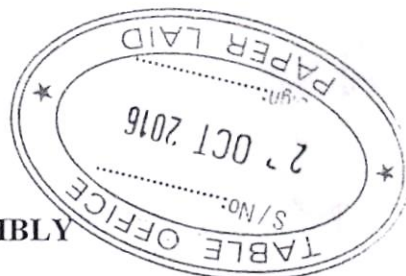


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THE NATIONAL ASSEMBLY

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ELEVENTH PARLIAMENT – FOURTH SESSION

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CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

REPORT ON CONSIDERATION OF PETITION BY MR. RAGE ISMAEL HUSSEIN  
CONCERNING THE NEED FOR PARLIAMENT TO INTRODUCE A BILL TO AMEND  
THE CONSTITUTION.

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

OCTOBER, 2016

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## LIST OF ABBREVIATIONS

AG	Attorney-General
CIC	Commission for the Implementation of the Constitution
CIOC	Constitutional Implementation Oversight Committee
IEBC	Independent Electoral and Boundaries Commission
KCPE	Kenya Certificate of Primary Education
KLRC	Kenya Law Reform Commission
MGDAs	Ministries, Government Departments and Agencies
MCA	Member of County Assembly
MP	Member of Parliament
SRC	Salaries and Remuneration Commission

## FOREWORD BY THE CHAIRMAN

Mr. Rage Ismael Hussein, a resident of Eldoret Town Constituency, Uasin Gishu County petitioned the National Assembly through the Speaker of the National Assembly pursuant to Standing Order 220(1)(a) to introduce a Bill to amend various provisions of the Constitution, in particular-

- (a) Article 9 of the Constitution to include 10<sup>th</sup> October as a national day to be known as Katiba day;
- (b) Article 27(8) of the Constitution to provide that the Two-Thirds gender rule applies to appointive and not elective positions;
- (c) Article 97(1)(a) and (b) of the Constitution to reduce the number of constituencies from two hundred and ninety (**290**) to two hundred and ten (**210**) and abolish the position of the forty-seven (**47**) women representatives;
- (d) Article 99 of the Constitution to remove the age limit for vying for elective positions and the minimum academic qualification be at least basic education that is the Kenya Certificate for Primary Education (KCPE) for the positions of a Member of a County Assembly (MCA) and Member of Parliament (MP);
- (e) Article 131 of the Constitution to provide that the President is above the law;
- (f) Article 152(3) of the Constitution to provide for the appointment of Cabinet Secretaries from persons serving as Members of Parliament;
- (g) Article 231 of the Constitution to provide that notes and coins should have the portrait of the first President of Kenya, H.E the Late Mzee Jomo Kenyatta; and
- (h) Article 260 of the Constitution to increase the age bracket of persons who qualify to be defined as youth from 18-35 years to 18-45 years;
- (i) Proposal to abolish the position of a governor and the proposal that counties be instead led by county commissioners;
- (j) Proposal that the President, the official opposition leader and the Deputy official opposition leader be treated as dignitaries and they be allowed to attend parliamentary sittings;
- (k) Proposal that the salaries of the elective positions be revised downwards to reduce the huge wage bill; and
- (l) Proposal to amend the Constitution to allow persons vying for the position of President and Deputy President to vie for any other elective position concurrently.



On 24<sup>th</sup> August 2016, the Speaker of the National Assembly conveyed the Petition to the House 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. Subsequently, the Petition was committed to the Constitutional Implementation Oversight Committee for consideration and the Committee was required to report its findings to the House and to the Petitioner in accordance with the National Assembly Standing Order 227(2).

The Committee held several meetings to deliberate on the Petition and also invited the Petitioner to prosecute his prayers in line with the requirements of Article 118 of the Constitution. In its deliberations, the Committee made the following observations on each of the issues raised by the Petitioner-

- (1) with regard to the proposal to amend Article 9 of the Constitution to include 10<sup>th</sup> October as national day to be known as Katiba day, the Committee observed that no constitutional amendment is required since section 3 of the Public Holidays Act Cap.110 empowers the Cabinet Secretary for Interior and Coordination of National Government to declare any day to be a public holiday at any time if s/he thinks fit, by notice in the Gazette. As such, there is no need to amend the Constitution to include the day as a national day as the same can still be declared by the Cabinet Secretary under section 3 of the Public Holidays Act.
- (2) with regard to the proposal to amend Article 27(8) of the Constitution to provide that the Two-Thirds gender rule only applies to appointive and not elective positions, the Committee observed that the affirmative action is a key principle espoused in the Constitution and is geared towards improving the issue of gender parity in elective positions. Parliament therefore still needs to come up with mechanisms of implementing the two-thirds gender rule.
- (3) in regard to the proposal to amend Article 97(1)(a) and (b) of the Constitution to reduce the number of constituencies from two hundred and ninety (**290**) to two hundred and ten (**210**) and abolish the position of the forty-seven (**47**) women representatives, the Committee observed that the 290 number of constituencies was arrived at after extensive negotiations and that the Independent Electoral and Boundaries Commission (IEBC) is mandated under Article 88(4)(c) and 89 of the Constitution to undertake delimitation of constituencies boundaries at intervals of not less than eight (**8**) years but not more than twelve (**12**) years. Further, the Committee observed that there is no demonstrated

justification that the cost of representation overrides the need for constitutional representation.

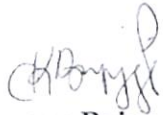
- (4) regarding the proposal to amend Article 99 of the Constitution to remove the age limit for vying for elective positions and the minimum academic qualification be at least basic education that is the Kenya Certificate for Primary Education (KCPE) for the positions of a Member of a County Assembly (MCA) and Member of Parliament (MP) and a Bachelor's degree for the positions of President and Governor, the Committee observed that the Constitution does not spell out age limits for persons vying for political positions nor stipulate the education qualifications requirements, as such no constitutional amendment is required. Qualifications for electoral position are provided for in the Elections Act. However, the Committee observed that the need for education requirements cannot be overstated as qualifications emanate from functions to be discharged.
- (5) with regard to the proposal to amend Article 131 of the Constitution to provide that the President is above the law, the Committee observed that the proposal is against the spirit of the Constitution to subject any exercise of power to strict constitutional principles.
- (6) on the proposal to amend Article 152(3) of the Constitution to provide for the appointment of Cabinet Secretaries from among the Members of Parliament, the Committee observed that as it is currently, the Constitution does not prohibit or bar the appointment of Cabinet Secretaries from among Members of Parliament. However, upon being appointed as a Cabinet Secretary, one is required to relinquish his or her position as a Member of Parliament. The Committee further observed that the proposal undermines the principle of separation of powers, checks and balances and accountability between the Executive and Legislature which is enshrined in the Constitution.
- (7) with regard to the proposal to amend Article 231 of the Constitution to provide that notes and coins should have the portrait of the first President of Kenya, Mzee Jomo Kenyatta and other subsequent Presidents, the Committee observed that Articles 142(2) and 231(4) of the Constitution are geared towards resisting personality cult practices. The proposal is therefore not tenable in light of Article 142(2) of the Constitution which provides that a person shall not hold office as a President for more than two terms. This is because the turnover of Presidents is bound to grow which would make the implementation of the proposal expensive and unsustainable.



- (8) with regard to the proposal to amend Article 260 of the Constitution to increase the age bracket of persons who qualify to be defined as youth from 18-35 years to 18-45 years, the Committee observed that the definition of persons who qualify to be defined as youth as enshrined in the Constitution is a universally acceptable definition embraced by various international bodies including the African Union and hence no need to change what is universally acceptable for purposes of local suitability.
- (9) regarding the proposal for abolition of the position of a governor and the proposal that counties be instead led by county commissioners, the Committee observed that the proposal is constitutionally untenable as it violates key constitutional principles regarding devolution and separation of powers. Further, the Committee observed that the Constitution establishes a devolved system of government where Kenyans participate in electing the President and Governor.
- (10) in regard to the proposal that the President, the Leader of the Official Opposition and the Deputy Leader of the Official Opposition be treated as dignitaries and they be allowed to attend parliamentary sittings, the Committee observed that pursuant to Article 124, the Constitution provides a procedure for interaction of the President and other persons with Parliament which is spelt out in the National Assembly Standing Orders. The Committee further observed that bearing in mind the principle of separation of powers between the Executive and the National Assembly, only Members of Parliament are allowed to attend parliamentary sittings and hold the offices of a Member of Parliament.
- (11) regarding the proposal that the salaries of the elective positions be revised downwards to reduce the huge wage bill, the Committee observed that pursuant to Article 230 of the Constitution, it is the responsibility of the Salaries and Remuneration Commission to set and regularly review the remuneration and benefits of all State Officers taking into account the need to ensure that the total public compensation bill is fiscally sustainable among other considerations. Salaries and Remuneration Commission is an independent Commission. The proposal does not therefore call for amendment of the Constitution.
- (12) with regard to the proposal to amend the Constitution to allow persons vying for the position of President and Deputy President to also vie for any other elective position concurrently, the Committee observed that that there is no constitutional or legal provision barring persons vying for the position of President and Deputy President to vie for any other elective position concurrently. In this regard, there is no need to amend 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 to execute its mandates.

It is my singular duty and privilege, on behalf of the Constitutional Implementation Committee, to present this Report to the House for onward transmission to the Petitioner in accordance with the provisions of the National Assembly Standing Orders 227(2) and 228.



**The Hon. Njoroge Baiya, MP,**

**Chairperson, Constitutional Implementation Oversight Committee**



## **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 the Constitution of Kenya, 2010. Prior to the dissolution of the Commission on the Implementation of the Constitution (CIC), the Committee used to get reports on the preparation of legislation required by the Constitution and on any impediments to the process of implementing this Constitution.

In discharging its mandate, the Committee coordinates with the Office of the Attorney-General (AG), Kenya Law Reform Commission (KLRC), 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

<b>Chairperson</b>	Hon. Njoroge Baiya, MP,
<b>Vice Chairperson</b>	Hon. Moitalel Ole Kenta, MP
	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. Grace Jemutai Kiptui, MP
	Hon. Rose Rwamba Mitaru, MP
	Hon. David Kangogo Bowen, MP
	Hon. Protus Akuja, M.P.
	Hon. Sakwa John Bunyasi, MP
	Hon. Abdul Rahim Dawood, MP
	Hon. Peter N. Gitau, MP
	Hon. (Dr.) Humphrey K. Njuguna, MP
	Hon. James Lomenen, MP
	Hon. (Eng.) Mohamed M. Mahmud CBS, MP
	Hon. Shakila Abdalla, MP
	Hon. Alice Muthoni Wahome, MP
	Hon. (Dr.) Dahir Duale Mohammed, MP
	Hon. Boniface Okhiya Otsiula, MP
	Hon. Millie Odhiambo-Mabona, MP
	Hon. George Washington Omondi Mallan, MP
	Hon. Mary Wambui Menene, M.P
	Hon. Aramat Lemanken, MP
	Hon David Gikaria, MP
	Hon. John Lodepe Nakara, MP
	Hon. Steven Kariuki, MP

## COMMITTEE SECRETARIAT

Mr. John Mutega	Principal Clerk Assistant II
Ms. Jemimah Waigwa	Legal Counsel II
Mr. Nebert Ikai Lomechu	Clerk Assistant III
Mr. Donald Manyala	Research Officer III
Ms. Winnie Kiziah	Media Relations Officer
Ms. Catherine M. Mutuku	Intern Research Department

## **1. Introduction**

### **1.1 Presentation and Committal of the Petition to the Committee**

On 14<sup>th</sup> July 2016, Mr. Rage Ismael Hussein, a resident of Eldoret Town Constituency, Uasin Gishu County petitioned the National Assembly pursuant to Standing Order 220(1)(a) for the introduction in the National Assembly of a Bill to amend the Constitution.

On 24<sup>th</sup> August 2016, the Speaker of the National Assembly presented to the House the Petition 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. Subsequently, the Petition was committed to the Constitutional Implementation Oversight Committee for consideration and report its findings to the House and to the Petitioner in accordance with the National Assembly Standing Order 227(2).

### **1.2 Overview of the Petition**

Upon interrogating the Petition, the Committee noted that the Petitioner sought the amendment of the following Articles of the Constitution-

- (a) Article 9 of the Constitution to include 10<sup>th</sup> October as national day to be known as Katiba day;
- (b) Article 27(8) of the Constitution to provide that the two-thirds gender rule applies to appointive and not elective positions;
- (c) Article 97(1)(a) and (b) of the Constitution to reduce the number of constituencies from two hundred and ninety (290) to two hundred and ten (210) and abolish the position of the forty-seven (47) women representatives;
- (d) Article 99 of the Constitution to remove the age limit for vying for elective positions and introduce the minimum academic qualification be at least basic education that is the Kenya Certificate for Primary Education (KCPE) for the positions of a Member of a County Assembly (MCA) and Member of Parliament (MP) and a Bachelor's degree for the positions of President and Governor;
- (e) Article 131 of the Constitution to provide that the President is above the law;
- (f) Article 152(3) of the Constitution to provide for the appointment of Cabinet Secretaries from among the Members of Parliament;
- (g) Article 231 of the Constitution to provide that notes and coins should have the portrait of the first President of Kenya, Mzee Jomo Kenyatta; and



- (h) Article 260 of the Constitution to increase the age bracket of persons who qualify to be defined as youth from 18-35 years to 18-45 years;
- (i) Proposal for abolition of the position of a governor and the proposal that counties be instead led by county commissioners;
- (j) Proposal that the President, the official opposition leader and the Deputy official opposition leader be treated as dignitaries and they be allowed to attend parliamentary sittings;
- (k) Proposal that the salaries of the elective positions be revised downwards to reduce the huge wage bill; and
- (l) Proposal to amend the Constitution to allow persons vying for the position of President and Deputy President to vie for any other elective position concurrently.

## **2. Meeting with the Petitioner, Mr. Rage Ismael Hussein**

On 27<sup>th</sup> September 2016, the Committee met with Mr. Rage Ismael Hussein. In his presentation, Mr. Rage made the following proposals for amendment to the Constitution while at the same time elucidating the rationale for his proposals-

### **(a) Inclusion of 10<sup>th</sup> October as a National Day**

The Petitioner submitted that Article 9 of the Constitution should be amended to include 10<sup>th</sup> October as a national day to be known as Katiba day.

#### **Justification**

He explained that, the journey towards the promulgation of a new Constitution was long and challenging and hence noting the importance of the Constitution, there is need to recognize 27<sup>th</sup> August, 2010 which is the day that the new Constitution was promulgated as a national day. Please confirm the proposed date for the holiday. Is it 10<sup>th</sup> October or 27<sup>th</sup> August when the constitution was promulgated.

### **(b) Exclusion of Two-thirds gender rule on elective positions**

The Petitioner submitted that Article 27(8) of the Constitution should be amended to provide that the two-thirds gender rule applies to appointive and not elective positions.

#### **Justification**

He explained that, every person should compete in an equal political ground and therefore the two-thirds gender rule should only apply to appointive and not elective positions.

**(c) Reduction of the number of Constituencies and abolition of the position of the forty-seven women representatives**

The Petitioner submitted that Article 97 of the Constitution should be amended to reduce the number of the constituencies from two hundred and ninety (290) to two hundred and ten (210) . He also submitted that the position of the forty-seven (47) women representatives should be abolished.

**Justification**

He explained that, there are too many members of Parliament and the people of Kenya are over-represented resulting to a huge wage bill.

**(d) Education Qualifications for Electoral Positions**

The Petitioner submitted that Article 99 of the Constitution should be amended to remove the age limit for vying for elective positions and the minimum academic qualification be atleast basic education that is the Kenya Certificate for Primary Education (KCPE) for the positions of a Member of a County Assembly (MCA) and Member of Parliament (MP) and a Bachelor's degree for the position of the President.

**Justification**

Mr. Rage explained to the Committee that, a person does not need to be well educated to govern or lead people. However, he believed that the President performs managerial roles and hence should have a Bachelor's degree as a prerequisite requirement.

**(e) The President to be above the law**

The Petitioner submitted that Article 131 of the Constitution should be amended to strengthen the position of the President by providing that the President be above the law.

**Justification**

It was his view and reasoning that, the President should not be subjected to challenges through court processes.

**(f) Appointment of Cabinet Secretaries from among Members of Parliament**

The Petitioner submitted that Article 152(3) of the Constitution should be amended to provide for the appointment of Cabinet Secretaries from among the Members of Parliament.

**Justification**

Mr. Rage informed the Committee that the proposal was meant to help reduce the huge wage bill that Kenyans were currently shouldering.

**(g) Display of portraits of Presidents on notes and coins**

The Petitioner submitted that Article 231(4) of the Constitution should be amended to provide that notes and coins should have the portrait of the first president of Kenya, Mzee Jomo Kenyatta. Other consecutive notes and coins should contain the portrait of the second President and others the third President of the Republic.

**Justification**

His explanation was that this was a sign of respect and appreciation to the founder of the nation and other Presidents who have held office of the presidency.

**(h) Definition of youth.**

The Petitioner submitted that Article 260 of the Constitution on the definition of the youth should be amended from the current age bracket of 18-35 years to 18-45 years.

**Justification**

Mr. Rage argued that, the proposal would enable the youths have more time to access the youth funds and other benefits targeting the youth. He explained further that, in the current Kenyan education system, youth attain their first degree at the ages between 24-26 years. This means they need more time to gain experience as well as participate in activities set out for youths.

**(i) Other proposals for amendments**

The Petitioner also submitted that-

- (i) the position of a governor should be abolished and the counties be led by county commissioners;



- (ii) the President, the official opposition leader and the Deputy official opposition leader be treated as dignitaries and they be allowed to attend parliamentary sittings;
- (iii) the salaries of the elective positions be revised downwards to give value for money; and,
- (iv) that persons vying for the position of President and Deputy President should be allowed to vie for any other elective position concurrently.

### **3. Analysis of similar issues raised by Major (Rtd) Joel Kiprono Rop's Petition**

The Committee observed that some of the issues raised by the Petitioner had been discussed and deliberated on in the Major (Rtd) Joel Kiprono Rop petition whose report had since been tabled before the House. It was therefore imperative for the Committee to take note of its decision regarding those issues as outlined below:-

#### **(a) Education Qualification Requirements for Electoral Positions**

With regard to the proposed amendment for the education requirements in Article 99 (1) (b) of the Constitution, the Committee, then, was of the view that the necessity for education requirements cannot be overstated as qualifications emanate from functions to be discharged.

#### **(b) Reduction of Number of Constituencies.**

With regard to the proposed amendment to reduce the number of constituencies, the Committee had deliberated on the matter and recommended that the 290 number of constituencies was arrived at after extensive negotiations. The Committee had also observed then that the Independent Electoral and Boundaries Commission (IEBC) was 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.

#### **(c) Appointment of the Cabinet Secretaries from among elected Members of Parliament.**

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 had 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.

#### **(d) Allowing contestants to vie for more than one elective position concurrently**

This is contained in 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 26<sup>th</sup> February, 2014 and gazetted on 15<sup>th</sup> 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 among other things assess the impact of the implementation of the Constitution to the Nation's economy and in particular its public finances.

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 in particular in relation to the proposal that the Constitution should be amended to provide that persons vying for the position of President and Deputy President should be allowed to vie for any other elective position concurrently. The Interim Report recommended that the proposal for allowing contestants to vie for more than one elective position concurrently 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 contest for the presidency and parliamentary seats and relinquish the parliamentary seat in case one wins the presidency. The Committee however observed that the Constitution strictly separates the Executive and the Legislature in order to enhance the principle of separation of powers.

#### **4. Committee Observations and Findings**

During a retreat held on 6<sup>th</sup> to 8<sup>th</sup> October, 2016 and in light of the submissions made by the Petitioner, the Committee came up with the following findings on each of the issues raised by the Petitioner-

##### **(a) Inclusion of 10<sup>th</sup> October as a National Day**

The Committee observed that no constitutional amendment is required since the matter of declaring any day as a national holiday is provided in section 3 of the Public Holidays Act Cap.110 where the Cabinet Secretary for Interior and Coordination of National Government may at any time if he thinks fit, by notice in the Gazette, declare any day to be a public holiday. As such, there is no need to amend the Constitution to include the day as a national day as the same can still be declared by the Cabinet Secretary under section 3 of the Public Holidays Act.

##### **(b) Abolition of two-thirds gender rule on elective positions**

The Committee observed that the affirmative action is a key principle espoused in the Constitution and is geared towards improving the issue of gender parity in elective positions. There is therefore need to come up with mechanisms of implementing the two-thirds gender rule.

##### **(c) Reduction of the number of Constituencies and abolition of forty-seven women representatives positions**

The Committee observed that the two hundred and ninety (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. Further, the Committee observed that there is no demonstrated justification that the cost of representation override the need for constitutional representation.

**(d) Education Qualifications for a Electoral Positions**

The Committee observed that the Constitution does not spell out age limits for persons vying for political positions nor stipulate the education qualifications requirements, as such, no constitutional amendment is required. However, the Committee observed that the need for education requirements cannot be overstated as qualifications emanate from functions to be discharged.

**(e) The President to be above the law**

The Committee observed that the proposal is against the spirit of the Constitution to subject any exercise of power to strict constitutional principles.

**(f) Appointment of Cabinet Secretaries from among Members of Parliament**

The Committee observed that as it is currently, the Constitution does not prohibit or bar the appointment of Cabinet Secretaries from among Members of Parliament. However, upon being appointed as a Cabinet Secretary, one is required to relinquish his or her position as a Member of Parliament. The Committee further observed that the proposal undermines the principle of separation of powers, checks and balances and accountability between the Executive and Legislature which is enshrined in the Constitution.

**(g) Display of portraits of Presidents on notes and coins**

The Committee observed that Articles 142(2) and 231(4) of the Constitution are geared towards resisting personality cult practices. The proposal is therefore not tenable in light of Article 142(2) of the Constitution which provides that a person shall not hold office as a President for more than two terms. This is because the turnover of Presidents is bound to grow which would make the implementation of the proposal expensive and unsustainable.

**(h) Definition of youth.**

The Committee observed that the definition of persons who qualify to be defined as youth as enshrined in the Constitution is a universally acceptable definition embraced by various



international bodies including the African Union and hence no need to change what is universally acceptable for purposes of local suitability;

**(i) Other proposals for amendments**

On the proposal for abolition of the position of a governor and the proposal that counties be instead led by county commissioners, the Committee observed that the proposal is constitutionally untenable as it violates key constitutional principles regarding devolution and separation of powers. Further, the Committee observed that the Constitution establishes a presidential system where Kenyans participate in electing the President and the Governor.

On the proposal that the President, the Leader of the Official Opposition and the Deputy Leader of the Official Opposition to be treated as dignitaries and that they be allowed to attend parliamentary sittings, the Committee observed that Article 124 of the Constitution empowers Parliament to develop rules for conduct of its business including procedure for interaction of the President and other persons with Parliament. The Committee further observed that only Members of Parliament are allowed to attend parliamentary sittings and hold the offices of a Member of Parliament.

On the proposal that the salaries of the elective positions be revised downwards to reduce the huge wage bill, the Committee observed that pursuant to Article 230 of the Constitution, it is the constitutional responsibility of the Salaries and Remuneration Commission to set and regularly review the remuneration and benefits of all State Officers taking into account the need to ensure that the total public compensation bill is fiscally sustainable among other considerations. The proposal does not therefore call for amendment of the Constitution.

On the proposal to amend the Constitution to allow persons vying for the position of President and Deputy President to vie for any other elective position concurrently, the Committee observed that there is no constitutional or legal provision barring persons from vying for the position of President and Deputy President and any other elective position concurrently. In this regard, there is no need to amend the Constitution.

## 5. Recommendation

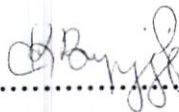
The Committee recommends to the National Assembly that-

- (a) There is no need to amend the Constitution to include 10<sup>th</sup> October as a National Day as the same can still be declared by the Cabinet Secretary under section 3 of the Public Holidays Act.
- (b) Parliament should endeavour to develop a framework for the realization of the Two-Thirds Gender Rule.
- (c) Any review of the number of Constituencies should await the review enunciated under Article 88(4)(c) and 89 of the Constitution by the Independent Electoral and Boundaries Commission.
- (d) Education qualifications should be matched with functions assigned to the respective position.
- (e) The President should not be above the law since this is not only against the spirit of the Constitution but also against the Oath of Office that he/she takes when assuming office.
- (f) Appointment of Cabinet Secretaries from among Members of Parliament is not barred by the Constitution, but upon appointment of a Member of Parliament to the Cabinet, he/she is required to resign from being a Member of Parliament.
- (g) Displaying of portraits of Presidents on notes and coins is untenable in light of Article 142(2) of the Constitution which provides that a person shall not hold office as a President for more than two terms.
- (h) Definition of youth should remain as currently provided for in the Constitution.
- (i) The position of a county governor should not be abolished and its functions performed by county commissioners since this would violate key constitutional principles regarding devolution and separation of powers.
- (j) Only Members of Parliament should be allowed to attend parliamentary sittings and hold the offices of a Member of Parliament as currently provided for in the Constitution.
- (k) Reduction of salaries of persons holding elective positions is the constitutional responsibility of the Salaries and Remuneration Commission which is an independent commission.
- (l) A copy of this Report be forwarded to the Petitioner in line with the provisions of the National Assembly Standing Order 228.



**6. Adoption of the Report by the Committee**

In its meeting held on Tuesday, 25<sup>th</sup> October, 2016, the Committee considered the contents of the report and adopted the same for onward tabling before the National Assembly on Thursday, 27<sup>th</sup> October, 2016.

Signed:..........

Date: 27/10/2016.....

Hon. Njoroge Baiya, MP,

Chairperson, Constitutional Implementation Oversight Committee

# APPENDIX I

# MINUTES

**MINUTES OF THE 61<sup>ST</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, SEPTEMBER 06, 2016 AT 2<sup>ND</sup> FLOOR CONTINENTAL, PARLIAMENT BUILDING, AT 10.30 AM.**

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**PRESENT**

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Benson M. Kangara, MP
3. The Hon. Boniface O. Otsiula, MP
4. The (Dr.) Hon. Humphrey K. Njuguna, MP
5. The Hon. Rose Rwamba Mitaru, MP
6. The Hon. Sabina Chege, MP
7. The Hon. Grace Jemutai Kiptui, MP
8. The Hon. George Washington Omondi Mallan, MP
9. The Hon. John Lodepe Nakara, MP

**APOLOGY**

1. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
2. The Hon. Sakwa J. Bunyasi, MP
3. The Hon. Abdul Rahim Dawood, MP
4. The Hon David Gikaria, MP
5. The Hon. Alice Muthoni Wahome, MP
6. The Hon. Peter N. Gitau, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon. Mary Wambui, M.P
9. The Hon. Steven Kariuki, MP
10. The Hon. Ababu Namwamba EGH, MP
11. The Hon. Shakila Abdalla, MP
12. The Hon. Samuel K. Chepkonga, MP
13. The Hon. Bowen, David Kangogo, MP
14. The Hon. Protus Akuja, M.P.
15. The Hon. James Lomenen, MP
16. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
17. The Hon. Aramat Lemanken, MP
18. The Hon. Manson Nyamweya, MP
19. The Millie Odhiambo-Mabona, MP

**IN-ATTENDANCE**

1. Mr. John Mutega
2. Mr. Nebert Ikai Lomechu
3. Ms. Jemimah Waigwa

**NATIONAL ASSEMBLY**

- Principal Clerk Assistant II
- Clerk Assistant III
- Legal Counsel



**MIN.NO. 257/6/09/2016: PRELIMINARIES**

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

**MIN.NO. 258/6/09/2016: CONSIDERATION OF PETITION BY MR. RAGE HUSSEIN ON INTRODUCTION OF A BILL TO THE NATIONAL ASSEMBLY TO AMEND VARIOUS ARTICLES OF THE CONSTITUTION**

The Committee observed that the petitioner seeks to among others amend the following articles of the Constitution-

- (i) Article 9 of the Constitution to declare 10th October as a National Day which will be referred to as Katiba Day;
- (ii) Article 27(8) of the Constitution on Gender, to provide that the two-thirds rule only applies to appointive positions and not elective/competitive positions.
- (iii) Article 97 of the Constitution on the membership of the National Assembly to reduce the number of constituencies and abolish the positions for Women Representatives;
- (iv) Article 99 and the Political Parties Act be amended to provide for no restriction on age limit to the elective positions; the minimum qualifications to be at least Kenya Certificate of Primary Education (KCPE);
- (v) Article 131 to provide that the President be above the law of the country and enact legislative to allow Presidency and/or Deputy Presidency to vie for other elective seat as Member of Parliament and once elected as president or vice president, the state officer relinquish the seat;
- (vi) Article 260 of the Constitution be amended under the item on Youth to define the maximum age limit for youth as 45 years; and
- (vii) Notes and Coins issued by Central Bank of Kenya (CBK) to bear the portrait of the First President of Kenya, H.E. the Late Mzee Jomo Kenyatta.

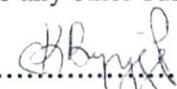
Members observed that some of the prayers of the petitioner were address in an earlier petition by Major (Rtd.) I Kiprono Rop. The Committee also observed the need to have the petitioner appear before them and explain his rationale on the said prayers.

**Way-forward:**

The Committee agreed that the petitioner be invited to a meeting with them to provide with rationale for each of the prayers made.

**MIN.NO. 259/6/09/2016: ADJOURNMENT**

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

SIGN.....  ..... DATE 25/10/2016  
CHAIRPERSON..... Hon. B. A. YIT .....

**MINUTES OF THE 62<sup>ND</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, SEPTEMBER 27, 2016 AT CONTINENTAL HOUSE, 2<sup>ND</sup> FLOOR, 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. Ababu Namwamba EGH, MP
4. The Hon. Benson M. Kangara, MP
5. The Hon. Sakwa J. Bunyasi, MP
6. The (Dr.) Hon. Humphrey K. Njuguna, MP
7. The Hon. Protus Akuja, M.P.
8. The Hon. Alice Muthoni Wahome, MP
9. The Hon. (Dr.) Dahir Duale Mohammed, MP

**APOLOGY**

1. The Hon. Samuel K. Chepkonga, MP
2. The Hon. Sabina Chege, MP
3. The Hon. (Eng.) Mohamed M. Mahamud CBS, MP
4. The Hon. Boniface O. Otsiula, MP
5. The Hon. Rose Rwamba Mitaru, MP
6. The Hon. George Washington Omondi Mallan, MP
7. The Hon David Gikaria, MP
8. The Hon. Peter N. Gitau, MP
9. The Hon. Aramat Lemanken, MP
10. The Hon. Steven Kariuki, MP
11. The Hon. Grace Jemutai Kiptui, MP
12. The Hon. John Lodepe Nakara, MP
13. The Hon. Abdul Rahim Dawood, MP
14. The Hon. Mary Wambui, M.P
15. The Hon. Shakila Abdalla, MP
16. The Hon. Bowen, David Kangogo, MP
17. The Hon. James Lomenen, MP
18. The Hon. Manson Nyamweya, MP
19. The Millie Odhiambo Mabona, MP

**IN-ATTENDANCE**

1. Mr. John Mutega
2. Ms. Winnie Kiziah
3. Ms. Catherine Mutuku

**NATIONAL ASSEMBLY**

- Principal Clerk Assistant II
- Media Relations Officer
- Intern (Research Department)

**MIN.NO. 260/27/9 /2016: PRELIMINARIES**

The meeting was called to order at 10.25am and commenced with a word of prayer from the Chairperson.

The Chairperson welcomed the Members of the Committee present and apprised them on the agenda of the meeting. Introductions of the members present and the Petitioner (Mr. Rage Hussein) ensued.

**MIN.NO. 261/27/9 /2016 PRESENTATION BY THE PETITIONER MR. RAGE ISMAEL HUSSEIN**

The Petitioner took the members through his prayers, giving justification for each prayer as follows-

**1. Age of Youth**

The Petitioner prayed that Article 260 of the Constitution be amended to have the age of youth raised from the current age bracket of 18-35 years to 18-45 years. He justified that the proposal was to enable the youths have more time to enjoy the set aside youth benefits like the Youth Funds. He explained that in the current Kenyan education system, youth graduate from the age of 24 to 26 years. This meant they needed more time to gain experience as well as participate in activities set out for youths.

**2. The Two-Third Gender Rule**

The Petitioner recommended for the amendment of Article 27(8) of the Constitution to provide that the two-thirds rule to apply only to appointive positions and not elective. His justification to this prayer was to let everyone compete in an equal political ground and if only one gender is elected, the other should accept the outcome. This therefore would lead to the abolition of the position of women representing counties.

**3. Qualifications for Elective Positions**

The Petitioner He recommended that there be no age limit for vying for elective positions and the minimum academic qualification be at least basic education (KCPE) for the positions of MCA, Members of Parliament but a bachelor degree for any person vying for the position of President and County Governor.

He argued that the rulings given by community elders, in his view, appear to be better and wise than those of people holding degrees. He also asserted that one does not need to be well educated to govern or lead people but would only require wisdom.

In his submissions, he argued that, the County Governor and the President deal with managerial roles of a big geographical jurisdictions and hence should have degrees as a prerequisite requirement. However, he also submitted that the position of the Governor should be abolished.



#### **4. Reducing the Number of Constituencies and Abolishing the Position of Women Representatives**

Mr. Rage proposed that the number of constituencies should be reduced and the position of women representatives abolished by amending of Article 97 of the Constitution. His argument was that there are too many Members of Parliament and that the people of Kenya are over-represented. He also noted that most Women Representatives were abandoning the position to run for other positions.

He also asserted that, the runners up in a presidential election should be the Official Leader of the Opposition.

#### **5. Appointment of Cabinet Secretaries from Members of Parliament**

He also recommended that Cabinet Secretaries be appointed from the Members of Parliament. This provision would lead to a Cabinet that is alive to the people's needs.

#### **6. Presidency**

The Petitioner recommended that the position of the Presidency be strengthened by being above the law through the amendment of Article 131 of the Constitution. He asserted that the President is like the 'Father' of the nation and cannot be subjected to people's scrutiny and constant abuse and court petitions. He wished that the president should uphold the law but be above to some extent.

#### **7. Abolish the Position of County Governor**

He proposed that the position of County Governor should be abolished and that counties should be headed by county commissioners with the aid of county chairperson appointed from the elected Members of County Assembly. He justified his position by saying that all the current power wrangles in the county were being caused in one way or another by the county governors.

#### **8. Reduction of salaries for the Members of County Assemblies**

He proposed a reduction of salaries for elected officials. He asserted that the MCAs earn a lot of money and do nothing yet teachers earn little and do a lot of work.

#### **9. National Holidays**

He proposed amendment to Article 9 of the Constitution to declare 10<sup>th</sup> October as Katiba day. This is because Kenya went a long way to get a new Constitution and should therefore be respected and honored. The choice of dates was so that to reduce the congestion in August as in every election year, the month will be full of events despite the fact that it was the month when the new Constitution was promulgated.

## **10. Currencies**

He recommended amendment to Article 231(4) by providing that Notes and Coins should have the portrait of the first president of Kenya, Mzee Jomo Kenyatta. Other consecutive notes and coins to contain the portrait of the second president, and others the third president. In his view, this would show a sign of respect and appreciation to the founding President of the nation and other presidents who have held office of the presidency.

Upon the submission by the Petitioner, Members felt they were better equipped to interrogate the prayers in a subsequent meeting. Subsequently, the meeting resolved to hold a retreat in Naivasha or its environs to undertake a report writing from 6<sup>th</sup> to 9<sup>th</sup> October, 2016.

Members also felt that, the Report (pending before the House) on the Petition made to the Committee by Major (Rtd.) Kiprono Rop would provide reference and be used as a guide by the Committee.

**MIN.NO. 262/27/9 /2016**

**ANY OTHER BUSINESS**

### **a) Study Visit to the Kingdom of Belgium**

The Committee was briefed that the Committee's request to undertake a study visit to the Federal Parliament of Belgium, the Parliament of Wallonia and the Flemish Parliament had been honoured and that the visit would be held between 10<sup>th</sup> to 18<sup>th</sup> October, 2016. It was proposed that the Committee be represented by-

1. The Hon. Peter Njoroge Baiya, MP Chairperson to lead the delegation
2. The Hon. Sabina Wanjiru Chege, MP
3. The Hon. Boniface Okhiya Otsiula, MP
4. The Hon. Aramat Lemanken Kiloku, MP
5. The Hon. Rahim Dawood, MP
6. The Hon. Lodepe Nakara, MP
7. The Hon. Rose Rwamba Mitaru, MP
8. The Hon. David Gikaria Ritho, MP

### **b) International Conference on Marginalization, Poverty And Decentralization In Kerala, India**

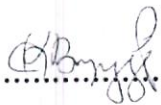
The attention of the Committee was drawn to an invitation to an "International Conference on Marginalization, Poverty and Decentralization" by the Kerala Institute of Local Administration (KILA) under the Ministry of Local Self-Government, Government of Kerala. The Conference was scheduled to take place at KILA from 19<sup>th</sup> to 22<sup>nd</sup> November, 2016. after deliberations, it was proposed that the Committee be represented by-

1. The Hon. Moitalel Ole Kenta, MP to lead the delegation
2. The Hon Ababu Namwamba, EGH, MP
3. The Hon. (Dr.) Dahir Duale Mohammed, MP
4. The Hon. (Dr.) Humphrey K. Njuguna, MP
5. The Hon. Protus Akujah, MP

MIN.NO. 263/27/9 /2016:

ADJOURNMENT

The meeting adjourned at 12:10 pm.

SIGN..........

DATE ..25/10/2016.....

CHAIRPERSON.....H.M. BAIYA.....



**MINUTES OF THE 63<sup>RD</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON FRIDAY, OCTOBER 7, 2016 AT SERENA LAKE ELEMENTAITA LOGDE AT 9.30 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. Boniface O. Otsiula, MP
5. The (Dr.) Hon. Humphrey K. Njuguna, MP
6. The Hon. Rose Rwamba Mitaru, MP
7. The Hon. Sabina Chege, MP
8. The Hon. George Washington omondi Mallan, MP
9. The Hon David Gikaria, MP
10. The Hon. Alice Muthoni Wahome, MP
11. The Hon. Peter N. Gitau, MP
12. The Hon. Aramat Lemanken, MP
13. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
14. The Hon. Samuel K. Chepkonga, MP
15. The Hon. Steven Kariuki, MP

**APOLOGY**

1. The Hon. Sakwa J. Bunyasi, MP
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. John Lodepe Nakara, MP
4. The Hon. Abdul Rahim Dawood, MP
5. The Hon. (Dr.) Dahir Duale Mohammed, MP
6. The Hon. Mary Wambui, M.P
7. The Hon. Ababu Namwamba EGH, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Bowen, David Kangogo, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon. James Lomenen, MP
12. The Hon. Manson Nyamweya, MP
13. The Hon Millie Odhiambo Mabona, MP

**In-Attendance**

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu
4. Ms. Beatrice Auma
5. Ms. Catherine Mutuku

**National Assembly**

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III
- Secretary
- Intern (Research department)

**MIN.NO. 264/7/10/2016: PRELIMINARIES**

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

**MIN.NO. 265/7/10/2016: CONSIDERATION OF THE REPORT ON PETITION INTRODUCTION OF A BILL TO NATIONAL ASSEMBLY TO AMEND VARIOUS ARTICLE OF THE CONSTITUTION**

The Committee noted that some of the issues raised by the Petitioner had been discussed and deliberated on in the Major (Rtd) Joel Kiprono Rop report which had since been tabled before the House. The Committee took note of its past decision regarding the following issues-

**1. Education Qualification Requirements for Electoral Positions**

With regard to education requirements, the Committee had in the past taken the view that the necessity for education requirements cannot be overstated as qualifications emanate from functions to be discharged. The proposal was therefore inconceivable.

**2. Reduction of Number of Constituencies.**

With regard to reduction of the number of constituencies, the Committee had in the past agreed that the current number of constituencies was arrived at after extensive negotiations and the Independent Electoral and Boundaries Commission (IEBC) was 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.

**3. Appointment of the Cabinet Secretaries from among elected Members of Parliament.**

With regard to the proposal to appoint Cabinet Secretaries from among the Members of Parliament, the Committee had already recommended to the House 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.

**4. Allowing contestants to vie for more than one elective position concurrently**

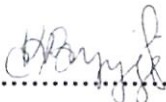
This is contained in the *Interim Report of the Working Group on Social Economic Audit of the Constitution of Kenya 2010*. The Working Group was established through a resolution of the House on 26<sup>th</sup> February, 2014 and gazetted on 15<sup>th</sup> August, 2014 to carry out a Socio-Economic Audit of the Constitution of Kenya 2010 under the auspices of the Auditor General. The Terms of Reference for the Working Group (WG) was to among other things assess the impact of the implementation of the Constitution to the Nation's economy and in particular its public finances.

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 in particular in relation to the proposal that the Constitution should be amended to provide that persons vying for the position of President and Deputy President should be allowed to vie for any other elective position concurrently. The Interim Report recommended that the proposal for allowing contestants to vie for more than one elective position concurrently 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 contest for the presidency and parliamentary seats and relinquish the parliamentary seat in case one wins the presidency. The Committee however observed that the Constitution strictly separates the Executive and the Legislature in order to enhance the principle of separation of powers.

The Committee took the view that the above recommendation to the House still stands.

**MIN.NO. 266/7/10/2016: ADJOURNMENT**

The Committee adjourned at 11.30am to resume at 12.00pm.

SIGN..........

DATE <sup>27</sup> 10/2016.....

CHAIRPERSON.....HON. BAIYA.....



**MINUTES OF THE 64<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON FRIDAY, OCTOBER 7, 2016 AT SERENA LAKE ELEMENTAITA LOGDE AT 12.30 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. Sabina Chege, MP
5. Hon. (Eng.) Mohamed M. Mahamud CBS, MP
6. The Hon. Benson M. Kangara, MP
7. The Hon. Boniface O. Otsiula, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. Rose Rwamba Mitaru, MP
10. The Hon. George Washington Omondi Mallan, MP
11. The Hon David Gikaria, MP
12. The Hon. Alice Muthoni Wahome, MP
13. The Hon. Peter N. Gitau, MP
14. The Hon. Aramat Lemanken, MP
15. The Hon. Steven Kariuki, MP

**APOLOGY**

1. The Hon. Sakwa J. Bunyasi, MP
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. John Lodepe Nakara, MP
4. The Hon. Abdul Rahim Dawood, MP
5. The Hon. (Dr.) Dahir Duale Mohammed, MP
6. The Hon. Mary Wambui, M.P
7. The Hon. Ababu Namwamba EGH, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Bowen, David Kangogo, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon. James Lomenen, MP
12. The Hon. Manson Nyamweya, MP
13. The Millie Odhiambo Mabona, MP

**IN-ATTENDANCE**

1. Mr. John Mutega - Principal Clerk Assistant II
2. Mr. Nebert Ikai Lomechu - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel
4. Catherine Mutuku - Intern (Research Department)

**NATIONAL ASSEMBLY**

**MIN.NO. 267/7/10/2016: PRELIMINARIES**

The meeting was called to order at 12.30 pm and commenced with a word of prayer from the Chair.

**MIN.NO. 268/7/10/2016:**

**ANALYSIS OF SIMILAR ISSUES RAISED BY MAJOR (RTD) JOEL KIPRONO ROP'S PETITION**

The committee observed that the following issues raised by the Petitioner had been discussed and deliberated on in the Major (Rtd) Joel Kiprono Rop report which had since been tabled in the House.

**1. Education qualification requirements for election as Member of Parliament/ County Assembly**

With regard to the proposed amendment for the education requirements in Article 99 (1) (b) of the Constitution to be expunged, the Committee was 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.

**2. Reduction of Number of Constituencies.**

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 than eight years but not more than twelve years.

**3. Appointment of the Cabinet Secretaries from among elected Members of Parliament.**

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.

**4. Allowing contestants to vie for more than one elective position concurrently**

This is contained in 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 among other things assess the impact of the implementation of the Constitution to the Nation's economy and in particular its public finances

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 in particular in relation to the proposal that the Constitution should be amended to provide that persons vying for the position of President and Deputy President should be allowed to vie for any other elective position concurrently. The Interim Report recommended that the proposal for allowing contestants to vie for more than one elective position concurrently 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 contest for the presidency and parliamentary seats and relinquish the parliamentary seat in case one wins the presidency. The Committee however observed that the Constitution strictly separates the Executive and the Legislature in order to enhance the principle of separation of powers.

**MIN.NO. 269/7/10/2016: ADJOURNMENT**

There being no other business the Committee adjourned at 2.30 pm

SIGN.....*CKB*.....

DATE ..25/10/2016

CHAIRPERSON.....*BALYA*.....



**MINUTES OF THE 65<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON SATURDAY, OCTOBER 8, 2016 AT SERENA LAKE ELEMENTAITA LOGDE AT 9.30 AM.**

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**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. Boniface O. Otsiula, MP
5. The (Dr.) Hon. Humphrey K. Njuguna, MP
6. The Hon. Rose Rwamba Mitaru, MP
7. The Hon. Sabina Chege, MP
8. The Hon. George Washington Omondi Mallan, MP
9. The Hon David Gikaria, MP
10. The Hon. Alice Muthoni Wahome, MP
11. The Hon. Peter N. Gitau, MP
12. The Hon. Aramat Lemanken, MP
13. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
14. The Hon. Samuel K. Chepkonga, MP
15. The Hon. Steven Kariuki, MP

**APOLOGY**

1. The Hon. Sakwa J. Bunyasi, MP
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. John Lodepe Nakara, MP
4. The Hon. Abdul Rahim Dawood, MP
5. The Hon. (Dr.) Dahir Duale Mohammed, MP
6. The Hon. Mary Wambui, M.P
7. The Hon. Ababu Namwamba EGH, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Bowen, David Kangogo, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon. James Lomenen, MP
12. The Hon. Manson Nyamweya, MP
13. The Hon Millie Odhiambo Mabona, MP

**In-Attendance**

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu
4. Ms. Catherine Mutuku

**National Assembly**

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III
- Intern (Research Department)

**MIN.NO. 270/8/10/2016: PRELIMINARIES**

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

**MIN.NO. 271/8/10/2016: CONSIDERATION OF A DRAFT REPORT ON THE PETITION BY MR. HUSSEIN RAGE**

With regard to the matters hereunder, the Committee made the following observations-

**1. Display of portraits of Presidents on notes and coins**

The Committee observed that the proposal is not tenable as with the two-term limit of the Presidents, there will be a high turnover of Presidents which would make the implementation of the proposal expensive and unsustainable.

**2. Definition of youth.**

The definition of persons who qualify to be defined as youth as enshrined in the Constitution is a universally acceptable definition embraced by various international bodies including the African Union.

**3. Abolition of the Position of a County Governor**

The Committee observed that the proposal is constitutionally untenable as it violates the key fundamental principles of the Constitution which are devolution and separation of powers.

**4. President and Leader of Official Opposition to attend Parliament**

On the proposal that the President, the official opposition leader and the Deputy official opposition leader be treated as dignitaries and they be allowed to attend parliamentary sittings, the Committee observed that the procedure for interaction of the President and other persons with Parliament is spelt in the National Assembly Standing Orders. As it is presently, only Members of Parliament are allowed to attend parliamentary sittings.

**5. Revision of Salaries for Elected Leaders**

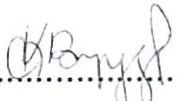
The Committee observed that this was the responsibility of the Salaries and Remuneration Commission to set and regularly review the remuneration and benefits of all State Officers and the proposal did not therefore require any amendment of the Constitution.

**6. Persons Vying for Presidency to Vie for Other Positions**

On the proposal to amend the Constitution to allow persons vying for the position of President and Deputy President to vie for any other elective position concurrently, the Committee observed that that the proposal would negate the principle of separation of powers which is enshrined in the Constitution.

**MIN.NO. 272/8/10/2016: ADJOURNMENT**

There being no other business the Committee adjourned at 11.00 pm to resume at 11.30am.

SIGN.....  ..... DATE ..... 25/10/2016 .....

CHAIRPERSON..... Hon. BAYA NSOROGI .....



**MINUTES OF THE 66<sup>TH</sup> SITTING OF THE CONSTITUTIONAL  
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON SATURDAY,  
OCTOBER 08, 2016 AT SERENA LAKE ELEMENTAITA LOGDE AT 11.30 AM.**

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**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. Boniface O. Otsiula, MP
5. The (Dr.) Hon. Humphrey K. Njuguna, MP
6. The Hon. Rose Rwamba Mitaru, MP
7. The Hon. Sabina Chege, MP
8. The Hon. George Washington Omondi Mallan, MP
9. The Hon David Gikaria, MP
10. The Hon. Alice Muthoni Wahome, MP
11. The Hon. Peter N. Gitau, MP
12. The Hon. Aramat Lemanken, MP
13. The Hon. Samuel K. Chepkonga, MP
14. The Hon. Steven Kariuki, MP
15. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP

**APOLOGY**

1. The Hon. Sakwa J. Bunyasi, MP
2. The Hon. Grace Jemutai Kiptui, MP
3. The Hon. John Lodepe Nakara, MP
4. The Hon. Abdul Rahim Dawood, MP
5. The Hon. (Dr.) Dahir Duale Mohammed, MP
6. The Hon. Mary Wambui, M.P
7. The Hon. Ababu Namwamba EGH, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Bowen, David Kangogo, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon. James Lomenen, MP
12. The Hon. Manson Nyamweya, MP
13. The Hon Millie Odhiambo Mabona, MP

**IN-ATTENDANCE**

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu
4. Ms. Catherine Mutuku

**NATIONAL ASSEMBLY**

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III
- Intern (Research department)

**MIN.NO. 273/8/10/2016: PRELIMINARIES**

The meeting was called to order at 11.30 am.

**MIN.NO. 274/8/10/2016: RECOMMENDATIONS OF THE REPORT ON THE  
PETITION BY MR. HUSSEIN RAGE**

The Committee recommended that the National Assembly that a copy of this Report be forwarded to the Petitioner in line with the provisions of the National Assembly Standing Order 228.

The Committee resolved to undertake a meeting on Tuesday, 11<sup>th</sup> October, 2016 to adopt the Report for tabling before the House.

**MIN.NO. 275/8/10/2016: ANY OTHER BUSINESS**

**(a) Visiting Delegation from the Republic of Zimbabwe**

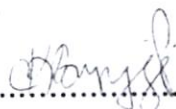
The attention of the Committee was drawn to the contents of a letter of Ref. No. MFA.ADM.1/27(19) from the Ministry of Foreign Affairs requesting them to co-host a government delegation from the Republic of Zimbabwe at a date to be confirmed. The Committee would co-host the delegation with the Office of the Attorney-General and Department of Justice and the Kenya Law Reform Commission. The Committee acceded to the request and tasked the Secretariat to follow up on the dates and apprise them accordingly.

**(b) Visit to the Kingdom of Belgium**

The Committee was informed that arrangements had been concluded for the study visit to the Kingdom of Belgium and the delegation would be leaving on the morning of Sunday, 9<sup>th</sup> October, 2016.

**MIN.NO. 276/8/10/2016: ADJOURNMENT**

The meeting was adjourned at 1.30 pm

SIGN.......... DATE ...25/10/2016.....

CHAIRPERSON.....Hon. HJOROGE BAIYA.....

**MINUTES OF THE 67<sup>TH</sup> SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, OCTOBER 25, 2016 AT 11<sup>TH</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 10.30 AM.**

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**PRESENT**

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Sabina Chege, MP
4. The Hon. Benson M. Kangara, MP
5. The Hon. Rose Rwamba Mitaru, MP
6. The Hon. Samuel K. Chepkonga, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Steven Kariuki, MP
9. The Hon. Mary Wambui, M.P
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. Boniface O. Otsiula, MP
12. The Hon. George Washington Omondi Mallan, MP
13. The Hon. Alice Muthoni Wahome, MP
14. The Hon. (Dr.) Dahir Duale Mohammed, MP
15. The Hon. Manson Nyamweya, MP

**APOLOGY**

1. The Hon. Ababu Namwamba EGH, MP
2. The Hon Millie Odhiambo Mabona, MP
3. The Hon. Aramat Lemanken, MP
4. The Hon David Gikaria, MP
5. The Hon. Peter N. Gitau, MP
6. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
7. The Hon. Sakwa J. Bunyasi, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. John Lodepe Nakara, MP
10. The Hon. Shakila Abdalla, MP
11. The Hon. Bowen, David Kangogo, MP
12. The Hon. Protus Akuja, M.P.
13. The Hon. James Lomenen, MP

**IN-ATTENDANCE**

1. Mr. John Mutega
2. Ms. Jemimah Waigwa
3. Mr. Nebert Ikai Lomechu

**NATIONAL ASSEMBLY**

- Principal Clerk Assistant II
- Legal Counsel II
- Clerk Assistant III



**MIN.NO. 277/25/10/2016: PRELIMINARIES**

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

**MIN.NO. 278/25/10/2016: ADOPTION OF MINUTES**

The Minutes of the 61<sup>st</sup> sitting of the Committee held on 6<sup>th</sup> September, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the chairperson after being proposed by Hon Moitalel ole Kenta, MP and seconded by Hon Rose Mitaru, MP.

The Minutes of the 62<sup>nd</sup> sitting of the Committee held on 27<sup>th</sup> September, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the chairperson after being proposed by Hon Benson Kang'ara, MP and seconded by Hon Moitalel ole Kenta, MP.

The Minutes of the 63<sup>rd</sup> sitting of the Committee held on 7<sup>th</sup> October, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the chairperson after being proposed by Hon Boniface Otsiula, MP and seconded by Hon Alice Wahome MP.

The Minutes of the 64<sup>th</sup> sitting of the Committee held on 7<sup>th</sup> October, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the chairperson after being proposed by Hon Samwel Chepkonga, MP and seconded by Hon Benson Kangara,MP.

The Minutes of the 65<sup>th</sup> sitting of the Committee held on 8<sup>th</sup> October, 2016 were confirmed as a true record of the proceedings of that meeting and signed by the chairperson after being proposed by Hon Moitalel Ole Kenta, MP and seconded by Hon Rose Mitaru, MP.

The Minutes of the 66<sup>th</sup> sitting of the Committee held on 8<sup>th</sup> October, 2016 were confirmed as a true record of the proceedings of that meeting and signed by the chairperson after being proposed by Hon Benson Kangara, MP and seconded by Hon Rose Mitaru MP.

**MIN.NO. 278/25/10/2016: ADOPTION OF THE REPORT ON PETION BY MR. RAGE HUSEIN ON INTRODUCTION TO NATIONAL ASSEMBLY OF ABILL TO AMMEND THE CONSTITUTION**

Members of the Committee present (see attached appendix II) reviewed the contents of the Report and unanimously approved the same for tabling before the House on Thursday, 27<sup>th</sup> October, 2016.

**MIN.NO. 279/25/10/2016: ADJOURNMENT**

There being no any other business the meeting was adjourned at 12.30 pm

**SIGN..... DATE .....**

**CHAIRPERSON.....**

# APPENDIX II

LIST OF MEMBERS WHO  
ADOPTED THE REPORT





PARLIAMENT OF KENYA  
NATIONAL ASSEMBLY  
FOURTH SESSION (2016)

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

DATE... 25/10/2016 ..... ATTENDANCE/PAYMENT SCHEDULE ..... VENUE... 11th Floor ..... Constitution

The Principal Accounts Controller  
Kenya National Assembly

Please pay the following Members of the Committee their allowances for the aforementioned sitting.

AGENDA - <sup>Huss</sup>ADOPTION OF THE REPORT ON PETITION BY HUSSEIN RAGE

NAME	SIGNATURE
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. Grace Jemutai Kiptui, MP	
5. The Hon. Benson Mutura Kangara, MP	
6. The Hon. Sakwa J. Bunyasi, MP	
7. The Hon. Samuel K. Chepkonga, MP	
8. The Hon. Boniface O. Otsiula, MP	
9. The Hon. Abdul Rahim Dawood, MP	
10. The Hon. David Gikaria, MP	
11. The Hon. Humphrey Kimani Njuguna, MP	
12. The Hon. Protus Akujah, MP	
13. The Hon. Alice Muthoni Wahome, MP	
14. The Hon. Peter N. Gitau, MP	
15. The Hon. Rose Rwamba Mitaru, MP	
16. The Hon. John Lodepe Nakara, MP	
17. The Hon. Aramat, Lemanken, MP	
18. The Hon. Sabina Chege, MP	
19. The Hon. Manson Nyamweya, MP	
20. The Hon. Mahamud, M. Maalim, MP	
21. The Hon. (Dr.) Dahir Duale Mohammed, MP	
22. The Hon. Bowen, David Kangogo, MP	
23. The Hon. Shakila Abdallah, MP	
24. The Hon. James Lomenen, MP	
25. The Hon. Mary Wambui, M. P.	
26. The Hon. Steven Kariuki, MP	
27. The Hon. Millie Odhiambo Mabona, MP	
28. The Hon. George Washington Omondi Mallan, MP	

John Mutega  
FOR: CLERK OF THE NATIONAL ASSEMBLY

# APPENDIX III

PETITION BY

MR. HUSSEIN  
ISMAEL RAGE



REPUBLIC OF KENYA  
ELEVENTH PARLIAMENT  
(FOURTH SESSION)  
THE NATIONAL ASSEMBLY

PETITIONS

(No. 21 of 2016)

CONVEYANCE OF A PETITION ON THE REVIEW OF THE  
CONSTITUTION

Honourable Members,

Pursuant to Standing Order 225 (2) (b), I wish to convey to the House that my office is in receipt of a Petition signed by one Mr. Rage Ismael Hussein a resident of Eldoret Town Constituency, Uasin Gishu County. In accordance with Article 256 (1) of the Constitution, the Petitioner is praying for the introduction in the National Assembly, of a Bill to amend the Constitution.

Honourable Members,

The Petitioner is proposing alteration of several Articles of the Constitution and legislation amongst them Article 27 (8), 97, 99, 131 and 260 with regard to definition of a youth, gender representation in elective positions, constitution of the National Assembly, the minimum qualifications for elective positions, public holidays and the currency. He is also seeks amendments to various pieces of legislation.

Honourable Members,

The Petitioner recommends the following amendments to the Constitution and the relevant legislations:

- (i) Article 9 of the Constitution to declare 10<sup>th</sup> October as a National Day which will be referred to as Katiba Day;
- (ii) Article 27(8) of the Constitution on Gender, to provide that the two-thirds rule only applies to appointive positions and not elective/competitive positions.



- (iii) Article 97 of the Constitution on the membership of the National Assembly to reduce the number of constituencies and abolish the positions for Women Representatives;
- (iv) Article 99 and the Political Parties Bill be amended to provide for no restriction on age limit to the elective positions; the minimum qualifications to be at least Kenya Certificate of Primary Education (KCPE);
- (v) Article 131 to provide that the President be above the law of the country and enact legislative to allow Presidency and/or Deputy Presidency to vie for other elective seat as Member of Parliament and once elected as president or vice president, the state officer relinquish the seat;
- (vi) Article 260 of the Constitution be amended under the item on Youth to define the maximum age limit for youth as 45 years; and
- (vii) Notes and Coins issued by Central Bank of Kenya (CBK) to bear the portrait of the First President of Kenya, H.E. the Late Mzee Jomo Kenyatta.

Honourable Members,

You may wish to note that some of the prayers, among them the reduction of the number of constituency and images on the Kenyan Currency, were sought by other petitioners. This Petition therefore stands committed to the Constitution Implementation Oversight Committee for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and the House in accordance with Standing Order 227 (2). The Committee should also undertake to hear the Petitioner.

I, Thank you!



**THE HON. (DR.) JOYCE LABOSO, MGH, MP**  
**DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY**

Wednesday, 24<sup>th</sup> August, 2016

0770 640 154

20/7/2016

KAGE' ISMAIL HUSSEIN

PO BOX 6656 - 30100

ELDORET

14<sup>TH</sup> JULY 2016

0729-811 498

HON: MUTURI JUSTINE  
SPEAKER OF THE KENYA  
NATIONAL ASSEMBLY  
PO BOX 41842-00100  
NAIROBI

Legal Section  
J. M. M. M. M.  
26/7/16

Dear Honorable Sir,

RE: CONSTITUTION REVIEW

I am a Kenyan Citizen aged 36 years. I reside in Uasin-Gishu County. I am writing to humbly, kindly and more sincerely request the Members of the National Assembly of Kenya to review the following items in our Constitution;

1. YOUTH AGE;

It's my prayer that youth age be extended from 18-35 years to 18-45 years

2. GENDER;

It's my prayer that; not more than  $\frac{2}{3}$  of appointments to be of the same gender, but not in elective/competitive positions or offices.

3. ELECTIVE POSITIONS;

i) It's my prayer that there be no age limit and atleast basic education (STB 3) for elective positions. — We study for 3 years in ECD then



8 years in Primary to get KCPE Certificate and it will be too bad for us to say STD 8 (KCPE Certificate cannot be recognised! Does it then mean there's no need to go to Primary?

ii) Number of Constituencies and wards to be reduced to the original number during independence. Women representatives to be abolished and this will be automatic because of my Second Prayer; (COWDER).

Minister's to be appointed from MPs as it used to be.

Effective positions Salaries to be reduced.

iii) PRESIDENCY; the President to be above the law of the country.

b) Those seeking Presidency and/or Deputy Presidency to also vie for MP or Senatorial Position. Once elec as President and/or Deputy President the Senatorial or MP seat that he/she had vied for becomes vacant. The second person with highest vote automatically becomes official opposition leader and the runner mate becomes Deputy official opposition leader and also the seat(s) - Senatorial and/or MP they had vied for becomes vacant.

The President, the Deputy President, the official opposition leader and the Deputy official opposition leader will all be treated as dignitaries and they shall be free to attend any sittings in Parliament or Senate.

The Governor position be abolished and there shall be county chairpersons among the rich who will assist the county commissioner run the county.



This is so to reduce duplication of designs.

#### 4. NATIONAL DAYS / HOLIDAYS:

10<sup>th</sup> October to be a national day - KATIBA DAY.

#### 5. CURRENCIES:

Notes and coins issued by CBK may bear images that depict or symbolize Kenya or an aspect of Kenya and should/shall also bear the portrait of the first president of Kenya; H.E. Mzee Jomo Kenyatta apart from;

i) Twenty Shillings coin which shall bear the portrait of the second president of Kenya; H.E. Daniel Toroitich Arap Moi.

ii) Forty Shillings coin which shall bear the portrait of the third president of Kenya; H.E. Mwai Kibaki.

iii) Fifty Shillings coin which shall bear the portrait of the fourth president of Kenya H.E. Uhuru Kenyatta and

iv) any other coin(s) in future eg a) Sh 60 coin b) Sh 80 coin c) Sh 100 coin d) Sh 120 coin e) Sh 140 coin f) Sh 150 coin g) Sh 160 coin h) Sh 180 coin i) Sh 200 coin j) Sh 220 coin k) Sh 140 coin l) Sh 250 coin e.t.c. which shall bear the portrait of the then president(s) and symbolize the years of Independence.

Hon: Sir, Thank you so very much in Advance I face forward for your replies. Hoping and praying hard that my request(s) will be considered.

Yours faithfully,

~~Wanjau Mwangi~~  
Wanjau Mwangi

EAOA

