

The Thirtieth Annual

Virginia Model United Nations Conference

Presents...

Kenyan Constitutional Review Board

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Dear Delegates,

Karibu ya Kenya! Or as we say in Swahili, welcome to Kenya. It is an honor and a pleasure to have you on this committee, and I look forward to all that can be accomplished during our time together. As you may already know (or will learn from reading this background guide), composing a new constitution is of the utmost importance to this nation.

Kenya has an illustrious and fascinating political history; however, the country has faced many challenges since it gained independence in 1963. Since that time, it has operated under the document that many Kenyans believe is still more “colonial” than “Kenyan” in nature. Now citizens and members of parliament alike are calling for change, and seek to establish aims such as greater equality for all people and cultural groups, fair land allocations, rights for women, and many other significant legislative objectives.

Thus, it is your task to take these varying aspects of human rights and national legislation into consideration as you compose the latest draft of the new constitution. The constitutional review process comes at a significant time in both Kenyan history as well as in current global politics, so what is decided by this committee will certainly have lasting effects. If the Constitutional revision process goes well and a truly democratic document is both drafted and voted into passage, then Kenya will become the first East African nation to compose a democratic Constitution during peacetime. If the review process is unsuccessful, however, it is likely that the country will continue to struggle with the political challenges that it currently faces.

With this task at hand to both draft and ratify a new draft constitution, I look forward to hearing your thoughts, ideas, and – most of all – proposals for legislation. So study up, follow the issues, and get ready for an unforgettable session of the Kenyan Constitutional Review Committee! I look forward to seeing all of you in November in Charlottesville at Mr. Jefferson’s illustrious university.

Sincerely,
Betsy L. Graves
Class of 2011

Notes on the Constitutional Referendum

In this context, the terms “constitutional referendum” refers to a time when citizens will vote whether or not to adopt proposed legislation into law. In order to change major legislation (such as the constitution of the country), it is required to be put to a national vote to reflect the will of the people. First, however, the document must be ready for such a vote, and that is where *you* come in. That’s right; as a member of the Kenyan Constitutional Review Board, your task is to help construct the laws and provisions that will make up the new constitution. Specifically, this committee will focus on the three areas of national law pertaining to: land legislation, democratic principles of leadership and governance, and affirmative action (inclusion of women and other marginalized or discriminated groups).

In order to develop policies and legislation that is applicable and beneficial to the nation, it is important that you understand the history and current information about some of these topics. There are also many

other factors outside of the tangible legislation (such as party affiliations, ethnic or tribal identities, poverty, low literacy rates, economic incentives, corruption, etc) that it will be important for you to consider when drawing up legislation, as they can greatly affect the outcome of the law.

Among this committee you will find both allies and enemies, but this must not deter you from your mission, which is to re-establish the law of the land.

In some cases, learning to navigate the national politics and political human geography may be just as challenging as writing up the laws themselves, but as this committee is a collective of some of the highest ranking political officials, representatives, and intellectuals of Kenya, people (both in Kenya) and around the world have placed their trust and hope on this committee. As you may know, this marks a significant moment in the history of Kenya, so by serving on this committee you are not only determining the future of the country, but writing its history as well. This guide is meant to help prepare you for this task and inform you about the details of certain topics pertaining to general Kenyan

politics and constitutional provisions. Please read it thoroughly and keep its tenets in mind when proposing legislation; remember, your nation is counting on you!

A brief overview: Kenya's Political History, Past and Present

In order to fully understand what it means to write a new constitution for an independent “democratic” republic, it is important to be aware of the political history of the nation and what has been done before in terms of political reform. Probably one of the best places to start is with Kenya's Independence from Britain, which took place on December 12, 1963¹. Gaining independence was not easy, and was the result of over a decade of persisted political activity carried out by various ethnic groups, which is famously known as the Mau Mau uprising.

Pre-independence

The period of 1952-1959 marked a time of independence movements and violent

¹ <http://www.state.gov/r/pa/ei/bgn/2962.htm#political>

insurgency as the “Mau Mau” (nickname for a group composed mostly from the Kikuyu tribe) fought against British rule. Issues such as unfair land practices had enflamed tensions between ethnic groups and their British colonizers, and so local political activism increased and many people began to vie for independence. Jomo Kenyatta (who later became the first president of Kenya) was a leader among the rebel groups, and was imprisoned for several years during this time. The Kikuyus and other native Kenyans suffered great losses, with the death toll being well over 10,000 people, while British losses were a few hundred men.² As tides began to change, a new political party emerged in 1960 that was known as the Kenya African National Union (KANU), of which Jomo Kenyatta was appointed as the head of this party following his release from prison in 1961; in the years following the minority party (Kenya African Democratic Union, KADU) dissolved and joined KANU.³

Post-Independence & President Kibaki

² <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad21>

³ <http://www.state.gov/r/pa/ei/bgn/2962.htm#political>

Kenya then gained independence in December of 1963 (during which time Kenyatta was Prime Minister), and Kenyatta was elected president in 1964. During this time, Jaramogi Oginga Odinga became the Vice President and Mwai Kibaki served as the Finance Minister. Although many citizens were worried about Kenyatta's leadership, he provided to be an effective president, gains a reputation for dealing "even-handedly in related to the African, Asian, and European communities", and upon his death in 1978, Kenya was a nation of high political stability and economic growth.⁴

President Moi

If only such positive trends could have continued; however, following Kenyatta's death, Vice President Daniel arap Moi (from one of the smaller Kalenjin tribes from the Rift Valley Province) served as the interim president of the nation. After being appointed as the head of the KANU party, Moi was officially elected as president in October 1978 (later that year), and began a regime of leadership that was very focused on single-party rule. In fact, the Kenyan

constitution was changed (or amended) in 1982 to make Kenya a one-party state, making any and all opposition illegal. This was not received positively by many Kenyans, and marked a time of great political tension and forceful silencing of dissent. However, over time people began to more radically protest this amendment (particularly the "Saba Saba" uprisings of the 1990s), and so parliament finally repealed the amendment in 1991, allowing opposition groups to lawfully re-emerge on the national political scene.⁵ 1992 marked the first round of multiparty elections in Kenya, yet conflict among opposition parties and aspects of "electoral malpractice" resulted in Moi winning the election and remaining in power through both the 1992 and 1997 elections.

President Kibaki

Towards the end of Moi's regime, two major things happened; the desire to author a new constitution began to take root and quietly gain momentum, while at the same time many political parties began to emphasize the importance of coalition building among the opposition parties. The result was the emergence of National Rainbow Coalition

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<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad21>

⁵ <http://www.kituoachakatiba.co.ug/kenyap.htm>

(NARC) in October 2002, a coalition that endorsed none other than former Finance Minister (under Kenyatta) and Vice President (under Moi), Mwai Kibaki (a kikuyu) as their presidential candidate. He won the election in 2002, and upon coming into power, promised that there would be a new constitution within the first “100 days” of his presidency. Due to internal conflicts among party members and other government officials over the next few years, this proved to be a difficult task for Kibaki to deliver. The drafting process for a new constitution had already begun to take place, and the first constitutional referendum was held in 2005; however, there was a strong opposition to the document supported by several key ministers within the government, and the draft was not adopted.

2007 Elections

Both the opposition to the constitutional referendum and building political tensions led to the highly contested 2007 elections, which resulted in extreme violence and democratically inconclusive results. The main two candidates were Raila Odinga, a political leader who was a representative of the Orange Democratic Movement (ODM) and Mwai Kibaki (who was the incumbent/current president at the time), who created a new political coalition party

known as the Party of National Unity (PNU) in Sept. 2007. National elections took place on December 27th, 2007, and “irregularities in the vote tabulation” and voter turnout resulted in a highly contentious outcome in the presidential race, which showed Kibaki gaining re-election, despite the wide-spread support for the popular candidate and political figure, Raila Odinga.⁶ When Kibaki was announced as winner of the presidency on December 30th, violence erupted across the country through conflicts between supporters of Odinga and Kibaki. The violence was unprecedented in Kenyan history and left approximately 1,300 people dead and over 500,000 Kenyans displaced in various regions of the country (especially in the North Rift valley), and became highly representative of conflict between ethnic groups (as Odinga is Luo and Kibaki is Kikuyu). In this way, what started as a political conflict between party supporters quickly became a dispute that was deeply steeped in ethnic identity and cultural affiliation. In the wake of the violence following these elections, the international community assisted Kenya in setting up a power-sharing agreement in late February

⁶ 6

<http://www.state.gov/r/pa/ei/bgn/2962.htm#political>

2008, which resulted in Kibaki serving as President and Odinga as Prime Minister; parliament then later amended the constitution in March 2008 so that this agreement was upheld by national law. The deal was put into effect in April 2008, and reflects the arrangements currently in effect in Kenya today.

Current political status

Despite their differences in politics and the 2007 elections, one topic of interest that Kibaki and Odinga share is their emphasis on the need for a new constitution. Although these two key figures differ in their views on specific aspects of legislation, both seem to generally agree that the best way to safeguard the nation's best interests is to adopt a new constitution. The views of these individuals (as well as other key ministers and government officials) are expected to be highly influential on the success or failure of the resulting constitutional document.

Meanwhile, negotiations for justice and reform are ongoing in anticipation of the December 2012 presidential elections.

Constitutional Drafts & History

As you may have noticed, the drafting process of the new constitution, as well as amendments made to the original post-independence constitution of Kenya have been closely linked to the politics of what is happening in the country at the time. Now that you are familiar with some of the primary events of Kenya's national political history, it is important to turn to the specific history and sequence of drafts that have resulted in what is now known as the proposed constitution of Kenya. While the starting origin of the document is generally disputed, the emergence of a movement supporting the ideals that were to be enshrined in the new constitution can be closely tracked, and the resulting documents produced by the individuals' involved in such movements are generally considered to be the starting point of the proposed constitution that is seen today.

Indeed, some sources cite the origin of the first constitution revision in early 2004 with the Bomas Draft, when different coalition and social advocacy groups began to offer input on key policy issues that they felt needed to be reformed. However, other sources refer back to dates as early as the 1990s, citing the creation of the first draft by

opposition party members as the conception of the Constitutional Revision Process. Both events are no doubt significant, and illustrate the longevity of the review process. They also signify the continual drafting process that has been a crucial factor in producing the proposed constitution that is currently in existence. To get a better idea of what the history behind this drafting process has included, a general timeline of events and definitions of key bodies and acts of legislation are included below:

Timeline

1997 Constitution of Kenya Review Commission Act (provide a framework for constitutional change, especially in allowing it to be a “people-driven” process)⁷ In the years following, leads to the creation of the Committee of Kenya Review Commission (CKRC), which is led by Yash Pal Ghai

2001-2002: The CKRC produces a draft of the constitution; includes significant gains for human rights (this draft becomes the

2004: first framework for the proposed constitution) National Constitutional Conference; results in the creation of the Bomas draft, with significant changes in legislation pertinent to women and land reform.⁸

2005: (August) Attorney General Amos Wako releases/promotes the revised draft of the constitution (formerly known as the Bomas draft); new draft becomes known as the Wako Draft⁹

(November) National Constitutional Referendum held on November 21st; the proposed constitution was voted down by 58% of the voters.¹⁰

2007: Another draft presented; still faces contention over issues pertaining to elections, corruption, and government

⁷ <http://www.kituoachakatiba.co.ug/kenyap.htm>

⁸

<http://www.constitutionnet.org/en/vl/item/verbatim-report-official-opening-national-constitutional-conference-he-president-hon-mwai-ki>

⁹ <http://news.bbc.co.uk/2/hi/africa/4449660.stm>

¹⁰ <http://www.kenya-advisor.com/kenya-referendum.html>

	reform and authority structures.	Constitution of Kenya Review Commission (CKRC) – formed in the late 1990's, this commission's task was to collect and observe the views of the people in regards to what citizens wanted in to the new constitution. They also prepared a draft constitution based on those views and then later organized the National Constitutional Conference (known as Bomas, by the location where the conference was held). The draft that resulted from the conference on March 15, 2004 was henceforth known as the Bomas draft, and is considered the first official draft of the present constitution (even though there were many other drafts drawn up by the CKRC before that time). ¹¹
2008:	Constitution of Kenya Review Act reinstated; gives the Committee of Experts (COE) to authority to launch public review process and hold another referendum process	
2009:	The official Harmonized draft of the Constitution of Kenya is published on November 17 th and is widely distributed throughout the country.	
2010:	Revisions continue to be made to the Draft in constitution in February and May; the final document that was put to a vote was the May 6 th , 2010 draft.	Ufungamano Initiative – “a citizen's lobby group on constitutional change led by the religious sector”, which came to life in response to the Constitution of Kenya Review Act. ¹² While the exact year of the initiative's origin is unknown, it seemed to be most active between 2000-2003. The group's focus was then to facilitate the authorship of the constitution by the people, or by Kenyans themselves; the movement was closely aligned/supported by religious leaders, and eventually merged with

Terms to Know

Constitution of Kenya Review Commission Act

– Amendment that was put into effect in 1997, that allowed for the creation of the Constitution of Kenya Review Commission (or the CKRC). This act is seen as the first time that the inclusion of the public voice (or views of the people) was structurally included in the drafting process of the constitution.

¹¹

http://www.iedafrica.org/documents/bomas_draft_reflections.pdf

¹² <http://www.kituoachakatiba.co.ug/kenyap.htm>

the Constitutional Review Commission (under leadership of Yash Pal Ghai at the time).¹³

Committee of Experts (COE) – body created for the purpose of facilitating the constitutional referendum (esp in 2010). Their job is to analyze the documents and drafts that emerged from the CKRC drafting process, as well identify and resolve contentious issues found within the document.¹⁴ Ultimately, it is their job to create a final harmonized draft to be presented before Parliament as the official proposed document (before the referendum). It is the task of the COE to also carry out Civic Education campaigns in order to inform the general public about the drafts and educate the nation on the referendum process.

¹³ <http://www.kituoachakatiba.co.ug/kenyap.htm>

¹⁴

http://www.coekenya.go.ke/index.php?option=com_content&view=article&id=62:q-what-is-the-difference-between-the-constitution-of-kenya-review-commission-ckrc-and-the-committee-of-experts-coe&catid=41:faqs&Itemid=44

Background information:

Kenya

Political Geography

The Republic of Kenya is a country located in Eastern Africa and shares borders with the nations of Tanzania, Uganda, Sudan, Ethiopia, and Somalia. It is also bordered by the Indian Ocean to the east, Lake Turkana to the North, and Lake Victoria to the West.

Kenya is rich in many natural resources and has five completely different types of terrain, from a coastal region to the east, desert region to the north and north east (border with Somalia and Ethiopia), the Great Rift valley and mountainous areas in the Northwest, Plains and river lowlands in the Southwest, and grassy highlands in the central province.

Traditionally, different regions of the country are home to various cultural groups. There are over 42 official ethnic groups (often identified as tribes) in Kenya, each with its own history, language, cultural

traditions, and historic region.¹⁵ This highly contributes to the nation's cultural diversity, and also poses a challenge for legislators in determining laws that provide fair and equal treatment for the interests of all cultural groups and Kenyan citizens.



Understanding where different groups are based and the complications of the history behind this land will be helpful in determining fair land distributions in legislation. For example, the largest ethnic group, the Kikuyu, reside in what is known in the central province (central region of the nation), while the second largest ethnic group (the Luo) primarily reside in the western region, around Lake Victoria. Some ethnic groups have stationary homelands, while others – such as the Masaai – are nomadic peoples and constantly move

¹⁵ Source 1

within a sizeable region to find grazing areas for their cattle, sheep, and goats.¹⁶

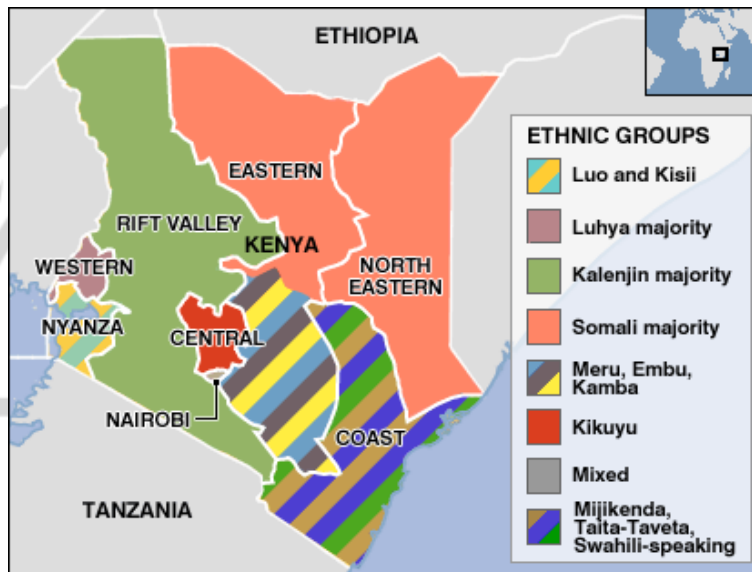
Committee Agenda

Key topics & Issues

Terminology: one thing to note is that the political terminology is slightly different in

In this committee, we will address several of

Kenya, especially when it comes to geography. For example, the country is divided into regions known as provinces, each of which has a different



the key issues that are implicated in the adoption of the new constitution. While all pertinent topics are welcomed, the discussions of this council will remain

focused on the following topics, as time allows. Representatives are also encouraged to keep in mind that these topics will be addressed from the perspective of how they can be included in national law. These central issues include:

focused on the following topics, as time allows. Representatives are also encouraged to keep in mind that these topics will be addressed from the perspective of how they can be included in national law. These central issues include:

- 1.) Land Reform
- 2.) Culture and political party affiliation (distribution of power)
- 3.) Women’s Issues & Rights (Affirmative Action)

¹⁶ Cultural source 2

Land Reform

Land Reform has been a key issue in Kenya, due to the unequal distribution of resources and traditional tribal lands. Oftentimes, this issue becomes particularly problematic in times of political conflict or environmental change (such as drought, etc). Determining who has the power to own land and how land can be legally – and fairly – owned and distributed is a major issue.

Specifically, this issue has long affected national politics, with perhaps the most formidable representation being found in the 2004 Bomas draft of the constitution.¹⁷ It can be highly contentious at times, with wealthy government representatives seeking to maintain power over the lands and territories currently in their possession. Conservation and land reform related to the environment often also falls into this category of political agendas.

Lastly, as the majority of the country (over 78% of the population in designated rural areas) is involved in agriculture, land also plays a huge role in determining people's livelihoods, jobs, and ability to provide for

their basic sustenance needs¹⁸. Thus, land distribution is not just a political issue, but something that often affects the everyday lives of many Kenyans.

Primary Question: Land is one of the most valuable resources in Africa, and is a highly contentious issue in politics. How will land distribution and land rights affect the rights and politics included in the new constitution?

¹⁷ Bomas Draft, 1

¹⁸ Agriculture stats

Party politics and cultural connections

After the revised Bomas draft was voted down in 2005, one of the next key issues that was cited was the distribution of power between offices, as well as the processes used to obtain positions within the government (especially through election) and what procedures constituted legal regulations for the democratic process of governance in Kenya.

There are many elements that contribute to this issue, thus there will be several aspects to address. Which issues are addressed and the degree to which they are discussed will be left up to the decision of this committee – members may choose to discuss a few of the primary aspects, or – ideally – address all the issues to some legislative extent. Some of these key elements include:

- Corruption
- Tribal affinities
- Election proceedings
- Religious identity and system of justice (example: khadis courts)
- Judicial system

Primary Question: One of the most historic points of contention is the legal inclusion of women in the government. There is a wide variance in the views of different cultural and political groups as to the length to which women should be granted certain rights. Thus, it is up to law makers and advocates to determine to what extent women have rights, and how can such rights be written and upheld by law? How will this issue affect the consensus needed by representatives in order to successfully ratify the new constitution?

Human Rights – Women’s Rights

The inclusion of an official bill of rights is a highly anticipated part of the of the new draft constitution, and is seen as one of the key elements that can bring equality to what has been a historically “unequal” society. This is particularly significant in regards to the rights of women, which have long been an issue of debate in Kenya. It wasn’t until 1979 that a woman first ran for parliament, with Mrs. Phoebe Asiyo becoming the first female Member of Parliament in Kenya history. After holding office for two terms, she went on to start the Caucus for Women’s leadership, an organization that continues to work with women’s legislative affairs across the country. Since that time, many other women have gone on to hold office in

Kenya, however, women's rights are still far from equality.

In many ways, this issue is related to the progress of development initiatives in Kenya. Women's issues are often highly pertinent to development initiatives, as many families live in rural areas. There are several cultural factors that also highly affect women, such as cultural practices, traditional gender roles, and poverty.

Many development experts have cited that advancements in Kenyan society and politics will be highly dependent upon the nation's ability to include women in legislation as more equal members of society¹⁹. Thus, it is estimated that legislation related to women will play a pivotal role in the drafting process of the new constitution in order to enable greater economic, political, educational, and legislative rights and abilities for women.

Committee structure

Here are some notes as to how this committee will function. This body will function as a standard specialized committee, following Model United Nations

guidelines. Roberts Rules of order will be used, and any discrepancies in policy or processes will be subject to the discretion of the chair. Otherwise, here are some guidelines that all delegates are encouraged to read and uphold:

Timeline

For the purposes of this committee, the simulation will start in January 2010, which is roughly 6 months before the constitutional referendum is scheduled to take place. That means that the committee will not function on "real time" but rather at a point that has taken place earlier this year. Time will then operate in practical increments according to the proceedings of the constitutional review process, with the objective completion date being July 2010 (which would signify a completed document).

Delegates are encouraged to complete extensive research on the various draft constitutions that have been produced and can look to current documents (such as the May 2010) draft for inspiration and insight onto the legislative process in Kenya, however, any reference to documents that were created after the starting date of the committee (or for example, referencing the voting process in June) will not be formally

¹⁹ Women in politics, 1

recognized by the chair. If delegates have any questions about these proceedings, please feel free to contact the chair or VAMUN secretariat members for clarification.

Political Reality

In reality, by the time that this committee takes place the constitutional referendum on the new Kenyan constitution will have already occurred. Therefore, it is likely that the draft constitution (regardless of the vote) will be available for viewing by this time, and you are highly encouraged to familiarize yourself with the document. However, you are encouraged to use it as a guide and inspiration, but not as an exact replica. As chair, I do not expect this committee to produce a document the size (or extensive quality) of the actual draft constitution, but rather look forward to observing the ways that delegates choose to address the key issues that have been identified as the focus for this committee. So when reading this document (as well as the other historic drafts of the constitution), here are some important questions to keep in mind:

- How do these issues relate to national politics and life in Kenyan society? What effect does

development and globalization have on the constitutional review process?

- What is the relation between the laws included in the new constitution with those already existent in the international community? How do these compare to the laws upheld in Western nations?
- What are crucial components of a democratic constitution? How can these be included in the constitution for Kenya?
- How does the ethnic background and/or party affiliations of your representative affect his/her views on these selected issues? How would he/she vote based on these affiliations?

Resolution writing

In this committee, the purpose of resolution writing will be to respond to the primary issues the committee addresses (as specified in this guide), and draft legislation that could be used to outline a draft constitution based on these issues. Most often this will be in the form of law or legal statement, and the chair will look most favorably on resolutions that outline the proposed legislation and

related sub-clauses that have been drafted through coalition efforts.

Resources for Research

In order to understand what is happening in Kenya, it is strongly recommended that your research include 2 different elements: researching and understanding the history of Kenya, and being up-to-date on what has happened with the specific issues that you will be addressing. Keep in mind that this committee will be taking place in June 2010, so a vote has not yet been cast on the new draft of the constitution. This is where your work comes in; you are responsible for composing and monitoring legislation that is pertinent to the key issues and addresses them in such way that will allow the country to prosper and maintain its democratic status.

About Kenya

Cia factbook website –
<https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>

Online library listing:

<http://www.thefreelibrary.com/Kenya-a0180278503>

State department website:

<http://www.state.gov/r/pa/ei/bgn/2962.htm#political>

Committee of Experts (COE):

<http://www.coekenya.go.ke/>

Constitutional review board website

Kenyan civic education

Ministry website(s)

Info about the Draft Constitution

Katiba ni sasa (Constitution in now):

<http://www.katibasasa.org/2010/06/12/kenya%E2%80%99s-constitution-making-history-1890-2010/>

Kenyan model of Draft Constitutions:

<http://www.thefreelibrary.com/Designing+a+constitution-drafting+process:+lessons+from+Kenya-a0166850106>

Proposed constitutions:

http://en.wikipedia.org/wiki/Proposed_Constitution_of_Kenya,_2010

Usawa ni Haki (gender coalition):

<http://www.gendergovernancekenya.org/katiba/156-katiba.html>

Go to this site: [fill in blog site once set up] to read and view complete drafts of the Kenyan constitution.

News sources:

One great thing about this issue is that it is a very current one, and you will find a number of mentions about the history of the draft and current views on the constitutional issues of Kenya in the news. Here are some primary sources that can be a great resource for tracking news from Africa in general – even though this isn't necessarily a “present time” committee, I strongly encourage you to take advantage of these issues and stay informed about what is happening in the region!

BBC Africa:

<http://www.bbc.co.uk/news/world/africa/>

All Africa: <http://allafrica.com/>

All Africa – East Africa:

<http://allafrica.com/eastafrica/>

Kenyan news resources:

Daily nation: <http://www.nation.co.ke/>

The standard: <http://www.nation.co.ke/>

The Kenya Star: <http://www.kenyastar.com/>

Kenya Broadcasting Corporation (KBC):

<http://www.kbc.co.ke/>

Kenya Television Network (KTN):

<http://www.ktnkenya.tv/>

Citizen TV:

<http://www.citizentv.co.ke/main.sss?fr=direct>