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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC)

**Report of the Constitutional Implementation Oversight Committee (CIOC) on
Consideration of Petition by Major (Rtd.) Joel Kiprono Rop concerning the need for
Parliament to harmonize all existing Draft Proposals for amending the Constitution into
One Hybrid Draft Bill for National Referendum**

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

MAY, 2016

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LIST OF ABBREVIATIONS

AG	Attorney-General
CDF	Constituency Development Fund
CIC	Commission for the Implementation of the Constitution
CIOC	Constitutional Implementation Oversight Committee
CoG	Council of Governors
EACC	Ethics and Anti-Corruption Commission
JMVB	Judges and Magistrates Vetting Board
JSC	Judicial Service Commission
MGDAs	Ministries, Government Departments and Agencies
NLC	National Land Commission
IEBC	Independent Electoral Boundaries Commission
KLRC	Kenya Law Reform Commission
WDF	Ward Development Fund

FOREWORD BY THE CHAIRMAN

Major (Rtd.) Joel Kiprono Rop of Identification Number 1375007 and a resident of Bomet County petitioned the National Assembly through the Speaker of the National Assembly pursuant to Standing Order 220(1)(a) to take over the process of amending the Constitution by using all existing draft proposals and produce one comprehensive hybrid draft for National Referendum. The Petition was forthwith committed to the Constitutional Implementation Oversight Committee for consideration and the Committee was required to a report to the House and to the Petitioner in accordance with the National Assembly Standing Order 227(2).

From the onset, the Committee was alive to the provisions of Articles 256 and 257 of the Constitution initiating amendments to the Constitution either through a "parliamentary initiative" "popular initiative" respectively.

The Committee developed a work-plan on the consideration of the Petition. The Committee resolved to invite the petitioner (Major (Rtd) Joel Kiprono Rop) to an "Open Consultative Forum" where all the key proponents of proposals to amend the Constitution namely: the Council of Governors (*Pesa Mashinani Referendum Campaign*), the Okoa Kenya Secretariat, "*Punguza Mzigo Referendum Campaign*", "*Boresha Katiba Initiative*" and the general public were invited both by way of newspaper adverts and sending of correspondences to the key institutions. The Committee also asked any member of the public to submit memoranda.

The Committee hosted a "Open Consultative Forum" with interested Members of the Public on 23rd March, 2016 in the County Hall Mini-Chamber. The Committee received presentations from the Petitioner, (Major (Rtd.) Joel Kiprono Rop/Tunza Kenya Initiative), Punguza Mzigo Initiative (The Hon. Moses Kuria, MP) and Mr. Njoroge Waweru (a Member of the Public). The Committee also met with the Boresha Katiba Initiative on Tuesday 12th April, 2016. Though the Committee invited the Okoa Kenya Secretariat and the Council of Governors, they did not honour the Committee's invitation. However, the Committee relied on documented evidence of the issues being canvassed by the two forums.

After extensive deliberations by the Committee and based on the presentations made by the Petitioner on the Tunza Kenya Initiative, the Punguza Mzigo Initiative, Mr. Njoroge Waweru, (a

member of the public) and the Boresha Katiba Initiative and findings from the research on the proposed amendments to the Constitution by the Okoa Kenya Initiative and the Pesa Mashinani Initiative, the Committee observed that: the constitutional reform agenda is alive; the proposed amendments to the Constitution although are variant, converge in principle that some amendments are required to the Constitution, to highlight just but a few: on the reduction of the number of counties and constituencies; increase of the county revenue allocation; basis for calculating the revenue allocations to county governments; the sharing of natural resources between the national government, county government and the community from which the natural resources have been extracted; increase of retirement age of judges; and, establishment of the Constituency Development Fund and Ward Development Fund. The Committee further observed there is need to develop a hybrid consolidated Bill noting the convergence on many of the proposals for amendment of the Constitution by the Petitioner and the various Initiatives to amend the Constitution. The Committee also observed that indeed there are provisions in the Constitution that require to be reviewed. However, the Committee is of the view that this should be done once an audit and review on the Constitution has been undertaken.

In view of the foregoing, and taking into account the provisions of the Constitution, the Petition to Parliament (Procedure) Act and the Standing Orders of the National Assembly, the Committee recommends that a legislative mechanism be established to review and audit the Constitution of Kenya, 2010; a copy of this Report be forwarded to the Petitioner as provided for under the National Assembly Standing Order 228; and, a referendum law be developed expediently to provide for a legal/statutory framework for undertaking and governing the referendum process under Article 255(2) of the Constitution.

The Committee acknowledges the support of the office of the Speaker of the National Assembly, and that of the Clerk in facilitating the committee's operations

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

The Hon. Njoroge Baiya, MP,
Chairperson, Constitutional Implementation Oversight Committee

EXECUTIVE SUMMARY

The Committee was tasked to consider a Petition concerning the need for Parliament to harmonize all existing proposals for amending the Constitution. The Committee was alive to the provisions of Articles 256 and 257 of the Constitution initiating amendments to the Constitution either through a "parliamentary initiative" or "popular initiative" respectively. The Committee resolved to have an "Open Consultative Forum" where all the major proponents of proposals to amend the Constitution namely: Pesa Mashinani Referendum Campaign (the Council of Governors), the Okoa Kenya (Okoa Kenya Secretariat), Punguza Mzigo Referendum Campaign (led by Hon. Moses Kuria), Boresha Katiba Initiative (led by Hon. Asman Kamama) and the general public were invited. The Committee also asked any member of the public to submit memoranda. The Committee observed that: most of the proposed amendments to the Constitution although they vary, they converge in principle for example the proposals to:- reduce the number of counties and constituencies; increase county revenue allocation; alter the basis for calculating the revenue allocations to county governments; increase the retirement age of judges; provide for Constituency Development Fund and Ward Development Fund in the Constitution; and review the number of constitutional commissions and their membership among others. A key finding of the Committee is that most of the proposed amendments to the Constitution by the various Initiatives relate to the matters listed in Article 255 of the Constitution and therefore would require to be approved by a referendum. However, some of the proposed amendments by the various proponents may not necessarily require constitutional amendments but would pass for policy formulation. Notwithstanding the above observations, the Committee notes that constitutional reform agenda is alive. In view of this, the National Assembly should undertake a review of the Constitution with a special reference to the proposals highlighted by the various proponents of the amendment proposals to the Constitution. The review should be the basis of whether amendments to the Constitution would be necessary or not. For an effective, review, it should be guided by a legislative framework.

MANDATE OF THE COMMITTEE

The Constitutional Implementation Oversight Committee (CIOC) is a 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. The Committee also used to get reports from the Commission on the Implementation of the Constitution Commission on the preparation of the legislation required by the Constitution and on any impediments to the process of implementing this Constitution.

In discharging this mandate, the Committee coordinates with the Office of the Attorney-General, Kenya Law Reform Commission, concerned Ministries, Government Departments and Agencies (MGDAs) 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.

MEMBERS OF THE COMMITTEE

Chairperson	Hon. Njoroge Baiya, MP,
Vice Chairperson	Hon. Moitalel Ole Kenta, MP
Members	Hon. Ababu Namwamba EGH, MP
	Hon. Samuel K. Chepkonga, MP
	Hon. Sabina Wanjiru Chege, MP
	Hon. Manson Nyamweya, MP
	Hon. Benson M. Kangara, MP
	Hon. Omulele Christopher, MP
	Hon. Grace Jemutai Kiptui, MP
	Hon. Rose Rwamba Mitaru, MP
	Hon. David Kangogo Bowen, MP
	Hon. Protus Akuja, M.P.
	Hon. Sakwa J. Bunyasi, MP
	Hon. Abdul Rahim Dawood, MP
	Hon. Peter N. Gitau, MP
	Hon. Humphrey K. Njuguna, MP
	Hon. James Lomenen, MP
	Hon. Mahamud, M. Maalim, MP
	Hon. Shakila Abdalla, MP
	Hon. Alice Muthoni Wahome, MP
	Hon. (Dr.) Dahir Duale Mohammed, MP
	Hon. Boniface O. Otsiula, MP
	Hon. Mary Wambui Menene, M.P
	Hon. Aramat Lemanken, MP
	Hon David Gikaria, MP
	Hon. John Lodepe Nakara, MP
	Hon. Steven Kariuki, MP

LIST OF RECOMMENDATIONS

1. a review and audit of the Constitution be undertaken with a special reference to the provisions and issues highlighted by the respective proponents of the amendment proposals outlined in this Report and the recommendations of the Working Group on Social Economic Audit of the Constitution of Kenya 2010, and that the review and audit be used to guide amendments to the Constitution.
2. in view of paragraph (a) above, a legislative framework be developed to guide the review process.
3. the Constitutional Implementation Oversight Committee oversight the review and audit in line with its constitutional mandate on oversight over implementation of the Constitution
4. a copy of this Report be forwarded to the Petitioner in line with the provisions of the National Assembly Standing Order 228.

INTRODUCTION

1.1 Presentation and Committal of the Petition to the Committee

On 8th December, 2015, Major (Rtd.) Joel Kiprono Rop of ID Number 1375007 a resident of Bomet County petitioned the National Assembly pursuant to Standing Order 220(1)(a) and prayed that Parliament takes over the process of amending the Constitution by using all existing draft proposals to consolidate and produce one comprehensive hybrid draft for National Referendum.

On 10th February 2016, the Speaker of the National Assembly presented to the House the said Petition by Major (Rtd.) Joel Kiprono Rop on the above subject matter pursuant to Article 119 of the Constitution, Standing Order 225(2)(a) and section 5 of the Petitions to Parliament (Procedure) Act No. 22 of 2012. The Petition was forthwith committed to the Constitutional Implementation Oversight Committee for consideration and the Committee was required to a report to the House and to the Petitioner in accordance with the National Assembly Standing Order 227(2).

1.2 Methodology of the Consideration of the Petition

On 25th February, 2016, the Committee held a Meeting to deliberate on methodology to use while considering the Petition. The Committee observed that Parliament was obligated by the Constitution¹ to facilitate public participation and involvement in the legislative and other business of Parliament and its committees". The Committee concluded that matter Petitions would qualify to fall under "*other business*". Subsequently, the Committee observed that there was need to invite interested members of the public to an open consultative forum. The Committee felt that the public should be given ample notice to attend the forum and or send memoranda.

The Committee observed that there are two ways of initiating amendments to the Constitution: either through a "parliamentary initiative"² or through a "popular initiative"³.

Under the parliamentary initiative, an amendment Bill is introduced to either House of Parliament and must be supported by at least two-thirds of the members in both Houses to sail through.

¹ Article 118(1)(b) of the constitution of Kenya

² Article 256 of the Constitution of Kenya

³ Article 256 of the Constitution of Kenya

Under the popular initiative, any person may propose amendments to the Constitution if he/she is supported by at least one million registered voters. In that event, the person presents a Petition to the IEBC supported by one million signatures and accompanied by a draft Bill. Upon verification of the signatures, the IEBC then sends the Bill to the forty-seven County Assemblies in Kenya for consideration. If the draft Bill is approved by a majority of the County Assemblies (i.e. at least twenty four County Assemblies), it is then introduced to Parliament. The Bill would pass if supported by the majority of members in both Houses. However, if either Houses of Parliament fail to pass the Bill, the Constitution provides that the Bill shall then be submitted to the people for approval through a referendum.

Article 255 of the Constitution however provides that there are constitutional amendments which must be passed through a referendum (whether they are initiated through the parliamentary or popular initiatives). These include matters touching on the;

- (a) Supremacy of the Constitution;
- (b) Territory of the Kenya;
- (c) Sovereignty of the people;
- (d) National values and principles of governance;
- (e) Bill of Rights;
- (f) Term of office of the President;
- (g) Independence of the Judiciary and the Commissions and the Independent Offices;
- (h) Functions of parliament; and,
- (i) Objects, principles and structure of devolved governments.

From the foregoing, the Committee agreed that:-

- a) a draft work-plan on the consideration of the Petition be developed and that the petitioner (Major (Rtd) Joel Kiprono Rop) be invited to appear before the Committee to expound more on his prayers;
- b) communications be made to the following institutions: the Council of Governors (sponsoring "*Pesa Mashinani Referendum Campaign*"), the Okoa Kenya Secretariat, "*Punguza Mzigo Referendum Campaign*" spearheaded by Hon Moses Kuria, MP, the Member for Gatundu South Constituency, "*Boresha Katiba Initiative*" spearheaded by Hon Asman Kamama, MP, the Member for Tiaty Constituency, the Office of the Attorney General and Department of Justice and the Kenya Law Reform Commission; and,

- c) an advert on request for submission of memoranda and invitation of the public to an "Open Consultative Forum" be run in dailies with nation-wide circulation and that the "Open Consultative Forum" be slated for Wednesday, 23rd March, 2016 at the County Hall Mini-Chamber, Parliament Buildings from 10.00am.

1.3 Open Consultative Forum

The Committee hosted a "Open Consultative Forum" with interested Members of the Public on 23rd March, 2016 in the County Hall Mini-Chamber. The following persons/ institutions made their presentations:-

1.3.1 The Tunza Kenya Initiative

Major (Rtd.) Joel Kiprono Rop, the Petitioner in the matter under consideration representing the "Tunza Kenya Initiative" made the following proposals for amendment of the Constitution-

- (1) **THAT**, the number of Counties be reduced from forty seven to three namely the East Coast County (comprising the former North Eastern and Coast Provinces), the Central Mount County (comprising the former Central and Eastern Provinces), and West Valley County (comprising the former Rift Valley, Western and Nyanza Provinces). The justification given for this proposal was that, the reduction in number of counties will foster effectiveness and efficiency in service delivery.
- (2) **THAT**, Kiswahili be made the national language of study and instruction of all subjects, except study and instruction of subjects of other languages, at all levels of education. The justification given was that a national language is the most important form of cultural expression and independence.
- (3) **THAT**, the Constitution be amended to ensure that traditional medicine is developed and encouraged and adequate public resources are allocated to research institutions for development of traditional medicine. This is because many Kenyans rely on tradition medicine.
- (4) **THAT**, the Chapter in the Constitution relating to land be amended as follows-

- (a) Article 62 (2) of the Constitution be re-drafted to provide that public land shall vest in and be held by a county government in trust for the people resident in the county and shall be administered by the County Government;
 - (b) Article 63(2) of the Constitution be amended by inserting a new sub-paragraph (iv) to provide that all land including property therein from the British white settlers and foreign investors should be classified as public land and that on leasehold tenure should be re-classified as Community Land and held by the relevant County Government in trust for the affected community;
 - (c) That private land under freehold tenure in Kenya should not be for more than ninety nine (99) acres. Any individual Kenyan or organization holding land in excess of that figure may hold it on leasehold tenure, from the relevant county government, for a period not exceeding nineteen (19) years; and
 - (d) That a person who is non-citizen or organization that is not wholly owned by Kenyans may not hold land for farming in Kenya on the basis of any arrangement, including freehold and leasehold.
- (5) **THAT**, Chapter Seven of the Constitution relating to representation be amended to among other things provide that-
- (a) there shall be three political parties in Kenya; men's party, women's party and youth's party;
 - (b) there shall be three members of the Senate (One Man, One Woman and One Young Person) from each county;
 - (c) the existing forty seven counties shall be equated as forty seven constituencies with three members in each constituency giving rise to a total of 141 members of the National Assembly; and
 - (d) the Senate be modeled as a hybrid of the current system and an arrangement similar to the House of Lords of the UK.
 - (e) the education requirements in Article 99 (1) (b) of the Constitution be expunged.
- (6) **THAT**, Chapter Nine of the Constitution be amended to provide for a rotating presidency in Kenya and a two-five year limit for each ethnic community. The justification given for this proposal is that the amendments will ensure sustained peace, harmony, stability and development in Kenya.

- (7) **THAT**, the Constitution be amended by inserting a new chapter on National Economy to ensure among other things that the Salaries and Remuneration Commission reviews the minimum wages for all workers in both private and public sectors. The justification given for this proposal is that the National Economy is the most important societal engines and as such it should be recognized in the Constitution.
- (8) **THAT**, a National Revolution Council be established consisting of among other persons the President of Kenya, the Chief Justice of Kenya, the National Leader of Political Opposition, the Speaker of the Senate and the Chairperson of the Commission for Science, Technology and Innovation. The justification given for this proposal was that Kenya requires a peaceful, nationalist and non-confrontational process that occurs within the Constitution and the laws of the land. As such, there is need to entrench the Revolution Council in the Constitution.
- (9) **THAT**, a mandatory National Military Service of not less than two years for all secondary school leavers be a constituent part of the Kenya Defence Forces. This will allow increased participation in national development projects.
- (10) **THAT**, provision(s) on tourism be entrenched in the Constitution to foster tourism as a national source of income. In particular, the provisions should require primary and secondary school students to visit tourist destinations in the country.
- (11) **THAT**, the Constitution be amended to entrench a revolutionary approach to farming which proposes among other things that all process-able farm produce intended for external markets are fully processed, branded and packaged to international standards before export and that there is no importation of all types of farm produce that are similar to those produced in Kenya. This proposal will foster the agriculture sector in the country.

1.3.2 Presentation by Hon. Moses Kuria on the “Punguza Mzigo Initiative”.

The Hon. Moses Kuria representing the “Punguza Mzigo Initiative” made the following proposals for amendment of the Constitution-

- (1) **THAT**, the number of Counties be reduced from 47 to 16 (*Amendment of the First Schedule to the Constitution*);
- (2) **THAT**, the number of single member constituencies be reduced from 290 to 200 (*Amendment of Article 89 of the Constitution*);
- (3) **THAT**, the institution of the Senate be abolished and the functions of the Senate be re-designated to the National Assembly (*deletion of Article 96 of the Constitution*);
- (4) **THAT**, the 12 positions of nominated members of the National Assembly be abolished (*Amendment of Article 97(1)(c) of the Constitution*); and,
- (5) **THAT**, the positions of the 47 women representatives positions be abolished (*Amendment of Article 97(1)(b) of the Constitution*).

The justification for the proposals for amendment of the Constitution by the *Punguza Mzigo Initiative* is geared towards reducing the public wage bill and in line with the government's austerity measures. The amendments are also anchored the need to realign the provision with two-third gender rule requirement under Article 27(8) of the Constitution.

1.3.3 Presentation by Mr. Njoroge Waweru - A Member of the Public

Mr. Njoroge Waweru while making his presentation to the Committee, observed that there was need for a comprehensive referendum law to be developed to address the ambiguities that exist as evidenced in the process of verification of signatures by IEBC for the Okoa Kenya Initiative. He requested the Committee to expedite on the process of the development of the law.

1.4 Meeting with the Boresha Katiba Initiative

The Boresha Katiba Initiative which is a parliamentary initiative advocating for constitutional reform led by the Member of Parliament for Tiaty Constituency, Hon. Asman Kamama appeared before the Committee on Tuesday 12th April, 2016 and made the following proposals for amendment of the Constitution-

- (1) **THAT** Article 27 of the Constitution be amended to put a time limit of ten years to the affirmative action clause. This is informed by the fact that the disadvantages suffered by the individuals or groups are contemplated to have been eliminated at the end of this

period. The amendment also abolishes the two-third gender rule so as to allow for election of candidates through a competitive electoral process.

- (2) **THAT** clause 59 of the Constitution be amended by deleting the provision allowing for the restructuring of the Kenya National Human Rights and Equality Commission into two or more separate commissions. This will help reduce the number of commissions established under the Constitution, a move that will help avoid duplication of roles and a sustainable public wage bill.
- (3) **THAT** the Constitution be amended by introducing a new Article 71A to deal with the sharing of natural resources between the national government, county governments and the community from which the natural resources have been extracted. The new clause will also requires that county governments should receive not less than eighteen (18) per cent of the revenue derived from the extraction of the natural resources and that the community from which the natural resource is derived should receive not less than seven (7) per cent of the said revenue.
- (4) **THAT** the Constitution be amended by introducing a new Article 75A to provide that crimes relating to economic sabotage, corruption, terrorism, and drug trafficking be capital offences. This amendment will elevate the levels of integrity in the Kenyan leaders.
- (5) **THAT** Article 81 of the Constitution be amended to abolish the two-third gender rule in the electoral system to allow for elections of candidates through a competitive electoral process. This amendment will also reduce the cost of funding salaries and benefits of the nominees.
- (6) **THAT** Article 88 of the Constitution be amended by deleting sub-clause (e) to abolish the Independent Electoral and Boundaries Commission's role of settling disputes relating to or arising from nominations. This is geared towards ensuring that the Political Parties Tribunal and the courts handle issues of electoral disputes and leave the Independent Electoral and Boundaries Commission to concentrate on running elections.

- (7) **THAT** Article 89 of the Constitution be amended to reduce the number of constituencies to two hundred and ten as opposed to two hundred and ninety. This will help in the formation of a lean and functional government while cutting down the public wage bill.
- (8) **THAT** Article 97(1)(a) of the Constitution be amended as a further the amendment to Article 89. This will reduce the number of the constituencies to two hundred and ten.
- (9) **THAT** Article 152(3) of the Constitution be amended to provide for the selection of Cabinet Secretaries from among the Members of Parliament.
- (10) **THAT** Article 167 of the Constitution be amended to set the retirement age of judges at seventy four years. Also the Supreme Court judges tenure be reduced to seven years from ten years.
- (11) **THAT** Article 168 of the Constitution be amended to introduce a new sub clause which provides for the vetting of judges after every five years. The judges will be vetted by a board whose establishment and composition is to be legislated by Parliament. The board will examine the suitability of the judges to continue serving. The amendment also provides for a right of appeal to any judge aggrieved by the vetting board's decision to the High Court and bench of five consisting of senior counsels not serving shall hear the appeal, and their decision shall be final.
- (12) **THAT** Article 203 of the Constitution be amended to increase the devolved funds from fifteen per cent to forty six percent to the county governments. This will ensure that county governments have adequate funds to carry out their functions. The base for calculating the funds is based on "the preceding financial year" as opposed to the "most recently audited and approved account" which may not reflect the current economic realities.
- (13) **THAT** the Constitution be amended to introduce a new Article 204A to establish the Constituency Development Fund which constitutes five per cent of the revenue collected by the national government.

- (14) **THAT** the Constitution be amended to introduce a new Article 204B which establishes the Ward Development Fund which constitutes five percent of the equitable share of the funds allocated to county governments. The Members of County Assemblies will manage the fund as the patrons and further legislation is to be made by Parliament on the management of the fund.
- (15) **THAT** Article 230(4) of the Constitution be amended to ensure that the expenditure on wages, salaries and other benefits, paid to state officers is not more than twenty per cent of the national revenue.
- (16) **THAT** Article 232 of the Constitution be amended to ensure that all communities are effectively represented in all public service appointments by restricting appointments in all state and county agencies, departments, and organs to twenty per cent based on the population of any one ethnic group. It also entrenches affirmative action in favor of ethnic minorities in public appointments. This duty is also imposed on all private entities contracted by both the National and County Governments.
- (17) **THAT** Article 250 of the Constitution be amended to ensure that the composition of members of any commission is limited to a maximum of five as opposed to nine members. This will reduce duplication of roles and duties in the commissions. The commissioners are also required to work part time. The amendment also introduces a retirement age of sixty to all permanent workers in the commissions and independent offices.
- (18) **THAT** the First Schedule to the Constitution be amended to reduce the number of counties to ten as opposed to forty seven. This helps in alignment of a leaner, efficient and manageable government.

(See attached in Appendix 1 the proposed Draft Constitution of Kenya (Amendment) Bill as proposed by the Boresha Katiba Initiative espousing the proposals as already discussed in detail).

1.5 The Okoa Kenya Initiative

The Committee did not receive any presentation from the Okoa Kenya Initiative. However, following extensive research by the Committee, we observed that the proposals for amendment of the Constitution as proposed by the Okoa Kenya Initiative were as follows-

- (1) **THAT** Article 12 of the Constitution be amended to provide that every citizen is entitled to a national identity card. The amendment also places an obligation on the State to issue the passport, ID and other documents to citizens within sixty **(60)** days.
- (2) **THAT** Article 67 of the Constitution be amended to provide an additional function to the National Land Commission (NLC) by providing that the Commission shall administer all registries, processes and dispositions in respect of all private, public and community land.
- (3) **THAT** the Constitution be amended to introduce a new clause 71A to ensure that at least fifteen percent of revenue derived by the national government from natural resources is allocated to the county where the natural resources are allocated. Further, the amendment seeks to provide that at least five percent of revenue derived by the national government from natural resources is allocated to the communities where the resources are extracted. The allocation is to be administered through a representative community management framework.
- (4) **THAT** Article 79 of the Constitution be amended to provide for the Ethics and Anti-Corruption Commission as an independent constitutional commission with Chapter fifteen status.
- (5) **THAT** the Constitution be amended to introduce new clauses immediately after clause 86 providing among other things that the Independent Electoral and Boundaries Commission shall have one single national register and that the Commission shall ensure in respect of each constituency not less than 80% of the eligible voters in any electoral area are registered, based on the last population census or the government projected population whichever is the most recent.

- (6) **THAT** Article 88 of the Constitution be amended to reconstitute the IEBC to consist of seven persons nominated by political parties based on their numerical strength in Parliament in the previous general elections.
- (7) **THAT** Article 93 of the Constitution be amended to provide that each governor shall be required to file quarterly reports of the County expenditures and development priorities with the Senate and the respective county assemblies.
- (8) **THAT** Article 110 of the Constitution be amended to provide that the joint resolution of two speakers shall be before the First Reading and each Speaker shall report the decision reached to the Respective Houses within seven days.
- (9) **THAT** Article 138 of the Constitution be amended to provide that the IEBC shall publish results from the constituency returning officers in the Gazette.
- (10) **THAT** Article 140 of the Constitution be amended to provide for the procedure for filing a presidential petition as follows-
- (a) Within fourteen days after the declaration of the results of a presidential election any voter may lodge at the Supreme Court a petition challenging the Presidential election results.
 - (b) Within seven days after lodging and service of the Petition at the Supreme Court, the Commission and the Respondents shall file their responses to the petition.
 - (c) Within seven days after the Commission and the Respondents file and serve their responses the Petitioner shall file further affidavits in response to the Commission and the Respondents.
 - (d) The Supreme Court shall hear and determine the Petition within sixty days from the date of the declaration of results.
 - (e) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.
- (11) **THAT** Article 166 of the Constitution be amended to provide that the Judicial Service Commission shall appoint the Chief Justice and the Deputy Chief Justice subject to the approval of the National Assembly.

- (12) **THAT** Article 167 of the Constitution be amended to provide that a judge shall retire from office on attaining the age of seventy five years but may elect to retire at any time after attaining the age of seventy years.
- (13) **THAT** Article 172 of the Constitution be amended to provide that JSC shall play the function of appointing judges and not just recommending to the President persons for appointment as judges.
- (14) **THAT** Article 203 of the Constitution be amended to increase the county revenue allocation from 15% to 45% of all revenue collected by the national government. Further, the amendment seeks to change the basis for calculating the allocations to county governments “from the most recent audited accounts of revenues received as approved by the National Assembly to “the previous year’s revenues received.”
- (15) **THAT** the Constitution be amended to introduce a new provision immediately after Article 204 of the Constitution establishing the Ward Development Fund consisting of five per cent of the equitable revenue allocated to a county government shall be paid into the Fund.
- (16) **THAT** the Constitution be amended to introduce a new provision immediately after Article 206 of the Constitution establishing the Constituency Development Fund.
- (17) **THAT** Article 232 of the Constitution be amended to provide that no ethnic community shall have more than fifteen per cent of appointments in any state organ of the National Government.
- (18) **THAT** the Constitution be amended to introduce a new clause 246A to establish the County Security Advisory Council in respect of each county.
- (19) **THAT** Article 248 of the Constitution be amended to provide for the Ethics and Anti-Corruption Commission as an independent constitutional commission.

(20) **THAT** Article 255 of the Constitution be amended to provide that any amendment relating to revenue allocation shall be way of a referendum.

(See attached in Appendix 2 the proposed Constitution of Kenya (Amendment) Bill as proposed by the Okoa Kenya Initiative espousing the proposals as already discussed in detail).

1.6 The Pesa Mashinani Initiative

The Pesa Mashinani Initiative is spearheaded by the Council of Governors (CoG). The Committee did not receive any presentation from the Council of Governors. However, following extensive research by the Committee, we observed that the proposals for amendment of the Constitution by the Pesa Mashinani Initiative related to among other things the following-

- (1) **THAT** Article 203 of the Constitution be amended to increase the county revenue allocation from 15% to 45% of all revenue collected by the national government.
- (2) **THAT** the Constitution be amended to strengthen the role of Senate and the nexus between the Senate and County Governments.
- (3) **THAT** the Constitution be amended to provide that the counties should have their own gazettelement law.
- (4) **THAT** the Constitution be amended to establish the County Security Advisory Council in respect of each county.
- (5) **THAT** the Constitution be further amended to provide clarity on management of land and natural resources and forestry, provide for the recalling and impeachment of all elected leaders, form a successor to CIC as a gatekeeper of laws-KLRC, establish a Loans and Grants Council and include representatives of the Council of Governors in the CRA.

1.7 Interim Report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010

The Committee benefited from the Interim Report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010. The Working Group was established through a resolution of the House on 26th February 2014 and gazetted on 15th August 2014 to carry out a Socio-Economic Audit of the Constitution of Kenya 2010 under the auspices of the Auditor General. The Terms of Reference for the Working Group (WG) was to: assess the impact of the implementation of the Constitution to the Nation's economy and in particular its public finances; to make a rapid assessment of the impact of the implementation of the Constitution on public institutions; to evaluate the social impact resulting from the implementation of the Constitution; to make recommendations to the National Assembly on potential measures that could enhance prudent management of the country's public resources; to investigate, determine and advise on any matter related to, relevant, consequential or incidental to the foregoing; and, to consult as necessary the National Assembly through the Budget and Appropriations Committee.

The Committee observed that generally, the Interim Report captured issues that would require legislative or policy interventions. However, the Committee cited a few areas where the Report recommends that the Constitution could be reviewed namely:-

1. The Structure and Composition of the Senate vis-à-vis its role: Under Article 98 of the Constitution, Senators are directly elected by county constituents and thereby are in direct mandate competition with Governors. The Working Group asserts that there is a lack of clear linkages between the Senator and the County Government as envisioned in article 96(1) and no clear provisions exist, requiring consultation between the Senator and County Government. The Working Group further asserts that in some cases, a directly elected Senator and Governor may be representing opposing political parties and this further complicates the working relationship. The Senate has the power to impeach a Governor⁴. According to the Working Group, this undermines the smooth and cordial relations that are expected between the county governments and the Senate. The weak institutional linkages have arguably impeded the effectiveness of the Senate and county governments.

⁴ Section 33 of the County Government Act.

The Working Group recommends that the ideal situation would have been a Senate that comprises delegates of the counties, elected or appointed by the county government and therefore directly answerable to the county government. This would be consistent with the South African and German systems of devolution from which the Kenyan constitution largely borrowed. In South Africa, members of the National Council of Provinces (NCOP), the equivalent of the Kenyan Senate, are composed of the executive and legislative organs of provinces. Indeed the provincial premier, the equivalent of the Governor, heads each province's 10 member delegation to the NCOP. In Germany, members of the *Bundesrat*, the equivalent of the Kenyan Senate, are representatives of the 16 *Länder* executives. In such an arrangement, the institutional linkages between the sub-national units and the second chamber are evident and the representative role of the second chamber is more apparent⁵.

2. Presidential Petitions: The hearing and determination of Presidential Disputes. The Report observes that the Supreme Court has a maximum of 14 days within which to hear and determine the dispute. Where the Court annuls the election, another election has to be held within the next 60 days. The Report proposes that the Constitution should be amended to provide for more time for the determination of election disputes⁶.
3. Alternative National Political Leadership: The Constitution provides that candidates cannot seek more than one elective office. In the past, the President was also a Member of Parliament and most unsuccessful presidential candidates became Members of Parliament. The decision to exclude presidential losers from parliamentary seats was partly as a result of the system of government which strictly separates the executive from the legislature. However, the reality of our politics is that this system locks out political leaders who contest election from any formal spaces of democratic representation. The net effect is that the alternative national political leadership is locked out of political decision-making. The Interim Report recommends that the above challenge can be addressed in two ways. First, there can be a change of the electoral process to provide for the staggering of the elections for president and other elections to allow a person to contest in both elections separately and relinquish one position for the other. The other alternative is to allow candidates to

⁵ Interim report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010 pg 43-44

⁶ Interim report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010 pg 64-65.

contest for the presidency and parliamentary seats and relinquish the parliamentary seat in case one wins the presidency. This will ensure that political leadership is in spaces where negotiations and political decision-making can take place. The Working Group also notes that while the Constitution provides for the position of Minority and Majority leaders in the National Assembly under Article 108, no similar position is recognized in the Constitution in the case of the Senate. Party leaders in both Houses play an important role in negotiating settlements and all their positions and roles should be equally recognized and protected in the Constitution⁷.

Drawing from presentations from the Petitioner (Tunza Kenya Initiative), the Punguza Mzigo Initiative, Mr Njoroge Waweru, (a member of the public) and the Boresha Katiba Initiative and documentary analysis on the proposed amendments to the Constitution by the Okoa Kenya Initiative, the Pesa Mashinani Initiative and the Interim Report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010, the Committee observes that-

- a number of the proposed amendments by the Petitioner arguably do not require constitutional amendments but raises policy questions. for instance, the proposal that tourism be a national source in income in particular, that there be provisions to require primary and secondary school students to visit tourist destinations in the country, the proposal that traditional medicine be developed and encouraged and adequate public resources be allocated to research institutions for development of traditional medicine and that a revolutionary approach to farming be adopted, require policy and administrative solutions rather than constitutional amendments.
- most of the proposed amendments to the Constitution by the various Initiatives relate to the matters listed in Article 255 of the Constitution and therefore require to be approved by a referendum.
- there exists no referendum law to govern the referendum process for the proposals to amend the Constitution to be approved as required under Article 255(2) of the Constitution.

⁷ Interim report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010 pg 45-46.

1.8 Analysis of the Various Proposals

During its 51st sitting held on 22nd April, 2016, the Committee deliberated on the various proposals made to amend the Constitution by the public and the proponents of key initiatives and made the following analysis and findings:-

Kiswahili to be Made the National Language of Study and Instruction

- (1) Regarding the proposal for Kiswahili to be made the national language of study and instruction of all subjects is unnecessary as Kiswahili is already a national language and the status already accorded to it is sufficient.

Provision of Traditional Medicine in the Constitution and Adequate Public Resource be allocated for the same.

- (2) Regarding the proposal for traditional medicine to be developed and adequate public resources allocated to research institutions for development of traditional medicine, the Committee found that this would fall under legislations or policy matters. Indeed, the Committee was apprised of the Health Bill, 2015 which has provisions on Traditional Medicine and the Seeds and Plants Varieties (Amendment) Bill, 2015 (although they are yet an Acts) which has provisions on plants used by indigenous communities and therefore the matter is substantially being taken care of and need not be provided for in the Supreme law.

Entitlement of citizens to National Identity Cards

- (3) Regarding the proposed amendment to Article 12 of the Constitution to provide that every citizen is entitled to a national identity card, the Committee argued that this was provided for in the same Article.

National Land Commission to administer all Registries, Processes and Dispositions in Respect of all Private, Public and Community Land

- (4) With regard to the proposal to amend Article 67 to have the National Land Commission (NLC) "*administer all registries, processes and dispositions in respect of all private, public and community land*", the Committee agreed that this would be conferring an executive function to an oversight agency (the National Land Commission) whose role is

essentially to oversight that function. The Committee holds the view that this is contrary to the principle of checks and balances as entrenched in the Constitution. Further, the Commission is only mandated to handle public land.

Sharing of revenue derived from natural resources

- (5) On the proposal for the sharing of natural resources between the national government, county government and the community from which the natural resources have been extracted, the Committee observed that with the provisions of Article 69(1)(b) which provide that "*the State shall ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits*" there is already a constitutional framework for sharing of revenue derived from natural resources and what remains is a matter of implementation by way of legislations. The Committee further observed that the development of the enabling legislation is already on course.

Inclusion of capital offences in the Constitution

- (6) On the proposals that offences relating to economic sabotage, corruption, terrorism and drug trafficking are made capital offences, the Committee holds the view that there is need to review Chapter Six of the Constitution or the Leadership and Integrity Act with a view to reinforcing provisions on integrity. This view is reinforced by the Interim Report of the Working Group. The Leadership and Integrity Act need to be reviewed to make explicit provisions that bar persons who do not comply with the provisions of Chapter Six of the Constitution from holding public office and for the removal of those already in office; provide for lifestyle audit of state officers as a means of enforcing the provisions of the Chapter and provide for clear procedures and mechanisms through which the Ethics and Anti-Corruption Commission can enforce compliance with the Chapter as envisaged under Article 79 of the Constitution⁸.

Amendments to Chapter Seven of the Constitution on Representation of People

- (7) On the proposal by Tunza Kenya to have only three political parties in Kenya namely: men's party, women's party and youth's party, the Committee holds the view that this would contravene the provisions Article 91(2) of the Constitution which provides that a

⁸ Interim Report of the Working group on Social Economic Audit of the Constitution of Kenya 2010 pg. 78

political party shall not be founded on gender basis. This would also curtail the political rights and freedom of association as enshrined in the Constitution. Consequently, in the absence of amendment to Article 91 of the Constitution and the Bill of rights, the Committee recommended that the proposal should not be carried.

Education Requirements for Election as a Member of Parliament

- (8) With regard to the proposed amendment for the education requirements in Article 99 (1) (b) of the Constitution to be expunged, the Committee is of the view that the necessity for education requirements cannot be overstated as qualifications emanate from functions to be discharged. The proposal is therefore inconceivable.

Reduction of the Number of Constituencies

- (9) With regard to the proposed amendment to reduce the number of constituencies, the Committee noted that the 290 number of constituencies was arrived at after extensive negotiations and that the Independent Electoral and Boundaries Commission is mandated under Article 88(4)(c) and 89 of the Constitution to undertake delimitation of constituencies boundaries at intervals of not less eight years but not more than twelve years.

Review of the functions of the IEBC

- (10) The Committee also holds the view that Article 88 of the Constitution should be amended to provide that IEBC shall not to deal with issues relating to party primaries.

Independent Electoral and Boundaries Commission

- (11) On the proposal to be amended Article 248 of the Constitution to make for the Ethics and Anti-Corruption Commission an independent Commission, the Committee holds the view that, EACC is an independent Commission as provided for under Article 248(1) of the Constitution as read together with Article 79 of the Constitution.
- (12) On the proposal the IEBC cannot compel against the free will of people to determine whether or not they should be registered, as such the proposed amendment that the IEBC shall ensure not less than 80% of the eligible voters in any electoral area are registered is inappropriate and an impossible responsibility to place on the Commission.

- (13) Regarding the proposal to amend Article 88 of the Constitution to reconstitute the IEBC to consist of seven persons nominated by political parties based on their numerical strength in Parliament in the previous general elections, the Committee observed that the proposal is contrary to Article 249(2)(b) of the Constitution, as constitutional commissions are expected to be independent.

Abolishment of the 12 positions of nominated members of the National Assembly

- (14) Regarding the proposal to abolish the 12 positions of nominated members of the National Assembly, the Committee observed that the nominations were meant to cater for special interests.

Reduction of the Members of the Senate or Abolishing the Senate

- (15) On the proposal for reduction of the members of the Senate and abolishment of the Senate, the Committee observed that there are challenges of achieving the objective of the function of the Senate as espoused in Article 96(1) of the Constitution because there exist conflict of interests by the Senators, as they use their positions to strive for gubernatorial elections. Further, the Senators are not linked to the counties. The Committee concurs with the Working Group observation that there is a need to create a stronger link between the institution of the Senate and the Counties as is the case in South Africa and Germany to ensure the Senate serves interests of the Counties.
- (16) On the proposal that the Senate be abolished and its functions be reassigned to the National Assembly, the Committee holds the view that this would substantially weaken devolution and expose the devolved system of government to political pressure from members of the National Assembly especially those aspiring to be Governors.

Rotating Presidency

- (17) With regard to the proposal for amendment of the Constitution to provide for a rotating presidency in Kenya and a two-five year limit for each ethnic community, the Committee agreed that this would needlessly compromise democratic values and polarize the country on ethnic lines.

Appointment of Cabinet Secretaries from among the Members of Parliament

- (18) With regard to the proposal to amend Article 152(3) of the Constitution to provide for the selection of Cabinet Secretaries from among the Members of Parliament, the Committee observed that the exclusion of the Executive from the Legislature was meant to enhance the principle of separation of powers and strengthen the independence of the Legislature.

National Revolution Council

- (19) Regarding the proposal to establish a National Revolution Council, the Committee held the view that Kenya is a Republic and establishment of the Council would be an attempt to oust the rule of law and the Constitution.

Mandatory National Military Service

- (20) With regard to the proposal relating to establishment of a mandatory National Military Service this should be left to policy issues.

Inclusion of provisions on tourism and farming in the Constitution

- (21) With regard to proposals for provision(s) on tourism to be entrenched in the Constitution to foster tourism as a national source of income and the entrenchment of a revolutionary approach to farming in the Constitution, the Committee holds the view that these are policy questions and hence requires policy solutions.

Review of the number of constitutional commissions and their membership

- (22) The Committee also observed that the proposal to review the number of constitutional commissions and their membership with a view to enhance their efficiency and viability in terms of costs should be done within the respective Acts of Parliament.

Increase of the retirement age of Judges

- (23) On the proposal to increase the retirement of age of judges, the Committee holds the view that this would raise questions of effectiveness in terms of service delivery. The Committee observed that the proposal is unnecessary as there is no scarcity of labour and excludes the young talent.

Evaluation of Judges

- (24) On the issue of evaluation of judges every five years, the Committee observes that there is need to establish a semi-autonomous organ to handle disciplinary cases of the judicial officers within the JSC to evaluate the performance of judges through a legislative framework.

Increase of devolved funds

- (25) With regard to the proposals for increase of the devolved funds, the Committee observes that this one of the issue being debated and should be reviewed.

Establishment of the NGCDF and the Ward Development Fund in the Constitution.

- (26) With regard to the proposals entrenching the National Government Constituency Development Fund (CDF) the Committee observes that the National Government Constituency Development Fund Act, 2016 was enacted recently and there is need to give time for the operationalization and implementation of the new law. On the proposal for entrenchment of the Ward Development Fund (WDF) in the Constitution, the Committee observes that this should be reviewed in consultation with the Senate.

Public Service appointments

- (27) On the proposal that Article 232 of the Constitution to be amended to ensure that all communities are effectively represented in all public service appointments, the Committee observed that this provision need not be put in the Constitution as it is an issue of implementation of the already enacted legislation including the National Cohesion and Integration Act.

County Expenditure's Reports to the Senate by the County Governors

- (28) on the proposal for Governors to file quarterly reports of the County Expenditure with the Senate, the Committee argues that this is tantamount to self-reporting by Governors instead of the current constitutional oversight institutions such as the office of Auditor-General and Controller of Budget, EACC and Commission of Revenue Allocation.
- (29) The proposal for amendment of Article 110 of the Constitution relates to matters of procedure which should be provided for in the Standing Orders.

Presidential Election Petition

- (30) The proposed amendment on the timelines for a presidential election petition is one of the issues being debated and should be reviewed.

Appointment of the Chief Justice and Deputy Chief Justice by the JSC

- (31) With regard to the proposed amendment to Article 166 of the Constitution to have the appointment of the Chief Justice and Deputy Chief Justice appointed by the Judicial Service Commission and not the President, the Committee observed that this would be tantamount to harmful concentration of power in the JSC and would defeat the principles of checks and balances and oversight.

Establishment of County Security Advisory Council

- (32) With regard to the proposal for the establishment of County Security Advisory Council in respect of each county, the Committee observed that under the current dispensation security is a national government function and the proposal therefore needs to be reviewed.

Reduction of the Number of Counties- Amendment to First Schedule

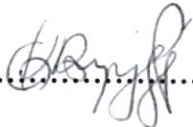
- (33) On all the proposal for the reduction of the number of counties by the various Initiatives, the Committee observes that this one of the issue in contention eliciting diverse responses including those in support of the comprised existing two-tier system vis-avis a three tier system and the Committee recommends that the proposal be reviewed.

RECOMMENDATIONS

The Committee recommends to the National Assembly that:-

1. a review of the Constitution be undertaken with a special reference to the issues raised in this Report and the recommendations of the Working Group on Social Economic Audit of the Constitution of Kenya 2010, and that the outcome of the review forms the basis for the proposal of the relevant amendments to the Constitution.

2. in view of paragraph (1) above, a legislative framework be developed to guide the review process.
3. the Constitutional Implementation Oversight Committee to oversight the review in line with its constitutional mandate on oversight over implementation of the Constitution
4. a copy of this Report be forwarded to the Petitioner in line with the provisions of the National Assembly Standing Order 228.

Signed 

The Hon. Njoroge Baiya, MP,

Chairperson, Constitutional Implementation Oversight Committee

Date: 5/5/2016

MINUTES OF THE 56TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY, MAY 05, 2016 AT MEDIA CENTRE, MAIN PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Benson M. Kangara, MP
4. The Hon. Abdul Rahim Dawood, MP
5. The Hon. Sakwa J. Bunyasi, MP
6. The Hon. Sabina Chege, MP
7. The Hon. Omulele Christopher, MP
8. The Hon. Alice Muthoni Wahome, MP
9. The (Dr.) Hon. Humphrey K. Njuguna, MP
10. The Hon. Rose Rwamba Mitaru, MP
11. The Hon. Protus Akuja, M.P.
12. The Hon. Shakila Abdalla, MP
13. The Hon. Samuel K. Chepkonga, MP
14. The Hon. Ababu Namwamba EGH, MP
15. The Hon David Gikaria, MP
16. The Hon. Aramat Lemanken, MP
17. The Hon. Mary Wambui, M.P
18. The Hon. John Lodepe Nakara, MP
19. The Hon. Manson Nyamweya, MP

ABSENT WITH APOLOGY

1. The Hon. Grace Jemutai Kiptui, MP
2. The Hon. Mahamud, M. Maalim, MP
3. The Hon. James Lomenen, MP
4. The Hon. Boniface O. Otsiula, MP
5. The Hon. (Dr.) Dahir Duale Mohammed, MP
6. The Hon. Bowen, David Kangogo, MP
7. The Hon. Peter N. Gitau, MP
8. The Hon. Steven Kariuki, MP

In-Attendance

National Assembly

1. Mr. John Mutega - Principal Clerk Assistant II
2. Mr. Nebert Ikai Lomechu - Clerk Assistant III

MIN.NO.240/05/05/2016: PRELIMINARIES

The meeting was called to order at 10.20 am and commenced with a word of prayer from the Chairman.

MIN.NO.241/05/05/2016: CONFIRMATIONS OF THE MINUTES

The minutes of the 50th sitting held on 22nd April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Humphrey K. Njuguna, MP and seconded by Hon. David Gikaria, MP.

The minutes of the 51st sitting held on 22nd April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. David Gikaria, MP and seconded by Hon. Humphrey K. Njuguna, MP.

The minutes of the 52nd sitting held on 23rd April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Omulele Christopher, MP and seconded by Hon Humphrey K. Njuguna, MP.

The minutes of the 53rd sitting held on 23rd April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Samuel K. Chepkonga, MP and seconded by Hon. Benson M. Kangara, MP.

The minutes of the 54th sitting held on 28th April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Samuel K. Chepkonga, MP and seconded by Hon. Benson M. Kangara, MP.

The minutes of the 55th sitting held on 3rd May, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Rose Mitaru, MP and seconded by Hon. Humphrey K. Njuguna MP.

MIN.NO. 242/05/05/2016: ADOPTION OF REPORT ON CONSIDERATION OF PETITION BY MAJOR (RTD.) JOEL KIPRONO ROP

All the Members present unanimously adopted the report on consideration of petition concerning the need for parliament to harmonize all existing draft proposals for amending the constitution into one hybrid draft bill for national referendum and approved the same for tabling before the House on Thursday, 5th May, 2016.

MIN.NO. 243/05/05/2016: ADJOURNMENT

There meeting adjourned at 12.30 pm.

SIGN.....

DATE

CHAIRPERSON.....

MINUTES OF THE 55TH SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, MAY
03, 2016 AT MEDIA CENTRE, MAIN PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
2. The Hon. Benson M. Kangara, MP
3. The Hon. Abdul Rahim Dawood, MP
4. The Hon. Sakwa J. Bunyasi, MP
5. The Hon. Sabina Chege, MP
6. The Hon. Omulele Christopher, MP
7. The Hon. Alice Muthoni Wahome, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. Rose Rwamba Mitaru, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon. Shakila Abdalla, MP

ABSENT WITH APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
2. The Hon. Samuel K. Chepkonga, MP
3. The Hon. Ababu Namwamba EGH, MP
4. The Hon. Steven Kariuki, MP
5. The Hon. David Gikaria, MP
6. The Hon. Aramat Lemanken, MP
7. The Hon. Boniface O. Otsiula, MP
8. The Hon. Grace Jemutai Kiptui, MP
9. The Hon. (Dr.) Dahir Duale Mohammed, MP
10. The Hon. Bowen, David Kangogo, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Peter N. Gitau, MP
13. The Hon. John Lodepe Nakara, MP
14. The Hon. James Lomenen, MP
15. The Hon. Mahamud, M. Maalim, MP
16. The Hon. Manson Nyamweya, MP

In-Attendance

National Assembly

1. Mr. John Mutega - Principal Clerk Assistant II
2. Mr. Nebert Ikai Lomechu - Clerk Assistant III

MIN.NO.236/03/05/2016: PRELIMINARIES

The meeting was called to order at 10.20 am and commenced with a word of prayer from the Chairman.

MIN.NO. 237/03/05/2016: RECOMMENDATIONS OF THE INTERIM REPORT OF THE WORKING GROUP ON SOCIAL ECONOMIC AUDIT OF THE CONSTITUTION OF KENYA 2010

The Committee considered the contents of the Interim Report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010. The Committee observed that, most of the issues raised in the Interim Report were either of legislative or policy concerns. However, the Committee cited a few issues where the Constitution could be opened up for review namely:-

- The Structure and Composition of the Senate vis-à-vis its role: The Committee observed – that the Senate as currently constituted is in direct competition with county governments. The Committee also observed that there is no clear linkages between the Senator and the County Government as envisioned in article 96(1) that would enable consultation between the Senate and County Governments. The attention of the Committee was drawn to the assertion of the Working Group that, in some cases, a directly elected Senator and Governor may be representing opposing political parties and this would complicate the working relationship. The fact that the Senate has the power to impeach a Governor, the smooth and cordial relations that are expected between the county governments and the Senate are strained.
- Presidential Petitions: The Committee observes that, the period set for the hearing and determination of Presidential Disputes is short. The Committee further observes that the Supreme Court is only left with a maximum of 14 days within which to hear and determine the dispute and this could be opened up for amendment to provide for more time for the determination of election disputes.
- Alternative National Political Leadership: Noting that, the Constitution provides that candidates cannot seek more than one elective office, those who lose on presidential elections are excluded out from the formal decision making processes. The Committee also felt that this could be opened up for discussion and review.

The Committee tasked the Secretariat to incorporate the above observations into the Report of the Committee on the foregoing subject.

MIN.NO. 238/03/05/2016: RECOMMENDATIONS

All the members present agreed on the following recommendations to the National Assembly:-

1. a review and audit of the Constitution be undertaken with a special reference to the provisions and issues highlighted by the respective proponents of the amendment proposals outlined in this Report and the recommendations of the Working Group on Social Economic Audit of the Constitution of Kenya 2010, and that the review and audit be used to guide amendments to the Constitution.
2. in view of paragraph (1) above, a legislative framework be developed to guide the review process.
3. the Constitutional Implementation Oversight Committee oversight the review and audit in line with its constitutional mandate on oversight over implementation of the Constitution
4. a copy of this Report be forwarded to the Petitioner in line with the provisions of the National Assembly Standing Order 228.

MIN.NO. 239/03/05/2016: ADJOURNMENT

There meeting adjourned at 12.00 pm and resolved to meet on Thursday, 5th May, 2016 at 10.00 am to adopt the Report.

SIGN.......... DATE

CHAIRPERSON.....

MINUTES -OF THE 54TH SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY,
APRIL 28, 2016 AT SMALL DINING, MAIN PARLIAMENT BUILDING, 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, MP
4. The Hon. Sakwa J. Bunyasi, MP
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 (Dr.) Hon. Humphrey K. Njuguna, MP
10. The Hon. Alice Muthoni Wahome, MP
11. The Hon. Peter N. Gitau, MP
12. The Hon. Sabina Chege, MP
13. The Hon. Shakila Abdalla, MP
14. The Hon. Steven Kariuki, MP
15. The Hon. Mary Wambui, M.P

ABSENT WITH APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
2. The Hon. Abdul Rahim Dawood, MP
3. The Hon. Grace Jemutai Kiptui, MP
4. The Hon. (Dr.) Dahir Duale Mohammed, MP
5. The Hon. Bowen, David Kangogo, MP
6. The Hon. Protus Akuja, M.P.
7. The Hon. John Lodepe Nakara, MP
8. The Hon. James Lomenen, MP
9. The Hon. Mahamud, M. Maalim, MP
10. The Hon. Aramat Lemanken, MP
11. The Hon. Rose Rwamba Mitaru, MP
12. The Hon. Manson Nyamweya, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

- | | |
|----------------------------|--------------------------------|
| 1. Mr. John Mutega | - Principal Clerk Assistant II |
| 2. Mr. Nebert Ikai Lomechu | - Clerk Assistant III |
| 3. Mr. Donald Manyalla | - Legal Counsel II |
| 4. Ms. Winnie Kizia | - Media Relation |

MIN.NO. 230/28/04/2016: PRELIMINARIES

The meeting was called to order at 10.00 am and commenced with a word of prayer from the Chairman.

MIN.NO. 231/28/04/2016: CONFIRMATION OF MINUTES

The minutes of the 4th sitting held on 12th April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Christopher Omulele, MP and seconded by Hon. Boniface Otsiula, MP.

The minutes of the 48th sitting held on 23rd April, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Christopher Omulele, MP and seconded by Hon. Boniface Otsiula, MP.

The minutes of the 49th sitting held on 15th March, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Boniface Otsiula, MP and seconded by Hon Hon. Benson Kangara, MP.

MIN.NO. 232/28/04/2016: MATERS ARISING

- (a) Under MIN. 214/14/04/2016: the Committee resolved to follow up with Cabinet Secretary for Devolution and Special Programs with regards to facilitation of Inter-Governmental Relations Technical Committee (IGRTC) and on the Report they had confirmed to file with the Committee after three weeks. The Committee resolved to invite them after 5th May, 2016.

MIN.NO. 233/28/04/2016: REPORT ON CONSIDERATION OF THE PETITION BY MAJOR (RTD.) JOEL KIPRONO ROP

The Committee tasked the secretariat to consider some of the recommendations contained in the Interim Report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010 and furnish the Committee at the next meeting.

MIN.NO. 234/28/04/2016: ANY OTHER BUSINESS

Correspondences to the Committee

- (a) The attention of the Committee was drawn to a request for a meeting with "The Devolution Forum" with a view of presenting a memorandum on the issues status of

devolution' after three years of implementation. The Committee tasked the Committee secretariat to liaise with the organization and get convenient dates for the same.

- (b) The attention of the Committee was also drawn to a letter from the Council of Governors on provision of retirement benefits for employees of county governments. The Committee resolved to invite the National Treasury, the Council, the Inter-Governmental Relations Technical Committee, the Attorney-General, the Kenya Law Reform Commission and the Public Service Commission with a view to addressing the issue of pensions of county governments' workers.

MIN.NO. 235/28/04/2016: ADJOURNMENT

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

SIGN.......... DATE

CHAIRPERSON.....



MINUTES OF THE 53RD SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON SATURDAY, APRIL 23, 2016 AT COLUMBA ROOM, GREAT RIFT VALLEY LODGE AND GOLD RESORT, NAIVASHA, AT 11.00 AM.

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
2. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Ababu Namwamba EGH, MP
5. The Hon. Benson M. Kangara, MP
6. The Hon. Steven Kariuki, MP
7. The Hon. Aramat Lemanken, MP
8. The Hon. Boniface O. Otsiula, MP
9. The Hon. Omulele Christopher, MP
10. The Hon. Alice Muthoni Wahome, MP
11. The (Dr.) Hon. Humphrey K. Njuguna, MP
12. The Hon. Rose Rwamba Mitaru, MP

ABSENT WITH APOLOGY

1. The Hon David Gikaria, MP
2. The Hon. Abdul Rahim Dawood, MP
3. The Hon. Grace Jemutai Kiptui, MP
4. The Hon. Sakwa J. Bunyasi, MP
5. The Hon. Sabina Chege, MP
6. The Hon. (Dr.) Dahir Duale Mohammed, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Mary Wambui, M.P
9. The Hon. Protus Akuja, M.P.
10. The Hon. Peter N. Gitau, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Shakila Abdalla, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP
15. The Hon. Manson Nyamweya, MP

In-Attendance

National Assembly

1. Mr. Nicholas Emejen - Principal Clerk Assistant I
2. Mr. John Mutega - Principal Clerk Assistant II
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Alex Mutuku - Serjeant-At-Arms

MIN.NO.227/23/04/2016: PRELIMINARIES

The meeting was called to order at 11.30 am and commenced with a word of prayer from the Chairman.

MIN.NO. 228/23/04/2016: RECOMMENDATIONS

The Committee proposed the followings recommendations for consideration at the next sittings:-

- (a) a review and audit of the Constitution should be undertaken with a special reference to the provisions and issues highlighted by the respective proponents of the amendment proposals, and that the review and audit be used to establish whether there is need or justification for amendments to the Constitution.
- (b) in view of paragraph (a) above, a legislative framework should be developed to guide the review and ensure the process is undertaken smoothly.
- (c) a copy of this Report be forwarded to the Petitioner in line with the provisions of the National Assembly Standing Order 228.

MIN.NO. 229/22/04/2016: ADJOURNMENT

There meeting adjourned at 12.00 pm and resolved to meet on Tuesday, 26th April, 2016 at 12.00 pm.

SIGN..........

DATE

CHAIRPERSON.....

MINUTES OF THE 52ND SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON SATURDAY, APRIL 23, 2016 AT COLUMBA ROOM, GREAT RIFT VALLEY LODGE AND GOLD RESORT, NAIVASHA, AT 8.30 AM.

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
2. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Ababu Namwamba EGH, MP
5. The Hon. Benson M. Kangara, MP
6. The Hon. Steven Kariuki, MP
7. The Hon. Aramat Lemanken, MP
8. The Hon. Boniface O. Otsiula, MP
9. The Hon. Omulele Christopher, MP
10. The Hon. Alice Muthoni Wahome, MP
11. The (Dr.) Hon. Humphrey K. Njuguna, MP
12. The Hon. Rose Rwamba Mitaru, MP

ABSENT WITH APOLOGY

1. The Hon David Gikaria, MP
2. The Hon. Abdul Rahim Dawood, MP
3. The Hon. Grace Jemutai Kiptui, MP
4. The Hon. Sakwa J. Bunyasi, MP
5. The Hon. Sabina Chege, MP
6. The Hon. (Dr.) Dahir Duale Mohammed, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Mary Wambui, M.P
9. The Hon. Protus Akuja, M.P.
10. The Hon. Peter N. Gitau, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Shakila Abdalla, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP
15. The Hon. Manson Nyamweya, MP

In-Attendance

National Assembly

1. Mr. Nicholas Emejen - Principal Clerk Assistant I
2. Mr. John Mutega - Principal Clerk Assistant II
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Alex Mutuku - Serjeant-At-Arms

MIN.NO.224/23/04/2016: PRELIMINARIES

The meeting was called to order at 8.30 am and commenced with a word of prayer from the Chairman.

MIN.NO. 225/23/04/2016: ANALYSIS OF THE VIEWS OF THE KEY PROPOSAL TO AMEND THE CONSTITUTION

The Committee continued with the analysis as follows:-

Increase of devolved funds

- (1) With regard to the proposals for increase of the devolved funds, the Committee holds the view that this should only be reviewed taking into considerations of what is required to finance the national functions *vis a vis* the devolved functions.

Establishment of the CDF and the Ward Development Fund in the Constitution.

- (2) With regard to the proposals entrenching the Constituency Development Fund (CDF) and Ward Development Fund (WDF) in the Constitution, the Committee argued that this should be considered along the basis of sustainability and economic viability as well as the doctrine of separation of powers.

Public Service appointments

- (3) On the proposal that Article 232 of the Constitution to be amended to ensure that all communities are effectively represented in all public service appointments, the Committee argued that this is not a provision to be put in the Constitution. The Committee is contented that the principle is already captured under the National Cohesion and Integration Act.

County Expenditure's Reports to the Senate by the County Governors

- (4) on the proposal for Governors to file quarterly reports of the County Expenditure with the Senate, the Committee argues that this is tantamount to self-reporting by Governors.
- (5) The proposal for amendment of Article 110 of the Constitution relates to matters of procedure which should be provided for in the Standing Orders.

Presidential Election Petition

- (6) The proposed amendment on the procedure for filing a presidential election petition raises an issues of anxiety and threaten paralysis in the country with the risk of extending pressure to the Judiciary.

Appointment of the Chief Justice and Deputy Chief Justice by the JSC

- (7) With regard to the proposed amendment to Article 166 of the Constitution to have the appointment of the Chief Justice and Deputy Chief Justice appointed by the Judicial Service Commission and not the President, the Committee observed that this would adulterate the unprecedented symbolic role of the President as the Head of State. The institution of the Presidency must be safeguarded.

Establishment of County Security Advisory Council

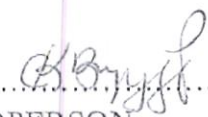
- (8) The proposal for the establishment of County Security Advisory Council in respect of each county is untenable in light of security threats from terrorism. The amendment would also politicize security and would be akin to establishment of federal state yet Kenya is a unitary state. Security is also a national government function as provided for under Part One of the Fourth Schedule to the Constitution. The amendment would also contravene the principle of centrality of command as applied in security matters.

Reduction of the Number of Counties- Amendment to First Schedule

- (9) On all the proposal for the reduction of the number of counties by the various Initiatives, the Committee noted that this would split the country along ethnic lines. Further, the proposal by Boresha Initiative would re-establish the defunct system of governance referred to provincial administration. However, the fact that various players have made proposals on the matter, the amendment to reduce the number of counties should be put in a constitutional conference.

MIN.NO. 226/23/04/2016: ADJOURNMENT

There meeting adjourned at 10.30 am and resolved to meet at 11.00am same day.

SIGN..........
CHAIRPERSON.....

DATE

MINUTES OF THE 51ST SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON FRIDAY, APRIL 22, 2016 AT COLUMBA ROOM, GREAT RIFT VALLEY LODGE AND GOLD RESORT, NAIVASHA, AT 2.00 PM.

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
2. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Ababu Namwamba EGH, MP
5. The Hon. Benson M. Kangara, MP
6. The Hon. Steven Kariuki, MP
7. The Hon. Aramat Lemanken, MP
8. The Hon David Gikaria, MP
9. The Hon. Boniface O. Otsiula, MP
10. The Hon. Omulele Christopher, MP
11. The Hon. Alice Muthoni Wahome, MP
12. The (Dr.) Hon. Humphrey K. Njuguna, MP

ABSENT WITH APOLOGY

1. The Hon. Abdul Rahim Dawood, MP
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Rose Rwamba Mitaru, MP
5. The Hon. Sabina Chege, MP
6. The Hon. (Dr.) Dahir Duale Mohammed, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Mary Wambui, M.P
9. The Hon. Protus Akuja, M.P.
10. The Hon. Peter N. Gitau, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Shakila Abdalla, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP
15. The Hon. Manson Nyamweya, MP

In-Attendance

National Assembly

1. Mr. Nicholas Emejen - Principal Clerk Assistant I
2. Mr. John Mutega - Principal Clerk Assistant II
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Alex Mutuku - Serjeant-At-Arms

MIN.NO.221/22/04/2016: PRELIMINARIES

The meeting was called to order at 2.00 pm and commenced with a word of prayer.

MIN.NO. 222/22/04/2016: ANALYSIS OF THE VIEWS OF THE KEY PROPOSAL TO AMEND THE CONSTITUTION

The Committee continued with the analysis of the various presentations and found that:-

- (1) Article 88 of the Constitution should be amended to provide that IEBC should not deal with issues relating to party primaries.
- (2) the Ethics and Anti-Corruption Commission is already an independent Commission under Article 248 of the Constitution.
- (3) IEBC cannot compel people to be registered.
- (4) the 12 positions of nominated members of the National Assembly should be retained on the basis that they are meant to cater for special interests.
- (5) the proposal to have three members of the Senate (One Man, One Woman and One Young Person) from each county based on the proposed three parties infringes on human rights.
- (6) to abolish the Senate and to reassign its functions to the National Assembly is tantamount to ousting devolution and would expose the devolved system of government to political pressure from members of the National Assembly aspiring to be County Governors.
- (7) the proposal for amendment of the Constitution to provide for a rotating presidency in Kenya and a two-five year limit for each ethnic community would polarize the country on tribal lines further.
- (8) the proposal to establish a National Revolution Council would be an attempt to oust the rule of law and the Constitution.
- (9) the proposal relating to establishment of a mandatory National Military Service should be left to policy issues.
- (10) the proposals for provision(s) on tourism to be entrenched in the Constitution to foster tourism as a national source of income and the entrenchment of a revolutionary approach to farming in the Constitution are policy questions and hence requires policy solutions.

- (11) the proposal to review the number of constitutional commissions and their membership with a view to enhance their efficiency and viability in terms of costs should be done within the respective Acts of Parliament.
- (12) the proposal to increase the retirement of age of judges would raise questions of effectiveness in terms of service delivery due to old age.
- (13) On the issue of vetting judges every five years, the Committee suggests that what need to be established is a successor to the Judges and Magistrates Vetting Board (JMVB) but this should be domiciled in Judicial Service Commission (JSC) as a semi-autonomous organ to handle disciplinary cases of the judicial officers. However, the Committee noted that, there is a proposal to legislate on such a legal framework and therefore the matter is being taken care of in a legislation.

MIN.NO. 223/22/04/2016: ADJOURNMENT

There meeting adjourned at 6.00pm and resolved to meet on Saturday 23rd April, 2016 at 8.30am.

SIGN.......... DATE

CHAIRPERSON.....

MINUTES OF THE 50TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON FRIDAY, APRIL 22, 2016 AT COLUMBA ROOM, GREAT RIFT VALLEY LODGE AND GOLD RESORT, NAIVASHA, AT 9.30 AM.

PRESENT

1. The Hon. Njoroge Baiya, MP - Chairperson
2. The Hon. Moitalel Ole Kenta, MP - Vice Chairperson
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Ababu Namwamba EGH, MP
5. The Hon. Benson M. Kangara, MP
6. The Hon. Steven Kariuki, MP
7. The Hon. Aramat Lemanken, MP
8. The Hon David Gikaria, MP
9. The Hon. Boniface O. Otsiula, MP
10. The Hon. Omulele Christopher, MP
11. The Hon. Alice Muthoni Wahome, MP
12. The (Dr.) Hon. Humphrey K. Njuguna, MP

ABSENT WITH APOLOGY

1. The Hon. Abdul Rahim Dawood, MP
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. Sakwa J. Bunyasi, MP
4. The Hon. Rose Rwamba Mitaru, MP
5. The Hon. Sabina Chege, MP
6. The Hon. (Dr.) Dahir Duale Mohammed, MP
7. The Hon. Bowen, David Kangogo, MP
8. The Hon. Mary Wambui, M.P
9. The Hon. Protus Akuja, M.P.
10. The Hon. Peter N. Gitau, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Shakila Abdalla, MP
13. The Hon. James Lomenen, MP
14. The Hon. Mahamud, M. Maalim, MP
15. The Hon. Manson Nyamweya, MP

In-Attendance

National Assembly

1. Mr. Nicholas Emejen - Principal Clerk Assistant I
2. Mr. John Mutega - Principal Clerk Assistant II
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Nebert Ikai Lomechu - Clerk Assistant III
5. Mr. Alex Mutuku - Serjeant-At-Arms

MIN.NO.216/22/04/2016: PRELIMINARIES

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

The Chair informed the meeting that, the Committee was holding a retreat after to consider the views received during the consideration of the "*Petition to the National Assembly by Major (Rtd.) Joel Kiprono Rop concerning the need for Parliament to take over the process of amending the Constitution by using all existing draft proposals to consolidate and produce one comprehensive hybrid draft for National Referendum*". The Chairman also gave an overview of what was required of the Committee.

MIN.NO.217/22/04/2016: MAJOR OBSERVATIONS ON THE VIEWS OF THE STAKEHOLDERS

The Committee considered the draft Report and observed that:

- a number of the proposed amendments by the Petitioner arguably do not require constitutional amendments but raises policy questions. for instance, the proposal that tourism be a national source in income in particular, that there be provisions to require primary and secondary school students to visit tourist destinations in the country, the proposal that traditional medicine be developed and encouraged and adequate public resources be allocated to research institutions for development of traditional medicine and that a revolutionary approach to farming be adopted, require policy and administrative solutions rather than constitutional amendments.
- most of the proposed amendments to the Constitution by the various Initiatives relate to the matters listed in Article 255 of the Constitution and therefore require to be approved by a referendum.
- there exists no referendum law to govern the referendum process for the proposals to amend the Constitution to be approved as required under Article 255(2) of the Constitution.

MIN.NO. 218/22/04/2016: ANALYSIS OF THE VIEWS OF THE KEY PROPOSAL TO AMEND THE CONSTITUTION

The Committee analyzed the presentations made by the Petitioner (Tunza Kenya Initiative), the Punguza Mzigo Initiative, Mr Njoroge Waweru, (a member of the public) during the "Open Consultative Forum". The Committee also considered the presentations of the Boresha Katiba

Initiative and the documented analysis on the proposed amendments to the Constitution by the Okoa Kenya Initiative and the Pesa Mashinani Initiative.

The Committee found that:-

- (1) the proposal to have Kiswahili made the national language of study and instruction of all subjects is unnecessary as Kiswahili is already a national language and the status already accorded to it is sufficient.
- (2) the proposal for traditional medicine to be developed and adequate public resources allocated to research institutions for development of traditional medicine would not require a constitutional amendment intervention but a policy intervention. The attention of the Committee was drawn to current Health Bill, 2015 which has provisions on Traditional Medicine and the Seeds and Plants Varieties (Amendment) Bill, 2015 which has provisions on plants used by indigenous communities and therefore the matter is substantially being taken care of and need not be provided for in the Supreme law.
- (3) the proposal to provide that every citizen is entitled to a national identity card was taken care of under Article 12 of the Constitution.
- (4) the proposal to amend Article 67 to have the National Land Commission (NLC) "*administer all registries, processes and dispositions in respect of all private, public and community land*", would be conferring an executive function to an oversight agency whose role is essentially to oversight that function. The Committee observed that this would contravene the principle of checks and balances further that NLC is only mandated to handle public land.
- (5) the proposal for sharing of natural resources between the national government, county government and the community was taken care of under Article 69(1)(b) which provide that "*the State shall ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits*".
- (6) the proposals that offences relating to economic sabotage, corruption, terrorism and drug trafficking are made capital offences would required a review of Chapter Six of the Constitution with a view to reinforcing provisions on integrity.
- (7) the proposal for only three political parties in Kenya namely: men's party, women's party and youth's party would contravene the provisions Article 91(2) of the

Constitution which provides that a political party shall not be founded on gender basis and also curtail the political rights and freedom of association as enshrined in the Constitution.

- (8) the proposal to expunge Article 99(1)(b) of the Constitution education requirements would undermine the necessity for education requirements for Members of Parliament.
- (9) the proposal to reduce the number of constituencies is not yet due for review. The Committee further observed that the 290 number of constituencies was arrived at after extensive negotiations.

MIN.NO. 219/22/04/2016: ANY OTHER BUSINESS

Study Visits by the Committee

The Committee was informed that the study visit to the Tynwald (Parliament of Isle of Man) was scheduled for mid May, 2016. The objective of the visit is to: share and compare experiences on the workings of the Isle of Man Government and its bicameral legislature; understand the systems put in place to curb conflict between the two Houses of Parliament and the operational challenges and successes of the system of governance in the Isle of Man and that the following were the members of the delegation:- Hon. Moitalele ole Kenta, Vice-Chairman & Leader of the Delegation; Hon. Sakwa J. Bunyasi, MP; Hon. Benson Mutura Kangara, MP; and, Hon. Rose Rwamba Mitaru, MP.

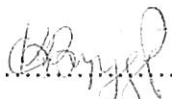
The Committee was also informed that the Chairman had been invited to the Conference on the "Implementation of Modern African Constitutions: Challenges and Prospect" to be held in Pretoria South Africa, from 23rd to 24th June, 2016. The Chairman was to be accompanied by Hon. Grace Jemutai Kiptui, MP; and, Hon. Christopher Omulele, MP.

The Committee was informed that the Secretariat was following up on the study visit to Romania.

MIN.NO. 220/22/04/2016: ADJOURNMENT

There meeting adjourned at One O'clock and resolved to meet at 2.00pm same day.

SIGN..... DATE

CHAIRPERSON.....


MINUTES OF THE 46th SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON WEDNESDAY,
MARCH 23, 2016 AT MINI CHAMBER, PARLIAMENT BUILDING, AT 11.30 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, MP
5. The Hon. Sakwa J. Bunyasi, MP
6. The Hon. Omulele Christopher, MP
7. The Hon David Gikaria, MP
8. The Hon. Peter N. Gitau, MP
9. The Hon. Rose Rwamba Mitaru, MP
10. The Hon. John Lodepe Nakara, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Grace Jemutai Kiptui, MP
13. The Hon. Aramat Lemanken, MP
14. The Hon. Humphrey K. Njuguna, MP

ABSENT WITH APOLOGY

1. The Hon. Protus Akuja, M.P.
2. The Hon. Steven Kariuki, MP
3. The Hon. Sabina Chege, MP
4. The Hon. Alice Muthoni Wahome, MP
5. The Hon. Boniface O. Otsiula, MP
6. The Hon. Samuel K. Chepkonga, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Mary Wambui, M.P
10. The Hon. James Lomenen, MP
11. The Hon. Mahamud, M. Maalim, MP
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. Joel M. Mutambu, MP
14. The Hon. Manson Nyamweya, MP

In-Attendance

Tunza Kenya Initiative

Major Rtd Kiprono Rop - Petitioner

Punguza Mzigo Initiative

1. Hon Moses Kuria, MP
2. Mr. Sande Olayo

3. Mr. Chris Kyalo
4. Ms. Warda Lazaro
5. Mr. Njui Joachim
6. Mr. Asuga Ian

Member of the Public

(See attached list- Appendix)

In-Attendance

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu
4. Mr. Donald Manyala
5. Ms. Winnie Kiziah
6. Mr. Stephen Nyakuti

National Assembly

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III
- Research Officer III
- Media Relations Officer
- Audio Recorder

MIN.NO.199/23/03/2016: PRELIMINARIES

The meeting was called to order at 11.30am and commenced with a word of prayer from the Chairman. Thereafter, the Chair allowed time for introductions.

Standing on a point of Order, the Hon. Christopher Omulele requested the Chairman to allow another member to preside over the meeting as he had allegedly exhibited bias by participating in a press conference which discussed among other things the Okoa Kenya Initiative. However, after extensive deliberations, Members resolved that the Chairman had participated in the press conference in his capacity as a Member of Parliament and not as the Chairman of CIOC and as such the issue of bias did not arise. The Committee further observed that the decisions would be made by the Committee and not the Chairman. In this regard therefore, the Committee resolved that the Chairman should proceed and preside over the meeting.

MIN.NO.200/23/03/2016: CONSULATATIVE FORUM ON THE PETITION BY MAJOR (RTD) JOEL KIPRONO ROP ON INTRODUCTION OF A COMPREHENSIVE BILL THAT INCORPORATES ALL THE CONSTITUTIONAL AMENDMENTS PROPOSED BY VARIOUS INDIVIDUALS AND BODIES

During the "Open Consultative Forum", the Committee received several presentations on the proposed amendments to the Constitution from various persons. The presentations were as follows-

- A. Presentation by Major (Rtd) Joel Kiprono Rop on a Petition for introduction of a comprehensive to consolidate the constitutional amendments proposed by various initiatives.

Major (Rtd.) Joel Kiprono Rop, the Petitioner in the matter under consideration representing the "Tunza Kenya Initiative" made the following proposals for amendment of the Constitution-

- (1) **THAT**, a National Revolution Council be established consisting of among other persons the President of Kenya, the Chief Justice of Kenya, the National Leader of Political Opposition, the Speaker of the Senate and the Chairperson of the Commission for Science, Technology and Innovation. The justification given for this proposal was that Kenya requires a peaceful, nationalist and non-confrontational process that occurs within the Constitution and the laws of the land. As such, there is need to entrench the Revolution Council in the Constitution.
- (2) **THAT**, the number of Counties be reduced from forty seven to three namely the East Coast County (comprising the former North Eastern and Coast Provinces), the Central Mount County (comprising the former Central and Eastern Provinces), and West Valley County (comprising the former Rift Valley, Western and Nyanza Provinces). The justification given for this proposal was that, the reduction in number of counties will foster effectiveness and efficiency in service delivery.
- (3) **THAT**, Kiswahili be made the national language of study and instruction of all subjects, except study and instruction of subjects of other languages, at all levels of education. The justification given was that a national language is the most important form of cultural expression and independence.
- (4) **THAT**, the Constitution be amended by inserting a new chapter on National Economy to ensure among other things that the Salaries and Remuneration Commission reviews the minimum wages for all workers in both private and public sectors. The justification given for this proposal is that the National Economy is the most important societal engines and as such it should be recognized in the Constitution.
- (5) **THAT**, the Chapter in the Constitution relating to land be amended as follows-
 - (a) Article 62 (2) of the Constitution be re-drafted to provide that public land shall vest in and be held by a county government in trust for the people resident in the county and shall be administered by the County Government;
 - (b) Article 63(2) of the Constitution be amended by inserting a new sub-paragraph (iv) to provide that all land including property therein from the British white settlers and foreign investors should be classified as public land and that on leasehold tenure should be re-classified as Community Land and held by the relevant County Government in trust for the affected community;
 - (c) That private land under freehold tenure in Kenya should not be for more than ninety nine (99) acres. Any individual Kenyan or organization holding land in excess of that figure may hold it on leasehold tenure, from the relevant county government, for a period not exceeding nineteen (19) years; and
 - (d) That a person who is non-citizen or organization that is not wholly owned by Kenyans may not hold land for farming in Kenya on the basis of any arrangement, including freehold and leasehold.
- (6) **THAT**, Chapter Seven of the Constitution relating to representation be amended to among other things provide that-

- (a) there shall be three political parties in Kenya; men's party, women's party and youth's party;
 - (b) there shall be three members of the Senate (One Man, One Woman and One Young Person) from each county;
 - (c) the existing forty seven counties shall be equated as forty seven constituencies with three members in each constituency giving rise to a total of 141 members of the National Assembly; and
 - (d) the Senate be modeled as a hybrid of the current system and an arrangement similar to the House of Lords of the UK.
 - (e) the education requirements in Article 99 (1) (b) of the Constitution be expunged.
- (7) **THAT**, Chapter Nine of the Constitution be amended to provide for a rotating presidency in Kenya and a two-five year limit for each ethnic community. The justification given for this proposal is that the amendments will ensure sustained peace, harmony, stability and development in Kenya.
- (8) **THAT**, a mandatory National Military Service of not less than two years for all secondary school leavers be a constituent part of the Kenya Defence Forces. This will allow increased participation in national development projects.
- (9) **THAT**, provision(s) on tourism be entrenched in the Constitution to foster tourism as a national source in income. In particular, the provisions should require primary and secondary school students to visit tourist destinations in the country.
- (10) **THAT**, the Constitution be amended to ensure that traditional medicine is developed and encouraged and adequate public resources are allocated to research institutions for development of traditional medicine. This is because many Kenyans rely on tradition medicine.
- (11) **THAT**, the Constitution be amended to entrench a revolutionary approach to farming which proposes among other things that all process-able farm produce intended for external markets are fully processed, branded and packaged to international standards before export and that there is no importation of all types of farm produce that are similar to those produced in Kenya. This proposal will foster the agriculture sector in the country.

B. Presentation by Hon. Moses Kuria on the "Punguza Mzigo Initiative".

The Hon. Moses Kuria representing the "Punguza Mzigo Initiative" made the following proposals for amendment of the Constitution-

- (1) **THAT**, the number of Counties be reduced from 47 to 16;
- (2) **THAT**, the number of single member constituencies be reduced from 290 to 200;
- (3) **THAT**, the institution of the Senate be abolished and the functions of the Senate be re designated to the National Assembly;
- (4) **THAT**, all positions for nominations of Members of the National Assembly and County Assemblies be abolished; and,
- (5) **THAT**, the positions of the 47 women representatives positions be scrapped.

The justification for the proposals for amendment of the Constitution by the Punguza Mzigo Initiative is geared towards reducing the public wage bill and in line with the government's austerity measures.

C. Presentation by Mr Njoroge Waweru - A Member of the Public

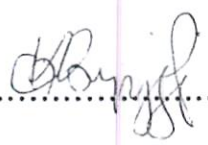
Mr. Njoroge Waweru observed that there was need for a comprehensive referendum law to be developed to address the ambiguities that exist as evidenced in the process of verification of signatures by IEBC for the Okoa Kenya Initiative. He requested the Committee to expedite on the process of the development of the law.

MIN.NO. 201/23/03/2016: WAY FORWARD

Having heard the presentations on the proposals for amendment of the Constitution and after extensive deliberations, the Committee resolved to re-invite the Council of Governors, the Okoa Kenya Secretariat and the *Boresha Katiba Initiative* in the subsequent meeting.

MIN.NO. 202/23/03/2016: ADJOURNMENT & DATE OF NEXT MEETING

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

SIGN..........DATE.....12/04/2016.....

CHAIRPERSON.....

MINUTES OF THE 45th SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON WENESDAY,
MARCH 23, 2016 AT MINI CHAMBER, PARLIAMENT BUILDING, AT 9.30 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, MP
5. The Hon. Sakwa J. Bunyasi, MP
6. The Hon. Omulele Christopher, MP
7. The Hon David Gikaria, MP
8. The Hon. Peter N. Gitau, MP
9. The Hon. Rose Rwamba Mitaru, MP
10. The Hon. John Lodepe Nakara, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Grace Jemutai Kiptui, MP
13. The Hon. Aramat Lemanken, MP
14. The Hon. Humphrey K. Njuguna, MP

ABSENT WITH APOLOGY

1. The Hon. Protus Akuja, M.P.
2. The Hon. Steven Kariuki, MP
3. The Hon. Sabina Chege, MP
4. The Hon. Alice Muthoni Wahome, MP
5. The Hon. Boniface O. Otsiula, MP
6. The Hon. Samuel K. Chepkonga, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Mary Wambui, M.P
10. The Hon. James Lomenen, MP
11. The Hon. Mahamud, M. Maalim, MP
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. Joel M. Mutambu, MP
14. The Hon. Manson Nyamweya, MP

In-Attendance

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu
4. Mr. Donald Manyala
5. Ms. Winnie Kiziah
6. Mr. Stephen Nyakuti

National Assembly

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III
- Research Officer III
- Media Relations Officer
- Audio Recorder

MIN.NO.196/23/03/2016: PRELIMINARIES

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

MIN.NO.197/23/03/2016: CONSIDERATION OF THE PETITION BY MAJOR (RTD) JOEL KIPRONO ROP ON INTRODUCTION OF A COMPREHENSIVE BILL THAT INCORPORATES ALL THE CONSTITUTIONAL AMENDMENTS PROPOSED BY VARIOUS INDIVIDUALS AND BODIES

The Legal Counsel took the Members on a summary of the various proposals to amend the constitution as follows:

PROPOSALS BY OKOA KENYA INITIATIVE			
Proposal	Summary of the proposal	Provision of the Constitution being sought to be amended.	Comments
1. Revenue allocation	To amend the Constitution to increase the county revenue allocation from 15% to 45% of all revenue collected by the national government. Further, seeks to change the basis for calculating the allocations to county governments "from the most recent audited accounts of revenues received as approved by the National Assembly to "the previous year's revenues received."	Article 203(2) of the Constitution. Article 203(3) of the Constitution.	Seeks to increase the equitable share of the revenue raised nationally that is allocated to county governments from fifteen percent to forty five percent in the preceding financial year. The amendments are justified by the fact that there have been delays in auditing accounts of revenue and the approval of accounts of revenue.
2. Recognition of the Constituency Development Fund	Seeks to introduce new provision immediately after Article 206 of the Constitution establishing the Constituency Development Fund.	The amendment seeks to introduce a new clause 206A.	There already exists a new Act seeking to establish the CDF.
3. Establishment of the Ward Development Fund.	The initiative also proposes that the remaining 5% from the 45% proposed above be allocated to a Ward Equalization Fund to be utilized in each county to implement projects in every ward.	The amendment seeks to introduce a new clause 204A.	The initiative argues that the amendment will ensure that the people of Kenya have more control of the affairs that are handled by their representatives at the local level.
4. Education	Seeks to amend the Constitution to devolve infrastructure and administration of primary schools, special education and secondary schools to the county government.	Paragraphs 15 and 16 and 9 of Part 1 and Part 2 of the Fourth Schedule to the Constitution respectively.	The amendment seeks to promote and improve access and quality of education at the county level.
5. Forests, Wildlife Reserves and Sanctuaries and Water Conservatories	Seeks to amend the Constitution to the effect that the management of forests, wildlife reserves and sanctuaries and water conservatories shall be a county government	Paragraph 22 of Part 1 of the Fourth Schedule to the Constitution respectively.	The initiative argues that the amendment is informed by the fact that the local communities have greater stake in the preservation of

	function.		forests, wildlife and water resources.
6. Security	<p>Seeks to amend the Constitution by introducing a new clause 246A to establish the County Security Advisory Council in respect of each county.</p> <p>This supported by the fact that county governments need to be involved in security matters.</p>	Articles 240 of the Constitution as read with paragraph 7 of Part 1 of the Fourth Schedule to the Constitution.	There is need to amend Article 240 of the Constitution, which establishes the National Security Council and paragraph 7 of the Bill which provides that police services are functions of the national government, as well.
7. To abolish the system provincial administration	Seeks to amend the Constitution as the National Government did not restructure the system of administration, commonly known as provincial administration as required by the Constitution.	Section 17 of the Sixth Schedule to the Constitution.	The proposal is already provided for under section 17 of the Sixth Schedule to the Constitution and the Report for restructuring of the provincial administration is still pending and has a 27/8/2016 deadline.
8. Amendment of the Constitution to provide proper procedures for the impeachment of Governors and Deputy Governors	The amendment seeks to secure the due process and adherence to the rules of natural justice.	Article 181 of the Constitution provides for removal of the county governor. There is no provision for removal of deputy governors.	The amendments can be included in the County Government Act which is the substantive law that applies to the impeachment process of governor and further make provision for the deputy governor-see section 33 of the Act which deals with impeachment.
9. Strengthening the role of the National Land Commission.	The amendment seeks to provide an additional function to the National Land Commission by providing that the Commission shall administer all registries, processes and dispositions in respect of all private, public and community land.	Article 67 of the Constitution.	Administration of Land Registries is now administered under the Ministry of Lands.(See the Land Registration Act Cap. 300). Further, the NLC is mandated to deal with only public land . An amendment to Article 67 of the Constitution would also require further amendment to allow NLC to also administer private and community land. Further, the amendment would also require the realigning of the National Land Commission Act and the Land Registration Act.
10. Defining the role and benefits for communities in natural resources	<p>The amendment seeks to ensure that the national government shall ensure that at least fifteen percent of revenue derived by the national government from natural resources is allocated to the county where the natural resources are allocated.</p> <p>Further, the amendment seeks to</p>	Amendment seeks to insert a new Article 71A	There is a Bill in the House the Natural Resources (Classes of Transactions subject to Ratification) which seeks to deal with the issues of ratification of agreement for sharing of natural resources.

	<p>provide that at least five percent of revenue derived by the national government from natural resources is allocated to the communities where the resources are extracted.</p> <p>The allocation is to be administered through a representative community management framework.</p>		
<p>11. Election Reforms to strengthen the electoral system to ensure free, fair and transparent accountable elections</p>	<p>The Independent Electoral and Boundaries Commission shall have one single national register.</p> <p>The Commission shall ensure that:</p> <ul style="list-style-type: none"> • The voter registration system and method used shall be simple, accurate, verifiable, secure, accountable, and transparent. • The voter registration system shall capture any two of the following biometric features: the finger prints, the facial features or Iris recognition. • There shall be one biometric voter registration kit in every polling station for purposes of registration of voters. • Voter registration shall be done at every designated and gazetted polling station. • The Commission shall cause to be published in the Gazette the national register of voters sixty days before the date of the general election vi) In the case of a by-election, the Commission shall publish in the Gazette the relevant portion of the national register of voters thirty days before the by-election • The Commission shall within sixty days of the commencement of each year cause to be published in the Gazette and to make available to every political party, the names and addresses of each person registered during the preceding year. • The Commission shall ensure in respect of each constituency not 	<p>Amendment seeks to amend Article 88 of the Constitution and sections 4 and 5 of the IEBC Act.</p>	<p>The amendment seeks to expand the functions of the IEBC and reconstitute the Commission. IEBC is however one of the Constitutional Commissions under Article 248 of the Constitution.</p>

less than 80% of the eligible voters in any electoral area are registered, based on the last population census or the government projected population whichever is the most recent.

- The Commission shall ensure that there is full and complete disclosure to the public of all its processes, infrastructure, decisions, and transactions, including award of services and contracts related to voter registration.

Insertion of a new clause 86A

The IEBC shall also appoint a returning officer for each constituency and a presiding officer for each polling station which shall be responsible for all the elective seats namely presidential, senate, governor, national assembly and women representative and county assembly.

Insertion of 86B

The system of voter identification shall be electronic.

Insertion of Article 86C

Votes results shall be beamed to the public through at least three accredited television stations, media Houses and to the Commission.

Insertion of Article 88A

The Commission shall carry out its operations and activities in an open and transparent manner.

Amendment of Article 88A

Seeks to reconstitute the IEBC Commission.

It shall consist of seven persons nominated by political parties based on their numerical strength in Parliament in the previous general elections.

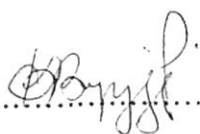
The chairperson shall elect a chairperson from among themselves.

40. Cabinet Secretaries to be appointed among members of Parliament and not private sector	The Constitution does not bar the President from appointing members of Parliament as Cabinet Secretaries. The only limitation is that a Cabinet Secretary shall not be a Member of Parliament.	Article 152(3) of the Constitution.	
41. Retirement age for judges to be 74 and not 70.	Amendment nearly similar to the one by Okoa Kenya.	Article 167 of the Constitution.	
42. Increase allocation to counties to 46%	Amendment is higher than that of Okoa Kenya by 1%	Amendment of Article 203(2) of the Constitution.	
43. Increase CDF to 5% from the current 2.5%	This is not a constitutional amendment but one which requires the amendment of the new CDF law.		
44. Reduction of the number of Commissioners	The Constitution provides that each commission shall consist of at least three, but not more than nine members. The amendment is informed by the fact that the wage Bill is high.	Amendment of Article 250(1) of the Constitution.	

MIN.NO.198/15/03/2016:

ADJOURNMENT & DATE OF NEXT MEETING

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

SIGN.......... DATE12/04/2016.....
CHAIRPERSON.....

MINUTES OF THE 44TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, MARCH 15, 2016 AT MEDIA CENTER, MAIN PARLIAMENT BUILDING, AT 10.30 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, MP
5. The Hon. Sakwa J. Bunyasi, MP
6. The Hon. Omulele Christopher, MP
7. The Hon David Gikaria, MP
8. The Hon. Protus Akuja, M.P.
9. The Hon. Peter N. Gitau, MP
10. The Hon. Rose Rwamba Mitaru, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Abdul Rahim Dawood, MP
13. The Hon. Grace Jemutai Kiptui, MP
14. The Hon. Aramat Lemanken, MP

ABSENT WITH APOLOGY

1. The Hon. Steven Kariuki, MP
2. The Hon. Sabina Chege, MP
3. The Hon. Alice Muthoni Wahome, MP
4. The Hon. Humphrey K. Njuguna, MP
5. The Hon. Boniface O. Otsiula, MP
6. The Hon. Samuel K. Chepkonga, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Mary Wambui, M.P
10. The Hon. James Lomenen, MP
11. The Hon. Mahamud, M. Maalim, MP
12. The Hon. Bowen, David Kangogo, MP
13. The Hon. Manson Nyamweya, MP

In-Attendance

National Assembly

1. Mr. John Mutega - Principal Clerk Assistant II
2. Mr. Nebert Ikai Lomechu - Clerk Assistant III
3. Ms. Christine Odhiambo - Legal Counsel

MIN.NO.193/15/03/2016: PRELIMINARIES

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

MIN.NO.194/15/03/2016: CONFIRMATIONS OF MINUTES

The Minutes of the 41st sitting held on 25th February, 2016, were confirmed as true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon Protus Akuja, MP and seconded by Hon. Abdul Rahim Dawood, MP.

MIN.NO.195/15/03/2016: CONSIDARATION OF THE PETITION BY MAJOR (RTD) JOEL KIPRONO ROP ON INTRODUCTION OF A COMPREHENSIVE BILL THAT INCORPORATES ALL THE CONSTITUTIONAL AMENDMENTS PROPOSED BY VARIOUS INDIVIDUALS AND BODIES

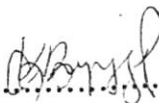
Members considered the Petition and resolved that:

1. in order to provide a platform for all the stakeholders enumerated in the Petition, it was needful for the Committee to host an "Open Consultative Forum".
2. the "Open Consultative Forum" be sheduled for Tuesday, March 22, 2016 and the invitation to the same be placed in a daily Newspaper(s) nationwide-wide circulation.

The meeting further observed that, the outcome of the "Open Consultative Forum" will guide the Committee on the subsequent steps to take.

MIN.NO.195/15/03/2016: ADJOURNMENT & DATE OF NEXT MEETING

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

SIGN.....  DATE ..12/04/2016.....
CHAIRPERSON.....

MINUTES OF THE 41ST SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY, FEBRUARY 25, 2016 AT 9TH FLOOR HARAMBEE BOARD ROOM, PARLIAMENT BUILDINGS, AT 10.00 AM

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Grace Jemutai Kiptui, MP
4. The Hon. Sakwa J. Bunyasi, MP
5. The Hon. Benson M. Kangara, MP
6. The Hon. Samuel K. Chepkonga, MP
7. The Hon. Boniface O. Otsiula, MP
8. The Hon. Abdul Rahim Dawood, MP
9. The Hon. Omulele Christopher, MP
10. The Hon David Gikaria, MP
11. The Hon. Protus Akuja, M.P.
12. The Hon. Peter N. Gitau, MP
13. The Hon. Rose Rwamba Mitaru, MP
14. The Hon. Sabina Chege, MP
15. The Hon. (Dr.) Dahir Duale Mohammed, MP
16. The Hon. Shakila Abdalla, MP
17. The Hon. Mary Wambui, M.P

ABSENT WITH APOLOGY

1. The Hon. Ababu Namwamba EGH, MP
2. The Hon. James Lomenen, MP
3. The Hon. Mahamud, M. Maalim, MP
4. The Hon. Steven Kariuki, MP
5. The Hon. Bowen, David Kangogo, MP
6. The Hon. (Dr.) Humphrey K. Njuguna, MP
7. The Hon. John Lodepe Nakara, MP
8. The Hon. Aramat Lemanken, MP
9. The Hon. Manson Nyamweya, MP
10. The Hon. Alice Muthoni Wahome, MP

IN-ATTENDANCE

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu
4. Mr. Donald Manyala
5. Ms. Winnie Kiziah
6. Mr. Alex Mutuku

NATIONAL ASSEMBLY

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III
- Research Officer
- Media Relations Officer
- Sergeant at Arms

MIN.NO.181/25/02/2016: PRELIMINARIES

The meeting was called to order at 10.20a.m. and commenced with a word of prayer from the Chairperson.

MIN.NO.182/25/02/2016: CONFIRMATIONS OF MINUTES

The Minutes of the 39th sitting held on 18th February, 2016, were confirmed as true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon Protus Akuja, MP and seconded by Hon Benson Kangara, MP.

The Minutes of the 40th sitting held on 18th February, 2016, were confirmed as true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon David Gikaria, MP, and seconded by Hon. Shakila Abdalla, MP.

MIN.NO.183/25/02/2016: CONSIDERATION OF THE PETITION BY MAJOR (RTD) JOEL KIPRONO ROP ON INTRODUCTION OF A COMPREHENSIVE BILL THAT INCORPORATES ALL THE CONSTITUTIONAL AMENDMENTS PROPOSED BY VARIOUS INDIVIDUALS AND BODIES

The Chair briefed Members that the Petition was committed to the Committee by the Honorable Speaker of the National Assembly on February 10, 2016, as per standing orders 227 (1). The attention of the Committee was further drawn to the provisions of Standing orders 227(2) that requires the Committee to report to the petitioner by way of a report laid on the Table of the House within sixty (60) days.

WAY FORWARD

After being allowed time for comments and observations, the members resolved that:

- a) the secretariat develops a draft work-plan on the consideration of the Petition and invite Major (Rtd) Joel Kiprono Rop (petitioner), the Council of Governors, the Okoa Kenya Secretariat, Hon Moses Kuria, MP, Hon Asman Kamama, MP, the Attorney General and Independent Election and Boundary Commission;
- b) a retreat be organized where constitutional experts would be invited to advise the Committee on the subject matter; and,
- c) a list of the said experts be suggested in the next meeting.

MIN.NO.184/25/02/2016: ANY OTHER BUSINESS

Invitation by the Judges and Magistrate Vetting Board to a Joint-Retreat.

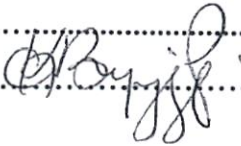
The Committee considered an invitation by the Judges and Magistrate Vetting board to a Joint-Retreat with the Departmental Committee on Justice and Legal Affairs in Mombasa from 3rd to

5th March, 2015 to share their findings and legislative recommendations emanating from the vetting process. The Committee acceded to the Board request.

MIN.NO.185/25/02/2016: ADJOURNMENT & DATE OF NEXT MEETING

There being no any other business the meeting adjourned at thirty minutes past Eleven O'clock. The next meeting shall be by notice.

SIGN..... DATE

CHAIRPERSON..... 

MINUTES OF THE 40TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY, 18TH FEBRUARY, 2016 AT THE 2ND FLOOR CONTINENTAL BOARD ROOM, PARLIAMENT BUILDING, AT 12.00 PM

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Benson M. Kangara, MP
4. The Hon. Protus Akuja, M.P.
5. The Hon. Mary Wambui, M.P
6. The Hon. Steven Kariuki, MP
7. The Hon. Omulele Christopher, MP
8. The Hon David Gikaria, MP
9. The Hon. Alice Muthoni Wahome, MP
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. John Lodepe Nakara, MP
12. The Hon. Sakwa J. Bunyasi, MP
13. The Hon. Boniface O. Otsiula, MP
14. The Hon. Abdul Rahim Dawood, MP
15. The Hon. Shakila Abdalla, MP
16. The Hon. Aramat Lemanken, MP
17. The Hon. James Lomenen, MP
18. The Hon. Peter N. Gitau, MP

ABSENT WITH APOLOGY

1. The Hon. Humphrey K. Njuguna, MP
2. The Hon. Bowen, David Kangogo, MP
3. The Hon. Rose Rwamba Mitaru, MP
4. The Hon. Samuel K. Chepkonga, MP
5. The Hon. Sabina Chege, MP
6. The Hon. (Dr.) Dahir Duale Mohammed, MP
7. The Hon. Ababu Namwamba EGH, MP
8. The Hon. Mahamud, M. Maalim, MP
9. The Hon. Manson Nyamweya, MP

IN-ATTENDANCE

- | | |
|----------------------------|-------------------------------|
| 1. Mr. John Mutega | -Principal Clerk Assistant II |
| 2. Mr. Nebert Ikai Lomechu | - Clerk Assistant III |
| 3. Mr. Alex Mutuku | - Sergeant at Arms |

NATIONAL ASSEMBLY

MIN.NO.177/18/02/2016:

PLERIMINARIES

The meeting was called to order at 12.00am. The Chairman informed the members that, the was convened to consider a Petition submitted by meeting Major (Rtd) Joel Kiprono Rop along side other correspondences.

MIN.NO.178/18/02/2016:

CONSIDERATION OF THE PETITION BY MAJOR
(RTD) JOEL KIPRONO ROP ON INTRODUCTION
OF A COMPREHENSIVE CONSTITUTIONAL BILL
TO AMEND THE CONSTITUTION

The Committee considered a Petition by Major (Rtd) Joel Kiprono Rop requesting the National Assembly to introduce a comprehensive Bill that incorporates all the constitutional amendments proposals by various individuals and bodies. The Committee observed that it would be prudent to harmonize those proposals which require parliamentary initiative and those which would require amendment by popular initiative.

Way Forward:

The Committee tasked the Secretariat to get all the proposals from the various proponents and analyse them in light of their constitutional anchorage for presentation before the Committee at its next meeting on Thursday, 25th February, 2015.

MIN.NO.179/18/02/2016: STUDY VISITS

The Committee re-visited the matter of study visits and observed that, CIOC had not held any benchmarking visit. The meeting was informed that out of the seven (7) proposals for visits made to Sweden, United Kingdom, Scotland, Wales, Russia, Switzerland and Canada, the Committee had only received a response from the Federal Assembly of Switzerland who indicated that they only accept delegations from other Parliament for one day only. The Committee was advised that it would not be prudent to visit such a far jurisdictions for a day.

Subsequently, the Committee asked the secretariat to make request to the following jurisdictions:

- a) The National Assembly of Quebec, Canada;
- b) The General Assembly of Maryland and Ohio Legislature, USA;
- c) The Parliament of Romania;
- d) The Austrian Parliament;
- e) The Parliament of South Africa and Gauteng Legislature, South Africa;
- f) The Parliament of Rwanda
- g) The Parliament of the Republic of Tanzania
- h) The Parliament of the Federal Republic of Nigeria

MIN.NO.180/18/02/2016:

ADJOURNMENT

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

SIGN.....

DATE

CHAIRPERSON.....


**THE CONSTITUTION OF KENYA, 2010
(AMENDMENT) BILL, 2015**



THE REPUBLIC OF KENYA

**BILL FOR THE AMENDMENT OF THE CONSTITUTION OF KENYA, 2010 BY
POPULAR INITIATIVE PURSUANT TO ARTICLE 257**

**PUBLISHED BY THE COMMITTEE OF EXPERTS,
OKOA KENYA MOVEMENT**

23RD APRIL 2015

THE CONSTITUTION OF KENYA, 2010 (AMENDMENT) BILL, 2015

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya, 2010 by popular initiative pursuant to Article 257 of the Constitution of Kenya.

ENACTED by the Parliament of Kenya as follows-

- | | |
|--|---|
| Short title. | 1. This Act may be cited as the Constitution of Kenya, 2010 (Amendment) Act, 2015. |
| Amendment of the Constitution. | 2. The Constitution of Kenya is amended in the manner set out herein below. |
| Amendment to Article 12 of the Constitution. | 3. The Constitution of Kenya is amended at Article 12 as follows-

a) At sub clause 1(a) by deleting the word “and” at the end of the sub clause.

b) At sub clause (1)(b) by adding a comma after the word “passport” and adding the words “national identity card” before the words “and any document” and deleting the full stop after the word “citizens” and substituting therefor a semicolon. The sub clause is further amended by adding the word “and” after the semicolon.

c) By introducing a new sub clause (1)(c)-

(c) The State shall issue the documents referred to in clause (b) to citizens within sixty days of application. |
| Amendment to Article 67 of the Constitution. | 4. The Constitution of Kenya is amended at Article 67 (2) by renumbering sub clauses (g) and (h) as sub clauses (h) and (i) respectively and introducing a new sub clause after sub clause (g) as follows-

(g) administer all registries, processes and dispositions in respect of all private, public and community land. |
| Insertion of new Article 71A to | 5. The Constitution of Kenya is amended by introducing a new Article 71A as follows- |

the Constitution.

- 1) The role of, and benefits for, communities in the management of natural resources shall be determined by legislation.
- 2) The national government shall ensure that:-
 - (a) at least fifteen per cent of revenue derived by the national government from natural resources is allocated to the county where the natural resources are extracted; and
 - (b) at least five per cent of revenue derived by the national government from natural resources is allocated to the communities where the resources are extracted.
- 3) The allocation under clause 2(b) shall be administered through a representative community management framework and structure.
- 4) Parliament shall enact legislation to give effect to this provision.

Amendment to article 79 of the Constitution.

6. The Constitution of Kenya is amended by deleting the current Article 79 and substituting therefor a new Article as follows:

- (1) There is hereby established the Ethics and Anti-Corruption Commission.
- (2) The Commission shall have the powers to ensure compliance with, and enforcement of, the provisions of this Chapter and other functions allocated to it by Parliament.
- (3) Parliament shall enact legislation to give effect to this Article.

Insertion of a new Article 83A to the Constitution.

7. The Constitution of Kenya is amended by introducing a new Article 83B as follows-

- (a) The Independent Electoral and Boundaries Commission shall have one single national register

of voters.

(b) The Commission shall ensure that:

- i) The voter registration system and method used shall be simple, accurate, verifiable, secure, accountable, and transparent.
- ii) The voter registration system shall capture any two of the following biometric features: the finger prints, the facial features or Iris recognition.
- iii) There shall be one biometric voter registration kit in every polling station for purposes of registration of voters.
- iv) Voter registration shall be done at every designated and gazetted polling station.
- v) The Commission shall cause to be published in the Gazette the national register of voters sixty days before the date of the general election
- vi) In the case of a by-election, the Commission shall publish in the Gazette the relevant portion of the national register of voters thirty days before the by-election
- vii) The Commission shall within sixty days of the commencement of each year cause to be published in the Gazette and to make available to every political party, the names and addresses of each person registered during the preceding year.
- viii) The Commission shall ensure in respect of each constituency not less than 80% of the eligible voters in any electoral area are registered, based on the last population census or the government projected population whichever is the most recent.
- ix) The Commission shall ensure that there is full and complete disclosure to the public of all its processes, infrastructure, decisions, and transactions, including award of services and contracts related to voter registration.

Insertion of a
new Article 86A
to the
Constitution

8. The Constitution of Kenya is amended by introducing a new Article 86A as follows:

- (i) The Independent Electoral and Boundaries Commission shall appoint a returning officer for

each constituency and a presiding officer for each polling station who shall be responsible for all the elective seats namely presidential, senate, governor, national assembly and women representative and county assembly.

Insertion of a new Article 86B to the Constitution.

9. The Constitution of Kenya is amended by introducing a new Article 86B as follows-

- (i) The system of voter identification shall be electronic;
- (ii) The electronic system adopted for voter identification shall be simple, accurate, verifiable, secure, accountable, and transparent;
- (iii) The electronic voter identification system shall have a count and a record of all voters so identified;
- (iv) the presiding officer shall ensure that only the electronically identified voters shall be allowed to vote;

Insertion of a new Article 86C to the Constitution.

10. The Constitution of Kenya is amended by introducing a new Article 86C to be titled “results transmission” as follows-

- (i) The system of results transmission shall be manual and electronic. The electronic transmission shall be real time;
- (ii) The results of all elections conducted in each constituency shall be announced by the constituency returning officer, after collating the results transmitted by the polling station presiding officers.
- (iii) The counting of votes at the polling station and announcement of results at the polling stations shall be announced in the following order: presidential, senate, governor, women representative, member of national assembly and members of the county assembly
- (iv) The Returning Officer shall ensure that the vote results are announced publicly, through a Video-link and beamed to the public through at least three accredited television stations, Media

houses and to the Commission.

- (v) The results shall be scanned, recorded and simultaneously sent by electronic means to the Commission and the participating political parties.
- (vi) Subject to this Constitution, the announcement by the constituency returning officer of the results in respect of each and all results for that constituency shall be final.

Insertion of a
new Article 88A

11. The Constitution is amended by introducing a new Article 88A as follows:

- (a) The Commission shall carry out its operations and activities in an open and transparent manner;
- (b) The Commission shall have an obligation of complete disclosure of all its operations both administrative and in the conduct and management of elections;
- (c) The commission shall make complete disclosure and provide access to all services procured, contracts entered into and general access to its systems;
- (d) The Commission shall at all times share its decisions and operations with all political parties and actors throughout the entire electoral process.

Amendment to
Article 88 of the
Constitution.

12. The Constitution of Kenya is amended at Article 88 by inserting a clause (1A) as follows-

- (i) The members of the Commission shall consist of seven persons nominated by political parties based on their numerical strength in Parliament in the previous general elections and gazetted by the President within seven days of receiving the nominees by the political parties.
- (ii) The commissioners shall elect a chairperson from among their number.
- (iii) No member of the Commission shall hold the position of chairperson for a period exceeding twelve months.

Insertion of a new Article 96 (4)

13. The Constitution is amended by introducing a new Article 93 (4) and re-numbering the current clause (4) to read clause (5) as follows:

- (4) Each Governor shall be required to file quarterly reports of the County expenditures and developments priorities with the Senate and the respective county assemblies.

Insertion of a new Article 110 (4) & (5)

14. The Constitution is amended by introducing a new Article 110 (4) & (5) and by re-numbering the current clause (4) as clause (6) as follows:

- (5) The joint resolution of the two speakers shall be shall be before the 1st reading of the bill.
- (6) Each speaker shall report the decision so reached to their respective houses within seven days of the decision.

Amendment to Article 138 of the Constitution.

15. The Constitution is amended at Article 138 at clause 10 by deleting the word “and” at the end of sub clause (a) and renumbering sub clause (b) as (c) and introducing a new sub clause (b) as follows-

- (c) publish the results received from the constituency returning officers in the Gazette; and

Amendment of Article 140 of the Constitution.

16. The Constitution of Kenya is amended by deleting the current Article 140 and substituting therefor the following new Article-

- (1) Within fourteen days after the declaration of the results of a presidential election any voter may lodge at the Supreme Court a petition challenging the Presidential election results.
- (2) Within seven days after lodging and service of the Petition at the Supreme Court the Commission and the Respondents shall file their responses to the petition.

- (3) Within seven days after the Commission and the Respondents file and serve their responses the Petitioner shall file further affidavits in response to the Commission and the Respondents.
- (4) The Supreme Court shall hear and determine the Petition within sixty days from the date of the declaration of results.
- (5) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.

Amendment of Article 166 of the Constitution. **17.** The Constitution of Kenya is amended at Article 166 (1)(a) by deleting clause (1)(a) and substituting therefore a new clause 1(a) as follows-

(1) The Judicial Service Commission shall appoint-

(a) the Chief Justice and the Deputy Chief Justice subject to the approval of the National Assembly; and

Amendment of Article 167 of the Constitution. **18.** The Constitution of Kenya is amended at Article 167 by deleting clause (1) and substituting therefor a new clause as follows-

(1) A judge shall retire from office on attaining the age of seventy five years, but may elect to retire at any time after attaining the age of seventy years.

Amendment of Article 172 of the Constitution. **19.** The Constitution of Kenya is amended at Article 172 by deleting clause (1)(a) and substituting therefor new clause (1)(a) as follows:

(a) appoint judges;

Amendment of Article 203 of the Constitution. **20.** The Constitution of Kenya is amended at Article 203 by deleting clause (3). The Article is further amended at clause (2) by deleting the word “fifteen” and substituting therefor the words “forty five” and by adding the words “in the preceding financial year” after the words “national government.”

Insertion of new Article 204A to the Constitution.

21. The Constitution of Kenya is amended by introducing Article 204A as follows-

- (1) There is hereby established a Fund to be known as the Ward Development Fund.
- (2) For every financial year, at least five per cent of the equitable revenue allocated to a county government shall be paid into the Fund and shall be utilized in each county to implement projects in accordance with development priorities of the ward representation.
- (3) Parliament shall enact legislation to make provision for the management of the Fund and to give further effect to this provision.

Insertion of new Article 206A to the Constitution.

22. The Constitution of Kenya is amended by introducing Article 206A as follows-

- (1) There is hereby established a Fund to be known as the Constituency Development Fund.
- (2) For every financial year, a portion of the revenue allocated to the National Government in the annual budget shall be paid into the Fund to undertake approved functions of the National Government in each Constituency.
- (4) Parliament shall enact legislation to make provision for the management of the Constituency Development fund.

Amendment to Article 232 of the Constitution.

23. The Constitution of Kenya is amended at Article 232 by introducing a new clause 2A as follows-

- (a) Subject to the protection of minorities and the marginalized in Articles 10, 100 and 232 of this Constitution, no ethnic community shall have more than fifteen per cent of appointments in any state organ of the National Government, all Government agencies, and departments of Government.
- (b) The provisions of this clause shall apply to all appointments at all levels of Government.
- (c) This provision shall apply to all private

enterprises that are contracted by the National Government and its agencies.

Insertion of a new Article 246A to the Constitution.

24. The Constitution is amended by introducing a new Article 246A as follows-

(1) There shall be a County Security Advisory Council in respect of each county.

(2) The membership of the Council shall include representatives of security agencies, county government representatives and members of the public.

(3) The functions of the Council shall be to-

(a) develop proposals on priorities, objectives and targets for the performance of security agencies ;

(b) provide feedback on performance of the security agencies to the Inter-governmental relations forum;

(c) Facilitate public participation;

(d) and such other functions as may be determined in national legislation.

(3) Parliament shall enact legislation to give effect to the provisions of this Article.

Amendment of Article 248 of the Constitution.

25. The Constitution of Kenya is amended at Article 248 (2) by introducing a new clause (k) as follows:

(k) The Ethics and Anti-Corruption Commission.

Amendment to Article 255 of the Constitution.

26. The Constitution of Kenya is amended at Article 255(1)(i) by adding the words “revenue allocation,” after the word “objects”.

MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya came into force on 27th of October 2010 upon its public promulgation. Many Kenyans pinned their hopes on the provisions of the Constitution. Owing to this, a vast majority had their dreams and aspiration tied to the efficacy and efficiency of implementation of the Constitution. This has not been possible without enabling provisions to help clarify and define responsibilities, duties, powers and functions of different organs; to wit the Judiciary, the Independent Electoral and Boundaries Commission, the National Land Commission *inter alia*. The objective of this Bill is therefore to amend various provisions of the Constitution in order to take into account the invaluable lessons learnt through three years of implementation of the Constitution in order to give effect to the aspirations of the people of Kenya. The following are the explanatory notes of the clauses.

Clause 3

The amendment in this Article entrenches the rights of all citizen to a Kenya National Identity Card. The National Identity Card is a pre-requisite for all citizens if they are to enjoy their political right under Article 38 of the Constitution.

Clauses 4

This clause has been introduced to define the specific roles between the National Government and the National Land Commission on management of public, community and private land. This is with respect to the management of registries, processes and dispositions. The clause grant exclusivity to the National Land Commission to administer public, private and community land while the National Government role is limited to policy formulation in relation to land.

Clause 5

The amendment has been introduced to clarify the roles of the different levels of government in management of natural resources. It enshrines the rights of communities from where the resources are extracted to share in the income. The clause anticipates legislation to guide the involvement of county governments and the development of a community management framework for the better management of natural resources by the two levels of government.

Clause 6

This clause establishes and entrenches the Ethics and Anti Corruption Commission as a constitutional commission with powers to enforce the

provisions of Chapter Six of Constitution. This clause grants more autonomy to the Commission under the Constitution.

Clause 7

The amendment enhances accountability and the management of the electoral process in Kenya and removing any loopholes which may make the voter registration process suffer legitimacy confidence. It gives the parties to the election to ascertain the contents of the register and allow individuals who may have been omitted from the register to seek redress. It also imposes a duty on the Commission to maintain only one single national register of voters and a requirement to adopt an electronic voter registration system that is simple, accurate, verifiable and accountable. The Commission will also have a duty to publish the National register of voters within 60 days for the preceding year and avail the register to all political parties.

Clause 8

The clause introduces a new Article 86A to provide for the appointment of a returning officer for each constituency and a presiding officer for every polling station and who shall be responsible for all election of all elective seats including the position of president, governor, and senator, member of the national assembly, women representative and county assembly representative. The clause is intended to ensure that in the Presidential election there shall be 290 returning officers whose results announcement shall be final and not the chairperson of the Commission.

Clause 9

This clause introduces a new Article 86B to provide for proper voter identification process which is electronic and is to be simple, accurate, verifiable and accountable. The new clause also requires the Commission to appoint a returning officer and a presiding officer for each of the elective positions namely presidential, senate, governor, women Representative and National Assembly positions.

Clause 10

This clause introduces a new Article 86C to deal with vote transmission which shall be electronic and simple, accountable, verifiable and transparent. The transmission system shall be real time and streamed simultaneously to all political parties. The results shall be announced by the Constituency returning officer and shall be final and to be beamed in public before a video camera and transmitted to all registered television stations, then subsequently scanned and sent to the Commission and to all political parties at the same time.

Clause 11

The clause introduces an obligation on the Commission to carry out its operations and conduct of elections in an open and transparent manner and to make full disclosure of all engagements including contracts of services it enters into.

Clause 12

This amendment provides for the nomination and appointment of Commissioners of the Independent Electoral and Boundaries Commission by political parties based on their numerical strength in parliament based on the last election results. The chair of the Commission is to be appointed by the members of the Commission on a rotational basis for a period not exceeding twelve months.

Clause 13

The amendment has been introduced to ensure accountability of County Governments for resources allocated to them by making a requirement that they file quarterly reports with the Senate to show how expenditure has been undertaken and to shed light on their development priorities for the subsequent quarter of the year.

Clause 14

The amendment has been introduced to streamline the procedure and process through which the speakers of both houses arrive at a joint resolution as to how to determine which bill must pass through senate. It places a requirement on both speakers to carry out such consultation or resolution before the 1st reading of the bill and to communicate their decision to the respective houses within seven days of the resolution.

Clause 15

The amendment is introduced to place an obligation on the Commission to publish results as received from the constituency returning officer into the Kenya Gazette.

Clause 16

The amendment sets out in great detail the dispute resolution process in the event of any electoral disputes arising out of the presidential elections. It offers adequate timelines to enable filing, exchange and determination of presidential election disputes. It offers an adequate timeline to enable filing, service of documents and determination of presidential elections disputes.

Clause 17

The amendment provides for a procedure of appointment of the Chief Justice and the deputy by the Judicial Service Commission and takes away the powers of the President to carry out any appointments.

Clause 18

This clause harmonizes the retirement age of the judges appointed under the old constitution and those under the new Constitution.

Clauses 19

The two clauses deepen the independence of the judiciary by allowing the Judicial Service Commission to appoint judges without the involvement of the executive.

Clause 20

This amendment ensures that county governments have adequate finances to carry out their functions. This is achieved through:

- a) Enhancing county allocation of the national revenue from the current minimum of fifteen percent to a minimum of forty five percent.
- b) Providing that the base for calculating the minimum allocation above is “the preceding financial” year as opposed to the “most recently audited and approved account” which have tended to be outdated and not reflecting the current economic realities.

Clause 21

The clause introduces the Ward Development Fund which constitutes five percent of the equitable share of the funds allocated to county governments. The clause also allows county assemblies to legislate for the better management of the Fund.

Clause 22

The clause establishes the Constituency Development Fund which shall be a portion of the revenue allocated to the National Government to carry out approved functions of the National Government.

Clause 23

This clause ensures that all communities are effectively represented in all public service appointments by restricting the appointments in all state agencies, government departments and corporations to no more than fifteen per cent of based on the population of any one ethnic community. It also entrenches affirmative action in favour of ethnic minorities in public appointment. It creates a duty on private enterprises that are contracted by the National Government to ensure that provide employment of Kenyans across the ethnic divide.

Clause 24

This amendment establishes the County Security Advisory Council at the county level. This seeks to strengthen community involvement in the security at the county level.

Clause 25

This clause seeks to entrench the independence of the Ethics and Anti-Corruption Commission as a constitutional commission. This is further to the amendment to Article 79 of the constitution.

Clause 26

This Bill seeks to protect devolution by ensuring that adequate funds are disbursed to the devolved government structures. This clause protects the provisions of Article 203 so that the equitable share of revenue to the devolved governments may only be altered at a referendum.

*DATED AT NAIROBI THIS 23RD DAY OF APRIL 2015
OKOA KENYA MOVEMENT*

THE CONSTITUTION OF KENYA, 2010 (

AN ACT of Parliament to amend the Constitution of Kenya, 2010 by parliamentary instrument pursuant to Article 256 of the Constitution

ENACTED by the Parliament of Kenya as follows-

- Short title
1. This Act may be cited as the Constitution of Kenya, 2010 (Amendment) Act, 2016.
- Amendment of the Constitution.
2. The Constitution of Kenya is amended in the manner set out herein below.
- Amendment of Article 27 to the Constitution.
3. The Constitution of Kenya is amended at Article 27 by introducing clause 6A as follows-
- 6A. The affirmative action programs and policies shall lapse after a period of ten years from the enactment date of this constitution
- Article 27 is further amended by deleting *sub* clause (8)
- Amendment of Article 59 to the Constitution
4. The Constitution of Kenya is amended at Article 59 (4) by deleting the comma after the word "part" and substituting therefor with a full stop and deleting the words "and any other such legislation may restructure the commission into ~ or more separate commissions."
- Article 59 to the Constitution is further amended by deleting clause (5).
- Insertion of a new Article 71 A to the Constitution.
5. The Constitution of Kenya is amended by introducing a new Article 71 A as follows -
- 1) The national government shall ensure that:-
- a) At least eighteen per cent of revenue derived by the national government from natural resources is allocated to the county where the natural resources are extracted.
- b) ~~At~~ least seven per cent of the revenue derived by the national government from natural resource is allocated to the community where the natural resources are extracted.
- Insertion of a new Article 75 A to the Constitution.
6. The Constitution of Kenya is amended by introducing a new Article 75 A as follows -
- (a) Any person who engages in economic sabotage, corruption, terrorism or any other offence is liable for a capital punishment.
- (b) Parliament shall enact legislation to give effect to this provision,

Amendment to Article 81 of the Constitution.

7. The Constitution is amended at Article 81 b: ---!!e:....:~5"~ cla..c;e (b).

Amendment to Article 88 of the Constitution

8 The Constitution is amended at Article 88 (4) by deleting sub clause (e).

Amendment to Article 89 of the Constitution.

9. The Constitution of Kenya is amended at Article 89 (1) by deleting the words "two hundred and ninety-" and substituting therefor with the words "two hundred and ten"

Amendment to Article 97 of the Constitution.

10. The Constitution of Kenya is amended at Article 97 (1) [a] by deleting the words "two hundred and ninety" and substituting therefor with the words "two hundred and ten" as existed before the enactment of the new constitution 2010.

Amendment to Article 152 of the Constitution.

11. The Constitution of Kenya i amended at Article 152 (3) by deleting the word "not" from the clause.

Amendment of Article 167 to the Constitution.

12. The Constitution of Kenya is amended at Article 167(1) by inserting the word "four" after the word "seventy":
The Article is further amended by introducing clause 2A as follows-

2A A Judge of the supreme court shall hold office for a maximum of seven years or until retiring under clause (1), whichever is earlier.

Amendment of Article 168 to the Constitution.

13. The Constitution of Kenya is amended at Article 168 (1) by introducing (f) (g) and (h) as follows-

(f) parliament shall enact legislation for the establishment and composition of a vetting board to conform the compliance of the judges with this section and chapter six of the Constitution every five years and their suitability to continue serving.

(g) judges found unsuitable to continue serving shall be relieved of their duties

(h) any judge aggrieved by the decision of the vetting board may appeal to the High Court and a bench of ~ consisting of senior counsel not serving appointed by the chief Justice ~ ~ar ...ce appeal and its decision shall be final.

(i) Any matter whereof a judge or magistrate has an interest shall equally be heard by a panel of three (3) senior counsel appointed by the chief Justice including any appeals preferred to the court of Appeal and the Supreme court, provided the number of senior counsel shall confirm with the quorum of the said courts.

Amendment to
Article 203 of the
Constitution

14 The Constitution of Kenya is amended at Article 203(2) by deleting the word "fifteen" and substituting therefor the words "forty-SIX" and adding the words "in the preceding financial year" after the words "national government".
The Article is further amended by deleting clause 3

Insertion of a new
Article 204 A to
The Constitution

15, The Constitution of Kenya is amended by introducing Article 204. as follows-

- (1) There is established the constituency development fund
- (2) For every financial year, the equitable share of the revenue raised nationally that is allocated to the Constituency Development Fund shall not be less than five per cent of all revenue collected by national government
- (3) Parliament with the concurrence of the Senate shall enact legislation to make provision for management of the Constituency Development Fund.

Insertion of a new
Article 204 B to
to the Constitution.

16. The Constitution of Kenya is amended by introducing Article 204 B as follows-

- (1) There is established at the ward level, ward development fund which shall receive not less than seventeen per cent of the total county revenue.
- (2) The Members of County Assembly shall administer the ward fund as the Patrons.
- (2) Parliament with the concurrence of the Senate shall enact legislation for further management of the fund and to give further effect to this provision.

Amendment to
Article 230 of the
Constitution

17. The Constitution of Kenya is amended at Article 230 (4) by introducing a new clause (c) as follows-

- (c) ensure that-
- (i) the expenditure on wages, salaries and other benefits, paid to state officers is not more than twenty per cent of the national revenue.
- (ii) The timeframe to achieve this shall be determined by the parliament.

Amendment to
Article 232 of the
Constitution.

18. The Constitution of Kenya is amended at Article 232 by introducing a new clause 2A as follows -

- (a) Subject to the protection of minorities and the provisions in Articles 10, 100 and 23, of this Constitution, no community shall have more than twenty per cent of appointments in-

(f) any state organ of the National Government and departments of Government
(g) any state organ of the county governments and departments of county governments.

(b) The provisions of this clause apply to all levels of the national and county governments.

(c) This provision shall apply to all private enterprises enacted that are contracted by the National or County Governments or their agencies.

Amendment to
Article 250 of the
Constitution.

19. The Constitution of Kenya is amended at Article 250 (1) by deleting the word "nine" and substituting therefor the word "five." Article 250 of the Constitution is further amended at clause (5) by deleting the word "may" and substituting therefor the word "shall."

Article 250 of the Constitution is further amended by introducing a new clause (13) as follows-

(13) A commissioner or holder of an independent office shall retire from office on attaining the age of sixty years, apart from those in office on part time basis.

Amendment of the first
Schedule of the
Constitution

20. The first schedule to the constitution is amended by deleting numbers one to forty seven (1-47) and is amended as follows-

1. Coast
2. Upper Eastern
3. Lower Eastern
4. Central
5. Nairobi
6. North Rift Valley
7. South Rift Valley
8. Nyanza
9. Western
10. North Eastern