

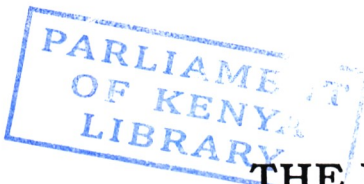


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# KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - SECOND SESSION (2008)



THE DEPARTMENTAL COMMITTEE

ON

ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS

REPORT ON

THE CONSTITUTION OF KENYA REVIEW BILL, 2008

Clerks Chambers,  
Parliament Buildings,  
**NAIROBI.**

OCTOBER, 2008

## PREFACE

**Mr. Speaker Sir,**

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No.151; its mandate pursuant to Standing Order 151(4) is:-

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of the Ministries and departments and the effectiveness for implementation;
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;
- e) to investigate and inquire into all matter relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee comprises:

1. Hon. Abdikadir Mohammed, M.P - Chairman
2. Hon. George Nyamweya, M.P.
3. Hon. Amina Abdalla, M.P.
4. Hon. Olago Aluoch, M.P.
5. Hon. Millie Odhiambo, M.P.
6. Hon. Ruto Kiprono, M.P.

7. Hon. Alfred Sambu, M.P.
8. Hon. Wamalwa Eugene, M.P.
9. Hon. Mutava Musyimi, M.P
10. Hon. Ababu Namwamba, M.P.
11. Hon. Peter Baiya, M.P.

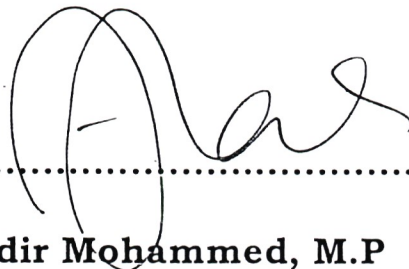
**Mr. Speaker Sir**, on 29<sup>th</sup> July, 2008, The Constitution of Kenya Review Bill, 2008 was referred to this Committee after its First Reading. This Report contains the proposed amendments to the Bill, which resulted from the deliberations of the Committee. In arriving at the proposed amendments the Committee took into consideration submissions from the Law Society of Kenya, the representatives of Religious Groups, the International Commission of Jurists and other stakeholders.

The Committee also held consultative meetings with the Minister for Justice, National Cohesion and Constitutional Affairs.

The Committee retreated to Mombasa in September to consider the Bill. The Report of the Committee was adopted in a committee sitting held on October 28, 2008.

**Mr. Speaker Sir**, it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, to present and commend this report to the House.

Signed: .....



**Hon. Abdikadir Mohammed, M.P**  
**Chairman, Departmental Committee on Administration**  
**of Justice and Legal Affairs**

Date: ..... 29<sup>th</sup> Oct. 2008

## Proposed Amendments

### THE CONSTITUTION OF KENYA REVIEW BILL, 2008

The Committee on administration of Justice and Legal affairs recommends to the National Assembly-

1. **That** clause 2 of the Bill be amended by inserting the following

“Commission” means the Constitution of Kenya Review Commission established under the expired act;

“Constitutional Conference” means the National Constitutional Conference established under the expired act.

2. **That** the Bill be amended by inserting a new section

2A to show the objects of the Act and which will

read as follows:-

The object and purpose of the act is:-

- (a) to provide a legal framework for the review of the constitution of Kenya;
- (b) to provide for the establishment of the organs charged with the responsibility of facilitating the review process
- (c) to establish mechanisms for conducting consultations with stakeholders;
- (d) to provide a mechanism for consensus-building on contentious issues in the review process.
- (e) to preserve the materials, reports and research outputs gathered under the expired Constitution of Kenya Review Commission Act.

3. **That** the Bill be amended by inserting a new section 7A to read:-

- (1) The National Assembly shall establish, in accordance with its standing orders, a select committee, known as the Parliamentary Select Committee, consisting of twenty seven members to assist the National Assembly in the discharge of its functions under this act and section 21 of the Constitution.
- (2) In constituting the Parliamentary Select Committee, the National Assembly shall ensure regional and gender balance in its composition.

4. **That** clause 6(4) be deleted and be replaced therewith by a new clause 6(4) to read as follows:-

The Committee of Experts shall comprise of nine persons nominated by the Parliamentary Select Committee and appointed by the president of whom-

- (a) Three shall be non-citizens nominated by the parliamentary select committee from a list of four names submitted to the Speaker of the National Assembly by the Panel of Eminent African Personalities in consultation with the National Dialogue and Reconciliation Committee; and
- (b) Six shall be citizens of Kenya nominated by the parliamentary select committee in accordance with the procedure prescribed in the First Schedule.

5. **That** the Bill be amended by inserting a new clause 7A to read as follows:

The Parliamentary Select Committee shall ensure regional and gender balance in the persons recommended for appointment as members of the committee of experts.

6. **That** the Bill be amended by deleting clause 13(1)(a) and (b) and substituting thereof the following new clauses

13(1) Where a vacancy occurs in the membership of the Committee of Experts under section 12, the president shall appoint a replacement-

- (a) Where the vacancy is in respect of a citizen of Kenya, the person ranked next highest on the list submitted by the Parliamentary Select Committee to the National Assembly under the First Schedule.
- (b) Where the vacancy is in respect of a non-citizen, from either of the other two names submitted by the Panel of Eminent African Personalities giving due regard to the rankings and comments of the Parliament Select Committee.

Provided that the Parliamentary Select Committee will ensure the appointment of the replacement under this section will not result in regional or gender imbalance of the Committee of experts as required under Clause 7.

7. **That** the Bill be amended by inserting a new clause 26A which will read as follows:-

26A(1) In the performance of its functions under the Act, the Committee of Experts shall draw upon the views and materials collected or prepared by the various organs of review under the expired Act, including but not limited to: -

- (a) the summary of the views of Kenyans collected and collated by the Constitution of Kenya Review Commission;
- (b) the various draft constitutions prepared

- by the Commission and the National Constitutional Conference;
- (c) the draft Constitution submitted to the referendum vote in 2005;
  - (d) documents reflecting political agreement on critical constitutional questions, such as the Naivasha Accord;
  - (e) Analytical and academic studies commissioned or undertaken by the Commission or the Constitutional Conference.

8. **That** the Bill be amended by inserting a new clause 28A to read as follows:-

Without prejudice to the powers vested in the organs of review under this act, the Committee of experts shall convene a reference group of thirty representatives chosen by the interest groups identified in the Fourth Schedule to facilitate the consultations referred to in section 27.

9. **That** the Bill be amended by deleting clause 29(6) and (7) and substituting thereof new subsections 29(6)(7)(8) and (9) to read as follows:-

- (6) If the National Assembly fails to approve the draft Constitution in accordance with subsection 4 and 5, a joint meeting between the Parliamentary Select Committee and the Committee of Experts shall be convened by chair the of the Committee of experts to consider the issue and or issues and to make recommendations to the National Assembly.
- (7) In considering issues not approved by the National Assembly, the meeting convened under section (6) above shall invite the Reference Group to make recommendation on how the issues may be resolved.
- (8) The meeting convened under subsection

4(c) shall be held in consecutive sessions over a period of not more than fourteen days and shall be chaired by the chair of the Committee of experts.

- (9) Upon decision of the meeting, the Committee of experts shall, within seven days, revise the draft constitution and submit a report and the new draft Constitution to the National Assembly.
- (10) The National Assembly shall approve the draft constitution and submit it to the Attorney General for publication.

10. **That** the Bill be amended by inserting a new clause 31(2) and (3) to read as follows:-

(2) The Committee of experts shall involve non-state actors in the delivery of Civic education.

(3) The provincial administration shall cooperate with and provide support to the committee of experts and non-state actors providing civic education on the Draft Constitution.

11. **That** the Bill be amended by inserting a new clause 31A to read as follows:-

The Committee of Experts shall ensure that all documents, materials, publications, reports, recommendations and proposed draft laws arising from the review process are maintained in a form that is accessible and usable by members of the public.

12. **That** section 5 of the first schedule be amended by deleting the word “six” immediately before “persons” and substituting thereof the word nine.

13. **That** section 6 of the First Schedule be amended by deleting the section and replacing it



as follows-

(6) The Minister shall forthwith forward the names of the persons nominated in accordance with paragraph (3) to the President who shall by notice in the gazette appoint them to be members of the Committee of Experts

#### FOURTH SCHEDULE REFERENCE GROUP

1. Persons with Disability - 1
2. Maendeleo Ya Wanawake (MYWU) - 1
3. Federation of Women Lawyers of Kenya (FIDA) - 1
4. Supreme Council of Kenya Muslims (SUPKEM) - 1
5. Kenya Episcopal Conference (KEC) - 1
6. Anglican Church of Kenya (ACK) - 1
7. Evangelical Association of Kenya (EAK) - 1
8. Presbyterian Church of East Africa (PCEA) - 1
9. Seventh Day Adventist (SDA) - 1
10. Hindu Council of Kenya (HCK) - 1
11. National Council of Churches of Kenya (NCCK) - 1
12. Organization of African Instituted Churches (OAIC) - 1
13. Central Organization of Trade Unions (COTU) - 1
14. Kenya National Union of Teachers (KNUT) - 1
15. University Academic Staff Union (UASU) - 1
16. Kenya Private Sector Alliance (KEPSA) - 1
17. Federation of Kenyan Employers (FKE) - 1
18. Association of Professional Societies of East Africa (APSEA) - 1
19. Kenya Magistrates and Judges Association (KMJA) - 1
20. Law Society of Kenya - 1
21. National Civil Society Congress for Constitutional Review - 2
22. Kenyans for Peace, Truth and Justice - 2
23. Centre for Multi-Party Democracy - 1
24. Youth Agenda - 1
25. Association of Local Government Authorities in Kenya - 1
26. Kenya Land Alliance - 1
27. Media Council of Kenya (MCK) - 1
28. National Muslim Leaders Forum (NAMLEF) - 1

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**MINUTES OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS TO CONSIDER AND ADOPT AMENDMENTS TO THE CONSTITUTION OF KENYA REVIEW BILL,2008 HELD ON TUESDAY OCTOBER 28,2008 IN COMMITTEE ROOM,2<sup>ND</sup> FLOOR,CONTINENTAL HOUSE PARLIAMENT BUILDINGS AT 3PM.**

**PRESENT**

Hon.Abdikadir Mohamed,M.P – Chairman  
Hon. George Nyamweya,MP  
Hon.Amina Abdalla,MP  
Hon.Olago Aluoch,MP  
Hon.Alfred Sambu,MP  
Hon.Mutava Musyimi,MP  
Hon.Peter Baiya,MP  
Hon.Ababu Namwamba,MP

**IN ATTENDANCE**

**MINISTRY OF JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS**

Hon. Martha Karua,MP-Minister for Justice, National Cohesion and Constitutional Affairs

**KENYA NATIONAL ASEMBLY**

Lucy Wanjohi - Clerk Assistant

**MINUTE NO 001/2008 – INTRODUCTORY REMARKS**

The Chairman called the meeting to order at 3.30pm and welcomed all the members present to the meeting.

**MINUTE NO 002/2008-ADOPTION OF THE COMMITTEE REPORT ON THE CONSTITUTION OF KENYA REVIEW**

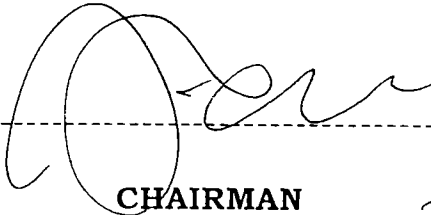
The Chairman stated that further consultations on the proposed amendments had made between him on behalf of the Committee and the Minister for Justice, National Cohesion and Constitutional Affairs. The amendments related to the time frame, the mandate of the Ministry of Justice vis-à-vis the Attorney General, the role of former Constitution of Kenya Review Commission and the composition on the Committee of experts. The Minister explained the rationale behind every amendments.

After due discussions the Committee approved the amendments and adopted the same for tabling.

**MINUTE NO 003/2008 - ADJOURNMENT**

And there being no other business the Chairman adjourned the sitting at five O'clock.

Signed -----



CHAIRMAN

Date -----

29<sup>th</sup> OCT. 2008