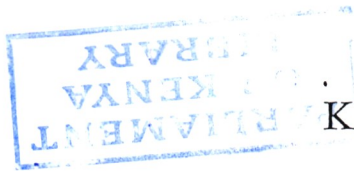




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TENTH PARLIAMENT - FOURTH SESSION, 2010

# Report of the Parliamentary Select Committee on the Review of the Constitution

With the Report and Draft Constitution prepared by the  
Committee of Experts pursuant to section 33 (2) of the  
Constitution of Kenya Review Act, 2008

1st March 2010

## PREFACE

**Mr. Speaker, Sir,**

The National Assembly appointed the Parliamentary Select Committee on the Review of the Constitution through a Resolution of the House on Wednesday, 17<sup>th</sup> December, 2008. The Select Committee is established pursuant to the provisions of section 7 of the Constitution of Kenya Review Act (No. 9 of 2008).

Section 7 of the Review Act states as follows-

- 1) *The National Assembly shall establish, in accordance with its standing orders, a Select Committee to be known as the Parliamentary Select Committee on the Review of the Constitution (hereinafter referred to as the "Parliamentary Select Committee") consisting of twenty seven Members, to assist the National Assembly in the discharge of its functions under this Act.*
- 2) *In constituting the Parliamentary Select Committee, the National Assembly shall ensure regional and gender balance in the composition of the Committee.*

The Committee comprises the following Members-

The Hon. Mohammed Abdikadir, M.P.	-	<b>Chairperson</b>
The Hon. Ababu Namwamba, M.P.	-	<b>Vice-Chairperson</b>
The Hon. Martha Karua, M.P.		
The Hon. Uhuru Kenyatta, M.P.		
The Hon. Mutula Kilonzo, M.P.		
The Hon. David Musila, M.P.		
The Hon. Moses Wetangula, M.P.		
The Hon. Danson Mungatana, M.P.		
The Hon. Wilfred Moriasi Ombui, M.P.		
The Hon. Kambi Kazungu, M.P.		
The Hon. Amina Abdallah, M.P.		
The Hon. Peter Munya, M.P.		
The Hon. Mwangi Kiunjuri, M.P.		
The Hon. Jeremiah Kioni, M.P.		
The Hon. Ekwee Ethuro, M.P.		
The Hon. Isaac Ruto, M.P.		
The Hon. Musalia Mudavadi, M.P.		
The Hon. Chachu Ganya, M.P.		
The Hon. Najib Balala, M.P.		
The Hon. Omingo Magara, M.P.*		
The Hon. Sally Kosgei, M.P.		
The Hon. William Samoei Ruto, M.P.		
The Hon. James Orengo, M.P.		

The Hon. Millie Odhiambo, M.P.  
The Hon. Sophia Abdi, M.P.  
The Hon. Joseph Nkaissery, M.P.  
The Hon. Charity Ngilu, M.P.

Among the functions of the Parliamentary Select Committee, in terms of the constitution was to constitute the four main bodies to deal with the constitutional review process namely, the Committee of Experts, the Interim Independent Electoral Commission, the Interim Independent Boundaries Review Commission and the Interim Independent Constitutional Dispute Resolution Court.

**Mr. Speaker, Sir,**

The Parliamentary Select Committee has held 46 sittings so far in the performance of its functions under the Review Act.

In accordance with the provisions of Standing Order 172, the minutes of the Select Committee are hereby attached as appendix 1.

The Select Committee is satisfied that it has discharged its mandate with regard to the four constitutional bodies by nominating persons for appointment by the House. The bodies are now in place and performing their functions as provided for by Statute. The appended Report and draft Constitution are products of the Committee of Experts which is one of the bodies mentioned above.

The Committee of Experts was mandated by the Review Act to identify the issues already agreed upon in the existing draft Constitutions, identify the issues which are contentious or not agreed upon, solicit and receive from the public written memoranda and presentations on the contentious issues and do such other things as are incidental or conducive to the attainment of objects and principles of the review process.

In particular, the Committee of Experts was required pursuant to section 32 (1)(a) of the Review Act to prepare a report and harmonized draft Constitution and ensure that the documents are made available to the public for a period of 30 days. Thereafter, the Committee of Experts was required to review the draft and incorporate the views of the public and present the Report and Revised harmonized draft to the Select Committee.

The Committee of Experts accordingly submitted these documents to the PSC on 8<sup>th</sup> January, 2010.

The Select Committee held a retreat at Naivasha between 18<sup>th</sup> -28<sup>th</sup> January, 2010 to scrutinize the Revised Harmonized draft Constitution and made recommendations pursuant to section 33(1) of the Review Act.

Let me take this opportunity to commend the members of the Select Committee for putting aside partisan interests and achieving consensus on the contentious issues.

On 29<sup>th</sup> January, 2010 the Select Committee presented its Report and Recommendations to the Committee of Experts as required under section 33(1) of the Review Act.

The Committee of Experts then revised the draft Constitution and re-submitted to the Select Committee the final report and draft Constitution on 24<sup>th</sup> February, 2010. In revising the draft, the Committee of Experts was required by section 33(1) of the Review Act to take into account the achieved consensus. The Select Committee notes with appreciation the work done by the CoE in this respect. The PSC has however identified a number of areas where the Committee of Experts did not take full account of the consensus arrived at by the Parliamentary Select Committee and consequently, the House as one of the organs of review is invited to consider these issues and make appropriate decisions. These issues include:-

- |                      |   |
|----------------------|---|
| a) <b>Chapter 8</b>  | - The Legislature;                          |
| b) <b>Chapter 10</b> | - The Judiciary;                            |
| c) <b>Chapter 11</b> | - Devolved Government; and                  |
| d) <b>Chapter 18</b> | - Transitional and Consequential provisions |

Let me take this opportunity to thank members of the Select Committee for their patience, sacrifice, endurance and hard work in, facilitating the completion of the comprehensive review of the constitution.

**Mr. Speaker, Sir,**

The Committee wishes to sincerely thank the offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. Further, the Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their tireless efforts and efficiency made the work of the Committee and the production of this Report possible.

**Mr. Speaker, Sir,**

In accordance with section 33(2) of the Constitution of Kenya Review Act, it is now my humble duty and privilege to present the Report and Draft Constitution prepared by the Committee of Experts for consideration by the House.

**Thank You.**

Signed .....

  
CHAIRMAN  
(HON. ABDIKADIR MOHAMMED, MP)

1<sup>st</sup> March, 2010

Date: .....

\* *ceased being a Member of Select Committee on 17<sup>th</sup> December, 2009 upon nullification of election by an electoral court.*