

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

ELEVENTH PARLIAMENT

THE STANDING COMMITTEE

ON

LEGAL AFFAIRS AND HUMAN RIGHTS

THE COMMITTEE REPORT ON THE CONSIDERATION OF THE EXTENSION OF
THE MANDATE OF THE COMMISSION FOR THE IMPLEMENTATION OF THE
CONSTITUTION (CIC) IN RESPECT OF THE CONSTITUTIONAL TIMELINE OF
2015

Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI.

November, 2015

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Senate on 2/12/2015
by Sen. Amos Wako



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ABBREVIATIONS

SEN Senator

CIC Commission for the Implementation of the Constitution

PREFACE

Establishment of the Committee

The Standing Committee on Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 208 and mandated to consider all matters related to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics and integrity; and implementation of the provisions of the Constitution on human rights.

Membership of the Committee

The Committee is comprised of the following members:-

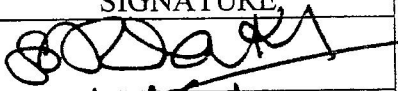

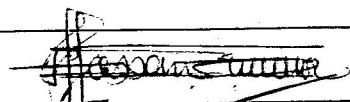

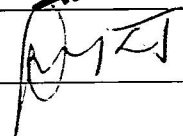
1. Sen. Amos Wako - Chairperson
2. Sen. Stephen Sang' - Vice Chairperson
3. Sen. Kembi Gitura
4. Sen. Kiraitu Murungi
5. Sen. Fatuma Dullo
6. Sen. Kipchumba Murkomen
7. Sen. Hassan Omar Hassan
8. Sen. Mutula Kilonzo Junior
9. Sen. Judith Sijeny

Mr. Speaker Sir,

The Senate Standing on Committee on Legal Affairs and Human Rights held a meeting with the Commission for the Implementation of the Constitution (CIC) on 30th September, 2015 on the progress made by the CIC in fulfilling their mandate and the pending work.

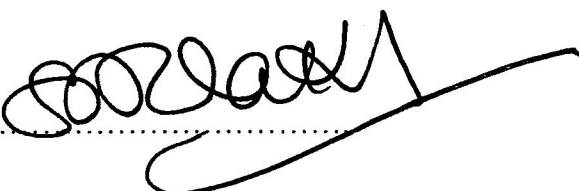
The Committee further deliberated on the matter of the term of CIC which ends in December 2015 and options with regard to the extension of the mandate of the Commission on the Implementation of the Constitution (CIC) given the constitutional time line.

Adoption of the Report for the Extension of the Term of the Commission for the Implementation of the Constitution (CIC).

NO	NAMES	SIGNATURE
1.	Sen. Amos Wako – Chairperson	
2.	Sen. Stephen Sang - V. Chairperson	
3.	Sen. Kembi Gitura	
4.	Sen. Kiraitu Murungi	
5.	Sen. Hassan Omar	
6.	Sen. Fatuma Dullo	
7.	Sen. Kihumba Murkomen	
8.	Sen. Mutula Kilonzo Jr.	
9.	Sen. Judith Sijeny	

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 203, to present the Report of the Standing Committee on Legal Affairs and Human Rights on the consideration of the extension of the mandate of the Commission for the Implementation of the Constitution (CIC) in respect of the constitutional timeline of 2015.

Signed.....

Date.....01/12/15.....

SEN. AMOS WAKO, EGH, M.P.,

CHAIRPERSON.

CHAPTER ONE

INTRODUCTION

1.1 Mandate of CIC

The Commission for the Implementation of the Constitution (CIC) was established under Section 5(6) of the Sixth Schedule of the Constitution to:

- (a) monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution;
- (b) co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing, for tabling in Parliament, the legislation required to implement the Constitution;
- (c) Report every three months to the Constitutional Implementation Oversight Committee on—
 - i. progress in the implementation of this Constitution; and
 - ii. any impediments to its implementation; and
- (d) Work with each constitutional commission to ensure that the letter and spirit of this Constitution is respected.

The CIC submitted its quarterly and annual reports to the Committee on Legal Affairs and Human Rights pursuant to Article 254 of the Constitution which requires each commission to submit reports to Parliament after each financial year. It states as follows-

- (1) As soon as practicable after the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament.*
- (2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.*
- (3) Every report required from a commission or holder of an independent office under this Article shall be published and publicised.*

Section 5(7) of the Sixth Schedule of the Constitution sets the term of the CIC which will come to an end on 31st December 2015. It provides as follows-

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.

The Senate Standing Committee on Legal Affairs and Human Rights held a meeting with the Commission for the Implementation of the Constitution (CIC) on 30th September, 2015 on the progress made by the CIC in fulfilling their mandate and the pending work. The Committee deliberated on the matter of the term of CIC and options with regard to the extension of the mandate of the Commission on the Implementation of the Constitution (CIC) with respect to the constitutional time line.

CHAPTER TWO DELIBERATIONS ON PENDING WORK AND EXTENSION OF TIME

2.1 Submissions by the Commission for the Implementation of the Constitution (CIC)

With regard to pending work, it was noted that there are eighteen (18) pieces of legislation (**Annex 1**) with constitutional deadlines where the term for enactment was extended by the National Assembly by one year. CIC inquired as to the implication of the extension of time by one year of Bills which fall within the mandate of the Commission.

It was noted that Section 5(6) (a) of the Sixth Schedule of the Constitution provides that CIC will “*monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution*”. In this regard, 80% of regulations for the Bills passed under the Constitution have not been done to provide administration procedures for their implementation. Most of the Bills passed to operationalize the Constitution therefore do not have a regulatory framework. Hence there is still need to pass subsidiary/delegated legislation pursuant to the laws passed, for example with regard to natural resources.

It was also noted that the process of reviewing unconstitutional Bills being passed by county government is a continuous process within the mandate of CIC.

CIC has provided the Senate with an exit report showing what has been implemented and the gaps.

2.2 Term of CIC

The term of CIC which expires on 27th December, 2015 was deliberated upon. CIC noted that there should be a way for the country to ensure that the momentum of implementing the Constitution of Kenya, 2010 is continued.

The Commissioners of CIC issued a press statement on Tuesday, 29th September, 2015 stating, among other issues, that Commissioners currently serving at CIC will not seek an extension of term of office and that they will leave at the expiry of their term on the 29th December, 2015. The reason given was so as to allow the National Assembly to make impartial decision on whether to retain CIC or any other institutional framework to oversee the implementation of the Constitution.

The role of the Senate and what decisions the Senate can make with regard to Section 5(7) of the Sixth Schedule of the Constitution was considered. It was noted that extension of the life of CIC can only be done through a legislative process. The National Assembly and the Senate have a responsibility to ensure that the Constitution is implemented.

It was further noted that Section 5(7) of the Sixth Schedule of the Constitution does not specify the time limit for extension which leaves it to the discretion of the National Assembly.

CHAPTER THREE OBSERVATIONS AND RECOMMENDATIONS

3.1 Observations

In view of the foregoing, the Committee observed the following:-

- i. While Section 5(7) of the Sixth Schedule places the mandate of extension of the term of CIC on the National Assembly, Parliament as a whole decides whether the Constitution has been fully implemented.
- ii. Consequently, both Houses have to make a determination of whether the Constitution has been fully implemented which should be done based on a report by both houses.
- iii. The Committee noted that there was still a lot of pending work within the mandate of CIC. This includes-
 - a. monitoring regulations where they have not been issued under the Bills passed especially with regard to county governments.
 - b. audit of current laws and whether they conform to the constitution, monitoring the harmony of laws between the national and county levels, enactment of constitutional laws with extended timelines, identify areas where the constitutional legislation is not expressly provided for but necessary to implement the constitution, for example the need for a referendum law and one on public participation.

3.2 Recommendations

The Standing Committee on Legal Affairs and Human Rights made the following recommendations based on the deliberations with the Commission for the Implementation of the Constitution (CIC):-

1. The mandate of CIC should be extended by a term not less than two (2) years to ensure that the Constitution is fully implemented.
2. That the Senate adopts this report.

- a) The Parliamentary Powers and privileges Bill, 2014 National Assembly Bill No. 33 of 2014 was read a first time on Wednesday 25th November, 2015 and stands referred to the Committee.
- b) The Lawyer, Dr. Khaminwa, for Hon. Kiala submitted pleadings (substantive application made to the Court) and the Lawyer for the County Government, Mr. Nyamu, has not submitted any document so far.

6. Date of Next Meeting

7. Adjournment

MIN. NO. 232/2015 CONSIDERATION AND ADOPTION OF THE REPORT FOR THE EXTENSION OF THE MANDATE OF CIC

The Committee considered and adopted the report on the Extension of the Mandate of the Commission for the Implementation of the Constitution.

MIN. NO. 233/2015 ANY OTHER BUSINESS

- c) The Parliamentary Powers and privileges Bill, 2014 National Assembly Bill No. 33 of 2014 was read a first time on Wednesday 25th November, 2015 and stands referred to the Committee.

The Committee resolved to postpone consideration of the Bill to the next meeting when the session start in 2016

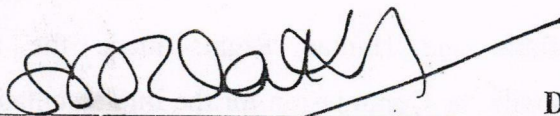
- d) The Lawyer, Dr. Khaminwa, for Hon. Kiala submitted pleadings (substantive application made to the Court) and the Lawyer for the County Government, Mr. Nyamu, has not submitted any document so far.

The Committee resolved to postpone consideration of the matter to the next meeting when the session start in 2016

MIN. NO. 234/2015 ADJOURNMENT

There being no any other business the meeting was adjourned the meeting at 9. 30 a.m.

SIGNED



(CHAIRPERSON)

DATE

01/12/15.