

*Approved
SNA
19/11/25*

REPUBLIC OF KENYA


THIRTEENTH PARLIAMENT – FOURTH SESSION

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

**FOURTH REPORT ON THE STATUS OF IMPLEMENTATION OF THE
CONSTITUTION BY:**

- 1. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION; AND**
- 2. THE OFFICE OF THE DATA PROTECTION COMMISSIONER.**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 19 NOV 2025	DAY: WED
TABLED BY:	Chair, CID C Hon. Caroli Emandi
CLERK-AT THE-TABLE:	Mado Miriam

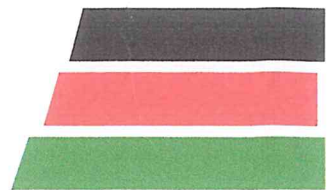
Directorate of Audit, Appropriations and General Purpose Committees

National assembly

Parliament buildings

NAIROBI

NOVEMBER, 2025



ANNEXURES

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ABBREVIATIONS

IEBC	Independent Electoral and Boundaries Commission
ODPC	Office of the Data Protection Commissioner
ROV	Registrar of Voters
RTS	Results Transmission System
CAK	Communications Authority of Kenya
CRMS	Candidate Management Registration System
DPO	Data Protection Officer
DRC	Dispute Resolution Committee
GIS	Geographical Information System
MLA	Mutual Legal Assistance
NRB	National Registration Bureau

CHAIRPERSON'S FOREWORD

The Constitutional Implementation Oversight Committee is established under Paragraph 4 of the Sixth Schedule to the Constitution of Kenya which provides as follows:

There shall be a select committee of Parliament to be known as the Constitutional Implementation Oversight Committee which shall be responsible for overseeing the implementation of this Constitution and which, among other things—

- (a) the preparation of the legislation required by this Constitution and any challenges in that regard;*
- (i) the process of establishing the new commissions;*
- (ii) 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;*
- (iii) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and*
- (iv) any impediments to the process of implementing this Constitution;*
- (b) coordinate with the Attorney-General and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and*
- (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.*

Pursuant to this mandate, the Committee, between September and October 2025, invited one Constitutional Commission and Independent Office with a view to understanding their operations vis-à-vis their constitutional mandates and any impediments in the performance of their roles.

The Constitutional Commission and Independent Office engaged were the ***Independent Electoral and Boundaries Commission (IEBC)*** and the ***Office of the Data Protection Commissioner (ODPC)***.

These interactions provided the Committee with valuable insights into the achievements and challenges facing these institutions.

In conclusion, Honorable Speaker, I wish to express my appreciation to fellow Honorable Members of the Committee, the Office of the Speaker, the Clerk of the National Assembly and the Secretariat for facilitating in the production of this report.

Honorable Speaker, pursuant to Standing Order 199(6), it is my pleasant duty and privilege, on behalf of the Constitutional Implementation Oversight Committee, to lay this report on the Table of the House and urge the House to adopt it and recommendations therein.

HON. CAROLI OMONDI, CBS, MP.

**CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**

I PREFACE

I.1 Mandate of the Committee

1. The Constitutional Implementation Oversight Committee is established under Paragraph 4 of the Sixth Schedule to the Constitution which provides for the Parliamentary Select Committee as follows-
2.
 - (a) *the preparation of the legislation required by this Constitution and any challenges in that regard;*
 - (i) *the process of establishing the new commissions;*
 - (ii) *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;*
 - (iii) *the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and*
 - (iv) *any impediments to the process of implementing this Constitution;*
 - (b) *coordinate with the Attorney-General and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and*
 - (c) *take appropriate action on the reports including addressing any problems in the implementation of this Constitution.*

1.2 Committee Membership

3. The Committee membership comprises: -

Chairperson

Hon. Caroli Omondi, CBS, MP

Suba South Constituency

Orange Democratic Movement

Vice-Chairperson

Hon. William Kamket, MP

Tiaty Constituency

KANU - Party

Members

Hon. Sylvanus Osoro, MP

South Mugirango Constituency

United Democratic Alliance

Hon. Mejjadonk Benjamin Gathiru, MP

Embakasi Central Constituency

United Democratic Alliance

Hon. Mary Wamaua, MP

Maragua Constituency

United Democratic Alliance

Hon. Jesica Mbalu Nduku Kiko, CBS, MP

Kibwezi East Constituency

Wiper Democratic Movement

Hon. Charles Nguna Ngusya, MP

Mwingi West Constituency

Wiper Democratic Movement

Hon. Jackson Lekumontare, MP

Samburu East Constituency

KANU

Hon. George Risa Sunkuiya, MP

Kajiado West Constituency

United Democratic Alliance

Hon. Paul Abuor, MP

Rongo Constituency

Orange Democratic Movement

Hon. Peter Oscar Nabulindo, MP

Matungu Constituency

Orange Democratic Movement

Hon. Teresia Wanjiru Mwangi, M.P

Nominated

United Democratic Alliance

Hon. Nimrod Mbithuka Mbai, MP
Kitui East

United Democratic Alliance

Hon. John Murumba Chikati, MP
Tongaren Constituency

FORD-Kenya

Hon. Patrick Osero Kibagendi, MP
Borabu Constituency

Orange Democratic Movement

Hon. Ali Abdisat Kalif, MP
Nominated Member

United Democratic Alliance

Hon. John Gitonga Mukunji Mwaniki, MP
Manyatta Constituency

United Democratic Alliance

Hon. Umulkher Harun Mohamed, MP
Nominated

Orange Democratic Movement

Hon. Hamisi Kakuta Maimai, MP
Kajiado East Constituency

Orange Democratic Movement

Hon. Geoffrey Ekesa Mulanya, MP
Nambale Constituency

Independent

Hon. Daniel Karitho Kiili, MP
Igembe Central Constituency

Jubilee Party

Hon. Bernard Kitur, MP
Nandi Hills Constituency

United Democratic Alliance

Hon. Lawrence Mpuru Aburi, MP
Tigania East Constituency

NOPEU

1.3 Committee Secretariat

4. The Secretariat facilitating the Committee in executing its mandate comprises of: –

Mr. Oscar Namulanda
Deputy Director

Ms. Hellen Kina
Senior Clerk Assistant
Lead Clerk

Ms. Kafuyai Wamae
Clerk Assistant III

Ms. Emma Essendi
Senior Legal Counsel

Mr. Jillo Yeziel
Sergeant -at- Arms

Ms. Mary Ann Gabow
Public Communications Officer

Mr. Kelvin Lengasi
Audio Officer

Ms. Rinha Saineye
Media Relations Officer

Mr. Alvin Ochieng
Research Officer

Ms. Pauline Sifuma
Hansard Reporter

2 INTRODUCTION

5. The Constitutional Implementation Oversight Committee commenced to apprise itself on the implementation status of the Constitution of Kenya according to Part Four of the Sixth Schedule to the Constitution which requires the Committee to take appropriate actions on the reports/submissions including addressing any problems in the implementation of the Constitution.
6. The report contains the status of implementation as submitted by various commissions between September to October 2025, as follows: -

1) *The Independent Electoral and Boundaries Commission.*

2) *The Office of the Data Protection Commissioner*

3 THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC).

3.1 Establishment and Mandate

7. The Independent Electoral and Boundaries Commission is a Constitutional Commission established under Article 88(1) of the Constitution of Kenya, 2010.
8. Article 88(4) outlines the general mandate of the Commission to conduct or supervise referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament.
9. Under Article 88(4)(c), the Commission is mandated to delimit constituencies and wards as provided for under Article 89 of the Constitution.
10. The mandate of the Commission is further espoused in the Independent Electoral and Boundaries Commission Act, Cap. 7C and the Elections Act, Cap. 7.

3.2 Background

11. The Constitutional Implementation Oversight Committee invited the Independent Electoral and Boundaries Commission on 9th September, 2025 to report on the extent of the Commission's discharge of its mandate pursuant to Article 88 of the Constitution including any impediments to the process of implementing the Constitution and the way forward.
12. Mr. Marjan Hussein Marjan, MBS, Commission Secretary/CEO, accompanied by other officials from IEBC appeared before the Committee on 25th September, 2025. IEBC submitted as follows:

3.3 Submission by the Independent Electoral and Boundaries Commission

On electoral activities and the upcoming by-elections

13. The Commission noted that the conduct and supervision of elections and referenda is the core mandate of the Commission as outlined under Article 88 of the Constitution. Following the receipt of notices of vacancies from the speakers of the assemblies, the Commission published gazette notices for by-elections with timelines covering political party nomination processes, independent candidate requirements, campaign periods and dispute resolution mechanisms.

14. The Commission outlined its comprehensive preparations for conducting by-elections, including training political parties on the use of the Candidate Management Registration System (CRMS), submission deadlines for party primaries and membership lists, and the establishment of clear timelines for candidate nomination and agent registration. The Electoral Code of Conduct applies from the date of publication of the by-election notices until the swearing-in of elected candidates, with every political party, candidate and participant required to subscribe to and observe the Code as per the Second Schedule to the Elections Act, Cap. 7.
15. The IEBC Dispute Resolution Committee and Electoral Code of Conduct Enforcement Committee were established to hear disputes arising during the electoral process, with specific timelines for hearing matters related to candidate registration and code of conduct violations.

On continuous voter registration and revision of the voters register

16. The Commission observed that Articles 38(3) and 83 of the Constitution recognize the rights of eligible citizens to be registered as voters. The Commission noted that under Article 88(4)(a), the Commission is obligated to ensure the continuous registration of citizens as voters.
17. The Commission reported that via ***Gazette Notice No. 12008 – Vol. CXXVII – No. 183***, the Commission *gazetted* the resumption of continuous voter registration slated to commence on 29th September, 2025. The Commission stated that the registration of citizens as voters takes place at the Commission's constituency offices, with the Commission *gazetting* registration officers and assistant registration officers to oversee this exercise, thereby providing the legal basis and accountability framework for the rollout.
18. The Commission noted that following this gazettelement, they undertook a range of preparatory measures including mapping and review of registration centers across the country, configuration and testing of the Kenya Integrated Election Management System (KIEMS) kits for continuous voter registration purposes, procurement and distribution of election materials, training and deployment of personnel, and public awareness and voter education campaigns.
19. The Commission observed that it has shifted its voter registration target setting approach from relying on Voting Age Population (VAP) to Voter Eligible Population

(VEP), which more accurately reflects the population that is legally registered and votes. The Commission stated that it aims to register 6.3 million new voters in addition to the current 22.1 million registered voters (ROV) ahead of the 2027 General Election.

20. The Commission noted that the traditional reliance on Census data to map the eligible population and estimate voter registration targets by calculating the population of persons who would have attained the voting age of 18 years by the time of the General Election has proven inaccurate, unsustainable and not veritable. The Commission observed that the nature of the Census Report includes persons who are ineligible to register as voters such as non-citizens, undocumented citizens, and refugees, leading to target inflation that does not disaggregate data based on legal eligibility.
21. The Commission stated that Article 83 of the Constitution provides for qualification of one to register as a voter, with the legal requirements being possession of a National Identity Card or a Valid Kenyan Passport. The Commission noted that it is shifting its target setting from Voting Age Population (VAP) to Voter Eligible Population (VEP) which pays attention to the actual number of citizens who possess the requisite documents.
22. The Commission observed that the VEP model utilizes data from the National Registration Bureau (NRB) and the Directorate of Immigration Services, thereby narrowing the target setting on disaggregated ID and passports issued. The Commission stated that this actual National ID/Passport data-driven targeting approach ensures that resources are deployed efficiently, and performance benchmarks are realistic and attainable.

On registration modalities

23. The Commission noted that to achieve its target and ensure no Kenyan is disenfranchised, the Commission intends to adopt several strategies including continuous voter registration at constituency offices, Huduma Centre registration, ward-based enhanced registration drives, conduct of continuous voter registration in institutions of higher learning, and registration of citizens residing outside the country as voters.
24. The Commission stated that constituency offices serve as a service point for registration of citizens as voters, as well as updating of particulars, to facilitate first-time voters to register at any time upon obtaining a National Identity Card. The

- Commission noted that registered voters are able to update or correct their information, while those who lost eligibility either by death, conviction or renouncing citizenship can be purged through formal processes.
25. The Commission observed that the Constituency office is allocated additional kits that facilitate registration across the country, with the kit opened to allow any eligible citizen to visit any constituency office and be facilitated to choose their preferred voting area across the country.
 26. The Commission noted that based on past experiences, the registration of voters during continuous voter registration, especially at the constituency level, has proved to be unfruitful. The Commission stated that as a strategy to address this challenge, the Commission intends to conduct an Enhanced Ward-based Continuous Voter Registration exercise (ECVR) and the update of the register of voters to improve the comprehensiveness of the register. The Commission observed that this strategy is essential for deepening the inclusivity and achieving geographic and demographic representativeness. The Commission noted that the drive, which will be done over a 30-day period, involves the deployment of adequate kits at the ward level with an aim of providing an opportunity to eligible citizens to enroll as voters.
 27. The Commission stated that to enhance continuous voter registration services, the Commission conducts targeted registration in institutions of higher learning in order to offer an opportunity to the eligible youth to register as voters. The Commission noted that it facilitates open kits, allowing students in those institutions to choose their preferred voting area.
 28. The Commission observed that the Constitution of Kenya, 2010, under Articles 38 and 82, guarantees all Kenyan citizens the right to political participation, including voting, regardless of geographic location. The Commission noted that the Policy on Voter Registration and Voting for Citizens Residing Outside Kenya, established in 2015 and reviewed in 2021, provides the framework for operationalizing this right.
 29. The Commission stated that despite progress, only 10,443 diaspora voters were registered in 2022 across 12 countries, with a 58% turnout, highlighting the need for expanded voter registration centers to enhance participation. The Commission noted that the promulgation of the Constitution of Kenya in August 2010 was a turning point in electoral inclusivity, as Article 82(1)(e) guaranteed the progressive realization of voting rights for Kenyan citizens residing outside the Country.

30. The Commission observed that the Elections Act, 2011, and the Elections (Registration of Voters) Regulations, 2012, established the legal framework for diaspora voting, assigning the Commission the responsibility to operationalize these provisions. The Commission noted that in addition, the Policy on Voter Registration and Voting for Citizens Residing Outside Kenya, established in 2015 and reviewed in 2021, provides the framework for operationalizing this right.
31. The Commission stated that the 2013 elections marked the first-ever diaspora voting exercise in Kenya's history, with implementation limited to four East African Community Member States of Uganda, Tanzania, Rwanda, Burundi, and South Africa. The Commission noted that the 2017 polls saw an incremental expansion of diaspora voting to include South Africa, bringing the total number of participating countries to five.
32. The Commission observed that the 2022 elections marked the most significant expansion of diaspora voting to date, with the operationalization of voting rights in 12 countries. The Commission noted that this expansion included the addition of the United States of America, Canada, the United Kingdom, Germany, the United Arab Emirates, Qatar, and South Sudan to the existing list. The Commission stated that registered diaspora voters rose to 10,443, representing a more than twofold increase from 2017, but still a fraction of the estimated millions of diaspora population.
33. The Commission noted that in order to enhance voter registration and voting for citizens residing outside Kenya, the Commission is in the process of reviewing and developing its implementation plan to, among others, expand voter registration centers for Kenyan citizens residing outside Kenya, ensuring progressive realization of their voting rights as mandated by the Constitution.

On voter registration and public outreach programs

34. The Commission reported that it has had a number of engagements enumerated in comprehensive voter education and public outreach initiatives. The Commission stated that these include review and production of voter education materials, development of concept papers for establishing a Paper on Voter Education, partnerships with development partners for extra resource and technical support for voter education, and structured engagement with stakeholders at National, County and Constituency levels.

35. The Commission noted that additionally, it has engaged in collaborations with various partners including the Commission on Revenue Allocation and Communication Strategies, partnerships with the National Assembly, Senate, civil society organizations, the National Commission for Civic Education (NCCCC), Political Parties Liaison Committee, the Commission on Administrative Justice, and other stakeholders.
36. The Commission stated that it also held a forum with Mombasa-based civil groups and community society groups, community-based organizations, and signed a Memorandum of Understanding with the Kenya Council of Kenya and the IEBC during a new MoU signing event. The Commission noted that it has released various press releases on topics including voter education, stakeholder engagement, and brand visibility, in addition to establishing a concept paper on Partnerships for grassroots support.
37. The Commission observed that it has also participated in Mombasa International Show and won the Best Independent Commission Award. The Commission stated that in line with the decision of the court in the Maina Kiai case, it trains election officials, enforces the Electoral Code of Conduct, allows agents and observers at polling stations and tallying centers and hears and determines pre-election disputes within the prescribed legal timelines.

On boundary delamination

Status of Constituencies and Wards Boundary Review

38. The Commission observed that Article 88(4)(c) of the Constitution of Kenya as read together with Article 89 of the Constitution confers on the Commission the mandate to review and delimit electoral units and in particular: to review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years; and to review the number, names and boundaries of wards periodically.
39. The Commission stated that the process of review of boundaries was last undertaken in the year 2012 and the report published in the National Assembly Constituencies and County Assembly Wards Order, 2012 – ***Legal Notice No. 14/2012***. The Commission noted that accordingly, the eight-year minimum period began in 2020, and the twelve-year maximum period lapsed on 6th March, 2024.

40. The Commission observed that during this constitutional window, the Commission lacked quorum. The Commission stated that in light of this, the Commission sought guidance from the office of the Attorney General. The Commission noted that on 22nd April 2024, the Attorney General advised that the Commission should seek an advisory opinion from the Supreme Court.
41. The Commission reported that consequently, on 2nd July 2024, the Commission filed a Reference Application before the Supreme Court of Kenya, seeking clarification on key constitutional questions relating to its operations. The Commission stated that the issues raised included whether the Commission can undertake delimitation of electoral boundaries and other electoral functions in the absence of Commissioners or without a quorum; whether the Commission can conduct the review of boundaries beyond the timelines set out under Articles 89(2) and 89(3) of the Constitution; and whether constitutional timelines may be extended, and if so, by whom and under what conditions.
42. The Commission noted that on 5th September 2025, the Court rendered itself on the Advisory Opinion in which it struck out the Reference filed by the Commission. The Commission observed that the court opined, among other things, that only a duly constituted Commission, comprising the Chairperson and other members of the Commission could bring the matter before the Court for its determination.
43. The Commission stated that as such, the Commission is considering its options noting the timelines, competing Commission activities and the necessity of the boundary delimitation exercise.
44. The Commission reported that it had undertaken the following activities in preparation for the upcoming boundaries delimitation:
 - Development of the Delimitation Concept Paper
 - Development of the Boundaries Review Operation Plan (BROP)
 - Conduct of Situational Analysis
 - Conduct of Pilot Study
 - Collection of Administrative Units' Geo-data
 - Digitization of Administrative Geo-data
 - Acquisition of Equipment (Funded by UNDP)
 - Capacity Building
 - Review of Boundaries Delimitation Legal Framework

- Senior Staff Sensitization on Collected Geo-Data in the 47 Counties
- Appointment and Inaugural meeting for Delimitation Project and Technical Team
- Development of Delimitation Applications and Map Standardization Manual
- Boundaries Security Arrangement Plan National Planning Workshop
- Civic Education and Public Outreach Strategies on Delimitation of Boundaries (Funded by URAIA)

45. The Commission stated that it sensitized its staff stationed at the headquarters and County Election Managers on the outcome of the Geo-data collected in the 47 Counties. The Commission noted that this was followed by deliberation on the way forward which included strategies to validate the collected data and update of the geo-database in preparation for the delimitation exercise.

46. The Commission observed that it appointed a Project and Technical boundaries delimitation team to manage the delimitation exercise. The Commission stated that this approach enables the Commission to harness and benefit from the wealth of experience and expertise of staff on their respective operational fronts. The Commission noted that the teams deliberated on their respective terms of reference (TOR) and strategized in readiness for the upcoming delimitation tasks.

47. The Commission reported that it was trained on the new technology which was followed by the development of several applications to be utilized in various phases of the delimitation exercise. The Commission stated that this includes Boundaries Hub with frequently asked questions (FAQs), evolution of electoral boundaries in Kenya story maps, a digital platform to submit memoranda, and a dashboard that gives an overview and summary statistics of the submitted memoranda. The Commission noted that additionally, it also developed a map standardization manual to be used by cartographers when producing the Commission's maps.

48. The Commission observed that cognizant of the interests associated with Boundary delimitation, a review of the electoral units has the potential to ignite community, sectarian, class and religious conflicts. The Commission stated that it hosted a three-day workshop to develop a Boundaries Security Arrangement Plan (BSAP). The Commission noted that it formed a Technical Committee that will drive and oversee the implementation of BSAP during the envisaged delimitation.

49. The Commission stated that it organized a meeting to develop public outreach strategies on boundary delimitation. The Commission noted that this was followed by

a workshop with Civic educators which identified key stakeholders and developed targeted messages and communication strategies during the boundaries' delimitation review process.

50. The Commission observed that it has in place a Boundary Review Operational Plan (BRPOP) which provides guidance on the next review of electoral boundaries. The Commission stated that the plan is anchored on the provisions of section 24B and the Fifth Schedule of the Independent Electoral and Boundaries Commission Act.

On electoral dispute resolution

Nature and number of election disputes handled

51. The Commission stated that the nature of electoral disputes that the Commission handles and/or is involved in includes Election Petitions, Electoral Code of Conduct violations, Leadership & Integrity Vetting Committee cases, Dispute Resolution Committee complaints on registration of candidates, and Election Offences.
52. The Commission reported that the statistics on the electoral disputes for the 2022 election period indicate that the Commission handled 133 Election Petitions, heard Electoral Code of Conduct violations as outlined in the Nairobi High Court case ***Cons. Pet.E073 of 2022 Sabina Wanjiru Chege Vs IEBC***, dealt with Leadership & Integrity Vetting Committee matters, handled 324 Dispute Resolution Committee complaints on registration of candidates, and addressed Election Offences which is the mandate of the ODPP to prosecute.

Mechanisms used to resolve disputes and outcomes achieved

53. The Commission noted that it has three Committees established to hear pre-election disputes. The Commission stated that the Dispute Resolution Committee hears disputes in relation to registration of candidates. The Commission observed that the Electoral Code of Conduct and Enforcement Committee hears matters in regard to breach of the Electoral Code of Conduct and the Leadership and Integrity Vetting Committee hears matters in relation to enforcement of Chapter Six of the Constitution.

Resource challenges and funding gaps

54. The Commission observed that the deficit in funding of the 2027 General Election will affect the Commission adversely in conducting the Elections. The Commission stated that the main area that will be affected by the inadequate funding is payment of wages to Election Officials totaling to Kshs 7.63Billion.
55. The Commission noted that it has accumulated pending bills totaling to Kshs 5.75 Billion arising from previous General Elections. The Commission observed that these pending bills have been accumulating over time and will adversely affect operations of the Commission in conducting the 2027 General Election. The Commission stated that if these pending bills are not settled, the quantum will not only increase but constrain operations of the Commission.
56. The Commission noted that it will also have to deal with court cases, especially where legal fees will be taxed upwards of the initial fees, and refusal and withdrawal of suppliers of goods and services.

Committee Observations

I. The Committee observed as follows: -

THAT-

57. Kenyans in the diaspora can only vote if they have a valid passport. This limits some since passports have an expiry date. IDs should also be considered as a valid voting document for Kenyans in the diaspora;
58. Inmates are allowed to vote only for presidential candidates and no other elective aspirants;
59. Pseudo accounts need to be regulated and managed especially during campaign season. This is to prevent campaigning after the timeline set for campaigning lapses;
60. The legislative proposals mentioned by the Commission have no specific issues that the National Assembly is to initiate;
61. Boundaries delimitation period has lapsed and it needs to be completed before the general elections in 2027;
62. The youth are the largest percentage of society and IEBC needs to ensure that they are well mobilized so that they take part in voting.
63. The Commission faces a significant budget deficit of Kshs 7.63 Billion for the 2027 General Election, which will adversely affect the payment of Election Officials and the

overall conduct of elections. This funding gap threatens the Commission's ability to discharge its constitutional mandate effectively;

64. The Commission has accumulated pending bills totaling Kshs 5.75 Billion from previous General Elections, which continues to strain operations and may lead to refusal by suppliers to provide goods and services for future elections;
65. The persistent late enactment or amendment of electoral laws too close to elections contradicts the Kriegler Commission recommendations that legal reforms should be undertaken at least two years before a General Election, thereby undermining proper planning and implementation;
66. The representation of Persons with Disabilities (PWDs) in elective and appointive bodies remains below the constitutional threshold of at least five percent as envisioned in Article 54(2) of the Constitution, despite improvements in the 2022 elections;
67. The validity and accuracy of the 2009 and 2019 census data remains contested in court, creating uncertainty for the boundary delimitation exercise which relies on accurate population data. The matter remains pending before the Court of Appeal with an order of preservation of status quo subsisting.
68. The Commission's continuous voter registration strategy, including registration at constituency offices, Huduma Centers, institutions of higher learning, and ward-based enhanced registration drives, demonstrates comprehensive efforts to ensure no Kenyan is disenfranchised.

Way Forward

69. IEBC to get back to the Committee regarding:
 - i) The steps it has taken to initiate boundary delimitation process; and
 - ii) How it will combat the issue of ghost primary schools that have been registered as polling stations.
70. The Committee recommends that the National Treasury addresses the budget deficit raised by the IEBC for the 2027 General Election and provides a clear front-loading schedule for the release of funds as requested by the Commission to ensure timely implementation of electoral activities.
71. The Committee recommends that Parliament allocates adequate resources to settle the pending bills of Kshs 5.75 Billion from previous elections to restore supplier confidence and ensure the Commission's operational capacity is not compromised.

72. The Committee recommend the Commission enforce the Kriegler Commission recommendation by ensuring that all electoral legal reforms are completed at least two years before the 2027 General Election, and calls upon the Executive to refrain from introducing electoral amendments within this restricted period.
73. The Committee recommends operationalization of the IEBC Fund as provided in law to strengthen the Commission's financial independence and eliminate reliance on the National Treasury's discretionary disbursement of funds.
74. The Committee recommends that the Judiciary establishes clear timelines for hearing and determining electoral matters to prevent delivery of judgments too close to election dates, which disrupts electoral processes and planning.
75. The Committee recommends that Parliament expedites consideration and passage of legislative proposals to realize the constitutional requirement that at least five percent of members in elective and appointive bodies are persons with disabilities as provided in Article 54(2) of the Constitution.
76. The Committee recommends enhancement of the legal framework to recognize National Identity Cards as valid voting documents for Kenyans in the diaspora, in addition to passports, to expand electoral inclusivity and remove barriers to participation.
77. The Committee recommends legislative amendments to expand voting rights for inmates beyond presidential elections to include other elective positions, in alignment with constitutional rights to political participation.
78. The Commission to provide detailed plans for expanding diaspora voter registration centers beyond the current 12 countries, with specific targets for the 2027 General Election and a roadmap for progressive realization of diaspora voting rights.
79. The Committee recommends that the Commission develops and implements a comprehensive youth voter mobilization strategy, including partnerships with educational institutions, youth organizations, and digital platforms, to increase registration and participation of the youth who constitute the largest demographic.
80. The Commission to provide a detailed security framework in collaboration with relevant security agencies to protect Commission staff and Commissioners from ethnic profiling, intimidation, abduction, and harassment during election periods.

4 THE OFFICE OF THE DATA PROTECTION COMMISSIONER (ODPC)

4.1 Establishment and Mandate

81. The Office of the Data Protection Commissioner is established under the Data Protection Act, Cap 411C as an independent office responsible for safeguarding the constitutional right to privacy under Article 31 of the Constitution and ensuring compliance with data protection principles.
82. The Commissioner's mandate encompasses regulatory oversight of all data controllers and data processors who handle personal data, including those involved in electoral processes. This includes oversight of the Independent Electoral and Boundaries Commission (IEBC), registered political parties, third-party service providers (including contractors, data processors, technology vendors, and analytic firms) that handle voters' or citizens' personal data in the context of elections and related civic processes.
83. Section 18(1) of the Act provides that *no individual or entity shall operate as a data controller or data processor without registering with the Office*. The Third Schedule of the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 further lists entities that process personal data for electoral purposes as part of the entities subject to mandatory registration.

4.2 Background

84. The Constitutional Implementation Oversight Committee wrote to the Office of the Data Protection Commissioner (ODPC) vide letter (**Ref No. NA/DAA&GPC/CIOCI/2025/18**) on 10th September, 2025 to report on the extent of the office's discharge of its mandate pursuant to the Constitution and its role regarding data protection and safeguarding the integrity of the elections and protecting the constitutional right to privacy.
85. Ms. Immaculate Kassait, MBS, Data Commissioner, appeared before the Committee on 7th October, 2025 and submitted as follows:

4.3 Submission by the Office of the Data Protection Commissioner

On regulatory authority of electoral data processing.

86. The Commission stated that all data controllers and data processors who process personal data for electoral purposes are subject to mandatory requirements and compliance obligations as provided under the Act and the attendant Regulations. The Commission noted that these include but are not limited to registration as either data controllers and data processors, or both, with the Office of the Data Protection Commissioner; and implementing data protection principles in an effective manner, and integrating appropriate technical and organizational measures to ensure data security.

Registration

87. The Commission reported that in line with the mandatory registration provision, the Office issued a letter **Ref. No. ODPC/DPCI/10(8)** dated 9th June 2025 to the Office of the Registrar of Political Parties (ORPP), requesting that the ORPP communicates the obligation to register with the Office as either data controllers, data processors or both to all registered political parties and independent candidates.
88. The Commission noted that the Office is subsequently reviewing twenty-one (21) applications for registration, in addition to the seven (7) already registered political parties. The Commission stated that the Office is currently reviewing IEBC's application for registration as both a data controller and data processor.

Audits and assessments

89. The Commission submitted that it faces a critical staffing capacity gap of 45% despite an expanded mandate. The Commission noted that understaffing results from limited budgets while responsibilities have significantly increased. The Commission submitted that its mandate expansion includes senior management positions in public universities, constitutional commissions and statutory bodies.
90. The Commission reported that in the Financial Year 2024/2025, the Office conducted an audit of the ORPP to assess data protection compliance in its operations. The Commission noted that the resulting Audit Report identified gaps that required corrective action to strengthen its data protection compliance.

91. The Commission stated that the Office has also scheduled a compliance audit of the processes and systems of the Independent Electoral and Boundaries Commission (IEBC) in the second quarter of the Financial Year 2025/2026, to assess the Commission's adherence to the requirements of the Act.
92. The Commission noted that additionally, the seven (7) political parties registered with the Office will be assessed to ascertain whether the personal data they process is handled in accordance with the provisions of the Act. The Commission observed that the Office further advises all the registered political parties to consider engaging the Office's prequalified accredited data protection auditors, to conduct data protection compliance.

Data processing agreements (Third party engagements)

93. The Commission stated that Regulation 24 of the Data Protection (General) Regulations require on data controllers such as IEBC and political parties who engage data processors or third-parties in the carrying out of any processing operation to ensure that enter into data processing agreements, outlining the processing details, the subject matter of the processing, the duration of the processing, the nature and the purpose of processing, the type of personal data being processed and the obligations and rights of the data controller.
94. The Commission noted that the Office shall be in a position to establish IEBC's compliance with this provision during the scheduled data protection audit.

Data sharing agreements

95. The Commission observed that Section 25 of the Data Protection Act, Cap. 411C provides that entities may share or exchange personal data collected, upon request, by another data controller, data processor, third party or a data subject. The Commission stated that however, it's the obligation of the data controller or processor to determine the purpose and means of sharing personal data, enter into data-sharing agreements and ensure that requests for sharing data are in writing specifying the purpose, duration and safeguards in place prior to sharing.

On complaints management

96. The Commission reported that the Office has received a total of 8226 complaints and of this 7947 has been resolved and 279 is being processed, translating to 97% resolution rate. The Commission stated that the majority of the complaints are from Digital Lender (68%), Individuals (6%), Private Companies (6%), Financial Institutions (4%), Telecommunications Companies (2%), and Government Institutions (1%).
97. The Commission noted that the Office has also received one hundred and fifty-four (154) complaints in 2021, eleven (11) in 2022 and one (1) in 2024 about the various political parties and ORPP. The Commission stated that the nature of the complaints entailed improper registration to a political party and requesting for them to be deregistered. The Commission observed that the Office directed the complainants to exercise their right of rectification with the ORPP. The Commission noted that on the trends, the Office observes that majority of the complaints were prior to the elections of 2022 and that after ORPP made provisions for the data subjects to be able to check, verify and amend their registration details, no complaints have been filed with the Office.

On investigations and audits undertaken

98. The Commission reported that the Office has received a total of 8226 complaints and of this 7947 has been resolved and 279 is being processed, translating to 97% resolution rate. The Commission stated that to this end, one hundred and fifty-four (155) complaints relate to the various political parties and ORPP, involving requests for deregistration due to improper registration to political parties. The Commission noted that the Office further directed the complainants to exercise their right of rectification under the Act with the ORPP.
99. The Commission observed that on the other hand, the Office conducted data protection compliance audits on forty-six (46) data handlers, comprising thirty-one (31) public entities and fifteen (15) private entities, in the previous financial year (2024/25). The Commission stated that ORPP was among these public entities.
100. The Commission noted that most of the entities were found to be partially compliant on most of the key audit areas including the Record of Processing activities (ROPA), assessment of legal bases, enabling data subjects to exercise their data subject rights

inclusion of data protection clauses in their data sharing and data processing agreements and employee training and awareness.

On enforcement measures Taken

101. The Commission reported that the Office has, to date issued 305 determinations, 129 enforcement notices, 20 penalty notices, 178 compensation orders, 21 referrals for prosecution and settled 74 complaints through Alternative Dispute Resolution (ADR).
102. The Commission stated that the Office has not received any complaints involving political parties, warranting any enforcement measures, after the intervention of ORPP.

On electoral data breaches notifications and incident responses

103. The Commission observed that notification and communication of personal data breaches is one of the key compliance obligations of data controllers and data processors. The Commission stated that the Act specifically requires entities processing electoral data to notify the Data Commissioner of a breach without undue delay, and in any event, within seventy-two (72) hours of becoming aware of it.
104. The Commission noted that in addition, the controller must also communicate the breach to the affected data subject in writing within a reasonably practicable period, where the breach is likely to result in high risk to their rights and freedoms, unless the identity of the data subject cannot be established.
105. The Commission stated that the Office has not received any breach notifications from the Independent Electoral and Boundaries Commission (IEBC) or any other electoral stakeholders, as of the date of the response.

On public awareness and guidance

106. The Commission reported that the Office has published a Guidance Note on the Processing of Personal Data for Electoral Purposes, which is available on the official website. The Commission stated that this Guidance Note is intended to support compliance by election stakeholders by providing clarity on their obligations under the Data Protection Act, 2019, particularly in relation to the lawful, fair, and transparent processing of voters' and other electoral related personal data. The Commission noted

that the Office has additionally conducted capacity building sessions for two hundred and twenty-nine (229) ORPP staff.

On cross border data flows and Third Country hosting

107. The Commission observed that Sections 48 and 49 of the Act outline the conditions for the transfer of personal data out of Kenya. The Commission stated that these conditions include the transfer as a necessity, consent of the data subject or transfer based on appropriate safeguards. The Commission noted that IEBC is subject to the data localization requirements under Section 50 of the Act and Regulation 26 of the Data Protection (General) Regulations.
108. The Commission stated that the Office is currently pursuing adequacy decision with the European Union (EU), which will facilitate ease of cross-border data flows between Kenya and EU members states. The Commission noted that the Office is additionally working on developing Standard Contractual Clauses (SCC) and Binding Corporate Rules (CBRs) to streamline the requirements for cross-border data flows.
109. The Commission observed that the Office will assess compliance with these initiatives through the scheduled audit at IEBC.

On Challenges in Overseeing Electoral Data Processing Legal, Policy & Institutional Challenges

The Commission noted the following challenges:

110. The Commission observed that while the ODPC has issued a Guidance Note on Processing of Personal Data for Electoral Purposes, the same needs to be updated to align with developments in election laws, and election and campaign technologies in order to address specific data protection implications of these new laws and technologies.
111. The Commission stated that there is a lack of Mutual Legal Assistance (MLA) in enforcement and monitoring data protection compliance within different jurisdictions.

Technical Challenges

112. The Commission noted that the use of sophisticated digital tools such as microtargeting, digital canvassing, data analytics, and social media platforms make it difficult to regulate the processing of personal data. The Commission observed that

ODPC lacks the necessary tools to audit such complex systems, including real time monitoring and detection tools.

113. The Commission stated that balancing the right to access information with data protection principles, such as data minimization due to data base sharing leading to repurposing of personal data, presents a challenge.

Resource Challenges

114. The Commission observed that there are capacity gaps, with limited staff and tools within the Office to match the surge of electoral related compliance needs during the election period.
115. The Commission stated that election periods require surge capacity for purposes of awareness creation, monitoring, investigations and enforcement. The Commission noted that however, resources are static and subject to treasury allocation.
116. The Commission observed that there are public awareness gaps, noting that citizens often do not know how to exercise their rights against misuse of electoral data.

Committee Observations

- I. The Committee observed as follows: -

THAT-

117. The Office of the Data Protection Commissioner plays a critical role in safeguarding electoral integrity by ensuring compliance with data protection principles in the processing of voters' and citizens' personal data during elections and related civic processes;
118. Only seven (7) political parties have registered with the ODPC as data controllers or data processors, despite the mandatory registration requirement under Section 18(1) of the Data Protection Act, Cap. 411C. The Office is currently reviewing twenty-one (21) additional applications and IEBC's application for registration as both a data controller and data processor;
119. The ODPC conducted an audit of the Office of the Registrar of Political Parties (ORPP) in Financial Year 2024/2025 which identified gaps requiring corrective action, and has scheduled a compliance audit of IEBC in the second quarter of Financial Year 2025/2026;

120. The Office received 155 complaints in 2021, 2022 and 2024 regarding improper registration to political parties, with the majority filed prior to the 2022 elections. After ORPP made provisions for data subjects to check, verify and amend their registration details, no complaints have been filed with the Office;
121. The Office has not received any breach notifications from IEBC or other electoral stakeholders regarding personal data breaches, despite the mandatory requirement to notify the Data Commissioner within seventy-two (72) hours of becoming aware of a breach;
122. The existing Guidance Note on Processing of Personal Data for Electoral Purposes needs to be updated to align with developments in election laws and emerging election and campaign technologies, including microtargeting, digital canvassing, data analytics, and social media platforms;
123. The ODPC faces significant resource constraints including limited staff and tools to match the surge of electoral-related compliance needs during election periods, with resources remaining static and subject to treasury allocation;
124. There is a lack of Mutual Legal Assistance (MLA) mechanisms in enforcement and monitoring data protection compliance across different jurisdictions, which limits the Office's ability to regulate cross-border data flows and processes; and
125. The alignment of election laws with the Data Protection Act through consequential amendments under the Second Schedule of the Act remains incomplete, creating potential conflicts and compliance challenges for electoral stakeholders.

Way Forward

126. The Committee recommends that all registered political parties that have not yet registered with the ODPC as data controllers or data processors should complete their registration to ensure compliance with Section 18(1) of the Data Protection Act, Cap. 411C;
127. The Committee recommends that IEBC expedites the completion of its registration process with the ODPC and ensures full compliance with all data protection requirements before the 2027 General Election, including entering into appropriate data processing and data sharing agreements with all third-party service providers;
128. The Committee recommends that the ODPC provides a detailed report to the Committee within six months on the findings of the scheduled IEBC compliance audit,

- including specific gaps identified and corrective measures required to strengthen data protection compliance in electoral processes;
129. The Committee recommends that Parliament enacts consequential amendments to align election laws with the Data Protection Act as provided under the Second Schedule of the Act, and incorporates Mutual Legal Assistance (MLA) provisions to facilitate cross-border enforcement and monitoring of data protection compliance;
 130. The Committee recommends that the ODPC updates its Guidance Note on Processing of Personal Data for Electoral Purposes within six months to address emerging technologies including microtargeting, digital canvassing, data analytics, and social media platforms used in modern electoral campaigns;
 131. The Committee recommends that the ODPC develops and implements a comprehensive public awareness campaign to educate citizens on their data protection rights in electoral contexts, particularly regarding the misuse of electoral data, with specific focus on youth and marginalized communities;
 132. The Committee recommends that the ODPC invests in technical capacity building, including acquisition of digital forensic tools, real-time monitoring systems, and detection tools necessary to audit complex digital electoral systems and ensure timely detection and response to non-compliance;
 133. The Committee recommends that IEBC, ORPP, and all registered political parties designate Data Protection Officers (DPOs) or establish Data Protection Committees within three months, and develop comprehensive data protection policies as part of embracing self-regulation in electoral data processing;
 134. The Committee recommends that the ODPC operationalizes the Data Sharing Code within six months to provide clear guidance on sharing of personal data between government departments, public sector agencies, and electoral stakeholders, promoting good practice and minimizing risks to data subjects;
 135. The Committee recommends that the ODPC conducts mandatory capacity building and training sessions for all electoral stakeholders, including political parties, IEBC staff, and third-party service providers, before the 2027 election season, focusing on data protection principles, compliance requirements, and best practices in electoral data processing;
 136. The Committee recommends that IEBC and all electoral stakeholders fully implement data localization requirements under Section 50 of the Data Protection Act and

Regulation 26 of the Data Protection (General) Regulations, ensuring that electoral data is stored and processed within Kenya with appropriate safeguards for any necessary cross-border transfers;

137. The Committee recommends that the ODPC establishes a mandatory breach notification monitoring system specifically for electoral data, with clear protocols for immediate investigation and response to any data breaches reported by IEBC, political parties, or other electoral stakeholders; and
138. The Committee to review progress on implementation of ODPC recommendations within twelve months and assess the effectiveness of data protection measures in safeguarding electoral integrity ahead of the 2027 General Election.


5 GENERAL COMMITTEE OBSERVATIONS

139. The Committee's interactions with the *Independent Electoral and Boundaries Commission (IEBC)* and the *Office of the Data Protection Commissioner (ODPC)* revealed several fundamental, cross-cutting challenges that impede the effective conduct of free, fair, and credible elections while safeguarding citizens' constitutional right to privacy. The Committee observes that:

1. Both institutions operate with significant budget deficits that prevent them from fulfilling their constitutional and statutory mandates. This systemic underfunding directly undermines the delivery of credible elections and effective data protection oversight as guaranteed by the Constitution;
2. Operational inefficiencies due to legislative gaps and outdated legal frameworks are prevalent. The persistent late enactment or amendment of electoral laws too close to elections contradicts the Kriegler Commission recommendations that legal reforms should be undertaken at least two years before a General Election. The IEBC's twelve legislative proposals and four bill submissions to Parliament await consideration and passage. The lack of consequential amendments to align election laws with the Data Protection Act under the Second Schedule creates compliance challenges. These legislative gaps lead to confusion, litigation and implementation delays that compromise electoral integrity;
3. Challenges in data validity and electoral infrastructure were noted across both institutions. The validity and accuracy of the 2009 and 2019 census data remains contested in court, creating uncertainty for boundary delimitation. The issue of ghost primary schools registered as polling stations compromises electoral integrity. Only seven political parties have registered with ODPC as data controllers despite mandatory requirements. The IEBC's shift from Voting Age Population (VAP) to Voter Eligible Population (VEP) demonstrates efforts to improve data accuracy, but implementation challenges remain;
4. Independence and political interference emerged as critical concerns. The IEBC's independence is compromised by political interference, inadequate and untimely disbursement of funding at the discretion of the National Treasury, and ethnic profiling of Commission staff during election periods. The persistent demand for disbandment of the Electoral Management Body following disputed elections, rather than

addressing systemic issues, undermines institutional stability. The lack of operationalized IEBC Fund perpetuates financial dependence on treasury discretion;

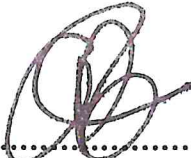

5. Inadequate capacity and technical tools severely affect both institutions. The ODPC lacks necessary tools to audit complex digital systems including real-time monitoring and detection tools for sophisticated digital campaigning, microtargeting, and data analytics. The IEBC requires investment in technology for enforcement including automated cameras, speed detection, and digital ticketing systems. Both institutions need enhanced capacity building, specialized training, and technical infrastructure to address emerging technologies in electoral processes.



6 COMMITTEE RECOMMENDATIONS

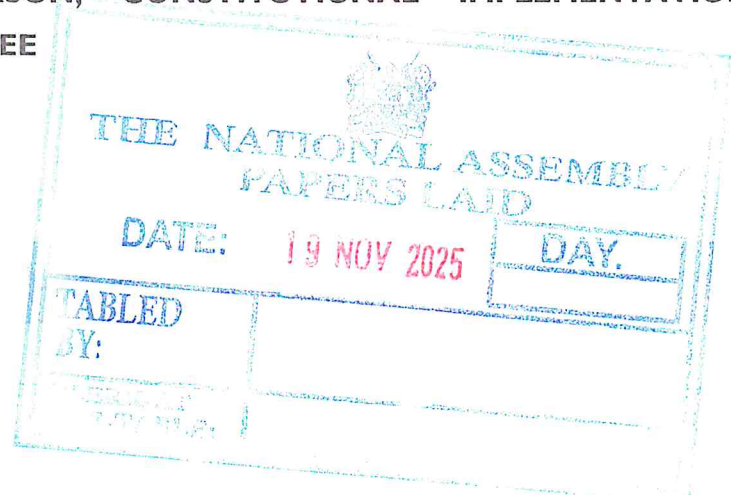
140. In light of the above general observations, the Committee makes the following recommendations to address these cross-cutting challenges:

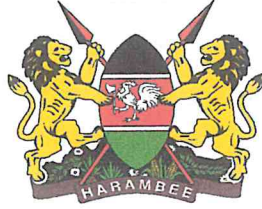
1. The National Treasury, in conjunction with Parliament to prioritize and ensure adequate budgetary allocations to both the Independent Electoral and Boundaries Commission and the Office of the Data Protection Commissioner;
2. Parliament to operationalize the IEBC Fund as provided in law to strengthen the Commission's financial independence and eliminate reliance on the National Treasury's discretionary disbursement of funds;
3. The Attorney General, in consultation with IEBC, ODPC, and relevant stakeholders, to urgently undertake a comprehensive legislative review to:
 - a) Enact consequential amendments to align election laws with the Data Protection Act as provided under the Second Schedule of the Act; and
 - b) Incorporate Mutual Legal Assistance (MLA) provisions across various data protection authorities and legislation to facilitate cross-border enforcement and monitoring.
4. IEBC to provide detailed plans for expanding diaspora voter registration centers beyond the current 12 countries, with specific targets for the 2027 General Election and a roadmap for progressive realization of diaspora voting rights;
5. Both IEBC and ODPC to develop and implement comprehensive public awareness campaigns to educate citizens on their electoral and data protection rights, with specific focus on youth mobilization, marginalized communities, and diaspora populations.

SIGNED.......... DATE..........

HON. CAROLI OMONDI, CBS, MP

CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE





THE NATIONAL ASSEMBLY
13TH PARLIAMENT – 4TH SESSION (2025)

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

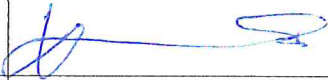



ADOPTION LIST

Fourth Report on the Status of Implementation of the Constitution by;

1. The Independent Electoral and Boundaries Commission; and
2. The Office of the Data Protection Commissioner.

We, the undersigned, hereby affix our signatures to this report to affirm our approval:

	HON. MEMBER	SIGNATURE
1.	Hon. Caroli Omondi, CBS, M.P. - Chairperson	
2.	Hon. William Kamket, M.P. - Vice Chairperson	
3.	Hon. Jessica Mbalu, CBS, M.P.	
4.	Hon. Silvanus Osoro, M.P.	
5.	Hon. Lawrence Aburi Mpuru, M.P.	
6.	Hon. Mejjadonk Benjamin Gathiru, M.P.	
7.	Hon. George Risa Sunkuyia, M.P.	
8.	Hon. Mary Wamaua, M.P.	
9.	Hon. Jackson Lekumontare, M.P.	

	HON. MEMBER	SIGNATURE
10.	Hon. Charles Nguna Ngusya, M.P.	
11.	Hon. Paul Abuor, M.P.	
12.	Hon. Oscar Nabulindo, M.P.	
13.	Hon. Dr John Murumba Chikati, MBS, M.P.	
14.	Hon. Nimrod Mbai, M.P.	
15.	Hon. Bernard Kitur, M.P.	
16.	Hon. Geoffrey Ekesa Mulanya, M.P.	
17.	Hon. Abdisirat, Khalif Ali, M.P.	
18.	Hon. Mwangi, Teresia Wanjiru, M.P.	
19.	Hon. Osero, Patrick Kibagendi, M.P.	
20.	Hon. Karitho, Kiili Daniel, M.P.	
21.	Hon. Mohamed, Umulkher Harun, M.P.	
22.	Hon. John Mukunji Gitonga, MP	
23.	Hon. Hamisi, Kakuta Maimai, M.P.	