

*Approved
SNA
18/11/25*

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – FOURTH SESSION


THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

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

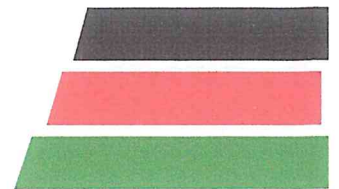
- 1. THE TEACHERS SERVICE COMMISSION;**
- 2. THE PUBLIC SERVICE COMMISSION; AND**
- 3. THE JUDICIAL SERVICE COMMISSION.**

NOVEMBER, 2025

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 NOV 2025	DAY: TUESDAY
TABLED BY:	HON. CAROL OMONDI, MP (CHAIRPERSON)
CLERK-AT-THE-TABLE:	INZOPU MWALE, #X

**Directorate of Audit, Appropriations and General Purpose Committees
National assembly
Parliament buildings
NAIROBI**

NATIONAL ASSEMBLY RECEIVED
13 NOV 2025
SPEAKER'S OFFICE P. O. Box 41842, NAIROBI.



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ABBREVIATIONS

CBE	Competency Based Education
SCAC	State Corporation Advisory Committee
TVET	Technical and Vocational Education and Training
TSC	Teachers Service Commission
SRC	Salaries and Remuneration Commission
PSC	Public Service Commission
PSIP	Public Service Internship Programme

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) shall receive regular reports from the Commission on the Implementation of the Constitution on implementation of this Constitution including reports concerning—

(i) the preparation of the legislation required by this Constitution and any challenge's in that regard;

(ii) the process of establishing the new commissions;

(iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;

(iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and

(v) any impediments to the process of implementing this Constitution;

(b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by 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 has so far between February and July 2025, invited three Constitutional Commissions with a view of understanding their operations vis-a vis their constitutional mandate and any impediments in the performance of their role.

The commissions are: ***Teachers Service Commission, Public Service Commission and Judicial Service Commission.***

This interaction made the Committee aware of the achievements and challenges of these Constitutional Commissions. Some of the challenges include inadequate budget allocation, despite their constitutional duty to submit reports, Parliament does not deliberate on these reports and lastly, the existence of conflict between TSC, JSC and PSC and the Executive and other State organs.

In conclusion, Honourable Speaker, I wish to express my appreciation to fellow Honourable 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.

Honourable 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-K

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 Mpuri 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

Principal Clerk Assistant I

Lead Clerk

Ms. Hellen Kina

Senior Clerk Assistant

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 February to July 2025, as follows: -

1) *The Teachers Service Commission.*

2) *The Public Service Commission*

3) *The Judicial Service Commission*

3 THE TEACHERS SERVICE COMMISSION (TSC).

3.1 Establishment and Mandate

7. The Teachers Service Commission (TSC) is one of the Independent Commissions established under Chapter Fifteen of the Constitution of Kenya, 2010. The Commission is established under Article 237 of the Constitution.
8. Article 237(3) further provides for the mandate of the Commission, it provides as follows:
 - 3) *The Commission shall—*
 - (a) *review the standards of education and training of persons entering the teachers service;*
 - (b) *review the demand for and the supply of teachers; and*
 - (c) *advise the national government on matters relating to the teaching profession.*
9. The Teachers Service Commission Act, Cap. 212, operationalizes the Commission and provides the legal framework for the Commission's functions and operations. The Act establishes the Commission as a body corporate with perpetual succession and outlines its comprehensive mandate including the recruitment, registration, employment, assignment, promotion, transfer, discipline, and termination of teachers in public institutions.
10. Additionally, the TSC Act, Cap. 212 provides for the governance structure of the Commission, including the appointment and tenure of commissioners, the establishment of regional and county offices and the creation of various committees to facilitate the Commission's work.

3.2 Background

11. The Constitutional Implementation Oversight Committee wrote to the Teachers Service Commission (TSC) on Tuesday, 8th April, 2025 to report on the extent of the Commission's discharge of its mandate pursuant to Article 237 of the Constitution including any impediments to the process of implementing the Constitution and the way forward.
12. Dr. Nancy Macharia, the Chief Executive Officer, accompanied by other officials from TSC appeared before the Committee and submitted as follows:

3.3 Submission by the Teachers Service Commission

On Recruitment and Employment of Registered Teachers

13. The Commission faces significant challenges in fulfilling its mandate to recruit and employ registered teachers. The primary impediment is inadequate budget allocation, which has resulted in a critical teacher shortage of 98,261 teachers in public schools, including Junior Secondary School (JSS) teachers. This shortage undermines the constitutional right to education as enshrined in Article 43 of the Constitution. The situation is expected to worsen in 2026 with the anticipated rollout of Senior schools.
14. The Commission has not achieved optimal teacher numbers since its establishment, highlighting the persistent nature of this challenge. Additional complications arise from the irregular establishment of new schools without corresponding budgetary provisions for teaching staff, creating further strain on the system.
15. The Commission also faces challenges with the lack of qualified teachers in new learning areas introduced by Competency-Based Education (CBE), including leather craft, picture making, sculpture, jewelry and ornament making, media technology, marine and fisheries technology, general science, and indigenous languages.
16. The proposed solutions include securing increased budgetary allocations from the National Assembly for teacher recruitment, strengthening coordination among stakeholders to ensure planned school establishment and implementing advisories to the National Government for training teachers in new learning areas.

On Transfer and Assignment of Teachers to Public Schools and Institutions

17. The Commission encounters significant obstacles in its mandate to transfer and assign teachers for service across the country. Security concerns present a major challenge, with teachers facing threats from banditry, Al-Shabaab attacks and community hostility, particularly when accused of non-performance by local stakeholders.
18. Environmental conditions in certain regions create additional hardships for teachers, making assignments to these areas difficult to fill and maintain. The situation is further complicated by competing stakeholder interests that often conflict with the Commission's placement decisions.
19. To address these challenges, the Commission proposes improved security measures by the National Government, enhanced stakeholder engagement to protect teachers from unfounded attacks, adherence to constitutional values by all stakeholders and

enhanced budgetary allocations for differentiated hardship allowances in extreme hardship areas.

On Promotion of Teachers

20. The Commission's ability to promote deserving teachers is severely constrained by insufficient budgetary allocations for implementing Career Progression Guidelines for Teachers. As of December 2024, a total of 200,022 teachers were qualified for promotion, having completed three years or more in their current grade, with additional teachers becoming eligible annually.
21. This backlog represents a significant challenge to teacher motivation and career development within the public education system. The Commission recommends continuous budgetary provisions specifically allocated for teacher promotions to address this growing backlog and ensure career progression remains viable for serving teachers.

On Exercise of Disciplinary Control Over Teachers

22. The Commission faces complex challenges in maintaining disciplinary standards among teachers. Harmful cultural practices in some communities lead to the protection of accused teachers while exposing learners to inappropriate sexual activities, undermining child protection efforts.
23. Additionally, Section 62 of the Anti-Corruption and Economic Crimes Act, Cap. 65, provides that employees charged with corruption-related offences shall be suspended on half pay from the date of the charge until the conclusion of the case, which must be determined within twenty-four months. However, since many cases take years to conclude, this provision often contributes to staff shortages, as teaching positions remain unfilled for extended periods.
24. The Commission proposes stakeholder collaboration on sensitization and awareness programs for child protection in local communities and amendments to the Anti-Corruption and Economic Crimes Act, Cap. 65 requiring corruption cases to be concluded within six months to minimize disruption to educational services.

On Registration of Trained Teachers

25. The Commission encounters challenges with training institutions admitting teacher trainees who lack the requisite qualifications for registration as teachers. This practice undermines the quality and standards expected in the teaching profession and creates complications in the registration process.

26. The proposed solution involves enhanced stakeholder engagement with training institutions to ensure admission standards align with professional registration requirements.

Committee Observations

- I. The Committee observed as follows: -

THAT-

27. The Commission faces significant challenges affecting teacher deployment and career progression within the public education system. The Committee noted a pronounced imbalance in teacher distribution across constituencies, with certain constituencies experiencing complete absence of teaching staff while others maintain adequate coverage;
28. Teachers across the country face excessive workloads, particularly in populous counties such as Kakamega County. This situation is compounded by insufficient teacher deployment to these high-demand areas due to budgetary constraints. The Committee noted that counties like Kakamega specifically demonstrate severely inadequate teacher distribution ratios;
29. The Public Service Commission has established a joint assessment team, which includes TSC personnel, to evaluate and compile a comprehensive list of hardship areas across the country. While the TSC has completed its identification of these areas, the Commission awaits the Public Service Commission's finalized recommendations before implementation;
30. The current budget allocation of One Billion Kenya Shillings is insufficient, to cover for the promotion of only 600,000 teachers. The Committee noted additional complications arising from veteran teachers who decline promotions to avoid mandatory transfers from their preferred duty stations;
31. TSC requires an additional Five Billion Kenya Shillings beyond the current budgetary allocation, to fulfill the legal mandate of promoting all eligible teachers. This highlights the substantial funding gap preventing full implementation of the teacher's career progression requirements;
32. The Commission faces a critical teacher shortage of 98,261 teachers in public schools, undermining the constitutional right to access basic quality education as enshrined in Article 43 of the Constitution;

33. There is an imbalance in teacher distribution across constituencies, with certain constituencies experiencing complete absence of teaching staff while others maintain adequate coverage;
34. The irregular establishment of new schools occurs without corresponding budgetary provisions for teaching staff, creating further strain on the system;
35. There is a shortage of qualified teachers in new learning areas introduced by Competency-Based Education, including leather craft, picture making, sculpture, jewelry and ornament making, media technology, marine and fisheries technology, general science and indigenous languages;
36. Teachers face security threats from banditry, Al-Shabaab attacks, and community hostility, particularly when accused of non-performance by local stakeholders;
37. Harsh environmental conditions in certain regions create additional hardships for teachers, making assignments to these areas difficult to fill and maintain; and
38. The Commission's ability to promote deserving teachers is severely constrained by insufficient budgetary allocations, with 200,022 teachers qualified for promotion as of December 2024
39. There are significant concerns regarding the classification, adequacy, and equitable distribution of hardship allowances for teachers serving in challenging environments across the country. While the TSC has acknowledged the need for enhanced budgetary allocations for differentiated hardship allowances in extreme hardship areas, the current framework for determining and classifying hardship areas presents several challenges that undermine teacher retention and motivation in these critical regions
40. The absence of a transparent, objective, and regularly updated mechanism for assessing and classifying hardship areas undermines the effectiveness of the hardship allowance scheme and contributes to teacher reluctance to accept postings in genuinely difficult areas, thereby exacerbating the teacher shortage crisis in marginalized regions;

Way Forward

1. The Committee to invite the Teachers Service Commission to appear before it again to provide comprehensive data on the distribution of teachers across all constituencies in the country. This data should include specific breakdowns by county and constituency, identifying areas with teacher shortages and surpluses, and explaining the criteria used for teacher deployment decisions. The Commission should also provide

comparative analysis showing teacher-to-student ratios across different regions to demonstrate the extent of the imbalance observed;

2. TSC to provide detailed data on teachers who have been promoted, including their original employment dates and corresponding promotion dates. This information should demonstrate the correlation between graduation years, employment periods, and promotion timelines to address the inconsistencies observed in the employment and career progression patterns. The data should also include analysis of promotion trends over the past five years to identify any systemic delays or preferential treatment patterns;
3. TSC to provide data on teachers who remain eligible for promotion but have not yet been promoted, categorized by years of service and qualification levels. The Commission should indicate the specific budget requirements for promoting these teachers as mandated by law, building upon the identified need for an additional five billion Kenya shillings beyond the current one billion allocation. This should include a detailed breakdown of promotion costs and a proposed timeline for addressing the backlog; and
4. The TSC to provide specific information on affirmative measures taken or planned for counties affected by teacher shortages to ensure equitable teacher distribution. Further, the Commission should outline concrete strategies, timelines, and resource allocations to address these disparities and ensure every constituency has adequate teaching staff as constitutionally mandated.

4 THE PUBLIC SERVICE COMMISSION (PSC).

4.1 Establishment and Mandate

41. The Public Service Commission (PSC) is one of the Independent Commissions established under Chapter Fifteen of the Constitution 2010. The Commission is established under Article 233 of the Constitution.
42. Article 234(2) further provides for the mandate of the Commission, it provides as follows:

234. (2)

The Commission shall—

(a) subject to this Constitution and legislation—

(i) establish and abolish offices in the public service; and

(ii) appoint persons to hold or act in those offices, and to confirm appointments;

(b) exercise disciplinary control over and remove persons holding

or acting in those offices;

(c) promote the values and principles referred to in Articles 10 and 232 throughout the public service;

(d) investigate, monitor and evaluate the organisation, administration and personnel practices of the public service;

(e) ensure that the public service is efficient and effective;

(f) develop human resources in the public service;

(g) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service;

(h) evaluate and report to the President and Parliament on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the public service;

(i) hear and determine appeals in respect of county governments' public service; and

(j) perform any other functions and exercise any other powers conferred by national legislation.

43. The Public Service Commission Act, Cap. 185, operationalizes the constitutional provisions by providing comprehensive frameworks for public service management.

The Act establishes the Commission as the principal authority responsible for human resource management in the public service, with powers to develop policies, procedures and guidelines governing recruitment, appointment, promotion, transfer, discipline and termination of public officers.

44. The legislation emphasizes merit-based selection processes and mandates adherence to constitutional values including transparency, accountability, competitiveness and non-discrimination in all public service operations.
45. Additionally, the PSC Act, Cap. 185 provides for the establishment of the Commission's organizational structure, including the creation of county and regional offices to enhance service delivery and oversight functions. The Act empowers the Commission to conduct investigations, audits and inspections of public institutions to ensure compliance with established standards and procedures.

4.2 Background

46. The Constitutional Implementation Oversight Committee wrote to the Public Service Commission (PSC) 26th May, 2025 to report on the extent of the Commission's discharge of its mandate pursuant to Articles 234, 155(3)(a), 158(2)(3) and (4), 171(2), 230(2)(b) and 236 of the Constitution including any impediments to the process of implementing the Constitution and the way forward.
47. PSC wrote to the Committee vide a letter (**Ref: PSCIADM/26/IVI (5)**) dated 5th June, 2025 requesting for a reschedule. The Committee acceded to this request during its 23rd Sitting and communicated this to PSC via a letter dated 12th June, 2025.
48. Mr. Paul Famba, the Chief Executive Officer, accompanied by other officials from PSC appeared before the Committee on Tuesday, 24th June, 2025. PSC submitted as follows:

4.3 Submission by the Public Service Commission

Encroachment of the Commissions mandate by other public agencies.

49. The State Corporations Advisory Committee (SCAC) and the Inspectorate of State Corporations have consistently encroached on the constitutional and statutory mandate of the Commission over the management of human resources in state corporations and public universities.

50. The Salaries and Remuneration Commission's mandate over public officers is to advise on remuneration and benefits. This advice is supposed to be given to PSC as the employer of public officers. However, SRC has consistently given advice directly to agencies that fall under the mandate of PSC thereby distorting remuneration in the public service and intensifying discrimination, unfairness and inequity.

Limited financial allocation relative to expanded mandate

51. The Public Service Commission submitted that annual budget allocations have been inadequate to fund projected programs and activities. The Commission noted that during the FY 2023/24 Budget Sector retreat, it presented resource requirements of KES 5.61 Billion to implement its five programs, but received only KES 3.67 Billion, leaving a deficit of KES. 1.94 Billion.

Understaffing at Commission Secretariat

52. 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.
53. The Commission further noted that Technical and Vocational Education and Training (TVET) functions were transferred from TSC to PSC in 2018 without corresponding resource allocation. The Commission submitted that it also handles increasing numbers of appeals from counties, universities and state corporations, along with related court litigation under its quasi-judicial functions.

Facility constraints

54. The Commission noted that they operate under severe facility constraints, including inadequate office space, limited work equipment, and restricted mobility resources. The Commission noted that attempts to enhance staff numbers within the same constrained office space have created operational challenges.
55. The Commission submitted that it requires additional office space to fully implement its expanded mandate and is exploring options for securing government plot allocation. The Commission noted that a permanent facility would provide an ideal environment for consolidating all functions under one roof with adequate parking and supporting infrastructure.

Inadequate office accommodation

56. In an attempt to enhance staff numbers in the face of an expanded mandate, PSC has had to operate in the same constrained office space but would need additional office space to roll out all its functions.
57. The Commission is exploring options for securing allocation of a government plot as this would have provided a permanent solution and ideal environment for accommodation of all facilities/ full roll out of PSC functions under one roof including adequate parking spaces.

Legal constraints and Court cases based on misinterpretation of the law

58. The Commission submitted that despite clear constitutional and statutory mandates, fragmentation and gaps in the legal framework persist. The Commission noted that disruptive court rulings continue to impede effective mandate discharge, with numerous court cases challenging human resource decisions in the public service.
59. The Commission submitted that as the service commission overseeing human resource practices in the public service, it finds itself enjoined in most litigation cases. The Commission noted that many court cases arise from misinterpretation of existing laws, creating additional operational burdens.

Lack of statutory or regulatory anchoring of Public Service Internship Programme (PSIP)

60. The Public Service Commission submitted that while it successfully initiated the Public Service Internship Programme (PSIP) in 2019, the programme lacks statutory or regulatory anchoring. The Commission noted that despite smooth implementation over five years, the absence of legal foundation presents ongoing challenges. The Commission submitted that an Internship Bill is currently before the National Assembly to address this gap.

Committee Observations

I. The Committee observed as follows: -

THAT-

- I. There is overlap in functions between PSC, SRC and SCAC creating confusion and inefficiency in public service management;

2. The Commission recruits on request from various institutions rather than through strategic workforce planning;
3. SCAC is to focus on governance issues however, it is doing human resource functions which is a mandate role of PSC;
4. SRC has exceeded its advisory role by directly engaging with agencies under PSC's mandate rather than channeling advice through the designated employer;
5. There is an affirmative program for all institutions under PSC where each has been given a target to meet on all marginalized groups;
6. The Commission faces a 45% staffing gap at the Secretariat despite expanded mandate to include senior management positions in public universities, constitutional commissions and statutory bodies; and
7. TVET functions were transferred from TSC to PSC in 2018 without corresponding resource allocation.

Way Forward

1. The Public Service Commission to provide comprehensive tabulated data of its proposed changes and amendments to various laws and policies within ninety days, including specific legislative gaps, recommended amendments and implementation timelines;
2. The Committee to engage the Attorney General to develop legislation bringing the State Corporations Act, Cap. 446 into full compliance with the Constitution to eliminate Jurisdictional overlaps between PSC, SCAC and other agencies;
3. The Public Service Commission to present detailed budget proposals to the National Treasury and Parliament addressing the identified deficit of KES. 1.942 Billion for effective mandate implementation;
4. The Commission to establish formal coordination frameworks with SRC and SCAC to eliminate functional overlaps and ensure clear protocols for consultation and decision-making hierarchy; and
5. The Public Service Commission to fast-track legal anchoring of the Public Service Internship Programme by providing technical input to support the Internship Bill currently before Parliament

5 THE JUDICIAL SERVICE COMMISSION (JSC).

5.1 Establishment and Mandate

61. The Judicial Service Commission (JSC) is one of the Independent Commissions established under Chapter Fifteen of the Constitution 2010. The Commission is established under Article 171 of the Constitution. Article 172 further provides for the mandate of the Commission.
62. Article 172(1) outlines the comprehensive mandate of the Commission, which includes:
- (a) recommending to the President persons for appointment as judges;*
 - (b) reviewing and making recommendations on the conditions of service of judges and judicial officers, other than their remuneration;*
 - (c) appointing, removing, and exercising disciplinary control over magistrates and other judicial officers; and*
 - (d) preparing and implementing programmes for the continuing education and training of judges and judicial officers.*
63. The Judicial Service Act, Cap. 8A operationalizes the Constitutional provisions by establishing detailed procedures for the Commission's functions in judicial administration. The Act empowers the Commission to ensure the independence and accountability of the judiciary through merit-based appointments, performance evaluation systems and disciplinary mechanisms.

5.2 Background

64. The Constitutional Implementation Oversight Committee wrote to the Judicial Service Commission (JSC) on 26th May, 2025 to report on the extent of the Commission's discharge of its mandate pursuant to Article 171 of the Constitution including any impediments to the process of implementing the Constitution and the way forward.
65. JSC wrote to the Committee vide a letter (*Ref:JSC/OR/JSC/511/813*) dated 3rd June, 2025 requesting for a reschedule of the aforementioned meeting. The Committee acceded to this request during its 23rd Sitting and communicated this to JSC via a letter dated 12th June, 2025.

66. Hon. Isaac Ruto, EGH, the Vice Chairperson of the Commission, accompanied by other officials from JSC appeared before the Committee on Thursday, 17th July, 2025. TSC submitted as follows:

5.3 Submission by the Judicial Service Commission

Discharge of JSC Constitutional Mandate

67. On the discharge of its mandate, the Judicial Service Commission submitted that it has embraced strategic planning to guide its diverse constitutional activities and ensure effective mandate delivery. The Commission noted that it is currently implementing its 2022-2027 Strategic Plan, which provides a comprehensive framework for the next five years of operations.
68. The Commission submitted that the Strategic Plan prioritizes five key themes derived from situational analysis. These strategic themes include: efficient, accountable, transparent and transformative administration of justice; motivated, professional, dynamic, responsive judges, magistrates, registrars, judicial officers and judicial staff; financially independent and suitable Judiciary and JSC; increased public confidence and trust in the JSC; and strengthened institutional capacity.

Inadequate budgetary allocation

69. The Judicial Service Commission submitted that it faces underfunding that significantly limits its ability to discharge its constitutional mandate effectively. The Commission noted that current budgetary allocations represent less than 1% of the National Budget, which is insufficient to meet operational requirements.
70. The Commission submitted that inadequate funding particularly affects infrastructure development across more than 140 court stations, recruitment of judges, magistrates and support staff, and technology adoption for e-justice systems. The Commission noted that these funding constraints undermine the judiciary's capacity to deliver timely and accessible justice to citizens.

Mobility restrictions for specialized court judges.

71. The Commission submitted that judges serving in specialized courts, including the Employment and Labour Relations Court (ELRC) and Environment and Land Court (ELC), cannot be cross-deployed to the High Court or other divisions. The

Commission noted that these mobility restrictions create operational inefficiencies and limit career development opportunities for judicial officers, affecting overall judicial administration effectiveness.

Disciplinary framework limitations.

72. The Judicial Service Commission submitted that current disciplinary mechanisms under Article 168 are inadequate for addressing judicial misconduct comprehensively. The Commission noted that it can only recommend removal of a judge or dismiss petitions and complaints, with no provision for intermediate sanctions when minor infractions are identified.
73. The Commission noted that this binary approach fails to provide proportionate disciplinary responses and undermines the intended purpose of judicial accountability.

On Judges' Pension Scheme and Retirement Benefits

74. The Judicial Service Commission submitted that there has been delay in the enactment of the Judges Retirement Bill, 2025, which is denying retired judges fair compensation in line with rising living costs. The Commission noted that the Bill seeks to establish a dedicated pension framework for judges of superior courts, providing for annual pension adjustments pegged to inflation but capped at five percent.
75. The Commission submitted that currently, pension reviews are conducted every two years under the Pensions Increase Act (Cap. 190), which grants a three percent increment applicable to all pensioners. The Commission noted that if the proposed Bill is passed into law, these general provisions will no longer apply to judges, whose benefits will be handled separately under a specialized scheme.
76. The Commission further submitted that under the proposed framework, judges will contribute 7.5 percent of their salaries during service, while the government will contribute 15 percent of each judge's pensionable pay, with contributions charged directly to the Consolidated Fund. The Commission noted that pensions will be paid from a proposed Judges' Retirement Benefits Fund.
77. The Commission submitted that the Bill, sponsored by Majority Leader Kimani Ichung'wah, seeks to give preferential treatment to retired judges over other public servants who are not entitled to similar inflation-adjusted benefits. The Commission noted concerns raised by the Salaries and Remuneration Commission regarding

jurisdictional overlap, but emphasized the unique demands of judicial service that justify a dedicated pension framework.

On Establishment of High Courts in Every County

78. The Judicial Service Commission submitted that Section 12(1) of the High Court (Organization & Administration) Act mandates the Chief Justice, in consultation with the Principal Judge, to establish at least one High Court station in every county to facilitate reasonable and equitable access to court services.
79. The Commission noted that there are currently forty-five High Court stations and seven High Court sub-registries spread throughout 46 counties, with ongoing work to ensure that each of the 47 counties has at least one High Court station. The Commission submitted that chronic underfunding remains a major obstacle to achieving this constitutional and statutory requirement.
80. The Commission further submitted that inadequate infrastructure development funding has particularly affected the establishment of new High Court stations in underserved counties. The Commission noted that while progress has been made since 2010, when only 16 High Court stations existed, substantial gaps remain in ensuring access to superior court services across all counties.

On Utilization of NG-CDF for Court Construction

81. The Judicial Service Commission submitted a proposal for Parliament to consider allocating part of the National Government Constituency Development Fund (NG-CDF) to support court construction across the country, as the Judiciary grapples with a staggering 257,000 case backlog.
82. The Commission's Vice Chair Isaac Rutto noted that conditional allocation from the NG-CDF could fast-track access to justice, especially in underserved areas, stating that such allocation would make it possible for constituencies without courts to finally have them in place.
83. The Commission submitted that the NG-CDF has already supported construction of 14 courts across the country, with three more underway, built using Judiciary-issued prototypes and cost estimates. The Commission noted that 16 other court projects have stalled due to lack of funds.
84. The Commission further submitted that its long-term plan is to ensure every sub-county has a court, but chronic underfunding remains a major obstacle. The Commission noted that this proposal comes despite the recent High Court decision

in September 2024 declaring the NG-CDF unconstitutional, with the National Assembly now pushing for a constitutional amendment through parliamentary initiative to salvage the fund.

Tension between Arms of Government on Judicial Appointments.

85. The Commission submitted that tensions between arms of government regarding judicial appointments pose significant challenges to constitutional implementation. The Commission noted instances of delays or refusal by the Executive to appoint judges recommended by the JSC, which undermines constitutional expectations and strains inter-governmental relations.
86. The Commission further submitted that persistent attacks on judges for decisions made in their judicial capacity compromise judicial independence and erode public confidence in the justice system. The Commission noted that such interference contravenes constitutional principles of separation of powers and judicial independence.

Overlapping mandates among Constitutional Commissions

87. The Judicial Service Commission submitted that mandate ambiguity between the Salaries and Remuneration Commission and JSC over judges' and judicial officers' terms, benefits and allowances create institutional friction. The Commission noted that this overlap has resulted in inconsistent conditions of service and undermines effective judicial administration.
88. The Commission submitted that clear delineation of roles between Constitutional Commissions is essential to avoid duplication of functions and ensure coherent policy implementation across the justice sector.

Delayed enactment of proposed legislation by JSC.

89. The Commission submitted that significant delays in enacting JSC-proposed legislation impede effective justice administration and judicial officer welfare improvement. The Commission noted that the Tribunals Bill, Judges Retirement Bill and amendments to several other statutes remain pending despite their critical importance to judicial operations.
90. The Commission submitted that these legislative reforms are designed to enhance effective administration of justice and improve employee welfare, emphasizing the

need for fast-tracking their enactment to support constitutional mandate implementation.

Committee Observations

The Committee observed as follows: -

THAT-

1. There is urgent need for a comprehensive case management policy to ensure timely delivery of justice and reduce case backlogs across all court levels, with clear timelines for case progression and mechanisms for monitoring judicial performance;
2. The Constitution and the Judicial Service Act are silent on the process of reprimanding judges, providing only for removal while lacking intermediate disciplinary measures. Unlike jurisdictions such as South Africa and Uganda which have established procedures for judicial reprimand, Kenya's binary system of dismissal or exoneration is inadequate for addressing minor judicial infractions;
3. There is need for an official Judicial journal that displays comprehensive data on cases concluded, judgements delivered by each judge, scholarly works and judicial performance metrics to enhance transparency and accountability in the justice system;
4. A comprehensive database is required to track fines collected by courts, their destination, utilization and impact on justice delivery, ensuring transparency in Judicial revenue management and accountability for collected funds;
5. There is concerning weaponization of the Judiciary by law enforcement agencies, with many recently arrested youth being denied bail or charged with serious offenses like terrorism despite exercising their constitutional right to peaceful demonstration and assembly;
6. The current budgetary allocation of less than 1% of the National Budget is grossly inadequate for effective Judicial operations, infrastructure development across 140+ court stations, recruitment of Judicial officers, and technology adoption for e-justice systems;
7. Mobility restrictions preventing judges in specialized courts from cross-deployment to other divisions create operational inefficiencies and limit career development opportunities for Judicial officers; and

8. Overlapping mandates between JSC and SRC regarding judges' terms, benefits, and allowances have created institutional friction and inconsistent conditions of service that undermine effective judicial administration.

Way Forward

1. The Judicial Service Commission to develop and publish a comprehensive judicial journal that displays data on cases concluded, judgements delivered by each judge, scholarly works and performance metrics to improve transparency and enhance services to the public;
2. The Commission to propose amendments to the Judicial Service Act to enable it to conduct proportionate disciplinary action against judges, including reprimand procedures for minor infractions, and develop comprehensive disciplinary regulations that provide intermediate sanctions beyond removal or dismissal;
3. The Judicial Service Commission and Salaries and Remuneration Commission to engage in formal dialogue within ninety days to resolve existing overlaps in their mandates regarding judges' terms, benefits, and allowances, and establish clear protocols for future coordination;
4. The Commission to develop a comprehensive case management policy with clear timelines for case progression, monitoring mechanisms and performance indicators to ensure timely delivery of justice and reduce case backlogs across all court levels;
5. The Judicial Service Commission to create a transparent database system for tracking court fines collection, allocation, and utilization to enhance accountability in judicial revenue management;
6. The Committee to convene a meeting with all Constitutional Commissions and Independent Offices within three months to be briefed on various constitutional amendments that each CCIO intends to propose before Parliament, ensuring coordinated legislative reform approaches;
7. The Commission to engage with law enforcement agencies to address concerns regarding weaponization of the judiciary and ensure constitutional rights of citizens are protected during arrest and prosecution processes; and
8. The Judicial Service Commission to present detailed budget proposals to Parliament addressing the critical funding gap, with specific allocations for infrastructure development, judicial officer recruitment, and e-justice system implementation to meet the constitutional mandate of accessible justice delivery.

6 GENERAL COMMITTEE OBSERVATIONS

1. The Committee's interactions with the *Teachers Service Commission, the Public Service Commission, and the Judicial Service Commission* revealed several fundamental, cross-cutting challenges that impede their effective implementation of the Constitution. The Committee observes that:
2. All three commissions operate with significant budget deficits that prevent them from fulfilling their constitutional mandates. The TSC lacks funds for promotions and recruitment, the PSC faces a deficit for its expanded functions, and the JSC receives less than 1% of the national budget, crippling its operations. This systemic underfunding directly undermines the delivery of essential public services; education, administration of justice, and effective public administration - as guaranteed by the Constitution.
3. Operational inefficiencies due to mandate overlaps and legislative gaps are prevalent. The functional conflicts between the PSC, SRC, and SCAC, and the jurisdictional ambiguities between the JSC and SRC, demonstrate a wider problem of poorly defined legal boundaries. This leads to confusion, inter-agency friction, and a waste of public resources.
4. Inadequate Human Resource capacity severely affects all three institutions. The TSC faces a critical teacher shortage and an imbalanced distribution, the PSC has a 45% staffing gap in its own secretariat, and the JSC is constrained in recruiting judicial officers. This chronic lack of adequate and strategically deployed human resources is a primary barrier to achieving their constitutional objectives.
5. A deficit in transparency and data-driven management was noted across the board. The absence of comprehensive data from the TSC on teacher deployment and promotions, the lack of a judicial journal and fines database for the JSC, and the need for better workforce planning at the PSC all point to a need for enhanced accountability mechanisms and evidence-based decision-making to bolster public trust.
6. The transfer of functions without corresponding resources is a recurring theme that cripples effectiveness. The PSC's acquisition of TVET functions without a budget and the sporadic establishment of new schools without provisions for teachers for the

TSC are indicative of a systemic failure to align policy decisions with budgetary and logistical support, setting these commissions up for failure.

7 COMMITTEE RECOMMENDATIONS


1. In light of the above general observations, the Committee makes the following recommendations to address these cross-cutting challenges:
2. The National Treasury, in conjunction with Parliament, shall prioritize and ensure adequate budgetary allocations to all Constitutional Commissions. Funding must be commensurate with their expanding mandates and critical national functions to safeguard the constitutionally protected rights to education, justice, and efficient public service.
3. The Attorney General, in consultation with the relevant commissions, should urgently undertake a legislative review to:
 - a) Clarify and delineate the mandates of the PSC, SRC, SCAC, and JSC to eliminate overlaps and operational conflicts.
 - b) Propose amendments to address identified legislative gaps, such as introducing intermediate disciplinary measures for judicial officers in the Judicial Service Act.
 - c) Ensure all legislation governing Constitutional Commissions is fully aligned with the spirit and letter of the Constitution.
4. All Three Commissions (**TSC, PSC, JSC**) are urged to develop and implement robust, transparent data management systems. This includes:
 - a) The TSC providing detailed, public data on teacher distribution, promotions, and vacancy projections.
 - b) The JSC publishing a judicial journal and a transparent fines database.
 - c) The PSC moving towards strategic, data-driven workforce planning.
5. The Public Service Commission should take the lead, in collaboration with the SRC and SCAC, to establish a formal Inter-Commission coordination framework. This framework will ensure clear protocols for consultation, eliminate duplication of effort, and resolve disputes regarding terms and conditions of service for public officers.
6. Parliament to prioritize and finalize the Public Service Internship (National Assembly Bills No. 63 of 2022) within six months of this report's consideration by the House.

7. Parliament to prioritize and finalize the Judges' Retirement Benefits Bill (National Assembly Bills No. 27 of 2025) within six months of this report's consideration by the House.
8. The JSC to present proposed amendments to the Committee addressing disciplinary mechanisms for minor offences and immediate sanctions for judges.
9. The Executive Arm of Government must ensure that any future transfer of functions to a constitutional commission, or any policy decision that expands a commission's operational burden, is accompanied by a commensurate and timely allocation of financial and human resources.
10. This Committee resolves to conduct a follow-up audit within twelve months to assess the implementation of these recommendations and the progress made by the commissions in addressing the outlined challenges.

SIGNED.......... DATE..11/11/25

THE HON. CAROLI OMONDI, CBS, MP

CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	18 NOV 2025
	DAY. TUESDAY
TABLED BY:	HON. CAROLI OMONDI, MP (CHAIRPERSON)
CLERK-AT-THE-TABLE:	MUNDO PU MWALE, ITC



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

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

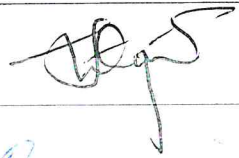
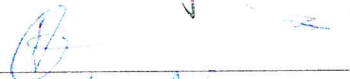
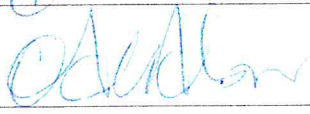
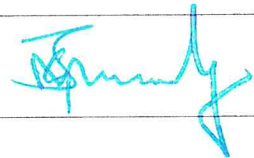
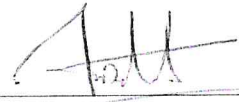
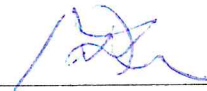
ADOPTION LIST

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

1. The Teachers Service Commission;
2. The Public Service Commission; and
3. The Judicial Service Commission.

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.	

	HON. MEMBER	SIGNATURE
9.	Hon. Jackson Lekumontare, M.P.	
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.	