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SELECT COMMITTEE ON
THE CONSTITUTION OF
KENYA REVIEW COMMISSION

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 Asiyo | - | 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:-

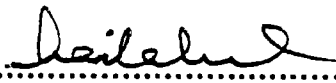
- (i) Since 1997, there has been a consensus and expectation among Kenyans that the next General Elections will be held under a new Constitution.
- (ii) The next General Elections accord Kenyans a unique opportunity to write a new Constitution which may fundamentally change the structures of Governance 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.

5.0. 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: 
HON. RAILA A. ODINGA, M.P.
CHAIRMAN OF THE SELECT COMMITTEE ON THE
CONSTITUTION OF KENYA REVIEW

DATE: 12th June 2002

6.0. APPENDICES

MINUTE NO. 21/2002:

**ADOPTION OF THE
COMMITTEE REPORT**

The Committee adopted the Report on extension of time for the Constitution of Kenya Review Commission.

MINUTE NO. 22/2002:

ADJOURNMENT

The Chairman adjourned the meeting at 12.30 p.m. until a later date.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

MINUTES OF THE FOURTEENTH SITTING OF THE SELECT COMMITTEE ON THE CONSTITUTION OF KENYA REVIEW HELD ON FRIDAY, MAY 31, 2002 IN THE MAIN CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. **(Chairman)**
The Hon. Joseph Kamotho, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Musalia Mudavadi, M.P.
The Hon. Isaac Rutto, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Mathias Keah, M.P.
The Hon. M.A. Affey, M.P.
The Hon. Simon Mkalla, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Mwai Kibaki, 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. Paul K. Muite, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.

ABSENT WITH APOLOGY:

The Hon. Julius Sunkuli, M.P.
The Hon. (Prof.) Sam Ongeru, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Stephen Mukangu, M.P.
The Hon. Ochilo Ayacko, M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Joe Donde, M.P.
The Hon. Karisa Maitha, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. J.N. Bundi

-

Principal Clerk Assistant

MINUTE NO. 19/2002:

**ISSUES RAISED BY THE MEMBERS
CONCERNING EXTENSION OF TIME**

Discussions continued on the request by the CKRC for an extension of the Review Process beyond the 4th October 2002

deadline. In the course of these deliberations, the following issues were raised:

1. It is convenient to carry out Constitutional review with a President in office who is not interested in running for an election. A President who has won an election might be reluctant to have his powers trimmed, Constitutional changes should therefore be concluded within the life of the current Parliament.
2. The Commission has already done a lot of work and therefore, there is no need for minimum Constitutional changes.
3. The Members were concerned that the work ethics of some Commissioners leaves a lot to be desired. To address this matter, it was suggested that the Act should be reviewed to ensure that Commissioners are engaged fully in the review process and those who cannot meet this requirement should quit.
4. The Members agreed to make a recommendation to Parliament to extend the review process upto 4th February 2003 so that the exercise could be concluded within the life of the current Parliament.
5. The Committee appointed a Sub-Committee comprising Hon. Otieno Kajwang', M.P., Hon. Kiraitu Murungi, M.P. and Hon. (Dr.) Mukhisa Kituyi, M.P. to draft the recommendations to National Assembly.

MINUTE NO. 20/2002:

ADJOURNMENT

The Chairman adjourned the meeting at 1.30 p.m. until Tuesday, June 11, 2002 at 9.00 a.m. in the Main Committee Room, County Hall, Parliament Buildings.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

MINUTES OF THE THIRTEENTH SITTING OF THE SELECT COMMITTEE ON THE CONSTITUTION OF KENYA REVIEW HELD ON TUESDAY, MAY 28, 2002 IN THE MAIN CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. **(Chairman)**
The Hon. Joseph Kamotho, M.P.
The Hon. Isaac Rutto, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Musalia Mudavadi, M.P.
The Hon. (Prof.) Sam Ogeri, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Simon Mkalla, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. M.A . Affey, M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Ochilo Ayacko, M.P.
The Hon. Mwai Kibaki, M.P.
The Hon. Martha Karua, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Kijana Wamalwa, M.P.
The Hon. Joe Donde, M.P.
The Hon. (Dr.) Mukhisa Kituyi, M.P.
The Hon. Paul K. Muite, M.P.

ABSENT WITH APOLOGY:

The Hon. Julius Sunkuli, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Stephen Mukangu, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Karisa Maitha, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. J.N. Bundi

-

Principal Clerk Assistant

MINUTE NO. 16/2002:

**CONFIRMATION OF THE PREVIOUS
MINUTES**

Minutes of the Twelfth Sitting held on Wednesday 15, 2002 were confirmed by the Members present and signed by the Chairman.

MINUTE NO. 17/2002:

**CONSIDERATION OF THE
MEMORANDUM OF REQUEST
TO THE NATIONAL ASSEMBLY
FOR EXTENSION OF TIME**

Debate on Request of Extension of the Review Process

After a lengthy discussion on the above request, the following issues arose:-

1. Members were unanimous that the general desire for Kenyans would be to go to the next general elections on schedule and with a new constitution.
2. Members were concerned that the work ethics of some of the Commissioners is not satisfactory and that they ought to be engaged fully in the review process to save time.
3. The extension of time suggested by the CKRC upto 15th May 2003 poses other institutional implications such as the extension of life of parliament and the presidency whose term expires on 4th January 2003.
4. A suggestion to de-link the review process from the election was not popular with the Members. Similarly, a proposal for introduction of minimum changes in the current constitution to facilitate elections was not acceptable as Members could not agree on what could constitute minimum and maximum.
5. As a time saving measure, the Members recommended that:-
 - (i) Publication and dissemination of the report period be reduced from sixty (60) days to thirty (30) days.

- (ii) Abolish provincial hearings.
 - (iii) Matters to be referred to a referendum be clearly defined and that they must have a 2/3 majority approval during the national conference.
6. Two months to be allowed for holding of national constitutional conferences.
 7. After the enactment of the constitution, Parliament will be required to pass other legislations to conform with the new constitution.
 8. The Members were in agreement that the review process having painstakingly taken so long, should continue to maintain the spirit of being people driven.
 9. The Members proposed the following time schedule.

MEMBERS PROPOSED TIME SCHEDULE

| ACTIVITY | TIME/DURATION |
|---|--|
| 1. Constituency Visits. | 29 th April, 2002 – 8 th July, 2002 |
| 2. Collation and Analysis. | To be completed by 8 th August, 2002 |
| 3. Compilation of the National Report. | To be completed by 30 th August, 2002 |
| 4. Draft Bill. | To be completed by 15 th September, 2002 |
| 5. Publication and Dissemination of the Report. | To be completed by 15 th October, 2002 |
| 6. Provincial Public Hearings. | Abolished |
| 7. Pre-conference Activities. | To take one week. To be done within the 60 days as indicated in No. 5 above. |
| 8. Holding of National Constitutional Conference. | To take two months. To be completed by 15 th December, 2002 |
| 9. Completion without Referendum. | To take two months. To be completed by 15 th February 2003 |
| 10. Completion with Referendum. | To be completed by 15 th April, 2003 |

MINUTE NO. 18/2002:

ADJOURNMENT

The Chairman adjourned the meeting at 1.30 p.m. until Friday, May 31, 2002 at 10.00 a.m. in the Main Committee Room, County Hall, Parliament Buildings.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

**MINUTES OF THE TWELFTH SITTING OF THE SELECT COMMITTEE
ON THE CONSTITUTION OF KENYA REVIEW HELD ON WEDNESDAY,
MAY 15, 2002 IN THE MAIN CONFERENCE HALL, COUNTY HALL,
PARLIAMENT BUILDINGS AT 10.00 A.M.**

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. **(Chairman)**
The Hon. Julius Sunkuli, M.P.
The Hon. Joseph Kamotho, M.P.
The Hon Isaac Rutto, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Simon Mkalla, M.P.
The Hon. M.A . Affey, M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Ochilo Ayacko, M.P.
The Hon. Mwai Kibaki, E.G.H., M.P.
The Hon. Martha Karua, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Kijana Wamalwa, M.P.
The Hon. Joe Donde, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.
The Hon. Paul K. Muite, M.P.
The Hon. Karisa Maitha, M.P.

ABSENT WITH APOLOGY:

The Hon. Musalia Mudavadi, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. (Prof.) Sam Ongeru, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. (Dr.) Mukhisa Kituyi, M.P.
The Hon. Stephen Mukangu, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. J.N. Bundi

-

Principal Clerk Assistant

LAW SOCIETY OF KENYA

| | | |
|-------------------|---|----------------------|
| Ms. Rachael Omamo | - | Chairperson |
| Ms. Lucy Kambuni | - | Council Member |
| Ms Rose Waruinge | - | Council Member |
| Mr Patrick Kiage | - | Council Member |
| Mr. George Kegoro | - | Secretary to the LSK |

RELIGIOUS GROUPS REPRESENTATIVES

| | | |
|-------------------------------|---|---|
| Rev. Pastor Mutava Musyimi | - | Spokesman Chairman, Ufungamano Steering Council and Secretary General, NCKK. |
| Archbishop Ndingi Mwana Nzeki | - | Catholic Church |
| Zablon Nthambuu | - | Methodist Church |
| Alhaji Yusuf Murigu | - | Supreme Council of Muslims. |
| Abdulrahaman Wandati | - | Muslim Consulta- tive Council. |
| Abdulhamid Slatch | - | Muslim Consulta- tive Council. |
| Usha Shah | - | Hindu Council. |
| Charles Wambugu | - | Presbyterian Church of East Africa. |

MINUTE NO. 09/2002: CONFIRMATION OF THE PREVIOUS MINUTES

Minutes of the previous meeting held on Thursday, May 09, 2002 were confirmed by the Members present and signed by the Chairman.

MINUTE NO. 10/2002: OPENING REMARKS BY THE CHAIRMAN

The Chairman called the meeting to order at 10.30 a.m. He informed the meeting that he had received a request from both the Law Society of Kenya and Leaders of Religious Groups to appear before the Committee to give their views

concerning the memorandum of request for extension of time by the Constitution of Kenya Review Commission.

On behalf of the Committee, the Chairman accepted their requests. The Members supported the decision and called in the Law Society of Kenya at 11.00 a.m. and the Leaders of the Religious Groups at 11.30 a.m.

MINUTE NO. 11/2002:

VIEWS BY THE LAW SOCIETY OF
KENYA AND THE RELIGIOUS LEADERS

(A) PRESENTATIONS BY THE LSK CHAIRPERSON

The Chairperson thanked the Committee for having allowed them to appear before them to give their views. After introducing her council members, she explained that her appearance before the Committee is in accordance with their mandate, under Section 4 of the Law Society Act.

She presented to the Committee a paper outlining the LSK's areas of concern briefly summarised herebelow:-

1. The expiry of the term of parliament is on or about 2nd or 3rd February, 2003 and therefore presenting a Bill to the Attorney General on 15th March 2003 would find no Parliament to debate it.
2. Holding of referendum between March and May 2003 could coincide with the hustles of a general election and scuttle the process.
3. The Review Process has not been entrenched in the Constitution and there is no guarantee that a new Parliament will necessarily complete the process.
4. Extension of the review process would escalate costs.

The Chairperson suggested some approaches that could result in time saving and accelerate the process. These were:-

- (i) Constituency visit by a panel of two and not three commissioners.
- (ii) Reduce dissemination period for the Bill

(iii) Abolition of provincial hearings.

(iv) Attending to drafting tasks alongside hearings

The Members thanked the LSK Chairperson and her Council Members for showing interest and trying to help the Committee with ideas on how to deal with the memorandum.

The Members asked the LSK to make further suggestions on the issues how the review process should be approached.

(B) PRESENTATION BY THE RELIGIOUS LEADERS

The Select Committee Chairman welcomed the Religious Leaders. Rev. Mutava Musyimi who was the spokesman of the Religious Leaders informed the meeting of the following:-

- (i) The review process could be accelerated by reducing the size of the Commission panel visiting constituencies from three to two Commissioners.
- (ii) Extending the review process is an expensive affair to the economy of the country.
- (iii) The review process could be concluded within the life of the current Parliament.
- (iv) The position of the church is to go to the polls in a new Constitution.
- (v) The referendum period should be reduced.
- (vi) The Religious Leaders felt that the progress work of the Commissioners is not satisfactory as earlier expected.
- (vii) They urged the need for adherence of professional ethics by Commissioners.
- (viii) That they would meet the Commissioners on 27th May 2002.

MINUTE NO. 12/2002:

ISSUES RAISED BY THE COMMITTEE

After listening to presentations from the religious leaders, the Members raised the following issues:-

- (i) There is no legal framework in the Constitution allowing for a referendum.
- (ii) The Members sought suggestions from the religious leaders on how to push the Commissioners to accelerate their work without them developing a feeling that there is interference on their work.
- (iii) The Members felt that the Commissioners should diligently and ethically perform the work they applied for.
- (iv) The Members were concerned that 2/3 of the Commissioners are not following the guidance of their experienced chairman who is credited for having participated in ten such constitutional reviews.

In conclusion, the Chairman informed the Committee that all the issues raised by both the LSK and the Religious Leaders would be discussed during the next sitting on Thursday 23rd May, 2002.

MINUTE NO. 15/2002:

ADJOURNMENT

The Chairman adjourned the meeting at 1.20 p.m. until Thursday, May 23, 2002 at 10.00 a.m. in the Main Committee Room, County Hall, Parliament Buildings.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

MINUTES OF THE ELEVENTH SITTING OF THE SELECT COMMITTEE ON THE CONSTITUTION OF KENYA REVIEW HELD ON THURSDAY, MAY 09, 2002 IN THE MAIN CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. (Chairman)
The Hon. Musalia Mudavadi, M.P.
The Hon. Julius Sunkuli, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. (Prof.) Sam Ongeru, M.P.
The Hon. Joseph Kamotho, M.P.
The Hon. Isaac Rutto, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Simon Mkalla, M.P.
The Hon. M.A. Affey, M.P.
The Hon. Ochilo Ayacko, M.P.
The Hon. Mwai Kibaki, E.G.H., 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. Njehu Gatabaki, M.P.
The Hon. Paul K. Muite, M.P.
The Hon. Karisa Maitha, M.P.

ABSENT WITH APOLOGY:

The Hon. Kalonzo Musyoka, M.P.
The Hon. S. Mukangu, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. (Mrs.) Charity Kaluki Ngilu, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. J.N. Bundi - Principal Clerk Assistant

CONSTITUTION OF KENYA REVIEW COMMISSION

Prof. Yash Pal Ghai - Chairman
Dr. Oki Ooko Ombaka - Vice Chairman
Prof. Idha Salim - Vice Chairman

| | | |
|--------------------------------|---|------------------|
| Mrs. Abida Ali Aroni | - | Vice Chairperson |
| Ms. Kavetsa Adagala | - | Commissioner |
| Prof. Wanjiku Kabira | - | Commissioner |
| Mr. Riunga Raiji | - | Commissioner |
| Mr. Domiziano Ratanya | - | Commissioner |
| Bishop Bernard Njoroge Kariuki | - | Commissioner |
| Mr. Paul Wambua | - | Commissioner |
| Mr. John Mutakha Kangu | - | Commissioner |
| Paster Zablon Ayonga | - | Commissioner |
| Dr. Abdirazak Arale Nunow | - | Commissioner |
| Mr. Githu Mungai | - | Commissioner |
| Dr. Mohamed A. Swazuri | - | Commissioner |
| Ms. Salome Wairimu Muigai | - | Commissioner |
| Ms. Nancy Baraza | - | Commissioner |
| Mr. Ahmed Isaack Hassan | - | Commissioner |
| Mr. Ibrahim Lethome Asmani | - | Commissioner |
| Dr. K Mosonik arap Korir | - | Commissioner |
| Mr. Isaac Lenaola | - | Commissioner |
| Dr. Charles Maranga | - | Commissioner |
| Hon. Amos Wako | - | Ex-Officio |
| Mr. P.L.O. Lumumba | - | Commissioner |
| | | Secretary |

MINUTE NO. 05/2002:

**OPENING REMARKS BY THE
CHAIRMAN**

The Chairman called the meeting to order at 10.30 a.m. He informed the meeting that the Constitution of Kenya Review Commission had sent a memorandum to the National Assembly requesting the extension of time under Section 26(3) of the Constitution of Kenya Review Act (Cap. 3A).

He further informed the meeting the procedure for requesting for extension which he outlined as follows:-

1. Submission of memorandum requesting extension to the Speaker, National Assembly.
2. The Speaker to cause the memorandum to be referred for consideration to the Select Committee on the Review of the Constitution.
3. The Committee to report its recommendation to the National Assembly. The National Assembly to debate the report, and to pass resolution.

4. The resolution by the National Assembly is communicated to the Constitution of Kenya Review Commission.

MINUTE NO. 06/2002:

**REPORT BY THE CHAIRMAN OF THE
CONSTITUTION OF KENYA REVIEW
COMMISSION (CKRC)**

Prof. Yash Pal Ghai, informed the meeting that the CKRC will not complete the review process by October 04, 2002 as scheduled because a lot of time was consumed during the negotiation for merger between Parliamentary Committee and the Ufungamano Initiative, recruitment of staff and conducting of civic education countrywide.

Prof. Ghai, however, reported that a lot of progress had been made in the review process. The Commission had concluded collecting views from Central and Coast Provinces, and will be proceeding to Eastern Province.

Prof. Ghai distributed to all the Members a time schedule which indicated that the review process would be completed by May 15, 2002 if the process would be subjected to a referendum.

MINUTE NO. 07/2002:

ISSUES RAISED BY THE COMMITTEE

Members raised the following issues with the Commission:-

- i. That to hasten the review process, the Commission should reduce the panel, visiting the constituencies from three to two commissioners. The CKRC insisted on a panel of three.
- ii. That the publication and dissemination of the report could be reduced from sixty (60) days to thirty (30) days by amending Section 27(1) of the Review Act (cap 3A).
- iii. That in case all options to complete the review process before elections were not possible, minimum constitutional changes to cater for elections be introduced, and leave the CKRC to continue with the review process.

- iv. That the life of Parliament be extended so that the CKRC can complete the review process during the life of the current Parliament.

The general response by the CKRC was that the time schedule for the review process was professionally done, and that the CKRC had reduced time proposed to the minimum.

The Chairman informed the meeting that the issues raised during the meeting will be discussed by the Committee on 15th May, 2002.

MINUTE NO. 08/2002:

ADJOURNMENT

The Chairman adjourned the meeting at 1.10 p.m. until Wednesday, May 15, 2002 at 10.00 a.m. in the Main Committee Room, County Hall, Parliament Buildings.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

**MINUTES OF THE TENTH SITTING OF THE SELECT COMMITTEE ON
THE CONSTITUTION OF KENYA REVIEW HELD ON THURSDAY, APRIL
11, 2002 IN THE MAIN CONFERENCE HALL, COUNTY HALL,
PARLIAMENT BUILDINGS AT 10.00 A.M.**

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. (Chairman)
The Hon. Musalia Mudavadi, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Julius Sunkuli, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. M.A. Affey, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. (Mrs.) Zipporah Kittony, 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. (Dr.) Mukhisa Kituyi, M.P.
The Hon. Joe Donde, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Karisa Maitha, M.P.

ABSENT WITH APOLOGY:

The Hon. (Prof.) Sam Ongeru, M.P.
The Hon. Joseph Kamotho, M.P.
The Hon. Isaac Rutto, M.P.
The Hon. S. Mukangu, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Simon Mkalla, M.P.
The Hon. Paul K. Muite, M.P.
The Hon. Ochilo Ayacko, M.P.
The Hon. Mwai Kibaki, E.G.H., M.P.
The Hon. Kijana Wamalwa, M.P.
The Hon. (Mrs.) Charity Kaluki Ngilu, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. David K. Ziah - Second Clerk Assistant

CONSTITUTION REVIEW COMMISSION

Prof. Yash Pal Ghai - Chairman

The Chairman introduced the new Members who had joined the Select Committee. He informed the meeting that he had invited Prof. Yash Pal Ghai so that he could explain some of the issues in the agenda.

He informed Prof. Ghai that Members of the Committee were anxious to know when the Commission will complete the review process, and that public discussion on the matter had led to acrimony among Members of the Commission and there were threats to divide the process by restarting the Ufungamano Initiative.

Prof. Yash Pal Ghai informed the Committee that:-

- Other Commissioners had not been able to accompany him because most of them were out of Nairobi on official duties. He hoped that a meeting between the Committee and all Commissioners could be held when they were back in Nairobi.
- Prof. Ghai corrected the misconception that the Commission had done little since its inception. He reported that the Commission had made tremendous progress by laying the necessary infrastructure for the review process such as the creation of documentation centres, conducting civic education programmes and holding public hearings.
- He further reported that Kenyans knew the kind of issues to be raised with the Commission. This is evidenced by the ever increasing submissions to the Commission by the public which had at present numbered 6,000.

He also reported that with the help of the United Nations Development Programme, workshops to sensitize women would be held all over the provinces starting from Friday April 12, 2002.

Papers Laid

Prof. Yash Pal Ghai laid a paper before the Committee entitled **"Time Line for Completion of the Review Process"** He explained to the Committee that:-

- Civic education will be a continuous process throughout the review process.
- Constituency hearings will begin towards the end of April and end on July 6, 2002.
- Writing and publishing of report and a draft constitution will start at the end of June and end on August 17, 2002.
- Public debates will start in August and end on October 17, 2002.
- Provincial hearings will take one month in October and end on October 26, 2002.
- Preparations for conference and actual holding of the conference start in October and end in November 23, 2002.
- Writing final report and redrafting of the Bill will take place in December and will be completed by December 07- 12, 2002.

The final report and draft Bill will be submitted in December to the Attorney General who will submit it to Parliament.

MINUTE NO. 02/2002:

SENTIMENTS BY MEMBERS OF THE COMMITTEE

Members were concerned about what would happen if the review process was completed by December 2002. It was explained that the New Constitution would have transitional clauses which will put legal measures as preparations for the General Election take place.

On the reported controversy between Prof. Yash Pal Ghai and some Commissioners, Prof. Yash Pal Ghai admitted that there existed a rift between him and some Commissioners. He, however, observed that majority of the Commissioners were hardworking and dedicated to duty. The Chairman informed the meeting that he had received complaints that some Commissioners absent themselves when assigned to visit the constituencies while others attended but were never punctual.

Members asked Prof. Ghai to convey the concern of the Committee that being Commissioners was a full-time job and they should therefore take their assignments with dedication and seriousness.

Prof. Yash Pal Ghai also told the Members that a meeting will be held on April 22, 2002 to compare the time-tables for the review process. One time-table was prepared by a Committee which was chaired by Commissioner Githu Muigai and the other by Prof. Ghai, which he had presented to the Committee.

Members agreed to support the time-table by Prof. Ghai which indicated that the Review Process could possibly be completed by December 2002.

Prof. Ghai refuted claims that he had taken consultancy contracts in other countries. He said the claims were only aimed at undermining his credibility. He believed that his credibility could not be doubted because as far as he was concerned, the Kenyan Constitution was his tenth constitution to review.

MINUTE NO. 03/2002:

DATE OF NEXT SITTING

The Members agreed to meet all the Commissioners after the Commission had considered and adopted the timetable of the Review Process.

MINUTE NO. 04/2002:

ADJOURNMENT

And the time being thirty minutes past One O'clock, the Chairman adjourned the sitting.

CONFIRMED:

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(CHAIRMAN)

DATE:

.....

**MINUTES OF THE NINTH SITTING OF THE PARLIAMENTARY
SELECT COMMITTEE ON REVIEW OF THE CONSTITUTION OF
KENYA HELD IN THE MAIN CONFERENCE ROOM, COUNTY HALL,
PARLIAMENT BUILDINGS ON THURSDAY, FEBRUARY 21, 2002 AT
2.30 P.M.**

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. (Chairman)
The Hon. Musalia Mudavadi, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. Dr. Bonaya Godana, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Mathews A. Karauri, M.P.
The Hon. Albert A. Ekirapa, M.P.
The Hon. (Mrs) Zipporah Kittony, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Darius Mbela, M.P.
The Hon. Mwai Kibaki, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Michael K. Wamalwa, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. Felix Nyauchi, M.P.

ABSENT WITH APOLOGY:

The Hon. Prof. Sam Ongeru, M.P.
The Hon. Mohammed Affey, M.P.
The Hon. Daniel Khamasi, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. J.N. Bundi - Principal Clerk Assistant
Mr. David K. Ziah - Second Clerk Assistant

CONSTITUTION OF KENYA REVIEW COMMISSION

| | | |
|--------------------------------|---|-------------------------------|
| Prof. Yash Pal Ghai | - | Chairman |
| Dr. Oki Ooko Ombaka | - | 1 st Vice Chairman |
| Mrs. Abida Ali Aroni | - | Vice Chairperson |
| Ms. Kavetsa Adagala | - | Commissioner |
| Prof. Wanjiku Kabira | - | Commissioner |
| Mr. Abubakar Zein Abubakar | - | Commissioner |
| Mr. Domiziano Ziano Ratanya | - | Commissioner |
| Bishop Bernard Njoroge Kariuki | - | Commissioner |
| Mr. John Mutakha Kangu | - | Commissioner |
| Paster Zablon Ayonga | - | Commissioner |
| Dr. Mohamed A. Swazuri | - | Commissioner |
| Ms. Salome Wairimu Muigai | - | Commissioner |
| Ms. Nancy Baraza | - | Commissioner |
| Mr. Ahmed Isaack Hassan | - | Commissioner |
| Mr. Ibrahim Lethome Asmani | - | Commissioner |
| Dr. K Mosonik arap Korir | - | Commissioner |
| Mr. Isaac Lenaola | - | Commissioner |
| Dr. Charles Maranga | - | Commissioner |
| Ms. Pheobe Asiyo | - | Commissioner |
| Mr. P.L.O. Lumumba | - | Commission Secretary |

MINUTE NO. 34/2002

CONFIRMATION OF MINUTES

Confirmation of Minutes of the Previous Sitting was deferred to the next sitting.

MINUTE NO. 35/2002

PROGRESS REPORT ON THE REVIEW PROCESS

The Commission circulated to Members of the Committee a brief on its mandate and the progress made on the review process. The Chairman of the Commission explained as follows:-

That the Commission had established five working committees to oversee several specific tasks. The committees are:-

- Mobilization and Outreach Committee
- Civic education, Publicity, Information and Communication Committee
- Resource Development and Budgeting Committee
- Research, Drafting and Technical Support Committee
- Steering Committee

The Chairman went on to explain that since June 2001 the Commission had set up a secretariat, leased office premises and equipped and furnished the said offices. CKRC also advertised and filled up various positions at the secretariat.

On civic education provision, the Chairman reported that the Commission had come up with a list of partners which include Non-Governmental Organizations, Religious Organizations and other civic actors. The providers are required to sign a memorandum of understanding which is binding. They are also required to follow the curriculum for Civic Education. As part of Civic Education efforts, the Commission is holding radio programmes in English and Kiswahili.

Other activities that have taken place include holding of public hearings, establishment of documentation centres, a library at the Secretariat, District Documentation Centres and Constituency Constitutional Committees.

The CRKC Chairman reported that the Commission had started collecting views from organized groups and professional organizations. He further reported that the Ufungamano Initiative had presented a memoranda and views to the Commission on December 20, 2001.

The Chairman said that the Commission had held several workshops and seminars where local and foreign experts presented papers detailing their experience. The Commission had held a series of

meetings with special groups including parliamentarians and religious leaders among others.

Future activities were scheduled as follows:-

Seminars

- (i) February 19 – 28, 2002
Advisory Panel on Judges /Public Lecture.
- (ii) (a) March 8 – 9, 2002
Constitution, Transparent Government and Transitional Justice.
(b) March 21, 2002
Scholars Conference.
- (iii) March 19 – 20, 2002
Political Parties/Electoral Systems
- (iv) March 24 - 25, 2002
Legislative Reform.

Constituency Hearings will start on February 28, 2002.

MINUTE NO. 36/2002

**ISSUES RAISED BY MEMBERS
OF THE COMMITTEE**

Members raised issues with the Commission as follows:-

(i) **Time Frame for the Review Process**

Members were concerned as to whether the Commission would be able to complete its work by September, 2002 as mandated by the Constitution of Kenya (Amendment) Act, 2001.

The Commission explained that it had set up a committee to review the progress of the review process and will make a report with recommendations by April, 2003. Until that report is out, the Commission would not advise otherwise.

(ii) Conducting of Civic Education

Members raised concern over the manner in which civic education providers were selected, why there was inadequate allocation of resources to the exercise and that in some parts of the country no civic education was being conducted.

The Commission reported that through its studies it had established three kinds of groups which could be used in the provision of civic education. The first group had trainers on the ground and are well versed with provision of civic education e.g. the Non-Governmental Organizations. The second group consists of organizations with the right infrastructure, but lack resources such as the churches. The last group consists of unemployed people who have no resources and no infrastructure. In all these groups, the Commission said that they needed sufficient funds to enable them carry out civic education activities.

It was agreed that civic education would be a continuous process. The Committee resolved to take up the issue of funding with the relevant authority.

(iii) Financial Position of the Commission

The Commission gave a summary of its financial report as at 31st January, 2002. There was a surplus of Kshs. 283,178,644. The Commission was yet to receive its January to March quarter allocations.

The issue of donor funding was also raised. The Commission reported that donors who had earlier on expressed a wish to finance civic education had not done so because they felt they were already funding Non-Governmental Organizations, which could effectively carry out the exercise. However, a few donors had supported the Commission financially.

(iv) Retrenching the Review Process into the Constitution of Kenya

Members of the Select Committee reported that they would pursue the matter when the House resumes.

MINUTE NO. 37/2002

ADJOURNMENT

And the time being thirty minutes past Five O'clock, the Chairman adjourned the sitting until further notice.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

**MINUTES OF THE EIGHTH SITTING OF THE PARLIAMENTARY
SELECT COMMITTEE ON REVIEW OF THE CONSTITUTION OF
KENYA HELD IN THE MAIN CONFERENCE ROOM, COUNTY HALL,
PARLIAMENT BUILDINGS ON THURSDAY, OCTOBER 25, 2001 AT
10.00 A.M.**

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. (Chairman)
The Hon. Musalia Mudavadi, M.P.
The Hon. Prof. Sam Ongeru, M.P.
The Hon. Joseph Kamotho, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. Dr. Bonaya Godana, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Mathews A. Karauri, M.P.
The Hon. Albert A. Ekirapa, M.P.
The Hon. (Mrs) Zipporah Kittony, M.P.
The Hon. Gitobu Imanyara, M.P.
The Hon. Paul Muite, M.P.
The Hon. Felix Nyauchi, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. David K. Ziah - Second Clerk Assistant

CONSTITUTION OF KENYA REVIEW COMMISSION

Prof. Yash Pal Ghai - Chairman
Dr. Oki Ooko Ombaka - 1st Vice Chairman
Mrs. Abida Ali Aroni - Vice Chairperson
Ms. Kavetsa Adagala - Commissioner
Prof. Wanjiku Kabira - Commissioner
Mr. Riunga Raiji - Commissioner
Mr. Domiziano Ziano Ratanya - Commissioner
Bishop Bernard Njoroge Kariuki - Commissioner

| | | |
|----------------------------|---|----------------------|
| Mr. Paul Wambua | - | Commissioner |
| Mr. John Mutakha Kangu | - | Commissioner |
| Paster Zablon Ayonga | - | Commissioner |
| Dr. Abdirazak Arale Nunow | - | Commissioner |
| Mr. Githu Mungai | - | Commissioner |
| Dr. Mohamed A. Swazuri | - | Commissioner |
| Ms. Salome Wairimu Muigai | - | Commissioner |
| Ms. Nancy Baraza | - | Commissioner |
| Mr. Ahmed Isaack Hassan | - | Commissioner |
| Mr. Ibrahim Lethome Asmani | - | Commissioner |
| Dr. K Mosonik arap Korir | - | Commissioner |
| Mr. Isaac Lenaola | - | Commissioner |
| Dr. Charles Maranga | - | Commissioner |
| Hon. Amos Wako | - | Ex-Officio |
| | | Commissioner |
| Mr. P.L.O. Lumumba | - | Commission Secretary |

MINUTE NO. 31/2001

STATUS OF THE WORK OF THE COMMISSION

The Commission reported that it had started its preparatory work in June 2001. It started with in house workshops where some members of the Select Committee were invited. Research was undertaken to establish the infrastructure. District Co-ordinators had been employed and deployed in the District and would liaise with their respective area Members of Parliament to establish the district documentation centers and assist the Commission on the coordination of conducting civic education.

MINUTE NO. 32/2001-

DELIBERATIONS ON THE GUIDELINES FOR THE OPERATIONALIZATION OF THE CONSTITUENCY CONSTITUTIONAL FORUMS

Members agreed to the terms of reference for the Constituency Constitutional Committees without amendments.

They however raised the following issues to do with its composition:-

(i) Appointment of District Co-ordinators

Members expressed concern on the modalities used to appoint the District Coordinators. The Commission responded that the District Coordinators had been appointed after the positions had been advertised. The Commission had extended the time for receiving applications from North Eastern Province.

(ii) Area Members of Parliament as EX-officio Committee Members

Members pointed out the crucial role, which would be played by area Members of Parliament and wondered whether they could be substantive Members of the Committee. The Committee explained that the term "ex-officio" was used to mean that the Constituency Constitutional Committees would not be complete without the presence of the ex-officio members.

(iii) Guidelines

It was agreed that the Commission come up with broad guidelines on how the Constituency Constitutional Committees would be constituted.

(iv) Civic Education

Members wanted to know the relationship between the groups already providing civic education and the Commission and if there were training programmes put in place by the Commission for Members of the Constituency Constitutional Committees.

The Members also asked how the Commission was going to ensure a level playing field by making sure that the Constitution was translated in languages which all Kenyans can understand.

The Commission reported that it had developed a curriculum and a Code of Conduct for civic education providers. The requirements for providers of civic education was that they should have the capacity to conduct civic education, be non-partisan and not engage in advocacy. Such organizations would enter into a contract with the Commission for the conduct of civic education.

A paper summarizing the present Constitution would be finalized in English and Kiswahili.

(v) **Budgetary Allocation**

The Commission was to provide financial support to the Constituency Constitutional Forums. In this regard the Commission urged Members to support its budget proposals in Parliament. Money used would be accounted for by the Committee.

(vi) **Time Frame for the Review Process**

The Commission explained that it had a strategic plan, which was known in the public domain. Dates and activities were stipulated in the plan. The calendar would be reviewed after every three months. The first review was to be due on 1st November 2001 and if it was to be found that time would not be enough for the Commission to complete its work, the same would be reported to Parliament.

(vii) **Entrenchment of the Act in the Constitution**

The Chairman reported that the entrenchment of the Constitution of Kenya Review Act, 2001 in the Constitution would be done by Parliament before it went on recess.

MINUTE NO.33/2001

ADJOURNMENT

And the time being One O'clock, the Chairman adjourned the meeting till further notice.

CONFIRMED.....

(CHAIRMAN)

DATE:.....

**MINUTES OF THE SEVENTH SITTING OF THE SELECT COMMITTEE
ON CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS
ON THURSDAY, SEPTEMBER 11, 2001 AT 10.00 A.M.**

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. (Chairman)
The Hon. Musalia Mudavadi, M.P.
The Hon. Prof. Sam Ogeri, M.P.
The Hon. Joseph Kamotho, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Julius Sunkuli, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Albert A. Ekirapa, M.P.
The Hon. Darius Mbela, M.P.
The Hon. (Mrs) Charity Ngilu, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. Felix Nyauchi, M.P.

ABSENT WITH APOLOGY:

The Hon. Norman M.G.K. Nyagah, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Patrick Gichohi - Deputy Clerk
Mr. David K. Ziah - Second Clerk Assistant

MINUTE NO. 28/2001 - CONFIRMATION OF MINUTES

Minutes of the Sixth Sitting held on Wednesday, August 22, 2001 were confirmed by the Members present and signed by the Chairman.

MINUTE NO. 29/2001 - NOMINATION OF SECRETARY

- (i) The Chairman read and explained to Members the requirement of the Constitution of Kenya Review (Amendment) Act, 2001 in the event of the position of a secretary becoming vacant.

(ii) Method of Selection

It was agreed that the candidates appear before the Committee to give a brief on their suitability.

(iii) Interpretation of Section 11(3A)

Members agreed that the seven days when the Committee is required to table the names of the two candidates selected means seven days after Parliament reconvenes in October, 2001.

(iv) Nominations

With the consensus of Members that the ranking of the candidates did not matter since the President was free to choose any. The following were nominated:-

(a) Mr. Martin N. Wambora

(b) Mr. Patrick L. Otieno Lumumba

MINUTE NO. 30/2001 - ANY OTHER BUSINESS

- (i) The Chairman responded to Members' concerns that some utterances made by the Chairman of the Commission and reported by the media could erode the integrity of the Commission. He said the incident where Prof. Pal Ghai was reported to have suggested that Kenya adopts a system of transitional government was a misreport by the two media. Prof. Ghai was only contributing to a paper presented at the

conference by Prof. Ojwang of the University of Nairobi. In the incident where Prof. Ghai is reported to have said that North Eastern had been marginalized, he was merely making a summary of the day's contribution before the Committee. These contributions had been made by leaders from the province.

(ii) Entrenchment of the Constitution of Kenya Review (Amendment) Act, 3001. The issue was to be picked up with the House Business Committee when the House resumes in October.

(iii) The Chairman told Members that acts by the state which violated rights of individuals ought to be condemned. The Chairman said he had not condemned some of these incidents because he had not been furnished with the correct facts.

(iv) Alternate Commissioners

The position had been deleted from the Act.

(v) Civic Education

The Chairman reported that he had discussed with the Commission on the issue and it was agreed that anybody competent enough should be allowed to conduct civic education. This was because there was no single body which could be neutral enough to be trusted with this exercise.

(vi) The Press

The Chairman then addressed the Members of the Press. He briefed them on the nomination exercise and gave the two names which the Committee had selected. He reminded the press that it had a big role to play in the Constitution of Kenya Review process by reporting accurately the activities of the

Commission. He gave the examples of misreporting during the conference for the Commission in Mombasa where Prof. Ghai was reported to have asked Kenyans to adopt a system of transitional government.

MINUTE NO.30/2001

ADJOURNMENT

And the time being One O'clock, the Chairman adjourned the meeting.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

**MINUTES OF THE SIXTH SITTING OF THE SELECT COMMITTEE ON
CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS
ON WEDNESDAY, AUGUST 22, 2001 AT 10.00 A.M.**

PRESENT: The following Members of the Committee were present:-

The Hon. Raila A. Odinga, M.P. - Chairman
The Hon. Musalia Mudavadi, M.P.
The Hon. (Prof.) Sam Ongeru, M.P.
The Hon. Julius Sunkuli, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Mathews A. Karauri, M.P.
The Hon. Mohamed A. Affey, M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Daniel Khamasi, M.P.
The Hon. Njehu Gatabaki, M.P.

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mr. Justin Bundi - Principal Clerk Assistant
Mr. David K. Ziah - Second Clerk Assistant

ATTORNEY GENERAL'S CHAMBERS

The Hon. Amos Wako, EGH, M.P. - Attorney General

CONSTITUTION OF KENYA REVIEW COMMISSION

Prof. Yash Pal Ghai - Chairman
Prof. Ahmed Idha Salim - Vice-Chairman
Dr. Oki Ooko-Ombaka - Vice-Chairman
Ms. Abida Ali - Vice-Chairperson
Mr. Githu Muigai - Commissioner

| | | |
|---------------------------|---|--------------|
| Ms Salome W Muigai | - | Commissioner |
| Mr. Mohammed A. Swazuri | - | Commissioner |
| Ms Wanjiku M. Kabira | - | Commissioner |
| Mrs Phoebe M. Asiyó | - | Commissioner |
| Mr. Isaac Lomada | - | Commissioner |
| Mr. Ahmed Isaac | - | Commissioner |
| Ms Zein Abubakar | - | Commissioner |
| Mr. Riungu Roji | - | Commissioner |
| Mr. Abdirizak A. Nunow | - | Commissioner |
| Mr. Ibrahim Iledhome | - | Commissioner |
| Ms Kavetsa Adagala | - | Commissioner |
| Dr. Charles Maranga | - | Commissioner |
| Mr. Hastings Okoth-Ogendo | - | Commissioner |
| Pastor Ayonga | - | Commissioner |
| Mr. Domiziano M. Ratanya | - | Commissioner |
| Mr. Mutakha Kangu | - | Commissioner |
| Dr. Musonik arap Korir | - | Commissioner |

MINUNTE NO. 23/2001

CONFIRMATION OF PREVIOUS

Minutes of the Fifth Sitting were confirmed by the Members present and signed by the Chairman.

MINUNTE NO.24/2001

REMUNERATION OF THE
CHAIRMAN

The Attorney General gave a brief history on the negotiations that had taken place between the then Head of Civil Service and Secretary to the Cabinet, Dr. Richard Leakey, and himself. The Attorney General said the total emoluments for Professor Yash Pal Ghai was \$ 650,000 per year, tax free. Kenya could not meet this and hence after further negotiations a verbal agreement was reached where Prof. Yash Pal Ghai was to be paid \$ 20,000.

It was resolved that Prof. Yash Pal Ghai be paid what was verbally agreed, \$20,000 per month starting from the date of appointment to May 2001. Thereafter he should be remunerated as per the recommendations of the Select Committee.

On the relocation expenses from Hong Kong to Kenya, for Prof. Yash Pal Ghai, the Attorney General could not come up with a figure but it was agreed that the expenses will be reimbursed on production of receipts to support the expenses incurred.

A LETTER LAID

A letter by Prof. Yash Pal Ghai to Dr. Leakey was laid before the Committee. The letter indicated that Prof. Ghai be paid the \$20,000 plus a 14% gratuity, a house allowance and a business class airfare to Hong Kong per year for himself and his wife.

MINUNTENO.25/2001:

MEETING WITH THE CONSTITUTION OF KENYA REVIEW COMMISSION

The Commission informed the Members as follows: _

1. GENERAL BRIEFING

(i) Divisions among the Commissioners

It was reported that there were deep divisions among the Commissioners. These divisions were affecting the work of the Commission. The divisions were not between the Commissioners from the Ufungamano and the Commissioners selected by the Select Committee. The divisions have been caused by outside pressure from politicians.

The Committee advised that, since constitution review was a political exercise it was bound to be faced with external pressures from politicians. The integrity of the Commission is the only weapon to thwart divisions among Commissioners.

(ii) Management of Finances since the Commission started.

The Commission reported that until the Constitution of Kenya Review Act was amended, the Accounting Officer was the Clerk of the National Assembly. After amendment, the Secretary of the Commission became the Accounting Officer.

An analysis by the Commission indicate that more money is due to it. Only Kshs. 30,000,000 had so far been transferred to the Commission's Account. The Kshs. 60,000,000 which was transferred to the Ministry of Foreign Affairs is yet to be transferred to the accounts of the Commission.

The Commission requested that money due to it be transferred to the Commission because the accounts were currently very low and it would soon be impossible even to meet the financial obligations of the Commission as recommended in the package by the Select Committee.

(iii) Time Table of Activities

Members were told that at the moment, there was no need of asking for an extension for the work of the Commission. The Commission said that every effort would be made to make sure that the Commission complete its mandate in time. Extra time will be requested for if it becomes clear that the Commission will fail to beat the deadline of September, 2002 provided for in the Act.

2. REMUNERATION PACKAGE BY THE SELECT COMMITTEE

The Commission said that the figures recommended by the Select Committee were lower . The Committee would have considered areas for allowances, such as housing, sitting, responsibility and transportation.

It was resolved that a sub-committee of the Select Committee and that of the Commission will meet and deliberate on the issue of remuneration of the Commission and its budget.

3. CIVIC EDUCATION

It was resolved that allocation of resources shall not favour the urban areas and that there be equity allocation of these resources and that the exercise be spread to the rural areas. It was agreed that resources be allocated per constituency. Teachers in the rural areas will be used in the civic education activities.

4. PROGRESS ON THE WORK OF THE COMMISSION

The Commission reported that the visits to the provinces had established that Kenyans were eager to present their views. The exercise to collect public views will therefore start soon and will be concluded within two months.

MINUNTE NO.26/2001: DATE OF NEXT MEETING

The Secretariat to liaise with the Chairman to fix the date of the next meeting for the sub-committee.

MINUNTE NO.27/2001- ADJOURNMENT

And the time being Two O'clock, the Chairman adjourned the meeting.

CONFIRMED.....
(CHAIRMAN)

DATE:.....

MINUTES OF THE FIFTH SITTING OF SELECT COMMITTEE
ON CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS ON
WEDNESDAY, AUGUST 15, 2001 AT 11.00 A.M.

PRESENT: The following Members were present:-

The Hon. Raila A. Odinga, M.P. - Chairman
The Hon. Musalia Mudavadi, M.P.
The Hon. (Prof.) Sam Ongeru, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. (Dr) Bonaya Godana, M.P.
The Hon. Mathias Keah, M.P.
The Hon. (Mrs.) Zipporah Kittony, 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. Gitobu Imanyara, M.P.

ABSENT WITH APOLOGY:

The Hon. Njehu Gatabaki, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. David K. Ziah - Clerk Assistant II

MINUTE NO.17/2001:

CONFIRMATION OF MINUTES

The Minutes of the Fourth Sitting were confirmed by the members present and signed by the Chairman.

MINUTE NO. 18/2001: **MATTERS ARISING**

Ex-Minute No. 15/2001(i)

The Chairman reported that it was impossible for the Select Committee to meet the Commission in Mombasa because the Commission flew to Mombasa and came back to Nairobi the same day.

The Committee was informed that it was the desire of the Commission that a meeting be scheduled to discuss their working relationship with the Committee. The Committee therefore scheduled the meeting for Wednesday, August 22, 2001 at 10.00 a.m.

MINUTE NO.19/2001: **RENUMERATION OF**
COMMISIONERS

The Chairman reported that initially the remuneration of the Chairman of the Commission had been negotiated between Prof. Ghai and the then Secretary to the Cabinet and Head of the Civil Service, Mr. Richard Leakey. Where they had agreed on a package of \$ 20,000. Consultations continued with the Attorney General when the former left office, the Attorney General proposed that Prof. Ghai be paid \$15,000. Prof. Ghai himself agreed to be paid \$10,000 because he had some mortgage to service back in Hong Kong and due to the fact that he had applied for leave of absence from duty the University was not paying him.

The Chairman reported that the remuneration had been considered by the Sub-Committee in consultation with the Minister for Finance against the budget as allocated in the 2001/2002 fiscal year. This was in line with the provisions of the Constitution of Kenya Review (Amendment) Act, 2001.

The Chairman further reported that a meeting between himself, the Commissioners and Vice-Chairman was held where the proposals of the Sub-Committee were presented to them by the Chairman of the Select Committee.

The Committee deliberated on the recommendations by the Sub-Committee and resolved as follows:-

1. **Salary**
Adopted without amendments.
2. **Subsistence and Out-of-Pocket Allowances**
 - (a) (i) **Subsistence**
Adopted without amendment.
 - (ii) **Out-of-Pocket Allowances**
Deleted
 - (b) **Outside the Country**
Amended to read as follows:-

“Allowances equivalent to those payable to the Ministers in the case of the Chairman of the Commission and Members of Parliament in case of Commissioner or Secretary”.
3. **Remuneration of Staff**

Adopted with amendments as follows:-

That the words “ ... in accordance with the budget of the Commission” be added at the end of the sentence.

MINUTE NO. 20/2001:

LETTERS TO THE CONSTITUTION
OF KENYA REVIEW COMMISSION

The Secretariat was asked to write letters as follows:-

- (i) forwarding the remuneration scales as resolved by the Committee.
- (ii) request the Commission to forward its budget for scrutiny and approval as provided for by the Act.
- (iii) the Commission meeting with the Select Committee on Wednesday 22, 2001 at 10.00 a.m.

MINUTE NO. 21/2001:

ANY OTHER BUSINESS

Members expressed concern over the controversies reported by the Press on the Review Commission. The Committee resolved to give the Commission time to resolve the controversies.

MINUTE NO. 22/2001:

ADJOURNMENT

And the time being five minutes past Twelve O'clock, the Chairman adjourned the sitting until Wednesday, August 22, 2001 at 10.00 a.m.

CONFIRMED:
(CHAIRMAN)

DATE:

**MINUTES OF THE FOURTH SITTING OF SELECT COMMITTEE
ON CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
CONFERENCE ROOM, COUNTY HALL ON TUESDAY, JULY 24,
2001 AT 10.00 A.M.**

PRESENT: The following Members were present:-

The Hon. Raila A. Odinga, M.P. - Chairman
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Julius Sunkuli, M.P.
The Hon. Albert A. Ekirapa, M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Daniel Khamasi, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Paul Muite, M.P., M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. Felix Nyauchi, M.P.

ABSENT WITH APOLOGY:

The Hon. Mathias B. Keah, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Samuel W. Ndindiri- Clerk of the National Assembly
Mr. Justin N. Bundi - Ag. Principal Clerk Assistant
Mr. David K. Ziah - Clerk Assistant II

MINUTE NO.14/2001:

CONFIRMATION OF MINUTES

The Minutes of the Third Sitting were confirmed by the members present and signed by the Chairman.

MINUTE NO.15/2001:

BUDGET FOR THE COMMISSION

The Clerk reported that he had written a letter to the Commission requesting to be provided with the annual budget. The Chairman responded that they had not finalized the budget.

The Committee resolved that:

- (i) The Select Committee should arrange a meeting to consult with the Commission preferably while the Commission will be touring Mombasa.

The agenda of meeting would be consideration of the budget for the Commission and discuss the working relationship between the Select Committee and the Commission.

- (ii) The Chairman of the Select Committee, the Minister for Finance, the Clerk of the National Assembly together with the Attorney General will meet on Wednesday, July 25, 2001 to deliberate on the remuneration of the Chairman of the Commission as resolved by the Committee in its third sitting.

MINUTE NO. 15/2001:

ADJOURNMENT

And the time being Twelve O'clock, the Chairman adjourned the sitting. The next meeting will be called on notice.

CONFIRMED:
(CHAIRMAN)

DATE:

**MINUTES OF THE THIRD SITTING OF SELECT COMMITTEE
ON CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
CONFERENCE ROOM, COUNTY HALL ON TUESDAY, JULY 17,
2001 AT 11.30 A.M.**

PRESENT: The following Members were present:-

The Hon. Raila A. Odinga, M.P. - Chairman
The Hon. Musalia Mudavadi, M.P.
The Hon. (Prof). Sam K. Ogeri, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Julius Sunkuli, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Mathews A. Karauri, M.P.
The Hon. Mohamed Affey, M.P.
The Hon. Darius Mbela, M.P.
The Hon. (Mrs.) Zipporah Kittony, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Martha Karua, M.P.
The Hon. Paul Muite, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. Felix Nyauchi, M.P.

ABSENT WITH APOLOGY:

The Hon. Albert A. Ekirapa

IN ATTENDANCE: **NATIONAL ASSEMBLY**

Mr. Samuel W. Ndindiri - Clerk of the National Assembly
Mr. Murumba Werunga - Deputy Clerk
Mr. Justin N. Bundi - Ag. Principal Clerk Assistant
Mr. David K. Ziah - Clerk Assistant II

MINUTE NO.09/2001:

CONFIRMATION OF MINUTES

The Minutes of the Second Sitting were confirmed by the members present and signed by the Chairman.

MINUTE NO.10/2001:

MATTERS ARISING

Members agreed to renumber the Terms of Reference so that number Six (6) be numbered as number Seven (7) and vice visa.

Purchase of Vehicles for the Commissioners

The Clerk of the National Assembly informed the Members that proper procurement procedures had been followed during the purchase of the vehicles. He further reported that the vehicles were already in the high seas and are expected in the country by the first week of August, 2001.

Members deferred debate on the matter till such a time when they will examine the budget of the Constitution of Kenya Review Commission.

MINUTE NO.11/2001:

REMUNERATION FOR COMMISSIONERS

The Committee discussed proposals presented by the Sub-Committee looking into the Remuneration of the Commissioners. It was proposed that the Commissioners and Secretary take home an income of between Kshs. 300,000 - 350,000 after tax per month made up of the following:-

- Salary
- Sitting Allowance
- Accommodation and
- Transport Allowance

The Committee mandated the Sub-Committee to discuss with the Minister for Finance the proposed salaries as stipulated in the Act. The proposals of salary and allowances for the Chairman of the Commission would be concluded after consultation with the Attorney General.

MINUTE NO. 12/2001: ANY OTHER BUSINESS

The Secretariat was asked to circulate to Members a document entitled “Strategic Plan” by the Constitution of Kenya Review Commission.

MINUTE NO. 13/2001: ADJOURNMENT

And the time being ten minutes past One O'clock, the Chairman adjourned the sitting until Tuesday, July 24, 2001 at 10.00 a.m.

CONFIRMED:
(CHAIRMAN)

DATE:

**MINUTES OF THE SECOND SITTING OF SELECT COMMITTEE
ON CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
CONFERENCE ROOM, COUNTY HALL ON THURSDAY, JUNE
21, 2001 AT 10.00 A.M.**

PRESENT: The following Members were present:-

The Hon. Raila A. Odinga, M.P. - Chairman
The Hon. (Prof). Sam K. Ongeru, M.P.
The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Mathias Keah, M.P.
The Hon. Darius Mbela, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. Daniel Khamasi, M.P.
The Hon. Gitobu Imanyara, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Felix Nyauchi, M.P.
The Hon. Otieno Kajwang', M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. Isaac Ruto, M.P.
The Hon. Joseph J. Kamotho, M.P.
The Hon. (Mrs.) Zipporah J. Kittony, M.P.

ABSENT WITH APOLOGY:

The Hon. Musalia Mudavadi, M.P.
The Hon. Mathews A. Karauri, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Mohammed Affey, M.P.
The Hon. Mwai Kibaki, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.
The Hon. Albert A. Ekirapa, M.P.
The Hon. Paul Muite, M.P.
The Hon. Kijana Wamalwa, M.P.
The Hon. Martha Karua, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Samuel W. Ndindiri - Clerk of the National Assembly
Mr. Murumba Werunga - Deputy Clerk
Mr. Justin N. Bundi - Ag. Principal Clerk Assistant
Mr. David K. Ziah - Clerk Assistant II

MINUTE NO.04/2001:

CONFIRMATION OF MINUTES

The Minutes of the First Sitting were confirmed by the members present and signed by the Chairman.

MINUTE NO.05/2001:

**CONSIDERATION OF THE TERMS
OF REFERENCE OF THE SELECT
COMMITTEE**

The following were agreed as the Terms of Reference of the Committee:-

1. To assist the National Assembly in its functions under the Constitution of Kenya Review (Amendment) Act.
2. To recommend to the National Assembly suitably qualified persons for appointment as Commissioners and Secretary.
3. To resolve disputes arising in the course of the review process as may be referred to them by the National Assembly.
4. To determine the remuneration and allowances of the Commissioners and the Secretary in consultation with the Minister for Finance.
5. To scrutinise and approve the budget of the Commission in consultation with the Minister for Finance.
6. To perform such other functions as the National Assembly may by Resolution assign.

7. To facilitate the work of the Commission.

MINUTE NO.06/2001:

CONSIDERATION OF THE
CONSTITUTION OF KENYA
REVIEW COMMISSION BUDGET

1. The Chairman invited the Clerk of the National Assembly to present the budget of the Commission for Fiscal Years 2000/2001 and 2001/2002. The Clerk then informed the Members that:-
- (i) the proposed estimates had been prepared by a Committee which had been set up by the Government and chaired by the Solicitor General. The Committee had studied the remuneration of other Commissions set up earlier.
 - (ii) in the Fiscal Year 2000/2001 the sum allocated was Kshs. 300 million. However, the Commission had requested for an addition of Kshs. 299,283,500 during the revised estimates which was not granted. In the Fiscal Year 2001/2002, the estimated sum submitted was Kshs. 1,950,510,000 but the Treasury finally allocated Kshs. 1.1 billion, which is reflected in the 2001/2002 Estimates of Expenditure.
2. The Committee resolved to establish a Sub-Committee to study the issue of remuneration of the Commissioners and Secretary. The report of the Sub-Committee would assist the Select Committee set remuneration for the Commissioners. The following Members were appointed:-

The Hon. Raila A. Odinga, M.P. (Chairman)
The Hon. Mathias Keah, M.P.
The Hon. Daniel Khamasi, M.P.
The Hon. Kiraitu Murungi, M.P.

The Hon. Isaac Ruto, M.P.
The Hon. Darius Mbela, M.P.

MINUTE NO. 07/2001: ANY OTHER BUSINESS

1. The Chairman reported that the Constitution of Kenya Review Commission had resolved to move from Hazina Towers to KENCOM House. It was expected that KENCOM House which was already partitioned would reduce rental costs.
2. The issue of the purchase of vehicles for the Commission, which had generated public debate, was discussed. The Clerk explained that proper procedures were followed in placing the order for twenty five (25) Nissan Patrol vehicles for Commissioners. Consequently an order had been placed with Messrs D.T. Dobie for a vehicle which was on Government Tender.

The Committee discussed the matter at length and Members were of the view that the Commissioners should be facilitated to perform their duties in the most convenient manner.

The decision to buy the vehicles had been made by an Inter-ministerial Committee appointed by the Government and Commissioners had presented their request to the Clerk based on that recommendation. The Finance Committee had further discussed the matter and approved the purchase.

Members mandated the Chairman of the Select Committee to follow up the matter with the Clerk and the Chairman of the Commission.

MINUTE NO. 08/2001: ADJOURNMENT

And the time being fifty minutes past Eleven O'clock, the Chairman adjourned the sitting. The next meeting will be called on notice.

CONFIRMED:
(CHAIRMAN)

DATE:

**MINUTES OF THE FIRST SITTING OF SELECT COMMITTEE ON
CONSTITUTION OF KENYA REVIEW HELD IN THE MAIN
CONFERENCE ROOM, COUNTY HALL ON FRIDAY, JUNE 15,
2001 AT 10.00 A.M.**

PRESENT: The following Members were present:-

The Hon. (Prof). Sam K. Ongeru, M.P.
The Hon. Raila A. Odinga, M.P.
The Hon. Musalia Mudavadi, M.P.
The Hon. Joseph J. Kamotho, M.P.
The Hon. Julius L. Sunkuli, M.P.
The Hon. Isaac K. Ruto, M.P.
The Hon. Mathews A. Karauri, M.P.
The Hon. Fred Gumo, M.P.
The Hon. Mohammed A. Affey, M.P.
The Hon. Darius M. Mbela, M.P.
The Hon. Zipporah J. Kittony, M.P.
The Hon. Mwai Kibaki, E.G.H., M.P.
The Hon. Norman M.G.K. Nyagah, M.P.
The Hon. Martha Karua, M.P.
The Hon. Kijana Wamalwa, M.P.
The Hon. Gitobu Imanyara, M.P.
The Hon. (Mrs) Charity K. Ngilu, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Otieno Kajwang', M.P.

ABSENT:

The Hon. (Dr.) Bonaya Godana, M.P.
The Hon. Kalonzo Musyoka, M.P.
The Hon. Mathias B. Keah, M.P.
The Hon. Albert A. Ekirapa, M.P.
The Hon. Daniel Khamasi, M.P.
The Hon. Paul K. Muite, M.P.
The Hon. Felix Nyauchi, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Samuel W. Ndindiri- Clerk of the National Assembly
Mr. Justin N. Bundi - Ag. Principal Clerk Assistant
Mr. David K. Ziah - Clerk Assistant II

MINUTE NO. 01/2001:

ELECTION OF THE CHAIRMAN

(i) **Remarks by the Clerk**

The Clerk called the meeting to order and asked Members to give proposals for the position of chairman.

(ii) **Proposals for Chairman**

The Hon. Mwai Kibaki proposed Hon. Darius Mbela who was seconded by Hon. Njehu Gatabaki. The Hon. Raila Odinga was proposed by Hon. Zipporah Kittony and seconded by Hon. Kajwang'. Hon. Mbela thereafter withdrew and Hon. Raila Odinga was declared elected unopposed.

(iii) **Reservations**

Following the election, one Member (the Hon. Karua) requested that her reservations be recorded that traditionally Select Committees were ordinarily not chaired by a Minister. The Clerk, however, explained that though this was the practice the Standing Orders did not bar a Minister from chairing a Select Committee.

(iv) **Remarks by the Chairman**

The Chairman thanked his colleagues for electing him and urged them to forget the past differences and work together.

MINUTE NO. 02/2001: ANY OTHER BUSINESS

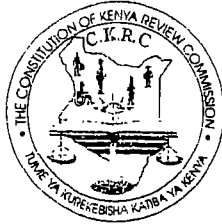
- (a) The Clerk of the National Assembly undertook to table the budget of the Constitution of Kenya Review Commission budget on Thursday, June 21, 2001.
- (b) The Clerk was asked to exercise good judgement and proper procedure on any capital expenditure for the Commission until the budget is considered by the Committee.
- (c) The Terms of Reference of the Select Committee would be agreed upon during the next meeting.

MINUTE NO.03/2001: ADJOURNMENT

And the time being thirty minutes past Eleven O'clock, the Chairman adjourned the sitting until Thursday, June 21, 2001 at 10.00 a.m.

CONFIRMED:.....
(CHAIRMAN)

DATE:



CONSTITUTION OF KENYA REVIEW COMMISSION

Kencom House, 2nd Floor P.O. Box 10526, Tel: 343601/2 Fax: 343603 Nairobi
Email: CRCKenya@nbnnet.co.ke, Website: www.kenyaconstitution.org

CKRC/S/CONF./02

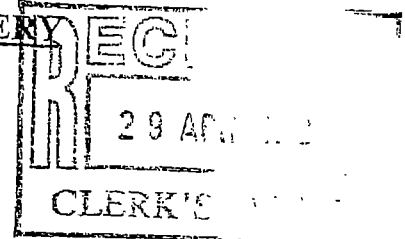
29/4/2002

Mr. Samuel Ndindiri
Clerk to the National Assembly
Parliament Buildings
NAIROBI



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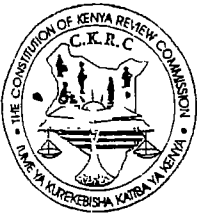
Dear Sir,

**RE: MEMORANDUM OF REQUEST TO THE NATIONAL ASSEMBLY FOR
EXTENSION OF TIME UNDER SECTION 26 (3) OF THE
CONSTITUTION OF KENYA REVIEW ACT (CAP 3A)**

At its 50th Plenary meeting held on March 27, 2002, the CKRC discussed and announced that it was no longer possible to complete those aspects of its work set out above, by October 4, 2002 as anticipated by Section 26 (1) of the Act. The CKRC therefore agreed that it would request extension of time, as required by the Act. After careful consideration of all relevant issues, the CKRC finally determined, at its 52nd Plenary meeting held on April 25, 2002, that it will be able to complete its part of the work on or about March 15, 2003 should there be need for one.

Duly instructed by the Commission, I now enclose herewith a formal memorandum of request under Section 26 (3) of the Constitution of Kenya Review Act Cap 3A of the Laws of Kenya for formal consideration by Parliament.

/2



CONSTITUTION OF KENYA REVIEW COMMISSION

Contd...

-2-

I am further directed by the Commission to point out to Parliament as indicated in the Press Statement of the 25th April, 2002 that if it is desirable that the new Constitution should be enacted before the end of the statutory life of the present Parliament expires in early, February, 2003, this objective can only be achieved if Parliament amends Section 27 (1) (a) and (b) of the Review Act to reduce from 60 days to 30 days the period of public discussions and comments on the recommendations, and if the provincial hearings scheduled to take place thereafter were eliminated to save an additional ten (10) days. This saving of six weeks would enable the Commission to present the draft Constitution to the National Assembly in January, 2003 if no referendum were required, and in April 2003 with referendum.

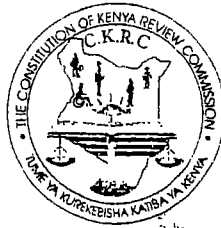
We take the liberty of copying this covering letter and a copy of the Memorandum of request to the Chairman of the Parliamentary Select Committee for information and necessary action.

Please do now take the appropriate legal steps to communicate the Commission's request to Parliament.

Yours faithfully,
for: CKRC

PLO – LUMUMBA
COMMISSION SECRETARY

Cc: Hon. Raila A. Odinga
Minister for Energy &
Chairman of the
Parliamentary Select Committee
Parliament Buildings



CONSTITUTION OF KENYA REVIEW COMMISSION

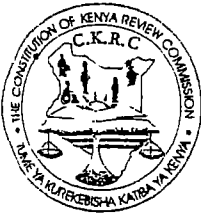
Kencom House, 2nd Floor P.O. Box 10526, Tel: 343601/2 Fax: 343603 Nairobi
Email: CRCKenya@nbnet.co.ke, Website: www.kenyaconstitution.org

PRESS STATEMENT

The Constitution of Kenya Review Commission held a meeting today, 25 April, 2002 to discuss the time frame for the completion of the review process in accordance with the Constitution of Kenya Review Act. The Commission has determined that it will be able to complete its part of the review process by 15th March, 2003 if there were no necessity to hold a referendum. However, if a referendum were necessary, which it would be if the National Constitutional Conference were unable to agree on all or any proposals for constitutional change, the completion date would be 15 May, 2003. The work of the Commission is complete when it submits the draft constitution to the National Assembly (see. 26 (1) and (2)), and the entire review process is complete when Parliament enacts the draft Bill.

If it is desirable that the new Constitution should be enacted before the end of the statutory life of the present Parliament expires in early February, 2003, this objective can only be achieved if Parliament amends Section 27 (1) (a) and (b) of the Review Act to reduce from 60 days to 30 days the period of public discussions and comments on the recommendations, and if the provincial hearings scheduled to take place thereafter were eliminated to save an additional ten (10) days. This saving of six weeks would enable the Commission to present the draft Constitution to the National Assembly in January 2003 if no referendum were required, and in April 2003 with a referendum.

Meanwhile, the Commission will continue its examination of the procedures of all the organs of review in order to expedite and complete the comprehensive review of the Constitution.

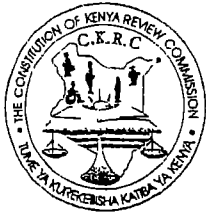


CONSTITUTION OF KENYA REVIEW COMMISSION

The Commission is now preparing its request to the National Assembly for the extension of time for the completion of its work in accordance with the above decision as required by section 26 (3).

**DATED AND SIGNED BY ALL COMMISSIONERS AT NAIROBI
THIS DAY OF 2002.**

1. Prof. Yash Pal Ghai
2. Dr. Oki O. Ombaka
3. Prof. Ahmed Idha Salim
4. Mrs. Abida Ali-Aroni
5. Mrs. Phoebe Asiyo
6. Dr. M. A. Swazuri
7. Dr. Charles Maranga Bagwasi
8. Salome Wairimu Muigai
9. Mrs. Alice Yano
10. Prof. Wanjiku Kabira
11. Dr. Abdirizak Arale Nunow
12. Bishop Bernard Njoroge Kariuki
13. Pastor Zablon Ayonga
14. Nancy Makokha Baraza
15. Mr. Mutakha Kangu



CONSTITUTION OF KENYA REVIEW COMMISSION

16. Ms. Kavetsa Adagala
17. Mr. Paul Musili Wambua
18. Mr. Abubakar Zein Abubakar
19. Mr. Ahmed Issack Hassan
20. Mr. Riunga Raiji
21. Mr. Ibrahim Lethome
22. Mr. Keriako Tobiko
23. Mr. Githu Muigai
24. Mr. Isaac Lenaola
25. Prof. H. W. O. Okoth-Ogendo
26. Dr. K. Mosonik arap Korir
27. Mr. Domiziano Ratanya
28. Hon. Amos Wako
29. PLO - Lumumba

Kavetsa Adagala

Present

~~*Present*~~

Present

~~*Present*~~

~~*Present*~~

Present

~~*Present*~~

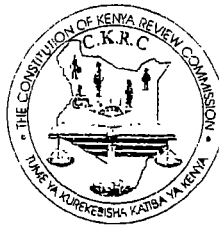
Present

~~*Present*~~

Present

~~*Present*~~

Present



CONSTITUTION OF KENYA REVIEW COMMISSION

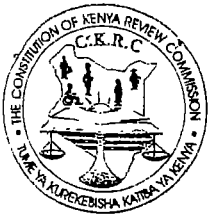
Kencom House, 2nd Floor P.O. Box 10526, Tel: 343601/2 Fax: 343603 Nairobi
Email: CRCKenya@nbnet.co.ke, Website: www.kenyaconstitution.org

CONSTITUTION OF KENYA REVIEW COMMISSION

MEMORANDUM OF REQUEST TO THE NATIONAL ASSEMBLY FOR EXTENSION OF TIME UNDER SECTION 26 (3) OF THE CONSTITUTION OF KENYA REVIEW ACT (CAP 3A)

.....

1. The process of constitutional review, which began with the appointment of the Constitution of Kenya Review Commission (CKRC) in November 2000, will end when a new constitution is enacted by the National Assembly in accordance with Section 28(4) of the Constitution of Kenya Review Act (Cap 3A of the Laws of Kenya), (herein the Act). Upon enactment of a new constitution, the Attorney-General must, under Section 33(1) of the Act, table in Parliament, a Bill to repeal the Act. Upon enactment of that Bill, the CKRC will stand dissolved and the tenure of office of Commissioners will expire.
2. To facilitate the proper conduct of the review process Section 26 of the Act requires that certain aspects of CKRC's work must be completed within twenty-four months of the commencement of the Act i.e. October 4, 2002. Those aspects of the CKRC's work which must be so completed are:
 - visiting all constituencies in Kenya to take views from the public;
 - compiling reports of Constituency Constitutional Fora;
 - convening and conducting the National Constitutional Conference;
 - conducting and recording the decision of the Referendum, and



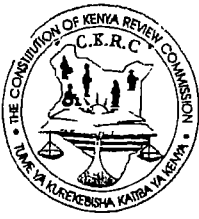
CONSTITUTION OF KENYA REVIEW COMMISSION

- drafting a Bill for presentation to Parliament.

Pursuant to that provision, the CKRC is required to perform the following specific tasks:

- collect views from all 210 constituencies in the country,
- collate and analyze those views;
- prepare constituency reports, and a national report;
- on the basis of the national report, draft a bill to alter the constitution;
- publish and disseminate the national report and draft bill throughout Kenya for a mandatory period of sixty days;
- facilitate public discussion and debate on the content of the national report and draft bill, by holding public hearings in all provinces;
- convene and conduct the National Constitutional Conference;
- revise the national report and draft bill if necessary;
- prepare for and conduct a national referendum on any matter in respect of which the National Constitution Conference has failed to agree;
- on the basis of the decision of the National Constitutional Conference and the Referendum, prepare the Final Report and draft Bill, and
- present the final report and draft bill to the Attorney-General for introduction to the National Assembly.

The Act provides in sub-section (3), however, that where the CKRC considers this period inadequate, it may, at least twelve (12) months after the commencement of its work, request an extension of that period by the National Assembly.



CONSTITUTION OF KENYA REVIEW COMMISSION

3. At its 50th Plenary meeting held on March 27, 2002, the CKRC discussed and announced that it was no longer possible to complete those aspects of its work set out above, by October 4, 2002 as anticipated by Section 26(1) of the Act. The CKRC therefore agreed that it would request extension of time, as required by the Act. After careful consideration of all relevant issues, the CKRC finally determined, at its 52nd Plenary meeting held on April 25, 2002, that it will be able to complete its part of the work on or about March 15, 2003, without a referendum, and May 15, 2003 should there be need for one. In making this determination, the Commission has considered a number of preliminary and substantive issues.
4. The preliminary issues the CKRC has considered are that:
 - between November 2000 and June 2001, the Commission was not in a position to execute any of the tasks listed in Section 26(2) of the Act because of the need to negotiate and conclude the merger with the Ufungamano Initiative;
 - before and during the execution of any of the tasks listed in Section 26(2), the Act requires the Commission to establish and operationalise a complex national infrastructure consisting, inter-alia, of:
 - ♦ establishment of a fully fledged national and constituency-based secretariat;
 - ♦ organization of work and procedures of the Commission;
 - ♦ establishment of documentation centres;
 - ♦ launching of infrastructure for civic education;
 - ♦ carrying out of studies, researches and evaluations;
 - ♦ deliberating upon and resolving the constitutional reform agenda and disseminating the same to the public; and



CONSTITUTION OF KENYA REVIEW COMMISSION

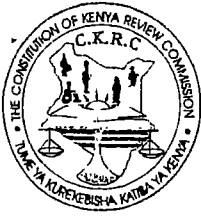
- ♦ there was need for the Commission itself to spend considerable time and resources in pursuance of its obligation under Section 17(a) to conduct and facilitate civic education in order to stimulate discussion and awareness of constitutional issues.

Concern with those issues meant that the Commission was not in a position to commence work on any of the activities listed in Section 26(2) until March, 2002.

5. The substantive issues the CKRC has considered are:

- the overall objective of the review process which is the comprehensive review of the Constitution by the people of Kenya;
- the obligation placed by Section 5(d) of the Act upon all organs of review, namely the CKRC, the Constituency Constitutional Forums, the National Constitutional Conference, the Referendum and the National Assembly, to ensure that the final outcome of review "faithfully reflects the wishes of the people of Kenya";
- the need for a technically, proficient and objective method of work including analysis and reporting;
- the absolute necessity to ensure that the provisions of the Act are followed and respected, and
- the need to provide the National Constitutional Conference, and the National Assembly with the transitional infrastructure necessary for the immediate operationalization of a new Constitution, once enacted.

6. Currently the CKRC is in the process of collecting views from all constituencies. That exercise is complete in Central Province and is scheduled to begin in the Coast Province on April 29, 2002. Concurrently with that exercise, the CKRC has established machinery for the analysis of all data and information so far received and for the drafting of those aspects of the National report that need not wait until constituency hearings are over. Advance planning for the National Constitutional Conference is also under way.



CONSTITUTION OF KENYA REVIEW COMMISSION

7. As required by Section 26(2) of the Act, therefore, the CKRC is requesting the National Assembly for the extension of the period necessary for the completion of its work from October 4, 2002 upto and including May 15, 2003. This includes the time which will be required to conduct and record the decision of the people at a referendum, should need for this arise.
8. The CKRC wishes to emphasize that the enactment of a new Constitution for Kenya is the responsibility of all organs of review. Whereas the CKRC will work tirelessly towards that end, other organs and especially the National Constitutional Conference and the National Assembly also carry responsibility for ensuring that a new Constitution is enacted within that time frame.

CONSTITUTION OF KENYA REVIEW COMMISSION

TIME SCHEDULE

| <u>ACTIVITY</u> | <u>TIME/DURATION</u> |
|--|--|
| 1. Constituency Visits | 29 th April, 2002 – 8 th August, 2002 |
| 2. Collation and analysis | To be complete by 8/9/2002 |
| 3. Compilation of the National Report | To take 3 weeks. To be completed by 4/10/2002 |
| 4. Draft Bill | To take 14 days. To be completed by 18/10/2002 |
| 5. Publication and dissemination of the report | To take 60 days. To be completed by 24/12/2002. |
| 6. Provincial Public Hearings | To be on 27 th – 31 st Dec. 2002. |
| 7. Pre-conference activities | To take 1 week. To be done within the 60 days as indicated in No. 5 above. |
| 8. Holding of National Constitutional Conference | To take 1 month. To be completed by 1 st of February, 2003 |
| 9. Completion without Referendum | To take 2 months. To be completed by 15/3/2003. |
| 10. Completion with Referendum | 15/5/2003. |
| 11. | |
| 12. | |

NOTE: The Constitution of Kenya Review Act provides that the Referendum (if necessary) be held within 60 days after the National Constitutional Conference.

**THE CONSTITUTION OF KENYA REVIEW
COMMISSION (CKRC)**

SUMMARY OF WORK DONE TO DATE

20TH FEBRUARY 2002

THE EXECUTIVE BRIEF

1.0 INTRODUCTION

The Constitution of Kenya Review Commission is established under the Constitution of Kenya Review Act Chapter 3A of the Laws of Kenya. The Commission has formulated a Strategic Plan, which is aimed at providing a comprehensive overview of the Commission's work and operations. The Strategic Plan is currently under review following the intensification of the Commission's activities in the last five months.

2.0 CKRC MANDATE

The Constitution of Kenya Review Commission (CKRC) is mandated under Section 18 of the Constitution of Kenya Review Act:

- to visit every constituency in Kenya to receive the views of the people on the Constitution
- without let or hindrance, receive memoranda, hold public or private hearings throughout Kenya and in any other manner, collect and collate the views and opinions of Kenyans, whether resident in or outside Kenya and for that purpose the Commission is empowered to summon public meetings of the inhabitants of any area for the discussion of any matter relevant to the functions of the Commission
- may summon any public officer to appear in person before it or before a committee or to produce any document or thing or information that may be considered relevant to the functions of the Commission.

The Commission is currently finalising a programme to start visiting Constituencies to collect views from the public.

3.0 WORKING COMMITTEES

The Commission has established five working committees to oversee several specific tasks aimed at ensuring efficiency and speed in its discharging its mandate. These committees are:

- Mobilization and Outreach Committee
- Civic Education, Publicity, Information and Communication Committee
- Resource Development and Budgeting Committee
- Research, Drafting and Technical Support Committee
- Steering Committee

4.0 ESTABLISHMENT OF THE SECRETARIAT

Since the month of June 2001, the Commission set up a Secretariat, leased office premises and equipped and furnished the said offices. CKRC has also advertised and filled up various positions at the Secretariat. This has gone a long way in providing a working headquarter's that is both convenient and accessible to the Commissioners, Secretariat staff and the general public.

5.0 CIVIC EDUCATION

In discharging its mandate, the CKRC is required to take the primary responsibility in conducting, promoting and facilitating civic education. The Commission has come up with a list of partners, which include NGOs, religious organisations and other civil actors, with whom civic education will be provided. The providers are required to sign a *Memorandum of Understanding*, which is binding. Further, all partners will be required to strictly follow a set code of conduct, which inter alia expects them to be non-partisan.

All civic education providers are also required to follow the *Curriculum for Civic Education*, which has been prepared by the Commission. This process has already started and will precede the collection of views from the constituencies. As part of Civic Education Process, the Commission is holding Radio Programmes at the KBC National Service (Kiswahili) between 11 a.m. and 12 p.m. and the General Service (English) between 3 p.m. and 4 p.m. on Sundays.

6.0 PUBLIC HEARINGS

6.1 "Questions and Issues"

The Commission has come up with "Questions and Issues" for Public Hearings which are aimed at forming a broad guideline for wananchi in presenting their views and memoranda to the Commission; for discussion at Constituency Constitutional For a; for the Commission itself in the collection of views, and for all the other organs of the review process. A pullout of the same was distributed countrywide in the local dailies, namely, the Daily Nation of 25th November 2001 and the East African Standard of 23rd December 2001. Copies are also being placed in all the Documentation Centres countrywide. These "Questions and Issues" are only guidelines and they are not exhaustive neither are they meant to inhibit any individual or group from raising other questions or issues of constitutional consequences

7.0 DOCUMENTATION CENTRES AND LIBRARIES

7.1 National Documentation Centre and Library

A Documentation Centre and a library is operational at the Secretariat and is open to the general public from 8 am to 5 pm. Materials available at the Centre include,

Constitutions of various Countries of the World, Verbatim Reports, Newspaper Articles, Periodicals and Journals on topics of interest, the current Constitution, and other related materials.

7.2 District Documentation Centres and Constituency Constitutional Committees (CCCs)

Pursuant to the Act, the Commission has established Documentation Centres in all the districts. Constituency Constitutional Committees have also been constituted in these districts to act as a facilitative vehicle in mobilization and outreach activities in the constituency as well as perform other non-executive roles.

8.0 PARTNERS

8.1 Provincial Administration

In addition to the other partners, the Commission recognizes the provincial administration as another important partner in the review exercise. Very successful workshops for the provincial administration were held on 22nd November 2001 throughout the country during which important suggestions came up on how their administration network can be used to help in attainment of the Commission's objectives, particularly regarding mobilization and outreach activities. These workshops were held in Provincial Headquarters, namely, Kakamega, Nairobi, Mombasa, Nyeri, Embu, Garissa, and Kisumu.

9.0 COLLECTING VIEWS

9.1 Organised Groups and Professional Bodies

Faced with time constraints, the Commission has already started collecting views from organized groups and professional organisations. These sessions held at all provincial headquarters have drawn impressive participation indicating Kenyans eagerness to participate in the making of their new Constitution.

9.2 The Ufungamano Memoranda

The Memoranda and Views that had been collected by the then Ufungamano Initiative was presented to the Commission on 20th December 2001. This is a strong indication of support and trust.

10.0 CKRC WEBSITE

The Commission recognizes the advent of information technology in the modern world and in view of this, we have set up a website under the following address, <http://www.kenyaconstitution.org>. The website has information about the background of the Commission, Frequently Asked Questions, The Current Constitution, Public Lecture Series/ Consultation Documents/Acts, The Review Process, Press Releases/News/Announcements,

Created on 20/02/2002

Civic Education, The Review and the Young People of Kenya, and much more. The CKRC website has also been linked with the Kenya National Archives website and the Nation Newspapers website, www.nationaudio.com. Reports indicate that CKRC Online Supplement is the most visited in the Nation Website. The logs show that the CKRC Online Supplement has registered magical growth in hits during its second month online, rising from 40 545 previously to 405 582 in the month under review. This represents a 1 000.3 % growth, a major statement on how useful the target audience find the supplement on Nation Internet.

11.0 WORKSHOPS AND SEMINARS

The Commission has held several workshops and seminars where both local and foreign experts presented papers detailing their experience gained from different parts of the world and on different issues of critical interest. The seminars held have been on:

- Devolution of Power
- Gender Question
- Independence Constitution
- Interpretation of CKRC Mandate
- Culture, Ethics, Ideology

The experts who have presented during these seminars include; Sir Lord Steel, Prof. Ali Mazrui, Prof. Richard Simeon and Prof. Ron Watts, Dr. Christina Murray, Dr. Ahmed Abdullahi Ahmed An - Na'im, Dr. Peter Wanyande, Dr. Gerishom Ikiara and Prof. B. A. Ogot. These reports are being made available to all the District Documentation Centres countrywide and efforts are being made to provide the same in audio and video format. Other seminars are being planned.

12.0 MEETINGS WITH SPECIAL GROUPS

The Commission has held a series of meetings with several groups aimed at ensuring that all Kenyans regardless of their status are involved in the Review Process. These groups include:

- 12.1 Religious Leaders
- 12.2 Women Organizations
- 12.3 Children
- 12.4 The Disabled
- 12.5 The Media
- 12.6 The Aged
- 12.7 Parliamentarians

Meetings with the Judiciary and other stakeholders are scheduled to take place soon.

13.0 DISTRICT VISITS

The Commission recently (21st January 2001 – 31st January 2001) visited all the Seventy (70) Districts in the Country including Nairobi to brief the Civic Education Providers and Constituency Constitutional Committees in preparation for the collection of views at the Constituency level.

14.0 FUTURE ACTIVITIES (SEMINARS)

| <u>Seminar</u> | <u>Dates</u> |
|--|--|
| i. Advisory Panel on Judges/Public Lecture | - 19 th – 28 th February, 2002 |
| ii. Political Parties/ Electoral Systems | - 19 th – 20 th March, 2002 |
| iii. (a) Constitution, Transparent Government and Transitional Justice | - 8 th -9 th March, 2002 |
| (a) Scholars Conference | - 21 st March, 2002 |
| (v) Legislative Reform | - 24 th – 25 March, 2002 |

More seminars are being organized and dates will be communicated to the public.

15.0 CONSTITUENCY HEARINGS

The Commission will start the Constituency Hearings on the 28th February 2002. Details of the programme will be released in due course.

LAW SOCIETY OF KENYA

Presentation to the Parliamentary
Select Committee on the
Extension of the Constitutional
Reform Process

1

LSK's MANDATE

- Submissions in furtherance of Section 4 of the Law Society Act
- To assist the Committee in defining the issues under consideration
- To assist the Committee to reach a decision that would be in the best interests of Kenya & the reform process

2

EXTENSION OF TIME

- By a memorandum the CKRC has submitted a request to the National Assembly for extension of time.
- The extension is intended to facilitate the completion of the work of the CKRC in accordance with the provisions of Cap 3A

3

INITIAL TIME LINES

- Within 24 months of the commencement of the Act i.e. 4th October, 2002
- Power to extend time is provided for by Section 26 (3)
- Application to be made 12 months after the commencement of its work
- Request to be made to the National Assembly

APPLICATION FOR EXTENSION TIME

- Request for extension of time made as follows.
- March, 15, 2003, if no Referendum required
- May 15, 2003, if a Referendum required

5

UNCOMPLETED TASKS AT TIME OF REQUEST

- Constituency visits
- Collation and analysis
- Compilation of National Report
- Draft Bill
- Publication and dissemination of report
- Provincial public hearings
- National Constitutional Conference
- Submission of Bill and enactment

KEY CONCERNS (1)

- Expiry of the term of Parliament on or about the 2nd/3rd February, 2003
- Presentation of Bill to AG on 15th March, 2003, when there will be no Parliament.
- Holding of referendum between March and May, 2003 which could coincide with the drama of general elections & scuttle the process

KEY CONCERNS (2)

- Interruption between the National Conference and the presentation of the Bill due to, the dissolution of Parliament or the elections.
- Elections will not held under a new constitution
- Bill would be passed by a new Parliament

KEY CONCERNS (3)

- The process has not been entrenched in the Constitution and there is no guarantee that a new parliament will necessarily complete the process
- Possibility of early elections after implementation of new constitution.
- Extension will escalate costs

ATTRACTIONS

- The process proceeds at a reasonable pace
- All stages in the process will be undertaken
- Completion not necessarily pegged to the general elections
- Consensus by most Commissioners on the time-lines suggested

10

SHOULD TIME BE SAVED ?

- Suggestions:
- Constituencies to visited in panels of 2 and not 3
- Reduction in the dissemination period for the bill
- Abolition of provincial hearings
- Attending to drafting tasks alongside hearings

11

EFFECT OF SAVINGS ON PROCESS

- Completion without Referendum in January, 2003
- Completion with Referendum in February, 2003
- Saving would be 2 -3 months
- Completion before expiry of Parliament
- Elections under new constitution

12

KEY CONCERNS

- Process may be perceived as rushed
- The need for a great deal of consensus building and political will at every stage of process or completion date will not be met
- Limited time to implement new constitutional electoral provisions under new Constitution, unless specific transitional mechanisms provided for

11

OTHER CONSIDERATIONS

(1)

- De-link review process from elections and succession
 - Releases pressure from review process
 - Elections under existing constitution
 - Allows for sufficient time for implementation of new constitutional order
 - Entrenchment of process necessary
 - Early elections under new constitution may be necessary - therefore expensive

14

OTHER CONSIDERATIONS

(2)

- Minimum Reforms
 - To facilitate free and fair elections
 - May only serve interests of the political class
 - May negate concept of people driven comprehensive reform
 - IPPG revisited

15

OTHER CONSIDERATIONS

(3)

■ Interim Constitution

- Not a clear concept
- If subjected to the same process as a comprehensive reform, time would not be saved
- May negate concept of a people drive comprehensive review process
- Consensus building may be difficult

16

OTHER CONSIDERATIONS

(4)

■ Extension of Life of Parliament

- Undemocratic
- Parliament may not dissolve itself upon completion of process or may delay process
- Not a popular proposal
- Constitution does not allow extension of this nature

17

OTHER CONSIDERATIONS

(5)

■ Disclosure of Election Date

- Presidential prerogative
- All timelines & considerations held captive to a unknown election date
- Assumptions made on life of Parliament which can be dissolved at any time
- Disclosure of election date could assist in planning of review process

18

EVALUATION STRATEGY

- Key Tests:
- Comprehensive, inclusive and participatory & democratic
- Facilitates completion within reasonable time
- Assists the country surmount anxiety of elections and serves interests of a peaceful transition
- Is cost effective

19

POSTIVE ENGAGEMENT

- Consensus building & tolerance
- Positive participation by all stakeholders
- Closer monitoring of process to ensure timelines are met
- Wholehearted rededication to the process

20

HOLDING ON FOR CHANGE

- "Those who are fired with an enthusiastic idea and who allow it to take hold and dominate their thoughts find that new worlds open for them. As long as enthusiasm holds out, so will new opportunities..."

21

Proposed amendments to the Constitution of Kenya Review Act

Amendments directed towards saving time

1. Section 27(1)(a)(i) – this requires the report of the CKRC and the draft constitution to be published for a period of 60 days before formal hearings and the meeting of the National Constitutional Conference. *The CKRC has recommended that this could be reduced to 30 days.*
2. Section 27(1)(b) – upon the expiry of 60 days, CKRC is required to hold hearings in provinces and invite and receive memorandum. *The CKRC has recommended that this provision could be deleted altogether.* Indeed it is not clear what its purpose is.
3. Section 27(7) states that the referendum must be held ‘within two months of the National Constitutional Conference. This period could be reduced to one month.
4. Section 28(3) – reduce time between presentation to and publication of the draft bill by the Attorney General from ‘within’ 14 days to ‘within’ 7 days.
5. Section 28(4) – reduce the period for the tabling of the Bill from ‘at the expiry’ of 14 days of the publication to ‘within’ 7 days.
6. Delete the following words from Section 28(4): ‘of the day when the Assembly next sits’. This amendment will require the National Assembly to proceed with the enactment of the Bill immediately after the proposed ‘within’ 7 days of publication, rather than when it might otherwise meet.

Other amendments

7. Section 21(6) provides for voting by two-thirds of the CKRC Commissioners on a constitutional proposal. Amend to read, 51% of the Commissioners present and voting’.
8. Referendum under Section 27(5) of the Act - this section should be amended to provide that issues to be decided by referendum should be supported by two-thirds of the voting members of the Constitutional Conference.

9. Section 27(5) deals with the method of voting and requires a vote of 'at least two-thirds of the members of the National Constitutional Conference' for a decision on a proposal to be included in the constitution. However, not all the members of the Conference have a vote - Commissioners of the Review Commission do not (Section 27(2)(a)). Amend Section 27(5)(i) and 27(5)(ii) to state that for the purpose of working out the two-thirds vote, only the number of voting members be taken into account.
10. Two-thirds of the votes of all the members (Section 27(5), even if restricted to voting members, seems too high, given the expected rate of absenteeism. Amend to read, 'the votes of two-thirds of the members present and voting', (as in the Uganda Constituent Assembly).
11. Section 33 which provides for the dissolution of the CKRC be amended to read, 'The Commission shall stand dissolved on the enactment of the constitution'. (There may not be enough time for a special bill to dissolve the Commission).
12. Amend Section 15(4) to include:-
 - (d) May while exercising the supervisory powers and providing direction do the following:-
 - (i) withhold the salary and allowances of Commissioners.
 - (ii) Suspend a Commissioner for misconduct.
 - (iii) Declare the office of a Commissioner vacant for breach of the provisions of this Act.

