

REPUBLIC OF KENYA

EIGHTH PARLIAMENT - FOURTH SESSION

REPORT
OF THE COMMITTEE
ON ADMINISTRATION OF JUSTICE
AND LEGAL AFFAIRS
ON
THE CONSTITUTION OF KENYA
REVIEW (AMENDMENT) BILL, 2000

PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2000

INTRODUCTION

Mr. Speaker, Sir,

On behalf of the Members of the Departmental Committee No. G on Administration of Justice and Legal Affairs, it is my humble duty and privilege to present the report of the Committee on the Constitution of Kenya Review (Amendment) Bill, 2000.

Mr. Speaker, Sir,

Departmental Committees are creations of this House as provided under Standing Order 151(1) and exist as set out in the schedule to the Standing Orders.

The mandate of my Committee covers the following areas:-

Constitutional affairs and the administration of law and justice (Police and Judiciary departments); Public prosecution; Elections .

This means that in terms of constitutional issues, Parliament cannot be a bystander because it has a mechanism to not only participate but to fully contribute to ensure that there exists not just a Constitution, but more significantly, Constitutionalism.

Mr. Speaker, Sir,

The Committee is composed of the following Members:-

1. The Hon. Otieno G. Kajwang, MP. (**Chairman**)
2. The Hon. John M. Katuku, MP (Vice Chairman)
3. The Hon. Cyrus J. Jirongo, MP
4. The Hon. Fahim Twaha, MP
5. The Hon. Mohamed Shidiye, MP
6. The Hon. Elias B. Shill, MP
7. The Hon. Eric T. Morogo, MP
8. The Hon. Peter E. Maundu, MP
9. The Hon. Kiraitu Murungi, MP
10. The Hon. James K. Kibicho, MP
11. The Hon. Enock N. Magara, MP

Mr. Speaker, Sir,

The Committee held three Sittings to consider the Constitution of Kenya Review (Amendment) Bill, 2000 and the recommendations we are presenting today were adopted by the majority. (The Minutes of the Sittings are annexed to this report).

OBSERVATIONS AND RECOMMENDATIONS

The Committee noted with grave concern that the House passed a Resolution on 15th December, 1999 to constitute another Committee to review the purportedly flawed Constitution of Kenya Review Act, 1997 when a forum existed within the framework of Parliament to not only review the Act but also examine the whole spectrum of Constitutional law in Kenya.

The Committee therefore finds it untenable for the House to refer the Bill to the Committee after it has been prepared and agreed upon by another Committee of the House.

The Committee is, in essence, expected to "rubber-stamp" the report of another Committee which should not have been there in the first place, a role our Committee found unacceptable.

Indeed, the Committee on Administration of Justice and Legal Affairs summoned various stakeholders in the review process in a bold and transparent attempt to jump-start the process but the Committee was denied Secretariat services and a meeting room.

However, there were other forces that were opposed to the initiative which were strong enough to successfully frustrate the Committee's efforts before establishing another Committee.

In other words, it is the Committee on Administration of Justice which has the *Locus standi* on Constitutional matters in general and specifically on the proposals contained in the Bill. The fact that the task to examine the 1997 Review Act was given to another Committee amounted to meddling in the work of my Committee and symbolised an overwhelming element of bad faith and trickery. It is our considered opinion that the so-called select Committee that reviewed the Constitution of Kenya Review Act, 1997 was unnecessary, mischievous and bound to fail having wasted colossal amounts

of public funds. That notwithstanding, ninety-one (91) Members of this House have appended their signatures to a declaration affirming that they will oppose a constitutional amendment Bill presented by the Attorney General emanating from the proposed Constitution of Kenya Review Commission and this is a very strong signal that even if the Review Bill, 2000 was to sail through Parliament, it will fail at the last hurdle as it will lack the requisite sixty-five percent majority, having wasted enormous public resources.

In conclusion, the Committee strongly believes that so far, the review process has been wrought with suspicion, ill will and bad faith, factors which are not conducive to the review of a constitution anywhere in the world.

The Committee, therefore, strongly recommends that the Constitution of Kenya Review (Amendment) Bill, 2000 be shelved or deferred for the time being to allow Kenyans from all walks of life to build consensus and confidence in the process.


This will give them an opportunity to retrace their steps, to establish rapport and mutually map out the way forward in the review process.

The Committee was in agreement that constitution making is about people and as much as we love to pursue constitutional review initiatives, we know deep down our hearts that if we are to have a new constitution that guarantees the survival of Kenya as a body politic, nobody can go it alone.



**THE HON. OTIENO G. KAJWANG' MP
CHAIRMAN**

**DEPARTMENTAL COMMITTEE ON
ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS**

SIGNATURE.....*3rd July, 2000*.....

DATE:.....

MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN COMMITTEE ROOM NO.9, PARLIAMENT BUILDINGS ON TUESDAY, JUNE 13, 2000 AT 4.00 P.M.

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

The Hon. Otieno G. Kajwang, M.P. - Chairman
The Hon. John M. Katuku, M.P.
The Hon. Peter E. Maundu, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. James K. Kibicho, M.P.
The Hon. Enock N. Magara, M.P.

ABSENT WITH APOLOGY

The Hon. Mohamed Shidiye, M.P.
The Hon. Eric T. Morogo, M.P.

ABSENT WITHOUT APOLOGY

The Hon. Cyrus Jirongo, M.P.
The Hon. Fahim Twaha, M.P.
The Hon. Elias B. Shill, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. S. Njenga - Clerk Assistant III

MIN.NO.32/2000

CONSIDERATION OF THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL, 2000

Members of the Committee made the following remarks on the Bill:-

(i) **Hon. Kiraitu Murungi**

- The Democratic Party of Kenya did not participate in the Motion establishing the Committee that wrote the report which culminated into The Constitution of Kenya Review (Amendment) Bill, 2000 because it had misgivings about the dimension the review process was taking.

- The work of the Raila Committee could have been undertaken successfully by the Committee on Administration of Justice and Legal Affairs.
- The Committee on Administration of Justice and Legal Affairs cannot be used to "rubber-stamp" a flawed process.
- The Committee should act in the interest of the country.
- Ninety-one MPs have signed a declaration affirming that they will oppose a Constitutional Amendment Bill after its presentation to the House emanating from the work of the proposed Review Commission which will hence deny the Bill the requisite sixty-five per cent. The process in its present form will therefore end in futility.

(ii) **Hon. James K. Kibicho**

- The Bill should be shelved to explore consultative avenues as a Constitution is a contract between the governors and the governed.

(iii) **Hon. J. Katuku**

- The Committee should recommend to the House that the Bill be shelved to allow for further consultations amongst Kenyans on the way forward in the review process.

(iv) **Hon. E. Magara**

- The Bill is a bad piece of legislation as it gives excessive powers to the President, a situation the country is trying to run away from.

- All stakeholders should go back to Safari Park and re-negotiate.

(v) **Hon. P. Maundu**

- The Committee has no *locus standi* to consider the Bill as it is based on a report prepared by another House Committee, completely ignoring the relevant Committee.
- The Bill goes against the spirit and principle of constitution making and hence bound to end in futility.

The Committee directed the Secretariat to draft a report on the Bill based on the sentiments expressed by Members.


Paper Laid

Hon. Kiraitu Murungi laid a declaration signed by ninety-one(91) Members of Parliament alleged to be against the Constitutional Amendment Bill to be presented by the Attorney General from the recommendations of the proposed Review Commission.

MIN.NO.33/2000

ADJOURNMENT

And there being no other business for discussion, the Chairman adjourned the sitting at thirty minutes past Five O'clock until Wednesday, June 14, 2000 at 4.00 p.m.

CONFIRMED 
(CHAIRMAN)

DATE ..14.6.2000.....

**MINUTES OF THE EIGHTEENTH SITTING OF THE COMMITTEE ON
ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN
COMMITTEE ROOM NO.9, PARLIAMENT BUILDINGS ON
WEDNESDAY, JUNE 14, 2000 AT 4.00 P.M.**

PRESENT: The following Members of the Committee were present.

The Hon. Otieno G. Kajwang, M.P. - Chairman
The Hon. John Katuku, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. James K. Kibicho, M.P.
The Hon. Enock N. Magara, M.P.

ABSENT WITH APOLOGY

The Hon. Mohamed Shidiye, M.P.
The Hon. Eric T. Morogo, M.P.

ABSENT WITHOUT APOLOGY

The Hon. Cyrus Jirongo, M.P.
The Hon. Fahim Twaha, M.P.
The Hon. Elias B. Shill, M.P.
The Hon. Peter E. Maundu, M.P.

IN ATTENDANCE NATIONAL ASSEMBLY

Mr. S. Njenga - Clerk Assistant III

**MIN.NO.34/2000 CONSIDERATION OF THE REPORT ON THE
CONSTITUTION OF KENYA REVIEW
(AMENDMENT) BILL, 2000**

- The Committee considered the report and agreed that it was a true reflection of the Committee's position on the (Amendment) Bill, 2000.
- The Committee, however, postponed any further deliberations on the report awaiting the input/participation of other Members who were absent.
- Consequently, the Committee scheduled a meeting for Wednesday, June 21, 2000 at 4.00 p.m when the final report on the Bill will be agreed upon.

MIN.NO.35/2000

ADJOURNMENT

And there being no other business for discussion, the chairman adjourned the sitting at forty minutes past four O'clock until Wednesday, June 21, 2000 at 4.00 p.m.

CONFIRMED 
(CHAIRMAN)

DATE ..21st June, 2000..

**MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON
ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN
COMMITTEE ROOM NO.9, PARLIAMENT BUILDINGS ON
WEDNESDAY, JUNE 21, 2000 AT 4.00 P.M.**

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

The Hon. Otieno G. Kajwang, M.P. - Chairman
The Hon. John Katuku, M.P.
The Hon. Fahim Twaha, M.P.
The Hon. Elias B. Shill, M.P.
The Hon. Eric T. Morogo, M.P.
The Hon. Kiraitu Murungi, M.P.
The Hon. James K. Kibicho, M.P.
The Hon. Enock N. Magara, M.P.

ABSENT WITH APOLOGY

The Hon. Mohamed Shidiye, M.P.

ABSENT WITHOUT APOLOGY

The Hon. Cyrus Jirongo, M.P.
The Hon. Peter E. Maundu, M.P.

IN ATTENDANCE NATIONAL ASSEMBLY

Mr. S. Njenga - Third Clerk Assistant

**MIN.NO.36/2000 CONSIDERATION OF THE REPORT ON THE
CONSTITUTION OF KENYA REVIEW
(AMENDMENT) BILL, 2000**

- The Chairman appraised the Members on the deliberations of the Committee during the previous sitting culminating into the report.
- Members of the Committee made the following remarks on the report:-

(i) **Hon. O. Kajwang'**

The mandate of the Committee is restricted to the study and review of legislation after First Reading and therefore the Committee has a

responsibility to consider the Review Bill, 2000 and make its recommendations.

- If the Committee does not fulfil its mandate, it will be abusing its privileges.

(ii) **Hon. J. Katuku**

- Concurred with the contents of the report.

(iii) **Hon. J. Kibicho**

- The Chairman should have disqualified himself from the Chair during the consideration of the Review Bill, 2000 owing to his role in the Raila Committee.
- The report should be presented to the House as it reflects the Committee's position on the matter in question.

(iv) **Hon. E. Morogo**

- The Committee cannot run away from reality. Its decision on the Bill negates the wishes of the majority in the House.
- The report represents the views of MPs against the Resolution of December 15, 1999 which established the Raila Committee.

(v) **Hon. Kiraitu Murungi**

- The report enjoys the support of the majority and hence constitutes the Committee's resolution.
- The minority voice should, however, be recorded.
- The mandate of the Committee as provided under Standing Order 151(4)(c) should be interpreted within the general framework of the Committee as set out in the schedule.
- Looking at the broad context, the Committee has considered the Bill and taken appropriate decision.

(vi) **Hon. Elias B. Shill**

- The Committee is properly constituted and its decision which is supported by the majority binding.

(vii) **Hon. E. Magara**

- The facts in the report should be presented to the House as they are.

(viii) **Hon. Fahim Twaha**

- Understands the Committee's annoyance that another Committee was set up to duplicate its work.
- However, the fact remains that the House resolved to establish the Raila Committee.
- Any misgivings the Committee might have had about the Raila Committee should have been raised during the Motion.
- The report appears to be strongly influenced by the MPs who signed a declaration affirming that they will oppose a constitutional amendment Bill emanating from the work of the proposed Review Commission. This is contrary to the principle of anticipating debate and it's therefore prejudicial.
- The duty of the multi-party Committee is to impartially and objectively deal with the matters presented to it.
- Failure to implement the directive of the House by considering the Bill is contemptuous.

Accordingly, the Committee, upon a division, resolved to adopt the report on the Bill as follows:-

AYES - 5

1. Hon. Elias B. Shill
2. Hon. Kiraitu Murungi
3. Hon. James Kibicho
4. Hon. Enock Magara
5. Hon. John Katuku

NAY - 3

1. Hon. Otieno G. Kajwang'
2. Hon. Eric Morogo
3. Hon. Fahim Twaha

MIN.NO.37/2000

ADJOURNMENT

And there being no other business for discussion, the Chairman adjourned the sitting at forty minutes past five O'clock.

CONFIRMED 
(CHAIRMAN)

DATE ..29th..June..2000:.....