

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC)



REPORT OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE (CIOC) ON OVERSIGHT OVER THE IMPLEMENTATION OF
DEVOLUTION UPTO 2016

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

FEBRUARY, 2017

PAPER
By the champion
Hon CIOC, for
Hon Justice Bena
on Tuesday
21.2.2017
[Signature]

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ABBREVIATIONS

CIOC	Constitutional Implementation Oversight Committee
JLAC	Justice and Legal Affairs Committee
IGRTC	Inter Governmental Relations Technical Committee
IGR	Inter Governmental Relations
CoG	Council of Governors
CIC	Commission on the Implementation of the Constitution
AG	Attorney-General
KLRC	Kenya Law Reform Commission
MGDAs	Ministries, Government Departments and Agencies
TA	Transition Authority
IGRA	Inter-Governmental Relations Act, 2012
HRM	Human Resource Management

FOREWORD BY THE CHAIRMAN

Honourable Speaker,

The Constitutional Implementation Oversight Committee (CIOC) is a Select Committee of the National Assembly of Kenya established under section 4 of the Sixth Schedule of the Constitution. The Committee is responsible for overseeing the implementation of the Constitution including receiving from relevant institutions regular reports on the implementation of the Constitution, and considering impediments to the process of the constitutional implementation.

Hon. Speaker

During a consultative workshop held from 13th to 15th November, 2016 at Swahili Beach Hotel, Ukunda, Kwale County between the CIOC, the Departmental Committee on Justice and Legal Affairs and the IGRTC deliberated on the following issues: the status of implementation of devolution and intergovernmental relations; the limitations in the policy and existing legal framework on devolution and legislation that affect the effective implementation of devolution and intergovernmental relations; and challenges impeding effective implementation of devolution and intergovernmental relations were deliberated upon.

The Constitutional Implementation Oversight Committee had since then, held several meetings to review the contents of the Kwale Consultative meeting. Following these deliberations the Committee did find that-

- (a) there are weaknesses in the current institutional and legal framework that are hampering effective implementation of devolution.
- (b) the National Assembly has a duty to oversight devolution at the national level and ensure that the various national government institutions and the county governments inter-relate in a harmonious manner.
- (c) the mandate of the Constitutional Implementation Oversight Committee is transitional in nature.
- (d) to support devolution at the national level, the National Assembly establishes a permanent Select Committee on Devolution that is entrenched in the National Assembly's Standing Orders.

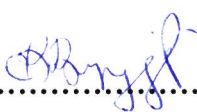
The Committee therefore recommends to the House that-

- (a) A Select Committee on Devolution be established in the National Assembly through the Standing Orders to oversight devolution at the national level, to review policies and legislation on devolution with the aim of safeguarding devolution.
- (b) The proposed Committee be mandated to review gaps in policy and in the existing legislative framework on devolution and inter-governmental relations.
- (c) The proposed Committee be mandated to provide oversight over the national government institutions implementing devolution and also take over the residual functions of the Constitutional Implementation Oversight Committee upon its winding up.
- (d) The oversight functions on devolution vested in the Departmental Committee on Finance, Planning and Trade be moved to the proposed Committee on Devolution.

It is the view of the CIOC that, by establishing such a Committee on Devolution, the National Assembly will provide oversight and support to the national government institutions that implement devolution.

The Committee acknowledges the support of the Offices of the Speaker of the National Assembly and of the Clerk in facilitating the Committee to execute its mandates.

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

Signed 

**THE HON. NJOROGE BAIYA, MP,
CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**

Date: 20/02/2017

To be

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. The Committee also used to get reports from the Commission on the Implementation of the Constitution (CIC) on the preparation of legislation required by the Constitution and on any impediments to the process of implementing the Constitution.

In discharging this 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

Chairperson	Hon. Njoroge Baiya, MP,
Vice Chairperson	Hon. Moitalel Ole Kenta, MP
	Hon. Samuel Kiprono Chepkonga, MP
	Hon. Sabina Wanjiru Chege, MP
	Hon. Manson Nyamweya, MP
	Hon. Benson Mutura Kang'ara, 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 Njuguna Gitau, MP
	Hon. (Dr.) Humphrey Kimani 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

COMMITTEE SECRETARIAT

Mr. John Mutega	Principal Clerk Assistant II
Ms. Mugure Gituto	Legal Counsel II
Mr. Nebert Ikai Lomechu	Clerk Assistant III
Mr. Donald Manyala	Research Officer III

1. Introduction

The Constitutional Implementation Oversight Committee (CIOC) is a Select Committee of the National Assembly of Kenya established under section 4 of the Sixth Schedule of the Constitution and mandated to oversee the implementation of the Constitution and consider impediments if any to the process of the constitutional implementation. CIOC is obligated to consider regular reports on the implementation of the Constitution, from all relevant bodies including the Intergovernmental Relations Technical Committee (hereinafter referred to as the IGRTC).

2. Background

In November, 2016 the Committee held a consultative meeting, at Swahili Beach Hotel, Ukunda, Kwale County, with the Departmental Committee on Justice and Legal Affairs and the IGRTC. The meeting deliberated on: the status of implementation of devolution and intergovernmental relations; the limitations in the policy and existing legal framework on devolution and legislation that affect the effective implementation of devolution and intergovernmental relations; and challenges impeding effective implementation of devolution and intergovernmental relations.

The Constitutional Oversight Implementation Committee (CIOC) and the Justice and Legal Affairs (JLA) Committees of the National Assembly were invited by the Intergovernmental Relations Technical Committee (IGRTC) to deliberate on progress in the implementation of devolution with a focus on intergovernmental relations, its operations to date, challenges and achievements. The consultations sought to appraise the legislature on the progress, process and challenges of intergovernmental relations within the existing legal framework and to enlist the support of the National Assembly in resolving issues that hamper effective implementation of devolution and intergovernmental relations.

The specific purpose of the meeting was:

- a. To appraise the National Assembly's Constitutional Implementation Oversight Committee (CIOC) and the Departmental Committee on Justice and Legal Affairs (JLAC), on the status of implementation of devolution and intergovernmental relations.
- b. To analyze the limitations in the policy and existing legal framework on devolution and how they affect the effective implementation of devolution and intergovernmental relations.
- c. To discuss and appreciate the resource constraints and its implications on devolution and intergovernmental relations.

3. Objectives of the Consultative Meeting

During the retreat the Committee was guided by the following objectives:

- a. To appraise Members on progress of implementation of devolution and to highlight issues arising therefrom;
- b. To discuss the challenges to effective intergovernmental relations and how this impedes the success of devolution; and
- c. To establish a foundation for proper management of intergovernmental relations and make recommendations to the House on the findings of the Committee.

4. Summary of Deliberations of the Consultative Meeting

The consultative meeting reviewed the transition process from the defunct Transition Authority to the Inter-Governmental Relations Technical Committee with regard to the devolution process. The meeting deliberated on the challenges and achievements of the IGRTC as well as the overlapping mandates of the two levels of government, competition for resources as well as the gaps in policy, legislative and regulatory framework.

5. Functions, Achievements, Challenges by the Intergovernmental Relations Technical Committee

The IGRTC is charged with the functions of administering the day to day functions of the Summit and the Council of Governors (CoG), implementing the resolutions of the Summit and performing the residual functions of the defunct TA.

With regard to achievements made by the IGRTC, the following has been realized-

- (a) IGRTC has convened and managed two Summit and CoG meetings. The Technical Committee has also convened two meetings of the forty-seven (47) County Secretaries

in fulfillment of the provisions of section 12 (c) of the Intergovernmental Relations Act 2012.

(b) IGRTC has implemented three critical summit agenda items through *ad hoc* committees established to-

- (i) streamline use of e-procurement by county governments and recommended extension of manual procurement;
- (ii) develop mechanisms for the quick disbursement of grants from the National Government and Development partners to counties; and
- (iii) convene meetings on Agriculture Levy and Licenses with key stakeholders to resolve outstanding issues on disbursement.

(c) IGRTC has commissioned a study to establish the cost of litigation and would be making recommendations on how to embrace Alternative Dispute Resolution (ADR) in intergovernmental relations.

(d) IGRTC has helped resolve intergovernmental relations disputes that include but not limited to-

- (i) Dispute over office block between West Pokot County Government and County Commissioner.
- (ii) Dispute over land ownership between the County Government of Tharaka Nithi and the Prisons Department.
- (iii) Privatization of Public Sugar companies between the affected County Governments and the National government.
- (iv) Dispute over Meat Inspection for Export between Nairobi City County and Ministry of Agriculture, Livestock and Fisheries.
- (v) Dispute between Agriculture Food Authority (AFA) and County governments over the withholding of tea and coffee cess funds by AFA.
- (vi) Dispute between the Ministry of Lands and Physical Planning and Kirinyaga and Embu County Governments over Mwea Settlement Scheme.

- (e) IGRTC has finalized the process of verification, audit and transfer of the assets and liabilities of the defunct Local Authorities being one of the residual functions of the defunct Transitional Authority (TA).
- (f) IGRTC has established the institutional framework for transfer and verification of assets and liabilities of the defunct Local Authorities.
- (g) the Technical Committee has commissioned a study on the status of public participation in both the national and county governments.

The IGRTC has faced several challenges that include-

- (a) Inadequate human resource capacity;
- (b) Lack of sufficient funds;
- (c) Lack of regulations to operationalize the Act;
- (d) Inadequate civic education to the members of the public ;
- (e) Limited appreciation of the concept and practice of intergovernmental relations;
- (f) Inadequate capacity in developing legislation; and,
- (g) Numerous litigation cases between various governments and institutions

6. Emerging Issues in Intergovernmental Relations

6.1. Devolution Policies and Legislations

The Kenyan devolution is founded upon the theory and concept of two or more levels of government that combine elements of 'self-rule' with 'shared rule'. The two levels of government derive sovereign powers from the Constitution rather than from another level of government and the distinct nature of the levels of government connotes a measure of relative autonomy on the part of each level. Inherent in the nature of the system is a natural 'tension' between the relative autonomy of a particular level of government. The object of intergovernmental relations is to manage this tension to ensure coherent government that delivers services to the nation.

With regard to the devolution policies and legislation, Members observed that policies and legislations were respectively formulated and enacted to establish institutions to manage and facilitate devolution. However, to fully implement those legislations, relevant regulations

ought to have been developed to operationalize these institutions. Members observed that, these regulations were key to the full facilitation and implementation of devolution in Kenya.

The meeting therefore recommended that, to successfully enhance the implementation of devolution, policy and legislative interventions were required in key priority areas including intergovernmental relations, public service reform and human resource management, management of natural resources, public participation and implementation of the national devolution policy.

The meeting also observed that, there are emerging policy issues that were hampering effective implementation of devolution and intergovernmental relations. The issues highlighted are-

- (a) Conflicts in terms of interpretation of concurrent functions;
- (b) Low levels of awareness of the devolved system of governance in both the public sector and the general public;
- (c) Weak or inadequate financial and performance management systems in counties;
- (d) Inadequate capacity for planning, implementation, monitoring and evaluation both at national and county level;
- (e) Inadequate and delayed release of resources leading to a disproportionate reform pace, inefficiencies and ineffectiveness in service delivery;
- (f) Weak inter and intra-agency or sectoral collaboration and coordination;
- (g) Weak monitoring and evaluation critical to track performance and inform programming;
- (h) Challenges in human resource and management at both levels of governments; and
- (i) Competition for resources and influence between counties, and counties and national government, leading to high demand for resources.

6.2. Areas for Legislative Reforms on Inter-Governmental Relations

The Constitution establishes two levels of government that are distinct and inter-dependent, it provides that intergovernmental relations shall be cooperative as opposed to competitive by providing that mutual relations shall be on the basis of cooperation and consultation (Article 6(2)). Further the Constitution establishes a bicameral Parliament, comprising the National Assembly and the Senate and advisory institutions which play a major role in intergovernmental relations including the Commission on Revenue Allocation, the defunct

Commission for the Implementation of the Constitution, Salaries and Remuneration Commission, and to some extent the Public Service Commission.

The Constitution empowers Parliament to establish additional IGR framework through national legislation. These include;

- (i) The Intergovernmental Relations Act which establishes-
 - The National and County Government Co-ordination Summit
 - The Council of Governors
 - The Intergovernmental Relations Technical Committee
 - Sectoral Forums
- (ii) The Public Finance Management Act which establishes the Intergovernmental Budget and Economic Council;
- (iii) The Transition to Devolved Government Act established the defunct Transition Authority; and
- (iv) The County Government Act which establishes the County Intergovernmental Forum.

The IGRTC has the responsibility to facilitate the other structures in discharging their intergovernmental relations responsibilities. The following were identified as possible areas for legislative reform:

- (a) Composition and neutrality of IGRTC;
- (b) Assignment of powers of the IGRTC; and,
- (c) Provision of adequate funding and resources.

6.3. Parameters for a Successful Transition to Devolved System of Governance

During the meeting, the following key parameters were highlighted as the pointers to successful transition to devolved governance-

- a) Provision of adequate funding to the devolved units.
- b) Giving sufficient political, policy and legal support to devolved governance.
- c) Creating adequate capacity for the effective and accountable use of public resources by counties through technical assistance and training.

- d) Effective management of intergovernmental relations.
- e) Ensuring actual service delivery to the public as opposed to mere expenditure of public funds.
- f) Promoting sound integrated planning at both levels of government.
- g) Re-engineering of the service delivery system by the public service.
- h) Putting in place systems/infrastructure for service delivery-roads, electricity, water, ICT, schools, hospitals etc.
- i) Enhancing public awareness and participation in governance.
- j) Promoting human rights and liberties and democracy by both levels of government.

6.4. Status of Transfer and Audit of Assets and Liabilities of the Defunct Local Authorities

Members were apprised on the status of transfer and audit of assets and liabilities of the defunct local authorities as follows:

- (i) The Transition Authority (TA) had already undertaken a survey and in every county of the assets, and liabilities with an ascertainable register before the general elections of March 2013.
- (ii) County Governments were currently utilizing assets within their counties though these have not been officially handed over to them as required by Transition to Devolved Government Act 2012.
- (iii) There is no legal framework in place on how the property should transit. IGRTC is working on a modality of transferring the properties to the counties so that there are no losses of assets.
- (iv) Having reviewed some TA reports, IGRTC recommends that a comprehensive assets and liabilities registers be developed to identify, list, verify, validate, value and audit all the assets and liabilities of the defunct local authorities including the use of forensic audit by the relevant experts.
- (v) There has since been the establishment of an inclusive County Assets and Liabilities Management Committee on transfer and verification of assets and liabilities of the defunct local authorities. A negotiated framework, being a Ministerial forum has been formulated.

- (vi) A national steering committee shall be established to manage the issues of assets and liabilities and a county audit committee shall be established to mitigate against further losses of assets and liabilities.

CIOC undertook to review the existing legislation with a view to enhancing and strengthening the IGRTC. IGRTC was tasked to furnish the CIOC with their proposals on the same.

7. Observations Made by the Committee from the Consultative Meeting

During a meeting of CIOC held on Tuesday, 7th February, 2017, the Committee reviewed the contents of the draft report of the Kwale consultative meeting with the Departmental Committee on Justice and Legal Affairs and the IGRTC and observed that:-

1. There are challenges in the implementation of the institutional and legal framework to manage intergovernmental relations resulting in implementation, leading to suspicion and conflict between the two levels of government.
2. In exercise of its oversight role, the National Assembly should establish a permanent Parliamentary Committee that regularly interacts with the National Government institutions that implement devolution and all other stakeholders including Council of County Governors and that the proposed committee should be guided by *inter alia*, the following Terms of reference-
 - (a) comprehensive review of gaps in the current legislative framework on the implementation of intergovernmental relations and devolution with a view of introducing amendments to the existing legislative provisions that hamper effective implementation of devolution;
 - (b) constant review of Intergovernmental organizations and assess their mandates and identify areas that require strengthening; and,
 - (c) follow up on the development of the devolution policy and other relevant policies that enhance and facilitate intergovernmental relations.

8. Parliamentary Oversight on Devolution in Comparative Jurisdictions

Legislative oversight is a tool used by the legislature to perform its role of checks and balances in a democracy. A Committee on devolution is necessary for the legislature's review and evaluation of selected activities of the executive branch(es) of government on devolution. After making a law, the legislature's main role is to see whether laws and policies are effectively

implemented as intended. Intergovernmental relations (IGR) is essential to all political systems with multi-level government. Negotiating and managing policy and especially financial interdependence is a key feature of IGR. IGR are dominated by Executives.

(a) Canada

In Canada, intergovernmental relations are heavily executive-dominated. Each provincial legislature has a dedicated *parliamentary committee* which includes within its remit scrutiny of IGR, and policy-specific committees may also play a role. Government departments charged with intergovernmental relations often submit an annual report to parliament. Legislatures can also mandate ministers to conclude agreements and act on behalf of the province. In Quebec, the intergovernmental affairs minister endorses every cross-border and intergovernmental agreement and maintains an accessible register of all agreements. The Quebec National Assembly illustrates how extending the role of parliament in IGR can serve to support the executive in the intergovernmental arena. As ministers embark upon intergovernmental negotiations, the National Assembly can support and reinforce their negotiating position by publishing unanimous resolutions which provide a more formal expression of Quebec's positions and are sometimes used to support the executive branch in dealing with the federal and other provincial governments.

(b) The Kingdom of Belgium

The Kingdom of Belgium has a highly institutionalized system of intergovernmental relations, driven by the overlap between the competences assigned to each level of governance, as well as the need for coordinated international and EU action. There are two main forums for intergovernmental relations in Belgium: the multi-lateral Concentration Committee consisting of the heads of the federal, regional, and community governments, and policy-focused standing Inter-ministerial Conferences. Intergovernmental relations in Belgium are relatively transparent. Records of the Concentration Committee as well as the agendas and approved minutes of the Inter-Ministerial Conferences are sent to all parliaments, and cooperation agreements are filed and published in the official gazette as well as made available electronically to MPs. Dedicated parliamentary committees are also charged with scrutinizing intergovernmental cooperation. In Flanders, for example, cooperation agreements and other questions regarding intergovernmental relations are mainly dealt with in subject specific committees, as are international agreements. Draft decrees are first discussed and debated in

committee before being sent to the plenary for voting.

(c) Switzerland

Although the Swiss cantons have very high levels of self-government, intergovernmental cooperation is commonplace, especially between the cantons. Swiss IGR are dominated by executives, and mainly conducted in high-level conferences and summits. There are two main conference forums - the Conference of Cantonal Governments (CCG) and the Conferences of Cantonal Directors. The CCG publishes an annual register of inter-cantonal agreements.

An established legislative consultation procedure and the requirement that cantonal legislatures implement federal regulations facilitates transparency and provides a mechanism for cantonal legislatures to scrutinize federal legislation. Dedicated and permanent parliamentary committees have been formed to oversee cooperation, external relations, regional affairs, or cross-border matters.

In the United Kingdom, there exists a select Committee on the Constitution that handles inter-governmental relations.

In a nut shell, a parliamentary oversight Committee on devolution is therefore necessary to check, question, examine, inquire, challenge, influence, change, support, criticize, censure or generally hold to account those charged with executing intergovernmental relations and other devolutions matters. There is therefore a need to establish a framework for oversight over devolution in the National Assembly. This would therefore call for such a Committee to be entrenched in the Standing Orders of the National Assembly. Coincidentally, the Standing Orders are currently undergoing the periodic review.

9. Findings of the Committee

During a meeting of the Committee held on Monday, 13th February, 2017, the Committee made the following findings-


- (e) THAT, the current institutional and legal framework was weak thereby hampering effective implementation of devolution.

- (f) THAT, the National Assembly has a duty to oversight devolution and ensure that the national government and her institutions and the county governments inter-relate in a harmonious manner.
- (g) THAT, the resolutions of the Summit are implemented without fail.
- (h) THAT, a Committee on Devolution should be established in the National Assembly Standing Orders with specific Terms of Reference.

10. Recommendations of the Committee

The Committee recommends to the House that-

- (a) **A Select Committee on Devolution be established in the National Assembly through the Standing Orders to provide policy oversight over the national government institutions implementing devolution at the national level with the aim of securing the constitutional principle of devolution.**
- (b) **Subject to paragraph (a) above, the proposed Committee be responsible for-**
 - (i) **reviewing gaps in the legislative framework on devolution and inter-governmental relations.**
 - (ii) **provide oversight over the implementation of devolution and connected purposes.**
 - (iii) **reviewing gaps in policies on devolution and intergovernmental organizations with the aim of safeguarding devolution.**
- (c) **the oversight functions on devolution vested in the Departmental Committee on Finance, Planning and Trade be moved to the proposed Committee on Devolution.**
- (d) **the proposed Committee on Devolution takes over the functions of the Constitutional Implementation Oversight Committee upon its extraction**

Signed 

The Hon. Njoroge Baiya, MP

Chairperson, Constitutional Implementation Oversight Committee

Date: 20/02/2017

ANNEX

1MINUTES

MINUTES OF THE 77TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY, FEBRUARY 16, 2017 IN THE NINTH FLOOR BIG BOARDROOM, HARAMBEE PLAZA, PARLIAMENT BUILDINGS, AT 11.30 AM.

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Sabina Chege, MP
5. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
6. The Hon. Alice Muthoni Wahome, MP
7. The Hon. Benson M. Kangara, MP
8. The Hon. Rose Rwamba Mitaru, MP
9. The Hon David Gikaria, MP
10. The Hon. John Lodepe Nakara, MP
11. The Hon. Abdul Rahim Dawood, MP
12. The (Dr.) Hon. Humphrey K. Njuguna, MP
13. The Hon. Grace Jemutai Kiptui, MP
14. The Hon. Mary Wambui, M.P
15. The Hon. George Washington Omondi Mallan, MP

APOLOGY

1. The Hon. Peter N. Gitau, MP
2. The Hon. Sakwa J. Bunyasi, MP
3. The Hon. (Dr.) Dahir Duale Mohammed, MP
4. The Hon. Boniface O. Otsiula, MP
5. The Hon. James Lomenen, MP
6. The Hon. Aramat Lemanken, MP
7. The Hon. Manson Nyamweya, MP
8. The Hon. Shakila Abdalla, MP
9. The Hon. Bowen, David Kangogo, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Mr. John Mutega
2. Ms. Mugure Gituto
3. Mr. Nebert Ikai Lomechu
4. Mr. Donal Manyala

NATIONAL ASSEMBLY

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

MIN.NO. 311/16/02/2017: PRELIMINARIES

The meeting was called to order at 11.40 am and commenced with a word of prayer from the Chairman.

MIN.NO. 312/16/02/2017: CONFIRMATIONS OF THE MINUTES

The minutes of the 56th sitting held on 5th May, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. (Dr.) Humphrey K. Njuguna, MP and seconded by Hon. Rose Mitaru, MP.

The minutes of the 57th sitting held on 26th May, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Benson Kangara, MP and seconded by Hon. Rahim Dawood, MP.

The minutes of the 58th sitting held on 26th May, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Benson Kangara, MP and seconded by Hon. Rahim Dawood, MP.

The minutes of the 59th sitting held on 14th July, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Lodepe Nakara, MP and seconded by Hon. Grace Kiptui, MP.

The minutes of the 60th sitting held on 16th August, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Grace Kiptui, MP and seconded by Hon. Lodepe Nakara, MP.

The minutes of the 67th sitting held on 25th October, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Grace Kiptui, MP and seconded by Hon. Rahim Dawood, MP.

The minutes of the 68th sitting held on 14th November, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Rose Mitaru, MP and seconded by Hon. Benson Kangara, MP.

The minutes of the 69th sitting held on 14th November, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Rose Mitaru, MP and seconded by Hon. Benson Kangara, MP.

The minutes of the 70th sitting held on 14th November, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. David Gikaria, MP and seconded by Hon. Grace Kiptui, MP.

The minutes of the 71st sitting held on 15th November, 2016 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. David Gikaria, MP and seconded by Hon. Rose Mitaru, MP.

The minutes of the 72nd sitting held on 13th February, 2017 were confirmed as a true record of the deliberations of that meeting and signed by the Chairman after being proposed by Hon. Lodepe Nakara, MP and seconded by Hon. Mary Wambui, MP.

MIN.NO. 313/16/02/2017: ADOPTION OF THE REPORT OF THE COMMITTEE ON IMPLEMENTATION OF DEVOLUTION AFTER THE EXPIRY OF THE TERM ON CIOC

All the members present adopted the Report of the Committee on implementation of devolution after the expiry of the term on CIOC with the following recommendations to the House-

- (a) **THAT, a Select Committee on Devolution be established in the National Assembly through the Standing Orders to oversight the national government institutions implementing devolution at the national level with the aim of securing the constitutional principle of devolution.**
- (b) **THAT, subject to paragraph (a) above, the proposed Committee be responsible for-**
 - (i) **reviewing gaps in the legislative framework on devolution and inter-governmental relations.**
 - (ii) **provide oversight over the implementation of devolution and connected purposes.**
 - (iii) **reviewing gaps in policies on devolution and intergovernmental organizations with the aim of safeguarding devolution.**
- (c) **THAT, the oversight functions on devolution vested in the Departmental Committee on Finance, Planning and Trade be moved to the proposed Committee on Devolution.**
- (d) **THAT, the proposed Committee on Devolution takes over the functions of the Constitutional Implementation Oversight Committee upon its expiry.**

The report was adopted and signed by the Chairman on behalf of the members present after being proposed by the Hon. Samuel Chepkonga, MP and seconded by the Hon. Alice Wahome, MP.

MIN.NO. 314/16/02/2017: ADJOURNMENT

The meeting adjourned at 12.50p.m.

SIGN..... DATE

CHAIRPERSON.....

MINUTES OF THE 75TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY, FEBRUARY 13, 2017 IN THE TUCANA BOARDROOM, GREAT RIFT VALLEY LODGE, NAIVASHA AT 3.00 PM.

PRESENT

1. The Hon. Njoroge Baiya, MP - **Chairperson**
2. The Hon. Alice Muthoni Wahome, MP
3. The Hon. Benson M. Kangara, MP
4. The Hon. Rose Rwamba Mitaru, MP
5. The Hon David Gikaria, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Peter N. Gitau, MP
9. The Hon. Mary Wambui, M.P
10. The Hon. George Washington Omondi Mallan, MP

APOLOGY

1. The Hon. Moitalel Ole Kenta, MP - **Vice Chairperson**
2. The Hon. Sabina Chege, MP
3. The Hon. Grace Jemutai Kiptui, MP
4. The Hon. Sakwa J. Bunyasi, MP
5. The Hon. (Dr.) Dahir Duale Mohammed, MP
6. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
7. The Hon. Samuel K. Chepkonga, MP
8. The Hon. Boniface O. Otsiula, MP
9. The Hon. James Lomenen, MP
10. The (Dr.) Hon. Humphrey K. Njuguna, MP
11. The Hon. Aramat Lemanken, MP
12. The Hon. Manson Nyamweya, MP
13. The Hon. Shakila Abdalla, MP
14. The Hon. Bowen, David Kangogo, MP
15. The Hon. Protus Akuja, M.P.
16. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Mr. John Mutega
2. Ms. Mugure Gituto
3. Mr. Nebert Ikai Lomechu
4. Mr. Noah Too

NATIONAL ASSEMBLY

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

MIN.NO. 296/13/02/2017: PRELIMINARIES

The meeting was called to order at 3.00 pm and commenced with a word of prayer from the Chairman.

MIN.NO. 297/13/02/2017: FINDINGS OF THE COMMITTEE ON IMPLEMENTATION OF DEVOLUTION AFTER THE EXPIRY OF THE TERM ON CIOC

Drawing from the observations of the Committee on their report on implementation of devolution after the expiry of the term on CIOC, the Committee made the following findings-

- (a) THAT, the current institutional and legal framework was weak thereby hampering effective implementation of devolution.
- (b) THAT, the National Assembly has a duty to oversight devolution and ensure that the national government and her institutions and the county governments inter-relate in a harmonious manner.
- (c) THAT, the resolutions of the Summit are implemented without fail.
- (d) THAT, a Committee on Devolution should be established in the National Assembly Standing Orders to provide for the Terms of Reference for the proposed Committee.

MIN.NO. 298/13/02/2017: RECOMMENDATIONS OF THE COMMITTEE

Drawing from the findings of the Committee on their report on implementation of devolution after the expiry of the term on CIOC, the Committee recommended to the House that-

- (a) **A Select Committee on Devolution be established in the National Assembly through the Standing Orders to oversight the national government institutions implementing devolution at the national level with the aim of securing the constitutional principle of devolution.**
- (b) **Subject to paragraph (a) above, the proposed Committee be responsible for-**
 - (i) **reviewing gaps in the legislative framework on devolution and inter-governmental relations.**
 - (ii) **provide oversight over the implementation of devolution and connected purposes.**
 - (iii) **reviewing gaps in policies on devolution and intergovernmental organizations with the aim of safeguarding devolution.**
- (c) **the oversight functions on devolution vested in the Departmental Committee on Finance, Planning and Trade be moved to the proposed Committee on Devolution.**
- (d) **the proposed Committee on Devolution takes over the functions of the Constitutional Implementation Oversight Committee upon its expiry.**

MIN.NO. 299/13/02/2017: ADJOURNMENT

The meeting adjourned at 11.50a.m.

SIGN..........

DATE 16/02/2017

CHAIRPERSON.....Hon NTOROH BAIYA, MP.....

MINUTES OF THE 72ND SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, FEBRUARY 07, 2017 IN THE BOARDROOM ON FOURTH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 10.30AM.

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. Aramat Lemanken, MP
6. The Hon. Alice Muthoni Wahome, MP
7. The Hon. Rose Rwamba Mitaru, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. James Lomenen, MP

APOLOGY

1. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
2. The Hon. Samuel K. Chepkonga, MP
3. The Hon. Boniface O. Otsiula, MP
4. The Hon. Abdul Rahim Dawood, MP
5. The (Dr.) Hon. Humphrey K. Njuguna, MP
6. The Hon. Manson Nyamweya, MP
7. The Hon. Mary Wambui, M.P
8. The Hon. Shakila Abdalla, MP
9. The Hon. Bowen, David Kangogo, MP
10. The Hon. Protus Akuja, M.P.
11. The Hon. Sakwa J. Bunyasi, MP
12. The Hon. (Dr.) Dahir Duale Mohammed, MP
13. The Hon David Gikaria, MP
14. The Hon. Peter N. Gitau, MP
15. The Hon. Grace Jemutai Kiptui, MP
16. The Hon. George Washington Omondi Mallan, MP
17. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Mr. John Mutega
2. Ms. Mugure Gituto
3. Mr. Nebert Ikai Lomechu
4. Mr. Noah Too

NATIONAL ASSEMBLY

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

MIN.NO. 293/07/02/2017: PRELIMINARIES

The meeting was called to order at 10.35 am and commenced with a word of prayer from the Chairman.

MIN.NO. 294/07/02/2017: OBSERVATION AND RECOMMENDATIONS

Following deliberations of the previous meetings on the status of implementation of devolution *vis a vis* the work of the IGRTC, the Committee reviewed the contents of the draft report of the Kwale consultative meeting with the Departmental Committee on Justice and Legal Affairs and the IGRTC and observed that:-

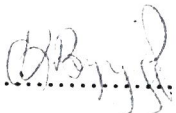
- (a) There are challenges in the implementation of the institutional and legal framework to manage intergovernmental relations resulting in implementation, leading to suspicion and conflict between the two levels of government.
- (b) In exercise of its oversight role, the National Assembly should establish a permanent Parliamentary Committee that regularly interacts with the National Government institutions that implement devolution and all other stakeholders including Council of County Governors and that the proposed committee should be guided by *inter alia*, the following Terms of reference-
 - a. comprehensive review of gaps in the current legislative framework on the implementation of intergovernmental relations and devolution with a view of introducing amendments to the existing legislative provisions that hamper effective implementation of devolution;
 - b. constant review of Intergovernmental organizations and asses their mandates and identify areas that require strengthening; and,
 - c. follow up on the development of the devolution policy other relevant policies that enhance and facilitate intergovernmental relations.

The meeting tasked the secretariat to undertake a comparative study with other jurisdictions with equivalent or related oversight frameworks over devolution and intergovernmental relations.

The Committee resolved to finalize the Report on the sidelines of their workshop with the Kenya Law Reform Commission scheduled for February 12 to 14, 2017 in the Great Rift Valley Lodge, Naivasha.

MIN.NO. 295/07/02/2017: ADJOURNMENT

The meeting adjourned at 11.50a.m.

SIGN.....

DATE ..14/02/2017

CHAIRPERSON.....

MINUTES OF THE 71ST SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY,
NOVEMBER 15, 2016 AT SWAHILI BEACH HOTEL, KWALE COUNTY AT 9.30AM.

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. Sakwa J. Bunyasi, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon David Gikaria, MP
9. The Hon. Peter N. Gitau, MP
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. George Washington Omondi Mallan, MP

APOLOGY

1. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
2. The Hon. Alice Muthoni Wahome, MP
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Boniface O. Otsiula, MP
5. The Hon. James Lomenen, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. Aramat Lemanken, MP
10. The Hon. Manson Nyamweya, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Shakila Abdalla, MP
13. The Hon. Bowen, David Kangogo, MP
14. The Hon. Protus Akuja, M.P.
15. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Ms. Allyce Kureiya
2. Prof. Shanyisa Khasiani
3. Dr. Billow Khalid
4. Dr. Raymond Nyeris
5. Prof. Judith Atyang
6. Mrs. Njambi Muchane
7. Dr. Francis Fobdo

**INTER-GOVERNMENTAL RELATIONS
TECHNICAL COMMITTEE**

- Vice Chair Person
- Member
- Member
- Member
- Member
- Member
- Member

- | | |
|------------------------|-------------------------|
| 8. Mr. Partick Karanja | - Secretary, IGRTC |
| 9. Dr. Mutakha Kangu | - Consultant with IGRTC |
| 10. Mr. Gichira Kibara | - Consultant with IGRTC |

IN-ATTENDANCE

- | | |
|-----------------------|------------------------|
| 1. Mr. Nebert Ikai | - Clerk Assistant III |
| 2. Mr. Donald Manyala | - Research Officer III |

NATIONAL ASSEMBLY

MIN.NO. 290/15/11/2016: PRELIMINARIES

The meeting was called to order at 10.35 am and commenced with a word of prayer from the Chairman.

MIN.NO. 291/15/11/2016: OBSERVATION AND RECOMMENDATIONS

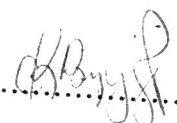
The two Committees of the National Assembly deliberated on the presentations made by the IGRTC at their previous sittings and observed that-
Having heard from IGRTC, the Committee observed the following:

1. There was a lot of suspicion and conflict between the two levels of government because perhaps there lacked the correct institutional and legal framework to manage intergovernmental relations.
2. There could be gaps in the current legislation providing for Inter-Governmental Relations which could be hampering effective implementation of devolution.
3. The presence of the Principal Secretary responsible for Devolution in the Technical Committee could be eroding impartial nature of IGRTC.
4. Perhaps there would be need to amend the Act establishing IGRTC to make it an independent agency.
5. There was need for formulation of a "Devolution Policy".
6. There would be need to stagger IGRTC's membership to allow for retention of institutional memory.

The two Committees asked IGRTC to submit their proposed amendments and that the CIOC would review them and report to the National Assembly appropriately.

MIN.NO. 292/15/11/2016: ADJOURNMENT

The meeting adjourned at 12.30p.m.

SIGN..... 

DATE 16/02/2016

CHAIRPERSON..... H.W. NTEROGE, MP

MINUTES OF THE 70TH SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY,
NOVEMBER 14, 2016 AT SWAHILI BEACH HOTEL, KWALE COUNTY AT 2.30PM.

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. Sakwa J. Bunyasi, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon David Gikaria, MP
9. The Hon. Peter N. Gitau, MP
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. George Washington Omondi Mallan, MP

APOLOGY

1. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
2. The Hon. Alice Muthoni Wahome, MP
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Boniface O. Otsiula, MP
5. The Hon. James Lomenen, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. Aramat Lemanken, MP
10. The Hon. Manson Nyamweya, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Shakila Abdalla, MP
13. The Hon. Bowen, David Kangogo, MP
14. The Hon. Protus Akuja, M.P.
15. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Ms. Allyce Kureiya
2. Prof. Shanyisa Khasiani
3. Dr. Billow Khalid
4. Dr. Raymond Nyeris
5. Prof. Judith Atyang
6. Mrs. Njambi Muchane
7. Dr. Francis Fobdo

INTER-GOVERNMENTAL RELATIONS

TECHNICAL COMMITTEE

- Vice Chair Person
- Member
- Member
- Member
- Member
- Member
- Member

8. Mr. Partick Karanja - Secretary, IGRTC
9. Dr. Mutakha Kangu - Consultant with IGRTC
10. Mr. Gichira Kibara - Consultant with IGRTC

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Nebert Ikai - Clerk Assistant III
2. Mr. Donald Manyala - Research Officer III

MIN.NO. 287/14/11/2016: PRELIMINARIES

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

MIN.NO. 288/14/11/2016: PRESENTATIONS

(1) Parameters of Successful Transition to Devolved System

The two Committees of the National Assembly were run through some of the parameters of successful transition to devolved system and the following key parameters were highlighted -

- a) Effectively management of intergovernmental relations;
- b) Ensuring actual service delivery to the public as opposed to mere expenditure of public funds;
- c) Promoting sound integrated planning at both levels of government;
- d) Re-engineering of the service delivery system by the public service;
- e) adequate infrastructure; and,
- f) Enhanced public awareness.

The meeting was informed of emerging issues affecting the working of IGRTC that included *inter-alia*-

- (a) Conflicts in terms of interpretation of concurrent functions;
- (b) Low levels of awareness of the devolved system of governance in both the public sector and the general public;
- (c) Weak or inadequate financial and performance management systems in counties;
- (d) Inadequate capacity for planning, implementation, monitoring and evaluation both at national and county level;
- (e) Inadequate and delayed release of resources leading to a disproportionate reform pace, inefficiencies and ineffectiveness in service delivery;
- (f) Weak inter and intra-agency or sectoral collaboration and coordination;
- (g) Weak monitoring and evaluation critical to track performance and inform programming;
- (h) Challenges in human resource and management at both levels of governments;
- (i) Competition for resources and influence between counties, and counties and national government, leading to high demand for resources.

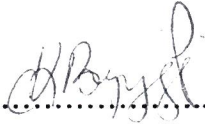
(2) Status of Transfer and Audit of Assets and Liabilities of the Defunct Local Authorities

Members were apprised on the status of transfer and audit of assets and liabilities of the defunct local authorities as follows:

- (a) The Transition Authority (TA) had already undertaken a survey and in every county of the assets, and liabilities with an ascertainable register before the general elections of March 2013.
- (b) County Governments were currently utilizing assets within their counties though these have not been officially handed over to them as required by Transition to Devolved Government Act 2012.
- (c) There is no legal framework in place on how the property should transit. IGRTC is working on a modality of transferring the properties to the counties so that there are no losses of assets.
- (d) Having reviewed some of records in TA reports, IGRTC recommends that a comprehensive assets and liabilities registers be developed, there is need to identify, list, verify, validate, value and audit all the assets and liabilities of the defunct local authorities including the use of forensic audit by the relevant experts.
- (e) There has since been the establishment of an inclusive County Assets and Liabilities Management Committee on transfer and verification of assets and liabilities of the defunct local authorities. A negotiated framework being a Ministerial forum has been formulated.
- (f) A national steering committee shall be established to manage the issues of assets and liabilities and a county audit committee shall be established to mitigate against further losses of assets and liabilities.

MIN.NO. 289/14/11/2016: ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 4.30 p.m. and resolved to meet the following day, 15th November, 2016 at 9.00a.m.

SIGN..........

DATE 16/02/2017

CHAIRPERSON.....

Hon. NJIROGE BANA, MP

MINUTES OF THE 69TH SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY,
NOVEMBER 14, 2016 AT SWAHILI BEACH HOTEL, KWALE COUNTY AT 12.00PM.

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. Sakwa J. Bunyasi, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon David Gikaria, MP
9. The Hon. Peter N. Gitau, MP
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. George Washington Omondi Mallan, MP

APOLOGY

1. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
2. The Hon. Alice Muthoni Wahome, MP
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Boniface O. Otsiula, MP
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7. The Hon. Abdul Rahim Dawood, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. Aramat Lemanken, MP
10. The Hon. Manson Nyamweya, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Shakila Abdalla, MP
13. The Hon. Bowen, David Kangogo, MP
14. The Hon. Protus Akuja, M.P.
15. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Ms. Allyce Kureiya
2. Prof. Shanyisa Khasiani
3. Dr. Billow Khalid
4. Dr. Raymond Nyeris
5. Prof. Judith Atyang
6. Mrs. Njambi Muchane
7. Dr. Francis Fobdo

INTER-GOVERNMENTAL RELATIONS
TECHNICAL COMMITTEE

- Vice Chair Person
- Member
- Member
- Member
- Member
- Member
- Member

8. Mr. Partick Karanja - Secretary, IGRTC
 9. Dr. Mutakha Kangu - Consultant with IGRTC
 10. Mr. Gichira Kibara - Consultant with IGRTC

IN-ATTENDANCE

1. Mr. Nebert Ikai - Clerk Assistant III
 2. Mr. Donald Manyala - Research Officer III

NATIONAL ASSEMBLY

MIN.NO. 284/14/11/2016:

PRELIMINARIES

The meeting was called to order at 12.00 p.m.

MIN.NO. 285/14/11/2016:

PRESENTATIONS

The two Committees of the National Assembly were taken through some proposals intended to amend the Inter-governmental Relations Act, 2012 with a view to strengthen the Technical Committee.

NO	PROPOSED AMENDMENT	JUSTIFICATION
1	Name of Committee to be amended to INTERGOVERNMENTAL RELATIONS AGENCY	The term Committee refers to a structure established for limited period and with a specific and narrow scope of work. A committee is usually formed to perform a specific task and dissolves on completion of the task. The change to "Agency" captures the very broad mandate of this state organ in addressing matters affecting the National and the County governments (intergovernmental relations). This organ is also perpetual and lasts forever.
2	<p>The State Organ be a BODY CORPORATE</p> <p>Include the provisions that the Agency shall: -</p> <p>(a) Be a BODY CORPORATE</p> <p>(b) Acquire, hold, charge and dispose of movable and immovable property.</p> <p>(c) Do or perform all such other things or act for proper discharge of its functions under the Constitution and this Act as may be lawfully be done or performed by a body corporate.</p>	<p>This will enable the State Organ to own property. Such properties include its offices and essential safety and health facilities for its Secretariat.</p> <p>Having corporate status also empowers the State Organ to employ officers and staff as are necessary not only for the proper discharge of its own functions but also those of the Council and the Summit.</p> <p>The state organ shall be empowered to negotiate with the staff, according to (Section 11) and allowances determined Remuneration</p>

		Acquiring a corporate status will also enable the organ to carry out its functions effectively. This includes suing and being sued in resolving disputes including court cases.
3	<p>Strengthen the Neutrality of State Organ</p> <p>Section 11 Subsection 2 states that the State Organ shall comprise –</p> <p>--delete Section 11 subsection 2 (c) which states that “the Principal Secretary of the State department for the time being responsible for matters relating to devolution.</p>	The Council of Governors (CoG) and the National Government (MODP) shall be excluded from membership of the State Organ to strengthen its neutrality, independence and autonomy in decision making that relate to intergovernmental relations. This will enable the Agency to undertake effective Alternative Dispute Resolution work (ADR) on matters that touch on COG or MODP jointly or separately and in undertaking its secretarial and budgeting functions (Section 15(5)).
4	<p>Headquarters</p> <p>Include a provision as follows:</p> <p>The Headquarters of the Agency shall be in the Capital City, but the Agency may establish branches at any place in Kenya</p>	This is to give the state organ powers to take its services to Counties to speed up service delivery.
5	<p>Oath of Office:</p> <p>The Chairperson, Members and the Secretary shall each make and subscribe before the CJ, to the respective Oath or affirmation spelt out in the first schedule.</p>	This affirms the independence of the Members and shields them from interference. It enhances their ability to effectively discharge the State Organ’s Mandate.
6	<p>Information Gathering:</p> <p>This is to give the Agency powers as follows:</p> <p>(a) Gather relevant information, including the requisition of reports, records, documents or any other information relevant for its mandate.</p>	This will give the State Organ power to obtain information from other Organizations. Without this power, external sources may be reluctant to provide information.
7	<p>Term of Office</p> <p>To amend the IGR Act 2012 to read:</p> <p>A Member appointed under this Act shall serve for a term of <u>Six</u> years but shall not be eligible for reappointment and the process of appointment shall be staggered.</p>	This period is aligned with that of other Commissions whose members are in office for six years. Six years will also give the Members ample time to develop and implement a 5 year Strategic Plan for Intergovernmental Relations. <p>The process of replacement shall be staggered for institutional memory and smooth transition</p>
8	<p>Remuneration of members</p> <p>Amend IGRA to read:</p> <p>The salaries and allowances payable to the Chairperson and Members shall be determined by</p>	The provision is intended to harmonize the Act with other Acts that form Independent Commissions and Offices.

	the Salaries and Remuneration Commission.	
9	<p>Power to delegate</p> <p>The Act is to be amended to read:</p> <p>The Agency may, by resolution either generally or in any particular case, delegate to any Committee or Member of the Agency or to any Officer, Employee or agent of the Agency, the exercise of any of the powers or performance of any of the functions or duties of the Agency under this Act.</p>	In the IGRA 2012, the power to delegate is rested only to the Summit. The Committee or Secretariat does not have such powers. This power is necessary in the discharge of duties of the State Organ in an efficient and effective manner especially where professional expertise is involved.
10	<p>Financial Year</p> <p>Amend the IGR Act, 2012 to include:</p> <p>The Financial Year of the Agency shall be the period of twelve months ending on the thirtieth June in each year.</p>	It is necessary to define the Agency's Financial Year and harmonize it with the National and County Government accounting period.
11	<p>Annual Estimates</p> <p>Amend IGR Act to include:</p> <p>(1) Before the commencement of each Financial Year, the Agency shall cause to be prepared estimates of revenue and expenditure of the Agency for that year.</p> <p>(2) The annual estimates shall make provision for all estimated expenditure of the Agency for the Financial Year and in particular, the estimates shall include: -</p> <p>(a) The payment of the salaries, allowances and other charges in respect of members and staff of the Agency.</p> <p>(b) The payment of pensions, gratuities and other charges in respect of members and staff of the Agency.</p> <p>(c) The proper maintenance of the buildings and grounds of the Agency.</p> <p>(d) The maintenance, repair and replacement of the equipment and other property of the Agency.</p> <p>(e) The creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other</p>	This is to enable the Agency to plan ahead and prepare budgets against which actual income and expenditure will be measured in order to prevent the expenditure of money without prior approval.

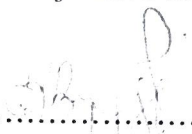
	<p>matter as the Agency may deem appropriate; and</p> <p>(f) Any other general expenditure relating to the operations of the Agency.</p> <p>(3) The annual estimates shall be approved by the Agency before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.</p> <p>(4) No expenditure shall be incurred for the purposes of the Agency except in accordance with the annual estimates approved under sub-section (3).</p>	
12	<p>Accounts and audit</p> <p>Amend the IGRA to include:</p> <p>(1) The Agency shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Agency.</p> <p>(2) Within a period of three months after the end of each financial year, the Agency shall submit to the Auditor-General the accounts of the Agency in respect of that year together with: -</p> <p>(a) Statement of the income and expenditure of the Agency during that year; and</p> <p>(b) Statement of the assets and liabilities of the Agency on the last day of that financial year.</p> <p>(3) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and Public Audit Act 2003 (No. 12 of 2003).</p>	<p>This is to compel the organization to prepare annual accounts and submit them to the Kenya Audit Office for Audit within the legally prescribed period.</p> <p>This is to enhance accountability of the Agency and to comply with the relevant constitutional provisions.</p>
13	<p>Protection from Liability</p> <p>Include in the IGR Act 2012 the following:</p> <p>No matter or thing done by a member of the Agency or any Officer, employee or agent of the Agency shall, if the matter or thing is done in</p>	<p>This is necessary to insulate Members of the Committee, staff or agents from personal liability arising from the execution of the Mandate of the State Organ.</p>

	good faith, for executing the functions, powers or duties of the Committee render the members, officer, employee or agent personally liable to any action, claim or demand whatsoever.	
14	<p>Funds of the Agency</p> <p>Amend the Act to include:</p> <p>(1) The funds of the Agency shall comprise:</p> <p>(a) Such sums as may be appropriated by Parliament toward the expenditure of the Agency in the performance of its functions and exercise of its powers.</p> <p>(b) Such fees, monies or assets as may accrue to or rest in the Agency in the Course of the exercise of its powers or the performance of its functions under this Act or any other written law, and</p> <p>(c) All monies from any other lawful source provided for, donated or lent to the Agency</p> <p>(2) Parliament shall allocate adequate funds to enable the Agency perform its functions.</p> <p>(3) The receipts, earnings or accruals of the Agency and the balances at the close of each financial year shall, subject to the law relating to financial management, not be paid into the Consolidated Fund but shall be retained for purposes of this Act,</p>	<p>It is necessary to define the sources of funds that the Agency can have access to for audit purposes and for carrying out its mandate.</p> <p>This will enable the Agency to invest surplus funds in short term Treasury Bills or fixed bank deposits to earn interest.</p> <p>This will enable the Agency to qualify for funds from Donors and to implement other resource mobilization strategies.</p> <p>This is necessary to make it mandatory for Parliament to allocate funds to the Agency</p> <p>This provision is necessary to enable the Agency to retain its funds held in bank accounts. The current situation is that the Committee is obliged to sweep all monies held at the end of the financial back to the Exchequer just like government departments</p>

Having being taken through the above amendments, the two Committees observed that they would require some time to interrogate the said amendments and respond to IGRTC appropriately.

MIN.NO. 286/14/11/2016: ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 1.30 p.m. and agreed to meet later the same day at 2.30p.m.

SIGN.....

DATE ...14/02/2016

CHAIRPERSON.....

MINUTES OF THE 63TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON MONDAY, NOVEMBER 14, 2016 AT SWAHILI BEACH HOTEL, KWALE COUNTY AT 9.30AM.

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. Sakwa J. Bunyasi, MP
7. The Hon. (Dr.) Dahir Duale Mohammed, MP
8. The Hon David Gikaria, MP
9. The Hon. Peter N. Gitau, MP
10. The Hon. Grace Jemutai Kiptui, MP
11. The Hon. George Washington Omondi Mallan, MP

APOLOGY

1. The Hon. (Eng.) Mohamed M. Mahmud CBS, MP
2. The Hon. Alice Muthoni Wahome, MP
3. The Hon. Samuel K. Chepkonga, MP
4. The Hon. Boniface O. Otsiula, MP
5. The Hon. James Lomenen, MP
6. The Hon. John Lodepe Nakara, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The (Dr.) Hon. Humphrey K. Njuguna, MP
9. The Hon. Aramat Lemanken, MP
10. The Hon. Manson Nyamweya, MP
11. The Hon. Mary Wambui, M.P
12. The Hon. Shakila Abdalla, MP
13. The Hon. Bowen, David Kangogo, MP
14. The Hon. Protus Akuja, M.P.
15. The Hon Millie Odhiambo Mabona, MP

IN-ATTENDANCE

1. Ms. Allyce Kureiya
2. Prof. Shanyisa Khasiani
3. Dr. Billow Khalid
4. Dr. Raymond Nyeris
5. Prof. Judith Atyang
6. Mrs. Njambi Muchane
7. Dr. Francis Fobdo
8. Mr. Partick Karanja

**INTER-GOVERNMENTAL RELATIONS
TECHNICAL COMMITTEE**

1. Ms. Allyce Kureiya - Vice Chair Person
2. Prof. Shanyisa Khasiani - Member
3. Dr. Billow Khalid - Member
4. Dr. Raymond Nyeris - Member
5. Prof. Judith Atyang - Member
6. Mrs. Njambi Muchane - Member
7. Dr. Francis Fobdo - Member
8. Mr. Partick Karanja - Secretary, IGRTC

9. Dr. Mutakha Kangu - Consultant with IGRTC
10. Mr. Gichira Kibara - Consultant with IGRTC

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Nebert Ikai - Clerk Assistant III
2. Mr. Donald Manyala - Research Officer III

MIN.NO. 280/14/11/2016: PRELIMINARIES

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

MIN.NO. 281/14/11/2016: OPENING REMARKS

(a) Remarks from the Vice Chair of the IGRTC

The Vice Chairperson IGRTC remarked that the specific purpose of the meeting was-

- a. to appraise the Constitutional Implementation Oversight Committee (CIOOC) & the Departmental Committee on Justice and Legal Affairs (JLAC) on the progress of implementation of devolution;
- b. to analyze the limitations in policy and existing legal framework on devolution and look at legislations that affects the effective implementation of devolution and intergovernmental relations;
- c. to discuss and appreciate the resource constraints and its implications on devolution and intergovernmental relations;
- d. to appraise Members of the two Committees on the functions and mandate of the IGRTC;
- e. to discuss the challenges to effective intergovernmental relations and how this impedes the success of devolution; and,
- f. to establish a foundation for proper management of intergovernmental relations and make recommendations to the House on the findings of the same.

(b) Remarks from the Chairperson of the Constitutional Implementation Oversight Committee

The chairperson of the Constitutional implementation Committee oversight Committee Hon. Njoroge Baiya, M.P welcomed the members to the meeting and thanked them for honouring the invitation by the IGRTC. He officially opened meeting.

(a) Achievements of IGRTC

With regard to achievements made by the IGRTC, the two Committees of the National Assembly were informed that-

- (a) IGRTC had convened and managed two Summit and Council of Governors (CoG) meetings.
- (b) The Technical Committee had also convened two meetings of the forty-seven (47) County Secretaries in fulfillment of the provisions of section 12 (c) of the Intergovernmental Relations Act 2012.
- (c) IGRTC had implemented three critical summit agenda items through *ad hoc* committees established to - streamline use of e-procurement by county governments and recommended extension of manual procurement; develop mechanisms for the quick disbursement of grants from the National Government and Development partners to counties; and, convene meetings on Agriculture Levy and Licenses with key stakeholders to resolve outstanding issues on disbursement.
- (d) IGRTC had commissioned a study to establish the cost of litigation and would be making recommendations on how to embrace Alternative Dispute Resolution (ADR) in intergovernmental relations.
- (e) IGRTC had helped to resolve intergovernmental relations disputes that include but not limited to-
 - i. Dispute over office block between West Pokot County Government and County Commissioner.
 - ii. Dispute over land ownership between the County Government of Tharaka Nithi and the Prisons Department.
 - iii. Privatization of Public Sugar companies between the affected County Governments and the National government.
 - iv. Dispute over Meat Inspection for Export between Nairobi City County and Ministry of Agriculture, Livestock and Fisheries.
 - v. Dispute between Agriculture Food Authority (AFA) and County governments over the withholding of tea and coffee cess funds by AFA.
 - vi. Dispute between the Ministry of Lands and Physical Planning and Kirinyaga and Embu County Governments over Mwca Settlement Scheme.

- (f) IGRTC had finalized the process of verification, audit and transfer of the assets and liabilities of the defunct Local Authorities being one of the residual functions of the defunct TA.
- (g) IGRTC had established the institutional framework for transfer and verification of assets and liabilities of the defunct Local Authorities.
- (h) the Technical Committee had commissioned a study on the status of public participation in both the national and county governments.

(b) Challenges Faced by IGRTC

With regard to challenges being faced by IGRTC, the two Committees of the National Assembly were informed that IGRTC had faced several challenges that include-

- (a) Inadequate human resource capacity;
- (b) Lack of sufficient funds;
- (c) Lack of regulations to operationalize the Act;
- (d) Inadequate civic education to the members of the public ;
- (e) Limited appreciation of the concept and practice of intergovernmental relations;
- (f) Inadequate capacity in developing legislations; and,
- (g) Numerous litigation cases between various governments and institutions.

The meeting agreed to deliberate on the presentations later.

MIN.NO. 283/14/11/2016: ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 11.30 am. and agreed to meet later the same day at 12.00p.m.

SIGN.....  DATE 16/02/2017

CHAIRPERSON..... HON. NJERAGE BAIYA, MP