

# **CONSTITUTION MAKING AND LEGAL REFORM PROCESS IN KENYA**

**BY**

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## **1. Introduction**

Broadly, the Constitution is a covenant, symbol and aspiration by – which a group of people, agree to transform themselves into a nation. A constitution may also function as a uniting force, the only principle of order in the absence of no other shared moral or social vision that might bind together a nation. It may serve as a binding statement of a people’s aspirations for themselves as a nation, thus a constitutional document may guide as well as express a peoples’ hopes for themselves as a society. The ideals and the words enshrine the processes they decide, and the actions they legitimize, must either help to change the society or at least reflect their values.

The constitution is also considered as a charter of government as it sketches the fundamental modes of legitimate governmental operations - who its officials are, how they are chosen, what their terms of office are, how authority is divided among them, what processes they must follow, and what rights are reserved for citizens. It is the guardian of human rights and fundamental freedoms. In so far as it is authoritative and embodies the legitimacy of the government, it must protect substantive rights by limiting the power of those fairly and freely chosen as representatives.

When Kenya became independent, the constitution was not made directly by the people. It was negotiated in London at Lancaster House between the British government and representatives of Kenya’s political parties who were members of the Legislative Council. The people of Kenya were therefore not consulted in the making of the Constitution, and the British Parliament, not

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the Kenya legislature, adopted the constitution. Since independence several amendments to the constitution have been done and just like at independence, the people had neither direct say in these constitutional changes, nor given time to debate and discuss the changes.

Based on the lessons learnt from the past, the Constitution of Kenya Review Act sought to place people at the centre of the review process and aimed at making the process comprehensive, participatory and inclusive. It is for this reason that it was popularly described as ‘people-driven’. Recognizing that a constitution is a compact among the people for the good governance of their society and affairs, the process, procedure and outcome of making the new constitution was intensely negotiated and its *contents* largely reflected the views of the majority involved in the process.

## **2. Background to the Constitutional Reform Process in Kenya**

For many years Kenyans have yearned for a constitution that could ensure the welfare of the people and stability of the nation, and a democratic constitutional order that is responsive to the needs and aspiration of the people. The Kenyan people demanded and fought for the review of the constitution to restore the valuable aspects of the constitution that had been removed the self driven amendments, to rationalize and refocus the judicial, legislative and executive power of the state to ensure the welfare of the people, and to effectively tackle the many political, social, cultural and economic problems that the country faced due to the failings of the constitution. The constitutional reconstruction was thus motivated by a desire to secure protection against past mistakes and excesses that led to political instability and poor social and economic performance, and to establish conditions of stability and security in the Republic.

The global movement towards constitutional and democratic reforms also prompted claims for reform. In the late 1980s and the 1990s, with the collapse of communism in Europe, liberal ideas of the organization of the state gained acceptance worldwide. The new world order, dominated by the global capitalist market, increasingly allowed states and societies to participate fully in the international system only if they accepted and practiced the market economy. Many states had undergone revolutionary changes, either with the overthrow of communism or the end of one-party or military regimes, and there was a need for totally new constitutional instruments. These changes were often the result of the struggles and efforts of civil society, which placed high

values on public participation in governance. Thus due to both international and domestic circumstances, concepts of a liberal constitution were adopted in numerous countries. Particular emphasis was placed on ‘democratizing’ constitutions in order to facilitate the full establishment of democracy.

In the African context, four main phases of constitutional review have been identified. The first phase, characterized as idealist in nature, lasted for a relatively short period of time coinciding with the transition to independence by African states, it can also be said to apply to the colonial period prior to independence. It was mainly characterized by constitutional documents and developments meant to provide African countries with constitutions that reflected the principles and norms prevalent in the colonial capital, with the culmination of this process being the enactment of the independence constitutions. In this phase, the constitutional documents enacted had little to do with African realities and what the colonial powers were doing was to bestow the Africans with structures that represented their own ideas of what should prevail. The constitutional documents were either imposed or negotiated, and no form of popular participation by the Africans was involved in their enactment.

The second phase commenced soon after independence, with measures aimed at abrogating the independence constitutions. Between the periods 1963 to 1989, many African constitutions were rewritten, reconfigured, suspended, abrogated and in other cases simply discarded, with the primary objective of using the constitutions to consolidate political power, and as such the constitutions inevitably became devalued instruments. During this period many African states had, what Prof. Okoth-Ogendo refers to as, “constitutions without constitutionalism”<sup>1</sup>. It was also a period chiefly characterized by either single-party or military dictatorship in many countries in Africa.

The third phase is what has been referred to as Africa’s “second liberation”. Starting from the 1990’s there has been considerable political transition in the continent characterized by a tendency to accept the necessity of political reform in order to placate domestic or international opinion. This phase coincided with the imposition of International Monetary Fund and World

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<sup>1</sup> H.W.O. Okoth Ogendo, “Constitutions without Constitutionalism: Reflections on an African Political Paradox” in Greenberg D. et al. (Eds), *Constitutionalism and Democracy: Transitions in the Contemporary World*, pp 65-81(New York: Oxford University Press, 1993)

Bank designed structural adjustment programs, which were accompanied with political and economic conditionalities. The political conditionalities related to human rights, multiparty polity democracy, accountability and transparency in governance while economic conditionalities required African states to execute stringent fiscal and economic policies, particularly those of deregulation and privatization, which opened the African states to the forces of globalization. Unfortunately for most African states, the failure of structural adjustment programs culminated in a rising debt profile, unemployment, inflation, infrastructural decay, economic collapse and social dislocation. One other major consequence was increasing pressures for economic and political reform from within the states by the increasingly marginalized groups, individuals and civil society movements. By the end of the 20<sup>th</sup> century, majority of the African states were either undertaking or had undertaken constitutional reforms.

The fourth phase is characterized by the need to build a people based democratic constitutional order emphasizing sovereignty of the people, the rule of law, good governance and respect of human rights and fundamental freedoms. The major characteristic of this phase is the attention paid to the importance of constitutionalism founded on the true understanding and appreciation of the local, national, regional and global realities of human life.

### **3. The Period Leading to the Constitutional Reform**

#### *Before 1990*

Since the Kenya constitution came into force on 12<sup>th</sup> December 1963, it has been amended 38 times. The period between 1963 when Kenya attained independence and 1990 witnessed twenty-four (24) amendments made to the Kenya Constitution. The process mirrored the constitutional developments that were taking place elsewhere in the continent as explained in the foregoing. Within the Kenyan context, three discernable trends can be drawn from the constitutional changes during the period:

- ♦ It was an *ad hoc* and reactive process, largely aimed at dealing with political exigencies of the moment.

- ♦ The major proponent for constitutional review was the ruling political party, and the organ for review was the single party parliament.
- ♦ The main purpose and effect of the constitutional changes was to strengthen the executive arm of government at the expense of other institutions and checks and balances provided for in the independence constitution.

*Between 1963 and 1965*, constitutional changes were mainly concerned with power transfer and was reacting to firstly, the inherited colonial constitutional legacy, and secondly, to the need by the ruling party KANU to strengthen and consolidate its power base. The constitutional changes resulted in the creation of a centralized system of government, the abolition of regionalism and establishment of *de facto* one-party state. It also laid the foundation in terms of content and process, of the constitutional changes that were to follow.

*Between 1966 and 1990* the major proponent for constitutional review during this period was the ruling party KANU, and the organ of review was a considerably weakened one party parliament. The constitutional developments during the period were to ensure the political survival and succession of power by the ruling party, culminating in Kenya being constitutionally declared a *de jure* one- party state in 1982. This resulted into further centralization of state powers in the hands of the President, and further erosion of powers of other constitutional organs and institutions of the state. The net effect of this period's constitutional changes was the creation of an almost entirely unaccountable government greatly compromised in terms of the sanctity and integrity of the constitution.

*After 1990*

The period after 1990 saw the galvanization of the national constitutional, political and economic reform movement influenced by national political dictatorship, deteriorating social and economic situation, and globalization. The disenchanting political groups and the civil society movements coalesced into one powerful force to form a common national agenda for reform. Against the background of relative political stability, the demands for a new constitution were motivated by the need to update and improve the current constitution, not for an entirely new socio-political

order like in Uganda, South Africa or Eastern Europe which were emerging from a chaotic political past.

Demands for a systematic review of the constitution were made as early as 1990 to the KANU Constitution Review Committee headed by the then Vice-President Professor George Saitoti. Doubts were raised about the desirability of various constitutional issues, which had been introduced by constitutional amendments. These included one party rule, detention without trial, the removal of security of tenure of judges, the Attorney General and the auditor-general, and the weakening of the principle of the separation of powers. However, no action was taken as the Committee considered that these matters were outside its mandate.

The pressures for constitution review built up as the movement for the restoration of multi-party system started in earnest in 1990 with many civil society organizations such as Citizens' Coalition for Constitutional Change emerging with focus on constitutional change. Other civil society organizations such as National Council of Churches of Kenya (NCCCK), Episcopal Conference of Catholic Bishops, the Law Society of Kenya, the International Commission of Jurists (ICJ) Kenya Chapter, Kenya Human Rights Commission and the National Council of NGOs of Kenya joined political groups to press for political and constitutional change.

In December 1991 the constitution was changed to allow multi-partyism. Some groups demanded, unsuccessfully, a comprehensive reform of the constitution before the general elections of 1992. The momentum for a comprehensive review picked up after the elections as it was realized that the repeal of one party provision was by itself insufficient to ensure an effective constitutional democracy, increase public accountability, and ensure more responsive policies.

In 1994 Catholic Bishops issued a pastoral letter that called for a new constitution to truly reflect multi-partyism. In the same year the Kenya Human Rights Commission, the Law Society and the ICJ developed and widely circulated new prototype constitution, dubbed *Proposal for a Model Constitution*, that formed the basis for extensive consultations and workshops from 1994 onwards by civic, religious and political organisations. In view of the wide support for constitutional review, the government announced plans in January 1995 to invite foreign experts to draft a new constitution for consideration by the National Assembly. This proposal however,

came to nothing, and civil society pressures for review through a people's convention gathered momentum. This led to mass action, which resulted in violence and some deaths.

As part of broader movement for comprehensive constitutional reform before the 1997 general elections, Parliamentary political parties, including those, which had supported the initiatives of the National Convention for Constitutional Change, formed their own forum, the Inter-Parties Parliamentary Group (IPPG) in August 1997. The IPPG agreed to a number of reforms to be implemented before the general elections, including the independence of the Electoral Commission, repeal of a number of laws restricting civil and political rights, and abolition of the offence of sedition, and other measures were agreed to facilitate the holding of political meetings, and the fairer access of all political groups to the state media. These were seen as interim reforms, to ensure fair elections, after which a comprehensive review would be undertaken after the general elections. Not all the IPPG's proposed reforms were enacted due to the early dissolution of Parliament.

#### *Post IPPG period*

As part of the IPPG package, the Constitution of Kenya Review Act was introduced and passed in 1997 to provide the legislative framework, structure and vision of the review process after the 1997 elections. The 1997 Review Act was not however made to every one's satisfaction and this brought about a series of multi-stakeholder negotiations held most intensely between June and October 1998 at the Bomas of Kenya and the Safari Park Hotel in Nairobi. The aim of the negotiations was to find and reach consensus on acceptable and inclusive framework for the review. The Act was consequently amended in 1998 to reflect the consensus achieved in these negotiations.

Despite the amendments to the Review Act, the review process did not take off as expected because the major parties disagreed on the nomination of members to, and composition of the Constitution of Kenya Review Commission. The result was a stalemate in the review process leading to the establishment of two parallel review processes. The Constitution of Kenya Review Commission established and appointed by Parliament and the President under the Review Act led one process. The other was set up and appointed by the National Assembly and the President under the Review Act. Parliament established the Parliamentary Select Committee on

Constitution Review under the Chairmanship of Honorable Raila Odinga. The opposition parties boycotted the Select Committee and the Review Commission.

The second process was led by a coalition of religious organizations and civil society organizations with the support of opposition parties in and outside parliament. It was based at Ufungamano House hence the name Ufungamano Initiative. The “Ufungamano Initiative” was founded on the premise that the structure and mandate of the Constitution of Kenya Review Commission as established by legislation was not inclusive, comprehensive and people-driven. The Ufungamano group established and appointed the People’s Commission of Kenya (PCK) under the Chairmanship of the late Dr. Oki-Ooko Ombaka. Although in its procedures, the PCK followed largely the provisions of the amended Review Act, it had no legislative backing and limited financial resources.

Despite the amendments to make the review process more democratic and inclusive, it proved difficult to establish a common and inclusive review process. Nevertheless, there was a danger that having two separate and parallel review commissions would lead to the intensification of political conflict, violence, and that the outcome of either processes would not be accepted and adopted by the polarized Kenyan people as the new constitution. Furthermore neither party had sufficient votes in the National Assembly to enact whichever constitution to be presented before parliament. As a result of this realization, the major stakeholders held a series of negotiations between November 2000 and May 2001 resulting in the decision to merge the two parallel review process and the amendment of the Review Act in May 2001. The Review Act was thus amended again in May 2001 to incorporate the terms of the merger agreement, and to bring on board 10 members from the PCK and 2 additional members appointed by the Parliamentary Select Committee to form a united CKRC of 29 Commissioners. The enlarged commission benefited greatly from the synergy of the merger.

#### **4. Establishment of the organs of the Review process**

The Review Act established several organs of the review process and gave them specific functions, and responsibilities. These were: -

- ❑ the Constitution of Kenya Review Commission (‘Commission or CKRC’);
- ❑ the Constituency Constitutional Forum (CCF);
- ❑ the National Constitutional Conference (NCC);
- ❑ the referendum; and
- ❑ the National Assembly.

#### **4.1 The Constitution of Kenya Review Commission**

The Commission, which was the primary organ of review, consisted of 29 Commissioners (of which two, the Attorney-General and its Secretary are ex-officio). The President acting on the nomination of the National Assembly appointed commissioners. The President appointed the Chairperson from among the Commissioners. The Commission reflected Kenya’s ethnic, geographical, cultural, political, social and economic diversity, and the principle of gender equity. Commissioners were appointed for their legal qualifications or experience in public affairs. The Commission was intended to be independent and could not therefore be instructed by anyone other than the great body of the people of Kenya in carrying out its functions. The tenure of Commissioners lasted until the conclusion of the review process and the Commission as established could only be dissolved subject to the provisions of the review law. The Commission for good cause under the law, could dismiss a Commissioner. They were bound by a code of conduct to prevent conflicts of interests and other improprieties. These characteristics were necessary for the discharge of its functions, the principal function being the preparation of the Bill to alter the Constitution.

#### **4.2 Constituency Constitutional Forum**

Constituency Constitutional Forums were established for every constituency for the purposes of debate, discussion, collection and collation of the views of the members of the public. The Forums also provided the basis for consultations with the Commission. The Commission facilitated the setting up of the Forums, but the people of the constituencies and their political and other leaders determined their composition and form.

In general the Constituency Constitutional Forum (CCF) played a very significant role in the review of the constitution. The CCF was described as one of the organs ‘ **through which the**

**review process shall be conducted’**. The CCF was thus one of the principal ways in which the views of the public were to be obtained.

The Select Committee of the National Assembly, which reviewed the Review Act in early 2000, decided to replace the District Forums with Constituency Forums to get views directly from the people in the constituency. The Select Committee envisaged the constituency forum as ‘open forums with no specific structures’ and which were to be ‘flexible and easy to manage’. The Committee’s opinion was that the ‘existing leadership comprising Members of Parliament, councilors, community based organizations, religious groups and individuals should be able to present views and opinions directly from the grassroots.’

To operationalize the Forums the Commission prepared and gazetted Guidelines for their establishment and operations. The Guidelines stipulated that all the residents of a constituency would constitute the CCF.

In order to coordinate and facilitate the activities of the CCFs, Constituency Constitutional Committees (CCCs) were established. The Guidelines proposed their membership to consist of 10 persons, of which three would be ex-officio: the local MP, the chair of the County Council in which the constituency is located, and the District Coordinator. The Guidelines stated that the membership would be as broad and representative of the people of the constituency as possible and recommended that at least a third of the committee should be women.

### **4.3 The National Constitutional Conference**

The National Constitutional Conference (‘Constitutional Conference’) was established by the Act as the most representative body assembled in Kenya for the function of debating, amending and adopting the draft constitution. It consisted of 629 members;

- ❑ 222 members of the National Assembly,
- ❑ 210 representatives of districts elected by the county councils,
- ❑ 29 members of the Commission (as non-voting members),
- ❑ 42 persons each representing a political party and

- 125 representatives of religious, professional, women's groups, trade unions and NGOs and 15 other interests chosen in accordance with regulations made by the Commission.

#### **4.4 The Referendum**

The Act established the referendum, which would be held within one month following the absence of consensus on any issue during the National Constitutional Conference. A Referendum is a process that is similar to a general election except that instead of voting for people to represent them, the voters give their views on one or more specific questions presented to them. A referendum would be held only to decide those issues, which are not resolved in the National Constitutional Conference. However, by the conclusion of the Conference on 15<sup>th</sup> March 2004, all constitutional issues had been resolved by the requisite two-thirds, hence no referendum was envisaged under the law.

#### **4.5 The National Assembly**

The Act established the National Assembly for the sole purpose of enacting the Bill to alter the Constitution. Once the National Constitutional Conference has adopted the draft Bill and people have made their decision at the referendum, the commission would prepare the final national report and Draft Bill to be presented to the Attorney general for tabling before the National Assembly. The National Assembly would ultimately enact the Bill. To facilitate its role, the National Assembly established the Parliamentary Select Committee on Constitutional Review to assist it in the performance of its functions under the Act.

### **5. Philosophy, Values and Principles of the Review Process**

In many ways the Constitution of Kenya Review Act set a clear vision and framework that articulates its core values, principles and philosophy of the review and the general concerns, interests and sometimes apprehensions of the people of Kenya. The Act in its provisions sought to provide clear direction to its organs as to the nature of process and structures and systems required to achieve the national goals established under the new constitution.

In ensuring that the review process remained focused on the concerns and needs of the Kenyan people, the Review Act outlined specific principles and values that the review organs must achieve to ensure that both the review process and its final outcome guarantee and safeguard the well being of the people of Kenya. They included:

- ❑ Remaining accountable to the people of Kenya
- ❑ Gender equity
- ❑ Peace, national unity and integrity of the Republic of Kenya
- ❑ Resolving national issues on the basis of consensus
- ❑ Respecting ethnic and regional diversity and communal right including the right of communities to organize and participate in cultural activities and the expression of their identities’
- ❑ Equal citizenship
- ❑ Equality and affirmative action to overcome the discrimination or hardships suffered in the past.
- ❑ Good governance based on democracy and separation and devolution of powers
- ❑ The rule of law and constitutionalism
- ❑ Respect of human rights and fundamental freedoms
- ❑ Equitable access to national resources.
- ❑ Full and inclusive Participation in public affairs
- ❑ Accountability and transparency
- ❑ Good international citizenship

The broader philosophy of the review process hinged on the need to establish a governance system that would derive from, and respond directly to the wishes, needs and aspirations of the people of Kenya. A governance system that would sustain not only the welfare and well being of the people but also guarantee national unity, peace and stability.

## **6. The Functions of the Review Commission**

The broader function of the Constitution of Kenya Review Commission was to facilitate the comprehensive review of the Constitution by the people of Kenya, and for the connected purposes. To facilitate the review process and provide technical facilitation of the operations of the Constituency Constitutional Forums, the National Constitutional Conference, the Referendum and the National Assembly in meeting the objects and purposes of the review process.

In addition the Commission was expected to:

- ❑ Compile its reports together with summary recommendations upon which to draft a Bill to alter the Constitution
- ❑ Convene a National Constitutional conference for discussion, debate, amendment and adoption of its report and draft bill.
- ❑ Hold a national Referendum in the absence of consensus at the National Conference
- ❑ Prepare and submit the final report and draft Bill to Attorney General for presentation to the National assembly
- ❑ Keep, audit and report on the accounts of the Commission to the National assembly in accordance with the law

## **7. Methodology of the Review**

The success of the review process could probably be found in the highly multidimensional methodological approach adopted by the Commission as broadly prescribed by the Review Act. In its entire work the Commission remained faithful to the people of Kenya through the Review Act that provided the framework for its work. The Commission adopted not only a highly people driven, people based and people focused approach in its work but also evolved a highly, technically sound framework for the review process. As a result, Kenya became perhaps the first country in the world to have its Constitution made by the people directly on one hand, and by technocrats on the other thereby reflecting the broad acceptance and acclamation of the New Constitution by the widest spectrum of the Kenyan society.

The people based approach to the Commissions work involved a comprehensive, participatory, consultative and public process sequenced in many stages.

- (i) *Establishing and forging of an inclusive national agreement on the need for, terms of the review and the structure of the review process:* The first stage involved establishing and forging an inclusive national agreement on the need for, terms of the review as well as the structure of the review process. This constituted a long and volatile stage of the review characterized with controversy, horse-trading and many years of costly negotiations in workshops, seminars and conferences, demonstrations and public debates by political elites, academics, professionals, civil society organizations including religious organizations and the ordinary people of Kenya. Following the agreement on the terms, method, structure and general principles of the review process, the Commission so established proceeded to apply the notion and practice of people's open and inclusive participation in all the subsequent stages of the review process.
- (ii) *Civic education to prepare the people for effective, and meaningful participation in the review process:* The members of the public were enabled to understand and evaluate the present constitution as well as the constitutional experience of other countries. People's awareness of constitutional issues and the progress of the review were facilitated by the establishment of documentation centres in each of the 74 districts of the country as well as through the electronic and print media. The Commission fulfilled this part of its mandate through a mixture of its own efforts and that of civil society civic education providers.
- (iii) *Public consultations and listening to the people through the Constituency Constitutional Forums and direct submissions to the Commission:* The Commission was required to visit every constituency\*, receive written memoranda or oral presentations from Kenyans in urban and rural areas and to consult, where necessary, with experts.

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\* There are 210 constituencies in Kenya.

- (iv) *Collation and analysis of views and preparing and writing of the report and draft Bill to alter the constitution:* The Act required the Commission to ensure that the final outcome of the review process faithfully reflected the wishes of the people of Kenya'. To achieve this the Commission developed an analytical framework that ensured that the new constitution not only took into full account views received and presented from the public at the national, provincial, district and constituency levels in drafting the new constitution but also that the expert, conceptual and comparative experiences formed the basis for analysis, drafting, debate, consensus building and adoption of the new constitution.
- (v) *Public discussion and debate of the Commission's report and draft Bill:* The Commission conducted a multi-level dissemination of the report and draft Bill through different media. This was marked by extensive distribution of the report and the draft bill prepared by the Commission to the public through print and electronic media and direct explanation to the public through public forum dissemination.
- (vi) *Discussing, debating and adopting the report and draft Bill at the National Constitutional Conference:* The Review Law empowered the Commission to convene a National Constitutional Conference for discussion, debate, amendment and adoption of its report and draft Bill. The law also gave the Commission the power to make regulations and to prescribe the procedure for the constitution and conduct of the National Constitutional Conference. In so doing the Commission ensured that the deliberations at the National Constitutional Conference were not only based on consensus building but also fully participatory.

The Regulations while stipulating the general procedure of the National Constitutional Conference, established the plenary and various committees or technical working groups of the Conference, which provided the full and free space for the delegates to discuss, debate and adopt the report and draft bill without any form of hindrance whatsoever. The Conference was public and the media arrangements were made in such away as to fully engage the general public in the Conference proceedings.

- (vii) *Consensus Building at the National Constitutional Conference and the Referendum:* While it was widely expected that the National Constitutional Conference would proceed on the basis of consensus building and that decisions would be made by consensus, the Review Act provided that in the absence of consensus, decisions would be made on the basis of simple majority failure of which the outstanding issues would be made directly by the people through a National Referendum. The Commission would record the decisions made by the Conference and submit the question or questions supported by the resolutions under the Act to the people for determination through a referendum within one month of the National Constitutional Conference.
- (viii) *Working through the National Assembly towards the Enactment of the New Constitution:* In its work, the Commission maintained close working relationship with National Assembly and consulted it through the Parliamentary Select Committee on the Constitutional Review on a variety of functions under the Act. The nature and manner of interactions between the Commission and the National Assembly were prescribed in the Review Act. The Review Act established the National Assembly as one of the Organs of the Review process. The Act further established the Parliamentary Select Committee to assist the Commission in the performance of its functions under the Act particularly with regard to the filling of the vacancies arising at the Commission. The law provided that the National Assembly would review and approve from time to time the Commission's program of work and also established the arrangements for financial reporting by the commission to the National Assembly.

The law provided that all Members of Parliament would be members of the National constitutional Conference. The Review law stipulates that on the basis of the decisions made by the people through the National Constitutional Conference and the Referendum the Commission would forward the final report and the draft Bill to the Attorney General for presentation to the National Assembly for enactment. Indeed the life of the Commission was subject only to the enactment of the Draft Bill to alter the Constitution by the National Assembly.

## **8. Conclusion**

Based on the elaborate structures, principles, goals and processes of the review process, the Commission not only greatly benefited from the co-operation of the entire Kenyan society but also demonstrated to the entire world that constitution making can truly be people based, people focused and people driven. The Commission's experience indeed showed that once the key stakeholders were able to sit and dialogue together, they discovered that there was a large measure of common ground and that their differences could be resolved without much difficulty through consensus for best results.

The review process provided all Kenyans with the opportunity to take part in preparing a new Constitution for their country so as to produce a legitimate instrument with which they can proudly identify as the supreme law of the land, and that since not all views expressed by the people would find their way into the Draft Bill to alter the Constitution, the Commission had to contend with the daunting task of determining which of the views would be included and how.