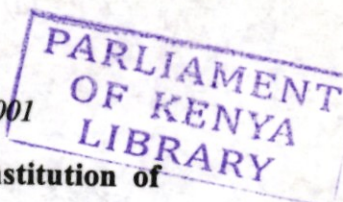


**THE CONSTITUTION OF KENYA REVIEW
(AMENDMENT) ACT, 2001**

No. 2 of 2001

Date of Assent: 16th May, 2001

Date of Commencement: 4th June, 2001



**AN ACT of Parliament to amend the Constitution of
Kenya Review Act**

Enacted by the Parliament of Kenya as follows-

1. This Act may be cited as the Constitution of Kenya Review (Amendment) Act, 2001. Short title.

2. The Constitution of Kenya Review Act, in this Act referred to as "the principal Act", is amended in the long title by deleting the long title and substituting therefor the following new long title - Amendment
of long title
of Cap.3A.

"An Act of Parliament to facilitate the comprehensive review of the Constitution by the people of Kenya and for connected purposes".

3. The principal Act is amended in section 2- Amendment
of section 2
of Cap. 3A.

(a) by deleting the definition of "Communications Commission of Kenya";

(b) by deleting the definition of "Constituency Constitutional Forum" and substituting therefor the following new definition—

"Constituency Constitutional Forum"
means a forum established in accordance with section 20;

(c) by deleting the definition of "National Conference" and substituting therefor the following definition -

"National Constitutional Conference"
means the National Constitutional Conference referred to in section 27(1)(c);

(d) by inserting the following new definitions in proper alphabetical sequence -

“chairperson” and “vice-chairpersons” mean the chairperson and the vice-chairpersons appointed under section 9 of this Act;

Cap 2

“constituency” has the meaning assigned to it in section 2 of the National Assembly and Presidential Elections Act;

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“County Council” has the meaning assigned to it in section 2 of the Local Government Act, and for the purposes of this Act includes the City Council of Nairobi;

No. 19 of 1990

“Non-Governmental Organisation” means a Non-Governmental Organisation registered under the Non-Governmental Organizations Co-ordination Act, 1990.

Amendment
of section 3
of Cap. 3A.

4. Section 3 of the principal Act is amended -

- (a) in the operative paragraph, by deleting the words “and eventual alteration”;
- (b) in paragraph (c), by deleting the words “the state organs of” immediately after the expression “among” and substituting therefor the words “various state organs including”;
- (c) by inserting the following new paragraphs immediately after paragraph (g) -

- (h) strengthening national integration and unity;
- (i) creating conditions conducive to a free exchange of ideas;
- (j) ensuring the full participation of people in the management of public affairs;
- (k) enabling Kenyans to resolve national issues on the basis of consensus.

5. Section 4 of the principal Act is amended –

Amendment
of section 4
of Cap. 3A.

(a) in subsection (1), by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs –

- (a) the Commission;
- (b) the Constituency Constitutional Forum;
- (c) the National Constitutional Conference;
- (d) the Referendum; and
- (e) the National Assembly.

(b) in subsection (2), by inserting the expression “(a), (b) and (c)” immediately after the expression “(1)”.

6. The principal Act is amended in section 5 -

Amendment
of section 5
of Cap. 3A.

- (a) by inserting the expression “(a), (b), (c) and (e)” immediately after the expression “4”;

(b) by deleting paragraph (b) and substituting therefor the following new paragraphs-

(b) ensure that the review process accommodates the diversity of the Kenyan people including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disabilities and disadvantaged-

(c) ensure, particularly through the observance of the principles in the Third Schedule, that the review process –

(i) provides the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to alter the Constitution;

(ii) is, subject to this Act, conducted in an open manner; and

(iii) is guided by respect for the universal principles of human rights, gender equity and democracy;

(c) by renumbering paragraph (c) as paragraph (d).

7. The principal Act is amended in section 6 –

(a) by inserting the following new subsections immediately after subsection (1) –

(1A) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of -

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging, or disposing of moveable and immovable property; and
- (c) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Cap. 446 (1B) The provisions of the State Corporations Act shall not apply to the Commission.

(b) by deleting subsection (2)(c) and substituting therefore the following subsection—

(c) the Attorney General or his representative and the Secretary who shall be *ex-officio* commissioners without the right to vote;

(c) in subsection (2)(b), by deleting the word "fifteen" and substituting therefor the words "twenty-seven".

8. Section 7 of the principal Act is amended -

(a) in subsection (3)(a), by deleting the word "fifteen" and substituting therefor the words "twenty-seven";

Amendment
of section 7
of Cap. 3A.

(b) by deleting paragraph (b);

(c) in subsection (7), by deleting the word "fifteen" and substituting therefor the words "twenty-seven".

Amendment
of section 8
of Cap. 3A.

9. The principal Act is amended in section 8 –

(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) Subject to subsection (3), of the twenty-seven Commissioners referred to in section 6 –

(a) eleven shall have knowledge of and at least five years' experience in matters relating to law; and

(b) sixteen shall have knowledge of and experience in public affairs:

Provided that –

(i) the persons qualified in terms of paragraph (b) shall comprise two persons from each province;

(ii) the total membership of the Commission shall not comprise more than four persons from any one province; and

(iii) at least six members of the Commission shall be women.

(b) by deleting subsection (2);

(c) in subsection (3) –

(i) by deleting the expression “subsection (1) and (2)” and substituting therefor the expression “subsection (1)”

(ii) by deleting the words “or an alternate Commissioner”.

(d) by re-numbering subsection (3) as subsection (2) and inserting the following new subsection (3) –

(3) All Commissioners once appointed shall cease active participation in political parties or any other organisation whether registered or otherwise, propagating partisan views with respect to the review process.

10. Section 9 of the principal Act is amended –

Amendment
of section 9
of Cap. 3A.

(a) in subsection (1), by deleting the words “names submitted to him under subsection (3) (a) of section 7” and substituting therefor the words “Commissioners appointed under section 8(1) (a)”;

(b) in subsection (2), by deleting the words “a vice-chairperson” and substituting therefor the words “three vice-

chairpersons, one of whom shall be a woman;"

- (c) in subsection (3), by deleting the words "a vice-chairperson of the Commission" and substituting therefor the words "three vice-chairpersons of the Commission as specified in subsection (2) one of whom shall be designated the first vice-chairperson"

Replacement of section 10 of Cap. 3A.

11. The principal Act is amended by repealing section 10 and replacing it with the following new section –

Establishment of Parliamentary Select Committee.

10. The National Assembly shall, in accordance with its Standing Orders, establish a Select Committee consisting of not less than five, and not more than twenty-seven members to assist it in the performance of its functions under the Act.

Amendment of section 11 of Cap. 3A.

12. Section 11 of the principal Act is amended –

- (a) in subsection (2), by deleting the words "and shall be an *ex-officio* member of the Commission" immediately after the word "basis";

(b) by inserting the following new subsections immediately after subsection (2) –

- (3) Where a vacancy occurs in the office of the Secretary, the Commission shall, within fourteen days of the occurrence, submit to the Parliamentary Select Committee three names of persons qualified under this Act to fill the vacancy.

(3A) The Select Committee shall, within seven days of receipt of the names from the Commission, submit to the National Assembly names of two persons from whom the President shall appoint a Secretary.

(4) The President shall, within seven days of receipt of the names submitted under subsection (3A), appoint a secretary.

(c) by renumbering subsection (3) as subsection (5).

13. The principal Act is amended in section 14(2)(a) by deleting the expression "15" and substituting therefor the expression "15(4)"

Amendment of
section 14
of Cap. 3A.

14. The principal Act is amended in section 15 –

Amendment
of section 15
of Cap. 3A.

(a) in subsection (2) by deleting the words "from the date the President receives the notice" and substituting therefor the words "within seven days of the date of that notice";

(b) by deleting subsection (5) and substituting therefor the following new subsection –

(5) Where any vacancy occurs in the Commission, the Commission shall, within fourteen days of the occurrence, submit to the Parliamentary Select Committee a list of three names of persons

qualified under this Act to fill the vacancy.

(5A) The Select Committee shall, within seven days of the receipt of the names submitted under subsection (5), submit to the National Assembly names of two persons from whom the President shall appoint a Commissioner.

(c) by deleting subsection (6), and substituting therefor the following new subsection –

(6) The President shall, within seven days of receipt of the names submitted under subsection (5A), appoint a Commissioner or Commissioners holding the same qualifications and from the same province as the Commissioner in respect of whom the vacancy has arisen.

(d) by deleting subsection (7) and substituting therefor the following new subsection –

(7) No act of the Commission shall be called to question on the ground merely of the existence of any vacancy in, or defect in, the constitution of the Commission.

Amendment
of section 17
of Cap. 3A

15. Section 17 of the principal Act is amended -

(a) by deleting paragraph (a) and substituting therefor the following new paragraph –

(a) to conduct and facilitate civic education in order to stimulate public discussion and awareness of constitutional issues;

(b) in paragraph (d) (i), by deleting the words "to wit" and substituting therefor the word "including";

(c) by deleting paragraph (d) (ii) and substituting therefor the following new paragraph –

(ii) examine the various structures and systems of government, including federal and unitary systems and recommend an appropriate system for Kenya;

(d) in paragraph (d) (xiv), by deleting the word "policies" and substituting therefor the word "policy";

(e) by renumbering paragraph (d)(xv) as paragraph(d)(xvi) and paragraph (d)(xvi) as paragraph (d)(xv)".

16. Section 18 of the principal Act is amended –

Amendment of
section 18
of Cap. 3A.

(a) in subsection (1)-

(i) by inserting the following new paragraph –

(a) shall visit every constituency in Kenya to receive the views of the people on the Constitution;

(b) in paragraph (c) –

(i) by deleting the word "person" and substituting therefor the words "public officer";

(ii) by renumbering paragraphs (a) and (b) as paragraphs (b) and (c) respectively.

(c) in subsection (2) –

(i) by deleting the words "A person" and substituting therefor the words "Any public officer";

(ii) by deleting the expression "(1) (b)" and substituting therefor the expression "(1) (c)".

Amendment of
section 19 of
Cap. 3A

17. The principal Act is amended in section 19 by deleting subsection (2) and substituting therefor the following new subsection –

(2) For the purposes of subsection (1), a meeting of any committee established for purposes of collecting the views of the public during the review process shall be deemed to be a meeting of the Commission.

Replacement
of section 20
of Cap. 3A.

18. The principal Act is amended by repealing section 20 and replacing it with the following section –

Constituency
Constitutional
Forums.

20. The Commission shall, in the performance of its functions under this Act, facilitate the establishment of Constituency Constitutional Forums for the debate, discussion, collection and collation of the views of the members of the

public on proposals to alter the Constitution.

19. Section 21 of the principal Act is amended -

Amendment
of section 21
of Cap 3A.

(a) by deleting subsection (3) and substituting therefor the following new subsection -

(3) All meetings of the Commission for the collection of the views of the public shall be held in public:

Provided that nothing in this section shall preclude the Commission from receiving evidence in private if circumstances so warrant.

(b) by deleting subsection (4) and substituting therefor the following new subsection -

(4) The chairperson shall -

(a) preside over all meetings of the Commission, and in the absence of the chairperson, the first vice-chairperson shall preside and in the absence of both the chairperson and the first vice-chairperson any one of the other vice-chairpersons may preside as the Commission may determine;

(b) be the spokesperson for the Commission and in the

absence of the chairperson, the first vice-chairperson shall be the spokesperson and in the absence of both the chairperson and the first vice-chairperson any of the other vice-chairpersons may be the spokesperson as the Commission may determine;

- (c) supervise and direct the work of the Commission:

Provided that in the absence of both the chairperson and all the vice-chairpersons, the commissioners present shall elect one of their number to perform the functions under this subsection during such absence.

(c) in subsection (6) –

- (i) by deleting the word “unanimity” and substituting therefor the word “consensus”;
- (ii) by inserting the following new proviso –

Provided that on any proposal concerning the inclusion of any provision in the constitution, the decision of the Commission shall be determined by at least two thirds of the members of the Commission.

20. Section 22 of the principal Act is amended—

- (a) in subsection (1), by deleting the words

“Subject to subsection (3) of section 21”
and substituting therefor the words “Save
as may be provided for in the
regulations”;

(b) in subsection (2) –

(i) by deleting the words
“Communications Commission
of Kenya” and substituting
therefor the words “Kenya
Broadcasting Corporation and
other broadcasting stations
licensed under the Kenya
Communications Act, 1998”.

No 2 of 1998

(ii) by inserting the words “suitable
arrangements for” immediately
after the word “secure”.

(c) in subsection (2)(a) –

(i) by inserting the words “and
space” immediately after the
word “airtime”;

(ii) by inserting the words “and
print” immediately after the word
“electronic”.

(d) by inserting the following new
subsection –

(3) Where a broadcasting station is
consulted by the Commission
under subsection (2), such station
shall make suitable arrangements
to air such programmes whose
broadcast is specified by the
Commission.

Amendment
of section 24
of Cap 3A.

21. Section 24 of the principal Act is amended –

- (a) in subsection (1) by deleting the words “conduct and facilitate” and substituting therefor the words “facilitate and promote”;
- (b) by deleting the expression “(1)”;
- (c) by deleting subsection (2).

Amendment
of section 26
of Cap. 3A.

22. Section 26 of the principal Act is amended –

- (a) by deleting subsections (1), (2), (3) and (4) substituting therefor the following new subsections –

(1) The Commission shall complete its work within a period of twenty four months of the commencement of this Act.

(2) For purposes of paragraph (a), the work of the commission shall consist of visiting all the constituencies in Kenya, compiling reports of the Constituency Constitutional Forums, the National Constitutional Conference, conducting and recording the decision of the referendum referred to in section 27(6), and on the basis thereof drafting a Bill for presentation to Parliament for enactment.

(3) Where the Commission considers this period inadequate, it may, at least twelve months after the commencement of its work, request an extension of the period by the National Assembly.

(4) Notwithstanding any extension of time under subsection (3), the Commission may, where circumstances demand, recommend such minimum amendments to the Constitution or any other law as may be necessary towards fulfilment of any of the objects of the review process, which shall be considered by the National Assembly in accordance with its Standing Orders.

(5) The National Assembly may, upon a request under subsection (3), by resolution, extend the period prescribed under the Act by such period as it may deem appropriate.

(6) Where an extension of time is granted to the Commission under this section, the Commission shall proceed expeditiously with its work in accordance with the provisions of this Act.

(b) by renumbering as subsection (7) and deleting therefrom the words "upon completion of its work".

23. Section 27 of the principal Act is amended –

Amendment
of section 27
of Cap. 3A.

(a) in subsection (1) –

(i) by deleting paragraph (a) and substituting therefor the following new paragraph –

(a) upon compilation of its report and the draft Bill referred to in section 26-

- (i) publish the same for the information of the public in the manner specified in section 22, for a period of sixty days; and
 - (ii) ensure that the report and the draft bill are made available to the persons or groups of persons conducting civic education;
- (ii) by inserting the words "and debate" immediately after the word "discussion" in paragraph (b);
- (b) by inserting immediately after the word "discussion" the words "debate, amendment" in paragraph (c);
- (b) in subsection (2) –
- (i) by inserting the words "who shall be *ex-officio* members without the right to vote" immediately after the word "Commissioners" appearing in paragraph (a);
 - (ii) by deleting paragraph (c) and the proviso thereto and substituting therefor the following new paragraph –
- (c) three representatives of each district at least one of whom shall be a woman and only one of whom may be a councillor elected by the respective county council in accordance with such rules as may be

prescribed by the
Commission.

(iii) by deleting paragraph (d) and substituting therefor the following new paragraphs-

(d) one representative from each political party registered at the commencement of this Act, not being a member of Parliament or a councillor:

(e) such number of representatives of religious organisations, professional bodies, women's organisations, trade unions and non-governmental organisations registered at the commencement of this Act, and of such other interest groups as the Commission may determine;

Provided that—

(i) the members under paragraphs (e) shall not exceed twenty-five per cent of the membership of the National Constitutional Conference under paragraphs (a), (b), (c) and (d); and

(ii) the Commission shall consult with, and make regula-

tions governing the distribution of representation among, the various categories of representatives set out in paragraph (e).

(c) by deleting subsection (3) and substituting therefor the following new subsections -

- (3) The Chairperson of the Commission shall be the Chairperson of the National Constitutional Conference;
- (4) The quorum of the National Constitutional Conference shall be one half of the members.
- (5) All questions before the National Constitutional Conference shall be determined by consensus, but in the absence of consensus, such decisions shall be determined by a simple majority of the members present and voting:

Provided that -

- (i) in the case of any question concerning a proposal for inclusion in the constitution, the decision of the National Constitutional Conference shall be carried by at least two thirds of the members of the National Constitutional Conference; and

(ii) if on taking a vote for the purpose of subsection 5 (i), the proposal is not supported by a two thirds vote, but is not opposed by one third or more of all the members of the National Constitutional Conference, then, subject to such limitations and conditions as may be prescribed by the Commission in the regulations, a further vote may be taken.

(6) The Commission shall record the decision taken by the National Constitutional Conference on the Report and the draft Bill pursuant to its powers under subsection (1)(c) and shall, in the absence of a consensus, submit the question or questions to the people for determination through a referendum.

(7)A national referendum under subsection (6) shall be held within two months of the National Constitutional Conference

24. The principal Act is amended by repealing section 28 and replacing it with the following new section –

Introduction of
Commission's
report to the
National
Assembly
5 of 2000

28.(1) The Commission shall, on the basis of the decision of the people at the referendum and the draft Bill as adopted by the National Constitutional Conference, prepare the final report and draft Bill.

Replacement
of section 28
of Cap 3A.

(2) The Commission shall submit the final report and the draft Bill to the Attorney General for presentation to the National Assembly.

(3) The Attorney General shall, within fourteen days of the receipt of the draft Bill, publish the same in the form of a Bill to alter the Constitution.

(4) At the expiry of a further period of fourteen days of the publication of the Bill to alter the Constitution, the Attorney General shall table the same together with the final report of the Commission before the National Assembly for enactment within seven days of the day when the Assembly next sits.

Amendment of
section 29 of
Cap. 3A.

25. Section 29 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “and the National Conference” and substituting therefor the words “the Constituency Constitutional Forums, the National Constitutional Conference and the referendum” immediately after the word “Commission”;
- (b) in subsection (2), by deleting the words “organs specified in subsection (1), through the permanent secretary to the Treasury” and substituting therefor the word “Commission”.

Amendment of
section 30 of
Cap. 3A.

26. Section 30 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “Clerk of the National Assembly” and substituting therefor the word “secretary”;

(b) in subsection 4, by deleting the words "Clerk of the National Assembly" and inserting the word "secretary".

27. The principal Act is amended by inserting the following new section immediately after section 30 –

Insertion of
new clause 30A.

Remuneration
and allowances
of Commissioners.

30A. The Minister in charge of finance, in consultation with the Parliamentary Select Committee, shall determine the remuneration and allowances of the Commissioners and shall scrutinize and approve the budget of the Commission.

28. The principal Act is amended by repealing section 32 and replacing it with the following new section –

Replacement of
section 32 of
Cap 3A

Dissolution of
Commission
and repeal
of this Act
6 of 1998
5 of 2000.

32.(1)The Attorney-General, shall upon the enactment of the Bill to alter the Constitution tabled before the National Assembly under subsection (1) of section 28, introduce before the National Assembly a Bill to repeal this Act.

(2) Upon the enactment of the Bill referred to in subsection (1), the Commission shall stand dissolved and the terms of office of the commissioners shall thereupon expire, save that the Secretary and such number of staff as shall be necessary, shall remain in office for a period of three months to conclude the financial and administrative affairs of the Commission.

Amendment of
Section 33 of
Cap.3A.

29. Section 33 of the principal Act is amended –

(a) in subsection (1), by deleting the word “may” and substituting therefor the word “shall”;

(b) in subsection (2) (b) -

(i) by inserting the expression “s” at the end of the word “vice chairperson” in subparagraph (i);”

(ii) by deleting the words “licensin persons or groups of persons for” appearing subparagraph (ii) and substituting therefor the words “facilitating and promoting”;

(iii) by inserting the following new subparagraphs immediately after subparagraph (ii) –

(iii) the establishment of Constituency Constitutional Forums; and

(iv) the constitution and conduct of the National Constitutional Conference; and

(v) resolution of any dispute arising in the course of the review process;

(c) in subsection (2)(d), by deleting the expression “28” and substituting therefor the expression “27”.

30. The principal Act is amended by inserting the following new section immediately after section 33-

Insertion of
section 34
in Cap.3A.

Act to bind
the Government.

**34. This Act shall bind the
Government.**

31. The principal Act is amended by inserting the following new Schedule immediately after the Second Schedule -

Insertion of
new Schedule
to Cap.3A

THIRD SCHEDULE

(s.5)

**PRINCIPLES FOR A DEMOCRATIC
AND SECURE PROCESS FOR
THE REVIEW OF THE CONSTITUTION**

The Government of the Republic of Kenya, the organs of review of the Constitution, political parties, non-governmental organisations, and all Kenyans -

- (i) recognize the importance of confidence building, engendering trust and developing a national consensus for the review process;
- (ii) agree to avoid violence or threats of violence or other acts of provocation during the review process;
- (iii) undertake not to deny or interfere with any one's right to hold or attend public meetings or assemblies, the right to personal liberty, and the freedoms of expression and conscience during the review process, save in accordance with the law;
- (iv) ensure that the police shall protect the safety of all persons who attend meetings or exercise their other rights from violence from whatever source;
- (v) ensure that the meetings of all organs of review are held in peace;
- (vi) respect the independence of the Commission and its members; and
- (vii) desist from any political or administrative action that will adversely affect the operation or success of the review process.

32.(1) Nothing in this Act shall affect any act, decision, appointments or activity carried out or made under or by virtue of the provisions of the principal Act as in force immediately prior to the commencement of this Act.

Transitional
and saving
provisions.

(2) Notwithstanding the generality of subsection (1) –

(a) the secretary and all fifteen members of the Commission appointed and in office immediately prior to the commencement of this Act shall remain in office as such secretary or Commissioners;

(b) all acts and decisions of, and appointments including the appointment of the chairperson and the taking of his oath and a vice-chairperson made to and by the Commission as constituted immediately prior to the commencement of this Act shall remain valid.

(3) The appointment of the twelve new Commissioners necessitated by section 7 of this Act shall be made within fifteen days of the coming into effect of this Act.

(4) For the purposes of section 8 of this Act, the twelve new Commissioners aforesaid shall be nominated from a list prepared and forwarded to the National Assembly by the chairperson of the Commission.

(5) For the purposes of section 9 of this Act, one of the twelve new Commissioners aforesaid shall be elected by the Commission as the first vice-chairperson of the Commission:

Provided that the persons nominated, appointed or elected under subsections (3), (4) and (5), shall be deemed to have been nominated, appointed or elected under sections 6, 7, and 9 of the principal Act respectively.

(6) In this section –

“Commission” means the Constitution of Kenya Review Commission established under

section 6 of the principal Act as amended by this Act;

“chairperson” means the chairperson of the Commission appointed prior to the commencement of this Act.

33. Notwithstanding the provisions of any other Act amending the principal Act, the principal Act shall be deemed to have come into operation on the 4th October, 2000. Commencement
of principal Act.

Johnston & Co. (Incorporated)

Section 6 of the principal Act amended by this

Act shall have effect as if the Commission appointed under the Commission

Act shall have effect as if the Commission appointed under the Commission Act shall be deemed to have come into operation on the 1st October

Commissioner