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NATIONAL ASSEMBLY

EIGHTH PARLIAMENT – SIXTH SESSION

REPORT OF THE PARLIAMENTARY
SELECT COMMITTEE

*EXTENSION OF TIME FOR THE CONSTITUTION OF
KENYA REVIEW COMMISSION*

PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2002

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1.0. INTRODUCTION

Mr. Speaker Sir,

- 1.1. The Select Committee on the Constitution of Kenya Review Commission was constituted on April 05, 2002 by a resolution of the National Assembly in accordance with the provisions of Section 10 of the Constitution of Kenya Review (Amendment) Act, Cap. 3A of 2000 which states as follows:-

“The National Assembly shall in accordance with its Standing Orders establish a Select Committee consisting of not less than five, and not more than twenty-seven Members”.

- 1.2. The following Members were appointed by the House to serve in the Committee.

The Hon. Raila A. Odinga, M.P. - **Chairman**

The Hon. Musalia Mudavadi, M.P.

The Hon. (Prof.) Sam K. Ongeru, M.P.

The Hon. Joseph J. Kamotho, M.P.

The Hon. Stephen Kalonzo Musyoka, M.P.

The Hon. (Dr.) Bonaya Godana, M.P.

The Hon. Julius Sunkuli, M.P.

The Hon. Isaac Ruto, M.P.

The Hon. Stephen Mukangu, M.P.

The Hon. Fred Gumo, M.P.

The Hon. Mathias Keah, M.P.

The Hon. Mohamed Affey, M.P.

The Hon. Simon Mkalla, M.P.

The Hon. Otieno Kajwang', M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Ochillo Ayacko, M.P.
The Hon. Mwai Kibaki, M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. Martha Karua, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Kijana Wamalwa, M.P.
The Hon. (Dr.) Mukhisa Kituyi, M.P.
The Hon. Joe Donde, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Paul K. Muite, M.P.
The Hon. Karisa Maitha, M.P.

2.0. FUNCTIONS OF THE SELECT COMMITTEE

2.1. The functions of the Select Committee are stipulated in Section 10(3) of the Constitution of Kenya Review Act, Cap 3A and include the following:-

- (a) To recommend to the National Assembly qualified persons for appointment as Commissioners, and the Secretary to the Commission. On receipt of the recommendations the National Assembly will submit the names to the President for appointment.
- (b) To resolve any dispute arising in the course of the review process, as may be referred to the Committee by the National Assembly.

- (c) To receive periodical reports from the Commission on behalf of the National Assembly.
- (d) To scrutinize and approve the budget of the Commission in consultation with the Minister for Finance.
- (e) To perform such other functions as the National Assembly may by resolution assign.

2.2. Appointment of Commissioners

Since the establishment of the Committee, it has performed a commendable job in fulfilling its mandate under the Act. The first task of the Committee was to interview and recommend names of fifteen Commissioners and Secretary to the National Assembly, and thereafter forward to the President for appointment. The following were appointed and gazetted as Commissioners.

Prof. Yash Pal Ghai	-	Chairman
Prof. Hastings Okoth-Ogendo		
Prof. Ahmed Idha Salim		
Mrs. Phoebe Asiyo		
Ms. Kavetsa Adagala		
Mr. Keriako Tobiko		
Mrs. Alice Yano		
Mr. Domiziano Ratanya		
Bishop Bernard Njoroge Kariuki		
Mr. Paul Wambua		
Mr. John Mutakha Kangu		
Paster Zablon Ayonga		

Mr. Githu Muigai
Dr. Mohamed A. Swazuri
Mr. Ahmed Isaack Hassan
Hon. Amos Wako - Ex-Officio
Mr. Arthur Okoth Owiro - Secretary to the
Commission

2.3. The Ufungamano Initiative

After appointment of the Commissioners, the Commission Chairman, Prof. Yash Pal Ghai declined to take oath of office because of the very strong opposition by the religious groups under an umbrella body called the Ufungamano Initiative, which accused the Commission of not being representative of Kenyans, and that it was appointed to serve the ruling party. The Ufungamano Initiative included several Members of Parliament mainly from the opposition, Non-Governmental Organizations and many political pressure groups such as Muungano wa Mageuzi, 4C's, NCEC etc.

The pressure from the Ufungamano Initiative and other pressure groups was not conducive for the operations of the Commission. The Ufungamano Initiative appointed their Commissioners and were conducting a parallel constitutional review process.

The Select Committee spent the first half of the year 2001 negotiating the merger with the Ufungamano Initiative. After protracted negotiations involving individual members of the Committee, the Commission Chairman, Leaders of Opposition Parties, the merger was finally concluded. The Government agreed to increase the total number of Commissioners from fifteen

(15) to twenty seven (27). These included ten (10) Commissioners appointed from the Ufungamano Initiative and two (2) by the Select Committee to provide representation in North Eastern Province and Rift Valley provinces which were not adequately represented during the first appointment. The final list of the Commissioners was gazetted.

The full list of the Commissioners as at 1st June, 2002 is:-

Prof. Yash Pal Ghai	-	Chairman
Dr. Oki Ooko Ombaka	-	Vice Chairman
Prof. Ahmed Idha Salim	-	Vice Chairman
Mrs. Abida Ali-Aroni	-	Vice Chairperson
Mrs. Phoebe Asiyu	-	Commissioner
Dr. Charles Maranga Bagwasi	-	Commissioner
Ms. Salome Wairimu Muigai	-	Commissioner
Mrs. Alice Yano	-	Commissioner
Prof. Wanjiku Kabira	-	Commissioner
Dr. Abdirazak Arale Nunow	-	Commissioner
Bishop Bernard Njoroge Kariuki	-	Commissioner
Paster Zablon Ayonga	-	Commissioner
Ms. Nancy Makokha Baraza	-	Commissioner
Mr. John Mutakha Kangu	-	Commissioner
Ms. Kavetsa Adagala	-	Commissioner
Mr. Paul Musili Wambua	-	Commissioner
Mr. Abubakar Zein Abubakar	-	Commissioner
Mr. Ahmed Issack Hassan	-	Commissioner
Mr. Riunga Raiji	-	Commissioner
Mr. Ibrahim Lethome	-	Commissioner
Mr. Keriako Tobiko	-	Commissioner
Mr. Githu Muigai	-	Commissioner

Mr. Isaac Lenaola	-	Commissioner
Prof. H.W.O. Okoth-Ogendo	-	Commissioner
Dr. K. Mosonik arap Korir	-	Commissioner
Mr. Domiziano Ratanya	-	Commissioner
Hon. Amos Wako	-	Ex-Officio
		Commissioner
Mr. P.L.O. Lumumba	-	Commission
		Secretary

Dr. Oki Ooko-Ombaka was elected First Vice-Chairman, Prof. Ahmed Idha Salim and Mrs. Abida Ali-Aroni, Vice-chairpersons of the Commission in accordance with the Act.

2.4. After the appointment of Commissioners, the Committee was presented with another operational problem where the Commissioners had no confidence with their Secretary, Mr. Okoth Owiro.

The Select Committee in accordance with their mandate advertised the vacancy and interviewed the applicants. The National Assembly recommended Mr. Martin N. Wambora, and Patrick Lumumba to the President. The President appointed Mr. P.L.O. Lumumba as the Commission Secretary.

2.5. The Select Committee has held several joint meetings with the Commission to review the progress of the review process. Such meetings have been held to discuss the operations of the civic education, remuneration of Commissioners and the management of the constituency forums. During these consultations, the Committee was satisfied that the Commission was discharging its mandate as stipulated in the Act.

3.0. REQUEST FOR THE EXTENSION OF TIME BY THE COMMISSION

- 3.1. On 29th April, 2002, the Secretary of the Constitution of Kenya Review Commission submitted a memorandum of request to the National Assembly for extension of time under Section 26(3) of the Constitution of Kenya Review Act (Cap.3A). Upon receiving the memorandum, the Speaker of the National Assembly referred it to the Select Committee for a detailed discussion. In accordance with the Standing Orders, the Select Committee is required to submit their findings and recommendations to the National Assembly. It is the National Assembly which should grant or reject the request after considering the Committee's report.
- 3.2. On May 09, 2002, the Select Committee held a joint meeting with the Commission to discuss the memorandum of request for extension. In their submission, Prof. Yash Pal Ghai on behalf of the Commission informed the Committee that while a lot of progress had been realized in the collection and collation of views from the constituencies, it was not possible to complete the review process within the specified time.

The CKRC informed the Committee that valuable time that would have been utilized in the Review Process was lost trying to reconcile and unify the Ufungamano Initiative and the CKRC to avoid a parallel process which could have led to unnecessary conflicts and confusion. As a result of this, it is not possible to accomplish all the aspects of the review as set out in the Act before the fixed deadline of 4th October, 2002.

It is on the basis of the above issues that the CKRC therefore presents its request to the National Assembly for an extension of time to allow it finalize the work as expected.

The full details of the time schedule by the Commission is as follows:

CONSTITUTION OF KENYA REVIEW COMMISSION
TIME SCHEDULE

ACTIVITY	TIME/DURATION
1. Constituency Visits.	29 th April, 2002 – 8 th August, 2002
2. Collation and Analysis of views presented.	To be completed by 8 th September, 2002
3. Compilation of the National Report.	To take 3 weeks. To be completed by 4 th October, 2002
4. Draft Bill.	To take 14 days. To be completed by 18 th October, 2002
5. Publication and Dissemination of the Report.	To take 60 days. To be completed by 24 th December 2002
6. Provincial Public Hearings.	To be on 27 th – 31 st December, 2002
7. Pre-conference Activities.	To take One month. To be done within the 60 days as indicated in No. 5 above.
8. Holding of National Constitutional Conference.	To take One month. To be completed by 1 st of February, 2003
9. Completion without Referendum.	To take two months. To be completed by 15 th March, 2003
10. Completion with Referendum.	15 th May, 2003

3.3.0. Before discussing the memorandum, the Select Committee heard evidence on the request for extension from the Law Society of Kenya and the Religious Leaders.

3.3.1. In their submission, the Law Society of Kenya informed the Committee that in their view, the review process should be completed within the current Parliament because there is no guarantee that a new Parliament will necessarily complete the process, as it had not been entrenched in the Constitution. The Law Society was also concerned that extension of the review process would escalate costs. The Law Society suggested that time could be saved by reducing the panels visiting constituencies from three to two Commissioners, reducing dissemination period for the Bill, abolish provincial hearings and attend to drafting tasks alongside hearings.

3.3.2. On their part, the Religious Leaders were also of the view that the Constitution Review Process should be finalized during the current Parliament, and that the elections should be held under the new Constitution. To maximize on the available time, the Religious Leaders proposed that the Commission panels visiting the constituencies should be reduced from three to two and that the Commissioners should work on full time basis. The Religious Leaders were also of the view that the Referendum period should be reduced.

4.0. OBSERVATIONS OF THE SELECT COMMITTEE

4.1. After considering different proposals of both the Commission and other groups which appeared before it, the Committee was unanimous in a recommendation that the next general elections should be held under a new Constitution. In adopting this position, the Committee considered the following:-

- (i) Since 1997, there has been a consensus and expectation among Kenyans that the next General Elections will be held under a new Constitution.
- (ii) The next General Elections accord Kenyans a unique opportunity to write a new Constitution which may fundamentally change the structures of Governance without appearing to target the incumbent.
- (iii) The Committee also considered that the earlier completion date of the Constitutional Review Process of October 04, 2002 was founded on an anticipation that there will be a new Constitution before the next elections.
- (iv) A flawed constitution, and a flawed electoral process lead to flawed elections.

- 4.2. The Committee was also of the view that the Constitution Review Process should be completed within the life of the current Parliament.
- 4.3. The Committee considered, and rejected the proposal for minimum constitutional reforms as part of a pre-electoral package for the following reasons:-
- (i) After the experience of the Inter-Parliamentary Party Group (IPPG) reforms, Kenyans do not need another package of minimum reforms, and have been expecting a comprehensive review.
 - (ii) The Committee considered that the process for negotiating for minimum reforms could take as much time as completing comprehensive reforms.
- 4.4. Members discussed the provision of a referendum under Section 27(5) of the Act and were of the opinion that this section should be amended to provide that issues to be decided by referendum should be supported by 2/3 of the voting members of the Constitutional Conference.
- 4.5. Members were concerned that the work ethics of some Commissioners leave a lot to be desired. To address this matter, the Committee recommends that the Act be amended to enhance the authority of the Chairman so as to ensure the commissioners devote their full time and attention to the tasks of the review.

RECOMMENDATION OF THE SELECT COMMITTEE

In accordance with Section 26(3) of the Constitution of Kenya Review Act, Cap. 3A, the Committee therefore recommends that the National Assembly do grant an extension of the Commission for a further period of four months from 4th October, 2002 to 4th February, 2003.

In order to operationalize this recommendation, the Act should be amended. The list of the proposed amendments are on Appendix V.

SIGNED:

David A. Odinga

HON. RAILA A. ODINGA, M.P.
CHAIRMAN OF THE SELECT COMMITTEE ON THE
CONSTITUTION OF KENYA REVIEW

DATE:

12th June 2002