimately have led to the enactment of the Partnerships Act, the Limited Liability Act, the Companies Act and the Insolvency Act.

16. Further, as is now well documented, our country endured such a difficult episode in the early months of 2008. Together with other players, the Commission was in its statutory capacity called upon to help return the country to normalcy. It is in this context that the Commission assisted in developing the Constitution of Kenya Review Bill, 2008 and the legislative frameworks for Agenda Four Commissions, among others. Upon enactment, these endeavors effectively set in motion the process of national healing through constitutional reform and the attendant legislative enactments. The legal framework developed by the Commission under the instructions of the Ministry of Justice and the Office of the Attorney General led to the successful drafting of the Constitution of Kenya 2010. The Commission staff provided technical support to the Committee of Experts as they framed the Constitution of Kenya 2010. It is for this singular reason we are happy to report that the Commission played an important role in bringing the new constitutional dispensation to fruition and as a matter of law, continues to shape the legal and constitutional reforms in our jurisdiction by being directly involved in the constitutional implementation process.

~~17. After the promulgation of the Constitution of Kenya 2010, KLRC developed~~ together with the Office of the Attorney-General and respective policy Ministries, Departments and Agencies (MDAs), the legislation creating the legal framework for operationalizing the constitutional Commissions (including CIC), independent offices and other agencies required to facilitate the implementation of the Constitution. This was despite the fact that the Kenya Law Reform Commission was still underfunded and lacked the necessary resources to recruit well trained and motivated staff. The bulk of the Government budgetary allocation for constitutional implementation was allocated to the Commission for the implementation of the Constitution. Donor support for constitutional implementation process was exclusively channeled through CIC. This meant that it was principally CIC that had the financial resources to fund seminars, stakeholder consultations and with that, the attendant publicity campaigns to sustain public engagement on the constitutional implementation frameworks essentially developed by KLRC and the Office of the Attorney General.

18. With a view of enhancing the capacity of KLRC, the Kenya Law Reform Commission Act 2013, was enacted re - establishing KLRC as a Semi-Autonomous Government Agency in order to grant it financial and operational autonomy. The Act enhanced the mandate of the KLRC as the premier agency for law reform charged with the added responsibility of development of legislation for constitutional implementation. Unlike the CIC, the mandate of KLRC is not time bound. The intention of Parliament in re-enacting the KLRC Act, 2013 was to designate and prepare KLRC to take on additional responsibilities in a sustainable manner after the dissolution of CIC.

19. Law Reform and Constitutional implementation is an ongoing process. It is not time bound. The five year transitional period which ended on 27th August, 2015, was intended to be a period for establishing the institutional mechanisms for continuous Constitutional implementation well beyond the transition period. It is important to note that although CIC has commendably discharged its assigned responsibilities, the framers of the Constitution recognized its time bound mandate. The lapse of CIC mandate must not occasion an unnecessary lacuna. This is because in keeping with the reality that our constitutional implementation framework is heavily dependent on policy, legislative, institutional and policy reforms, the constitutional and statutory mandate and design of KLRC is such that it should be able to ensure continuity in this regard. It must however be pointed out that KLRC will require the support of the relevant constitutional Commissions, State Organs and other Intergovernmental structures to ensure full implementation of the Constitution going forward.

20. As has already been confirmed by the CIC, these institutional frameworks have already been put in place and they are working. What remains, is to strengthen them so that they can effectively perform their assigned tasks. It is noteworthy to observe that the Presidential Taskforce on Reform of Parastatals advised against the proliferation of Government Agencies with overlapping mandates. It recommended the dissolution of several Government Agencies and merging of others. Policy consistency would require that once CIC mandate expires by effluxion of time, its residual functions, if any, should be carried out by the remaining institutions namely, the Office of the Attorney General and Kenya Law Reform Commission which have the constitutional and statutory mandate to do so.

APPENDIX III



Commission for the Implementation of the Constitution

Utekelezaji wa katiba, Jukumu la wote

PARKLANDS PLAZA, CHIROMO LANE OFF MUTITHI ROAD JUNCTION
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Ref: CIC/1/56/Vol. I(40)

Date: 9th October, 2015

Hon. Njoroge Baiya, M.P

Chairperson

Constitutional Implementation Oversight Committee

Kenya National Assembly

Parliament Buildings

NAIROBI

Dear

ISSUES ARISING ON THE EXTENSION OF THE CIC TERM AFTER 29TH DECEMBER, 2015

As you are no doubt aware the five-year term of the Commission for the Implementation of the Constitution (CIC), which commenced on the 30th of December 2010, comes to an end on December 29, 2015. Under Section 5 of the 6th schedule and the CIC Act, CIC was established as an Independent Commission to exercise the following mandates:

- (i) Facilitate, monitor, and oversee the preparation of legislation and administrative procedures necessary to implement the Constitution.
- (ii) Reporting on the progress of implementation of the Constitution and in particular impediments thereto to Parliament.
- (iii) Working with other Constitutional Commissions and Independent Offices to ensure compliance with the letter and spirit of the Constitution.

- (iv) Monitoring the implementation of the system of devolved government.

As we have reported to your Committee on previous occasions, the Commission has identified a number of successes and challenges in the performance of its mandate.

SUCSESSES

There have been significant milestones of success in the process of implementation of the Constitution. These include:

- Most of the legislation necessary to implement the Constitution has been enacted by Parliament.
- Devolution is on track and many of the institutional mechanisms for its success are in place.
- Service delivery in many counties has improved and the public involvement in the governance process has been enhanced.
- The Constitutional Commissions and Independent Offices are largely carrying out their individual mandates effectively and with the formation of the Forum for Constitutional Commissions and Independent Offices, continue to undertake their collective mandate under Article 249.
- Even as we have consistently reported on the violations of the Constitution by various parties to your Committee and at times sought court intervention where the violations continue, other Kenyans are increasingly seeking various interventions to stop constitutional violations.

CHALLENGES AND OUTSTANDING ISSUES

Despite these successes, significant challenges remain.

- Some legislation including the law relating to the two thirds gender principle was not enacted within the five-year timeline set out in the Constitution. The National Assembly has however extended the period for the passage of the pending legislation by one year.

- Most of the legislation passed has no enabling regulations despite the Constitution and the specific legislation requiring them to be in place so as to implement the enacted laws.
- Laws that were passed since 2010 have provisions that were either unconstitutional, have been ineffective or incapable of achieving their intentions. Many of these are being reviewed but require continual monitoring to ensure that meet the dictates of the Constitution.
- New laws are being passed by Parliament that negate the letter and spirit of the Constitution (COK) 2010 or are outright unconstitutional.
- The transition to the system of devolved government continues to suffer under legal and institutional challenges that require continual oversight.
- Civic awareness on the Constitution and critical laws remains low. ~~Neither the national nor the County governments are putting in any significant resources to ensure civic education.~~

- Public participation in governance is largely absent or at best tokenistic.
- The provisions of Chapter 6 are routinely violated or ignored as public officers carry out their duties.
- On devolution, we have noted with concern the abuse of power and misuse of public resources by some county governments and failure by most of them to decentralize to lower sub-county units.
- The retention of numerous parastatals that carry out county government functions and utilize extensive public funds is not only unconstitutional but a severe drain on scarce public resources.
- There is increased impunity and disrespect for the rule of law

OPTIONS AVAILABLE

The National Assembly and the Senate are constitutionally mandated to determine if the Constitution has been fully implemented and the National Assembly is constitutionally mandated to determine whether there is need to extend the term of CIC. Generally, Parliament, as one of the oversight bodies, and in terms of its general mandate, has the

ultimate responsibility to decide how to ensure the effective monitoring and facilitation of the implementation of the Constitution, beyond CIC.

In view of the outstanding issues outlined above, which clearly show that the key components of the Constitution are yet to be fully implemented, it is our opinion that the most prudent and effective option would be to extend the CIC term. Such an extension would facilitate the necessary institutional continuity and also retain the safeguards that come from the status of CIC as an independent body under Chapter 15 of the Constitution.

If for any reason the assembly deems it unnecessary to extend the term of the Commission, there would, in our view, be need to create an institutional framework for monitoring and facilitating the effective implementation of the Constitution post CIC. Whereas we recognize that since 2010, several institutions, including the Kenya Law Reform Commission have been set up that can pursue some of the outstanding matters, many of these institutions require increased capacity and strengthening. Some would also need to transform their ethos so as to align them with CoK 2010. There would also be need to review the institutions' constituting statutes to enable them carry out the residual CIC mandate effectively.

The decision as to how to ensure the effective monitoring, oversight and facilitation of the implementation of the Constitution, including the option of extending CIC, must be made objectively, impartially and with the best interest of how to effectively implement the Constitution, so that ultimately, the people of Kenya achieve all the benefits of the Constitution including provision of better services.

To give the National Assembly the opportunity to address this matter on a purely objective basis unclouded by their views on the individuals currently serving as Chairperson and Members of the Commission, we did advise the Country, and we hereby reiterate the same, **that as Commissioners currently serving at CIC, we will not seek an extension of our term of office and we will leave at the expiry of our five-year term, which expires on the 29th of December 2015.**

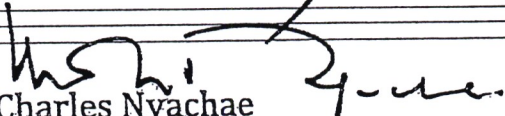
We made this decision not to abandon an onerous civic duty, but so as to give an opportunity to the National Assembly to determine whether to extend the CIC term or provide for any other institutional framework for facilitating and overseeing the implementation of the Constitution, **without such decision being clouded by the possible involvement of any or all of the serving Commissioners.**

We now write to you so that you may deliberate on this matter in good time and make such decision as you feel will be appropriate in the circumstances. We do wish to indicate the urgency of the matter as we would wish to know in good time how to manage the transition especially if the term of the Commission will not be extended. In this latter event, there would still be need to revise the CIC Act to enable the secretariat to remain in office for a short while to facilitate the winding up and handover of assets and documents after the end of the term.

We remain available and willing to discuss or clarify any of the issues raised herein

Yours

Sincerely



Charles Nyachae

CHAIRPERSON

Copy to:

Hon. Amos Wako

Chairperson

Senate Committee on Legal Affairs

and Human Rights

Parliament Buildings

NAIROBI

APPENDIX IV



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/6/E/227

October 26, 2015

Hon. Justin Muturi
Speaker of the National Assembly
Parliament Building
NAIROBI

Hon. Ekwe Ethuro
Speaker of the Senate
Parliament Building
NAIROBI

RE: MEMORANDUM ON THE DISSOLUTION OF THE COMMISSION FOR
IMPLEMENTATION OF THE CONSTITUTION

The Commission for the Implementation of the Constitution (CIC) was established under Section 5(6) of the Sixth schedule of the Constitution. The functions of CIC are to:

1. Monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution;
2. Co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement this Constitution;
3. Report every three(3) months to the Constitutional Implementation Oversight Committee on:
 - i. progress in the implementation of this Constitution; and
 - ii. any impediments to its implementation; and
4. Work with each Constitutional Commission to ensure that the letter and spirit of this Constitution is respected and;

The term of the CIC comes to an end on 31st December 2015, and consequently, various deliberations and consultations are ongoing with a view to determining whether or not CIC's mandate is to be extended for a defined term.

However, in order to make such a determination, it is imperative to remain focused on the core mandate of the CIC based on the *raison d'être* of its establishment and if satisfied that the same has been satisfactorily met, review the framework for implementation of residual functions if any, and the operational tasks required for dissolution.

SHERIA HOUSE, HARAMBEE AVENUE

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DEPARTMENT OF JUSTICE

CO-OPERATIVE BANK HOUSE, HAILE SELASSIE AVENUE, P.O. Box 56057 - 00200, Nairobi - Kenya, TEL: Nairobi 2224029/2240337
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The *raison d'être* for CIC's establishment and its fulfillment thereof

1. CIC was established to support the implementation of the Constitution in very specific terms, that is, *by monitoring, facilitating and overseeing development of legislation and administrative procedures to implement the Constitution.* CIC was to do so through coordinating with the Attorney General and the Kenya Law Reform Commission to table the required legislation and report every three months to the Constitutional Implementation Oversight Committee (CIOC) on implementation progress.
2. This position is further supported by the Committee of Expert (CoE) Final Report that outlined the core role of CIC and the purpose of its establishment. At paragraph 11.3 of Chapter 11 (page 150), the CoE recognizes that all organs of government are required to implement the constitution however, the CIC and CIOC were established as "temporary bodies" for the purpose of overseeing proper implementation of the Constitution. With specific reference to CIC, the report outlines that *"The CIC, with tenure of five years, is a 'hands on' organ ... comprised of nine people with proven skills in public administration, human rights and government. Its members need expertise in structuring programmes and taking initiative when they are delayed or have failed. The CIC will monitor, facilitate, and oversee the development of legislation and administrative procedures required to implement the new Constitution. It will coordinate with the Attorney-General and the Kenya Law Reform Commission in preparing, for tabling in Parliament, the legislation required to implement the new Constitution. It is required to report to PCIOC on the progress made in, or on any impediments to, the implementation of the new Constitution. These are responsibilities that cannot be fulfilled by Parliament. They will require fulltime attention which MPs cannot give as they have many other responsibilities"*
3. The conceptualization of CIC was temporal in nature, designed to aide in midwifing the colossal task of constitutional implementation, and it was consequently designed with a limited timeframe. From the above description, it is clear that CIC was established as an additional support structure to the executive and parliamentary mandate of constitutional implementation, noting that these pre-existing organs would need the extra support during the distinct short term assignment over and above their regular functions to support the constitution's implementation. The commissioners were required to have skill sets or *"expertise in structuring programmes and taking initiative when they are delayed or have failed"* to ensure that in the event the Attorney General and Parliament were bogged down in the varied other duties of their office occasioning delay in legislative processing, that CIC would be on hand to fastrack the same and ensure devotion to the timelines.
4. A second function envisioned of CIC was to monitor the implementation of the system of devolved government as provided in section 15(2)(d) of the Sixth Schedule . The CoE report indeed noted that a critical part of CIC's work will be to ensure that devolved governments are not given tasks before they have the capacity to implement them as this would set them up for failure. CIC was also to ensure that national government transfers its powers and functions to devolved governments and CIC was to ensure it reports to the CIOC on any difficulties this regard.

5. It is our considered view that the *raison d'etre* of CIC's establishment has been fulfilled and that any existing processes are to be determined with no further action of the CIC.

- a. The legislation anticipated in the fifth schedule is largely in place, and the requisite drafts of anticipated legislation that is yet to be enacted have been developed and forwarded for Parliament's consideration and/or in the alternative, have been reviewed and endorsed by CIC for this purpose. The CIC has no role in the parliamentary debate and enactment of legislation, and consequently, has no further input into bills currently before Parliament or due to be tabled before the House by the Attorney General.

Consequently, it is imperative that a review of any bills currently before CIC are interrogated as to their alignment to the fifth schedule in order to determine the propriety and relevance of their continued engagement. This is particularly cogent when one considers that the core function of law reform is the mandate of the Attorney General and Kenya Law Reform Commission, whose tasks would ordinarily include the review and reform of laws for conformity with the constitution, national and international policy and other treaties that Kenya has adhered to.

- b. Parliament has, in recognizing the required timeframe for enacting the remaining legislation, extended the period thereof in line with the terms of Art. 262(2) of the Constitution for one year. During this period, parliament will consider the bills before it, and deal accordingly.
- c. With regards to monitoring the implementation of devolution, it is to be noted that the transfer of functions was anticipated in section 15 of the Sixth Schedule and consequently given further legislative effect through the Transition to Devolved Government Act (TDGA) and the Intergovernmental Relations Act (IGRA). The transfer of functions was effected by the Transition Authority established under the TDGA and consequently, the Transition Authority and by extension CIC is *functus officio* to all transferred functions. The IGRA anticipates that any further consultations on re-transfer of functions, or the transfer of additional functions would be the subject of inter-governmental agreement.
- d. All pending transfers especially the transfer of roads, cultural activities, public entertainment and public amenities etc are matters pending adjudication before the High Court and consequently the national government agencies including the Office of Attorney General stands to be guided accordingly. The function of CIC in this regard is therefore moot. The Intergovernmental Relations Technical Committee anticipated in the IGRA is vested with the mandate of undertaking all residual functions of the Transition Authority

6. The supplementary and supportive nature of CIC's mandate must be duly appreciated. It does not of itself create a newly defined mandate for the CIC that is in competition with or overlapping with the functions of distinct constitutional offices. The proposition suggesting that CIC has a role in developing regulations and ensuring their adherence to the Constitution is incongruous, in view of the fact that regulations give effect to the substantive law, and cannot be at variance with it. In addition, constitution implementation is envisioned as a process and not an event. Development and review of regulations to implement legislation is expected to be a continuous ongoing process of reform and cannot have been vested in a temporal institution, but rather, was correctly assigned to the Attorney General and Kenya Law Reform Commission. Where concerns may arise as to the consistency and adherence of such regulations to the Constitution, then the same would be subject to judicial adjudication and direction.

Whether a lacuna exists with the exit of CIC

-
1. As noted hereinabove, all organs of government are required to implement the constitution, but the framers found it fit to establish a facilitative body to aid the transition to a new constitutional order. The Constitution further established distinct offices mandated to implement the constitution, i.e. the Office of Attorney General.
 2. Art. 156 of the Constitution designates the Attorney General as the principal legal advisor to the government, promoter of the rule of law and defender of the public interest. The Attorney General has a constitutional responsibility to defend the rule of law, and thereby ensure that all laws, actions, procedures and regulations whether national or county governments, conform to the constitution, are not in conflict with existing laws, and are legally and technically sound. This responsibility is not in usurping the role of the Judiciary or Parliament, but rather, as a complimentary role towards the objective of promoting the rule of law.
 3. Section 5(1) of the Office of the Attorney General Act provides in detail the functions of the office as:
 - a. Advising Government Ministries, Departments, Constitutional Commissions and State Corporations on legislative and other legal matters;
 - b. Advising the Government on all matters relating to the Constitution, international law, human rights, consumer protection and legal aid;
 - c. Negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties for and on behalf of the Government and its agencies;
 - d. Coordinating reporting obligations to international human rights treaty bodies to which Kenya is a member or on any matter which member states are required to report;
-

- e. Drafting legislative proposals for the Government and advising the Government and its agencies on legislative and other legal matters;
- f. Reviewing and overseeing legal matters pertaining to the registration of companies, partnerships, business names, societies, adoptions, marriages, charities, chattels, hire purchase and coat of arms;
- g. Reviewing and overseeing legal matters pertaining to the administration of estates and trusts;
- h. In consultation with the Law Society of Kenya, advising the Government on the regulation of the legal profession;
- i. Representing the national Government in all civil and constitutional matters in accordance with the Government Proceedings Act;
- j. Representing the Government in matters before foreign courts and tribunals; and
- k. Performing any function as may be necessary for the effective discharge of the duties and the exercise of the powers of the Attorney General.

In the execution of the functions conferred by the Constitution and the Act, the Attorney-General is expected to provide efficient and professional legal services to the Government and the public for the purpose of facilitating, promoting and monitoring the rule of law, the protection of human rights and democracy.

4. Section 43 of the County Government's Act further extends the scope of the Attorney General by providing that: "*A county government may, pursuant to Article 156(4) of the Constitution request the Attorney-General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings*".
5. Despite the fact that the Constitution has no distinct definition of the term "government" it is clear that the constitution envisages the existence of government as one organ, thereafter further distinguishing a national and county level of government which collectively form "government" in its singular term. Consequently, the Attorney General is principal legal advisor and promoter of the rule of law and public interest to all state organs at both levels of government, guided by the principles enshrined in Art. 259 of the Constitution.
6. This extrapolation is in line with the sentiments of the High Court in *B vs. Attorney General Misc. Civil Application No. 1609 of 2003* which summarized the instructive role of the Attorney General as follows:

"The Attorney General's office is the State Law Office, a core instrumentality of the process of legality in the conduct of governance in the Republic. Not only is this office expected and required to assist the courts in upholding the supremacy of the law in Kenya; it is required to advise all departments of government and all ministers competently, efficiently and in good faith, on the correct path of decision making in compliance with the law of the land. The State Law Office is required to functionalize all instruments of law to support lawful decision making in government, and to give the State an image of credibility as a law abiding nation within the international community of nation states."

7. It is further important to note that the Kenya Law Reform Commission is established under statute to inter alia:

- a) *keep under review all the law and recommend its reform to ensure—*
 - i. *that the law conforms to the letter and spirit of the Constitution;*
 - ii. *that the law systematically develops in compliance with the values and principles enshrined in the Constitution;*
 - iii. *that the law is, among others, consistent, harmonized, just, simple, accessible, modern and cost-effective in application;*
 - iv. *the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution;*
 - v. *keep the public informed of review or proposed reviews of any laws; and*
 - vi. *keep an updated date of all laws passed and reviewed by Parliament;*
- b) *work with the Attorney-General and the Commission for the Implementation of the Constitution in preparing for tabling, in Parliament, the legislation and administrative procedures required to implement the Constitution;*
- c) *provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law;*
- d) *upon request or on its own motion, undertake research and comparative studies relating to law reform;*
- e) *formulate and implement programmes, plans and actions for the effective reform of laws and administrative procedures at national and county government levels;*
- f) *consult and collaborate with State and non-State organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force;*
- g) *formulate, by means of draft Bills or otherwise, any proposals for reform of national or county government legislation;*
- h) *upon request or on its own motion, advise the national or county governments on the review and reform of their legislation;*
- i) *undertake public education on matters relating to law reform; and*
- ii) *perform such other functions as may be prescribed by the Constitution, this Act or any other written law.*

8. A tripartite operational framework was established between the CIC, KLRC and AG to facilitate the smooth preparation of bills to Parliament. Each agency had a distinct mandate in this arrangement, with CIC charged with facilitating the roundtable meetings to vet the constitutionality of legislation and further incorporate a framework of public participation.

9. Whereas this is acknowledged as a critical role, the same can and has been effected through the Office of Attorney General and Kenya Law Reform Commission by virtue of their constitutional and legislatively defined mandates respectively. Furthermore, Parliament has by requirement of the Constitution incorporated a comprehensive public participation framework to support the legislative process through the designated parliamentary committees and thereby receives submissions from citizens, government agencies and constitutional commissions on key concerns. This process is usually preceded by similar public consultation platforms organized by implementing Ministries, Departments and Agencies. Furthermore, it is important to note that there exist other constitutional commissions and independent offices with distinct oversight mandates to monitor implementation of the constitution that report to parliament on the status of its implementation.

10. Upon review of the functions and powers of the Attorney General, and the Kenya Law Reform Commission as elucidated above, one can clearly discern that the role of the CIC could only be facilitative of the transition to a new constitutional order in a transient and auxiliary framework.

11. Consequently, the exit of CIC is unlikely to be detrimental to the defined expectations. This position, coupled with the fact that the key legislation anticipated in the fifth schedule have been enacted and/or are under the final stages of parliamentary consideration, render the continued existence of the CIC untenable. The structuring of the Office of Attorney General and KLRC as currently designed do not require any review to undertake the function of constitution monitoring, and no other bodies are necessary for this purpose. These offices only require the enhancement of necessary human, financial and other resources to facilitate their mandates. The winding up of CIC in this regard and the natural reallocation of their assigned resources to these agencies would form an initial start in supporting their functions accordingly.

Operational Framework for Winding Down CIC

1. As noted above, the proposal since mooted to establish another institution/body to transit the CIC is not required, as the Attorney General and KLRC as currently constituted are designed to undertake the function of monitoring implementation of laws, including the constitution. Creating any other institutions for this purpose would be imprudent and a misuse of public resources contrary to Art. 201 of the Constitution.
2. The winding down of CIC and the takeover its current operations and staff would be a purely administrative process. The Office of Attorney General as the mandated executive agency would take over the assets, operations and staff of the CIC subject to existing rules and regulations. This is not a particularly novel process, recalling that other commissions and organs in our country's past including the Truth, Justice and Reconciliation Commission (TJRC) have been wound up and its assets and operational staff restructured in the normal government procedure.
3. It is also to be noted that a core of CIC's technical staff were seconded staff from executive agencies including the Office of Attorney General, and

consequently, a winding up of operations would necessitate a resumption of duties accordingly. Relevant protocols would then apply for other staff who were employed on contract and/or such other terms.

In conclusion therefore, the CIC has fulfilled its mandate of "*monitoring, facilitating and overseeing development of legislation and administrative procedures to implement the Constitution*". Evidence of this is in the robust legislative calendar of Parliament and the subsequent enactment of a plethora of new law to implement the constitution. The remaining legal texts have left the purview of CIC's engagement and now lie with Parliament to give them legal effect. There are no further tasks warranting an extension of their term and the same should be disbanded at the expiry of its term.

GITHU MUIGAI, EGH, SC
ATTORNEY GENERAL

Copy to: Mr. Aden Duale
Leader of Majority
National Assembly
NAIROBI

Mr. Njoroge Baiya
Chairperson
Constitution Implementation Oversight Committee
National Assembly
NAIROBI

Mr. Samuel Chepkonga
Chairperson
Departmental Committee on Justice and Legal Affairs
National Assembly
NAIROBI

Mr. Amos Wako
Chairperson
Standing Committee on Legal Affairs and Human Rights
Parliament Building
NAIROBI

Mr. Mbage Nganga
Chairperson
Kenya Law Reform Commission
NAIROBI

APPENDIX V

MINUTES

**MINUTES OF THE 34TH SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY,
17TH NOVEMBER, 2015 AT THE OAK ROOM, WINDSOR GOLF HOTEL AND
COUNTRY CLUB, AT 9.30AM**

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Omulele Christopher, MP
5. The Hon. Joe M. Mutambu, MP
6. The Hon. Grace Jemutai Kiptui, MP
7. The Hon. Alice Muthoni Wahome, MP
8. The Hon. Steven Kariuki, MP
9. The Hon. Humphrey K. Njuguna, MP
10. The Hon. Sabina Chege, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Ababu Namwamba EGH, MP
13. The Hon. Mary Wambui, M.P
14. The Hon. Benson M. Kangara, MP
15. The Hon David Gikaria, MP
16. The Hon. Peter N. Gitau, MP

APOLOGY

1. The Hon. James Lomenen, MP
2. The Hon. John Lodepe Nakara, MP
3. The Hon. Aramat Lemanken, MP
4. The Hon. Mahamud, M. Maalim, MP
5. The Hon. Manson Nyamweya, MP
6. The Hon. Boniface O. Otsiula, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Protus Akuja, M.P.
10. The Hon. (Dr.) Dahir Duale Mohammed, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Samuel K. Chepkonga, MP

IN ATTENDANCE

1. Mr. JN Mutega
2. Mr. Noah Too
3. Ms. Jemimah Waigwa
4. Mr. Nebert Ikai Lomechu
5. Mr. Alex Mutuku
6. Ms. Winne Kiziah

NATIONAL ASSEMBLY

- Principal Clerk Assistant II
- Research Assistant
- Legal Counsel
- Clerk Assistant
- Serjeant-At-Arms
- Media Relations Officer

MIN.NO. 156/17/11/2015: PRELIMINARIES

The meeting was called to order at 9.30am and commenced with a word of prayer from the Chairperson.

MIN.NO. 157/17/11/2015: CONFIRMATION OF MINUTES

The minutes of the 30th sitting held on 16th November, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by the Vice-Chairperson and seconded by Hon. Sakwa J. Bunyasi, MP.

The minutes of the 31st sitting held on 16th November, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by the Vice-Chairperson and seconded by Hon. Christopher Omulele, MP.

The minutes of the 32nd sitting held on 16th November, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by the Vice-Chairperson and seconded by Hon. Steven Kariuki, MP.

The minutes of the 33rd sitting held on 16th November, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by the Vice-Chairperson and seconded by Hon. Steven Kariuki, MP.

MIN.NO.158/16/11/2015: ADJOURNMENT

There being no any other business the meeting adjourned at 10.30am.

SIGN.......... DATE16/11/2015.....
CHAIRPERSON

**MINUTES OF THE 33RD SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY,
16TH NOVEMBER, 2015 AT THE OAK ROOM, WINDSOR GOLF HOTEL AND
COUNTRY CLUB, AT 2.00 PM**

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Omulele Christopher, MP
5. The Hon. Joe M. Mutambu, MP
6. The Hon. Grace Jemutai Kiptui, MP
7. The Hon. Alice Muthoni Wahome, MP
8. The Hon. Steven Kariuki, MP
9. The Hon. Humphrey K. Njuguna, MP
10. The Hon. Sabina Chege, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Ababu Namwamba EGH, MP

13. The Hon. Mary Wambui, M.P.

14. The Hon. Benson M. Kangara, MP
15. The Hon David Gikaria, MP
16. The Hon. Peter N. Gitau, MP

APOLOGY

1. The Hon. James Lomenen, MP
2. The Hon. John Lodepe Nakara, MP
3. The Hon. Aramat Lemanken, MP
4. The Hon. Mahamud, M. Maalim, MP
5. The Hon. Manson Nyamweya, MP
6. The Hon. Boniface O. Otsiula, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Protus Akuja, M.P.
10. The Hon. (Dr.) Dahir Duale Mohammed, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Samuel K. Chepkonga, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. JN Mutega - Principal Clerk Assistant II
2. Mr. Noah Too - Research Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Ms. Winne Kiziah - Media Relations Officer

MIN.NO. 153/16/11/2015: PRELIMINARIES

The meeting was called to order at 2.30pm.

MIN.NO. 154/16/11/2015: ADOPTION OF THE REPORT OF THE COMMITTEE ON EXTENSION OF THE LIFE OF THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The Report of the Committee was adopted by the Members present at a meeting of the Committee held on Monday, 16th November, 2015 at 4.00pm.

MIN.NO.155/17/10/2015: ADJOURNMENT

There being no any other business the meeting adjourned at 4.30pm

SIGN.....*[Signature]*..... DATE16/11/2015.....
CHAIRPERSON

**MINUTES OF THE 32ND SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY,
16TH NOVEMBER, 2015 AT THE OAK ROOM, WINDSOR GOLF HOTEL AND
COUNTRY CLUB, AT 12.00 PM**

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
2. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Omulele Christopher, MP
5. The Hon. Joe M. Mutambu, MP
6. The Hon. Grace Jemutai Kiptui, MP
7. The Hon. Alice Muthoni Wahome, MP
8. The Hon. Steven Kariuki, MP
9. The Hon. Humphrey K. Njuguna, MP
10. The Hon. Sabina Chege, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Ababu Namwamba EGH, MP
13. The Hon. Mary Wambui, M.P.
14. The Hon. Benson M. Kangara, MP
15. The Hon David Gikaria, MP
16. The Hon. Peter N. Gitau, MP

APOLOGY

1. The Hon. James Lomenen, MP
2. The Hon. John Lodepe Nakara, MP
3. The Hon. Aramat Lemanken, MP
4. The Hon. Mahamud, M. Maalim, MP
5. The Hon. Manson Nyamweya, MP
6. The Hon. Boniface O. Otsiula, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Protus Akuja, M.P.
10. The Hon. (Dr.) Dahir Duale Mohammed, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Samuel K. Chepkonga, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. JN Mutega - Principal Clerk Assistant II
2. Mr. Noah Too - Research Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Ms. Winne Kiziah - Media Relations Officer

MIN.NO. 150/16/11/2015: PRELIMINARIES

The meeting was called to order at 12.00pm.

MIN.NO. 151/16/11/2015: RECOMMENDATIONS OF THE COMMITTEE WITH REGARD TO EXTENSION OF THE LIFE OF THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The Committee deliberated on the matter of the extension of the life of CIC and made the following recommendations:-

- a) **THAT**, the life of CIC should not be extended.
- b) **THAT**, in light of paragraph (a) the country should focus on supporting and strengthening other institutions charged with respective constitutional implementation mandate. In this regard, Parliament should support the strengthening of the Kenya Law Reform Commission (KLRC) including enhancing the Commission's legal and operational autonomy, capacity and budgetary support to augment its ability to carry on with its mandate. Further, the Office of the Attorney General should facilitate the administrative and functional takeover of CIC upon the expiry of its term.

MIN.NO.152/16/11/2015: ADJOURNMENT

There being no any other business the meeting adjourned at 1.00pm.

SIGN.....  DATE 16/11/2015
CHAIRPERSON

**MINUTES OF THE 31ST SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY,
16TH NOVEMBER, 2015 AT THE OAK ROOM, WINDSOR GOLF HOTEL AND
COUNTRY CLUB, AT 10.30 AM**

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Omulele Christopher, MP
5. The Hon. Joe M. Mutambu, MP
6. The Hon. Grace Jemutai Kiptui, MP
7. The Hon. Alice Muthoni Wahome, MP
8. The Hon. Steven Kariuki, MP
9. The Hon. Humphrey K. Njuguna, MP
10. The Hon. Sabina Chege, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Ababu Namwamba EGH, MP
13. The Hon. Mary Wambui, M.P
14. The Hon. Benson M. Kangara, MP
15. The Hon. David Gikaria, MP
16. The Hon. Peter N. Gitau, MP

APOLOGY

1. The Hon. James Lomenen, MP
2. The Hon. John Lodepe Nakara, MP
3. The Hon. Aramat Lemanken, MP
4. The Hon. Mahamud, M. Maalim, MP
5. The Hon. Manson Nyamweya, MP
6. The Hon. Boniface O. Otsiula, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Protus Akuja, M.P.
10. The Hon. (Dr.) Dahir Duale Mohammed, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Samuel K. Chepkonga, MP

IN ATTENDANCE

1. Mr. JN Mutega
2. Mr. Noah Too
3. Ms. Jemimah Waigwa
4. Mr. Nebert Ikai Lomechu
5. Mr. Alex Mutuku
6. Ms. Winne Kiziah

NATIONAL ASSEMBLY

- Principal Clerk Assistant II
- Research Assistant
- Legal Counsel
- Clerk Assistant
- Serjeant-At-Arms
- Media Relations Officer

MIN.NO. 147/16/11/2015: PRELIMINARIES

The meeting was called to order at 10.30am.

**MIN.NO. 148/16/11/2015: FINDINGS OF THE COMMITTEE REGARDING
EXTENSION OF THE LIFE OF THE
COMMISSION FOR THE IMPLEMENTATION
OF THE CONSTITUTION**

The Committee considered the Report and made the following findings-

- a) The term of the Commission will come to an end on 29th December 2015 and that the National Assembly needs to determine the life of CIC in light of the extension of the constitutional deadline.
- b) The Constitution gave CIC a specific mandate to be delivered within a specified timeline of five years, a period which it was to midwife the implementation process and support other state organs responsible for the implementation of the Constitution. Largely, this has been achieved.
- c) The Sixth Schedule to the Constitution set the term of CIC at five (5) years from its establishment or full implementation of the Constitution as determined by Parliament. On 19th August, 2015, the National Assembly resolved to extend the deadline for enactment of legislations with a Five Years time specification by one year to 27th August, 2016. By so doing, the National Assembly attested to the fact that there is still pending work on implementation of the Constitution as contemplated by Section 5(7) of the 6th Schedule to the Constitution.
- d) Most institutions envisaged by the constitution have been set up.
- e) In carrying out its mandate, CIC worked hand in hand with the Attorney General and the Kenya Law Reform Commission, both institutions with capacity to implement the Constitution as required. In this tripartite arrangement, CIC facilitated round-table meetings to vet and enhance the constitutionality of legislation and further incorporate a framework of public participation.
- f) It was the very intention and design of the Constitution to have CIC as a temporary institution.
- g) For legislations required under the Fifth Schedule to the Constitution with a Five Years' time specification, most of the legislations have been prepared, passed through the stakeholders and are now before Parliament save for legislations on Judiciary Fund; Succession; and, Report on restructuring of the Report on compliance with section 17 of

the Sixth Schedule of the Constitution of Kenya, 2010 (restructuring of the provincial administration) still pending.

- h) All the pending legislations required under the Fifth schedule to the Constitution should be given priority for consideration by the House so that the deadline of 27th August , 2016 can be met.
- i) There is need to develop legislation on the conduct of referendum.
- j) There is need to review the Statute Book to align the various statutes with the Constitution of Kenya 2010.
- k) The Cabinet Secretary for Interior and Co-ordination of National Government should table before Parliament the report contemplated under section 17 of the Sixth Schedule to the Constitution on the restructuring of the provincial administration to accord with and respect the system of devolved government established under the Constitution of Kenya.
- l) The Office of the Attorney General should operationalize the Campaign Financing Act, 2013 and the National Values and Principles Act, 2015 with immediate effect.

m) In light of the progress realized and stages of legislations pending enactment and considering that the implementation of the Constitution is a continuous process that goes beyond five years, the Committee finds no sufficient reason to support the life of CIC.

MIN.NO.149/16/11/2015: ADJOURNMENT

There being no any other business the meeting adjourned at 11.30am.

SIGN.....  DATE 16/11/2015

CHAIRPERSON

MINUTES OF THE 30TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY, 16TH NOVEMBER, 2015 AT THE OAK ROOM, WINDSOR GOLF HOTEL AND COUNTRY CLUB, AT 9.00AM

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Omulele Christopher, MP
5. The Hon. Joe M. Mutambu, MP
6. The Hon. Grace Jemutai Kiptui, MP
7. The Hon. Alice Muthoni Wahome, MP
8. The Hon. Steven Kariuki, MP
9. The Hon. Humphrey K. Njuguna, MP
10. The Hon. Sabina Chege, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Ababu Namwamba EGH, MP
13. The Hon. Mary Wambui, M.P
14. The Hon. Benson M. Kangara, MP
15. The Hon David Gikaria, MP
16. The Hon. Peter N. Gitau, MP

APOLOGY

1. The Hon. James Lomenen, MP
2. The Hon. John Lodepe Nakara, MP
3. The Hon. Aramat Lemanken, MP
4. The Hon. Mahamud, M. Maalim, MP
5. The Hon. Manson Nyamweya, MP
6. The Hon. Boniface O. Otsiula, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Protus Akuja, M.P.
10. The Hon. (Dr.) Dahir Duale Mohammed, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Samuel K. Chepkonga, MP

IN ATTENDANCE

1. Mr. JN Mutega
2. Mr. Noah Too
3. Ms. Jemimah Waigwa
4. Mr. Nebert Ikai Lomechu
5. Mr. Alex Mutuku
6. Ms. Winne Kiziah

NATIONAL ASSEMBLY

- Principal Clerk Assistant II
- Research Assistant
- Legal Counsel
- Clerk Assistant
- Serjeant-At-Arms
- Media Relations Officer

MIN.NO. 144/16/11/2015: PRELIMINARIES

The meeting was called to order at 9.30am and commenced with a word of prayer from the Chairperson.

MIN.NO. 145/16/11/2015: CONFIRMATION OF MINUTES

The minutes of the 24th sitting held on 8th October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by Hon. Sakwa J. Bunyasim MP and seconded by Hon. Steven Kariuki, MP.

The minutes of the 25th sitting held on 16th October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by Hon. Rose R. Mitaru, MP and seconded by Hon. Sakwa J. Bunyasi, MP.

The minutes of the 26th sitting held on 16th October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by Hon. Christopher Omulele, MP and seconded by Hon. Steven Kariuki, MP.

The minutes of the 27th sitting held on 16th October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by Hon. Christopher Omulele, MP and seconded by Hon. Sakwa J. Bunyasi, MP.

The minutes of the 28th sitting held on 17th October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by Hon. Sakwa J. Bunyasi, MP and seconded by Hon. Steven Kariuki, MP.

The minutes of the 29th sitting held on 22nd October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by the Vice-Chairperson and seconded by Hon. Sakwa J. Bunyasi, MP.

MIN.NO.146/16/11/2015: ADJOURNMENT

There being no any other business the meeting adjourned at 10.30am.

SIGN.....
CHAIRPERSON

DATE16/11/2015

MINUTES OF THE 29th SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY, 22ND OCTOBER, 2015 AT THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDING, AT 10.00 AM

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Ababu Namwamba EGH, MP
4. The Hon. Benson M. Kangara, M
5. The Hon. Sakwa J. Bunyasi, MP
6. The Hon. Samuel K. Chepkonga, MP
7. The Hon. Omulele Christopher, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. Aramat Lemanken, MP
10. The Hon. Mary Wambui, M.P

APOLOGY

1. The Hon. James Lomenen, MP
2. The Hon. Mahamud, M. Maalim, MP
3. The Hon. Joel M. Mutambu, MP
4. The Hon. Manson Nyamweya, MP
5. The Hon. Grace Jemutai Kiptui, MP
6. The Hon. Rose Rwamba Mitaru, MP
7. The Hon. David Gikaria, MP
8. The Hon. Boniface O. Otsiula, MP
9. The Hon. Sabina Chege, MP
10. The Hon. Bowen, David Kangogo, MP
11. The Hon. Shakila Abdalla, MP
12. The Hon. Humphrey K. Njuguna, MP
13. The Hon. Protus Akuja, M.P.
14. The Hon. Alice Muthoni Wahome, MP
15. The Hon. (Dr.) Dahir Duale Mohammed, MP
16. The Hon. Peter N. Gitau, MP
17. The Hon. Steven Kariuki, MP
18. The Hon. Abdul Rahim Dawood, MP

IN ATTENDANCE

COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION (CIC)

1. Dr. Elizabeth Muli - **Vice Chairperson**
2. Mr. Kamotho Waiganjo - **Commissioner**
3. Mr. J. N. Kosure - **CEO/ Secretary to CIC**

NATIONAL ASSEMBLY

1. Mr. Kipkemoi Arapkirui - Principal Clerk Assistant I
2. Ms. Jemimah Waigwa - Legal Counsel II
3. Mr. Nebert Ikai Lomechu - Clerk Assistant III
4. Mr. Donald Manyalla - Research Assistant III
5. Ms. Winne Kiziah - Media Relations Officer

MIN.NO. 140/22/10/2015: PRELIMINARIES

The meeting was called to order at 10.30am and commenced with a word of prayer from the Chairperson.

MIN.NO. 141/22/10/2015: MEETING WITH COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The Vice-Chairperson of the Commission for the Implementation of the Constitution (CIC), Dr. Elizabeth Muli, accompanied by Commissioner Kamothe Waiganjo and the Secretary to the Commission, Mr. J. N. Kosure appeared before the Committee to discuss their position on the expiry of the term of the Commission. The Committee heard that:-

- a) there have been significant milestones of success in the process of implementation of the Constitution key among them: establishment of key constitutional Commissions and Independent Offices; enactment of key legislations majority of which have seen devolution actualized with the necessary institutional infrastructure:
- b) there have been significant challenges in the process of implementation of the Constitution e.g. most of legislations enacted have no enabling regulations; public participation in governance was largely absent and passage of unconstitutional laws by Parliament was on the rise.
- c) The Commission would not to seek an extension of their term of office and that they will leave at the expiry of their term (December 29, 2015).
- d) That if Parliament hands over the mandate of CIC to another institution, this will require a change of institutional structure and framework to enjoy independence and autonomy.

Way Forward by the Committee

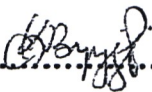
The Committee resolved to have the report on status of implementation of the constitution ready for tabling immediately after the short recess.

MIN.NO. 142/17/10/2015: ANY OTHER BUSSINESS

The Committee revisited the matter on the invitation by Judges and Magistrate Vetting Board to a retreat scheduled for 29th October to 1stNovember, 2015 at Serena Lodge, Mombasa and agreed to attend. Members were asked to send their preferred itineraries to the Committee's Secretariat.

MIN.NO.143/17/10/2015: ADJOURNMENT

There being no any other business the meeting adjourned at thirty minutes past Twelve O'clock.

SIGN.......... DATE16/11/2015.....

CHAIRPERSON

**MINUTES OF THE 28th SITTING OF THE CONSTITUTIONAL
IMPLIMENTATION OVERSIGHT COMMITTEE HELD AT SOPA LODGE,
NAIVASHA ON 17TH OCTOBER, 2015 AT 9.30AM**

MEMBERS PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
 2. The Hon. Ababu Namwamba, EGH, MP
 3. The Hon. Benson M. Kangara, MP
 4. The Hon. Sakwa J. Bunyasi, M.P
 5. The Hon. Samuel K. Chepkonga, MP
 6. The Hon. Boniface O. Otsiula, MP
 7. The Hon. Omulele Christopher, MP
 8. The Hon. David Gikaria, MP
 9. The Hon. Humphrey K. Njuguna, MP
 10. The Hon. Peter N. Gitau, MP
 11. The Hon. Rose Rwamba Mitaru, MP
 12. The Hon. Aramat, Lemanken, MP
 13. The Hon. (Dr.) Dahil D. Mohammed, MP
 14. The Hon. Steven Kariuki MP
-
-

ABSENT WITH APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. Abdul Rahim Dawood, MP
4. The Hon. Protus Akuja, M.P.
5. The Hon. Alice Muthoni Wahome, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. Joel M. Mutambu, MP
8. The Hon. Sabina Chege, MP
9. The Hon. Manson Nyamweya, MP
10. The Hon. Shakila Abdalla, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. JN Mutega - Principal Clerk Assistant II
2. Mr. Noah Too - Research Officer
3. Mrs. Jemimah Waigwa - Legal Counsel
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Donald Manyala - Research Officer
6. Ms. Winnie Kiziah - Media Relations Officer

MIN.NO. 135/17/10/2015: PRELIMINARIES

The meeting was called to order at 9.30 a.m. and prayers were said by the Chairperson.

MIN.NO. 136/17/10/2015: RETREAT WITH THE JUDGES AND MAGISTRATES VETTING BOARD

The Committee considered an invitation by the Judges and Magistrates Vetting Board to a retreat scheduled for 29th October to 1st November, 2015 at Serena Lodge, Mombasa. The objective of the retreat was to apprise the Committee and the Departmental Committee on Justice and Legal Affairs on their achievements; challenges faced and proposed legislative frameworks to surmount the said challenges. The Committee agreed to honour the invitation.

MIN.NO. 137/17/10/2015 VISITING DELEGATION OF THE CONSTITUTIONAL REVIEW COMMISSION OF SIERRA LEONE

The Committee considered a request to meet with a visiting delegation acceded Constitutional Review Commission from Sierra Leone. The Committee agreed to host the delegation for a working dinner at Hotel Intercontinental, Nairobi on Tuesday, 27th October, 2015 at 7.00p.m.

MIN.NO. 138/17/10/2015 POSITION OF THE CIC ON EXPIRY OF ITS LIFE

The Committee agreed to invite the Commission for the Implementation of the Constitution (CIC) on Thursday, 22nd October, 2015 to get their position on expiry of their term.

MIN.NO. 139/17/10/2015 ADJOURNMENT

There being no any other business the meeting adjourned at 11.30a.m.

Sign..........

(Chairperson)

Date16/11/2015.....

**MINUTES OF THE 27th SITTING OF THE CONSTITUTIONAL
IMPLIMENTATION OVERSIGHT COMMITTEE HELD AT SOPA LODGE,
NAIVASHA ON 16TH OCTOBER, 2015 AT 2.30PM .**

MEMBERS PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
 2. The Hon. Ababu Namwamba, EGH, MP
 3. The Hon. Benson M. Kangara, MP
 4. The Hon. Sakwa J. Bunyasi, M.P
 5. The Hon. Samuel K. Chepkonga, MP
 6. The Hon. Boniface O. Otsiula, MP
 7. The Hon. Omulele Christopher, MP
 8. The Hon David Gikaria, MP
 9. The Hon. Humphrey K. Njuguna, MP
 10. The Hon. Peter N. Gitau, MP
 11. The Hon. Rose Rwamba Mitaru, MP
 12. The Hon. Aramat, Lemanken, MP
 13. The Hon. (Dr.) Dahil D. Mohammed, MP
 14. The Hon. Steven Kariuki MP
-
-

ABSENT WITH APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
2. The Hon. Grace JemutaiKiptui, MP
3. The Hon. Abdul Rahim Dawood, MP
4. The Hon. ProtusAkuja, M.P.
5. The Hon. Alice MuthoniWahome, MP
6. The Hon. John LodepeNakara, MP
7. The Hon. Joel M. Mutambu, MP
8. The Hon. Sabina Chege, MP
9. The Hon. Manson Nyamweya, MP
10. The Hon. ShakilaAbdalla, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP

IN ATTENDANCE

KENYA LAW REFORM COMMISSION (KLRC)

1. Mr. Nganga Mbage - Chairman, KLRC
2. Mr. Joash Dache, MBS - Chief Executive/Secretary KLRC
3. Ms. Virginia Nelder - Intern, KLRC

NATIONAL ASSEMBLY

1. Mr. JN Mutega - Principal Clerk Assistant II

2. Mr. Noah Too - Research Officer
3. Mrs. Jemimah Waigwa - Legal Counsel
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Donald Manyala - Research Officer
6. Ms. Winnie Kiziah - Media Relations Officer

MIN.NO. 131/16/10/2015: PRELIMINARIES

The meeting was called to order at 2.30 p.m.

MIN.NO. 132/16/10/2015: REPORT ON REVIEW THE STATUTES BOOK BY KLRC

The Chair of Kenya Law Reform Commission Mr. Nganga Mbage accompanied by the Secretary to KLRC, Mr. Joash Dache, appeared before the Committee to apprise them on the status of the review of the Statutes Book. The Chairman of KLRC informed the meeting the following:-

1. The principal mandate of Kenya Law Reform Commission (KLRC) is to keep under review all the law of Kenya to ensure conformity with the Constitution. This mandate is exercised either on the commission's own volition or at the reference of the Attorney-General or generally a Ministry, Department or State Agency.
2. The KLRC as one of the organs involved in the implementation of the Constitution has ensured, in collaboration with the Office of the Attorney-General and various Ministries, Departments and Agencies (MDAs), that all Bills required under the Fifth Schedule to the Constitution are prepared in time and tabled before Parliament. This process has been in keeping with the reality that the implementation of the Constitution has largely been a function of administrative, institutional, policy and legislative reforms.
3. The KLRC has played a central role in the drafting of the East Africa Common Protocol, amendment of the Treaty Establishing the EAC, various Community initiatives to harmonize Kenyan laws with the EAC legal constructive documents as required under Article 126(2)(b) of the Treaty establishing the East Africa Community.
4. Upon promulgation of the Constitution in August 2010, KLRC was given an additional role of preparing legislation to implement the Constitution. The Commission while still cognizant of its statutory obligation, immediately realized that the constitutional implementation process was going to occupy most of its time and consume the biggest chunk of its meager resources. KLRC approached the European Union (EU) through its Bridging Divides Through Accountable Governance (BDAG) Programme to fund a provisional study on alignment of existing law with the Constitution pursuant to the provisions of clause 7 of the Sixth Schedule to the Constitution.

Reviewing the entire Statutes Book requires looking into over 700 pieces of legislation.

KLRC partnered with the International Law Development Organization (IDLO) who agreed to fund two studies: one on report to review all the post-promulgation legislations generally and specifically on the review of laws related to Elections, Campaign Financing and Political Parties. This led to review of the Elections (Amendment) Bill, 2015, Political parties (Amendment) Bill, 2015 and legislation on Article 100 of the Constitution. These Bills are at various stages of processing.

The second report on General Audit has proposed a Thematic Approach to the review of the Statutes Book. KLRC is currently reviewing the first one hundred and fifty chapters of the Statutes Book. These efforts have led to the development of the Security Laws (Amendment) Bill, 2014 while and the annual Statute Law Miscellaneous (Amendment) Bills done by the Attorney General.

The KLRC has reviewed various legal regimes such as business related laws like the Partnerships Act, 2013, Limited Liability Partnership Act, 2013, Companies Act 2015 and the Insolvency Act 2015.

5. Ongoing Projects

Currently, KLRC is reviewing the Societies Act and related Legislation; the Advocates Act; the Regime of tribunals pursuant to article 169 of the Constitution; and, Audit of County legislation.

OBSERVATIONS BY THE COMMITTEE

The Committee observed that:-

- a) despite budgetary constraints, the KLRC had done commendably well. The Committee was of the view that, KLRC should be considered for capacity and budgetary support; and,
- b) it would be prudent for members to be given time to look into the report of the KLRC on the status of review of the Statutes Book.

MIN.NO. 133/16/10/2015: EXTENSION OF THE LIFE OF CIC

The Committee called on the Kenya Law Reform Commission to expound on their reasons as to why the life of CIC should not be extended. The Committee heard that, a majority of the remaining pieces of legislation required under the Fifth Schedule to the Constitution had undergone the usual stakeholder consultation, cleared at Round-table(s) session and all that remained is for Parliament to debate them and give them legal effect.

MIN.NO. 134/16/10/2015 ADJOURNMENT

There being no any other business the meeting adjourned at 4.30p.m. The next meeting shall be held on 17th October, 2015 at 9.30a.m.

Sign.....*BBryid*.....
(Chairperson)

Date16/11/2015.....

**MINUTES OF THE 26th SITTING OF THE CONSTITUTIONAL
IMPLIMENTATION OVERSIGHT COMMITTEE HELD AT SOPA LODGE,
NAIVASHA ON 16TH OCTOBER, 2015 AT 11.45AM**

MEMBERS PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
 2. The Hon. Ababu Namwamba, EGH, MP
 3. The Hon. Benson M. Kangara, MP
 4. The Hon. Sakwa J. Bunyasi, M.P
 5. The Hon. Samuel K. Chepkonga, MP
 6. The Hon. Boniface O. Otsiula, MP
 7. The Hon. Christopher Omulele, MP
 8. The Hon David Gikaria, MP
 9. The Hon. Humphrey K. Njuguna, MP
 10. The Hon. Peter N. Gitau, MP
 11. The Hon. Rose Rwamba Mitaru, MP
 12. The Hon. Aramat Lemanken, MP
 13. The Hon. (Dr.) Dahil D. Mohammed, MP
 14. The Hon. Steven Kariuki MP
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ABSENT WITH APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. Abdul Rahim Dawood, MP
4. The Hon. Protus Akuja, M.P.
5. The Hon. Alice Muthoni Wahome, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. Joel M. Mutambu, MP
8. The Hon. Sabina Chege, MP
9. The Hon. Manson Nyamweya, MP
10. The Hon. Shakila Abdalla, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP

IN ATTENDANCE

OFFICE OF THE ATTORNEY-GENERAL AND DEPARTMENT OF JUSTICE

1. Ms. Muthoni kimani - Senior Deputy Solicitor General
2. Ms. Linda Musilivi Murilla - Chief Parliamentary Counsel

NATIONAL ASSEMBLY

1. Mr. JN Mutega - Principal Clerk Assistant II

2. Mr. Noah Too - Research Officer
3. Mrs. Jemimah Waigwa - Legal Counsel
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Donald Manyala - Research Officer
6. Ms. Winnie Kiziah - Media Relations Officer

MIN.NO. 128/16/10/2015: PRELIMINARIES

The meeting was called to order at 11.45 a.m.

MIN.NO. 129/16/10/2015: STATUS OF THE CULTURE BILL, JUDICIARY FUND BILL, SUCCESSION BILL AND THE REPORT ENUNCIATED UNDER SECTION 17 OF THE SIXTH SCHEDULE OF THE CONSTITUTION

The Senior Deputy Solicitor-General, Ms. Muthoni Kimani, and Chief Parliamentary Counsel, Ms. Linda Murilla representing the Office of the Attorney-General appeared before the Committee and apprised them on the above legislations as follows:-

1. The National Culture and the Arts Bill, 2015

- The Bill was submitted to the Commission for the Implementation of the Constitution (CIC) on the 11th September 2015 for its comments and approval before submission to the Cabinet and the National Assembly. CIC facilitated round-table meetings with the respective Ministry, the Office of the Attorney-General and itself.

2. The Judiciary Fund Bill, 2015 Bills

- A draft Cabinet Memorandum was prepared and sent to the Chief Registrar of the judiciary on the 13th October, 2015 for her comments and revision. The Bill was ready for submission to cabinet.

3. The Succession Bill, 2015

- The Bill was sent to the Commission for the Implementation of the Constitution on the 9th September, 2015 and is awaiting final approval by the commission before submission to cabinet.

4. Report on restructuring of Provincial Administration

- The Ministry of Interior and Co-ordination of National Government held a consultative meeting on restructuring of provincial administration on the 19th August, 2015. The meeting agreed the report be finalized as soon as possible so that it is presented to Parliament. The meeting also agreed that existing problems be identified and where need be, amendments be effected on the National Coordination Act and any other law. However, the Office of

the Attorney General and Department of Justice had not received any instructions on the proposed amendments to the National Co-ordination act or any other law.

5. Other Legislations

a. Public Participation Bill, 2013

The Public Participation Bill, 2013 was developed by the Kenya Law Reform Commission. The Bill was discussed by stakeholders at a validation forum held on 21st March, 2014. The Office of Attorney General and Department of Justice had not received the Bill from the Kenya Law Reform Commission for drafting and onward transmission to CIC.

b. Referendum Bill

At a Multi-stakeholders retreat to discuss amendments to electoral laws held in Mombasa from 1st to 4th October, 2015, it was agreed that a Bill be developed by the Independent Electoral and Boundaries Commission. The Office of the Attorney and Department of Justice had not received any instructions on the proposed on the proposed Bill.

Way forward

The Committee resolved to invite the concerned Ministries/State Agencies where the above Bills fall under for meeting to get a status update with a view to have the matters expedited.

MIN.NO. 130/16/10/2015: ADJOURNMENT

There being no any other business the meeting was adjourned at 1.30 p.m.

Sign.....

(Chairperson)

Date 16/11/2015

**MINUTES OF THE 25th SITTING OF THE CONSTITUTIONAL
IMPLIMENTATION OVERSIGHT COMMITTEE HELD AT SOPA LODGE,
NAIVASHA ON 16TH OCTOBER, 2015 AT 9.30AM**

MEMBERS PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Ababu Namwamba, EGH, MP
3. The Hon. Benson M. Kangara, MP
4. The Hon. Sakwa J. Bunyasi, M.P
5. The Hon. Samuel K. Chepkonga, MP
6. The Hon. Boniface O. Otsiula, MP
7. The Hon. Omulele Christopher, MP
8. The Hon David Gikaria, MP
9. The Hon. Humphrey K. Njuguna, MP
10. The Hon. Peter N. Gitau, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Aramat, Lemanken, MP
13. The Hon. (Dr.) Dahil D. Mohammed, MP
14. The Hon. Steven Kariuki MP

ABSENT WITH APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
2. The Hon. Grace JemutaiKiptui, MP
3. The Hon. Abdul Rahim Dawood, MP
4. The Hon. ProtusAkuja, M.P.
5. The Hon. Alice MuthoniWahome, MP
6. The Hon. John LodepeNakara, MP
7. The Hon. Joel M. Mutambu, MP
8. The Hon. Sabina Chege, MP
9. The Hon. Manson Nyamweya, MP
10. The Hon. ShakilaAbdalla, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. JN Mutega - Principal Clerk Assistant II
2. Mr. Noah Too - Research Officer
3. Mrs. Jemimah Waigwa - Legal Counsel
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Donald Manyala - Research Officer
6. Ms. Winnie Kiziah - Media Relations Officer

MIN.NO. 123/16/10/2015: PRELIMINARIES

The meeting was called to order at 9.30 am and prayers were said by Chairperson. The Chairman welcomed the members present and the team from the Office of the Attorney-General.

MIN.NO. 124/16/10/2015: REMARKS BY THE CHAIRMAN

The chair began by reminding members that the Five Years' constitutional timeline had been extended by 12 month, of which two months had already lapsed. He informed the meeting that the House Business Committee was prioritizing constitutional Bills for consideration by the House.

The Chair informed the meeting that the House Business Committee was concerned that four (4) of the constitutional timeline Bills were yet to be published namely:- the Culture Bill, 2015; the Judiciary Fund Bill, 2015; the Succession Bill, 2015; and, a Report relating to Section 17 of the Sixth ~~Schedule of the Constitution concerning restructuring of the Provincial Administration.~~ The Committee observed that the Commission for Implementation of the Constitution (CIC) by way of a letter addressed to the Clerk of the National Assembly, had indicated that they had concluded with these Bills and forwarded them to the Office of the Attorney General.

The meeting observed that **forty seven (47)** Bills were awaiting **Second Reading**. In this regard, and so as to conclude most of these Bills within the Third Session, the House Business Committee had proposed to sponsor two procedural motions: firstly to limit by way of reducing speaking time on some of these Bills and secondly to have the House resolve to sit on Thursday mornings preferably during the month of November, 2015 so as to allow expeditious consideration during Second Reading.

MIN.NO. 125/16/10/2015: PENDING BILLS

The meeting observed that the Office of the Attorney-General would be appearing them to apprise them on the status of the following Bills: Culture; Judiciary Fund; Succession; and, Report required under section 17 of the sixth schedule of the constitution.

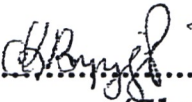
MIN.NO. 126/16/10/2015: EXTENSION OF THE LIFE OF CIC

The Committee observed that they were in receipt of a memorandum from the Kenya Law Reform Commission on their position with regard to extending the life of CIC. The KLRC was opposed to any extension. The meeting observed

that, they would be meeting with KLRC later in the day and they would use the meeting to get more clarification on the Commission's position.

MIN.NO. 127/16/10/2015: ADJOURNMENT

There being no any other business, the meeting adjourned at 11.30a.m. The next meeting shall be held 11.45 a.m. the same day.

Sign..... 
(Chairperson)

Date 16/11/2015
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**MINUTES OF THE 24th SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY,
8TH OCTOBER, 2015 AT THE 2ND FLOOR BOARD ROOM, CONTINENTAL
HOUSE, AT 10.00 AM**

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
 2. The Hon. Ababu Namwamba EGH, MP
 3. The Hon. Benson M. Kangara, M
 4. The Hon. Sakwa J. Bunyasi, MP
 5. The Hon. Samuel K. Chepkonga, MP
 6. The Hon. Christopher Omulele, MP
 7. The Hon. Humphrey K. Njuguna, MP
 8. The Hon. Protus Akuja, M.P.
 9. The Hon. Alice Muthoni Wahome, MP
 10. The Hon. (Dr.) Dahil Duale Mohammed, MP
 11. The Hon. Peter N. Gitau, MP
 12. The Hon. Mary Wambui, M.P
 13. The Hon. Steven Kariuki, MP
 14. The Hon. Abdul Rahim Dawood, MP
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APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
2. The Hon. James Lomenen, MP
3. The Hon. Mahamud, M. Maalim, MP
4. The Hon. Joel M. Mutambu, MP
5. The Hon. Manson Nyamweya, MP
6. The Hon. Grace Jemutai Kiptui, MP
7. The Hon. Rose Rwamba Mitaru, MP
8. The Hon. David Gikaria, MP
9. The Hon. Boniface O. Otsiula, MP
10. The Hon. John Lodepe Nakara, MP
11. The Hon. Aramat Lemanken, MP
12. The Hon. Sabina Chege, MP
13. The Hon. Bowen, David Kangogo, MP
14. The Hon. Shakila Abdalla, MP

IN ATTENDANCE

MINISTRY OF INFORMATION AND COMMUNICATION TECHNOLOGY

1. Dr. Fred Matiang'i - Cabinet Secretary
2. Mr. Joseph Tiampati - Principal Secretary
3. Mr. Henry Mung'asia - Director

4. Mr. Christopher Maina - Legal Officer
5. Mr. Joseph Kihanya -

NATIONAL ASSEMBLY

1. Mr. John Mutega - Principal Clerk Assistant II
2. Ms. Jemimah Waigwa - Legal Counsel II
3. Ms. Mugure Gituto - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Ms. Winne Kiziah - Media Relations Officer

MIN.NO. 118/08/10/2015: PRELIMINARIES

The meeting was called to order at 10.30am and commenced with a word of prayer from the Chairperson.

MIN.NO. 119/08/10/2015: CONFIRMATIONS OF MINUTES

The minutes of the 23rd Sitting held on 6th October, 2015 were confirmed as a true record of the proceedings of that meeting and signed by the Chairperson after being proposed by the Hon. Christopher Omulele, MP and seconded by the Hon. Protus Akuja, MP.

MIN.NO. 120/08/10/2015: UPDATE ON PENDING CONSTITUTIONAL BILLS UNDER THE MINISTRY OF INFORMATION, COMMUNICATION AND TECHNOLOGY

The Chairperson invited the Cabinet Secretary for Information, Communication and Technology to apprise the Committee on the status of the Access to Information Bill, 2015 and the Data Protection Bill, 2015. The Cabinet Secretary informed the meeting that:

- a) The Access to Information Bill, 2015 and the Data protection Bill, 2015 had been reviewed by the Commission for the Implementation of the Constitution and forwarded to cabinet for approval. However, the Bills were returned to the Ministry after the Cabinet raised concerns over some issues in the Bills.
- b) The Bills were then resubmitted to the Cabinet for approval by the Ministry after addressing the concerns raised by the Cabinet.
- c) The Cabinet Secretary assured Members that the Ministry was keen on formulating the legislation, and the lengthy process of formulating the Bills was due to the need to include various and broad parameters in the Bill including matters of National Security as regards the Defence Forces.

- d) The Cabinet Secretary undertook to have the Bills sent to Parliament within two weeks.

CONCERNS RAISED BY THE COMMITTEE

The Committee expressed concern that there was need for the Ministry to engage the Hon. Priscilla Nyokabi who had already developed the Access to Information Bill, 2015 as a Private Member's Bill. The Private Member's Bill was already before the Departmental Committee on Energy and ICT. The Committee agreed that there was need to create a convergence between the Ministry and the said Member and ensure that there was no compromise on quality and standards of the Bill.

The Cabinet Secretary undertook to consult with the Member and the Chairperson of the Departmental Committee on Energy and ICT with a view of discussing the concerns raised by the Committee. He further undertook to consult the Cabinet on the way forward concerning the proposals made by the Committee and inform the Chairperson on the same.

Way Forward by the Committee

~~The Committee resolved that the Cabinet Secretary for Information Communication and Technology:-~~

- a) forwards the Access to Information Bill, 2015 and the Data protection Bill, 2015 to Parliament on or before Thursday, October 22, 2015; and,
- b) consults the Hon. Priscilla Nyokabi and the Chairperson of the Committee on Energy with a view of create synergy and convergence with regard to Access to Information Bill, 2015 (Private Member Bill)

MIN.NO.121/08/10/2015: ANY OTHER BUSSINESS

The Committee reconsidered its early decisions and resolved to invite the Attorney-General and Solicitor-General besides the Kenya Law Reform Commission to a retreat at Sopa Lodge, Naivasha from 15th to 18th October, 2015.

MIN.NO.122/08/10/2015: ADJOURNMENT

There being no any other business the meeting adjourned at 12.30p.m.

SIGN.....

Bonyef

DATE 16/11/2015

CHAIRPERSON

