

THE CONSTITUTION OF KENYA REVIEW BILL, 2006
A Bill for

An Act of Parliament to facilitate the completion of the process of the review of the Constitution by the people of Kenya, and for connected purposes.

ENACTED by the Parliament of Kenya as follows:-

PART I — PRELIMINARY

Short title. **1.** This Act may be cited as the Constitution of Kenya Review Act.

Interpretation. **2.** In this Act, unless the context otherwise requires-

“Bomas Draft” means the document commonly known as the Bomas Draft produced by the National Constitutional Conference on 15th March 2004 under the expired Act;

“Commission” means the Electoral Commission of Kenya;

“Conference” means the Constitutional Conference for a Democratic Kenya referred to in section 22(1)(b);

“Council” means the Council of Reference established under section 6;

“Director” means the director appointed under section 10.

“district” means a district set out in the Fifth Schedule;

“expired Act” means the Constitution of Kenya Review Act which expired on **31st January 2006**;

“member” means a member of the Council appointed under section 6;

“Minister” means the Minister for the time being responsible for matters relating to constitutional affairs;

“Non-Governmental Organisation” mean a Non-Governmental Organisation registered under the Non-Governmental Organizations Co-ordination Act, 1990;

“Proposed New Constitution” means the Proposed New Constitution of Kenya (2005) submitted to the referendum on 21st November 2005 under the expired Act;

“Steering Committee” means the steering committee established under section 17;

Objects and purpose of constitutional review process.

3. The object and purpose of the review of the Constitution is to secure provisions therein –
 - (a) guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the well-being of the people of Kenya;
 - (b) establishing a free and democratic system of Government that guarantees good governance, constitutionalism, the rule of law, human rights, gender equity, gender equality and affirmative action;
 - (c) recognising and demarcating divisions of responsibility among the various state organs including the executive, the legislature and the judiciary so as to create checks and balances between them and to ensure accountability of the Government and its officers to the people of Kenya;
 - (d) promoting the peoples’ participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power;
 - (e) respecting ethnic and regional diversity and communal rights including the right of communities to organise and participate in cultural activities and the expression of their identities;
 - (f) ensuring the provision of basic needs of all Kenyans through the establishment of an equitable frame-work for economic growth and equitable access to national resources;
 - (g) promoting and facilitating regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights;
 - (h) strengthening national integration and unity;
 - (i) creating conditions conducive to a free exchange of ideas;
 - (j) ensuring the full participation of people in the management of public affairs; and

- (k) enabling Kenyans to resolve national issues on the basis of consensus.

Organs of review.

- 4. (1) The organs through which the review process shall be completed shall be –

- (a) the Council;
- (b) the Conference;
- (c) the National Assembly; and
- (d) the referendum.

- (2) The organs specified in subsection (1) (a), (b) and (c) shall not be dissolved except in accordance with Part VIII.

Guiding principles.

- 5. In the exercise of the powers or the performance of the functions conferred by this Act, the organs specified in section 4 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 Kenyan people including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disabilities and the disadvantaged;
- (d) ensure, particularly through the observance of the principles in the First Schedule 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
- (iv) is guided by respect for the principles of human rights, affirmative action, gender equity, equality and democracy;

- (e) ensure that the outcome of the review process faithfully reflects the wishes of the people of Kenya.

PART II – ESTABLISHMENT AND COMPOSITION OF COUNCIL

Establishment and membership of the Council.

6. (1) There is established a council to be known as the Council of Reference.

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging, or disposing of movable and immovable property; and
- (c) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The provisions of the State Corporations Act shall not apply to the Council.

(4) The Council shall consist of persons nominated by the organizations set out in the Second Schedule and appointed by the President.

(5) The organizations specified in the Second Schedule shall each nominate the number of persons specified in that Schedule for appointment under subsection (4).

(6) The Minister and Attorney-General or their representatives and the Director shall be *ex officio* members of the Council without the right to vote.

(7) In nominating persons for appointment as members, the organizations specified in the Second Schedule shall have regard to –

- (a) Kenya's ethnic, geographical, cultural, political, social and economic diversity; and
- (b) the principle of gender equity, equality and affirmative action.

Procedure for appointing members.

7. (1) The organizations specified in the Second Schedule shall, within seven days of the commencement of this Act, submit the names of their nominees under subsection (5) of section 6 to the

Minister, for onward transmission to the President.

(2) The Minister shall within seven days of receipt of the names of the nominees received under subsection (1) transmit the list to the President.

(3) The President shall, within seven days of receipt of the names forwarded under subsection (2), notify the appointment of the members of the Council.

Qualification for appointment as member.

8. (1) To qualify for nomination for appointment as a member of the Council a person shall have knowledge of and experience in public affairs.

(2) Notwithstanding the provisions of subsection (1), no person shall be qualified for appointment as a member of the Council –

(a) unless such person –

(i) is a citizen;

(ii) is able to speak and, unless incapacitated by blindness or other physical cause, to read the Swahili and English languages well enough to take an active part in the proceedings of the Council;

(iii) is of sound mind; and

(iv) is of good character and integrity; or

(b) if such person is an undischarged bankrupt.

Chairpersons and deputy chairpersons.

9. (1) The Minister shall within seven days of the appointment of the Council convene the first meeting of the Council at which the Council shall elect two co-chairpersons and two deputy chairpersons from amongst its members.

(2) Each of the positions in the Council specified in subsection (1) shall be held by persons of opposite gender.

(3) The Council shall elect two joint-secretaries of opposite gender from amongst its members.

(4) The joint secretaries elected under subsection (3) shall be the rapporteurs of the Council and the Conference and shall be generally responsible for the management of the meetings and the preparation of reports.

- The Secretariat. **10.** (1) There shall be a Secretariat of the Council which shall be headed by a director appointed by the Council.
- (2) The Director shall be the chief executive of the Secretariat and the accounting officer of the Council and shall serve on a full-time basis.
- (3) The Director shall be responsible for -
- (a) the day to day administration of the affairs of the Council;
 - (b) the co-ordination of the Council's studies, research and evaluations;
 - (c) the recording of the proceedings; and
 - (d) custody of all records and documents of the Council.
- Staff of the Council and Experts. **11.** (1) The staff of the Council shall comprise -
- (a) such officers and other staff as the Council may appoint to assist it in the discharge of its functions under this Act; and
 - (b) such public officers as may upon the request of the Council, be seconded to the Council.
- (2) A public officer who is seconded to the Council under subsection (1), shall, during the secondment, be deemed to be an officer of the Council and subject to its direction and control.
- (3) The Council shall establish a committee of experts to assist the Council as appropriate and necessary under this Act.
- Oath of office. **12.** (1) A member of the Council; the joint-secretaries and the Director shall each, according to their religious or other beliefs -
- (a) make and subscribe to the oath prescribed in the Third Schedule; or
 - (b) make the solemn affirmation in the form prescribed in the Third Schedule before the Chief Justice, prior to embarking on their duties.
- (2) Every oath and affirmation made and subscribed to under this section shall be deposited with the Director and with the Chief Justice.
- Code of Conduct **13.** (1) For the better discharge of the functions of the organs of the review process specified in section 4 and the Secretariat of the Council, the code of conduct prescribed in the Fourth Schedule shall apply.

(2) A person who breaches the provisions of the code of conduct shall

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- (a) in the case of a member or the director, subject to the provisions of section 14(3), be disqualified from holding office as such; and
- (b) in the case of a member of staff of the Council, be liable to such disciplinary action as the Council may prescribe.

Tenure of office

14. (1) A member of the Council may, at any time after appointment, resign, by notice in writing to the Council.

(2) The Council shall notify every resignation in the Gazette within seven days thereof.

(3) The office of a member of the Council shall fall vacant if the person -

- (a) dies; or
- (b) resigns from office; or
- (c) is adjudged bankrupt; or
- (d) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (e) is in breach of the code of conduct prescribed under section 13; or
- (f) without reasonable excuse, fails to attend three consecutive meetings of the Council; or
- (g) is by reason of physical or mental infirmity, unable to discharge his duties as a member; or
- (h) is for any other reason, unable or unwilling to act as a member,

and in any case to which paragraphs (e), (f), (g) and (h) apply, the breach, failure, inability or unwillingness is noted by the Council in its records and supported by a resolution of two-thirds majority of the members and the person is informed of the termination of the appointment in writing through the director, or where the affected person is the director, through the chairperson.

(4) Where any vacancy occurs in the Council, the Council shall within seven days of the occurrence, submit to the Minister the name

of a person qualified under this Act and nominated by the relevant organization, to fill the vacancy.

(5) The Minister shall, within seven days of the receipt of the name submitted under subsection (4), submit the name to the President for appointment of the person as a member of the Council.

(6) The President shall, within seven days of receipt of the name submitted under subsection (5) appoint the person as a member of the Council.

(7) No act of the Council shall be called to question on the ground only of the existence of any vacancy in, or defect in, the constitution of the Council.

PART III – FUNCTIONS AND POWERS OF THE COUNCIL AND MEMBERS

Functions of the
Council

15. The Council shall be the principal organ of the review process and shall-

- (a) provide policy directions to guide the process;
- (b) oversee the operations of the Steering Committee;
- (c) identify contentious issues in the Proposed New Constitution and the Bomas Draft and any other draft Constitution that the Council may consider appropriate;
- (d) negotiate the resolution of identified contentious issues;
- (e) on the basis of the Proposed New Constitution, the Bomas Draft and such other draft Constitutions as the Council may consider appropriate, prepare a harmonized draft Constitution for presentation to the Constitutional Conference for a Democratic Kenya;
- (f) establish an audit, monitoring and evaluation mechanism to ensure compliance with the principles and objects of the review process and that the draft Constitution produced by the Conference is internally consistent and is of the highest legislative drafting standards;
- (g) conduct and facilitate civic education in order to stimulate public discussion and awareness of constitutional issues;
- (h) carry out or cause to be carried out such studies, researches and evaluations concerning the Constitution and other constitutions and constitutional systems; and

- (i) do such other things as are incidental or conducive to the attainment of the objects and principles of the review process.

Powers of the Council

16. (1) The Council shall have all powers necessary for the execution of its functions under this Act.

(2) The Council may summon any public officer or other person 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 Council.

Establishment of Steering Committee and other committees.

17. (1) There is established a Steering Committee which shall be composed of forty-three members appointed by the Council from amongst its members.

(2) The Steering Committee shall be the principal organ of the Council in the execution of its functions and shall have general oversight of the Secretariat of the Council.

(3) The Council may establish such other committees as it may consider necessary for the better carrying out of its functions under this Act.

Procedure of the Council.

18. (1) Subject to this section, the Council shall regulate its own procedure and that of its committees.

(2) Subject to subsection (3), the Council shall hold such number of meetings in such places, at such times and in such manner as the Council shall consider necessary for the discharge of its functions under this Act.

(3) The quorum of the Council and of any of its committees shall be two-thirds of its members.

(4) All questions before the Council or a committee thereof shall be determined by consensus, but in the absence of consensus, decisions of the Council shall be determined by a two-thirds majority of the members present and voting.

Records of the Council.

19. (1) The Council shall keep a verbatim record of the proceedings of every meeting of the Council and its committees.

(2) The Council shall, for the purposes of subsection (1)(c), consult with the Kenya Broadcasting Corporation and other licensed broadcasting stations, in order to secure suitable –

- (a) allocation of air-time and space for purposes of disseminating information about the activities of the Council through the electronic and print media; and
- (b) provision of a sign language inset or subtitles in all television programmes aired for purposes of paragraph (a), all newscasts, civic educational programmes and in all other programmes covering the constitutional review process.

(3) Where a broadcasting station is consulted by the Council under subsection (2), such station shall make suitable arrangements to air such programmes whose broadcast is specified by the Council.

Civic education.

20. (1) The Council shall, in furtherance of the completion of the review process, facilitate and promote civic education in order to stimulate public discussion and awareness.

(2) The Council shall ensure that civic education materials are made available in a form accessible to the various categories of persons with disabilities.

PART IV – REPORT OF THE COUNCIL AND ACTION THEREON

Completion of work.

21. (1) Subject to section 33, the Council shall complete its work within a period of twelve months of the commencement of this Act.

(2) The Council shall within two months of the commencement of this Act, on the basis of the Proposed New Constitution, the Bomas Draft and such other draft Constitutions as the Council may consider appropriate, prepare a draft Constitution for presentation to the Conference.

National discussion of draft Constitution.

22. (1) The Council shall –

- (a) upon compilation of its report and preparation of the draft Constitution referred to in section 21 –
 - (i) publish the draft Constitution for a period of

thirty days; and

- (ii) ensure that the report and the draft Constitution are made available to the public generally and to persons or groups of persons conducting civic education;
 - (b) upon the expiry of the period provided for in paragraph (a)(i), convene a Conference for presentation of its report and for the debate, amendment and adoption of the draft Constitution.
- (2) The Conference shall consist of the membership set out in the Fifth Schedule.
- (3) The Council shall make regulations governing the election of members to the Conference and the distribution of representation among the various categories of representatives provided for in subsection (2).
- (4) The Council shall within seven days of the expiry of the period specified in subsection (1), convene the first meeting of the Conference at which the Conference shall elect two co-chairpersons and two deputy chairpersons from amongst the members of the Conference.
- (5) Each of the positions in the Conference specified in subsection (4) shall be held by persons of opposite gender.
- (6) The quorum of the Conference shall be one half of the members of the Conference.
- (7) All questions before the Conference shall be determined by consensus, but in the absence of consensus, decisions other than decisions on questions relating to the content of the draft Constitution, shall be determined by a simple majority of the members of the Conference present and voting.
- (8) In the absence of consensus under subsection (7), a decision on any question relating to the content of the draft Constitution, shall be determined by two thirds of the members of the Conference present and voting.

Debate of draft
Constitution by

23. (1) The Conference shall complete its work within thirty days

National
Assembly.

of its first meeting and shall submit its report and draft Constitution to the Attorney-General for presentation to the National Assembly.

(2) The Attorney-General shall, within seven days of the receipt of the report and draft Constitution from the Conference, table the report and draft Constitution before the National Assembly.

(3) The National Assembly shall within fifteen days of the tabling of the draft Constitution under subsection (2), debate it and -

- (a) approve the draft Constitution without amendment and submit it to the Attorney-General for publication; or
- (b) propose amendments to the draft Constitution and submit the draft Constitution and the proposed amendments to the Conference for re-consideration.

(4) Where the National Assembly submits the draft Constitution to the Conference for re-consideration under paragraph (b) of subsection (3), the Conference shall within seven days of receipt of the draft Constitution, consider the amendments proposed by the National Assembly and submit the draft Constitution with or without amendments to the Attorney-General for publication.

(5) Upon the submission by the Conference of the draft Constitution to the Attorney-General under subsection (4), the Conference shall stand dissolved.

Publication of the
new Constitution.

24. (1) The Attorney-General shall, within thirty days after receipt of the draft Constitution from the National Assembly or the Conference under section 23, publish the Proposed New Constitution.

(2) The Electoral Commission shall, within sixty days after the Attorney-General publishes the Proposed New Constitution under subsection (1), hold a referendum on the Proposed New Constitution.

PART V – THE REFERENDUM

Referendum
question.

25. (1) The Commission shall within seven days of the publication of the draft Constitution by the Attorney-General under section 24, frame the question to be determined by the referendum and the Attorney-General shall lay the question before the National Assembly for approval.

(2) The question referred to in subsection (1) shall be approved by resolution of the National Assembly within seven days of the date it is laid and the Commission shall thereupon, within seven days, publish the question.

(3) The question to be submitted to the referendum shall require the voter to indicate whether the voter approves or does not approve the Proposed New Constitution and shall be so framed as to require the answer “Yes” or the answer “No.”

(4) The voting at a referendum shall be by secret ballot.

(5) The Commission may assign such symbols for each answer to the referendum question as it may consider necessary.

(6) The referendum ballot paper shall contain only one question.

Conduct of referendum

26. The Commission shall organize, conduct and supervise a referendum held under this Act.

Funding of referendum campaigns.

27. Public funds shall not be used to finance the campaign activities of any referendum side

Notice of holding referendum

28. (1) The Commission shall, within fourteen days after publication of the question under section 25 (2) by notice in the Gazette specify –

- (a) the day on which the referendum is to be held;
- (b) the polling time of the referendum;
- (c) the referendum campaign period which shall not be less than twenty one days after the date of the publication of the notice;
- (d) the day by which the referendum committees must have registered with the Commission; and
- (e) the day and time by which campaign in support of or in opposition to the referendum question shall cease.

(2) The returning officer of every constituency shall notify the public of the referendum within twenty one days of publication of the notice by the Commission.

(3) The Commission shall on publication, of the notice specified in paragraph (1), suspend the registration of voters.

- Right to vote in referendum.
- 29.** A person whose name is entered in the register of voters shall, unless prohibited from voting by any written law, be entitled to vote at the referendum.
- Referendum committees
- 30.** (1) Persons intending to support or oppose the ratification of the Proposed New Constitution may each form one national committee and one committee in each parliamentary constituency, which committees shall be known as referendum committees.
- (2) A member of a referendum committee shall subscribe to and abide by the Code of Conduct provided for in section 33 in the manner prescribed by the Commission.
- Registration of referendum committees.
- 31.** (1) A referendum committee shall apply for registration for the purposes of a referendum by filing the prescribed form with the Commission, within the time specified by the Commission.
- (2) On receipt of an application for registration of a referendum committee, the Commission shall examine the application and determine whether the committee is eligible for registration and shall if satisfied register the committee.
- (3) The registration of a referendum committee for the purposes of a referendum is valid for that referendum only and shall be invalid unless renewed in the event of a repeat referendum.
- Procedure for conduct of referendum.
- 32.** The procedure for conducting a referendum shall be the same as that of elections to the National Assembly and the Local Government Elections.
- Code of conduct
- 33.** The code of conduct applicable to elections under the National Assembly and Presidential Elections Act shall apply to the conduct of the referendum and shall bind all persons participating in the referendum
- Process after ratification referendum.
- 34.** (1) The Electoral Commission shall publish the result of the referendum in the Gazette within two days of the holding of the referendum.
- (2) If no petition is made under section 35 challenging the conduct or result of the referendum within the time limit for making such petitions, the result of the referendum shall be final upon the expiry of

that time limit.

(3) If a petition is made under section 35 challenging the conduct or result of the referendum within the time limit for making such petitions, the result of the referendum shall not be final until all such petitions are finally disposed of.

Petition to court to challenge referendum.

35. (1) The conduct or result of the referendum may be challenged only by petition to the High Court made within fourteen days after the publication of the result of the referendum under section 34.

(2) A petitioner shall give notice of the petition to the Attorney-General and the Electoral Commission within seven days after the petition is made and the Attorney-General shall publish a notice of each petition of which notice has been received, in the Gazette within seven days of the expiry of the period prescribed in subsection (1).

(3) The petitioner shall within seven days after the petition is made deposit two million shillings with the court as security against costs.

(4) If security is not given in accordance with subsection (3), the petition shall be dismissed.

Composition of court.

36. (1) A petition under section 35 shall be determined by a panel of five judges appointed by the Chief Justice.

(2) Unless otherwise ordered by the Chief Justice, interlocutory matters shall be dealt with by a single judge from the panel.

Powers of court

37. (1) On a petition under section 35 challenging the conduct or result of the referendum the Court may -

- (a) dismiss the petition;
- (b) declare the published result to be incorrect;
- (c) order the Electoral Commission to repeat the polling in any place or places; or
- (d) annul the result of the referendum.

(2) The court shall not annul the result of the referendum unless it is satisfied that the applicable law has not been complied with and such

non-compliance has materially affected the result of the referendum.

Determination on priority basis. **38.** (1) The hearing of a petition shall not commence until after the expiry of seven days after the publication by the Attorney-General of the notices referred to in section 35

(2) A petition presented under section 35 shall be heard and determined by the Court on a priority basis, and in any event within fourteen days of the commencement of the hearing.

Court decision is final **39.** The determination by the Court of a petition under section 35 shall be final.

Withdrawal **40.** A petition under section 35 may be withdrawn by the applicant on notice to the other parties and the Court, subject to any order of the Court as to costs.

Certain provisions of Cap. 7 to apply. **41.** The following provisions of the National Assembly and Presidential Elections Act apply, with necessary modifications, to a petition under section 35 -

- (a) section 22;
- (a) section 23(1);
- (c) section 25;
- (d) section 26; and
- (e) section 29.

Other procedure **42.** Subject to sections 35 to 41 the Chief Justice may give directions with respect to the procedure for a petition under section 35.

PART VI – EXPENSES OF THE REVIEW PROCESS

Funds for expenses of the review process. **43.** (1) The expenses of the constitutional review process incurred by the Council, the Conference and the referendum in accordance with this Act shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

(2) Without prejudice to subsection (1), there may be made to the

Council grants, gifts, donations or bequests towards the achievement of the objects of the review process specified in section 3:

(3) The Council shall not accept any grant, gift, donation or bequest made on any condition that the Council perform any function or discharge any duty or obligation other than duties under this Act.

Constitution of
Kenya Review
Fund.

44. (1) There is established a Fund to be known as the Constitution of Kenya Review Fund which shall be administered, on behalf of the Council, by the Director.

(2) There shall be paid into the Fund –

(a) such monies as may be appropriated out of the Consolidated Fund pursuant to this Act; and

(b) any grants, gifts, donations or bequests received under section 43(2).

(3) There shall be paid out of the Fund all payments in respect of any expenses incurred in pursuance of the provisions of this Act.

(4) The Director shall, in administering the Fund, consult with the Permanent Secretary to the Treasury and, subject to provisions of the Exchequer and Audit Act, manage the Fund in such manner as promotes the objects and purposes of this Act.

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(5) Upon the dissolution of the Council under section 52, any assets to the credit of the Constitution of Kenya Review Fund shall, subject to any condition attached to a gift, donation or bequest, be credited to the Consolidated Fund.

Remuneration and
allowances of
Members.

45. The Minister shall, in consultation with the Minister in charge of finance, determine the remuneration and allowances of members and shall scrutinize and approve the budget of the Council.

Accounts and
audit.

46. The accounts of the Constitution of Kenya Review Fund shall be kept, audited and reported upon to the National Assembly in accordance with Public Audit Act.

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PART VII - GENERAL PROVISIONS

Disobedience of
summons.

47. Any public officer who, without lawful cause, fails to appear before the Council pursuant to any summons by the Council

under section 16 (2) commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding three months, or to both.

Privileges of
Members and the
Director during
office and other
immunities.

48. (1) A member or the Director shall not be liable to any civil action suit for or in respect of any matter or thing done or omitted to be done in good faith as a member or as the Director.

(2) A member of the Council or the Director shall not be liable to arrest under civil process while participating in any meeting of the Council or of any committee thereof.

(3) No person who appears before the Council shall, whether such appearance is in pursuance of any summons by the Council under this Act or not, be liable to any criminal or civil proceedings, or to any penalty or forfeiture whatsoever in respect of any evidence or information given to the Council by such person.

Regulations.

49. (1) The Council shall make Regulations generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this section may -

- (a) prescribe anything required by this Act to be prescribed;
- (b) subject to this Act, prescribe the procedure for-
 - (i) electing the co-chairpersons, deputy co-chairpersons and joint secretaries and filling any vacancies arising in respect thereof;
 - (ii) facilitating and promoting the provision of civic education;
 - (iv) the constitution and conduct of the Conference;
 - (v) resolution of any disputes arising under this Act.
- (c) prescribe the disciplinary procedures applicable to members and staff of the Council.

(3) The Commission may make Regulations prescribing any matter relating to the holding of the referendum.

Act to bind the
Government.

50. This Act shall bind the Government.

Extension of time. **51.** The National Assembly may extend the time prescribed under the Act by such period as it may consider appropriate.

PART VIII - DISSOLUTION OF ORGANS OF REVIEW AND FINAL PROVISIONS

Dissolution of Council. **52.** (1) If the final result of the referendum is that the people of Kenya have ratified the draft Constitution, the Council shall stand dissolved forty-five days after the day the President proclaims the new Constitution to be law and this Act shall thereupon lapse.

(2) If the final result of the referendum is that the people of Kenya have not ratified the draft Constitution, the Council shall stand dissolved forty-five days after that result becomes final.

(3) During the period prescribed in subsections (1) and (2), the Council shall ensure that its affairs are wound up in an orderly way and, in particular, shall ensure that –

- (a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred; and
- (b) its files and records are preserved and transferred to the appropriate bodies.

(4) Upon the dissolution of the Council under subsections (1) and (2), any assets and liabilities of the Council, other than assets described in subsection 44(5), shall become assets and liabilities of the Government.

(4) The terms of members shall expire upon the dissolution of the Council.

PART IX – PRESERVATION OF THE REVIEW PROCESS

Commencement of Part. **53.** This Part shall come into operation on the date of the dissolution of the Council.

Non application of Parts. **54.** Parts I, II, III, IV, V, VI, VII, and VIII shall not apply at any time while the Council stands dissolved.

Revival of review process. **55.** At any time after the expiry of one year from the date of the dissolution of the Council under section 34-
(a) the President may by notice in the Gazette appoint a date

- as the day on which Parts I, II, III, IV, V, VI, VII and VIII shall begin to apply; or
- (b) if the President does not appoint a date under paragraph (a) within two months of the expiry of the period of one year provided for in this section, the National Assembly, on the motion of any member of the National Assembly, may by resolution appoint a date as the day on which Parts I, II, III, IV, V, VI, VII, and VIII shall begin to apply.

FIRST SCHEDULE

(s. 5)

PRINCIPLES FOR A DEMOCRATIC AND SECURE PROCESS FOR THE REVIEW OF THE CONSTITUTION

The Government of the Republic of Kenya, the organs of review of the constitution, political parties, non-governmental organisations, and all Kenyans shall –

- (i) recognise the importance of confidence building, engendering trust and developing a national consensus for the review process;
- (ii) agree to avoid violence or threats of violence or other acts of provocation during the review process;
- (iii) undertake not to deny or interfere with any one's right to hold or attend public meetings or assemblies, the right to personal liberty, and the freedoms of expression and conscience during the review process, save in accordance with the law;
- (iv) ensure that the police shall protect the safety of all persons who attend meetings or exercise their other rights from violence from whatever source;
- (v) ensure that the meetings of all organs of review are held in peace;
- (vi) respect the independence of the Council and its

members; and

- (vii) desist from any political or administrative action that will adversely affect the operation or success of the review process.

SECOND SCHEDULE

(s. 6)

LIST OF ORGANIZATIONS AND THEIR REPRESENTATIVES IN THE COUNCIL

1. Kenya African National Union	2
2. Liberal Democratic Party of Kenya	2
3. NARC-Kenya	2
4. Democratic Party of Kenya	2
5. New KANU Alliance Party of Kenya	2
6. FORD-People	2
7. FORD-Kenya	2
8. FORD-Asili	2
9. Shirikisho Party of Kenya	2
10. SAFINA	2
11. National Labour Party of Kenya	2
12. Labour Party of Kenya	2
13. National Party Kenya	2
14. Mazingira Greens Party of Kenya	2
15. NARC	2
16. SISI kwa SISI Party of Kenya	2
17. Forum for Development of Multi-Party Democracy-CMD	2

18. APSEA	2
19. Law Society of Kenya	2
20. Central Organization of Trade Unions (Kenya)	2
21. Kenya National Union of Teachers	2
22. KEPSA	2
23. Hindu Council of Kenya	2
24. Seventh Day Adventist	2
25. Evangelical Alliance of Kenya	2
26. Kenya Episcopal Conference	2
27. Supreme Council of Kenya Muslims	4
28. National Council of Churches of Kenya	2
29. Non-Governmental Organization Council of Kenya	6
30. CCR-C	4
31. Youth	4
32. Persons with Disabilities Organizations	2
33. Women's Political Alliance	3
34. Kenya Women Political Caucus	3
35. Centre for Multi Party Democracy-Kenya (<i>Ex- Officio</i>)	2

THIRD SCHEDULE

(s. 12)

OATH OF OFFICE OF A MEMBER

I being appointed a member under the Constitution of Kenya Review Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such member I shall not be influenced by any political party, religious society or other organisation or person which may have nominated me for appointment. So help me God.

.....
MEMBER

.....
CHIEF JUSTICE

SOLEMN AFFIRMATION OF A MEMBER

I being appointed a member

under the Constitution of Kenya Review Act do solemnly declare and affirm that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such member I shall not be influenced by any political party, religious society or other organisation or person which may have nominated me for appointment.

.....
MEMBER

.....
CHIEF JUSTICE

OATH OF OFFICE OF THE DIRECTOR

I being appointed the director under the Constitution of Kenya Review Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such director/deputy director I shall not be influenced by any political, religious or other interest, or by any person. So help me God.

.....
DIRECTOR

.....
CHIEF JUSTICE

SOLEMN AFFIRMATION OF THE DIRECTOR

I, being appointed the director under the Constitution of Kenya Review Act do solemnly and sincerely declare and affirm that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice

and to the end that in the exercise of the functions and powers as such director/deputy director I shall not be influenced by any political, religious or other interest, or by any person.

.....
DIRECTOR

.....
CHIEF JUSTICE

FOURTH SCHEDULE (s. 13)

**CODE OF CONDUCT FOR MEMBERS AND STAFF
OF THE COUNCIL**

Impartiality and Independence of Members

1. Every member of the Council shall serve impartially and independently and perform the functions of his office in good faith and without fear, favour or prejudice.
2. No member of the Council may -
 - (a) by his or her membership, association, statement, conduct or in any other manner jeopardize the perceived independence of the member, or in any other manner prejudice the credibility, impartiality, independence or integrity of the Council;
 - (b) make private use of or profit from any confidential information gained as a result of being a member of the Council.

Disclosure of Conflicting Interests

3. If a member of the Council is directly or indirectly interested in any contract, proposed contract or other matter before the Council, such member shall disclose the fact and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be

counted in the quorum of the meeting during consideration of the matter.

4. This Code shall apply with necessary modifications to the staff of the Council.

FIFTH SCHEDULE

(s. 23 (2)(c))

CONSTITUENCIES	CONSTITUENCIES			Sub Totals	TOTAL	Sub Totals	TOTAL
FIRST ROW SPECIALISED CONSTITUENCIES	FIRST ROW SPECIALISED CONSTITUENCY						
Intergenerational interests	Intergenerational interests	Youth Senior citizens Department of Children Network of Children Organizations	6 2 1 1	Youth Senior citizens Department of Children Network of Children Organizations	10 	6 2 1 1	10
	Faiths Constituencies	Catholics	2	Catholics		2	16
Faiths Constituencies	Catholics	NCCK	2	NCCK	16	2	
	NCCK	Adventist	2	Adventist		2	
	Adventist	Evangelical	2	Evangelical		2	
	Evangelical	Muslims	2	Muslims		4	
	Muslims	Hindu	4	Hindu		2	
	Hindu	Sikh	2	Sikh		1	
	Sikh	OAIC	1	OAIC		1	
Women Movement constituency	Women Movement constituency	Women Political Alliance	6	Women Political Alliance		6	12
	Civil society Movement on the constitution	NGO Council CCR-C	6	NGO Council CCR-C		6	10
Civil society Movement on the constitution	Business Council	KEPSA FKE	6	KEPSA FKE	10	2 2	4
	Trade Unions	CCRC	4	CCRC		4	4
	Pastoralists, Ethnic Minorities and other Special Interests	Pastoralists		Pastoralists		6	6
Business constituency	KEPSA and other Special Interests		2		4		
Trade Unions			4		4		
Pastoralists, Ethnic Minorities and other Special Interests	Intelligent Professionals, Academia and Students	Pastoralists Professionals Academia Students [Kenya	6	LSK Professionals Academia Students [Kenya	6	4 2 2 2	10

Preliminary Draft
The Constitution of Kenya Review Bill, 2006

		Labour Party of Kenya National Party Kenya Mazingira Greens Party of Kenya NARC SISI kwa SISI Party of Kenya FORUM	Nairobi Nairobi East Nairobi North Nairobi West Coast : Kaloleni Kilifi Kilindini Kinango Kwale				
THIRD ROW			Lamu Malindi Mombasa				
DISTRICT DELEGATES		Insert here as it appears in THE CONSTITUTION OF KENYA REVIEW BILL, 2006 (DRAFT REVIEW LAW)	Taita Taita Taveta Tana River North Eastern: Garissa Mandera Wajir Wajir South Eastern: Embu Igembe		104		
GRAND TOTAL			Imenti South Isiolo Kang'undo Kibwezi Kitui Kitui South Machakos Makueni Marsabit Meru Central Meru North Meru South (Nithi) Moyale Tharaka/Nithi Yatta		256		

	<p>Central : Gatundu Kiambu Kiambu West Kirinyaga Maragua Muranga Nyandarua Nyandarua South Nyeri Nyeri South Thika</p> <p>Rift Valley : Baringo Bomet Bureti East Pokot Elgeyo/Marakwet Kajiado Keiyo/Marakwet Kericho Koibatek Laikipia Laikipia East Molo Naivasha Nakuru Nandi Nandi South Narok Samburu Subukia Trans Nzoia Trans Nzoia East Trans Nzoia West Transmara Turkana Turkana North Uasin Gishu Waren/Taragwa West Pokot</p>			
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	Western : Bungoma Busia Butere Butere/Mumias Hamisi/Sabatia Kakamega Kakamega North Lugari Mt. Elgon Sirisia Teso Vihiga Webuye Nyanza : Bondo Gucha (South Kisii) Homa Bay Kisii Central Kisumu Kisumu North Kuria Masaba Migori Nyamira (Kisii North) Nyando Rachuonyo Rongo Siaya South Kisii Suba			
GRAND TOTAL				256

SIXTH SCHEDULE

(s. 23 (2)(d))

SPECIAL INTERESTS TO BE REPRESENTED

Ethnic and other Minorities
Pastoralists
Persons with disabilities
Trade unions
Women
Youth