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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – THIRD SESSION, 2009

**THE REPORT OF
THE PARLIAMENTARY SELECT COMMITTEE
ON
THE REVIEW OF THE CONSTITUTION**

**ON
THE NOMINATION OF JUDGES OF THE INTERIM
INDEPENDENT CONSTITUTIONAL DISPUTE RESOLUTION
COURT (IICDRC)**

OCTOBER 2009

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PREFACE

Mr. Speaker, Sir,

The Interim Independent Constitutional Dispute Resolution Court (IICDRC) is established pursuant to the provisions of Section 60A of the Constitution introduced following the enactment of the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The establishment of IICDRC is part of the constitutional and electoral reforms which were proposed by the National Dialogue and Reconciliation Committee that was formed to facilitate mediation talks after the political crisis triggered by the disputed 27 December 2007 General elections.

The urgent need to complete the comprehensive review of the Constitution which stalled after the November 2005 referendum was ranked high in the strategies to address underlying causes of the post-election conflict in the country. Subsequently the Coalition Government established after the signing of the National Accord and Reconciliation Agreement fast tracked the implementation of the review of the Constitution by enacting the Constitution of Kenya Review Act (No. 9 of 2008) and the Constitution of Kenya (Amendment) Act (No. 10 of 2008).

The Acts provide for the framework for the completion of the constitutional review process through setting up of organs to effect it, and the time frames for which the various activities of the review process should be undertaken.

The Constitution of Kenya Review Act (2008) provides for the establishment of the Parliamentary Select Committee on the Review of the Constitution and the Committee of Experts as organs of the constitutional review process.

The Constitution of Kenya (Amendment) Act (2008) provides for the setting up of other bodies of the review process, namely, the Interim Independent Electoral Commission (IIEC), the Interim Independent Boundaries Review Commission (IIBRC) and the Interim Independent Constitutional Dispute Resolution Court (IICDRC).

The Parliamentary Select Committee was constituted through a resolution of the House on Wednesday, 17 December 2008, and consists of the following twenty seven (27) members-

The Hon. Mohammed Abdikadir, M.P. - Chairperson
The Hon. Ababu Namwamba, M.P. - Vice-Chairperson
The Hon. Martha Karua, M.P.
The Hon. Uhuru Kenyatta, M.P.
The Hon. Mutula Kilonzo, M.P.
The Hon. David Musila, M.P.
The Hon. Moses Wetangula, M.P.

The Report of the Parliamentary Select Committee on the Review of the Constitution, October 2009

The Hon. Danson Mungatana, M.P.
The Hon. Wilfred Moriasi Ombui, M.P.
The Hon. Kambi Kazungu, M.P.
The Hon. Amina Abdallah, M.P.
The Hon. Peter Munya, M.P.
The Hon. Mwangi Kiunjuri, M.P.
The Hon. Jeremiah Kioni, M.P.
The Hon. Ekwee Ethuro, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. Musalia Mudavadi, M.P.
The Hon. Chachu Ganya, M.P.
The Hon. Najib Balala, M.P.
The Hon. Omingo Magara, M.P.
The Hon. Sally Kosgei, M.P.
The Hon. William Samoei Ruto, M.P.
The Hon. James Orengo, M.P.
The Hon. Millie Odhiambo, M.P.
The Hon. Sophia Abdi, M.P.
The Hon. Joseph Nkaissery, M.P.
The Hon. Charity Ngilu, M.P.

The functions of the Parliamentary Select Committee include: recommendation of qualified persons for nomination to the four bodies to give effect to the constitutional review process.

Mr. Speaker Sir, the reports of the Parliamentary Select Committee on the nomination of members of the Committee of Experts, the IIEC and the IIBRC have been discussed and approved by the House.

Pursuant to the provisions of section 60A (2) (b) of the Constitution, the Parliamentary Select Committee advertised for applications for the positions of Judges of the IICDRC which were published in the daily newspapers on Friday, 9 January 2009 and on Wednesday, 14 January 2009. The deadline for receiving the applications was Friday, 30 January 2009.

The Parliamentary Select Committee received 141 applications which it processed with the assistance of a human resource firm, M/S Manpower Services (K) Ltd. The Committee shortlisted sixteen candidates who undertook a written and an oral interview. The written interview was administered with the assistance of three law lecturers of the School of Law, University of Nairobi.

After consideration of the applications, the Committee nominated the following candidates for appointment as judges pursuant to the provisions of Section 60A (2)

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the Constitution. The decision to nominate the six candidates was arrived at by consensus:-

1. Mr. S.N. Mukunya
2. Ms. Violet Khadi Mavisi
3. Ms. Scholastica Omondi
4. Ms. Jamilla Mohamed
5. Mr. Sankale ole Kantai
6. Mr. Mburugu M'Nkanata Kioga

Pursuant to the provisions of section 60A (2) (a) of the Constitution, the Committee requested and received five names of nominees as Judges from the Panel of Eminent African Personalities. The Committee recommended the following three persons for appointment as Judges of the IICDRC.

1. Mr. Michel Bastarache
2. Ms. Unity Dow
3. Mr. John Alistair Cameron, Lord Abernethy

The Committee therefore recommends the following nine (9) individuals to be appointed as Judges of the Interim Independent Constitutional Dispute Resolution Court-

1. Mr. S.N. Mukunya
2. Ms. Violet Khadi Mavisi
3. Ms. Scholastica Omondi
4. Ms. Jamilla Mohamed
5. Mr. Sankale ole Kantai
6. Mr. Mburugu M'Nkanata Kioga
7. Mr. Michel Bastarache
8. Ms. Unity Dow
9. Mr. John Alistair Cameron, Lord Abernethy

Mr. Speaker Sir, let me take this opportunity to thank the Members of the Select Committee for their commitment, sacrifice, hard work and cooperation. I applaud their endurance when they had to work tirelessly and for long hours during the selection process of the candidates and to complete other tasks necessary for the successful production of this report.

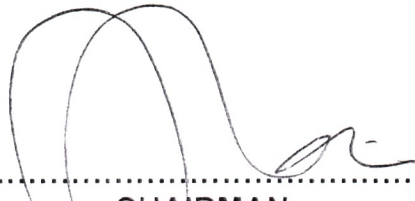
I also take this opportunity to sincerely thank the offices of the Speaker and the Clerk of the National Assembly for the necessary support, guidance and co-operation that have enabled the Parliamentary Select Committee to efficiently execute its mandate and functions.

Similarly, I wish to sincerely thank Manpower Services (K) Ltd for the assistance which has enabled the Committee to work efficiently in processing the applications and contributed immensely to the timely production of this report.

Mr. Speaker, Sir, on behalf of the Parliamentary Select Committee, I now have the honour and pleasure to present this Report on the recommendations of nominees to the Interim Independent Constitutional Dispute Resolution Court for consideration and adoption by the House.

Thank You.

Signed



CHAIRMAN
(HON. ABDIKADIR MOHAMMED, MP)

Date:

26th Oct 2009.

1.0 INTRODUCTION

1. The National Dialogue and Reconciliation Committee that was formed to spearhead mediation talks following the post-election violence experienced in Kenya in early 2008 deliberated under Agenda Item Four on the underlying root causes of the post-election conflict and the periodic ethnic clashes in the country and particularly during election time. The post-election crisis was sparked off by the General Elections of 27 December 2007 and the subsequent disputed presidential election results.
2. The National Dialogue and Reconciliation Committee noted that the long-standing unresolved issues and historical injustices caused the post-election turmoil in the country. Subsequently, the Reconciliation Committee underscored the critical need to complete the comprehensive review of the Constitution to address the problems behind the violence. The comprehensive constitutional review process stalled after the referendum of November 2005.
3. To provide the framework for the completion of the review of the Constitution, the Coalition Government formulated for enactment the Constitution of Kenya Review Act (No. 9 of 2008) and the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The two Acts provide for the setting up of bodies to give effect to the completion of the review of the Constitution, namely-
 - i) the Parliamentary Select Committee on the Review of the Constitution;
 - ii) the Committee of Experts;
 - iii) the Interim Independent Electoral Commission (IIEC);
 - iv) the Interim Independent Boundaries Review Commission (IIBRC); and
 - v) the Interim Independent Constitutional Dispute Resolution Court (IICDRC).

The PSC has already nominated members to other bodies related to the review process, namely, the COE, the IIEC and the IIBRC.

This report relates to the functions of the Parliamentary Select Committee on the Review of the Constitution on the nomination of judges to the IICDRC pursuant to section 60A of the Constitution. The IICDRC is provided for by the Constitution of Kenya (Amendment) Act (No. 10 of 2008).

The Interim Independent Constitutional Dispute Resolution Court was established to adjudicate matters emanating from the constitutional review process. The function was formerly undertaken by the High Court of Kenya.

2.0 THE ESTABLISHMENT OF THE INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE RESOLUTION COURT (IICDRC)

1. The Interim Independent Constitutional Dispute Resolution Court (IICDRC) is a temporary court established pursuant to the provisions of section 60A which was introduced in the Constitution following the enactment of the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The establishment of the IICDRC follows recommendations of the National Dialogue and Reconciliation Committee that mediated the political crisis occasioned by the disputed December 2007 General elections and by the Independent Review Commission (IRC).
2. Section 60A (2) of the Constitution empowers the Parliamentary Select Committee to nominate persons to be appointed Judges to the IICDRC based on the qualifications stipulated in section 60A (4) which states as follows-

A person shall be qualified to be appointed a judge of the Court if he-

- a) is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters within the Commonwealth; or*
 - b) is an advocate of the High Court of Kenya of not less than ten years standing; and*
 - c) is a person of high moral character and integrity.*
3. Section 60A (2) of the Constitution also requires that the IICDRC comprises nine judges consisting of three non-citizens of Kenya nominated from Commonwealth countries and six Kenya citizens. All the judges are to be nominated by the Select Committee for approval by the National Assembly and to be appointed by the President in consultation with the Prime Minister.
 4. The function of the IICDRC, pursuant to the provisions of Section 60A (1) is **‘to hear and determine all and only matters arising from the constitutional review process’**.
 5. Pursuant to the provisions of section 60A (2) of the Constitution the Parliamentary Select Committee advertised for applications for the position of judges in the daily newspapers of Friday, 9 January 2009 and Wednesday, 14 January 2009. Interested candidates were required to submit their applications by Friday, 30 January 2009.
 6. The Parliamentary Select Committee deliberated on applications for nomination to the Committee of Experts, the IIEC and the IIBRC in that order. The reports of

the Committee relating to the three bodies have already been adopted by the House and the nominees appointed to the respective bodies by the President after consultation with the Prime Minister.

7. At its sitting of Tuesday, 19th May 2009, the Committee shortlisted sixteen candidates from a total of one hundred and forty one (141) who had applied to be considered for positions of judges of the IICDRC. The candidates undertook a written interview conducted on 5th October 2009 followed by oral interviews on 12th October 2009. The written interview was administered with the assistance of three law lecturers from the School of Law at the University of Nairobi.

8. After consideration of the results of both components of the interview, on 12th October, 2009 the Parliamentary Select Committee nominated, by consensus, the following persons for appointment as judges of the Interim Independent Constitutional Dispute Resolution Court-

1. Mr. S.N. Mukunya
2. Ms. Violet Khadi Mavisi
3. Ms. Scholastica Omondi
4. Ms. Jamilla Mohamed
5. Mr. Sankale ole Kantai
6. Mr. Mburugu M’Nkanata Kioga
7. Mr. Michel Bastarache (Canada)
8. Ms. Unity Dow (Botswana)
9. Mr. John Alistair Cameron, Lord Abernethy (United Kingdom)

9. The Parliamentary Select Committee on the Review of the Constitution therefore presents to the House this report on recommendation of nominees to the Interim Independent Constitutional Dispute Resolution Court (IICDRC) for consideration and approval pursuant to section 60A (2) of the Constitution.

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MINUTES OF THE TWENTY FIFTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON TUESDAY, 16TH JUNE, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.00 AM.

PRESENT

1. The Hon. Mohammed Abdikadir, MP - **Chairperson**
2. The Hon. Omingo Magara, MP
3. The Hon. Mutula Kilonzo, MP
4. The Hon. Chachu Ganya, MP
5. The Hon. Danson Mungatana, MP
6. The Hon. Amina Abdalla, MP
7. The Hon. Joseph Nkaiserry, MP
8. The Hon. Kambi Kazungu, MP
9. The Hon. James Orengo, MP
10. The Hon. Millie Odhiambo, MP
11. The Hon. Sophia Abdi, MP
12. The Hon. Mwangi Kiunjuri, MP
13. The Hon. Wilfred Ombui, MP
14. The Hon. Jeremiah Kioni, MP

ABSENT WITH APOLOGY

1. The Hon. Ababu Namwamba, MP - **Vice Chairperson**
2. The Hon. Martha Karua, MP
3. The Hon. David Musila, MP
4. The Hon. Moses Wetangula, MP
5. The Hon. Uhuru Kenyatta, MP
6. The Hon. Najib Balala, MP
7. The Hon. Musalia Mudavadi, MP
8. The Hon. Sally Kosgei, MP
9. The Hon. William Ruto, MP
10. The Hon. Peter Munya, MP
11. The Hon. Charity Ngilu, MP
12. The Hon. Ekwee Ethuro, MP
13. The Hon. Isaac Ruto, MP

IN ATTENDANCE

1. Mr. Stephen Njenga
2. Mr. Paul Ngetich
3. Ms. Rose Mudibo

NATIONAL ASSEMBLY

- First Clerk Assistant
- Senior Research Officer
- Public Relations Officer

MIN. NO. 123/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 124/2009:

REVISION OF QUORUM

The Committee revised its quorum for the purpose of the meeting as one of the political groups did not attain the number earlier agreed.

MIN. NO. 125/2009:

CONFIRMATION OF MINUTES

Minutes of the Twenty Fourth sitting were confirmed by the members present and signed by the Chairperson.

MIN. NO. 126/2009:

MATTERS ARISING

- (i) Under Min. No. 119/2009, the Chair reported that information emanating from the Committee of Experts indicated that the non-citizen members had not been paid their salaries.

The Committee resolved to invite the Minister for Justice, National Cohesion and Constitutional Affairs and the Deputy Prime Minister and Minister for Finance to discuss issues pertaining to financing of the Committee of Experts, the Interim Commissions set up and the yet to be constituted Interim Independent Constitutional Dispute Resolution Court.

- (ii) Under Min. No. 121/2009, the Chair reported that he discussed the matter with the Speaker who allowed him to issue the statement in the House.

The Committee noted that the statement was well received by the House and reiterated the need to protect the review process from being derailed by partisan politics.

The Committee also noted that the Committee of Experts had indicated that it would soon publish contentious issues in the draft constitutions.

The Committee resolved to request the Speaker to convene a “*Kamukunji*” where members would be appraised on the contentious issues and on the way forward.

MIN. NO. 127/2009:

SHORTLISTING OF CANDIDATES FOR POSITIONS OF JUDGES OF THE INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE RESOLUTION COURT

The Committee considered the summary of applications for positions of judges of the Interim Independent Constitutional Dispute Resolution Court from Manpower Services (K) Ltd and correspondence from the Registrar of the High Court on applicants serving or who have served in the Judiciary.

The Committee also noted a letter from the Program Director, Compliance and Ethics (Law Society of Kenya) indicating applicants who have renewed practising certificates and those with pending matters before the Advocates Disciplinary Committee.

The Committee further noted a letter from the Advocates Complaints Commission indicating applicants with and those without pending complaints before the Commission.

The Committee resolved to shortlist 30 candidates to be interviewed and agreed that 1/3 must be from either gender.

The Committee shortlisted the following applicants:-

1. George Kimondo
2. Hassan N. Lakicha
3. Kasanga Mulwa
4. Ibrahim J. Onyinkwa
5. Mwirigi M’Inoti

6. Mburugu M'Nkanata Kioga
7. Jamilla Mohamed
8. Regina S. Boisabi
9. S. N. Mukunya
10. Sankale ole Kantai
11. Cripsin Beda Nagillah
12. Mavisi Violet Khadi
13. Susan W. Murage
14. Scholastica Omondi
15. Kiogora Mutai
16. George Masese
17. Milly Lwanga
18. Nancy Baraza
19. Wilfred N. Nderitu
20. Jane Nyangoma
21. Alice Yano
22. Syed Kassim Shah
23. Thomas Letangule
24. Judith N. Ramaita
25. William K. Aruse
26. Josephine Kemunto
27. David M. Waihiga
28. Jared Magolo
29. Evans Thiga Gaturu
30. Gabriel Mukele

The Committee directed the Secretariat to seek further information on shortlisted applicants appearing in the three letters.

MIN. NO. 128/2009:

ADJOURNMENT

There being no other business for discussion, the Chairperson adjourned the meeting at ten minutes past One O'clock until Friday, 26th June, 2009 at 10.00 a.m.

SIGNED:

HON. MOHAMMED ABDIKADIR, MP

CHAIRPERSON

DATE:

26TH JUNE, 2009

MINUTES OF THE TWENTY SEVENTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON TUESDAY, 28TH JULY, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.30 AM.

PRESENT

- | | | |
|------------------------------------|---|-------------------------|
| 1. The Hon. Mohammed Abdikadir, MP | - | Chairperson |
| 2. The Hon. Ababu Namwamba, MP | - | Vice Chairperson |
| 3. The Hon. Mutula Kilonzo, MP | | |
| 4. The Hon. Chachu Ganya, MP | | |
| 5. The Hon. Najib Balala, MP | | |
| 6. The Hon. Musalia Mudavadi, MP | | |
| 7. The Hon. Danson Mungatana, MP | | |
| 8. The Hon. Amina Abdalla, MP | | |
| 9. The Hon. Joseph Nkaiserry, MP | | |
| 10. The Hon. Kambi Kazungu, MP | | |
| 11. The Hon. James Orengo, MP | | |
| 12. The Hon. Charity Ngilu, MP | | |
| 13. The Hon. Isaac Ruto, MP | | |
| 14. The Hon. Sophia Abdi, MP | | |
| 15. The Hon. Wilfred Ombui, MP | | |
| 16. The Hon. Ekwere Ethuro, MP | | |
| 17. The Hon. Jeremiah Kioni, MP | | |

ABSENT WITH APOLOGY

1. The Hon. Martha Karua, MP
2. The Hon. Peter Munya, MP
3. The Hon. Omingo Magara, MP
4. The Hon. Moses Wetangula, MP
5. The Hon. Uhuru Kenyatta, MP
6. The Hon. Sally Kosgei, MP
7. The Hon. William Ruto, MP
8. The Hon. Mwangi Kiunjuri, MP
9. The Hon. David Musila, MP
10. The Hon. Millie Odhiambo, MP

IN ATTENDANCE

1. Mr. Stephen Njenga
2. Mr. Paul Ngetich
3. Ms. Rose Mudibo

NATIONAL ASSEMBLY

- | | |
|---|--------------------------|
| - | First Clerk Assistant |
| - | Senior Research Officer |
| - | Public Relations Officer |

MIN. NO. 135/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 136/2009:

CONFIRMATION OF MINUTES

Minutes of the Twenty Sixth sitting were confirmed by the members present and signed by the Chairperson.

MIN. NO. 137/2009:

MATTERS ARISING

Under Min. No. 130/2009 on failure by the Committee to commence meetings on time due to lack of quorum, the Chairperson confirmed that he had written to Hon. Midiwo drawing his attention to the matter.

MIN. NO. 138/2009:

**SHORTLISTING OF CANDIDATES FOR POSITIONS
OF JUDGES OF THE INTERIM INDEPENDENT
CONSTITUTIONAL DISPUTE RESOLUTION COURT**

The Committee considered and deliberated on correspondence from Law Society of Kenya, Advocates Complaints Commission and the Registrar of the High Court of Kenya on details regarding applicants for the positions of judges.

Consequently, the Committee resolved that shortlisted applicants adversely mentioned in any of the three letters should be removed from the list.

The Committee approved the following to be invited for interviews and agreed that the interviews be held on Tuesday, 4th August, 2009:-

1. Hassan N. Lakicha
2. Mburugu M'Nkanata Kioga
3. Jamilla Mohamed
4. S. N. Mukunya
5. Sankale ole Kantai
6. Mavisi Violet Khadi
7. Susan W. Murage
8. Scholastica Omondi
9. Wilfred N. Nderitu
10. Jane Nyangoma
11. Syed Kassim Shah
12. Judith N. Ramaita
13. William K. Aruse
14. Josephine Kemunto
15. David M. Waihiga
16. Evans Thiga Gaturu
17. Gabriel Mukele

MIN. NO. 139/2009:

ADJOURNMENT

There being no other business for discussion, the Chairperson adjourned the meeting at Twelve O'clock until Tuesday, 4th August, 2009 at 7.30 a.m.

SIGNED:

HON. MOHAMMED ABDIKADIR, MP

CHAIRPERSON

DATE:

2ND SEPTEMBER, 2009

MINUTES OF THE TWENTY EIGHTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON WEDNESDAY, 2ND SEPTEMBER, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.40 AM.

PRESENT

1. The Hon. Mohammed Abdikadir, MP - **Chairperson**
2. The Hon. Martha Karua, MP
3. The Hon. David Musila, MP
4. The Hon. Omingo Magara, MP
5. The Hon. Musalia Mudavadi, MP
6. The Hon. Joseph Nkaiserry, MP
7. The Hon. Kambi Kazungu, MP
8. The Hon. James Orengo, MP
9. The Hon. Millie Odhiambo, MP
10. The Hon. Sophia Abdi, MP

ABSENT WITH APOLOGY

1. The Hon. Ababu Namwamba, MP - **Vice Chairperson**
2. The Hon. Mutula Kilonzo, MP
3. The Hon. Najib Balala, MP
4. The Hon. Chachu Ganya, MP
5. The Hon. Danson Mungatana, MP
6. The Hon. Amina Abdalla, MP
7. The Hon. Peter Munya, MP
8. The Hon. Moses Wetangula, MP
9. The Hon. Uhuru Kenyatta, MP
10. The Hon. Sally Kosgei, MP
11. The Hon. Charity Ngilu, MP
12. The Hon. Ekwee Ethuro, MP
13. The Hon. Isaac Ruto, MP
14. The Hon. Wilfred Ombui, MP
15. The Hon. Jeremiah Kioni, MP
16. The Hon. William Ruto, MP
17. The Hon. Mwangi Kiunjuri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Stephen Njenga - First Clerk Assistant
2. Eunice Gichangi - Senior Legal Counsel
3. Mr. Paul Ngetich - Senior Research Officer
4. Ms. Rose Mudibo - Public Relations Officer

MIN. NO. 140/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 141/2009:

REVISION OF QUORUM

The Committee noted the letter authored by the Chairperson addressed to all members of the Committee on special quorum and consequently resolved to apply the provisions of Standing Order 162 relating to quorum during its sittings.

MIN. NO. 142/2009:

CONFIRMATION OF MINUTES

Minutes of the Twenty Seventh sitting were confirmed by the members present and signed by the Chairperson.

MIN. NO. 143/2009:

MATTERS ARISING

The Committee deliberated on its decision under Min. No. 138/2009 of 28th July, 2009 and reiterated its earlier resolution that shortlisted applicants adversely mentioned in any of the three letters be removed from the list.

Hon. Omingo Magara objected to this resolution proposing that the nature of allegation made against candidates be considered.

The Committee also noted that consequent to the above resolution, Wilfred Nderitu should be removed from the shortlist.

The Committee approved the following final shortlist of 16 names:-

1. Hassan N. Lakicha
2. Mburugu M'Nkanata Kioga
3. Jamilla Mohamed
4. S. N. Mukunya
5. Sankale ole Kantai
6. Mavisi Violet Khadi
7. Scholastica Omondi
8. Jane Nyangoma
9. Syed Kassim Shah
10. William K. Aruse
11. Josephine Kemunto
12. David M. Waihiga
13. Gabriel Mukele
14. Susan W. Murage
15. Evans Thiga Gaturu
16. Judith N. Ramaita

MIN. NO. 144/2009:

**CONSIDERATION OF PROGRAMME FOR INTERVIEW
OF CANDIDATES FOR POSITIONS OF JUDGES OF
THE INTERIM INDEPENDENT CONSTITUTIONAL
DISPUTE RESOLUTION COURT**

- (a) The Committee resolved to subject the candidates to a written aptitude test in addition to an oral interview.

The Committee agreed that the test should be held in the Main Committee Room, County Hall and that a panel of Constitutional professors be constituted with the help of Dean of Faculty of Law, University of Nairobi to set and mark the test.

- (b) The Committee resolved to conduct interviews on 22nd September, 2009 starting from 10.00 a.m. and that the written test should be held earlier with the participation of the Chair, Vice-Chair and Hon. Millie Odhiambo.

MIN. NO. 145/2009:

ANY OTHER BUSINESS

- (a) The Committee noted that the Interim Independent Electoral Commission successfully presided over the by-elections in Bomachoge and Shinyalu constituencies.
- (b) The Committee also noted the meeting in Mombasa that brings together the Committee of Experts and Political Parties.
- (c) The Committee agreed to engage with Parliamentary Political Parties through informal meetings (*Speaker's Kamukunji*) in order to build consensus among them.

MIN. NO. 146/2009:

ADJOURNMENT

There being no other business for discussion, the Chairperson adjourned the meeting at Twelve O'clock until Tuesday, 22nd September, 2009 at 10.00 a.m.

SIGNED:

HON. MOHAMMED ABDIKADIR, MP

CHAIRPERSON

DATE:

26TH OCTOBER, 2009

MINUTES OF THE TWENTY NINTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON MONDAY 12TH OCTOBER, 2009 IN THE MAIN CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 8.30 A.M.

PRESENT

1. The Hon. Mohamed Abdikadir, M.P.
2. The Hon. Mutula Kilonzo, M.P
3. The Hon. Moses Wetangula, M.P
4. The Hon. Danson Mungatana, M.P
5. The Hon. Kambi Kazungu, M.P
6. The Hon. Amina Abdalla, M.P
7. The Hon. Peter Munya, M.P
8. The Hon. Mwangi Kiunjuri, M.P
9. The Hon. Jeremiah Kioni, M.P
10. The Hon. Musalia Mudavadi, M.P
11. The Hon. Chachu Ganya, M.P
12. The Hon. Sally Kosgei, M.P
13. The Hon. James Orengo, M.P
14. The Hon. Millie Odhiambo, M.P
15. The Hon. Sophia Abdallah, M.P
16. The Hon Wilfred Moriasi Ombui, M.P

Chairman

ABSENT WITH APOLOGY

1. The Hon. Ababu Namwamba, MP
2. The Hon. Martha Karua, M.P
3. The Hon. David Musila, M.P
4. The Hon. Joseph Nkaisery, M.P
5. The Hon. Charity Ngilu, M.P

Vice Chairperson

ABSENT

1. The Hon. Uhuru Kenyatta, M.P
2. The Hon. Ekwee Ethuro, M.P
3. The Hon. Isaac Ruto, M.P
4. The Hon. Najib Balala, M.P
5. The Hon. Omingo Magara, M.P
6. The Hon. William Ruto, M.P

IN ATTENDANCE:

1. Mr. Nzamba Kitonga
2. Ms. Atsango Chesoni
3. Mr. Abdirashid Abdullahi
4. Mr. Otiende Amollo
5. Hon. Njoki Ndung'u
6. Dr. Chaloka Beyani
7. Mr. Bobby Mkangi
8. Hon. Amos Wako
9. Dr. Ekuru Aukot
10. Mr. Mugambi Laibuta

COMMITTEE OF EXPERTS (CoE)

- Chairperson
- Vice Chairperson
- Member
- Member
- Member
- Member
- Member
- Attorney General / Member
- Director
- PA to the Chairperson

IN ATTENDANCE:

1. Mr. Zakayo Mogere
2. Ms Eunice Gichangi
3. Ms Rose Mudibo
4. Ms Evelyne Mutungi

NATIONAL ASSEMBLY

- Second Clerk Assistant
- Senior Legal Counsel
- Public Relations Officer
- Parliamentary Intern

MIN. NO. 147/2009: PRAYER

The proceedings were opened with a word of prayer by Hon. J. Kioni.

MIN. NO. 148/2009: CONFIRMATION OF MINUTES

Confirmation of minutes of the Twenty Eighth sitting was deferred to the next meeting.

MIN. NO. 149/2009: MEETING WITH THE COMMITTEE OF EXPERTS (CoE)

The chairperson thanked the CoE and asked the Chair of CoE to inform the Committee on the progress made so far. The Committee was then informed that:-

- i) Upon being sworn in, the CoE prepared a timetable for its activities and advertised in the media requesting the public to send memoranda on what they want to be included in the Constitution.
- ii) In order to harmonize the views of Kenyans, they studied various reference materials among them the three previous constitution drafts – the Ghai, Wako and Bomas drafts - , the emerging issues between 2005 and now; and also summarized the views received from the public (about 15,000 memoranda).
- iii) The CoE held technical consultations in the months of June and July on the Executive, Legislature, Electoral Systems, Transition Systems and on Equality with various organizations including religious bodies, the civil society and political parties. Provincial and regional hearings were also done to enable people in the grass root to participate. More consultations are planned in the

coming weeks with political parties and the Reference Group who had requested for more time with the committee.

- iv) Out of the 47 registered political parties, only 8 submitted written memoranda.
- v) The CoE has also met with the TJRC, the IIEC, the Media Owners and the Editor's Guild to brief them on the process. The CoE has undertaken to train the media, especially community media, on issues concerning the constitution review process.
- vi) The CoE retreated from the 14th - 22nd September, 2009 to harmonize the draft and clean up the information gathered so far. However the work is immense and it is expected to be completed by the end of the month.
- vii) All deliberations by the CoE are on Hansard and given out on request.
- viii) Civic education is underway and advertisements on the same had been placed in the media. Civic education would also continue once the draft constitution is published by the end of the month of October.
- ix) the CoE is not overlooking any views by any group as claimed by the religious group on the issue of the kadhi's court, and although it has been explained that the kadhi's court were in the present constitution the religious group still insist that the issue is contentious. However the issue has been categorized as a resolvable issue together with land, electoral system and affirmative action.
- x) It is not the intention of the CoE to extend the timelines and it sought the assistance of the Committee in confidence building.
- xi) The CoE outlined several challenges they are facing including the timeline, given the immense work and the lack of confidence by the public in its work.

On the issue of members of the CoE falling out, the Hon. Njoki Ndung'u informed the Committee that she had differences over the following:-

- i) The methodology adopted by the CoE as it has never held any consultations with the government (Parliament, Police, Provincial Administration and the Judiciary) which is a major player in the review process.
- ii) Consultations were meant to build consensus to the review process, however the committee has not built any, partly because the law has not been properly followed.

The Attorney General informed the Committee that the CoE was committed to have the country get a new constitution as soon as possible. While noting the need for more consultations between the PSC and the CoE, the AG argued that the report that will be presented to the PSC will include both the contentious issues and the non contentious issues

that will be harmonized later. He however warned that having too many contentious issues could lead to the draft being rejected. He further asked the CoE to consult H.E the President and the Rt. Hon. Prime Minister before finalizing on the raw draft.

It was resolved that:-

- i) That meeting between the Committee and CoE should be more frequent and be held every two weeks with the CoE making their presentations in writing.
- ii) That the CoE should carry out more consultations with various groups, including the Reference Group, political parties and the Interim Independent Boundaries Review Commission, and also try to convince the religious groups on the issue of the kadhi's court instead of wishing them away.
- iii) That the CoE should release immediately the Hansard of the consultations they hold with various groups to avoid appearing as if they were hiding some information.
- iv) That the Committee will defend the integrity of the CoE and inject the confidence of the public in the process.
- v) That bad press should be avoided at all costs, and the CoE should find a way of settling disputes between its members without going out to the media.
- vi) That consultation between the government and the CoE should be done in a manner that it does not undermine the independence of the latter.
- vii) That CoE should give the committee a non paper on what they have done so far. This will form the basis of deliberations in the next meeting.

MIN. NO. 150/2009: INTERVIEWS FOR POSITIONS OF JUDGES OF THE IICDRC

The Chairperson informed the Committee that 15 out of 16 candidates who had been shortlisted for interviews turned up for the written interviews. The written interviews were administered by 3 lecturers from the University of Nairobi – Parklands Campus, on Monday 12th October, 2009.

The Committee resolved to proceed with the oral interviews without opening the envelop with the results of the written interviews. On concluding the oral interviews, the Chairperson released the results for the written interviews, which were as follows:-

Index No.	Name	Score %
PSC 001	Hassan N. Lakicha	52
PSC 002	Mburugu M'Nkanata Kioga	62
PSC 003	Jamila Mohamed	65
PSC 004	S.N. Mukunya	71
PSC 005	Sankale ole Kantai	60
PSC 006	Mavisi Violet Khadi	69
PSC 007	Susan W. Murage	57
PSC 008	Scholastica Omondi	69
PSC 009	Jane Nyangoma	55
PSC 010	Syed Kassim Shah	32
PSC 011	Judith N.Ramaita	53
PSC 012	William K.Aruse	61
PSC 013	Josephine Kemunto	52
PSC 014	David M.Waihiga	58
PSC 015	Evans Thiga Gaturu	52
PSC 016	Gabriel Mukele	Absent

The Committee unanimously nominated the following persons to be Judges of the Interim Independent Constitutional Dispute Resolution Court (IICDRC):-

1. Mr. S. N. Mukunya
2. Ms. Violet Khadi Mavisi
3. Ms. Scholastica Omondi
4. Ms. Jamilla Mohamed
5. Mr. Sankale ole Kantai
6. Mr. Mburugu M'Nkanata Kioga

The Committee also considered the list of 5 non-citizens of Kenya submitted by African Union Panel of Eminent Persons. They are:-

1. Mr. Michel Bastarache (Canada)
2. Mr. John Alistair Cameron, Lord Abernethy (United Kingdom)
3. Ms. Unity Dow (Botswana)
4. Ms. Tecla Henry-Benjamin (Trinidad and Tobago/Antigua)
5. Mr. Issac Jamu Mtambo (Malawi)

The Committee unanimously nominated the following 3 non-citizens of Kenya to be Judges of the Interim Independent Constitutional Dispute Resolution Court (IICDRC):-

1. Mr. Michel Bastarache (Canada)
2. Ms. Unity Dow (Botswana)
3. Mr. John Alistair Cameron, Lord Abernethy (United Kingdom)

MIN. NO. 151/2009: **ADJOURNMENT.**

The Chair adjourned the meeting at forty five minutes past three O'clock, until Monday 26th October, 2009 at 9.00 a.m.

SIGNED: **HON. MOHAMMED ABDIKADIR, MP**
CHAIRPERSON

DATE: **26TH OCTOBER, 2009**

MINUTES OF THE THIRTIETH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON MONDAY, 26TH OCTOBER, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

- | | | |
|------------------------------------|---|-------------------------|
| 1. The Hon. Mohammed Abdikadir, MP | - | Chairperson |
| 2. The Hon. Ababu Namwamba, MP | - | Vice Chairperson |
| 3. The Hon. Mutula Kilonzo, MP | | |
| 4. The Hon. Martha Karua, MP | | |
| 5. The Hon. Moses Wetangula, MP | | |
| 6. The Hon. Danson Mungatana, MP | | |
| 7. The Hon. Uhuru Kenyatta, MP | | |
| 8. The Hon. Musalia Mudavadi, MP | | |
| 9. The Hon. Peter Munya, MP | | |
| 10. The Hon. Joseph Nkaiserry, MP | | |
| 11. The Hon. Kambi Kazungu, MP | | |
| 12. The Hon. Charity Ngilu, MP | | |
| 13. The Hon. Mwangi Kiunjuri, MP | | |
| 14. The Hon. Jeremiah Kioni, MP | | |
| 15. The Hon. James Orengo, MP | | |
| 16. The Hon. Wilfred Ombui, MP | | |
| 17. The Hon. Millie Odhiambo, MP | | |

ABSENT WITH APOLOGY

1. The Hon. David Musila, MP
2. The Hon. Najib Balala, MP
3. The Hon. Chachu Ganya, MP
4. The Hon. Omingo Magara, MP
5. The Hon. Amina Abdalla, MP
6. The Hon. Sally Kosgei, MP
7. The Hon. Ekwee Ethuro, MP
8. The Hon. Isaac Ruto, MP
9. The Hon. Sophia Abdi, MP
10. The Hon. William Ruto, MP

IN ATTENDANCE

1. Mr. Nzamba Kitonga
2. Ms. Atsango Chesoni
3. Mr. Abdirashid Abdullahi
4. Prof. Christina Murray
5. Hon. Njoki Ndungu
6. Dr. Chaloka Beyani
7. Mr. Bobby Mkangi
8. Hon. Amos Wako
9. Dr. Ekuru Aukot
10. Dr. Michael Chelogoy
11. Mr. Mugambi Laibuta

COMMITTEE OF EXPERTS (COE)

- | |
|---------------------------------------|
| Chairperson |
| Vice Chairperson |
| Member |
| Member |
| Member |
| Member |
| Member |
| Attorney General/Ex-Officio |
| Director |
| Deputy Director |
| Personal Assistant to the Chairperson |

IN ATTENDANCE

1. Mr. Stephen Njenga
2. Eunice Gichangi

NATIONAL ASSEMBLY

First Clerk Assistant
Senior Legal Counsel

MIN. NO. 152/2009:**PRAYER**

The proceedings were opened with a word of prayer.

MIN. NO. 153/2009:**CONFIRMATION OF MINUTES**

Minutes of the Twenty Eighth and Twenty Ninth sittings were confirmed by the members present and signed by the Chairperson.

MIN. NO. 154/2009:**MEETING WITH THE COMMITTEE OF EXPERTS**

The Chairperson explained the purpose of the meeting and noted that it was a consultative forum between two of the organs of the constitutional review process.

The Chair invited the Committee of Experts to give an update on the review process.

The Chair of the Committee of Experts thanked the Parliamentary Select Committee for convening the meeting which avails an opportunity to exchange notes on the review process.

The Select Committee was informed as follows:-

- (a) At the time of being sworn in, the Committee of Experts had lost three (3) months as the Review Act, 2008 came into force on 23rd December, 2008 with clear provisions of twelve(12) months to complete the review process;
- (b) Sufficient consultations have been undertaken with, among others, the Ministry of Justice, the Parliamentary Select Committee, the two principals and development partners;
- (c) To identify both contentious and non-contentious issues, the Committee of Experts studied all existing draft Constitutions, consulted on the summary of views collected by the former Constitution of Kenya Review Commission, examined documents reflecting political agreement, considered academic studies undertaken and reports related to Agenda No. 4;
- (d) The Committee of Expert solicited and received a total of over 19,000 written memoranda and presentations from the public;
- (e) The Committee of Experts set up a library with all the relevant resources on constitution-making in the world and worked out methodology on how it would identify and resolve the contentious issues;
- (f) The Committee of Experts has so far met the Parliamentary Select Committee twice to discuss the progress in the review process and will soon publish its report and the revised draft which will be presented to the public, the Parliamentary Select Committee and the National Assembly in accordance with the law;
- (g) The Committee of Experts has conceptualised civic education to stimulate public discussions and awareness of constitutional issues;
- (h) Transitional provisions to ensure a smooth move from the old to the new order are very technical as they have to guarantee existing laws continue to have force;

- (i) Some transitional provisions have significant policy implications and in identifying contentious issues, the Committee of Experts stated that there is consensus that a new constitution should create a fresh start for Kenya in terms of establishing the rule of law, protection of human rights and respect of everyone; the institutions and office bearers in the new constitution must have the confidence of the people and accountable to them and all government action and exercise of power should be based on the new constitution;
- (j) The issues not agreed upon are how the adoption and coming into force of the new constitution affects holders of political constitutional offices, unelected constitutional positions and measures to ensure that Parliament enacts laws required by the new constitution;
- (k) The Committee of Experts identified the following issues as agreed upon on the question of devolution; that a new constitution should not provide for a system where powers of government are concentrated in a national government and that powers of government must be shared between a national government and governments at the local level;
- (l) Issues identified by the Committee of Experts as not agreed are on whether there should be two or more levels of government, what should be the powers of each level of government and how much power to supervise devolved governments should be vested in the central government;
- (m) The constitutional systems of government used in most countries around the world are parliamentary, presidential and hybrid with the key differences among the three systems being the extent to which powers of government are separated functionally between the branches of government.

The Select Committee applauded the efforts made by the Committee of Experts in the review process and made the following observations:-

- (a) The Committee of Experts needs to give a clear direction especially the system of government and transitional provisions instead of leaving matters in abeyance taking into consideration the realities in the country;
- (b) The Committee of Experts should take all necessary measures to build consensus while following the legal framework to ensure that the fundamental reforms required are undertaken comprehensively encompassing all the arms of government;
- (c) The Committee of Experts must bring its expertise to bear to rationalise the proposals made by the public for the good of the country, and in particular should help the country to bridge its differences;
- (d) The Committee of Experts should focus on all the contentious issues holistically with other provisions and make proposals that will make the country move forward.

MIN. NO. 155/2009:

ANY OTHER BUSINESS

The Committee considered and adopted, by consensus, the report on the nomination of Judges of the Interim Independent Constitutional Dispute Resolution Court.

MIN. NO. 156/2009:

ADJOURNMENT

There being no other business for discussion, the Chairperson adjourned the meeting at Five minutes past Two O'clock.

SIGNED:

HON. OMINGO MAGARA, M.P

CHAIRPERSON

DATE:

17TH NOVEMBER 2009

MINUTES OF THE THIRTY FIRST SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON TUESDAY, 17TH NOVEMBER, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.10 AM.

PRESENT

- | | | |
|----------------------------------|---|-------------|
| 1. The Hon. Omingo Magara, MP | - | Chairperson |
| 2. The Hon. Joseph Nkaiserry, MP | | |
| 3. The Hon. Kambi Kazungu, MP | | |
| 4. The Hon. Sophia Abdi, MP | | |

ABSENT WITH APOLOGY

- | | | |
|------------------------------------|---|------------------|
| 1. The Hon. Mohammed Abdikadir, MP | - | Chairperson |
| 2. The Hon. Ababu Namwamba, MP | - | Vice Chairperson |
| 3. The Hon. Mutula Kilonzo, MP | | |
| 4. The Hon. Martha Karua, MP | | |
| 5. The Hon. Moses Wetangula, MP | | |
| 6. The Hon. Musalia Mudavadi, MP | | |
| 7. The Hon. Danson Mungatana, MP | | |
| 8. The Hon. Uhuru Kenyatta, MP | | |
| 9. The Hon. Peter Munya, MP | | |
| 10. The Hon. Charity Ngilu, MP | | |
| 11. The Hon. Mwangi Kiunjuri, MP | | |
| 12. The Hon. Jeremiah Kioni, MP | | |
| 13. The Hon. James Orengo, MP | | |
| 14. The Hon. Wilfred Ombui, MP | | |
| 15. The Hon. Millie Odhiambo, MP | | |
| 16. The Hon. David Musila, MP | | |
| 17. The Hon. Najib Balala, MP | | |
| 18. The Hon. Chachu Ganya, MP | | |
| 19. The Hon. Amina Abdalla, MP | | |
| 20. The Hon. Sally Kosgei, MP | | |
| 21. The Hon. Ekwere Ethuro, MP | | |
| 22. The Hon. Isaac Ruto, MP | | |
| 23. The Hon. William Ruto, MP | | |

IN ATTENDANCE

Mr. Stephen Njenga

NATIONAL ASSEMBLY

First Clerk Assistant

MIN. NO. 157/2009:

ELECTION OF CHAIRPERSON OF THE SITTING

The Committee elected Hon. Omingo Magara to take the Chair in accordance with the provisions of Standing Order 170.

Thereupon, Hon. Magara assumed the Chair.

MIN. NO. 158/2009:

PRAYER

The proceedings were opened with a word of prayer.

