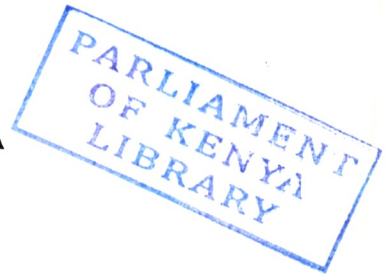




REPUBLIC OF KENYA

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THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

CONSTITUTIONAL, LEGAL AND  
ADMINISTRATIVE REFORM COMMITTEE

REPORTS AND RESOLUTIONS ADOPTED

BY THE

THIRD PLENARY OF IPPG

ON

THURSDAY, 11<sup>TH</sup> SEPTEMBER, 1997 ...

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# **REPUBLIC OF KENYA**

## **TOWARDS CONSTITUTIONAL REFORMS**

### **FOREWORD**

1. Kenya is a sovereign Republic with a republican constitution and various institutions. The cardinal and principal institutions of the Republic include the Executive, the Legislature and the Judiciary. The rest of the institutions of the Republic revolve around the constitutional troika, i.e. Government, Parliament and Judiciary.
2. The various functions and powers of the principal institutions of the Republic of Kenya are prescribed by and under the Constitution of the Republic. Thus, the functions and powers of the Executive are prescribed by and under Chapter II (Sections 4-29) of the Constitution. The functions and powers of the Legislature or the Parliament of the Republic are prescribed by and under Chapter III (Sections 30-59) of the Constitution. The functions and powers of the Judiciary are prescribed by and under Chapter IV (Sections 60-69) of the Constitution.
3. The Constitution of the Republic of Kenya also has a Bill of Rights consisting of the Fundamental Rights and Freedoms of the Individual as enshrined in Chapter V (Sections 70-86) of the Constitution. The Fundamental Rights and Freedoms of the Individual enshrined in the Constitution include:
  - a) Life, liberty, security of the person and the protection of the law.
  - b) Freedom of conscience, of expression and of assembly and association.
  - c) Protection for the privacy of his home and other property and from deprivation of property without compensation.
4. The protection of the Fundamental Rights and Freedoms of the Individual is subject to limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. These limitations constitute the derogations from the Fundamental Rights and Freedoms in order to establish a balance between the interests of the individual and the general public.
5. The principal institutions of the Republic are based on the democratic Doctrine of Separation of Powers with checks and balances between the Executive, the Legislature and the Judiciary. These checks and balances are designed to ensure mutual autonomy and harmony in the functions, operations and powers of the three principal institutions of the Republic of Kenya. This autonomy and harmony is essential and imperative for the constitutional and democratic governance of the Republic.
6. The functions, operations and powers of the Executive, the Legislature and the Judiciary are based on the constitutional interactions and relationships of the three institutions. In so far as the protection of the Fundamental Rights and Freedoms of the Individual is concerned, the Executive, the Legislature and the Judiciary have a mutual accountability and responsibility to the people of Kenya.



7. The legislative functions and powers of the Republic of Kenya have been and are vested in the Parliament of Kenya, which consists of the President and the National Assembly as provided by and under Section 30 of the Constitution of Kenya. The legislative functions and powers of Parliament are exercisable by Bills passed by the National Assembly and assented to by the President as provided by and under Sections 46 of the Constitution.
8. The legislative functions and powers of the Parliament of Kenya embrace the alteration of the Constitution as stipulated by and under Section 47 of the Constitution. The legislative function and power of the Republic of Kenya is a constitutional prerogative of the Parliament of Kenya. The legislative function and power of the Republic cannot be arrogated or ceded to any other authority without committing a serious breach of the letter and spirit of the Constitution of the Republic. Indeed, any such breach of the Constitution would constitute a state of unmitigated anarchy, chaos and even violent revolution.
9. The Constitution of the Republic of Kenya has served the country for the last thirty four years. There is need for a fundamental reform of the Constitution in order to reflect the current realities and meet future challenges of democratic, political and social transformation of our Motherland. These reforms are necessary and are supported by all Kenyans. The necessity of the reforms is also recognised by both sides of the political divide.
10. What is probably lacking in the current reform process is a national vision and will on the part of the stakeholder regarding the modalities or *modus operandi* and the time-frame of the reform process. There are also elements of dangerous brinkmanship and mutual suspicion. These factors have bedeviled the reform process and resulted in ugly confrontations and loss of life and property. This situation is driving the country to a political precipice of calamity and catastrophe. The catastrophe must be averted at all costs. The country must be saved from a political holocaust.
11. Whereas constitutional reform is a right of all Kenyans as individuals, civil society groups, religious organisations and political parties, the legislative mandate and responsibility for their reforms is the preserve of the Parliament of Kenya as by law established. The composition of the Parliament is prescribed by and under Section 31 of the Constitution.
12. The current Seventh Parliament of Kenya was duly elected by Kenyans in the 1992 General Election as stipulated by and under Section 32 with nominated and *ex-officio* members as stipulated by and under Sections 33, 36 and 37 of the Constitution. The constitutional legitimacy of the current Parliament is not in doubt or questionable at all. The Parliament has the constitutional legitimacy, mandate and responsibility to deal with and guide the reform process in accordance with the Constitution in the best interest of all Kenyans. To suggest otherwise would be a sure prescription of a recipe for constitutional chaos and violence.

*Hon. George M. Anyona, MP*  
*KITUTU MASABA (KSC)*

*Parliament Buildings*  
*NAIROBI*

*August 27, 1997*

## THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

### FIRST PLENARY

#### COUNTY HALL - 28<sup>TH</sup> AUGUST 1997

1. The first meeting of the Inter-Parties Parliamentary Group (IPPG) took place at the Country Hall Precinct of Parliament on Thursday, 28<sup>th</sup> August 1997 with a prayer from Hon. Bishop Kimani MP, Nakuru North (FA).
2. The Members who attended the Inter-Parties Parliamentary Group meeting in their individual capacities were drawn from Kanu, Ford-Kenya, Ford-Asili, Democratic Party and Kenya Social Congress.
3. The IPPG meeting was open to all Members of Parliament. The number of Members who attended the meeting and those who had signed willingness to attend but did not do so for various reasons was 110. Specific apology was tendered on behalf of the Chairman and some members of Ford-Kenya as well as the Chairman and some members of DP who were attending a party meeting at the same time. The meeting was also open to the Press and observers.
4. The IPPG meeting was facilitated and guided by Hon. Jilo J. Falana MP (Kanu), Hon. Achieng Oneko MP (Ford-Kenya) and Hon. George M. Anyona MP (KSC). The meeting took place in a very rare atmosphere of comraderie, candour, civility, cordiality and courtesy. The meeting was opened with words of experience and wisdom by Hon. Achieng Oneko (Ford-K) and was addressed by Hon. Falana (Kanu), Busolo (FK), Mutiso (Kanu), Wamae (DP), Shikuku (FA), Khalif (Kanu), Ouma (FK), Ndetei (Kanu), Karua (DP), Ntimama (Kanu), Osogo (Kanu), Mungai (FA), Nthenge (FA), Kariuki (Kanu), Sifuna (FA), Bishop Kimani (FA) and Anyona (KSC).
5. The issues broached during the IPPG meeting included: the political crisis facing the economic and country, the search for peace and unity, the need for dialogue and trust, the spectre of violence, the recent events in Mombasa, the constitutional and legal reform process, the role of Parliament and Civil Society in the reform process and the forthcoming General Election.
6. The meeting unanimously adopted a working document presented by Hon. George M. Anyona MP (KSC). The title of the document was: Towards Constitutional Reform. The document was made available to the Press and the general public to underscore the transparency of the Inter-Parties Parliamentary Group meeting. The working document will form the basis of the deliberations of the Co-ordinating Working Committee of the IPPG.
7. The Inter-Parties Parliamentary Group meeting resolved to appoint an Inter-Parties Parliamentary Committee of thirteen Members to co-ordinate the IPPG activities and meetings.



The Committee was mandated to draw up the agenda for the next IPPG meeting. The Coordinating Working Committee would consist of 5 Kanu, 2 FK, 2 FA, 2 DP, 1 KSC and 1 NDP Members of Parliament to be chosen by the respective parties and forwarded in due course.

8. The Co-ordinating Working Committee would hold its first meeting on Monday 1<sup>st</sup> September at 10.00 a.m. to prepare the agenda and programme for the next IPPG meeting scheduled for 2nd September, 1997. The venue of the IPPG meeting will be arranged by the Committee.

9. The IPPG meeting unanimously adopted and passed the following resolutions proposed by Hon. Saulo Busolo:

(a) We, Parliamentarians meeting on 28th August, 1997 at County Hall, Nairobi, to review the current political debates around the laws of this country, do hereby resolve to adopt the Working Document presented by Hon. George M. Anyona, MP to be presented to the Committee appointed at this meeting to be composed as follows:

|        |   |   |
|--------|---|---|
| Ford-K | - | 2 |
| Ford-A | - | 2 |
| DP     | - | 2 |
| Kanu   | - | 5 |
| KSC    | - | 1 |
| NDP    | - | 1 |

(b) This Committee will review the agenda from issues discussed at this meeting to be presented to the next meeting.

10. The IPPG meeting closed with a prayer from Hon. Bishop Njeru, Mwea (DP) and Members left in a spontaneous mood of geniality, optimism and reconciliation.

Hon. George M. Anyona, MP  
KITUTU MASABA (KSC)

Parliament Buildings  
Nairobi.

1<sup>st</sup> September, 1997

## THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

### CO-ORDINATING-WORKING COMMITTEE

1. The IPPG Coordinating-Working Committee was appointed by the Members attending the First Plenary Meeting of the IPPG at County Hall on 28<sup>th</sup> August, 1997.
2. The IPPG Coordinating-Working Committee was mandated to co-ordinate the general activities and prepare the Agenda of the Second Plenary meeting of the IPPG on 2<sup>nd</sup> September, 1997.
3. The Members of the IPPG Coordinating-Working Committee submitted by the respective Political Parties are as follows:

|                           |        |
|---------------------------|--------|
| Hon. J.J. Falana, MP      | - Kanu |
| Hon. J C.N. Osogo, MP     | - Kanu |
| Hon. Kipkalya Kones, MP   | - Kanu |
| Hon. Ibrahim Salat, MP    | - Kanu |
| Hon. J. N. Angwenyi, MP   | - Kanu |
| Hon. Achieng Oneko, MP    | - FK   |
| Hon. Saul Busolo, MP      | - FK   |
| Hon. George Nthenge, MP   | - FA   |
| Hon. John Mutere, MP      | - FA   |
| Hon. Martha Karua, MP     | - DP   |
| Hon. Matu Wamae, MP       | - DP   |
| Hon. George M. Anyona, MP | - KSC  |
4. The IPPG Co-ordinating-Working Committee met at County Hall Committee Room on Monday, 1<sup>st</sup> September, 1997 at 10.00 a.m. The attendance at the meeting was as follows:

a) Present

Hon. J.J. Falana, MP  
Hon. Achieng Oneko, MP  
Hon. George Anyona, MP  
Hon. Saulo Busolo, MP  
Hon. Ibrahim Salat, MP  
Hon. John Mutere, MP  
Hon. Matu Wamae, MP

Hon. James Osogo, MP  
Hon. Martha Karua, MP  
Hon. George Nthenge, MP  
Hon. Kipkalia Kones, MP  
Hon. Jimmy Angwenyi, MP

- b) Absent NDP was not represented.
5. The IPPG Coordinating Working Committee meeting considered the Draft Proceedings of the 1<sup>st</sup> IPPG Plenary prepared and presented by Hon. George M. Anyona, MP for Kitutu Masaba (KSC) and adopted it for the confirmation of the Second IPPG Plenary on 2<sup>nd</sup> September, 1997.
6. The IPPG Co-ordinating-Working Committee considered and adopted the issues which will constitute the Agenda for the 2<sup>nd</sup> meeting of the IPPG as follows:
- A. The venue of the Second IPPG Plenary at County Hall, Conference Hall.
- B. The date and time of the IPPG Plenary:
- (i) Date - 2<sup>nd</sup> September, 1997  
(ii) Time - 10.00 am to 12.30 pm  
- 3.00 pm to 05.00 pm
- C. The attendance of the IPPG Plenary:
- (i) Members of Parliament  
(ii) Press
- D. The confirmation of the Draft Proceedings of the First IPPG Plenary:
- E. The IPPG discussed and adopted the Agenda and Programme of the Second Plenary of the IPPG as follows:
- (a) Commitment to dialogue
- (b) Reforms
- (i) Constitutional Reforms:
- The Constitution of Kenya Review Commission Bill, 1997  
The Opposition Document  
Minimum Reforms  
Long-term Reforms
- (ii) Legal Reforms:  
Amendments and repeals of Statutes contained in the Statute Miscellaneous Law (Repeals and Miscellaneous Amendments) Bill, 1997.

Statutes not covered by the Statute Law (Repeals and Miscellaneous Amendments Bill, 1997.

Opposition document

Electoral Code of Conduct

(iii) Administrative Reforms:

Opposition Document

Other Proposals

(c) Peace and Security:

(i) Security situation in Coast Province and the rest of the country

(ii) Banditry

(iii) Cattle rustling

(iv) Incitement at public meetings and processions

(v) Permits for public meetings

(d) General Election

(i) Voters Roll

(ii) Electoral law, regulations and rules

(iv) Access to public media

8. Time frame

Reports before 15th September, 1997

9. Any Other Business

11. Resolutions

# **THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)**

## **SECOND PLENARY**

**COUNTY HALL: 2ND SEPTEMBER, 1997**

### **P R O G R A M M E**

1. Prayers
2. Introductory Remarks
3. Adoption of Agenda and Report of 1st IPPG Meeting
4. Commitment to Dialogue
5. Reforms
  - (a) Constitutional Reforms
    - (i) The Constitution of Kenya Review Commission Bill, 1997
    - (ii) The Opposition Document
    - (iii) Minimum Reforms
    - (iv) Long-term Reforms
    - (v) Participation
  - (b) Legal Reforms
    - (i) Amendments and repeals of statutes contained in the Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997 (see list)
    - (ii) Statutes not covered by the Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997 (see list)
    - (iii) Opposition Document
    - (iv) Election Code of Conduct



(c) Administrative Reforms

(i) Opposition Document

(ii) Others

6. **PEACE AND SECURITY**

(a) Security situation in Coast Province and the rest of the country.

(b) Banditry

(c) Cattle rustling

(d) Incitement at public meetings and processions

(e) Permits for public meetings

7. **GENERAL ELECTIONS**

(a) Voters Roll

(b) Electoral law, regulations and code of conduct

(c) Access to Public Media

8. **TIME - FRAME**

Reports before 30th September, 1997

9. A.O.B.

10. Resolutions

## **AGENDA NO.5 (b) - STATUTES**

1. The National Assembly and Presidential Elections Act -Cap 7
2. The Public Order Act - Cap 56
3. The Preservation of Public Security Act - Cap 57
4. The Vagrancy Act - Cap 58
5. The Penal Code - Cap 63
6. The Prevention of Corruption Act - Cap 65
7. The Election Offences Act - Cap 66
8. The Police Act - Cap 84
9. The Administration Police Act - Cap 85
10. The Outlying Districts Act - Cap 104
11. The Special Districts (Administration) Act-Cap 105
12. The Public Collections Act - Cap 106
13. The Societies Act - Cap 108
14. The Traditional Labour Act - Cap 122
15. The Chiefs Authority Act - Cap 128

## AGENDA NO.5 (a - c) - OPPOSITION DOCUMENT

### CONSTITUTIONAL REFORMS

1. **Presidential Election (Section 5)**

The successful presidential candidate should in addition to getting at least 25% of the votes cast in at least 5 provinces be required to get over 50% of the total votes cast.

Should no clear winner emerge from the first round of polling then around-off shall be held within 21 days between the two candidates who scored the highest votes in the first round and a simple majority shall decide the winner.
2. **Coalition Government (Sections 7,15,16 and 19)**

The Constitution should expressly provide for the formation of a coalition government.
3. **Electoral Commission (Section 41)**

A truly independent and no-partisan Electoral Commission should be established. Members of the Commission should be nominated by all political parties, religious organisations and organised sectors of the civil society. The new independent and non-partisan Electoral Commission should be given adequate power to organise control and manage elections.
4. **Nominated Members of Parliament (Section 33)**

The Power to nominate twelve members of Parliament is open to abuse. Section 33 should therefore be repealed.
5. **Date of Elections**

The date of general elections should be established under the Constitution and should be in the third week of December of the 5th year after the previous general election.
6. **Independent Candidates**

Provision should be made for independent presidential, parliamentary and civic candidates to participate in elections.

### LEGAL REFORMS

1. **Public Order Act**

The requirement of licensing public meetings and processions should be removed. Instead individuals should be required merely to notify the local police station of an intended public meeting or procession for security arrangements.
2. **Preservation of Public Security Act**

The power to detain and restrict persons without trial should be abolished while the power to declare a state of emergency should be subject to parliamentary approval.

3. **Societies Act**  
Political parties should **not** be required to register under the Societies Act but should instead be required to notify the Electoral Commission of their formation.
4. **Chief's Authority Act**  
This Act should be repealed
5. **Films and Stage Plays**  
The requirement of licensing films and stage plays should be abolished
- 6a. **Penal Code (Section 56 and 57)**  
Sedition provisions which criminalise free speech should be repealed.
- 6b. **The Public Collection's Act**  
The requirements of licensing public collections (harambees) should be abolished by a repeal of this act.
7. **Election Code**  
The independent and non-partisan Electoral Commission should operate under an Election Code which should provide for the following amongst other things:
  1. Registration of voters using any of the following documents: (a) National Identity Card (old or new), (b) Birth Certificate and (c) Passport.
  2. Nomination period for prospective candidates for a period of three days. Nomination papers may be presented to the Electoral Commission by the candidate or his/her agent.
  3. Introduction of reasonable expenditure ceilings for candidates during elections.
  4. The voting day shall be made a public holiday.
  5. Accessibility of information on register of voters, ballots, etc to the public.
  6. Use of transparent ballot boxes.
  7. The counting of votes and announcement of results be at each polling stations. Results should be certified by the agents to respective candidates before being forwarded to the central recording station.

### **ADMINISTRATIVE REFORMS**

1. All political prisoners including Koigi wa Wamwere, his co-accused, the Mungiki Cultists and Apiny Odhiambo should be released.
2. All victims of ethnic cleansing should be resettled.
3. All unregistered political parties should be registered.
4. PCs, DCs, DOs, Chiefs, the police and other civil servants should be banned from interfering with the electoral process.
5. Private radio and television should be licensed immediately.
6. Illegal presidential decrees on elections should be prohibited.
7. The gagging of the press and religious organisations should be prohibited.



# THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

## SECOND PLENARY

COUNTY HALL - 2ND SEPTEMBER, 1997

### SUMMARY PLENARY PROCEEDINGS

1. The Inter-Parties Parliamentary Group (IPPG) held three Sessions of the Second Plenary at the County Hall Conference Room of the precincts of Parliament from Tuesday, 2nd September to Thursday, 4th September, 1997. The Plenary Sessions were co-chaired by Hon. James Osogo, (Kanu) and Hon. Achieng Oneko (Ford-K) with Hon. George Anyona (KSC) as the Secretary.
2. The Plenary Sessions of the IPPG were attended and covered by the Press Corps. The Speaker of the National Assembly, Hon. Francis Ole Kaparo, MP, also attended the Plenary Session on Wednesday, 3rd September, 1997 in an observer capacity. The attendance at the Plenary Sessions was as follows:
  - (a) First Session, Tuesday, 2nd September, 1997 - 106 Members
  - (b) Second Session, Wednesday, 3rd September, 1997 - 100 Members
  - (c) Third Session, Thursday, 4th September, 1997 - 96 Members
3. The IPPG Plenary Session on 2nd September, 1997 adopted the Draft Agenda and Programme prepared by the Co-ordinating Committee as mandated by the First Plenary on 1st September, 1997. The Plenary also adopted, by acclamation, the Report or Proceedings of the First Plenary presented by the Secretary to the IPPG, Hon. George M. Anyona, MP (KSC).
4. The IPPG Plenary commenced its deliberations with "Commitment to Dialogue". At the end of the deliberations, there was broad and general consensus on commitment to dialogue as the only way to deal with the current situation in the country and also with future challenges. The Plenary proposed a Resolution on Commitment to Dialogue which was read by Hon. Simeon Nyachae, MP (Kanu).
5. The IPPG Plenary Session exchanged view on the various subjects on reform, peace and security as well as the forthcoming General Election as follows:
  - (a) Constitutional Reform
    - (i) The Constitution of Kenya Review Commission Bill, 1997 on long term reform.
    - (ii) The Opposition Document on minimum reforms:
      - Presidential Election
      - Coalition Government
      - Electoral Commission
      - Nominated Members
      - Date of Election
      - Independent Candidates

(b) Legal Reforms

(i) The statutes contained in the Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997.

- The Public Order Act Cap 56
- The Preservation of Public Security Act, Cap 57
- The Vagrancy Act, Cap 58
- The Penal Code, Cap 63
- The Election Offences Act, Cap 66
- The Police Act, Cap 84
- The Administration Police Act, Cap 85
- The Outlying Districts Act, Cap 104
- The Special Districts (Administration) Act, Cap 105
- The Public Collections Act, Cap 106
- The Societies Act, Cap 108
- The Chiefs Authority Act, Cap 128

(ii) The Statutes not contained in the Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997:

- The National Assembly and Presidential Elections Act, Cap 7
- The Films and Stage Plays Act, Cap
- The Tradition Liquor Act, Cap 122
- The Kenya Broadcasting Corporation Act - Cap 221
- The Trade Unions Act, Cap 233
- The Local Government Act, Cap 265

(iii) The issues and Statutes contained in the Opposition Document

- Presidential Election
- Coalition Government
- Electoral Commission
- Nominated Members
- Date of Election
- Independent Candidates
- Public Order Act
- Preservation of Public Security Act
- Societies Act
- Chiefs Authority Act
- Films and Stage Plays Act
- Penal Code
- Public Collections Act
- Election Code
- Release of Political Prisoners
- Settlement of Victims of Clashes
- Registration of all Political Parties
- Delinking the Provincial Administration, Civil Servants and the Police from the election process
- Licencing of private radio and television media
- Prohibition of Presidential "decrees" on elections
- The Press and Religious Organisations

- (c) Administrative Reform
  - (i) The Opposition Document
  - (ii) General proposals
- (f) Peace and Security
  - (i) Security situation in Coast Province and the rest of the country.
  - (ii) Banditry
  - (iii) Cattle Rustling
  - (iv) Incitement at Public Meetings and Processions
- (g) General Election
  - (i) Voters Roll
  - (ii) Electoral law, regulations and code of conduct
  - (iii) Access to Public Media
- (h) Time-Frame
  - (i) Participation
  - (ii) Reporting before 15th September, 1997
- (i) Any Other Business
  - (i) The on Union of Kenya Civil Servants
  - (ii) ALGAK
  - (iii) The Kenya Women's Political Caucus
- (j) Resolutions
  - (i) Commitment to Dialogue
  - (ii) Reforms
  - (iii) Peace and Security
  - (iv) Electoral Code

6. The IPPG Plenary admitted three petition memoranda for consideration as follows:

- (a) Election of Chairmen and Mayors from ALGAK (Association of Local Government Authorities of Kenya) presented by Hon. Martha Karua, MP.
- (b) Rights of Women from the Kenya Women's Political Caucus on reform initiatives presented by Hon. Phoebe Asiyo, MP
- (c) The revival of the Union of Kenya Civil Servants from former officials presented by Hon. George M. Anyona, MP.

7. The IPPG Plenary resolved to extend the mandate of the Co-ordinating Committee to guide the dialogue and reform initiatives. The Plenary then established three Technical Committees to deal with issues discussed in the Plenary Sessions as follows:

- (a) Constitutional, Legal and Administrative Reform Committee.
  - (b) Peace and Security Committee
  - (c) Electoral Code Committee
8. The IPPG Plenary accepted and approved the proposal made by the Co-ordinating Committee to hold consultations on the reform process with the President, religious community leaders and other stakeholders. The Plenary was not unanimous on consultations with the diplomatic community but left the issue to the discretion of the Co-ordinating Committee.
9. The IPPG Plenary made and adopted the following resolutions:
- (a) Commitment to Dialogue Resolution:
    - (i) We are unequivocally committed to the current dialogue on legal, administrative and constitutional reform through the Inter-Parties Parliamentary Group (IPPG).
    - (ii) We shall do anything within our individual and collective capacity to avoid all acts and utterances inimical to positive peaceful change in our country.
    - (iii) We shall make all efforts to accommodate dissenting views as a way of reflecting diversity and not hate.
    - (iv) We shall stand together in prosecuting the course of this dialogue on reform without any fear.
  - (b) Technical Committees Resolution:
    - (i) A technical committee comprising ten members from Kanu and ten from the Opposition to discuss and draft recommendations to the IPPG reflecting consensus between the parties to this dialogue on constitutional, legal and administrative reform, with a view to developing possible bills for enactment into law by the National Assembly.
    - (ii) A technical committee comprising seven members from Kanu and seven from the Opposition to develop recommendations for the IPPG on a draft electoral code, and draft legislation and regulation to govern the operations of the Electoral Commission.
    - (iii) A technical committee comprising seven Kanu members and seven from the Opposition to deliberate upon and recommend to the IPPG on a collective resolution regarding the current problems of insecurity and banditry with a view to developing a collective commitment to the rule of law, maintenance of peace and exclusion of peace or exacerbation of conflict.



That the established committees work for a period of one week and thereafter report back to the IPPG through the Co-ordinating Committee.

10. The IPPG Plenary mandated the Co-ordinating and the Technical Committees to undertake the responsibilities bestowed upon them in the discussions and resolutions of the Plenary within one week and report proposed recommendations to the Third Plenary of the IPPG at 10.00 a.m on Tuesday, 9th September, 1997 at County Hall Conference Room.

Hon. George M. Anyona, MP  
Secretary to Co-ordinating Committee and IPPG

Parliament Buildings  
NAIROBI

September 10, 1997

## THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

### TECHNICAL COMMITTEES

#### PRESS BRIEFINGS

The Technical Committees established by the Inter-Parties Parliamentary Group (IPPG) Plenary Session on 4th September, 1997 are as follows:

#### A. CO-ORDINATING COMMITTEE

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| The Hon. J.J. Falana, MP          | - | Convener (Kanu)      |
| The Hon. C.N. Osogo, MP           | - | Co-Chairman (Kanu)   |
| The Hon. Ramogi Achieng Oneko, MP | - | Co-Chairman (Ford-K) |
| The Hon. George M. Anyona, MP     | - | Secretary (KSC)      |
| The Hon. Kipkalya Kones, MP       | - | Member (Kanu)        |
| The Hon. George G.W. Nthenge, MP  | - | Member (Ford-A)      |
| The Hon. Joseph M. Shikuku, MP    | - | Member (Ford-A)      |
| The Hon. Ibrahim Salat, MP        | - | Member (Kanu)        |
| The Hon. Matu Wamae, MP           | - | Member (DP)          |
| The Hon. Martha Karua, MP         | - | Member (DP)          |
| The Hon. Saulo Busolo, MP         | - | Member (Ford-K)      |
| The Hon. Jimmy N. Angwenyi, MP    | - | Member (Kanu)        |

#### B. CONSTITUTIONAL, LEGAL AND ADMINISTRATIVE REFORM COMMITTEE

|                                 |   |                      |
|---------------------------------|---|----------------------|
| The Hon. Dalmas Otieno, MP      | - | Co-Chairman (Kanu)   |
| The Hon. Kiraitu Murungi, MP    | - | Co-Chairman (Ford-K) |
| The Hon. George M. Anyona, MP   | - | Secretariat (KSC)    |
| The Hon. Dr. Mukhisa Kituyi, MP | - | Secretariat (Ford-K) |
| The Hon. J.C.N. Osogo, MP       | - | Member (Kanu)        |
| The Hon. Kipkalya Kones, MP     | - | Member (Kanu)        |
| The Hon. Peter Maundu, MP       | - | Member (Kanu)        |
| The Hon. Julius ole Sunkuli, MP | - | Member (Kanu)        |
| The Hon. G.G. Kariuki, MP       | - | Member (Kanu)        |
| The Hon. F.N. Kagwima, MP       | - | Member (Kanu)        |
| The Hon. Moses Wetangula, MP    | - | Member (Kanu)        |
| The Hon. Henry Obwocha, MP      | - | Member (Ford-K)      |
| The Hon. Martha Karua, MP       | - | Member (DP)          |
| The Hon. Norman Nyagah, MP      | - | Member (DP)          |
| The Hon. Matu Wamae, MP         | - | Member (DP)          |
| The Hon. George Nthenge, MP     | - | Member (Ford-A)      |
| The Hon. Dr. Lwali Oyondi, MP   | - | Member (Ford-A)      |
| The Hon. Abubakar Badawy, MP    | - | Member (Kanu)        |

#### C. PEACE AND SECURITY COMMITTEE

|                              |   |                  |
|------------------------------|---|------------------|
| The Hon. Moody Awori, MP     | - | Chairman (Kanu)  |
| The Hon. Kennedy Kiliku, MP  | - | Co-Chairman (DP) |
| The Hon. William Morogo, MP  | - | Member (Kanu)    |
| The Hon. Mwangi Githiomi, MP | - | Member (DP)      |

|                                |   |                 |
|--------------------------------|---|-----------------|
| The Hon. Chris Kamuyu, MP      | - | Member (Ford-A) |
| The Philip Rotino, MP          | - | Member (Kanu)   |
| The Hon. Linus A. Polo, MP     | - | Member (Ford-K) |
| The Hon. Eliud Mcharo, MP      | - | Member (Kanu)   |
| The Hon. Khalif S. Mwavumo, MP | - | Member (Ford-K) |
| The Hon. Jillo Falana, MP      | - | Member (Kanu)   |
| The Hon. Mohammed Shidiye, MP  | - | Member (Kanu)   |
| The Hon. Sammy Leshore, MP     | - | Member (Kanu)   |
| The Hon. Mrs Phoebe Asiyo, MP  | - | Member (Ford-K) |

**D. ELECTORAL CODE COMMITTEE**

|                                   |   |                    |
|-----------------------------------|---|--------------------|
| The Hon. Andrew Ligale, MP        | - | Co-Chairman (Kanu) |
| The Hon. Joseph Mulusya, MP       | - | Co-Chairman (DP)   |
| The Hon. Prof. Ouma Muga, MP      | - | Member (Ford-K)    |
| The Hon. Prof. Anyang Nyong, MP   | - | Member (Ford-K)    |
| The Hon. George Kaptan, MP        | - | Member (Ford-K)    |
| The Hon. Muhika Mutahi, MP        | - | Member (DP)        |
| The Hon. Shadrack Manga, MP       | - | Member (Kanu)      |
| The Hon. Japhet Shamala, MP       | - | Member (Kanu)      |
| The Hon. Boaz Kaino, MP           | - | Member (Kanu)      |
| The Hon. John S. Mumba, MP        | - | Member (Kanu)      |
| The Hon. Gonzi Rai, MP            | - | Member (Kanu)      |
| The Hon. Mrs Agnes Ndeti, MP      | - | Member (Kanu)      |
| The Hon. Bishop Joseph Kimani, MP | - | Member (Ford-A)    |
| The Hon. Njenga Mungai, MP        | - | Member (Ford-A)    |

2. The Technical Committees met yesterday afternoon and constituted themselves as above. The Committees also compiled their Work Programme for Friday, Saturday, Sunday and Monday.
3. The Committees started working this morning and continued in the afternoon. They will be working throughout the weekend.
4. The Committees are working in a cordial and relaxed atmosphere. The Committees are so far making good progress in their deliberations.
5. The Committees will compile provisional reports on Monday, 8th September, 1997. The reports will be presented to the Plenary Session of the IPPG on Tuesday, 9th September, 1997 at County Hall. The Committees will also hold the next Press Briefing on Monday, 8th September, 1997.

Hon. George M. Anyona, MP  
Secretary to Co-ordinating Committee

Parliament Buildings  
Nairobi

September 5, 1997

## THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

### PRESS BRIEFING

1. The Technical Committees have been meeting today.
  - (a) The Constitutional, Legal and Administrative Reform Committee met in the morning and adjourned to allow members to attend the national Harambee for Women. The Committee has completed deliberations on Legal Reform covering Statutes listed in the Bill and Agenda No.5(b).
  - (b) The Peace and Security Committee met in the afternoon and completed their deliberations on the following issues before adjourning and will meet tomorrow to draft Resolutions for the Plenary:
    - (i) Rule of Law
    - (ii) Maintenance of Peace
    - (iii) Threats to Security
    - (iv) Banditry
    - (v) Cattle Rustling
    - (vi) Clashes
    - (vi) Urban Insecurity
  - (c) The Electoral Code Committee is in session and making good progress.
2. The Committees will meet again tomorrow to deal with remaining business. The Committees are working hard and deliberations are based on general consensus.
3. The Committees are keenly conscious of their grave responsibilities to Kenyans and are determined to discharge and honour these responsibilities to the best of their abilities.
4. The Committees are most grateful to all Kenyans for being and remaining calm while the IPPG deals with the situation.
5. We appeal and urge all Kenyans of goodwill to give support to the current dialogue initiatives by the IPPG.

Hon. George M. Anyona, MP  
SECRETARY TO COMMITTEE & IPPG

6th September, 1997

**THIRD (IPPG) PLENARY**

**RESOLUTION**

**PRESS BRIEFINGS**

1. **The Committees have been meeting again this morning and proceedings are in progress this afternoon.**
2. **The Security Committee has finalised resolutions. The Committee will meet the Commissioner of Police and his security team tomorrow morning.**
3. **The Constitutional, Legal and Administrative Reform Committee has started deliberations this afternoon and may complete the work tomorrow. Drafts on legal reforms are in progress with co-operation of the Attorney-General's office.**
4. **The Electoral Code Committee will complete work on Local Government this afternoon. Drafts are ready on the Electoral Code.**
5. **The Committees will meet tomorrow to finalise Drafts Reports and Recommendations.**

**Hon. George M. Anyona, MP**  
**SECRETARY TO CO-ORDINATING COMMITTEE AND IPPG**

**Parliament Buildings**  
**NAIROBI**

**September 07, 1997**



## **THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)**

### **PRESS BRIEFINGS**

1. The Technical Committees of the IPPG met and continued working this morning and afternoon. The deliberations of the Committees are still in progress.
2. The Peace and Security Committee held consultations with the Commissioner of Police and his security team this morning. In the afternoon, the Committee continued with the drafting of Resolutions. The Committee is being facilitated in the drafting of the Resolution by an officer from the Attorney-General's Chambers, Mr. Milton Odhiambo.
3. The Electoral Code Committee continued deliberations on Local Government. The Committee had consultations with the Permanent Secretary for Local Government, Mr. Richard Siele, who attended the morning session. The Committee is also being facilitated by an officer from the Attorney-General's Chambers, Ms Linda Mulira, in preparing draft Resolutions.
4. The Constitutional, Legal and Administrative Committee continued deliberations on both minimum and long-term constitutional reform. In both respects of the reform agenda, the Committee reached consensus on most of the issues under discussion, including the Electoral Commission, Nominated Members, etc. The Committee will proceed to deliberate on administrative reform. The Committee is being facilitated by three officers from the Attorney-General's Chambers, Ms Margaret Nzioka, Mr. Stephen Mwenesi and Ms Elizabeth Ng'ang'a, in drafting proposed constitutional and legal amendments and repeals to the Constitution and various Statutes.
5. Given the exceptional goodwill and large volume of work generated by deliberations of the Technical Committees, it will not be possible for the Committees to complete the Draft Resolutions and present them to the Co-ordinating Committee today. The Technical Committees require at least another two days to finalise their assignments.
6. In view of the foregoing, it has been agreed through consultations that the Third Plenary of the IPPG, scheduled for Tuesday, 9th September, 1997, be postponed until Thursday, 11th September, 1997, at 10.00 a.m. The venue of the Plenary will be notified in due course.
7. In the meantime, the Co-ordinating Committee and Technical Committees will seek consultations with the religious community and other stakeholders in the reform process. There will also be consultations with the Head of State.

**Hon. George M. Anyona, MP**  
**Secretary to Co-ordinating Committee and IPPG**

**Parliament Buildings**  
**NAIROBI**

**September 08, 1997**

## **THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)**

### **PRESS BRIEFINGS**

1. The proceedings of the Technical Committees of the IPPG have reached advanced stages. The spirit of consensus and cordiality that has guided and imbued the proceedings of the Committees from the beginning of the IPPG dialogue and reform initiatives has been sustained and strengthened throughout the deliberations of the Committees. This has resulted in quick and remarkable achievements by the Technical Committees in the deliberations of the issues involved in the reform process as well as the peace and security situation in the country.
2. The Peace and Security Committee forwarded the proposed reports and resolutions to the Attorney-General's Chambers for drafting. The draft reports and resolutions were received from the Attorney-General's Chambers this afternoon and the Committee will now adopt them for presentation to the Co-ordinating Committee of the IPPG some time tomorrow.
3. The Electoral Code Committee has completed deliberations and is reviewing draft reports and resolutions on the following:
  - (a) The Constitution of Kenya
  - (b) The National Assembly and Presidential Elections Act, Cap 7.
  - (c) The Schedule to Section 34(i) and (h) on the Electoral Code of Conduct.
  - (d) The Election Offences Act, Cap 66.
  - (e) The Local Government Act, Cap 265
  - (f) The Proposed electoral Bills proposed by the Electoral Commission and the Opposition.
  - (g) The Presentation by the Association of Local Authorities of Kenya (ALGAK).
4. The Constitutional, Legal and Administrative Committee has now completed deliberations on all the items of the reform process. There is overwhelming consensus on these issues and reports, resolutions and possible legislations are in the process of drafting with the willing and welcome co-operation of officers from the Attorney-General's Chambers.
5. The Technical Committees are scheduled to present their draft reports and resolutions to the Co-ordinating Committee tomorrow, Wednesday, 10th September, 1997. The Co-ordinating Committee will then prepare the Agenda and Programme for the Third Plenary of the IPPG on Thursday, 11th September, 1997.

**Hon. George M. Anyona, MP**  
**Secretary to Co-ordinating Committee and IPPG**

**Parliament Buildings**  
**NAIROBI**

**September 09, 1997**

THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)

TECHNICAL COMMITTEES - DRAFT REPORTS

PRESS BRIEFINGS

1. The Three Committees established by the Fourth Session of the Second Plenary of the IPPG on Thursday, 4th September, 1997, have completed their work and presented Draft Reports and Resolutions to the Co-ordinating Committee for consideration and adoption.
2. The Draft Reports and Resolutions cover all the issues contained in the Agenda of the Second Plenary of the IPPG. These issues include:
  - (a) Minimum short-time constitutional, legal and administrative reforms.
  - (b) Comprehensive long-term constitutional, legal and administrative reforms.
  - (c) Peace and Security
  - (d) General Election
3. The Technical Committees deliberated, in a candid manner and free atmosphere, controversial and sensitive aspects of the reform agenda that were anathema to public scrutiny in the past. Indeed, the spirit and wind of dialogue was so strong that the Draft Reports and Resolutions were made and reached by general consensus.
4. The Draft Reports and Resolutions of the Technical Committees have been presented to the Co-ordinating Committee for consideration and adoption. The Co-ordinating Committee has duly considered the Draft Reports and Resolutions presented by the Technical Committees and duly adopted them with unanimity.
5. The Draft Reports and Resolutions of the Technical Committees have been compiled by the Co-ordinating Committee as an Interim Report for presentation to the Third Plenary of the IPPG on Thursday, 11th September, 1997, for consideration, adoption and sanction. The Interim Report will form a basis on which to defuse the explosive situation in the country and point the way forward from the current political impasse in the reform process as well as the deteriorating security situation. The recommendations will create a level-playing field for fair, free and peaceful General Election. The recipe for fair, free and peaceful General Election consists of, inter alia, co-operation, goodwill, tolerance and transparency.

Hon. George M. Anyona, MP  
SECRETARY TO COMMITTEE & IPPG

10th September, 1997



**THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)**

**THIRD PLENARY**

**OLD CHAMBER - 11TH SEPTEMBER, 1997**

**P R O G R A M M E**

- 1. ATTENDANCE:**
  - (a) Members of Parliament**
  - (b) Religious Community Facilitation Team (RCFT) Observers**
  - (c) Diplomatic Community Observers**
  - (d) Resident Representatives of IMF, World Bank and European Commission Observers.**
  - (e) Amnesty International Observer**
  - (f) Press**
- 2. PRELIMINARIES:**
  - (a) Prayer**
  - (b) Opening Remarks**
  - (c) Adoption of Agenda**
  - (d) Adoption of Proceedings of Second Plenary of IPPG**
- 3. PRESENTATION OF REPORTS AND RESOLUTIONS:**
  - (a) Peace and Security Committee**
  - (b) Electoral Code Committee**
  - (c) Constitutional, Legal and Administrative Reform Committee**
- 4. PLENARY DELIBERATIONS**
- 5. RESOLUTIONS**

**Parliament Buildings  
Old Chamber  
NAIROBI  
11th September, 1997**

# **THE INTER-PARTIES PARLIAMENTARY GROUP (IPPG)**

## **THIRD PLENARY**

### **SUMMARY PLENARY PROCEEDINGS**

1. The Third Plenary of the IPPG took place in the Old Chamber of Parliament Buildings, on Thursday, 11th September, 1997, from 10.50 a.m. to 1.50 p.m.
2. The Plenary was attended as follows:
  - (a) Members of Parliament - 138 Members
  - (b) Speaker and Attorney General (Observers)
  - (c) Religious Community Facilitation Team (RCFT) Observers - 10 Members
  - (d) Diplomatic Community Observers - 30 Diplomats
  - (e) Donor Community Observers - 3 Resident Representatives
  - (f) Amnesty International Observer - 1 Representative
  - (g) Press: Local and International
3. The Plenary started with a prayer by Hon. Bishop Joseph Kimani, M.P. (Nakuru North), after which the Agenda and Programme of the Plenary was adopted by acclamation. The adoption of the Report was proposed by Hon. Dr. Joseph Misoi, M.P. (Eldoret South) and seconded by Hon. Aluoch Polo, M.P. (Rongo). The Plenary also adopted the Summary Proceedings of the Second Plenary circulated by the Secretary to the IPPG by acclamation after the adoption was proposed by Hon. Jimmy N. Angwenyi, M.P. (Kitutu Chache) and seconded by Hon. Matu Wamae, M.P. (Mathira).
4. The Plenary commenced its deliberations with introductory and opening remarks from Hon. J.J. Falana, M.P.(Saku), Convenor, Hon. Achieng Oneko, M.P. (Rarieda), Co-Chairman and Hon. James Osogo, M.P. (Bunyala), Co-Chairman.
5. The Plenary was informed that some members of the Coordinating Committee of the IPPG had met the President at State House, Nairobi, during the morning of 11th September, 1997 and briefed him on the progress of the Technical Committees of the IPPG as follows:
  - (a) Peace and Security
  - (b) Electoral Code
  - (c) Constitutional, Legal and Administrative Reform.

6. The Interim Report of the Peace and Security Committee was presented to the Plenary by Hon. Moody Awori, M.P. (Samia), Co-Chairman and Hon. Kennedy Kiliku, M.P. (Changamwe), Co-Chairman. The Report was proposed for adoption by Hon. Simeon Nyachae, M.P. (Nyaribari Chache) and seconded by Hon. Phoebe Asiyo, M.P. (Karachuonyo). The Report was adopted by acclamation.
7. The Interim Report of the Electoral Code Committee was presented by Hon. Joseph Mulusya, M.P. (Kangundo), Co-Chairman and Hon. Andrew Ligale, M.P. (Vihiga) - Co-Chairman. The Report was proposed for adoption by Hon. Chris Kamuyu, M.P. (Dagoretti) and seconded by Hon. Kipkalya arap Kones, M.P (Bomet). The Report was adopted by acclamation.
8. The Interim Report of the Constitutional, Legal and Administrative Reform Committee was presented by Hon. Dalmas Otieno, M.P. (Nominated) - Co-Chairman and Hon. Kiraitu Murungi, M.P. (Imenti South), Co-Chairman. The Report was proposed for adoption by Hon. Henry Obwocha, M.P. (West Mugirango) and seconded by Hon. William ole Ntimama (Narok North). The Report was adopted by acclamation.
9. The Plenary was then addressed by Hon. George Saitoti, M.P. (Vice President), Kanu, Hon. Michael K. Wamalwa, M.P. (Chairman), Ford-Kenya, Hon. Martin J. Shikuku, M.P. (Secretary-General), Ford Asili, Hon. Mwai Kibaki, M.P. (Chairman), Democratic Party and Hon. George M. Anyona, M.P. (Chairman-General), Kenya Social Congress.
10. The Plenary ended with closing remarks from Hon. J.J. Falana, M.P. (Saku), Convenor and Hon. James Osogo, M.P. (Bunyala), Co-Chairman. The Hon. George M. Anyona, M.P. (Kitutu Masaba), the Secretary to the IPPG, read the Resolution which was adopted by acclamation, after being proposed for adoption by Hon. Mwai Kibaki, M.P.(Othaya) and seconded by Hon. Jackson Kalweo, M.P. (Nyambene). The Plenary after a prayer from Hon. Abubakar Badawy, M.P. (Malindi) then embarked on the Great Reform Train(GRT) and left the Old Chamber of Parliament Buildings in a festival mood of the Reform and Christmas Seasons of goodwill to all men and women. The Third Plenary took place in the true spirit of the National Motto of *Harambee* (Reasoning Together) and the Motto of the National Assembly: FOR THE WELFARE OF SOCIETY AND THE JUST GOVERNMENT OF MEN.

**Hon. George M. Anyona, M.P.**  
**SECRETARY TO INTER-PARTIES**  
**PARLIAMENTARY GROUP (IPPG)**

**Parliament Buildings**  
**NAIROBI**

**15th September, 1997**



## **THIRD IPPG PLENARY**

### **RESOLUTION**

**We, Members attending the Third Plenary of the Inter-Parties Parliamentary Group (IPPG) of the Seventh Parliament meeting on the eleventh day of September, 1997 to consider the reports of the Peace and Security Committee, the Electoral Code Committee and the Constitutional, Legal and Administrative Committee regarding minimum reforms before the forthcoming General Elections do hereby**

**urge the National Assembly of Kenya to adopt the reports of the said three Committees through a House Resolution;**

**empower the Attorney-General to translate the reports of the said three committees into draft Bills for presentation to the National Assembly before the forthcoming General Elections;**

**recommend that all the four committees of the IPPG continue to work in close collaboration with the Attorney-General's Chambers to ensure that the contents of the Bills are fully cognisant of these recommendations;**

**call upon the National Assembly to ascertain that the respective Bill are enacted into law so as to ensure free and fair elections.**

**Old Chamber  
Parliament Buildings  
NAIROBI**

**Thursday, September 11, 1997**

**REPORT OF THE COMMITTEE ON**  
**CONSTITUTIONAL, LEGAL AND**  
**ADMINISTRATIVE REFORMS**

**A. CONSTITUTIONAL REFORMS**

The Committee resolved to deal with minimum constitutional reforms for the purposes of the forthcoming general election as follows:

**(i) Section 1 - Declaration of Republic**

The Committee recommended that Section 1 be renumbered Section 1A.

**(ii) Section 1B - Multiparty Democracy**

The Committee recommended that a new Section 1B which would read as follows:

**"Kenya shall be a multi-party democracy" be inserted.**

**(iii) Section 7 - Coalition Government**

The Committee recommends that, Section 7 be amended by deleting all the words after the word "elected" appearing in the third line to read as follows:

**"A person elected as President in accordance with this constitution shall assume office as soon as he is declared to be elected".**

This amendment now permits the winning President to form a Government of National Unity or a Coalition.

**(iv) Section 41(1) - Electoral Commission**

The Committee deliberated on the need for an independent impartial and inclusive Electoral Commission.

The Committee recommends that Section 41(1) of the Constitution be amended by deleting the word "other" and inserting after the words "not less than four" the words "and not more than twenty one".

The Committee recommends that the President do appoint the additional 10 Commissioners from a list of names submitted to him by parliamentary Opposition parties.

(iii) **Section 41(10)**

The Committee recommends that Section 41(10) which gives the Commission a blank cheque to regulate its own procedure be deleted, and replaced with the following section.

**"The Commission may by rules or otherwise regulate its own procedure subject to any electoral laws in force".**

(iv) **Section 33 - Nominated Members of Parliament**

The Committee proposed amendments to this Section. The Section as amended reads:-

"Section 33(1): There shall be 12 nominated Members of the National Assembly to represent Special Interests, who shall be proposed for appointment to the President by each leader of a Parliamentary party in proportion to the respective party membership in the National Assembly.

(ii) At the conclusion of a General Election, the Electoral Commission shall issue a certificate to the leader of each parliamentary party giving the number of nominees to be proposed by the party under this Section.

(iii) All Nominated Members shall be persons who qualify to be elected as Members of the Kenya National Assembly.

The Committee further proposed that half of the nominations be reserved for women. In this regard, the following provision is proposed to be inserted in the Electoral Code.

"In receiving nominations from Leaders of the Parliamentary parties under Section 33 of the Constitution, the Electoral Commission shall ensure that one half of all Members nominated for appointment by the President shall be women".

(v) **Section 82(3) - Protection from Discrimination**

The Committee recommends an amendment to Section 82(3) by inserting the word "sex" between the words "race" and "tribe".

This amendment shall protect all Kenyans from discrimination on grounds of sex.

(vi) **Presidential Elections (Section 5)**

The Committee considered the proposal to amend Section 5 of the



Constitution to require a presidential candidate to obtain a 50% majority in addition to the 25% in 5 of the eight provinces. After lengthy deliberations the Committee resolved that this amendment is of a fundamental nature which requires consideration by all Kenyans, as part of the comprehensive constitutional reforms.

The Committee resolved to retain the present Section 5 of the Constitution and recommended that:-

- (a) all presidential candidates be granted adequate security by the State.
- (b) all political parties will have genuine freedom to campaign in all areas of Kenya and there will be no closed party zones.

(vii) **Independent Candidates**

- a. The Committee deliberated at length on the question of Independent Candidates and resolved that the matter be left for the consideration of all Kenyans under the proposed Constitution of Kenya Review Commission Bill, 1997.
- b. It was the consensus of the Committee that all Kenyans do participate in the General Elections and candidates granted the right to present themselves on tickets of parties of their choice. In this regard, the Committee recommends that all political parties which have applied for registration be registered forthwith unless their registration would contravene the provisions of the Societies Act (Cap.108) and the refusal and reasons thereof are communicated in writing to the affected parties within 14 (fourteen) days.
- c. In the event the Registrar does not comply with (b) above, the Committee recommends that the Constitution be amended to permit independent candidates to participate in the forthcoming General Elections.

(viii) **Independence and Autonomy of Parliament**

The Committee deliberated on the issue of independence autonomy of the institution of Parliament, and strongly recommended that the Motion unanimously passed by Members of Parliament for establishment of Parliamentary Service Commission be implemented.



**THE CONSTITUTION OF KENYA REVIEW COMMISSION BILL, 1997**

The Committee considered the Constitution of Kenya Review Commission Bill, 1997 and made the following recommendations:

- (i) **Clause 4** - To remove uncertainty as to when the Commission shall be appointed, the Committee recommended that clause (4) be amended to indicate that the Commission will be appointed as soon as this Bill is enacted into law.
- (ii) **Clause 6** - This clause should be amended to allow the Commission to hire its own Secretary and Deputy Secretaries instead of the President.
- (iii) **Clause 7** - The first line of this clause be amended by deleting the word "**shall**" and inserting the words "**may upon request by the Commission**". This will enable the President to avail to the Commission the services of public officers, if and when required by the Commission.
- (iv) **Clause 11(c)** - This clause be amended by deleting the word "**person**" appearing in the first line and inserting the words "**Public Officer**" in place thereof. This will ensure that appearance before the Commission is voluntary and that only public officers can be compelled to produce documents.
- (v) **Clause 13(3)** - This clause be amended to include a sub-clause to provide that in the absence of the Chairman and the Vice-Chairman, the Commission will appoint any other member to Chair the meeting.
- (vi) **Clause 13(b)** - This clause be amended by inserting an additional sub-clause to indicate that the Secretary shall be responsible for the custody of all records and documents of the Commission.
- (vii) **Clause 15** - This clause be amended by deleting the word "**person**" appearing in the first line and inserting the words "**Public Officer**" in place thereof. This ensures that only public officers are punished for disobedience of summons issued by the Commission to produce documents.



- (viii) **Clause 16(1)** - This clause be amended by deleting all the words after the word "**Commissioners**" in the third line to the end.

This amendment is intended to ensure that the Commission will submit its report to the President promptly within twenty four months from the date of appointment.

- (ix) **First Schedule** - The Committee recommends that:

(a) Clause 2 of the First Schedule should be redrafted to indicate that the President shall only appoint Commissioners from the names submitted by the listed organizations.

(b) each of the organizations listed in the schedule will nominate not more than 4 (four) names.

(c) the list of organizations appended to the bill should be expanded to be as inclusive as possible to ensure that such organisation as the Kenya Women's Political Caucus, the Muslim Consultative Council, the Association of the Physically disabled of Kenya and other stakeholders are included.

### **Dates of Elections**

The Committee deliberated on the need to have the dates of elections in Kenya clearly spelt out in the Constitution. The Committee recommends that this matter be left for consideration by all Kenyans as part of the comprehensive review of the Constitution as it involves a decision as to whether Kenya will have a Parliamentary or Presidential system. The Committee further recommends that the election timetable be prepared in consultation with all parties participating in the elections.

## **B. LEGAL REFORMS**

The Committee considered the following Acts:

1. The Public Order Act, Cap 56
2. The Penal Code, Cap 63
3. The Police Act, Cap 84
4. The Administration Police Act, Cap 85
5. The Traditional Liquor Act, Cap 122
6. The Chiefs' Authority Act, Cap 128
7. The Kenya Broadcasting Corporation Act, Cap 221
8. The Films and Stage Plays Act, Cap 222
9. The Public Collections Act, Cap 106
10. The Preservation of Public Security Act, Cap 57
11. The Societies Act, Cap 108
12. The Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997

### **Recommendations made under each Act**

#### **1. The Public Order Act (Cap 56)**

The Committee recommends some amendments in order to classify meetings that require notification and those that do not require notification. In this regard the Committee recommends that:-

- (a) all public rallies and processions held at public places should require notification.
- (b) meeting of political party organs under their respective constitutions, held exclusively to discuss party affairs shall not require notification.
- (c) convenors of meetings that do not require notification may request security from the police.
- (d) meet-the-people tours should not require notification.
- (e) notifications under this Act should be made to the Officer Commanding Police Station (OCS).
- (f) a public register of notifications should be maintained by the Officer Commanding Police Station (OCS).
- (g) the time of public meetings be limited from 6.00 a.m. to 6.00 p.m.
- (h) the organizer of a meeting or procession or his agent should be present throughout the meeting or procession and assist the police in the maintenance of peace and order.

- (i) a meeting or procession may only be stopped by an Officer Commanding Police Station (OCS) or a police officer of or above the rank of inspector, where there is clear present or imminent danger of a breach of the peace or public order.
- (j) a public meeting or procession held without due notice to the OCS or in defiance of a police order not to hold a meeting in a particular place or at a particular time would be an unlawful assembly. The proposed requirement in the Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997 that meetings or processions in progress could be declared unlawful because of the disobedience of three or more persons to keep peace should be deleted.
- (k) The proposals in the Statute Law (Repeals and Miscellaneous Amendments) Bill that the use of threatening abusive or insulting words at a public meeting with intent to provoke a breach of the peace be an offence under the Public Order Act be deleted, as relevant provisions of the Penal Code are adequate to cover such utterances.
- (l) Clause 5(1)(a) of the Bill which empowers a police officer to control music, human speech, and sound amplification in public meetings and processions be deleted.

## 2. **The Penal Code**

Section 52 of the Penal Code gives the Attorney-General unfettered discretionary powers to restrict freedom of expression by prohibiting any past or future publication in the interests of public order, health, morals and state security.

- (a) It is recommended that the Attorney-General reviews sections 52, 53 and 54 of the Penal Code regarding prohibited publications in order to make the protection of morality and health the only basis for prohibition.
- (b) It is recommended that sections 56, 57 and 58 which relate to sedition be repealed altogether as they are open to abuse and criminalize free speech.
- (c) It is recommended that the Attorney-General establishes a Board to review the banned publications.

The Committee felt that Section 77 of the Penal Code adequately caters for people who incite others to crime, violence, ethnic or racial hatred, and that there is no need for retaining the sedition clauses.

It was also noted that criminal libel and defamation are adequately catered for in the Penal Code.

3. **The Police Act**

The Committee recommends that Section 14 be amended by inserting the following:

14(2) The Force shall exercise its functions under the direction, supervision and control of the Commissioner of Police and shall not be subject to the direction or control of any other person or authority.

14(3) No police officer shall subject any person to torture, or to inhuman or degrading treatment.

14(4) The Force shall in exercise of its functions be impartial and neutral in all political matters, and shall not accord different treatment to different persons on the basis of political party affiliation or political opinion.

14(5) Any police officer who fails to comply with subsections (3) and (4) hereof shall be guilty of an offence.

4. **The Administration Police Act**

The Committee recommends that in the long term Administration Police force be merged with the regular Police to harmonize the operation of the Police force.

5. **The Traditional Liquor Act**

It was recommended that an amendment be made to Section 30 by deleting "administrative officers" and leaving the police as the only persons who may enter and search premises. It was also recommended that such police officer should at all such times have a search warrant.

6. **The Chiefs' Authority Act**

- (i) The members examined this Act in detail and suggested the following amendment to curb the powers of the chief and to prevent misuse of office in the run-up to the General Elections and beyond:
- (ii) It is recommended that section 3 which deals with Liwalis and Mudirs be repealed as it is said to be out of date.
- (iii) It is recommended that section 7 be repealed to prevent the employment of "youthwingers" by Chiefs.
- (iv) It is recommended that section 8 be amended in subsection (2) to require that where the chief arrests a person such person is not locked up by the chief but taken to the police forthwith for due process in accordance with the law.



- (v) It was proposed that section 9 which empowers the Chief to compel people to attend court be repealed.
- (vi) It is recommended that sections 10 and 11 which deal with Chiefs' orders be amended:-
  - (a) to empower the Chief to issue orders prohibiting the consumption, possession and supply of intoxicating liquor to young persons.
  - (b) to limit the Chiefs of controlling people by issuing orders prohibiting dances or any act which he thinks might cause a breach of the peace, or collecting money or property from any persons.
- (vii) It is recommended that the Act be amended to require Chiefs issue orders only for purposes authorised under the law.
- (viii) It is recommended that Section 12 be amended to empower the Chief to require able bodied persons to render services to the community in cases of emergencies.
- (ix) It is recommended that Section 13 be amended to limit the Chiefs' power to require people to work for conservation of natural resources because it was felt that this could be abused as a form of forced labour.
- (x) It is recommended that Section 15 be amended to require that the Chiefs' order for work under Section 13 should not apply to persons of over the age of 50, and that a person may be exempted from such work by a medical doctor in writing.
- (xi) It is recommended that Section 18 be amended to require a person who disobeys a Chief's order to be sentenced by the court to extra-mural penal employment (e.m.p.e.) for fourteen days.
- (xii) It is recommended that section 20 be repealed (offences by chiefs) in order to enable the chief to execute his duties fairly according to the law and without any fear of victimisation.
- (xiii) Part III of the Act (Famine Relief) is recommended for repeal since the Act under which it was made has also been repealed.
- (xiv) The Committee recommends the following rules to govern the conduct of the Chiefs:-
  - (a) It shall be unlawful for a Chief to engage in activities of any political party, to act as an agent of a person or political party or in any manner canvass for any political party.

- (b) A Chief shall not in the performance of his/her duties subject any person to torture or inhuman treatment.
- (c) A Chief shall not in the performance of his/her duty forcefully enter any private premises save with a warrant duly signed by a magistrate.
- (d) A Chief shall not demand, solicit or canvass donations, collections or *harambee* in any manner that suggests that such a donation, collection or *harambee* is a precondition or requirement before services can be rendered.

7. **The Kenya Broadcasting Corporation Act**

The Committee recommends that the following sub-section be inserted under Section 8 of the Act.

- (j) "The Corporation shall keep a fair balance in all respects in allocation of broadcasting hours as between different political view point".

8. **The Films and Stage Plays Act**

The Committee was in agreement that the Act has inhibited the development of drama in the country. The Committee recommends that the licensing requirement (under Part IV) be deleted and replaced by a requirement of notification.

9. **The Public Collections Act**

- (a) It is recommended that section 3 and 5 be amended to remove the requirement for a licence for public collections, and to provide only for notification of the same to the District Commissioner.
- (b) It was agreed that in the long-term the Attorney-General should examine the Act in total to harmonize it with the Public Order Act.
- (c) The Committee further recommends that the Attorney-General should in the near future review the Act to avoid the abuse of Public Collections (*harambee*).

10. **The Preservation of Public Security Act**

- (i) The Committee recommends that:-
  - (a) Section 4(2)(a) on **detention without trial** be repealed.

- (b) the following proviso be inserted immediately after Section 4(2)(b):

"provided that no person shall be restricted on account of his/her political beliefs and/or activities".

- (ii) The Committee recommends that the Attorney-General should review the other sections of the Act to conform with these amendments.

#### 11. **The Societies Act**

- (a) It is recommended that section 4 of the Act be amended to give the Registrar of Societies a maximum of 120 days within which to register or to decline to register a society.
- (b) It is recommended that the sentences for managing an unlawful society under Section 5 be reduced to a maximum of 3 years or fine not exceeding Shs10,000.
- (c) It is recommended that the penalty under Section 6 for being a member of an unlawful society be reduced to a maximum of one year or a fine not exceeding shs5000.
- (d) The Committee noted that Section 11 (refusal of registration) and Section 12 (Cancellation of registration) gives the Registrar broad unfettered discretion which could lead to injustice and arbitrariness. The Committee recommends that the words "**if it appears to him**" or "**in his opinion**" wherever they appear be replaced with the words "**where he has reasonable cause to believe**".
- (e) It is recommended that where a society is affiliated to a body of a political nature outside Kenya it only needs to inform the Registrar accordingly without having to seek his consent.
- (d) It is recommended that where a person is aggrieved by the decision of the Registrar he should appeal either directly to the High Court, or to the Minister, who shall determine the appeal within 90 days.

## **C. ADMINISTRATIVE REFORMS**

The Committee considered the issues raised under administrative reforms as follows:

### **1. Political Prisoners**

In light of the recommendations for amending and/or repealing sections of our laws concerning illegal assembly and sedition and considering that we are committed to the process of national reconciliation and harmony, the Committee recommends that:-

- (i) the Attorney-General moves expeditiously to facilitate clemency for Mr. Apiny Odhiambo.
- (ii) the Attorney-General reviews cases of all persons currently serving jail or facing trial on matters of sedition or participating in unlicensed meetings, with a view to releasing them.
- (iii) the Attorney-General reviews all other pending cases which are of a political nature.

### **2. Victims of ethnic clashes and banditry**

The Committee recommends that all victims of ethnic clashes and banditry be resettled as soon as possible.

### **3. Unregistered political parties**

The Committee recommends that all political parties which have applied for registration be registered forthwith unless their registration would contravene the provisions of the Societies Act (Cap. 108) and the refusal and reasons thereof are communicated in writing to the affected parties within 14 (fourteen) days.

### **4. Provincial Administration**

The Committee recommends that PCs, DCs, DOs, Chiefs and other civil servants should be restrained from interfering with the electoral process.

### **5. Private radio and television**

The Committee recommends that all pending applications be processed within 30 (thirty) days.

### **6. Election announcements**

The Committee recommends that all matters and announcements relating to elections be left solely to the Electoral Commission.

### **7. Security of Presidential Candidates**

The Committee recommends that all Presidential candidates be given adequate security during the campaign period.



## **CONSTITUTIONAL, LEGAL AND ADMINISTRATIVE REFORM COMMITTEE**

|  |   |                                       |
|--|---|---------------------------------------|
| <b>The Hon. Dalmas Otieno, MP</b>      | - | <b>Co-Chairman (Kanu) . . . . .</b>   |
| <b>The Hon. Kiraitu Murungi, MP</b>    | - | <b>Co-Chairman (Ford-K) . . . . .</b> |
| <b>The Hon. George M. Anyona, MP</b>   | - | <b>Secretariat (KSC) . . . . .</b>    |
| <b>The Hon. Dr. Mukhisa Kituyi, MP</b> | - | <b>Secretariat (Ford-K) . . . . .</b> |
| <b>The Hon. J.C.N. Osogo, MP</b>       | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. Kipkalya Kones, MP</b>     | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. Dr. Bonaya Godana, MP</b>  | - | <b>Member (Kanu)</b>                  |
| <b>The Hon. Peter Maundu, MP</b>       | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. Julius ole Sunkuli, MP</b> | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. G.G. Kariuki, MP</b>       | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. F.N. Kagwima, MP</b>       | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. Moses Wetangula, MP</b>    | - | <b>Member (Kanu) . . . . .</b>        |
| <b>The Hon. Henry Obwocha, MP</b>      | - | <b>Member (Ford-K) . . . . .</b>      |
| <b>The Hon. Martha Karua, MP</b>       | - | <b>Member (DP) . . . . .</b>          |
| <b>The Hon. Norman Nyagah, MP</b>      | - | <b>Member (DP) . . . . .</b>          |
| <b>The Hon. Matu Wamae, MP</b>         | - | <b>Member (DP) . . . . .</b>          |
| <b>The Hon. George Nthenge, MP</b>     | - | <b>Member (Ford-A) . . . . .</b>      |
| <b>The Hon. Joseph M. Shikuku, MP</b>  | - | <b>Member (Ford-A)</b>                |
| <b>The Hon. Dr. Lwali Oyondi, MP</b>   | - | <b>Member (Ford-A) . . . . .</b>      |
| <b>The Hon. Abubakar Badawy, MP</b>    | - | <b>Member (Kanu) . . . . .</b>        |

# *THE WOMEN'S REFORMS*

## *INITIATIVE (SUMMARY)*

ALTHOUGH THEY FORM HALF OF KENYA'S POPULATION, KENYAN WOMEN WERE NOT REPRESENTED AT LANCASTER HOUSE WHEN THE CURRENT *CONSTITUTION* WAS WRITTEN.

Not only were Kenyan women not present, in 1992, they were not consulted - in no way can it therefore be said that the current *Constitution* represents the needs or views of the women of Kenya. Can a Constitution that ignores half a country's people be said to be representative and will it truly withstand the test of time. It is our submission that given the nature of the current debates surrounding the Kenyan *constitution*, history is in danger of repeating itself, much to the detriment of the Kenyan woman. The *Constitution of Kenya* discriminates against Kenyan women and even if it is "minimally," amended to ensure a "level" playing field for all electoral candidates, it will not address the needs of the Kenyan woman. In order to ensure a new Kenyan *Constitution* that truly embodies the values of all of Kenyan people, and afford women and men equal protection of their fundamental rights, we recommend the following :

### DIALOGUE AND CONSTITUTIONAL REFORMS

1. Women must be represented by women in all national dialogue mechanisms and initiatives on the *Constitution*.
2. There should be a National Convention in order to give all Kenyans, an opportunity to present their views on the review and amendments necessary to ensure that the *Constitution of Kenya* guarantees all Kenyans their fundamental rights.

### CONSTITUTIONAL REFORMS

1. Section 82(3) of the *Constitution* amended in order to prohibit discrimination on the basis of sex.
2. Section 82(4) of the *Constitution* repealed as it permits discrimination in matters of personal law, customary law, marriage, inheritance, burial, divorce and adoption.
3. Section 90 and 91 of the *Constitution* be amended to enable Kenyan women to bestow citizenship on their children and spouses.
4. The *Constitution* be re-written in gender sensitive language
5. The *Constitution* be amended to ensure that women are considered for all constitutional offices by:
  - a) Requiring that all candidates for constitutional offices be subject to vetting by the legislature; and
  - b) Requiring that before appointments to constitutional offices are made Parliament must be satisfied that at least half the Candidates considered for the office were women.

## *WOMEN'S MILIUM REFORMS AGENDA*

6. Enact the *International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* into Kenya's domestic law and amend all laws in contravention of the Convention so as to bring them in line with the law.
7. Ratify Article 13 of *CEDAW* so as to give Kenyan women equal access to socio-economic benefits.
8. Enact legislation to facilitate the implementation of the Beijing Platform of Action.
9. Under the new *Constitution* 30% of the seats in the House of Parliament should be reserved for women.
- ✓10. There should be a Gender Commission set up under the *Constitution* the purpose of which shall be to monitor Government's Implementation of legal and policy measures necessary to ensure the equality of women and men.

## LEGISLATIVE REFORMS

1. Enact a bill legalising Affirmative Action in all public offices (elected and non-elected) and to correct other gender imbalances (including those in the private sector).
2. Enact an Equality Bill, constitutionally entrenching gender parity in areas of national life.
3. Enact a bill that prohibits domestic violence specifically.
4. Amend sections 139 and 145 of the *Penal Code Cap. 63 of the Laws of Kenya*, so that:
  - A) The rape of a minor carries maximum life sentence.
  - B) The definition of rape includes forced penetration with objects.
  - C) To prohibit rape within marriage.
  - D) To prohibit marriage as a defence of rape of a child under the age of 14.
5. That there be a uniform minimum age for marriage introduced into Kenyan law and that that age be 18 years of age.
6. That there be a legal requirement that all marriages be registered.
7. Amend the *Succession Act Cap. 160 of the Laws of Kenya* to:
  - A) Specifically state that married daughters can inherit property where their father dies intestate.
  - B) Recognising that under some forms of customary law, all the property acquired by a wife belongs to a husband, wives should be able to inherit where a husband dies intestate.
8. Repeal the *Vagrancy Act Cap. 58 of the Laws of Kenya*, as it criminalises small businesses and unemployed people.
9. Repeal the *Public Order Act Cap. 56 of the Laws of Kenya*, as it restricts Kenyans right to freedom of association and assembly.
10. Repeal the *Preservation of Public Security Act Cap 57 of the Laws of Kenya*, as it facilitates the detention without trial of Kenyans for their political beliefs, thus undermining section 78 of the *Constitution*, which permits freedom of conscience.

P.O. BOX 48083  
NAIROBI.

3RD September, 1997.

The Hon. Members of  
Inter-party Parliamentary Group  
Parliament Building/County Hall  
NAIROBI.

Dear Honourable Members,

TRADE UNIONS IN KENYA "UNION OF KENYA CIVIL SERVANTS"

With great respect and unreserved honour may we first of all take this opportunity to thank you very much for the noble task you have undertaken for the good of our country.

However, as you do recall, just recently in our parliament you passed a resolution for the reinstatement of the Union of Kenya Civil Servants. Certainly all civil servants have greatly appreciated this brilliant move by our parliamentarians.

Nevertheless, by the look of things, we are quite uncertain as to whether this important resolution will ever be implemented by the Government. A case in point, at the moment, the Registrar General is mute over the registration of this union despite the two resolutions of the House of parliament passed on 13th October, 1993 and 9th July, 1997 respectively.

It is worthy noting:-

1. That the Government has an obligation to respect and uphold the constitution which provides for the freedom of Association and the rights of workers to form and belong to trade unions as enshrined in Chapter V, Section 30 (1).
2. That as a member of the International Labour Organisation (I.L.O) the Government has an obligation to respect and uphold the (I.L.O) conventions Nos. 37 and 98, concerning Freedom of Association and Protection of the rights, to organise and collective bargaining to which Kenya has subscribed as a member of the I.L.O.



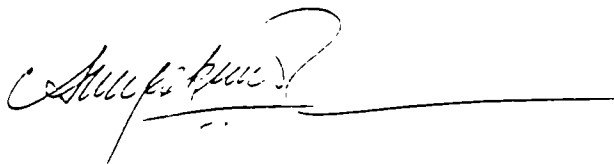
Besides that, the KANU Government has also violated its own Election Manifesto of 1992 that states that it fully supports the reinstatement of the Union of the Civil Servants.

Over and above, the Government has declined to implement the Justice S. R. Cockar report of 1994 which strongly recommended the reinstatement of the Union of Kenya Civil Servants.

It is in this regard that we wish to kindly request all of you Honourable members to include and address the issue of Trade Unions in this country and particularly the Union of Kenya Civil Servants which for over the years has been denied its functions, hitherto, denying the civil servants the freedom and rights of association todate.

We are optimistic that you will do the needful.

Thank you.



Alphayo M. Nyakundi  
SECRETARY-GENERAL  
UNION OF KENYA CIVIL SERVANTS

**THE UNITED DISABLED PERSONS OF KENYA**  
**P. O. BOX 34549.**  
**NAIROBI**

**Memorandum to the Inter-Party Parliamentary Group.**

The United Disabled Persons of Kenya as an umbrella of organisations of persons with disabilities has followed keenly the debate on constitutional reforms. We wish to express our most sincere gratitude for being accorded an opportunity to appear before you to present our views.

1. First, we note with concern that the current constitution has not a single positive clause in reference to persons with disabilities. Sections 70 and 82 of the constitution of Kenya which outlaws discrimination on the basis of race, tribe, place of origin or residence, or other local connection, political opinion, colour or creed has no reference to disability as a basis for discrimination. Thus, the constitution does not cover the persons with disabilities for whom discrimination, both institutionalised and subtle, is a daily challenge in varying degrees. We believe that this is because persons with disabilities were not represented in the formulation of that supreme law of the land. The experience of Uganda where persons with disabilities were represented in the constituent assembly that came up with the new constitution is an example that we should borrow. Today, disabled persons in Kenya are discriminated against in provision of services in among other public utilities like banks with impunity. They are denied right of access to public facilities by the way buildings are constructed while aids and appliances are charged duties and other taxes thus making them unaffordable. We recommend that opportunity be provided for persons with disabilities to be represented and to participate fully in the reform process as this will help in articulating their special needs and thus make their lives better than is the case. More specifically, we request that our participation in the constitutional reform commission whose bill has already been published be considered.
2. Disabled people and their organisations should be consulted and included in the decision making process that affect their lives including among others participation at civic and parliamentary levels. To us, the failure to develop appropriate services to persons with disabilities is largely not intentional but simply results from the fact that the affected people in this respect have not been involved in the development of such services.

A lot of services to persons with disabilities have been under resourced because people with disabilities are not involved at the level where the national budget is discussed to point out their priorities. Our neighbouring country Uganda has made great strides in this direction by recognizing that the 10% population made up of the disabled community in that country is large enough to form no less than five constituencies.

Consequently, their government has provided for five members of parliament who are disabled and who are elected by the disabled community on regional basis to represent their interest in parliament. Similar affirmative step has been taken at the local authority levels. Through this, nearly 2000 persons with disabilities are involved at various levels of local authorities. These are elected by the disabled people themselves and are expected to articulate the needs, aspirations, possible contributions and limitations of persons with disabilities in their respective local authorities. Although this representation is not outrightly stated in the constitution, it is based on the clauses relating to the recognition of persons with disabilities as an integral part of the Ugandan community whose needs are special and which can only be best articulated by them. It is also based on an affirmative clause that requires representation of minority groups. However the actual representation is outrightly provided for in the rules and regulations which interpret the constitution. In this light, it is our opinion and hence our recommendation that the Kenyan constitution should provide for affirmative action in respect to representation of minority groups and in particular persons with disability as a special group at all levels where decisions are made.

In South Africa, the government's affirmative action has taken the form of nominating a member of parliament with a disability to represent the interest of people with disabilities. In addition, They have set up a desk in the office of the president to coordinate all disability concerns in the country. In Tanzania, Lesotho and Zimbabwe the governments have also provided for at least one person with disability to represent their lot in parliament through nomination but in consultation with the organisations of persons with disabilities. We recommend that in the short run before the provision of representation through the constitution, Kenya takes this route of nomination as an affirmative action. More specifically, we request that nomination of a person with a disability to represent the interests of people with disabilities in parliament be considered and that United Disabled Persons of Kenya as a representative organisation of people with disabilities be consulted in deciding who such a person should be.

3. Allow me to go back to our laws and statutes for a moment as I am convinced that the reforms we are here to address center on these. Going back to our constitution. section 12 provides for the removal of the president on grounds of incapacity. We consider this unfair in that the definition of incapacity is not provided. Such interpretation should define "incapacity" taking into consideration the technological development which enables persons with disabilities be at par with the none-disabled persons. The term "incapacity" should be defined to exclude all disabilities which do not incapacitate the president to such extent that he is unable to perform his duties effectively.

The grounds for removal from office should be inability to perform rather than mere incapacitation. This provision should be applied to all other persons who hold public offices.

Section 16 and 17 empower the president to remove the vice president or minister at his discretion on the grounds of disability. We believe that grounds for removal should be inability to perform effectively rather than mere occurrence or presence of a disability.

Section 33 of the constitution provides for nominated members to the National assembly but does not provide for representation of persons with disabilities. We recommend that this section be amended to make provision for the nomination of persons with disabilities to represent their interest in the National Assembly.

Section 34 whether by intent, design or inadvertently outrightly discriminates against persons with visual and hearing disabilities by depriving them their rights either to be elected or nominated as members of parliament. clause (c) of this section states that a person shall be qualified to be elected as a member of parliament if, and shall not be qualified unless, at the date of nomination for election he is able to speak, unless incapacitated by blindness or other physical cause, to read Swahili and English languages well enough to take an active part in the proceedings of the National assembly". whereas this may have been meant to be an initiative to ensure that persons unable to "read" because of visual difficulties may be exempted from disqualification, They would in any case be disqualified under section 35 in respect to language proficiency test.

It also wrongly assumes that persons with visual difficulties are all illiterate thus failing to recognise braille as a form of writing. It is well known that whether wrongly or correctly, this clause has been referred to several times in public utterances by key leaders in this country in connection with the fact that blind people cannot stand for elections. This clause, however well intentioned is susceptible to misinterpretation and should all together be repealed. In one of the by-elections in the late 80's one of us was barred from contesting a seat in parliament as a result of the misinterpretation of this section.

In the same way, CAP 7 the National Assembly and presidential act should be harmonised with this recommendation. It should also provide for people with visual disability to be assisted in marking the ballots by persons of their own choice as opposed to the case presently where they have to be assisted by presiding officers in the presence of agents of candidates thus denying such a person his right to secretly electing a person of his choice.

Section 77 (2) provides that an accused person be given free services of an interpreter to enable him or her to understand proceedings in court and to communicate in a language he can understand. This entitlement should be extended to include specifically the sign language for the deaf.

4. Turning to other statutes, The law reform act CAP 26 should be amended to provide for representation of persons with disabilities on the law reform commission. CAP 63 the penal code section 146 "defilement of idiots or imbeciles".



In the first place, the description of persons with mental disability as "idiots" or "imbeciles" is discriminatory as it deprives them of a right to positive identity. Secondly, this section meant to protect them against sexual abuse regards the carnal knowledge of such persons irrespective of their age as "defilement" instead of treating this as rape in accordance to section 139 of the same code. Thus, offenders in this respect are normally charged with defilement rather than rape. This provision should be amended to regard offenses of this type to adult persons with mental handicaps as rape. Terms "idiots" and "imbeciles" should also be changed to persons with mental handicap.

CAP 107 The registration of persons act which makes provision for registration of persons and for the issue of identity card and other connected purposes does not provide for a register or the registration of persons with disabilities. Thus, whereas the relevant authorities can quickly tell you the number of elephants or rhinos in this country, there are no statistics of persons with disabilities. The registration of persons Act should be amended to establish a registry for the registration of persons with disabilities. This would help with the collection of data and the planning of services to such persons. CAP 141 The Children and Young Persons Act. This act does not address the rights of children with disabilities. This is a matter that needs immediate attention to ensure that the welfare of children with disabilities are given consideration.

CAP 210 (b). The Universities Act: Although this is an act to make better provisions for the advancement of university education in Kenya, it is silent on the welfare of students with disabilities in institutions of higher learning. It should be amended to secure in our universities a friendly physical and learning environment for university students with disabilities. For instance, lecture theatres, seminar rooms, laboratories, administration blocks and other buildings should be made accessible.

Appropriate equipment and services should be provided to students with special educational needs. This recommendation should apply in CAP 210 (c), The Kenyatta University Act.

CAP 211 The education Act: This act which provides for the regulation and progressive development of education makes no direct reference or mention of the education of learners with special needs. What so far has happened in this field has been through individual policy makers good will to interpret certain sections to enable the introduction of services. Section 4 (a) has for instance been interpreted to help in the establishment of Kenya Institute for SPECIAL Education. It is necessary that Special Education be explicitly defined and provided for in this act. The Act should therefore be amended to include specific provisions affecting students with disabilities and institutions catering for them. CAP 226 Employment Act This law has made no attempt whatsoever in addressing discrimination against people with disabilities in employment.

It should be amended to provide for affirmative action to create equal opportunities for persons with disabilities. Affirmative action could include provision of a quota system in the employment of persons with disabilities in organisations of given size.

CAP 470 Income Tax Act: It provides for the charge, assessment and collection of income tax. This act is discriminatory in content as it does not grant relief to persons with disabilities taking into consideration in the assessment the cost implications that comes with disability. Wheel chair users, Crutches users, sign language users, hearing aid users, reader service users all incur extra expenses in their daily lives which are not put into consideration in either tax assessment or granting of tax relief. We recommend that this law be amended accordingly.

CAP 472 the Custom Excise Act: This act provides for the management and administration of the customs for the assessment charge and excise duties. the 3rd schedule in clause 15 exempts "disabled" and "physically disabled" persons from tax on materials, articles and equipment including motor vehicles specially designed for their use at the discretion of the treasury where the cost exceeds 10,000 shillings. First, there is the problem of distinguishing between "disabled" and "Physically disabled" and knowing who are included in these terminologies. Secondly, there is the great problem of obtaining approval from the treasury which even when granted may have taken so long thus incurring big bills on demurrage and storage not to mention the problem when such an approval is rejected. Clause 16 exempts from export duty materials and articles for the educational, scientific or cultural advancement of persons with visual disability for the use of an organisation approved by government. This clause gives no exemption whatsoever to individuals with visual disability thus distinguishing them from their organisations and from the "disabled" and "physically disabled" as mentioned in clause 15 and denying them exemption.

It means that they can be charged duty on any appliances as they are not covered either in clause 15 or 16. Worse still are the deaf and the mentally handicapped who are not at all mentioned in this act and whom we can assume that like the visually disabled are not included in clause 15. To us, this is quite discriminatory and should be amended forthwith. Moreover the phrase "specially designed" in clause 15 is quite misleading because in today's technology, persons with disabilities can use appliances, equipment and even vehicles that are not originally designed for them but which are modified just a little either locally or internationally to suit their use. A case in point is the use of computers by blind persons once the necessary soft ware has been installed, a development which has revolutionalised the lives of blind professionals in their career performance.

We recommend that all persons with disabilities and their organisations as well as organisations providing services to them be treated equally in respect to duty exemption on appliances, equipment and materials which they require to ease their day to day life irrespective of the category of disability and that duty exemption procedures be made easy to avoid delays at the ports.

CAP 473 The Telecommunication Tax Act. This act imposes a tax in the provision of communication apparatus and services. THE tax is levied to all users of these services on equal basis but it is necessary to realise that for persons with disabilities who may be immobile in their houses, in trouble and unable to help themselves, telephone services could be a life-line.

In this respect, for this act to be fair, concession should be given to such persons as they are bound to use the services more often and in circumstances where they would otherwise not have used it were it not for their disabilities. We therefore, recommend that tax waver be considered in this act as an affirmative action.

5. We recommend that the government endorse and affirm its commitment to all UN instruments on human rights and that special attention be given to those related to human rights of disabled people. Alongside the consideration of the implementation of the UN Standard Rules on equalisation of opportunities for persons with disabilities, we single out in particular the ILO convention 159 of 1983 on the rehabilitation, training and employment of disabled persons which is a concern of every ministry under the guidance of the ministry of labour and manpower Development for ratification and implementation. We as a disability movement have done our best to bring about awareness on the UN Standard Rules by among other ways organizing seminars where government officials are invited to discuss these rules but more often than not the people who are in decision making levels do not attend our seminars even when invited. More specifically, we request that the implementation of the UN standard rules for equalisation of opportunities for persons with disabilities and the ratification of ILO convention 159 on rehabilitation and employment of persons with disabilities be effected.

We further recommend that the provisions of the 1971 UN declaration on the rights of the mentally handicapped and the 1975 UN declaration on the rights of persons with disabilities be recognised and incorporated into our laws since Kenya is a UN member country. This will go far to help improve the lives of persons with disabilities in this country.

6. We recommend that enactment of human rights legislation be carried out to protect the lives of disabled people. In this respect we want to commend the attorney General who in an unprecedented move became a lone living example in appointing disabled people to participate in the review of the laws relating to their affairs. We look forward to the result of this particular exercise which we consider to be long overdue. We especially call upon the support of those currently in parliament when the bill which we understand is under preparation comes up to support it. More specifically, we request that the enactment of the persons with disabilities bill of 1997 resulting from the work of the Attorney Generals Tasks force be effected
7. We recommend that our Nation adopt a comprehensive plan to empower disabled people and to develop and strengthen their organisations. Empowerment strategies could include job creation through either open employment or informal sector.



To-date, credit schemes designated specifically for women and youth continue to be established by both the government and Non Governmental agencies but we have so far seen very little done for persons with disabilities if at all. We feel that affirmative action should be taken in this respect. Thus, we request that either regulations be set to ensure that credit organisations consider persons with disabilities or that specific credit programmes be set up for them.

8. Disability work should be incorporated into planning and implementation of all aspects of development work by the Government, Churches and other Non Governmental Organisations. We see the reasons for our inadequate services as the practice in the separate planning of these services as exemplified by having skills training institutions catering for persons with disabilities in the ministry of Culture and Social Services instead of having them in the same ministry as the mainstream training. Having these institutions where they are has made them seem like charity centres of social welfare characterised by poorly designed and unrecognised curriculum and inadequate equipment.

Trainers in these Institutions are not in touch with the current labour market needs and have therefore continued to train in the traditional "disabled trades". Persons with disabilities want to train in marketable courses in accordance to the country's development and we therefore go further to recommend that skills training for them be placed within the ministry responsible for the mainstream training. Specifically, we recommend that all vocational Rehabilitation centres be transferred from the Ministry of Culture and Social Services to the Ministry of Science and Technology and be transformed into regional poly technics.

9. Finally, we contend that in view of the extra financial implications of being able to operate as a handicapped person:
  - (a). Subsidies on aids and appliances be considered.
  - (b). A better system and widened scope to duty exemption on aids and appliances be worked out.
  - (c). Disability tax relief to employed persons with handicaps be introduced.
  - (d). Disability allowance for non-working persons who are unable to secure work on account of their disabilities and have no other means of income be considered.

*S. Kabue* *UDPK*

**PRESENTED BY: Samuel Kabue (Mr.)**  
**CHAIRMAN**  
**UDPK**

*MEMBER*  
*7*  
*MEMBER*



September 05, 1997

**MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON  
CONSTITUTIONAL, ADMINISTRATIVE AND LEGAL REFORMS HELD ON  
THURSDAY 4TH SEPTEMBER, 1997 IN COMMITTEE ROOM NO. 7 AT 5.00 P.M.**

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. F.N. Kagwima, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. Henry Obwocha, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. Abubakar Badawy, MP

**ABSENT WITH APOLOGY:**

The Hon. Dr. Bonaya Godana, MP  
The Hon. J.M. Shikuku, MP

**IN ATTENDANCE:** Mr. J.N. Mwangi - Senior Clerk Assistant  
Mr. Njenga Ruge - Clerk Assistant

The meeting started with a word of prayer led by the Hon. George Nthenge, MP.

**MIN.NO.1/97: ELECTION OF CO-CHAIRMEN**

Hon. George Anyona presided over the election of the Co-Chairmen. The Committee resolved to elect two Members to chair the meetings.

The following Members were unanimously elected to the Chair as Co-Chairmen:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP

**MIN.NO.2/97:**      **WORKING PROGRAMME**

The Committee unanimously agreed on the following programme:

|                 |  |
|-----------------|--|
| Friday 5-9-97   | 10.00 a.m. - 1.00p.m.<br>2.30 p.m. - 6.00 p.m. |
| Saturday 6-9-97 | 8.30 a.m. - 10.30 a.m.                         |
| Sunday 7-9-97   | 9.00 a.m. - 1.00 p.m.<br>2.30 p.m. - 6.00 p.m. |
| Monday 8-9-97   | 9.00 a.m. - 1.00 p.m.<br>2.30 p.m. - 6.00 p.m. |

The Committee further agreed to start with Legal Reforms then Administrative reforms and finally Constitutional reforms.

**MIN.NO.3/97:**      **MATERIAL FOR USE BY THE COMMITTEE**

The Committee resolved that the following documents should be made available to the Members:

- (i) Copies of the Constitution of Kenya.
- (ii) Copies of the Constitution of Kenya Review Commission Bill and the Statute Law (Repeals and Miscellaneous Amendments) Bill.
- (iii) Copy of the original Opposition document.
- (iv) Copy of the summary of the Opposition document.
- (v) A commentary on the two Bills.
- (vi) The original Constitution of Kenya (1963).
- (vii) Copies of the Acts proposed to be amended.

**MIN.NO.4/97:**

**BRIEFS TO THE PRESS**

It was resolved that the Co-Chairmen would give briefs to the Press as and when necessary. The Committee also resolved to have a Press Conference on Monday 8th September, 1997 in order to give a preliminary report.

**MIN.NO.5/97:**

**ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting at twenty minutes past Six O'clock until Friday, September 5, 1997 at 10.00 a.m.

**CONFIRMED:**

.....

**DATE:**

.....

September 05, 1997

**MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON  
CONSTITUTIONAL, ADMINISTRATIVE AND LEGAL REFORMS HELD ON  
FRIDAY 5TH SEPTEMBER, 1997 IN COMMITTEE ROOM NO. 7 AT 10.00 A.M.**

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP

**ABSENT WITH APOLOGY:**

The Hon. F.N. Kagwima, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Henry Obwocha, MP

**IN ATTENDANCE:**

|                        |   |   |
|------------------------|---|---|
| Mr. J.N. Mwangi        | - | Senior Clerk Assistant  |
| Mr. Njenga Ruge        | - | Clerk Assistant   |
| Mrs Elizabeth Ng'ang'a | - | Principal Parliamentary<br>Counsel, Attorney-<br>General's Chambers |



**MIN.NO.6/97:      LEGAL REFORMS**

The Committee considered the following Act contained in the Statute Law (Repeals and Miscellaneous Amendments) Bill 1997 and proposed some amendments therein.

The Public Order Act (Cap 56)

**MIN.NO.7/97:      ADJOURNMENT**

Mr. Chairman (Hon. Kiraitu Murungi) adjourned the meeting at twenty minutes past One O'clock until this afternoon at 2.30 p.m.

**A F T E R N O O N   S I T T I N G**

**PRESENT:**

The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP

**ABSENT WITH APOLOGY:**

The Hon. Dr. Bonaya Godana, MP  
The Hon. Henry Obwocha, MP  
The Hon. F.N. Kagwima, MP

**IN ATTENDANCE:**

|                        |   |   |
|------------------------|---|---|
| Mr. J.N. Mwangi        | - | Senior Clerk Assistant  |
| Mr. Njenga Ruge        | - | Clerk Assistant   |
| Mrs Elizabeth Ng'ang'a | - | Principal Parliamentary<br>Counsel, Attorney-<br>General's Chambers |

**MIN.NO.8/97:      LEGAL REFORMS**

The Committee considered the following Acts contained in the Statute Law (Miscellaneous Amendments) Bill 1997 and proposed some amendments therein.

- (i)    The Penal Code (Cap 63)
- (ii)   The Administration Police Act (Cap 85)
- (iii)   The Societies Act (Cap 108)
- (iv)   The Chiefs' Authority Act (Cap 128), Sections 1-11.

**MIN.NO.9/97:      ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting at thirty minutes past Six O'clock until Saturday, September 6, 1997 at 8.30 a.m.

CONFIRMED: .....

DATE: .....

September 06, 1997

**MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON  
CONSTITUTIONAL, ADMINISTRATIVE AND LEGAL REFORMS HELD ON  
SATURDAY 6TH SEPTEMBER, 1997 IN COMMITTEE ROOM NO.7 AT 8.30 A.M.**

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP

**ABSENT WITH APOLOGY:**

The Hon. F.N. Kagwima, MP  
The Hon. Henry Obwocha, MP

**IN ATTENDANCE:**

|                        |   |   |
|------------------------|---|---|
| Mr. J.N. Mwangi        | - | Senior Clerk Assistant  |
| Mr. Njenga Ruge        | - | Clerk Assistant   |
| Mrs Elizabeth Ng'ang'a | - | Principal Parliamentary<br>Counsel, Attorney-<br>General's Chambers |

**MIN.NO.10/97**      **CONFIRMATION OF MINUTES**

Minutes of the first sitting held on Friday 4th September, 1997 were confirmed by the Members present and signed by the Chairman (Hon. Kiraitu Murungi).

**MIN.NO.11/97:      LEGAL REFORMS**

The Committee considered the following Acts and made recommendations as indicated below:

(i)      **The Chiefs' Authority Act (Cap 128)**

- (a)      The Committee amended some Sections of the Act and deleted others.
- (b)      The Committee requested Hon. Martha Karua, Hon. Moses Wetangula, Hon. Julius Sunkuli and Hon. Anyona to draft rules governing the conduct of Chiefs during the forthcoming general elections.

(i)      **The Police Act**

Hon. Kiraitu Murungi undertook to re-draft two Sections of the Act and present the same to the Committee for consideration.

(iii)     **Traditional Liquor Act**

The Committee amended Section 30 the Act.

(iv)     **Trade Unions Act**

The Committee resolved that the Act should be reviewed along the others in the near future.

(v)      **The Local Government Act**

The Committee referred this Act to Committee No.2.

(vi)     **The Films and Stage Plays Act**

The Committee deferred deliberations on this Act until Sunday, 7th September, 1997.

**MIN.NO.12/97:      ADJOURNMENT**

Mr. Chairman (Hon. Kiraitu Murungi) adjourned the meeting at thirty minutes past Eleven O'clock until Sunday, September 7, 1997 at 9.00 a.m.

CONFIRMED:

.....  
(Chairman)

DATE:

.....



September 07, 1997

**MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON CONSTITUTIONAL,  
ADMINISTRATIVE AND LEGAL REFORMS HELD ON SUNDAY 7TH SEPTEMBER, 1997  
IN COMMITTEE ROOM NO.7 AT 9.00 A.M.**

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. F.N. Kagwima, MP  
The Hon. Henry Obwocha, MP

**IN ATTENDANCE:** Mr. J.N. Mwangi - Senior Clerk Assistant  
Mr. Njenga Ruge - Clerk Assistant  
Mrs Elizabeth Ng'ang'a - Principal Parliamentary Counsel,  
Attorney-General's Chambers

The meeting started with a word of prayer led by the Hon. George Nthenge, MP.

**MIN.NO.13/97** **LEGAL REFORMS**

The Committee considered the following Acts and proposed some amendments therein as indicated below:-

(i) **The Police Act (Cap 84)**

The Committee agreed that a clause be incorporated within Section 14 to provide -

- (a) for the neutrality of the police.
- (b) that police should not torture and that any offence of torture be punishable under the Penal Code.
- (ii) **The Films and Stage Plays Act (Cap 222)**
- The Committee was in agreement that the Act has inhibited the development of drama in the country and that the licensing system was defective and recommended that the licensing requirement under Part IV be scrapped and replaced by a notification to the police.
- (iii) **The Kenya Broadcasting Corporation Act (Cap.221)**
- The Committee unanimously agreed to amend Part III of the Act.
- (iv) **The Public Collections Act (Cap.106)**
- The Committee amended Sections 3, 4 and 5. Hon. Peter Maundu undertook to peruse the Act to establish whether the amendments are in harmony with the Act.
- (v) **Preservation of Public Security Act (Cap.57)**
- The Committee resolved that Section 4(2)(a) and 4(2)(b) be repealed and amended respectively.

**MIN.NO.14/97:**

**ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting until 3.00 p.m. this afternoon.

**AFTERNOON SITTING**

**PRESENT:**

The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. Dr. Lwali Oyondi, MP

The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. F.N. Kagwima, MP  
The Hon. Henry Obwocha, MP

The Meeting started at 3.00 p.m.

**IN ATTENDANCE:** Mr. J.N. Mwangi - Senior Clerk Assistant  
Mr. Njenga Ruge - Clerk Assistant  
Mrs Elizabeth Ng'ang'a - Principal Parliamentary Counsel,  
Attorney-General's Chambers

**MIN.NO.15/97:** **CONFIRMATION OF MINUTES**

Minutes of the Second and Third sittings held on Friday 5th and Saturday 6th September, 1997 respectively were confirmed by the Members and signed by the Chairman (Hon. Dalmas Otieno) after an amendment to include the name of Hon. F.N. Kagwima on the list of Members present on Saturday, 6th September, 1997.

**MIN.NO.16/97:** **LEGAL REFORMS**

The Committee considered the draft of the Chiefs' Authority Act Regulations by Hon. Karua which was agreed to with amendments.

**MIN.NO.17/97:** **CONSTITUTIONAL REFORMS**

The Committee resolved to deal with minimum Constitutional Reforms as opposed to long-term comprehensive reforms for the purposes of the forthcoming general elections.

The Committee considered the following Sections of the Constitution:

(i) The Committee amended Section 82(3).

(ii) **Presidential Election (Section 5)**

The Committee deliberated on this issue and deferred it until Monday morning, September 8, 1997.

(iii) **Coalition Government (Sections 7, 15, 16 and 19)**

The Committee amended Section 7.

(iv) **Electoral Commission**

The Committee amended Sections 41(1), 41(10) and 42(A).

(v) **Nominated Members of Parliament (Section 33)**

The Committee deliberated on the issue and deferred it until Monday morning.

**MIN.NO.18/97: ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting at Seven O'clock until Monday, September 8, 1997 at 9.00 a.m.

**CONFIRMED:**

.....  
(CHAIRMAN)

**DATE:**

.....



September 08, 1997

**MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON  
CONSTITUTIONAL, ADMINISTRATIVE AND LEGAL REFORMS HELD ON  
MONDAY 8TH SEPTEMBER, 1997 IN COMMITTEE ROOM NO.7 AT 9.00 A.M.**

**PRESENT:** - The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Henry Obwocha, MP

**ABSENT:**

The Hon. Dr. Lwali Oyondi, MP  
The Hon. F.N. Kagwima, MP

**IN ATTENDANCE:**

|                 |   |                        |
|-----------------|---|------------------------|
| Mr. J.N. Mwangi | - | Senior Clerk Assistant |
| Mr. Njenga Ruge | - | Clerk Assistant        |
| Mr. S. Mwenesi  | - | Advocate               |

The meeting started with a word of prayer led by the Hon. George Nthenge, MP.

**MIN.NO.19/97**      **CONSTITUTIONAL REFORMS**

(i)      **Nominated Members of Parliament (Section 33)**

The Committee deliberated on this issue and proposed some amendment.

(ii) **Date of Elections**

The Committee resolved that the timetable for the elections shall be addressed under Administrative Reforms.

(iii) **Independent Candidates**

The Committee deliberated on this issue and deferred it until this afternoon.

(iv) **Presidential Election (Section 5)**

The Committee considered this section and deferred it until 2.30 p.m. this afternoon.

**MIN.NO.20/97:**

**ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting at 12.30 until 2.00 p.m. this afternoon.

**AFTERNOON SITTING**

**PRESENT:**

The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Henry Obwocha, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. F.N. Kagwima, MP

|                              |                  |   |                             |
|------------------------------|------------------|---|-----------------------------|
| <b><u>IN ATTENDANCE:</u></b> | Mr. J.N. Mwangi  | - | Senior Clerk Assistant      |
|                              | Mr. Njenga Ruge  | - | Clerk Assistant             |
|                              | Mrs. M.N. Nzioka | - | Chief Parliamentary Counsel |
|                              | Mr. S. Mwenesi   | - | Advocate                    |

The meeting started at 3.00 p.m.

**MIN.NO.21/97:**      **CONFIRMATION OF MINUTES**

Minutes of the Fourth sitting held on Sunday, 7th September, 1997 were confirmed by the Members and signed by the Chairman (Hon. Kiraitu Murungi) after amendments.

**MIN.NO.22/97:**      **CONSTITUTIONAL REFORMS**

1. The Committee considered and deliberated on the Constitution of Kenya Review Commission Bill, 1997 and proposed amendments therein as indicated below:

- (i) Section 4(i) and Clause (2) of the First Schedule.
- (ii) Section 6(1)(2)
- (iii) Section 7(1)
- (iv) Section 11(1)(c)
- (v) Section 13(6)
- (vi) Section 15
- (vii) Section 16(1)(3)

2. **Presidential Election (Section 5 of the Constitution)**

The Committee deferred this issue to Tuesday morning 9th September, 1997.

3. **Independent Candidates**

The Committee deferred this issue to Tuesday morning September 9, 1997.

**MIN.NO.23/97:**      **ADMINISTRATIVE REFORMS**

The Committee deliberated on various aspects and made recommendations as indicated below:

(i) **Political Prisoners**

The Committee recommended to the Attorney-General that all cases deemed political be considered for pardon under the law.

(ii) The Committee recommended that all victims of ethnic clashes and banditry be resettled.

- (iii) The Committee recommended that the Registrar General should communicate his decision regarding unregistered political parties within 30 days.
- (iv) The Committee recommended that PCs, DCs, DOs, Chiefs, the Police and other Civil Servants be restrained from the electoral process.
- (v) Concerning private radio and television licenses, the Committee recommended that a decision on all applications pending be made within 30 days.
- (vi) The Committee recommended that all matters and announcements relating to elections be left to the Electoral Commission.
- (vii) The Committee recommended that the elections timetable (dates of nomination and elections) be set in consultation with registered political parties. This recommendation was however referred to Committee No.2.
- (viii) The Committee recommended that all presidential candidates be provided with State security.

**MIN. NO.24/97:**

**ADJOURNMENT**

Mr. Chairman (Hon. Kiraitu Murungi) adjourned the meeting at thirty minutes past Six O'clock until Tuesday, September 09, 1997 at 9.00 a.m.

**CONFIRMED:**

.....  
**(CHAIRMAN)**

**DATE:**

.....



September 09, 1997

**MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON  
CONSTITUTIONAL, ADMINISTRATIVE AND LEGAL REFORMS HELD ON  
TUESDAY 9TH SEPTEMBER, 1997 IN COMMITTEE ROOM NO.7 AT 10.30 A.M.**

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. Henry Obwocha, MP

**ABSENT WITH APOLOGY:**

The Hon. F.N. Kagwima, MP

**IN ATTENDANCE:**

|                  |   |                                |
|------------------|---|--------------------------------|
| Mr. J.N. Mwangi  | - | Senior Clerk Assistant         |
| Mr. Njenga Ruge  | - | Clerk Assistant                |
| Mrs. M.N. Nzioka | - | Chief Parliamentary<br>Counsel |
| Mr. S. Mwenesi   | - | Advocate                       |

The meeting started with a word of prayer led by the Hon. George Nthenge, MP.

**MIN.NO.25/97: CONFIRMATION OF MINUTES**

Minutes of the Fifth sitting held on Monday, 8th September, 1997 were confirmed by the Members and signed by the Chairman (Hon. Dalmas Otieno)

after the following amendments.

- (i) That the words "deliberated and" be inserted after the word "Committee" in clause 2 and 3 of Min.No.22/97.
- (ii) Delete the words "political prisoners" in clause (i) of Min.No.23/97 and insert subclauses to read as follows:
  - (a) the Committee recommended to the Attorney-General that all cases deemed political be considered for review and pardon under the law.
  - (b) all persons serving jail or facing trial under repealed Sections of the statute be considered for clemency.
- (iii) delete the words "the Police" in clause (iv) of Min.No.23/97.
- (iv) insert the words "during campaign period" after the word "security" in clause (viii) of Min.No.23/97.

**MIN.NO.26/97: CONSTITUTIONAL REFORMS**

(i) **Presidential Election (Section 5 of the Constitution)**

The Committee deliberated on this issue and resolved that the status quo be maintained subject to government guarantees that:

- (a) all presidential candidates be granted adequate security by the State.
- (b) all political parties will have genuine freedom in all areas of Kenya and there will be no closed party zones.

(ii) **Independent Candidates**

The Committee deliberated at length on this issue and resolved to summon the Registrar-General (Mr. Cmondi Mbago) this afternoon to comment on registration of political parties before making its recommendations on the matter.

**MIN.NO.27/97: ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting at thirty minutes past Twelve O'clock until 4.00 p.m. this afternoon.

## AFTERNOON SITTING

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Peter Maundu, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. Henry Obwocha, MP

**ABSENT WITH APOLOGY:**

The Hon. F.N. Kagwima, MP

|                              |                  |   |                             |
|------------------------------|------------------|---|-----------------------------|
| <b><u>IN ATTENDANCE:</u></b> | Mr. J.N. Mwangi  | - | Senior Clerk Assistant      |
|                              | Mr. Njenga Ruge  | - | Clerk Assistant             |
|                              | Mrs. M.N. Nzioka | - | Chief Parliamentary Counsel |
|                              | Mr. S. Mwenesi   | - | Advocate                    |

**MIN.NO.28/97: CONSTITUTIONAL REFORMS**

**Independent Candidates:**

Mr. Kariuki Richu, Senior Deputy Registrar-General, appeared before the Committee on behalf of the Registrar-General (Mr Omondi Mbago) who was said to be out of the country.

The Committee was of the opinion that Mr. Kariuki was not well placed to address the Members' questions. The Committee considered further the issue of Independent Candidates and resolved as follows:

- (a) That the question of Independent Candidates be left for the consideration of all Kenyans under the proposed Constitution of Kenya Review Commission Bill, 1997.

- (b) It was the consensus of the Committee that all Kenyans do participate in the General Elections and candidates granted the right to present themselves on tickets of the parties of their choice. In this regard, the Committee recommended that all political parties which have applied for registration be registered forthwith unless their registration would contravene the provisions of the Societies Act (Cap.108) and the refusal and reasons therefor are communicated in writing to the affected parties within 14 (fourteen) days.
- (c) In the event the Registrar does not comply with (b) above, the Committee recommended that the Constitution be amended to permit independent candidates to participate in the forthcoming General Elections.

The meeting ended with a word of prayer led by the Hon. George Nthenge, MP.

**MIN.NO.29/97:      ADJOURNMENT**

Mr. Chairman (Hon. Kiraitu Murungi) adjourned the meeting at forty minutes past Six O'clock until Wednesday, September 10, 1997 at 9.00 a.m.

**CONFIRMED:**

.....  
(CHAIRMAN)

**DATE:**

.....



September 10, 1997

**MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON  
CONSTITUTIONAL, ADMINISTRATIVE AND LEGAL REFORMS HELD ON  
WEDNESDAY 10TH SEPTEMBER, 1997 IN COMMITTEE ROOM NO.7 AT 10.30  
A.M.**

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Kipkalya Kones, MP  
The Hon. Julius ole Sunkuli, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. George M. Anyona, MP  
The Hon. Martha Karua, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. George Nthenge, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Dr. Lwali Oyondi, MP  
The Hon. Henry Obwocha, MP

**ABSENT WITH APOLOGY:**

The Hon. Peter Maundu, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. F.N. Kagwima, MP

**IN ATTENDANCE:**

|                 |   |                                 |
|-----------------|---|---------------------------------|
| Mr. J.N. Mwangi | - | Senior Clerk Assistant          |
| Mr. Njenga Ruge | - | Clerk Assistant                 |
| Ms. E. Ng'ang'a | - | Principal Parliamentary Counsel |
| Mr. S. Mwenesi  | - | Advocate                        |

The meeting started with a word of prayer led by the Hon. George Nthenge, MP.



**MIN.NO.33/97: ADMINISTRATIVE REFORMS**

The Committee considered the Draft Report on Administrative Reforms presented by the Secretariat and made amendments therein.

**MIN.NO.34/97: ADJOURNMENT**

Mr. Chairman (Hon. Dalmas Otieno) adjourned the meeting at thirty minutes past Four O'clock until 6.00 p.m. this evening.

**PRESENT:** The following members were present:

The Hon. Dalmas Otieno, MP  
The Hon. Kiraitu Murungi, MP  
The Hon. J.C.N. Osogo, MP  
The Hon. Peter Maundu, MP  
The Hon. Kipkalya Kones, MP  
The Hon. G.G. Kariuki, MP  
The Hon. Moses Wetangula, MP  
The Hon. George M. Anyona, MP  
The Hon. Norman Nyagah, MP  
The Hon. Matu Wamae, MP  
The Hon. J.M. Shikuku, MP  
The Hon. Dr. Bonaya Godana, MP  
The Hon. Dr. Lwali Oyondi, MP

**ABSENT WITH APOLOGY:**

The Hon. Julius ole Sunkuli, MP  
The Hon. Dr. Mukhisa Kituyi, MP  
The Hon. Martha Karua, MP  
The Hon. F.N. Kagwima, MP  
The Hon. George Nthenge, MP  
The Hon. Abubakar Badawy, MP  
The Hon. Henry Obwocha, MP

**IN ATTENDANCE:**

|                 |   |                        |
|-----------------|---|------------------------|
| Mr. J.N. Mwangi | - | Senior Clerk Assistant |
| Mr. Njenga Ruge | - | Clerk Assistant        |
| Mr. S. Mwenesi  | - | Advocate               |

**MIN.NO.35/97: CONFIRMATION OF MINUTES**

Minutes of the Sixth sitting held on Tuesday 9th September, 1997 were confirmed by the Members present and signed by the Chairman (Hon. Dalmas Otieno).





**MIN.NO.36/97:      HANDING OVER OF THE REPORT**

The Chairman (Hon. Kiraitu Murungi) handed over the report of the Committee to the Chairman of the Co-ordinating Committee (Hon. Jilo Falana).

**MIN.NO.37/97:      ADJOURNMENT**

Mr. Chairman (Hon. Kiraitu Murungi) concluded deliberations on Constitutional, Legal and Administrative Reforms and brought the meeting to a close at thirty minutes past Seven O'clock.

**CONFIRMED:**

.....  
(CHAIRMAN)

**DATE:**

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