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PREFACE

Mr. Speaker, Sir,

The National Dialogue and Reconciliation Committee formed to spearhead mediation talks after the post-election conflict identified under Agenda 4, the critical need to complete the comprehensive review of the Constitution to address underlying issues behind the political crisis in early 2008 following the 27 December 2007 presidential election dispute. The constitution review process stalled after a referendum in 2005.

Subsequently, the Coalition Government formulated and enacted two Bills, namely the Constitution of Kenya Review Act (No. 9 of 2008) and the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The Constitution of Kenya Review Act provides for the Parliamentary Select Committee and Committee of Experts as important organs of the completion of the review process of the Constitution.

Parliamentary Select Committee on the Review of the Constitution is established pursuant to the provisions of Section 7 of the Constitution of Kenya Review Act (2008) and section 123 of the Constitution.

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.**

Section 123 of the Constitution provides as follows-

"Parliamentary Select Committee" means the Parliamentary Select Committee on the Review of the Constitution".

On Wednesday, 17th December 2008, Parliament appointed, through a resolution of the House, the 27-member Parliamentary Select Committee comprised of the following Members-

The Hon. Mohammed Abdikadir, M.P.
The Hon. Ababu Namwamba, M.P.
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.

The Parliamentary Select Committee held its first sitting on Friday, December 19, 2008. The first Business of the Committee was the election of the Chairperson and Vice-Chairperson. The Hon. Mohammed Abdikadir, M.P. and the Hon. Ababu Namwamba, M.P., were elected as Chairperson and Vice-Chairperson, respectively. Thereafter, the Committee deliberated on its Terms of Reference relating to setting up of four 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 constitution of the Committee of Experts was concluded in February 2009. The report of the Parliamentary Select Committee on the nomination of the Director and Members of the Committee of Experts was discussed and approved by the House on Tuesday, 10th February, 2009. The Members of the Committee of Experts were sworn-in on Monday, 2nd March 2009.

Section 2 of the Constitution of Kenya (Amendment) Act (No. 10 of 2008) repealed Section 41 of the Constitution that established the Electoral Commission of Kenya. This paved the way for setting up of the Interim Independent Electoral Commission (IIEC).

On Wednesday, 18th February 2009, the Committee tabled the list of nominees for the positions of Chairperson and Members of the IIEC which composed of the following-

1. Mr. Cecil G. Miller - Chairperson
2. Mr. Suleman Y. Buko - Member
3. Ms. Tiyah Galgalo - Member
4. Ms. Hamara Ibrahim Adan - Member
5. Mr. Kenneth Nyaundi - Member
6. Dr. Yusufu Nzibo - Member
7. Ms. Winifred Waceke Guchu - Member
8. Mr. Davis Chirchir - Member
9. Capt. (Rtd.) Charles Masinde - Member

Following subsequent debate on the nominees by the House on Thursday, 19th February, 2009, the matter was referred back to the Committee after the House held reservations on the nominee for the position of chairperson and two nominees for Members of the IIEC.

At its meeting of Monday, 23rd February 2009, the Committee resolved that the position of Chair be re-advertised and to replace the two nominees for the membership of the IIEC. The re-advertisements were published in the daily newspapers on Tuesday, 3rd March, 2009 and on Friday, 6th March, 2009. Twenty one (21) applicants for the position of Chairperson of the IIEC were received. With the assistance of a human resource firm, M/S Manpower Services (K) Ltd, the Committee processed all the applications for the

position of Chair of IIEC, including those from the earlier advertisement. The human resource firm was procured in January 2009 in accordance with the Public Procurement and Disposal Act, 2005.

After consideration of the applications received, the Committee nominated the Chairperson from a shortlist of twelve (12) candidates interviewed for the position of the Chair. The Committee also filled the vacant positions on the nominees of Membership of the IIEC for which the House had expressed reservations.

The Committee therefore recommends the following nominees for the positions of the Chairperson and Members of the IIEC-

1. Mr. Ahmed Issack Hussein - Chairperson
2. Mr. Douglas Mwashigadi - Member
3. Ms. Tiyah Galgalo - Member
4. Ms. Hamara Ibrahim Adan - Member
5. Mr. Kenneth Nyaundi - Member
6. Dr. Yusufu Nzibo - Member
7. Ms. Winifred Waceke Guchu - Member
8. Mr. Davis Chirchir - Member
9. Mr. Simiyu Abiud Wasike - Member

The decision to nominate the Chair and the Members of the IIEC was arrived at by consensus.

This report of the Parliamentary Select Committee on the Constitution is the culmination of efforts by the Members of the Committee who spent long hours to complete the tasks necessary for its production and relates to the nomination of the chair and members of the IIEC.

The Parliamentary Select Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly, that have provided the Committee with the necessary support and co-operation that have enabled it to execute its mandate and functions effectively and efficiently.

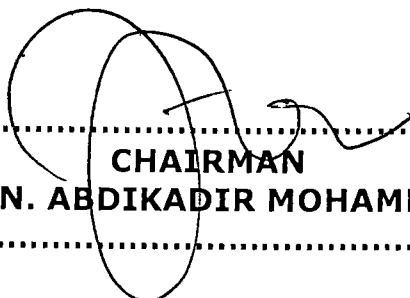
On behalf of the Committee, I sincerely thank the human resource firm which enabled the Committee to work efficiently in processing the applications.

I cannot forget to thank the staff of the National Assembly, whose dedication to duty enabled the smooth running of Committee's work and activities, including the production of this report.

Mr. Speaker, Sir, on behalf of the Parliamentary Select Committee, I now have the honour and pleasure to present this Report on the recommendations of persons to be nominated as the Chair and Members of the Interim Independent Electoral Commission. I request the House to deliberate on and adopt the report.

Thank You.

Signed



CHAIRMAN

(HON. ABDIKADIR MOHAMMED, MP)

Date:

21.04.09.

1.0 INTRODUCTION

1. The establishment of the Parliamentary Select Committee, pursuant to section 7 of the Constitution of Kenya Review Act, 2008 constitutes an important step in our renewed hope to achieve a new constitutional dispensation, after the referendum of 2005. Section 5 of the Review Act identifies the Parliamentary Select Committee as one of **'the organs through which review of the Constitution shall be completed'**.
2. Section 6 of the Review Act further recognizes the crucial role of the Parliamentary Select Committee as an organ of the review process, and provides that-

'In the exercise of the powers or the performance of the functions conferred by this Act, the organs specified in section 5 shall-

- a) ensure that the national interest prevails over regional or sectoral interests;***
- b) be accountable to the people of Kenya;***
- c) ensure that the review process accommodates the diversity of the people of Kenya including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disabilities and the disadvantaged;***
- d) ensure that the review process-***
 - i. provides the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to review and replace the constitution;***
 - ii. is guided by the principle of stewardship and responsible management;***
 - iii. is, subject to this Act, conducted in an open manner, and***

five nominees to the Parliamentary Select Committee, for onward transmission to the National Assembly.

- v. Section 9(2): The Parliamentary Select Committee shall rank and provide comments regarding each of the nominees under sub-section (1) to the National Assembly.**
- vi. Section 9(3): The National Assembly shall, upon receipt of the recommendations of the Parliamentary Select Committee under subsection (2), nominate three persons for appointment as members of the Committee of Experts and shall submit the list of nominees to the Minister.**
- vii. Section 14 (4): The Minister shall, within seven days of receipt of the application, forward the application to the Parliamentary Select Committee to inquire into the matter.**
- viii. Section 14(5): The Parliamentary Select Committee shall inquire into the matter and make recommendations to the President as to whether or not the Chairperson or the Member of the Committee of Experts ought to be removed from office.**
- ix. Section 14(6): In undertaking the inquiry under Section 14(5), "The Parliamentary Select Committee shall afford the concerned person an opportunity to be heard".**
- x. Section 17(1): There shall be a Director of the Committee of Experts who shall be appointed by the Parliamentary Select Committee on such terms and conditions of service as the Parliamentary Select Committee may, in consultation with the Minister, determine.**
- xi. Section 32(1) (c): The Committee of Experts shall within twenty one days of the expiry of the period provided in paragraph (a) (i), present the draft Constitution and the report to the Parliamentary Select Committee for deliberation and consensus building on the contentious issues on the basis of the recommendations of the Committee of Experts.**

- xii. **Section 33(3): The Parliamentary Select Committee shall, within seven days of receipt of the report and the draft constitution under sub section (2), table the report and draft constitution before the National Assembly.**
- xiii. **Section 33(6): If the National Assembly fails to approve the draft Constitution in accordance with subsection (4) and (5), a joint meeting between the Parliamentary Select Committee and the Committee of Experts shall be convened by the chair of the Committee of Experts to consider the issue or issues and to make recommendations to the National Assembly.**
- xiv. **Section 34(2)** relates to the publication of the proposed Constitution and states as follows-

'The Attorney General shall not effect any alteration to the draft Constitution, except for editorial purposes, in consultation with the Parliamentary Select Committee'.

The Constitution has the following provisions:-

- xv. **Section 41(3):-**
'The Chairman and other members of the Commission shall be nominated through a competitive process by the Parliamentary Select Committee and upon approval by the National Assembly be appointed by the President in consultation with the Prime Minister'.
- xvi. **Section 41B(2):-**
'The Chairman and other members of the Commission shall be nominated through a competitive process by the Parliamentary Select Committee and upon approval by the National Assembly be appointed by the President in consultation with the Prime Minister'.
- xvii. **Section 60A(2):-**
'The judges of the Court shall be nine judges of whom-

- a) three shall be non-citizens who are qualified to be appointed judges or have served as judges of the highest court in any jurisdiction within the Commonwealth nominated by the Parliamentary Select Committee; and**
- b) six shall be recruited through a competitive process by the Parliamentary Select Committee and upon approval by the National Assembly be appointed by the President in consultation with the Prime Minister.'**

4. This report relates to the functions of the Committee on the nomination of the Chairperson and Members of the IIEC pursuant to Section 41(3) of the Constitution. The IIEC is the successor to the Electoral Commission of Kenya, following the enactment of the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The repeal of section 41 of the Constitution that established the Electoral Commission of Kenya was undertaken against a background of events that led to the post-election crisis in the country in the early part of 2008, occasioned by the disputed December 2007 Presidential elections.
5. Following the signing of the National Accord and Reconciliation Agreement that led to the formation of a Coalition Government in Kenya, the National Dialogue and Reconciliation Committee, formed after the political crisis, underscored in its Agenda Item 4, the need to complete the comprehensive review of the Constitution to address deep-rooted underlying issues that led to the post-election conflict. Subsequently, the Constitution of Kenya Review Act (No. 9 of 2008) and the Constitution of Kenya (Amendment) Act (No. 10 of 2008) were enacted by Parliament to crystallize the efforts towards the review of the Constitution.
6. The conduct of the General Elections of 2007 which led to the post-election violence was the subject of investigations by both the Kriegler and Waki Commissions. Both Commissions were emphatic that ECK had failed to rise to the occasion in the management and conduct of those elections. The Government therefore fast tracked the implementation of the recommendations of the two Commissions through the enactment of the Constitution of Kenya Review Act (No. 9 of 2008) and the Constitution of Kenya (Amendment) Act (No. 10 of

2008) to provide for the framework in the completion of the comprehensive review of the Constitution.

7. The Constitution of Kenya (Amendment) Act (No. 10 of 2008) in particular, introduced institutional electoral reforms through the repeal of section 41 of the Constitution that established the Electoral Commission of Kenya and its replacement with the Interim Independent Electoral Commission. Section 41(3) of the Constitution provides for the appointment of the Chairperson and Members of the IIEC.

2.0 THE ELECTORAL COMMISSION OF KENYA (ECK)

8. The Electoral Commission of Kenya (ECK) was established pursuant to the provisions of Section 41 of the Constitution, now repealed, following the enactment of the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The repealed section provided for the appointment of a Chairman and not more than twenty-one Members of the ECK, appointed by the President.
9. The functions of the ECK, pursuant to the provisions of sections 33, 42 and 42A of the Constitution, were-
 - a) Dividing Kenya into such number of constituencies with such boundaries and names as it may determine;***
 - b) Reviewing the numbers, boundaries and names of the constituencies at intervals of between eight and ten years with power to alter the number, the boundaries or the names, if it considers that desirable;***
 - c) Registering voters, maintenance and revision of voters' registers;***
 - d) Directing and supervising Presidential, National Assembly and Local Government elections;***
 - e) Promoting free and fair elections***
 - f) Promoting voter education throughout Kenya;***
 - g) Determining the proportion of Nominated Members of the National Assembly, and Councillors for each parliamentary party; and***
 - h) Performing such other functions as may be prescribed by law.***

10. Pursuant to the provisions of Section 41(9) of the Constitution, now repealed, the ECK was an independent body which was not to be subject to the direction of any person or authority in the exercise of its functions. The Constitution required that all Commissioners be Kenyan citizens. The Commissioners were to be appointed for a renewable term of 5 years, and were to enjoy security of tenure. The Commissioners could only be removed by the President who had appointed them. According to the Constitution, the Chairperson and Vice-Chairperson of the ECK were to be persons who had held or were qualified to hold the office of Judge of the High Court or Judge of the Court of Appeal.
11. The history of ECK dates back to the time of independence in 1963, when presidential, parliamentary and local/municipal elections began to take root following gaining of franchise in Kenya from British colonial rule. The core constitutional functions of the ECK were registration of voters, supervision of elections and review of constituencies. However, over time, the role of the ECK was restricted merely to reviewing constituencies. The ECK was later renamed the Electoral Boundaries Review Commission, which was charged with the role of reviewing electoral boundaries and determining the number of constituencies and their names.
12. Until 1991, the conduct of elections was under the control of the Supervisor of Elections, a department that was created in the Attorney General's Chambers. The Supervisor of Elections, a civil servant, conducted elections with the assistance of District Commissioners and other civil servants. The Supervisor of Elections therefore lacked independence and was under the direct control and direction of the Executive. The Constitution of Kenya (Amendment) Act (No. 17 of 1990) helped to restore the constitutional powers of the ECK in 1991 when multi-party democracy was re-introduced in Kenya. Subsequently, the Office of the Supervisor of Elections was abolished.
13. Following a constitutional amendment in 1997 under the Inter-Party Parliamentary Group (IPPG) Initiative, the independence of the ECK was reaffirmed, while the number of Commissioners was increased to twenty-two from the twelve Commissioners who had earlier been appointed in 1993. The 1997 amendment further vested in Parliament the power to make laws to regulate the orderly and effective conduct of the operations and business of the ECK. The amendment further

allowed ECK to employ staff and subsequently ECK established its Secretariat in July 1998.

14. The challenges posed by the General Elections of December 2007 pointed to the inadequacies and failures of the Constitution and other laws to address salient election-related issues. The National Dialogue and Reconciliation Committee deliberated at length on these issues under Agenda item 4 leading to the enactment of the Review Act (2008) and the Constitution of Kenya (Amendment) Act (2008) which paved way for the establishment of the IIEC.

3.0 THE ESTABLISHMENT OF THE INTERIM INDEPENDENT ELECTORAL COMMISSION

15. The IIEC is established pursuant to the provisions of Section 41 of the Constitution of Kenya (Amendment) Act (No. 10 of 2008). The functions and powers of the IIEC are stipulated in Section 41A of the Constitution, which states as follows-

- (a) reform of the electoral process and the management of elections in order to institutionalize free and fair elections;**
- (b) establishment of an efficient and effective secretariat;**
- (c) promotion of free and fair elections;**
- (d) fresh registration of voters and the creation of a new voter register;**
- (e) efficient conduct and supervision of elections and referenda;**
- (f) development of a modern system for the collection, collation, transmission and tallying of electoral data;**
- (g) facilitation of the observation, monitoring and evaluation of elections and referenda;**
- (h) promotion of voter education and culture of democracy;**
- (i) settlement of minor electoral disputes during an election as may be provided by law; and**
- (j) performance of such other functions as may be prescribed by law.**

16. Section 41(10) of the Constitution provides IIEC with the operational autonomy. It states as follows-

'In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority'.

17. Pursuant to the provisions of Section 41(3) of the Constitution, the Parliamentary Select Committee is mandated to nominate the Chairperson and the Members of the IIEC, in accordance with criteria spelt out in Sections 41(4) and (5) of the Constitution. Pursuant to these provisions, the Parliamentary Select Committee first advertised for applications for the positions of Chairperson and Members of the IIEC in the daily newspapers on 5th and 12th January 2009. The closing date for the applications was 30th January 2009.
18. On Tuesday, 10th February 2009, the applications received were submitted to a human resource firm, Manpower Services (K) Ltd, for a preliminary analysis of the applications. Manpower Services (K) Ltd was earlier procured in accordance with procurement laws and procedures to assist the Parliamentary Select Committee. A total of forty-two (42) applications for the position of the Chairperson of the IIEC and 2499 candidates for the positions of Members of IIEC were received.
19. At its sitting of Monday, 16th February 2009, the Parliamentary Select Committee shortlisted eight candidates for the position of Chairperson and fifty-one candidates for the positions of Members. The shortlisted candidates were subsequently interviewed by the Committee.
20. After deliberation on the results of the interviews, the Parliamentary Select Committee nominated the following persons for appointment as the Chairperson and the Members of the IIEC-

- | | |
|------------------------------|---------------|
| 1. Mr. Cecil G. Miller | - Chairperson |
| 2. Mr. Suleman Y. Buko | - Member |
| 3. Ms. Tiyah Galgalo | - Member |
| 4. Ms. Hamara Ibrahim Adan | - Member |
| 5. Mr. Kenneth Nyaundi | - Member |
| 6. Dr. Yusufu Nzibo | - Member |
| 7. Ms. Winifred Waceke Guchu | - Member |

8. Mr. Davis Chirchir - Member
9. Capt.(Rtd.) Charles Masinde - Member

21. On Wednesday, 18th February 2009, the Parliamentary Select Committee tabled the names of the nine (9) nominees for deliberation and approval by the House, pursuant to the provisions of Section 41 of the Constitution.
22. Following the subsequent debate on Thursday, 19th February 2009, the House referred the list of nominees back to the Committee due to further information relating to some nominees which was divulged on the floor of the House and which had not been disclosed to the Select Committee during the selection process. Section 41(4) of the Constitution of Kenya requires the nominees to the IIEC to be persons of '**high moral character and integrity**'.
23. On Monday, 23rd February 2009, the Parliamentary Select Committee deliberated on the proceedings of the House on the debate on the Motion to approve the report of the Committee on the nomination of Chairperson and members of the IIEC. The Committee observed that the House expressed reservations on the nominee for the position of the Chair, Mr. Cecil Miller, and two nominees for Members of IIEC, Mr. Suleiman Buko and Capt. (Rtd.) Charles Masinde. The Committee therefore resolved to re-advertise for the position of the Chairperson of the IIEC, and to replace Mr. Suleiman Buko and Capt. (Rtd.) Charles Masinde.
24. At its sitting on Thursday, 26th February 2009, the Committee nominated Mr. Douglas Mwashigadi to replace Mr. Suleiman Buko.
25. The re-advertisements for applications for nomination to the position of the Chairperson of the IIEC were published in the daily newspapers of Tuesday, 3rd March 2009, and on Friday, 6th March 2009. A total of twenty one (21) new applicants for the position of the Chairperson of the IIEC were received.
26. On Tuesday, 24th March 2009, the Parliamentary Select Committee, with the assistance of M/S Manpower Services (K) Ltd, processed all the applications for the position of Chair, including those from the earlier advertisement made in January 2009. Thereafter, the Committee short listed five (5) candidates from the new applicants to

make a shortlist of twelve (12) candidates for the position. Eight (8) candidates had earlier been interviewed following the first advertisement for the post.

27. On Thursday, 2nd April 2009, the Committee conducted interviews for the short listed new applicants. Only four candidates were interviewed after one withdrew in writing to the Committee before the interviews. One additional candidate for consideration for nomination as Member of IIEC was also interviewed.
28. At the conclusion of the deliberation on the results of the interviews, the Parliamentary Select Committee recommended the nomination of Mr. Ahmed Issack Hussein, for the position of the Chairperson, and nomination of Mr. Simiyu Abiud Wasike as a member of the IIEC to replace Capt. (Rtd.) Charles Masinde.
29. Therefore, the Parliamentary Select Committee on the Review of the Constitution recommends the following persons for nomination to the positions of the Chairperson and members of IIEC-
 1. Mr. Ahmed Issack Hussein - Chairperson
 2. Mr. Douglas Mwashigadi - Member
 3. Ms. Tiyah Galgalo - Member
 4. Ms. Hamara Ibrahim Adan - Member
 5. Mr. Kenneth Nyaundi - Member
 6. Dr. Yusufu Nzibo - Member
 7. Ms. Winifred Waceke Guchu - Member
 8. Mr. Davis Chirchir - Member
 9. Mr. Simiyu Abiud Wasike - Member

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MINUTES OF THE FOURTEENTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON MONDAY 23RD FEBRUARY, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.30 AM.

PRESENT

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

ABSENT WITH APOLOGY

1. The Hon. Najib Balala, MP

IN ATTENDANCE

1. Mrs. Consolata Munga
2. Mr. Stephen Njenga
3. Ms. Eunice Gichangi
4. Mr. Paul Ngetich
5. Ms. Rose Mudibo

NATIONAL ASSEMBLY

- Deputy Director, Committee Services
- First Clerk Assistant
- Senior Legal Counsel
- Senior Research Officer
- Public Relations Office

MIN. NO. 063/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 064/2009:

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

The Committee deferred confirmation of Minutes of the Thirteenth sitting to the next sitting.

MIN. NO. 065/2009:

CONSIDERATION OF THE PROCEEDINGS IN THE HOUSE ON THE REPORT OF THE COMMITTEE

- (a) The Committee considered the proceedings in the House on the Motion to approve the report on nomination of the Chair and members of the Interim Independent Electoral Commission.

The following observations were made:-

- (i) Some members reconsidered their decision on the report following receipt of additional information about the nominated candidates.
 - (ii) There is need to build consensus in the Committee and also in the House.
 - (iii) Announcement of the names to the media was premature as the responsibility of appointment lies with the National Assembly.
 - (iv) The refusal by the House to approve the report has dented the image of the Committee.
 - (v) Members would be required to append their signatures on all future reports of the Committee.
- (b) The Committee noted that the decision of the House related to the Chair and all proposed Members of the Interim Independent Electoral Commission but further observed that debate on the motion expressed reservations on three nominees, namely:-
- (i) Cecil G. Miller - Chair
 - (ii) Suleman Buko - Member
 - (iii) Capt. (Rtd.) Charles Masinde - Member
- (c) The Committee resolved to reopen discussions only on the three nominees. Hon. Karua expressed reservations on the decision proposing to reopen the entire list of all nine nominees.
- (d) Thereupon, the Committee agreed to replace Suleman Buko on grounds that he served as Deputy Presiding Officer for Garsen constituency during the 2007 General Elections.
- (e) The Committee agreed that a confidential letter be sent to the Permanent Secretaries, Ministries of Defence and Trade for information on circumstances surrounding the termination of employment of Cpt. (Rtd.) Masinde from the Military, Kenya Wine Agencies Ltd. and East African Portland Cement.
- (f) The Committee deliberated on allegations advanced against the proposed Chair of Interim Independent Electoral Commission and deferred making a decision on the matter until the next sitting.

MIN. NO. 066/2009:

ADJOURNMENT

There being no other business for discussion, the Chair adjourned the meeting at fifty minutes past Two O'clock until Thursday, 26th February, 2009 at 9.00 a.m.

SIGNED:

HON. MOHAMED ABDIKADIR, MP

CHAIRPERSON

DATE:

15TH APRIL, 2009

MINUTES OF THE FIFTEENTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON THURSDAY 26TH FEBRUARY, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. The Hon. Mohammed Abdikadir, MP - **Chairperson**
2. The Hon. Ababu Namwamba, MP - **Vice Chairperson**
3. The Hon. Martha Karua, MP
4. The Hon. Omingo Magara, MP
5. The Hon. Musalia Mudavadi, MP
6. The Hon. Moses Wetangula, MP
7. The Hon. Wilfred Ombui, MP
8. The Hon. Chachu Ganya, MP
9. The Hon. Peter Munya, MP
10. The Hon. Mwangi Kiunjuri, MP
11. The Hon. Danson Mungatana, MP
12. The Hon. Charity Ngilu, MP
13. The Hon. Sophia Abdi, MP
14. The Hon. Sally Kosgei, MP
15. The Hon. Amina Abdalla, MP
16. The Hon. Joseph Nkaiserry, MP
17. The Hon. Kambi Kazungu, MP
18. The Hon. James Orengo, MP
19. The Hon. Millie Odhiambo, MP
20. The Hon. Isaac Ruto, MP

ABSENT WITH APOLOGY

1. The Hon. Najib Balala, MP
2. The Hon. William Ruto, MP
3. The Hon. Uhuru Kenyatta, MP
4. The Hon. Mutula Kilonzo, MP
5. The Hon. David Musila, MP
6. The Hon. Ekwee Ethuro, MP
7. The Hon. Jeremiah Kioni, MP

IN ATTENDANCE

1. Mrs. Consolata Munga
2. Mrs. Serah Kioko
3. Ms. Eunice Gichangi
4. Mr. Paul Ngetich
5. Ms. Rose Mudibo

NATIONAL ASSEMBLY

- Deputy Director, Committee Services
- First Clerk Assistant
- Senior Legal Counsel
- Senior Research Officer
- Public Relations Office

MIN. NO. 067/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 068/2009:

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The Committee deferred confirmation of Minutes of the Thirteenth and Fourteenth sittings to the next sitting.

MIN. NO. 069/2009:

**CONSIDERATION OF NOMINEES FOR POSITION
OF CHAIR AND MEMBERS OF THE INTERIM
INDEPENDENT ELECTORAL COMMISSION**

(a) The Committee deliberated at length on the issue of nomination of Chairperson and representatives of the Coast and Western Regions for Membership of the Interim Independent Electoral Commission and resolved as follows:-

(i) Coast Province

That Mr. Suleman Buko be replaced by Mr. Douglas Mwashigadi. The resolution to replace Mr. Mwashigadi was proposed by the Hon. Wilfred Ombui, M.P and seconded by the Hon. Joseph Nkaiserry, M.P

(ii) Western Province

That the office of the Clerk should write to the Permanent Secretary, Ministry of Trade and inquire about the profile of Capt. (Rtd.) Masinde as a director of Kenya Wine Agencies Ltd and that the letter be copied to the Efficiency Monitoring Unit (EMU).

The Committee further resolved to step down the name of Capt. Masinde as the representative of Western Province and agreed to allow committee members from the region to consult further before a final decision is made.

(iii) Post of Chairperson, Interim Independent Electoral Commission

That the office of the Clerk re-advertises the post of Chairperson, Interim Independent Electoral Commission. All those who applied earlier would be considered. The resolution to re-advertise was proposed by the Hon. Kambi Kazungu, M.P and seconded by the Hon. Isaac Ruto, M.P

MIN. NO. 070/2009:

ADJOURNMENT

There being no other business for discussion, the Chairperson adjourned the meeting at five minutes past Two O'clock to a date to be notified.

SIGNED:

HON. MOHAMED ABDIKADIR, MP

CHAIRPERSON

DATE:

15TH APRIL, 2009

MINUTES OF THE SIXTEENTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON TUESDAY 24TH MARCH, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.35 A.M.

PRESENT

1. The Hon. Mohammed Abdikadir, MP - Chairperson
2. The Hon. Ababu Namwamba, MP - Vice Chairperson
3. The Hon. Martha Karua, MP
4. The Hon. Omingo Magara, MP
5. The Hon. Musalia Mudavadi, MP
6. The Hon. Moses Wetangula, MP
7. The Hon. Wilfred Ombui, MP
8. The Hon. Chachu Ganya, MP
9. The Hon. Peter Munya, MP
10. The Hon. William Ruto, MP
11. The Hon. Danson Mungatana, MP
12. The Hon. Sophia Abdi, MP
13. The Hon. David Musila, MP
14. The Hon. Jeremiah Kioni, MP
15. The Hon. Amina Abdalla, MP
16. The Hon. Joseph Nkaiserry, MP
17. The Hon. Kambi Kazungu, MP
18. The Hon. James Orengo, MP
19. The Hon. Millie Odhiambo, MP
20. The Hon. Isaac Ruto, MP

ABSENT WITH APOLOGY

1. The Hon. Najib Balala, MP
2. The Hon. Uhuru Kenyatta, MP
3. The Hon. Mwangi Kiunjuri, MP
4. The Hon. Mutula Kilonzo, MP
5. The Hon. Charity Ngilu, MP
6. The Hon. Ekwee Ethuro, MP
7. The Hon. Sally Kosgei, MP

COMMITTEE OF EXPERTS

1. Nzamba Kitonga - Chair
2. Atsango Chesoni - Vice Chair
3. Otiende Amollo
4. Abdirashid Abdullahi
5. Bobby Mkangi
6. Prof. Christina Murray
7. Dr. Chaloka Beyani
8. Prof. Frederick Ssempebwa
9. Dr. Ekuru Aukot - Director
10. Hon. Amos Wako - Attorney-General
11. Hon. Njoki Ndungu

IN ATTENDANCE

1. Mrs. Consolata Munga -
2. Mr. Stephen Njenga -
3. Ms. Eunice Gichangi -
4. Mr. Paul Ngetich -

NATIONAL ASSEMBLY

1. Deputy Director, Committee Services
2. First Clerk Assistant
3. Senior Legal Counsel
4. Senior Research Officer

MIN. NO. 071/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 072/2009: MEETING WITH MEMBERS OF THE COMMITTEE OF EXPERTS

The Chair of the Select Committee briefed the Committee of Experts on the purpose of the meeting and explained that as two of the organs of review, there was need for understanding and co-operation to facilitate the conclusion of the Constitution of Kenya review process.

The Committee of Experts made the following comments:

- (a) Thanked the National Assembly for honouring them with the task of completing the long standing constitutional review process;
- (b) The country is in a state of crisis requiring remedy through reforms to address long standing grievances and historical injustices;
- (c) The review process ended with the disastrous referendum of 2005 due to brinkmanship and disunity among leaders;
- (d) Undertook to work hard to give the country a draft Constitution that reflects the compromises, sacrifices and accommodations that must be made to create a tolerant and just society based on fairness, mutual respect and national cohesion;
- (e) The ultimate sacrifice leading to a new constitution will have to be made by political leadership that will be called upon to agree on the great constitutional questions which include the system of government, devolution, the judiciary and electoral reforms;
- (f) Appealed to leaders to avoid grand standing, inflexibility and pitfalls of the past;
- (g) Requested political parties to prepare their positions on the key questions in a coherent and structured manner; and
- (h) Parliament holds the key to the completion of the review process.

The Committee of Experts then updated the Select Committee on measures taken in fulfillment of its mandate as follows:

- (a) The Committee elected the Chair and Vice-Chair by consensus after being sworn-in on 2nd March, 2009;
- (b) The Committee has resolved to complete its task within the stipulated time with an endeavour to finalize even earlier;
- (c) Ad-hoc Committees have been established to examine the work matrix, timelines and to analyse the Constitution of Kenya Review Act especially on areas requiring strengthening;
- (d) Manpower Services (K) Ltd. will be utilized to recruit staff;
- (e) Agreement has been reached on amendments to be included in the statute Law Miscellaneous Amendments Bill;
- (f) Acknowledged the role of the Select Committee in the Review Process and undertook to hold consultations as may be necessary; and
- (g) Invited interested groups especially political parties to present written memoranda on proposed draft Constitution especially on contentious issues.

MINUTES OF THE SEVENTEENTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON THURSDAY 2ND APRIL, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.00 AM.

PRESENT

1. The Hon. Mohammed Abdikadir, MP - **Chairperson**
2. The Hon. Ababu Namwamba, MP - **Vice Chairperson**
3. The Hon. Martha Karua, MP
4. The Hon. Omingo Magara, MP
5. The Hon. Musalia Mudavadi, MP
6. The Hon. Moses Wetangula, MP
7. The Hon. Wilfred Ombui, MP
8. The Hon. Chachu Ganya, MP
9. The Hon. Peter Munya, MP
10. The Hon. William Ruto, MP
11. The Hon. Najib Balala, MP
12. The Hon. Uhuru Kenyatta, MP
13. The Hon. Danson Mungatana, MP
14. The Hon. Charity Ngilu, MP
15. The Hon. Sophia Abdi, MP
16. The Hon. Mutula Kilonzo, MP
17. The Hon. Amina Abdalla, MP
18. The Hon. Jeremiah Kioni, MP
19. The Hon. Joseph Nkaiserry, MP
20. The Hon. Kambi Kazungu, MP
21. The Hon. James Orengo, MP
22. The Hon. Millie Odhiambo, MP
23. The Hon. Isaac Ruto, MP

ABSENT WITH APOLOGY

1. The Hon. Mwangi Kiunjuri, MP
2. The Hon. Sally Kosgei, MP
3. The Hon. David Musila, MP
4. The Hon. Ekwere Ethuro, MP

IN ATTENDANCE

1. Mrs. Consolata Munga
2. Mr. Jeremiah Ndombi
3. Mr. Paul Ngetich
4. Ms. Rose Mudibo

NATIONAL ASSEMBLY

- Deputy Director, Committee Services
- Senior Legal Counsel
- Senior Research Officer
- Public Relations Office

MIN. NO. 076/2009:

INTERVIEW OF APPLICANT FOR THE POSITION OF MEMBER OF THE INTERIM INDEPENDENT ELECTORAL COMMISSION

The Committee agreed on the questions to be asked to Mr. Simiyu A. Wasike as follows:-

- (a) Highest academic and professional qualifications.
- (b) What makes the candidate appropriate for the job
- (c) Expected challenges and how a member will assist in resolving them.

The Committee resolved that his application would be considered alongside seven others interviewed on 17th February 2009, namely:-

- (a) John Munyasia
- (b) William I. Ikapel
- (c) Wangalwa Kizito
- (d) Anthony S. Muchanga
- (e) Dan K. Ameyo
- (f) Dr. Inganji
- (g) Catherine Mumma

The Committee then interviewed him for the position of member of the Interim Independent Electoral Commission.

The Committee deliberated on the most suitable candidate for the position of Member of the Interim Independent Electoral Commission to represent Western Province and resolved to nominate Mr. Simiyu Abiud Wasike.

MIN. NO. 077/2009:

**INTERVIEW OF APPLICANTS FOR THE POSITION
OF CHAIR OF THE INTERIM INDEPENDENT
ELECTORAL COMMISSION**

The Committee interviewed the candidates in the listed order:-

- (a) Jane Nyaboke Njagi
- (b) James H. O. Oswago
- (c) Duncan N. Mwanyumba
- (d) Ahmed I. Hassan

The Committee resolved that their applications would be considered alongside the other eight persons interviewed on 17th February, 2009 namely:-

- (a) Koki Muli
- (b) Maina Kiai
- (c) Alice Yano
- (d) Francis ole Kaparo
- (e) Fackson Kagwe
- (f) Murshid Abdalla
- (g) Cecil G. Miller
- (h) Maina Wachira

The Committee deliberated on the most suitable candidate for the position of Chair following the interviews.

The Committee unanimously resolved to nominate Ahmed Issack Hassan for the position.

The Committee therefore resolved to nominate the following as Members of the Interim Independent Electoral Commission:-

Chairperson

(a) Ahmed Issack Hassan

Members

- (a) Douglas Mwashigadi
- (b) Tiyah Galgalo
- (c) Hamara Ibrahim
- (d) Kenneth Nyaundi
- (e) Yusuf Nzibo
- (f) Winifred W. Guchu
- (g) Davis Chirchir
- (h) Simiyu Abiud Wasike

MIN. NO. 078/2009: **ANY OTHER BUSINESS**

The Committee resolved that the remuneration package for the Director of the Committee of Experts should be deliberated on at a later date.

MIN. NO. 079/2009: **ADJOURNMENT**

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

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

DATE: **15TH APRIL, 2009**

MINUTES OF THE EIGHTEENTH SITTING OF THE PARLIAMENTARY SELECT COMMITTEE ON THE REVIEW OF THE CONSTITUTION HELD ON WEDNESDAY, 15TH APRIL, 2009 IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.45 AM.

PRESENT

1. The Hon. Mohammed Abdikadir, MP - **Chairperson**
2. The Hon. Ababu Namwamba, MP - **Vice Chairperson**
3. The Hon. Omingo Magara, MP
4. The Hon. Musalia Mudavadi, MP
5. The Hon. Wilfred Ombui, MP
6. The Hon. Peter Munya, MP
7. The Hon. William Ruto, MP
8. The Hon. Najib Balala, MP
9. The Hon. Danson Mungatana, MP
10. The Hon. Mwangi Kiunjuri, MP
11. The Hon. Ekwee Ethuro, MP
12. The Hon. Charity Ngilu, MP
13. The Hon. David Musila, MP
14. The Hon. Sophia Abdi, MP
15. The Hon. Mutula Kilonzo, MP
16. The Hon. Amina Abdalla, MP
17. The Hon. Jeremiah Kioni, MP
18. The Hon. Joseph Nkaiserry, MP
19. The Hon. Kambi Kazungu, MP
20. The Hon. James Orengo, MP
21. The Hon. Millie Odhiambo, MP
22. The Hon. Isaac Ruto, MP

ABSENT WITH APOLOGY

1. The Hon. Martha Karua, MP
2. The Hon. Uhuru Kenyatta, MP
3. The Hon. Moses Wetangula, MP
4. The Hon. Chachu Ganya, MP
5. The Hon. Sally Kosgei, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mrs. Consolata Munga - Deputy Director, Committee Services
2. Mr. Stephen Njenga - First Clerk Assistant
3. Mrs. Eunice Gichangi - Senior Legal Counsel
4. Mr. Paul Ngetich - Senior Research Officer
5. Ms. Rose Mudibo - Public Relations Office

IN ATTENDANCE

MANPOWER SERVICES (K) LTD

- Mr. Francis Muhindi - Managing Director.

MIN. NO. 080/2009:

PRAYER

The proceedings were opened with a word of prayer.

MIN. NO. 081/2009: **CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

Minutes of the Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth sittings were confirmed by the members present and signed by the Chairperson.

MIN. NO. 082/2009: **MATTERS ARISING**

- (a) Under Min. No. 065/2009 (a) (iii) on release of names to the media, the Committee agreed that the observation should be deleted.
- (b) Under the Minutes of the Seventeenth sitting, the record of a prayer that opened the proceedings should be inserted.

MIN. NO. 083/2009: **CONSIDERATION OF THE REPORT ON NOMINATION OF CHAIR AND MEMBERS OF THE INTERIM INDEPENDENT ELECTORAL COMMISSION. (IIEC)**

The Committee considered the draft report on nomination of Chair and Members of the Interim Independent Electoral Commission and adopted it by consensus.

The Committee further revised its earlier decision requiring members to append their signatures to its reports and affirmed that the Chair should sign on behalf of members as provided by Standing Order 162.

MIN. NO. 084/2009: **CONSIDERATION OF THE REPORT FROM HUMAN RESOURCE FIRM ON CANDIDATES FOR POSITIONS OF CHAIR AND MEMBERS OF THE INTERIM INDEPENDENT BOUNDARIES REVIEW COMMISSION. (IIBRC)**

Manpower Services (K) Ltd presented the report on applications for positions of Chair and Members of Interim Independent Boundaries Review Commission (IIBRC) as follows:-

- (a) Manpower received a total of 106 applications for the position of Chair and 1,034 applications for members of IIBRC.
- (b) All the applications were analyzed and comments made on qualifications of each applicant.

Thereupon, the Committee directed Manpower Services (K) Ltd. to list the applications according to their provinces.

The Committee resolved to shortlist five applicants to be interviewed for the position of Chair and five applicants from each province for the positions of members of IIBRC.

MIN. NO. 085/2009: **ANY OTHER BUSINESS**

The Committee considered letters authored by the Chair of Committee of Experts and Permanent Secretary, Ministry of Justice and Constitutional Affairs on the remuneration package for the Members and Director of Committee of Experts.

The Committee resolved to invite the Minister for Justice and Constitutional Affairs to deliberate on the issues raised in the letters.

MIN. NO. 086/2009: **ADJOURNMENT**

There being no other business for discussion, the Chairperson adjourned the meeting at fifteen minutes past Eleven O'clock until Monday, 20th April, 2009 at 9.00 a.m.

SIGNED: **HON. MOHAMED ABDIKADIR, MP**

CHAIRPERSON

DATE: **15TH APRIL, 2009**