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NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT – SECOND SESSION, 2014

REPORT OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE
IN RESPECT OF LEGISLATION WITH CONSTITUTIONAL TIMELINES

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2014

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ACKNOWLEDGEMENTS

I wish to appreciate the efforts by members of the Committee in the preparation of this report.

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

It is my pleasant duty and privilege, on behalf of the Constitutional Implementation Oversight Committee, to present this report to the National Assembly pursuant to Standing Order 199.

Signed.....

Date: 13/08/2014.....

HON. NJOROGE BAIYA, MP

CHAIRPERSON,

1.0 INTRODUCTION

1.1 Committee Mandate

The mandate of the select committee is derived from the Constitution of Kenya, 2010. The Sixth Schedule (Article 262 - Transitional and Consequential Provisions) provides for a Parliamentary Select Committee to be known as the Constitutional Implementation Oversight Committee (CIOOC) responsible for overseeing the implementation of the Constitution and which, among other things—

- a) shall receive regular reports from the Commission on the Implementation of the Constitution on the implementation of the Constitution of Kenya, 2010. These includes reports concerning—
 - (i) the preparation of the legislation required by the Constitution and any challenges in that regard;
 - (ii) the process of establishing the new commissions;
 - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of the sixth Schedule; and
 - (v) any impediments to the process of implementing this Constitution;
- b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and
- c) take appropriate action on the reports including addressing any problems in the implementation of the Constitution.

1.2 Committee Membership

The Constitutional Implementation Oversight Committee comprises of the following Members:-

- | | | | |
|----|------------------------------------|---|-------------------------|
| 1. | The Hon. Njoroge Baiya, MP | - | Chairperson |
| 2. | The Hon. Moitalel Ole Kenta, MP | - | Vice Chairperson |
| 3. | The Hon. Benson Mutura Kangara, MP | | |

4. The Hon. Joe M. Mutambu, MP
5. The Hon. Sakwa J. Bunyasi, MP
6. The Hon. Humphrey Kimani Njuguna, MP
7. The Hon. Aramat, Lemanken, MP
8. The Hon. Abdul Rahim Dawood, MP
9. The Hon. (Dr.) David Eseli Simiyu, MP
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. Omulele Christopher, MP
12. The Hon Stephen Mule, MP
13. The Hon. Samuel K. Chepkonga, MP
14. The Hon. Shakila Mohammed, MP
15. The Hon. Boniface O. Otsiula, MP
16. The Hon. Arama Samuel, MP
17. The Hon. David Gikaria, MP
18. The Hon. Protus Akujah, MP
19. The Hon. Alice Muthoni Wahome, MP
20. The Hon. Peter N. Gitau, MP
21. The Hon. Rose Rwamba Mitaru, MP
22. The Hon. John Lodepe Nakara, MP
23. The Hon. Sabina Chege, MP
24. The Hon. Enoch Kibunguchy, MP
25. The Hon. Manson Nyamweya, MP
26. The Hon. Mahamud, M. Maalim, MP
27. The Hon. (Dr.) Dahil Duale Mohammed, MP
28. The Hon. Bowen, David Kangogo,

2.0 LEGAL PROVISIONS ON LEGISLATION WITH CONSTITUTIONAL TIMELINES

The Constitution of Kenya, 2010 in Article 261 (1) provides that Parliament shall enact legislation required by the Constitution to be enacted to govern a particular matter within the period specified in the Fifth Schedule, commencing on the effective date.

Article 261 (2), however, gives the National Assembly power to extend the period prescribed in respect of any particular matter covered under the Fifth Schedule by a period not exceeding one year.

Article 261 (3) provides that the power of the National Assembly in respect of extension of timelines may be exercised only once in respect of any particular matter and only in exceptional circumstances to be certified by the Speaker of the National Assembly.

Article 261 (4) vests the responsibility for preparation of requisite Bills, for tabling before Parliament, in the Attorney-General in consultation with the Commission for Implementation of the Constitution

Article 261 (5) provides for the consequences of Parliament's failure to enact any particular legislation within the specified time, any person may petition the High Court on the matter which can finally lead to dissolution of Parliament - Article 261 (7).

3.0 LEGISLATION WITH A CONSTITUTIONAL DEADLINE OF 27TH AUGUST 2014

The Committee observed that the following legislation have a constitutional deadline of 27th August, 2014 as stipulated in Schedule Five of the Constitution of Kenya, 2010.

1. Consumer Protection (Article 46)
2. Fair Administrative Action (Article 47)
3. Fair Hearing (Article 50)
4. Rights of Persons Detained, Held in Custody or Detained (Article 51)
5. Legislation Regarding Environment (Article 72)
6. Accounts and Audit of Public Entities (Article 226)
7. Procurement of Public Goods and Services (Article 227)
8. Values and Principles of Public Service (Article 232)

4.0 STATUS OF PREPARATION OF THE LEGISLATION

The Committee established, through consultations with the Office of the Attorney-General and the Commission for Implementation of the Constitution, that the said legislation are at varied stages preparation:

1. Consumer Protection (required by Article 46)

The Committee noted that legislation on consumer protection is already implemented through the Consumer Protection Act that was enacted in 2012.

2. Fair Administrative Action (required by Article 47)

The legislation concerning Fair Administrative Action was partly implemented through the Commission on Administrative Justice Act (No.23 of 2011), which established the already functional Commission of Administration of Justice. However, a legislation to comprehensively cover the subject of fair administrative action is yet to be put in place.

3. Fair Hearing (required by Article 50).

The legislative obligation on the subject of fair hearing is contained in Article 50(9) which provides that Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences. A private Member's Bill (The Victim Protection Bill, 2013) whose Second Reading concluded on 22nd July, 2014 and is due for Committee Stage fulfils this requirement.

4. Rights of Persons Detained or Held in Custody (required by Article 51)

The Persons Deprived of Liberty Bill, 2014 had been prepared by the Ministry of Interior and Coordination of National Government. The Bill was deliberated on at the Cabinet level on 10th July, 2014.

The Bill is one of the Bills recently published and awaiting for the lapse of 14 days, as provided for in Standing Order 120, before it is introduced for First Reading.

The Bill was part of the subject of a motion, rejected by the House, which sought to reduce the period of First Reading from date of publication from 14 to 5 Days.

5. Legislation Regarding Environment (required by Article 72)

The Environmental Management and Coordination Act only requires amendments to comply with Article 72 of Constitution of Kenya, 2010.

The amendment of the Bill had been processed in time but the National Environmental Management Authority (NEMA) had issues of concern with the amended version of the Bill which were resolved by 11th July, 2014.

The Environmental Management and Coordination (Amendment) Bill, 2014 had already been dispatched from the Cabinet and was one of the Bills recently published and awaiting for the lapse of 14 days, as provided for in Standing Order 120, before it is introduced for First Reading.

Similarly, the Bill was part of the subject of a motion rejected by the House, which sought to reduce the period of First Reading from date of publication from 14 to 5 Days.

6. Accounts and Audit of Public Entities (required by Article 226)

The National Treasury finished preparing the Draft Public, 2014 on 10th July, 2014 which is now undergoing processing through other stakeholders including CiC and the Cabinet, before it can be submitted to the National Assembly for formal publication.

7. Procurement of Public Goods and Services (required by Article 227)

The Bill to cater for this legislative requirement (The Public Procurement and Asset Disposal Bill, 2014) had a high number of stakeholders that had be involved in its processing. The National Treasury engaged in extensive consultations and realized that the Bill was controversial. Nevertheless, the National Treasury prepared its version of the Bill and presented it to the Attorney-General by 10th July, 2014. The Bill is now undergoing Processing through other stakeholders including CiC and the Cabinet, before it can be presented to the National Assembly for formal publication.

The Bill being contentious implies that the National Assembly would also take a while to scrutinize it apart from subjecting it to the constitutional requirement of public participation.

Equally, it was observed that because the Bill affects county governments as well as the national government, the senate would also be required to consider the Bill.

This process, it was observed, would require an extension of the set timeline of 27th August, 2014 to avoid passage of a sub standard legislation.

8. Values and Principles of Public Service (required by Article 232)

A Bill on the subject had been prepared and was released by the Ministry of Devolution and Planning to the Attorney-General on 23rd of June, 2013. The Bill has since gone through deliberations in the Cabinet and had been dispatched to the National Assembly where it is one of the three Bills recently published and awaiting for the lapse of 14 days, as provided for in Standing Order 120, before it is introduced for First Reading.

5.0 RECOMMENDATION

Having considered:

- a) the abovementioned status of preparation and processing of the various legislative proposals,
- b) the legal consequences of failure to enact the requisite legislations in the stipulated time - Article 261 (7),

- c) the constitutional power granted to the National Assembly to extend the timelines as espoused in Article 261 (2) and
- d) having consulted the offices tasked by the Constitution to prepare the legislative proposals – the Office of the Attorney-General and the Commission for the Implementation of the Constitution - Article 261 (4),
- e) the lengthened procedure of enactment of legislation involving the Senate which will require time and effort to create consensus and may end up in a mediation process,

The Constitutional Implementation Oversight Committee recommends that the National Assembly grants an extension of time for enactment of all the legislations that have a Constitutional deadline of 27th August, 2014 by nine months from 27th August, 2014.

MINUTES OF THE SIXTEENTH SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY
AUGUST 12TH, 2014 AT MEDIA CENTRE MAIN PARLIAMENT BUILDING.

PRESENT

The Hon. Njoroge Baiya, MP -Chairperson
The Hon. Moitalel Ole Kenta, MP -Vice Chairperson
The Hon. Benson Mutura Kangara, MP
The Hon. Aramat, Lemanken, MP
The Hon. Abdul Rahim Dawood, MP
The Hon. (Dr.) David Eseli Simiyu, MP
The Hon. Omulele Christopher, MP
The Hon. Humphrey Kimani Njuguna, MP
The Hon. Alice Muthoni Wahome, MP
The Hon. Protus Akuja, M.P.
The Hon. Peter N. Gitau, MP
The Hon. Rose Rwamba Mitaru, MP
The Hon. Grace Jemutai Kiptui, MP
The Hon. Samuel K. Chepkonga, MP
The Hon. Mary Wambui, M.P

ABSENT WITH APOLOGY

The Hon. Arama Samuel, MP
The Hon. David Gikaria, MP
The Hon. (Dr.) Dahil Duale Mohammed, MP
The Hon. Mahamud, M. Maalim, MP
The Hon. Joel M. Mutambu, MP
The Hon. Enoch Kibunguchy, MP
The Hon. Sabina Chege, MP
The Hon. Shakila Abdalla, MP
The Hon. John Lodepe Nakara, MP
The Hon. Bowen, David Kangogo, MP
The Hon. Enoch Kibunguchy, MP
The Hon. Manson Nyamweya, MP
The Hon. Boniface O. Otsiula, MP
The Hon. John Bunyasi, M.P

IN ATTENDANCE

Mr. Adan .S. Gindicha- Clerk Assistant 1

Mr. Dennis Mogere Ogachi- Clerk Assistant 111

MINUTE NO.68/2014: PRELIMINARIES

The chairperson called the meeting to order at 12.30pm. The meeting started with a word of prayer.

MINUTE NO. 69/2014: CONSIDERATION OF THE REPORT OF THE COMMITTEE REPORT IN RESPECT OF LEGISLATION WITH CONSTITUTIONAL TIMELINE

The Committee considered the report and made the following observations.

- The legal backing for action on legislation with constitutional timelines is derived from Article 261 of the Constitution with Article 261(2) specifically vesting in the National Assembly power to extend the period in respect of any matter covered under the Fifth schedule by a period not exceeding one year.
- That these legislations are important in supporting the implementation of the Constitution of Kenya 2010 and that even in instances where other Legislations were in place before this, Then they need to be realigned with the new Constitutional dispensation.
- That the legislation on Accounts and Audit of Public Entities (as required by Article 226) and Procurement of Public Goods and Services (as required by Article 227) currently with the Treasury are still in draft form and hence need fast tracking.
- The status of The persons Deprived of Liberty Bills (2014) prepared by the Ministry of Interior and National Co-ordination awaiting First Reading in accordance with Standing order 120 be established.

MINUTE NO.70/2014: RESOLUTIONS

The Committee made the following resolutions.

- I. That the report be adopted and tabled before the House on Wednesday 13th August 2014.
- II. That the Committee seeks an extension of nine (9) months for all the Bills on Legislation with Constitutional timelines.
- III. That in regard to Legislation on Accounts and Audit and Procurement of Public Goods and Services currently with the National Treasury, The Committee will act on drafts in order to fast track the process.
- IV. That noting the constitutional requirements of 2/3 majority to effect the extension, The Committee will seek consensus and support across the political divide.
- V. That the Committee takes up the 2/3 gender rule on elective positions (Article 81 b) as a substantive agenda and liaises with all relevant agencies to explore the options available to chart the way forward.

MINUTE NO.71/2014: DATE FOR THE NEXT SITTING

It was resolved that the next sitting of the Committee will be held on notice.

MINUTE NO.72/2014: ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at Forty Seven Minutes past two O'clock.

Signed.......... Chairperson

Date.13/08/2014.