

**NATIONAL CONSTITUTIONAL CONFERENCE  
DOCUMENTS**

**THE VOTES AND PROCEEDINGS OF THE PLENARY SESSIONS OF  
THE NATIONAL CONSTITUTIONAL CONFERENCE**

**APPROVED FOR ISSUE AT THE 110TH PLENARY MEETING OF THE  
CONSTITUTION OF KENYA REVIEW COMMISSION HELD ON 30TH  
NOVEMBER, 2005**

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## **SESSION I (BOMAS I)**

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**TUESDAY, APRIL 29, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Ten O'clock.
2. The Proceedings were opened with Prayers led by the following Spiritual leaders:
  - (i) Archbishop Zacheus Okoth
  - (ii) Sheikh Ali Shee
  - (iii) Kamla Sikand
  - (iv) Siopin Lekoolool

**3. ADMINISTRATION OF OATH OR SOLEMN AFFIRMATION**

The Secretary of the Constitutional Conference administered the Oath of a Delegate to the Chairman of the Conference who later administered the Oath or Solemn Affirmation to the following delegates:

**TEXT OF OATH OR AFFIRMATION ADMINSTERED**

(i) **SOLEMN AFFIRMATION OF A DELEGATE**

I.....being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission 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 delegate I shall at all times be guided by the national interest.

.....DELEGATE

.....CHAIRPERSON

(ii) **OATH OF A DELEGATE**

I.....being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission 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 delegate, I shall at all times be guided by the national interest. So help me God.

..... DELEGATE  
.....CHAIRPERSON

And the time being twenty minutes past Twelve O'clock, the Chairperson adjourned the proceedings without Question put pursuant to Constitution of Kenya Review (National Constitutional Conference) regulations.

5. **CONFERENCE ROSE** - at twenty minutes past Twelve O'clock.

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**MEMORANDUM**

The Chairperson will take the Chair on  
Wednesday, April 30, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, APRIL 30, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Ten O'clock.

2. **ARRIVAL OF H.E. THE PRESIDENT**

The President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, H.E. the Hon. Mwai Kibaki, C.G.H., M.P entered the Conference Hall and took the Chair.

3. The Proceedings were opened with Prayers said by the following religious leaders:

- Archbishop John Njenga (Catholic)
- Most rev. Benjamin Nzimbi (Anglican)
- Sheikh Ahmed Mohammed Kassim (Muslim)
- Hare Krishna Sharma (Hindu)
- Siopin Lekoolool (Indigenous religion)

4. **ADMINISTRATION OF OATH OR SOLEMN AFFIRMATION**

The Chairperson administered the Oath to the following:

- Speaker of the National Assembly, Hon. F.K. ole Kaparo, MP
- H.E. the Vice-President, Hon. Michael C. Wamalwa, MP
- H.E. the President, Hon. Mwai Kibaki, CGH, MP

5. **SPEECHES**

The following persons addressed the gathering:

- Chairperson of the Constitution of Kenya Review Commission, Prof. Yash Pal Ghai;
- Chairman of the Parliamentary Select Committee on Constitutional Review, Hon. Paul Muite, MP;
- Speaker of the National Assembly, Hon. F.K. ole Kaparo, MP;
- H.E. the Vice-President, Hon. Michael Wamalwa, MP
- H.E. the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, Hon. Mwai Kibaki, MP. His Speech was as follows:

“Hon. Members of Parliament, distinguished delegates, Commissioners of the Constitution of Kenya Review Commission, Ladies and Gentlemen.

It gives me great pleasure to inaugurate the National Constitution Conference. This Conference is the culmination of a long struggle by the people of Kenya. A struggle for justice and the recovery of their rights. A struggle for fair and efficient governance. A struggle for the reaffirmation of our destiny as the common political community of Kenyans.

Over the last two decades, the freedom, which the people of Kenya fought and died for, was snatched from them. The people were deprived of their property and many

were denied the opportunity to earn a livelihood. Corruption by leaders became commonplace. More than half of the entire population was condemned to absolute poverty.

It was against this corruption and tyranny that many brave and patriotic Kenyans fought for their rights. Through their efforts, we came out of the dark days of one party rule. Detention without trial is no more. The Nyayo House torture chambers have been closed forever.

Let us, today, remember those Kenyans who gave their lives, limbs, careers, and suffered torture so that we might, again, be free.

And let us be proud of the indomitable spirit of the freedom fighters. It is, indeed, the unbogable spirit of Kenyans.

I should like to pay special tribute to civil society organizations, which played a leading role to bring us to this stage, in our review process. Their vigilance and research were essential. The Ufungamano Initiative has provided inspired leadership, and kept our hopes alive in difficult moments. By their own example of unity, in diversity, they showed Kenyans, the path to the future.

The best homage we can pay to all of them is to act in the best interests of our nation and to fight for more democracy and freedom.

My Government pledges to support this process in every way. We shall not interfere with the review process. The Constitution of Kenya Review Act sets out the agenda of reform that the country agreed at Bomas of Kenya and Safari Park in 1998.

All the organs of review, including this Conference and the Parliament, are bound by certain key values. These are democracy, transparency, accountability, integrity and people’s participation, rights and freedoms. The organs of the review must ensure protection of minorities, and the dignity of all Kenyans. There are different ways to

achieve these values. The delegates must debate vigorously the merits and demerits of different options.

But these are the values that we, as a nation, have already committed ourselves to. This Conference must be guided by them.

I have been greatly encouraged by the process followed so far. In the beginning, we were able to overcome deep divisions to create a joint process. That decision required great courage on the part of many political and social groups.

The Review Commission did a good job in informing the people of the process and the issues. It provided people ample opportunities to express their view. People turned out, in their thousands, to give recommendations to the Commission. They spoke freely and without fear. They made many sensible proposals. These were diligently analysed.

The process turned out to be the first audit, by the people, of their nation since independence. It sharpened people's recognition of their own sovereignty. It is unlikely, that they will ever accept the dictatorship that previous regimes imposed on them.

I congratulate the Review Commission for a draft constitution which shows great respect for the people. It is not my intention to pre-empt or influence the debate of the Conference. But it is my belief that even the best can be made better.

The consultative process had other benefits. It re-affirmed our identity as Kenyans.

It develops a vision of Kenya which is critical to nation building. It has strengthened national unity, just as the last general elections did. It enabled us to be a people who are prepared to listen to others. It has been peaceful and participatory. People waited patiently for hours, sometimes in the hot sun and sometimes in rain, to express their views. I hope that this kind of open and peaceful process will be an example to us all.

This Conference is a gathering of the whole nation. It should strengthen national unity. The delegates must discharge their duties responsibly. You must be mindful of the national interest. As individuals, we are bound to have our own personal interest. But, as Kenyans, we are enjoined to promote national good, the integrity of the state, and the rights and welfare of the people. Our narrow interests must be subordinated to the greater good.

Like a constituent assembly, we represent the nation, and are accountable to all the people. Different groups have presented different proposals. These proposals should not be written in stone. We should be ready to listen to each other. Listening is an essential democratic attribute. Good ideas should give way to better ones. I urge all delegates to shun parochialism and dogmatism. In the heat and dust of conflict to

remove dictatorship, many proposals were made to the Commission. This Conference now offers an opportunity for more sober reflection. The prevailing peace and tranquility offers the delegates realistic conclusion. This constitution is not being reviewed for an individual, group or community. The Constitution is bigger than all of us. It is for posterity.

It is my Government's wish that this process be concluded as soon as possible. However, the decision with regard to actual duration belongs to the people of Kenya and this Conference.

My Government is committed to the establishment of a new democratic culture in this country. The peaceful transition of last year, and this participatory review process, are part of this new culture for which Kenya is, now, much admired, both at home and abroad.

It is my wish that Kenya remains one inseparable and indivisible nation. We recognize, respect and celebrate the diversity of our people. We have more things that unite us than those that separate us. Let us harness the strength of our unity in diversity. Let us, at this conference, discuss all the issues openly, honesty and in the spirit of oneness. This is the barely way to build a truly democratic and prosperous Kenya.

It is, now, my honor and privilege, to declare this conference officially open.

Thank you and God Bless Kenya.”

And the time being fifteen minutes past One O'clock, the Chairperson adjourned the proceedings without Question put pursuant to Constitution of Kenya Review (National Constitutional Conference) regulations.

### **AFTERNOON SITTING**

The proceedings started at fifty minutes past Two O'clock.

The Chairperson of the Parliamentary Select Committee on Constitutional Review, Hon. Paul Muite, stated that there was need for the Constitution of Kenya Review Commission to hand over the management of the Conference to a Steering Committee.

He explained the composition of the proposed Steering Committee and the aspects which should be considered during the election of the Committee members.

And the time being fifteen minutes past Four O'clock, the Chairperson adjourned the proceedings without Question put pursuant to the National Constitutional Conference regulations.

6. **CONFERENCE ROSE** - at fifteen minutes past Four O'clock.

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**MEMORANDUM**

The Chairman will take the Chair  
on Friday, May 02, 2003.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, MAY 02, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson conveyed the following Communication from the Chair:-

Honourable delegates, it is with deep sorrow that we announce the untimely death of Hon. James Mutiso, the MP for Yatta. He was also a delegate to this Conference. Before he met the cruel hand of death, he had attended the Constitutional Conference on Wednesday 30<sup>th</sup> April, 2003. May God rest his soul in eternal Peace.

4. **APPOINTMENT OF MEMBERS OF THE STEERING COMMITTEE**

The following Members were appointed to serve in the Steering Committee as indicated:-

**Chairman**

Yash Pal Ghai

**People with disabilities**

Samuel Tororei

**Religious Groups**

Mutava Musyimi  
Ali, Shee Mohammed  
Sulumeti Phillip

**Parliamentarians**

Raila Amolo Odinga  
Karua Martha Wangari

Kombo Musikari Nazi  
Kenyatta Uhuru Muigai  
Nyachae Simeon

**Central Province**

Mathaai Wangari Muta  
Gacuru wa Kareng'e

**Coast Province**

Kitambe Mwalimu Digore  
Mwanyota S. Mariam

**Nairobi Province**

Lungali Nancy Kabetaka  
Samuel Macharia Muchuga

**Western Province**

Chemwei Naibei Sammy  
Oniang'o K. Ruth

**Rift Valley**

Sego Kimaiyo Seroney  
Keko Margaret

**Eastern Province**

Maende Rhoda Ndumi  
Yussuf Wako Dogo

**North Eastern**

Ahmed Maalim Omar  
Sophia Abdi

**Nyanza Province**

Ogot Grace Emily Akinyi  
Thomas Nyabote Aburi

**Professional bodies**

Raphael G. Mwai

**Trade Unions**

Roselinda Simiyu

**Women Organisations**

Ruth N. Kibiti

**Non-Governmental Organisations (NGOs)**

Joyce Umbima  
Oduor Ong'wen

**Ex-Officio**

Muite Paul Kibugi  
Murungi Kiraitu  
Amos Wako

**5. ELECTION OF 3 VICE CHAIRPERSONS**

The following two delegates were unanimously elected Vice Chairpersons of the Steering Committee:-

- (i) Godana Bonaya Adhi
- (ii) Fadhil Suitana

Elections were held for the third Vice-Chairperson and the results were as follows:-

Kiotamen Ole Kina	-	287
Bishop Philip Sulumeti	-	70
ArchiBishop David Gitari	-	34
Spoilt ballot papers	-	29

**Kiotamen Ole Kina was therefore declared the Third Vice Chairperson.**

6. **ADDITIONAL MEMBERS PROPOSED FOR THE STEERING COMMITTEE**

The Chairperson informed the delegates that after consultations, the following groups had been considered for representation in the Steering Committee:

- i. Non-Parliamentary Political Parties
- ii. Special Interest groups, such as the Judiciary and Electoral Commission of Kenya
- iii. Elderly delegates (60 years and above)
- iv. The Youth

The groups were asked to forward their nominees on Monday, 5<sup>th</sup> May, 2003.

And the time being twenty five minutes past Five O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

7. **CONFERENCE ROSE** - at twenty-five minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Monday, May 05, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, MAY 05, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.
2. The Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

The Chairman administered the Oath of allegiance to the following delegates:-

- (i) Hon. Prof. George Saitoti, M.P.
- (ii) Mr. Sehmi Rapinder Singh
- (iii) Hon. Arthur Kinyanjui Magugu, M.P.
- (iv) Dr. George Kinyua
- (v) Hon. Charles Oyugi Owino, M.P.
- (vi) Rev. Ibrahim Omondi
- (vii) Hon. Lucas Buya Maitha, M.P.
- (viii) Hon. Andrew Ligale, M.P.
- (ix) Ms. Anne A. Okoth
- (x) Hon. Simon Kanyingi Kuria, M.P.
- (xi) Hon. John Njoroge Michuki, MP
- (xii) Mr. Raphael Githiga Mwai
- (xiii) Mr. Godfrey Masanya Okeri

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the conference that delegates would speak for 10 minutes and that in presiding over the proceedings he would be assisted by the Vice Chairperson.

5. **NOTICE OF MOTION**

**Mr. Joel Kipyegon Sang purported to give notice of the following Motion:-**

**THAT**, the National Constitutional Conference recommends that the out-of-pocket allowance for delegates be adjusted from Kshs.2000 (two thousand) to Kshs.10,000 (ten thousand) per day to adequately cater for extra expenses arising from their relocation and inconveniences arising thereon.

Thereupon the Chairperson directed that the matter be dealt with by the Conference secretariat.

6. **DELEGATES TO THE LANCASTER HOUSE CONFERENCE**

The Chairperson introduced the following distinguished persons who served in the

Lancaster Constitutional Conference:-

1. Mr. John Keen
2. Mr. J. Martin Shikuku
3. Mr. Jeremiah Nyaga
4. Mr. George Nthenge
5. Mr. De Souza
6. Dr. Gikonyo Kiano
7. Mr. Dennis Akumu
8. Mr. J.S. Otiende
9. Dr. Taita arap Towett
10. Mr. Achieng Oneko

The delegates addressed the Conference and raised the following issues:-

**Mr. De Souza**

He informed the National Constitutional Conference that the Lancaster experience was useful because the process is similar and the problems are related such as Majimbo and strong unitary system, were the main options then.

He hoped that the current National Constitutional Conference will produce a Constitution that will take the country to the next 50 years and warned that:-

- It should not be written with one person in mind;
- Too much power should not be concentrated on one person;
- The Constitution should not be changed easily;
- The whole country must be involved; and
- The Bill of Rights should be permanent.

Mr. De Souza also emphasized the following:-

- There should be an independent judiciary
- Appointments for chief officers should be vetted by Parliament
- There should be a clear distinction between the Minister for Justice and Attorney General
- There should be a social security system to take care of the aged, children and disabled.

**Mr. Achieng Oneko**

He requested the delegates to recognize the contribution of the elderly citizens towards nation building. The interests of the old people should be taken care of during the constitutional conference deliberations.

He further advised Kenyans to focus on the future instead of focusing on revenge for mistakes done in the past.

**Dr. Gikonyo Kiano**

He spoke on several issues and proposed the following:-

- That clause 42(i) and (ii) in the draft Bill which deal with slavery, servitude and forced labour be amended by deleting the word “may” and replacing it with the word “shall”.
- That clause 112 of the draft Bill which deals with recalling of a Member of Parliament by the electorate be approached cautiously as the provision could cause instability in Parliament.
- That several provisions in the current constitution were borrowed directly from the Westminster model and in practice they have been abused. These include powers of the Head of Government to dissolve Parliament which has, in essence, been a violation of the principle of separation of powers.
- The requisite number of votes in the Parliament (65%) for passing a constitutional amendment Bill was inadequate. He emphasized the fact that a referendum of two thirds of votes is necessary to endorse such an amendment .
- Creation of regional bodies such as local councils have a financial implication for development planners. He therefore called on the Ministry of Planning to examine constitutional provisions before embarking on the next Development Plan.
- That the seventh schedule should be amended as far as the duties of the National Government, district councils and other councils are concerned to include issues like educational services such as schools under the national government.

He also urged the delegates to reconsider the abolition of provincial administration as proposed in the draft bill as it would imply that all government departments at provincial level be likewise abolished.

**Dr. Taita Towett**

He underscored the need to put checks and balances in the Bill to ensure that the executive does not wield excessive powers such as changing the constitution at will, detaining people without trial, renegeing on his constitutional duty like assenting to a Bill.

And the time being fifty-five minutes past Twelve O'clock, the Second Vice-Chairperson (Dr. Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

The following Members of the Lancaster House negotiating team addressed the Conference:

- Mr. George Wilson Gregory Nthenge
- Mr. John Keen
- Mr. Martin Joseph Shikuku
- Mr. Dennis Akumu

**Mr. George Nthenge**

He informed the Conference that the original Constitution was negotiated and formulated in 1961 with a view that it was not a monopoly of those who were at the Conference but for all Kenyans. He said that nationalism was the driving factor and it should be the guiding factor for a fair and corruption free country.

The new constitution should be well formulated to help all the generations to come with clear policies. Population versus vastness of an area should be taken into consideration.

**Mr. John Keen**

He told the delegates to be frank, open and talk the truth as it was the best way to have correct views. He proposed the devolution of power, that the Prime Minister powers be specified in consultation with the President.

He proposed a lower and upper House and was of the view that Muslims were entitled to Kadhi's court.

**Mr. Martin Shikuku**

He informed the delegates that the Lancaster House Conference had 6 KADU and 15 KANU members and only 2 in KADU and 4 in KANU are alive today. He requested the delegates to observe a minute's silence in memory of the pioneers of the Lancaster Conference.

He proposed that all political parties form the basis of all constitutions as they instigate the change of constitution and they should not be left out. He emphasized that the rules and regulations should be followed to the letter.

**Mr. J. D.A. Akumu**

He emphasized that each delegate should sign the final copy of the approved constitution. He was of the view that every social group should be considered during the constitutional conference.

Heroism should be recognized and rewarded. The government should establish a Heroes' Fund.

**Mr. Otiende**

He advised that national boundaries should be entrenched in the new constitution in order to avoid border conflicts.

The existing land laws are mainly based on the Indian and British model. A land Bill should be passed in order to protect Kenyans' land rights. The African culture should be entrenched in the constitution.

And the time being ten minutes past Five O'clock, the Second Vice-Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

6. **CONFERENCE ROSE** - at ten minutes past Five O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Tuesday, May 06, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**TUESDAY, MAY 06, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifty minutes past Nine O'clock.
2. The Proceedings were opened with a Prayer by Archbishop Zacheus Okoth.

3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:

- Sammy P. Leshore
- Elkanah Odembo
- Francis Kilemi M' Anampiu
- Muriuki Karue
- Danson Buya Mungatana
- Moses Kipkemboi Cheboi
- Raila Odinga

4. **PERSONAL STATEMENT**

Pursuant to Regulation 23(i), delegate Sheikh Ali Shee made a personal statement.

5. **DEBATE ON CONSTITUTION OF KENYA REVIEW (NATIONAL CONSTITUTIONAL CONFERENCE) (PROCEDURE) REGULATIONS, 2003**

The Rules and Regulations pertaining to the efficient functioning and transaction of the Conference's business made by the CKRC pursuant to provision of section 34 of the constitution of Kenya Review act (Cap.3A), were presented to the Conference

Debate arising;

And the time being fifteen minutes past Eleven O'clock, the Acting Chairperson (Githu Muigai) interrupted the proceedings and adjourned the Conference without Question put pursuant to National Constitutional Conference Regulations.

Conference proceedings resumed at fifty-five minutes past Eleven O'clock.

Debate on Rules and Regulations resumed.

## **6. INTERRUPTION OF BUSINESS**

- (i) Delegates raised various issues regarding the Rules and Regulations and their welfare.

The Conference Secretary informed the delegates that there would be a Session on Friday, 9<sup>th</sup> May, 2003 dedicated to delegate's welfare (Finance and Administration)

- (ii) Delegates recommended that the Committee on Privileges, Discipline and Welfare be constituted as a matter of urgency to hold consultative meetings with CKRC to resolve matters pertaining to delegates welfare internally.

And the time being fifteen minutes past One O'clock, the Acting Chairperson (Githu Muigai) interrupted the proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

## **AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

## **7. COMMUNICATION FROM THE CHAIR**

The Chairperson introduced to the delegates Mr. Eliud Ngala Mwendwa, a member of the Lancaster House Conference.

### **Rules Nos 18, 19 and 26(3)**

The Chairperson clarified the above rules and procedure of the Conference and thereon laid the following documents:-

- Working document for the National Constitutional Conference (documents I)
- Working document II (Compendium of Public comments)
- Working document III (an annotated version of the Draft Bill - Vol. II of the Commissions report).
- Working document IV
- Report of the Constitution of Kenya Review Commission
- Report of the Constitution of Kenya Review Commission (Vol.II – the Draft Bill to amend the Constitution)
- Legal Notice No.42 (National Constitutional Conference procedure of regulation).

The Chairperson clarified several aspects of the conference document.

8. **DEBATE ON THE REPORT AND DRAFT BILL PREPARED BY THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission.

*(Mrs. Grace Ogot on behalf of the Chairperson of the Constitution of Kenya Review Commission)*

Debate arising;

And the time being thirty minutes past Three O'clock, the Chairperson interrupted the proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

The Conference resumed at ten minutes past Four O'clock.

9. **GUIDELINES FOR CONSTITUTING THE TECHNICAL WORKING GROUPS**

The Vice-Chairperson (Dr. Godana) briefed the Conference on the guidelines for constituting the 12 Technical Working Groups as provided for under the Constitution of Kenya Review Regulations , 2003 and informed the delegates as follows:

- Each delegate is expected to participate in one working group which should consist of not more than 60 delegates.
- Any delegate is entitled to attend and make oral or written statements to any working group but is not entitled to vote unless he is a member of that group.
- Each working group should propose a convenor and submit his or her name to the Steering Committee for nomination.
- Once elected, a convenor becomes a member of the Steering Committee.

And the time being forty-five minutes past Five O'clock, the Vice-Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

10. **CONFERENCE ROSE** - at forty-five minutes past Five O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Wednesday, May 07, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, MAY 07, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following:-

- Mohamed Farah Maalim
- Choge Jimmy

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 7-8 of the Commission Report and Chapters 1-4 of the Draft Bill)*

(Mrs. Grace Ogot - 06-05-2003 – on behalf of the Chairperson  
Constitution of Kenya Review Commission)

Debate interrupted on May 06, 2003 resumed;

And the time being fifteen minutes past Eleven O'clock, the Acting Chairperson (Mr. Otieno Kajwang) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

The Conference resumed at twenty minutes past Eleven O'clock.

5. **PLENARY DISCUSSIONS ON CHAPTERS 1, 2, 3, & 4 OF THE DRAFT BILL**

Delegates made general comments on issues raised on Chapters 1,2, 3 and 4 of the Draft Bill.

And the time being ten minutes past One O'clock, the Acting Chairperson (Mr. Otieno Kajwang') interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

## **AFTERNOON SESSION**

The Conference assembled at three O'clock.

### 6. **COMMUNICATION FROM THE CHAIR**

The Chairperson announced that there will be a fundraising for the late Hon. James Mutiso at KICC on May 08, 2003 at 7.00 p.m. This will be followed by a funeral service on Friday, May 09, 2003 and the funeral will be on Saturday, May 10, 2003 at Ikombe Village in Yatta Constituency.

### 7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 7-8 of the Commission Report and Chapters 1-4 of the Draft Bill)*

(Mrs. Grace Ogot – 06.05.2003 – on behalf of the Chairperson  
of the Constitution of Kenya Review Commission)

Arising from numerous points of Order concerning the current rules of procedure vis-à-vis the ones set up, the Acting Chairperson (Hon. Otieno Kajwang) temporarily adjourned the Conference at 4.00 O'clock to enable the Steering Committee constitute the working procedures.

The Conference resumed at Five O'clock.

### 8. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the Conference that the draft Bill would be debated chapter by chapter after presentation by a Commissioner. He further informed the Conference that the Steering Committee found it necessary that each delegate debate for five minutes to enable as many as possible to contribute.

After the last chapter, the delegates will break into Committees in order to discuss in detail the draft Bill and propose amendments if any. The proposed amendments will be introduced in the Plenary after the Committees have concluded business.

Each Session would be chaired by Joint Chairs. Each of the provinces should provide a name of a delegate who will co-chair to ensure continuity.

The Chairperson further informed the Conference that the Steering Committee had agreed that all nominating groups should submit their nominations for the Committees on Privileges Welfare and Discipline and media for appointment by the Conference.

9. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 7-8 of the Commission Report and Chapters 1-4 of the Draft Bill)*

**(Mrs. Grace Ogot – 06.05.2003 – on behalf the Chairperson of the Constitution of Kenya Review Commission)**

Debate interrupted resumed.

**And the time being thirty minutes past Six O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

10. **CONFERENCE ROSE** - at thirty minutes past Six O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Thursday, May 08, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**THURSDAY, MAY 08, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifty-five minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:-

- Hon. Kalonzo Musyoka
- Justice Richard Kwach
- Hon. John arap Koech
- Hon. Mohamed Ahmed Khalif
- Hon. Joseph Kasaine Nkaissey
- Hon. Peter Gatirau Munya
- Joyce Miguda Majiwa
- Hon. Fred Gumo

4. **MOTION - NEED TO AMEND SECTION 47 OF THE CONSTITUTION OF KENYA**

Motion made and Question proposed:

**THAT**, considering the desire of Kenyans for a NEW and COMPREHENSIVE Constitution and appreciating that the National Delegates Conference must express the wish of each Kenyan in equal voice, this Conference hereby resolves:

1. That the Honourable Attorney General and the National Assembly do move with dispatch to entrench the Constitutional Review Process in the Constitution of Kenya by appropriate amendment to Section 47 of the Constitution of Kenya before further proceedings can take place in this Conference.
2. That the Honourable Attorney General and the National Assembly do move with dispatch to make amendment to Section 2 and Section 27 of the Constitution of Kenya Review Act and to provide for an appropriate definition of a "District" and to provide for the principle of equal representation in selection of District delegates before this conference can proceed further.

*(Hon. Mirugi Kariuki)*

Debate arising;

Rising in his place on a point of order, Hon. Daniel Khamasi claimed to move that the Mover be called upon to reply;

And the Chairperson acceding to the claim;

Mover replied;

Question put and Negatived.

**And the time being fifteen minutes past Eleven O'clock, the Vice-Chairperson (Hon. Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**The Conference assembled at forty minutes past Eleven O'clock.**

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 8 and 9 of the Commission Report and Chapters 2, 5, 6 Part III and Section 63A of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson  
Constitution of Kenya Review Commission)**

Debate interrupted on Wednesday, May 07, 2002 resumed;

**And the time being ten minutes past One O'clock, the Vice-Chairperson (Hon. Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SESSION**

The Conference assembled at three O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 8 and 9 of the Commission Report and Chapters 2, 5, 6 Part III and Section 63A of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being thirty minutes past Four O'clock, the Session Chairperson (Mr. Yusuf Haji) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference resumed at Five O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 8 & 9 of the Commission Report and Chapters 2,5,6 Part III and Section 63A of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

Delegates raised various issues on the sections dealing with the Bill of Rights.

The Chairperson of the Conference informed them that their comments would be handed over to the committee dealing with Human Rights issues for consideration and further advice.

**And the time being five minutes past Six O'clock, the Vice-Chairperson (Wilfred ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at five minutes past Six O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Friday, May 09, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, MAY 09, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifty-five minutes past Nine O'clock.
2. Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:-

- Hon. Alfred Nderitu
- Hon. Gurach Galgalo
- Hon. Washington Jakoyo Midiwo
- Ms. Martha Koome
- Dr. Mukhisa Kituyi

4. **ESTABLISHMENT OF COMMITTEES**

By leave of the Conference, the following Committees were established:

(i) Committee on Privileges, Discipline and Welfare whose membership is as follows:-

- |     |                           |   |   |
|-----|---------------------------|---|---|
| 1.  | Baldip S. Rihal           | - | Professional Organisations                    |
| 2.  | Salim Ibrahim             | - | Nairobi                                       |
| 3.  | Hezekiah Waithanje        | - | Central                                       |
| 4.  | Abdullahi Haji Mohamoud   | - | North Eastern                                 |
| 5.  | Francis Wangara           | - | Trade Unions                                  |
| 6.  | Yusuf Mahmoud Aboubakar   | - | Coast Province                                |
| 7.  | Miriam Muto Malogo        | - | Special Interest<br>(Persons with disability) |
| 8.  | Abida Ali-Aroni           | - | CKRC Commissioner                             |
| 9.  | Bishop Bernard N. Kariuki | - | CKRC Commissioner                             |
| 10. | Mosonik arap Korir        | - | CKRC Commissioner                             |
| 11. | Kamla Sikand              | - | Women Organizations                           |
| 12. | Shakeel Shabir            | - | Nyanza Province                               |
| 13. | F.X ole Kaparo            | - | Parliamentarian                               |
| 14. | Joel Kipyegon Sang        | - | Rift Valley Province                          |

(ii) Media Advisory Committee whose membership is as follows:-

1.	Sylvestor W. Wafula (co-opted)	-	Professional Organizations
2.	David Marcos Rakamba	-	Nyanza Province
3.	Awili David Erulu	-	Western Province
4.	Michael Oliewo (co-opted)	-	Political Parties
5.	Nkoro Peter Kang'ethe	-	Eastern Province
6.	Kavetsa Adagala	-	CKRC Commissioner
7.	Salome Muigai	-	CKRC Commissioner
8.	Abubakar Zein Abubakar	-	CKRC Commissioner
9.	Rose Lukalo	-	NGOs
10.	Mustafa Ali	-	Rift Valley Province
11.	Mutahi Kagwe	-	Parliamentarian

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 & 11 of the Commission's Report and Chapters 2, 5 Article 44 and Section 63A, 6 Part III and chapter 7 of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Thursday, May 08, 2003 resumed;

**And the time being fifty minutes past Eleven O'clock, the Acting Chairperson (Hon. Yusuf Haji) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at twenty minutes past Three O'clock.

6. **REPORT OF THE COMMITTEE ON PRIVILEGES, DISCIPLINE AND WELFARE ON THE DELEGATE'S ADMINISTRATIVE SERVICES**

Mr. Baldip S. Rihal, Chairperson, Privileges, Discipline and Welfare Committee briefed the Conference on the delegate's administrative services.

## **QUORUM**

Delegate Nakalo David Okiya claimed to move that there was no quorum, and the Chairperson, having counted the delegates, confirmed that there was no quorum and caused the Division Bell to be rung;

And there being a quorum after expiry of four minutes;

Proceedings interrupted resumed;

## **QUORUM**

Delegate Victor Paul Gituma claimed to move that there was no quorum, and the Chairperson, having counted the delegates, confirmed that there was no quorum and caused the Division Bell to be rung;

And there being no quorum after expiry of five minutes;

**And the time being fifty minutes past Four O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

7. **CONFERENCE ROSE** - at fifty minutes past Four O'clock.

## **M E M O R A N D U M**

The Chairperson will take the Chair on  
Monday, May 12, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, MAY 12, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty minutes past Nine O'clock.

2. Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:-

- Hon. Daudi Mwiraria
- Hon. Raphael Tuju
- Brig. (Rtd) Titus Kamau Githiora

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson conveyed the following Communication from the Chair:

I would like to welcome back the honourable delegates to the Conference. I hope you had a pleasant and restful weekend. For this is going to be a strenuous week, with complex and perhaps controversial constitutional issues to be discussed.

I hope that all the honourable delegates will enter into these discussion with an open mind. As during last week, they will listen to what the other delegates have to say with respect and civility. In my statement on Tuesday last week, I mentioned that one of the functions of a long and participatory review process provided under the Constitution of Kenya Review Act is to resolve differences between parties, communities and regions and to strengthen national unity. This requires us to negotiate in good faith and to search for consensus. In fact the Review Act states quite clearly that the Conference, as indeed other organs of review, must aim to make decisions by consensus. It is only after honest and sincere efforts at reaching consensus have failed that the Conference can proceed to vote.

I am confident that we can reach consensus on most issues if we stick to our oath of office, which requires us to make all decisions in the national interest. Last week I reminded honourable delegates that although the composition of the Conference is based on different categories of delegates, the purpose is to ensure a representative Conference, not to fragment the delegates into competing and indeed antagonistic groups. One of the principal goals of review is to strengthen national unity and the integrity of the Republic. We shall not achieve this aim if we lock ourselves into

ethnic or regional lobbies. Instead, we shall sharpen political and social divisions that the review process aims to remove. Another problem with the pre-occupation with ethnic or regional identities is that they obscure the common interest that we have as individuals or classes in social justice and equity, and the groupings that unite us, because they transcend ethnic divisions, such as being workers, trade unions, women,

professionals, etc. to reduce the complexity and interconnectedness of the representation in this Conference merely to ethnicity is to disable the Conference from performing its proper and heavy responsibilities to lay the legal foundations of a united, peaceful and prosperous nation.

Last Tuesday, I also referred to the conflict of interests that delegates may face between their public duty to ensure a good and fair constitution that would serve the national interest and their private concerns. It would be a tragedy of gigantic proportions if constitutional issues fundamental to good governance of the country were personalized, and thus explored not in terms of the long-term benefits of the country but as the accommodation of the interest of specific individuals. There could be no greater betrayal of the people than the subordination of the national interest to the personal or sectional.

I do not mean to say that there is no place or caucusing. Indeed the Conference is about aggregating interests, lobbying, negotiating – but also agreeing. But the lobbying and caucusing must be to achieve the aims of unity and equity, not the sabotage of the goals of review. Discussions on and negotiations of fundamental issues must be transparent, on the floor of the Conference.

Finally, I want to remind the honourable delegates of the extreme importance of winning and retaining the confidence of the public, not only for our reputation and prestige, but even more fundamentally for the legitimacy of the constitution that we eventually produce. It will be obvious to us all from the media coverage of last week's proceedings that the public takes a keen interest in our proceedings and we are subjected to a sharp scrutiny. I believe myself that the media have not always been fair to the honourable delegates, seizing upon what they perceive to be our failings and not giving sufficient publicity to our achievements, which are considerable. The delegates have already debated five chapters of the draft constitution and shown that they have read the documents with care and have much to contribute to the improvement of the draft constitution. I do not question the right and indeed the responsibility of the media to report and comment on the proceedings and work of the Conference, and want to say that we want cordial and fruitful relations with the media. All that we want is a balanced reporting and commenting, and a greater focus on and coverage of the discussion of substantive issues of constitutional reform.

We have now a Media Advisory Committee, which will deal with relations with the media, but I should mention here that in our condemnation of the media, we should also be mindful of our own failings. We have now an opportunity to dispel the

negative image that has been created of the Conference by the way in which we conduct ourselves. I know that many delegates themselves are impatient with the slow progress so far on the core functions of the conference. They are anxious to move to the Committee stage where the detailed examination of each chapter will be undertaken and a preliminary agreement on changes to the draft will be negotiated. So let us move with greater speed than last week on the general debate. Let us have fewer points of order so that we can complete the general debate before the end of the week. Let the public recognize the hard work, dedication and ability of the delegates, instead repeat allegations that the Conference and the Commission have personal interests in unnecessarily prolonging the review process.

I wish the Conference a fruitful week.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 & 11 of the commission's Report and Chapters 2, 5 Article 44 and section 63A, 6 Part III and Chapter 7 of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Friday, May 09, 2003 resumed;

**And the time being thirty minutes past Ten O'clock, the Session Chairperson (Atsango Chesoni) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at thirty minutes past Ten O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 & 11 of the commission's Report and Chapters 2, 5 Article 44 and section 63A, 6 Part III and Chapter 7 of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being forty-five minutes past Twelve O'clock, the Session Chairperson (Atsango Chesoni) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

### **AFTERNOON SITTING**

The Conference assembled at twenty minutes past Two O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION  
OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 & 11 of the commission's Report and Chapters 2, 5 Article 44 and section 63A, 6 Part III and Chapter 7 of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being ten minutes past Four O'clock, the Session Chairperson (Atsango Chesoni) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**The Conference assembled at forty-five minutes past Four O'clock.**

8. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 & 11 of the commission's Report and Chapters 2, 5 Article 44 and section 63A, 6 Part III and Chapter 7 of the Draft Bill)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being Six O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE** - at Six O'clock.

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**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, May 13, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**TUESDAY, MAY 13, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty-five minutes past Nine O'clock.

2. Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:-

- Hon. (Dr.) Newton Kulundu
- Hon. Ochilo Ayacko
- Hon. Najib Balala
- Mr. Carey Francis Onyago

4. **REPORT BY THE CHAIRMAN OF PRIVILEGES, DISCIPLINE AND WELFARE COMMITTEE**

The Chairman of the Committee made a report that his Committee, in consultation with the Steering Committee, had addressed numerous concerns on welfare of delegates including out of pocket allowance and accommodation as follows:

- (i) An acceptable and objective solution has been reached on delegates' allowances. Further details on this will be communicated to delegates via provisional co-ordinators.
- (ii) It was resolved that resident delegates remain accommodated in their present hotels.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 and 11 of the Commission's Report and Chapters 2, 6 Part III, 7 and 8 of the Draft Bill on Representation of the People, the Legislature and the Executive, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Monday, May 12, 2003 resumed;

**And the time being thirty minutes past Eleven O'clock, the Session Chairperson (Prof. Wangari Maathai) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at fifteen minutes past Twelve O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 and 11 of the Commission's Report and Chapters 2, 6 Part III, 7 and 8 of the Draft Bill on Representation of the People, the Legislature and the Executive, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being fifteen minutes past One O'clock, the Vice Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

**TUESDAY, MAY 13, 2003**

*(Chapters 9 and 11 of the Commission's Report and Chapters 2, 6 Part III, 7 and 8 of the Draft Bill on Representation of the People, the Legislature and the Executive, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission**

Debate interrupted resumed;

**And the time being fifty minutes past Four O'clock, the Vice Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at thirty minutes past Five O'clock.

8. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 9 and 11 of the Commission's Report and Chapters 2, 6 Part III, 7 and 8 of the Draft Bill on Representation of the People, the Legislature and the Executive, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being Six O'clock, the Session Chairperson (Prof. Wangari Maathai) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE** - at Six O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Wednesday, May 14, 2003 at 9.30 a.m.  

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, MAY 14, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty-eight minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Tuesday, May 13, 2003 resumed;

**And the time being twenty minutes past Eleven O'clock, the Session Chairperson (Prof. Wangari Maathai) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at Twelve O'clock.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being fifteen minutes past One O'clock, the Session Chairperson (Prof. Wangari Maathai) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

### **AFTERNOON SITTING**

The Conference assembled at forty-five minutes past Two O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

6. **PERSONAL STATEMENT UNDER RULE 23**

By indulgence of the Conference, Hon. Delegate Mohamed Haji made a Personal Statement regarding recent allegations, remarks and insinuations made by some delegates on Ijara people. He appealed to the delegates to respect the people of Ijara and to understand that they are entitled to all the rights and privileges enjoyed by other Kenyans notwithstanding their location and population.

And the time being thirty minutes past Four O'clock, the Session Chairperson (Prof. Wangari Maathai) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

The Conference assembled at fifteen minutes past Five O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being Six O'clock, the Vice Chairperson (Mr. Wilfred Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at Six O'clock.

**M E M O R A N D U M**

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The Chairperson will take the Chair on  
Thursday, May 15, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**THURSDAY, MAY 15, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at Ten O'clock.
2. Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR**

The Chairperson of the Constitution of Kenya Review Commission clarified that the Draft Constitution of Kenya which will come out of the National Constitutional Conference will be submitted to Parliament through the Attorney General for formal enactment. Parliament can only adopt or reject the draft by a two-thirds majority but the Hon. Members cannot amend it.

The Chairperson suggested that the conference should conclude Plenary debate by May 28, 2003 so that technical committees can be allocated five days to consider the draft Bill. Delegates were asked to confine themselves to points of principle in order to conclude debate by the above mentioned date.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Wednesday, May 14, 2003 resumed;

**And the time being twenty-five minutes past Eleven O'clock, the Session Chairperson (Mr. Samuel arap Ng'eny) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at five minutes past Twelve O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

6. **ADJOURNMENT OF DEBATE PURSUANT TO REGULATION 32**

Pursuant to Regulation 32, a delegate representing Political Parties (Mr. Leslie Mwachiro) moved the following Motion:-

THAT, the Conference do adjourn debate on Chapter 8 of the Draft Bill to enable the Commission rewrite the chapter in order to eliminate the contradictions contained therein.

And there being no Seconder;

Motion dropped.

Debate interrupted resumed;

**And the time being five minutes past One O'clock, the Session Chairperson (Mr. Samuel arap Ng'eny) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

6. **STATEMENT UNDER RULE 23(1) ON A MATTER OF URGENT PUBLIC IMPORTANCE**

By indulgence of the Conference, the Speaker of the National Assembly, Hon. Francis ole Kaparo, made a statement in response to comments and statements previously made by delegates during Plenary discussions to the effect that delegates from the National assembly had attempted to constitute themselves as special category above the rest of the delegates.

Thereupon, he informed the Conference that delegates from the National Assembly constitute at least one third of the conference and that under the rules of national justice and fairness there will be more delegates from Parliament speaking or attempting to speak at any one time.

He re-affirmed the commitment of the Members of Parliament to the conference and appealed to delegates to approach issues with an open mind while ensuring that a delegate's rights to speak carries with it the responsibility to listen to others.

He thereupon assured the delegates that those from the National Assembly were part and parcel of the conference and that their participation, interventions and debate will only serve to enrich the deliberations of the conference and further that they intended to render their participation to the fullest of their ability.

7. **COMMUNICATION FROM THE CHAIR**

The Chairperson of the Constitution of Kenya Review Commission issued a statement on behalf of the Commission in response to the statement made earlier on by the Speaker of the National Assembly, Hon. F.K ole Kaparo.

Thereupon, he informed the Conference that no Commissioner intends to defend any part of the Draft report and Bill. He reiterated that the Commission's role is to present the Draft report and Bill as they are to the Conference and to facilitate free debate and thorough discussion of the said documents. He re-assured all the delegates of the Commission's commitment to fulfill its mandate for the benefit of the country and the people of Kenya.

**And the time being twenty-five minutes past Four O'clock, the Session Chairperson (Mr. Samuel arap Ng'eny) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at Five O'clock.

8. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being ten minutes past Six O'clock, the Vice-Chairperson (Mr. Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE** - at ten minutes Six O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Friday, May 16, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, MAY 16, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty-five minutes past Nine O'clock.

2. Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

The Chairman administered the Oath to the following delegates:

Hon. Kipkalya Kones  
Bornice Chelangat Soi

4. **REPORT BY THE CHAIRPERSON**

The Chairperson made clarification regarding membership of the Technical Working Committees.

5. **INTRODUCTION OF MEMBERS OF MEDIA ADVISORY COMMITTEE**

The Chairperson of the Media Advisory Committee (Rose Kabiala Lukalo-Owino) introduced the members of the Committee as follows:-

Rose Lukalo-Owino	-	Chair
Sylvester W. Wafula	-	Member
David Marcos Rakamba	-	Member
Awili David Erulu	-	Member
Nkoroi Peter Kang'ethe	-	Member
Michael Oliewo	-	Member
Mustafa Ali	-	Member
Hon. Mutahi Kagwe	-	Member
Kavetsa Adagala	-	Ex-officio member – CKRC
Salome Muigai	-	Ex-officio member – CKRC
Abubakar Zein Abubakar	-	Ex-officio member – CKRC

She informed the delegates that they were free to speak to the media. However, for the National Constitutional Conference to be a success each participant must ensure that his or her actions and utterances are consistent with the substance and goal of the conference.

She further informed the delegates that the Media Advisory Committee will ensure that the conference is given proper coverage.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Thursday, May 15, 2003 resumed;

**And the time being ten minutes past Eleven O'clock, the Vice-Chairperson (Mr. Koitamet Ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at fifty-five minutes past Eleven O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 and 9 of the Draft Bill on the Executive and the Judiciary, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

8. **STATEMENT UNDER RULE 23(1) ON A MATTER OF URGENT PUBLIC IMPORTANCE**

Pursuant to Rule 23(1), Mr. Oduor Ongwen a delegate representing the Non-Governmental Organisations made a Statement in response to a Statement made by the Speaker of the National Assembly (Mr. Francis ole Kaparo) on Thursday 15<sup>th</sup> May 2003.

Thereupon, he informed the Conference that delegates were in support of the sentiments expressed by the Speaker and denied that there was a conspiracy against Members of Parliament in the Conference. He requested all delegates to approach issues with an open mind in order to arrive at decisions by consensus.

9. **STATEMENT UNDER RULE 23(1) ON A MATTER OF URGENT PUBLIC IMPORTANCE**

Pursuant to rule 23(1), Mr. Koigi wa Wamwere, a delegate from the Parliamentary Group, made a Statement in relation to a Motion he had submitted and which was subsequently rejected.

Thereupon, he claimed that there was no fairness in the manner in which Motions submitted by delegates were treated. He further claimed that out of thirteen (13) Motions submitted by delegates, only one had so far been approved. Hon. Wamwere stated that his Motion on “districts representation” had been misconstrued and that he had no intentions of maligning or undermining any delegate.

**And the time being thirty-five minutes past Twelve O’clock, the Vice-Chairperson (Mr. Koitamet Ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at Thirty minutes past Two O’clock.

10. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

**Motion made and Question proposed:**

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapters 8 of the Draft Bill on the Executive).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being twenty-five minutes past Four O'clock, the Session Chairperson**

**(Mr. Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

11. **CONFERENCE ROSE** - at twenty-five minutes past Four O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Monday, May 19, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, MAY 19, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at Ten O'clock.
2. Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson reminded the delegates that all notices of Motion should be presented to the Conference Secretary or to designated officers and not to any one else.

He further reminded the delegates to inform the Secretariat of the Committees they wish to serve because the Conference will constitute committees soon.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapter 8 of the Draft Bill on the executive).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Friday, May 16, 2003 resumed;

**And the time being Eleven O'clock, the Vice-Chairperson (Mr. Koitamet Ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at Twelve O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapter 8 of the Draft Bill on the executive).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being ten minutes past One O'clock, the Session Chairperson (Mr. Samuel arap Ng'eny) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

### **AFTERNOON SITTING**

The Conference assembled at thirty minutes past Two O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapter 8 of the Draft Bill on the executive).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**Rising in his place on a point of order, delegate Daniel W. Ichangi claimed to move that the debate on Chapter 8 be closed pursuant to Regulation 37;**

**And the Session Chairperson acceding to the claim;**

**Question put and agreed to.**

**And the time being five minutes past Four O'clock, the Session Chairperson (Mr. Samuel arap Ng'eny) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at Five O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commission's Report and Chapter 9 of the Draft Bill on the Judicial and Legal system).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate arising;

**And the time being five minutes past Six O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at five minutes past Six O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, May 20, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**TUESDAY, MAY 20, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at Ten O'clock.
2. Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR**

The Chairperson clarified the procedure of debate on the Report and Draft Bill of the Constitution of Kenya Review Commission. He stated that the Plenary discussions currently going on would give way to committees which will deliberate on the various chapters in their purview and make reports which will be tabled in the Conference and discussed in plenary sessions.

He further assured the delegates that divergent opinion/recommendations in committees would be recorded in the reports and each delegate will have an opportunity to contribute before any amendments proposed by committees are agreed to.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

**Debate interrupted on Monday, May 19, 2003 resumed;**

**And the time being twenty minutes past Eleven O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the**

**Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at twelve minutes past Twelve O'clock.

5. **COMMUNICATION FROM THE CHAIR**

The Chairperson told the participants to submit names of delegates wishing to serve in the ad hoc committee on culture by the end of the day's sitting.

He reminded delegates that they should attend all sittings even if they do not contribute because listening to views will help them participate in decision making later in the Committees and in the Plenary.

He requested delegates wishing to make their views in writing to present their submissions to the Secretariat.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being ten minutes past One O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being ten minutes past five O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at forty-five minutes past Five O'clock.

8. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

9. **QUORUM OF THE CONFERENCE**

Rising in his place on a point of order, delegate Boniface Mganga drew the attention of the Session Chairperson (Hon. Mungatana) to the fact that there was no Quorum in the Conference.

And the Session Chairperson having counted the delegates present and confirmed that there was no quorum caused the Division bell to be rung;

And there being no Quorum after expiry of five minutes;

**And the time being fifty three minutes past Five O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

10. **CONFERENCE ROSE** - at fifty minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Wednesday, May 21, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, MAY 21, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.

2. Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegate:-

Archbishop Njue John

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Tuesday, May 20, 2003 resumed;

**And the time being ten minutes past Eleven O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at forty minutes past Eleven O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being five minutes past One O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 12 of the Commission's Report and Chapters 9 and 10 of the Draft Bill on the Judicial and Legal system and Devolution, respectively).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being twenty minutes past Five O'clock, the Session Chairperson (Hon. Danson Mungatana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

10. **CONFERENCE ROSE** - at twenty minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Thursday, May 22, 2003 at 9.30 a.m.  
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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**THURSDAY, MAY 22, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegate:-

Hon. Beth W. Mugo

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Press has enquired about the decision taken by the conference on issues concerning the Presidency and the Prime Minister;

He explained that no decisions had been reached by the Conference. The Conference will vote on every clause in the Draft Bill after the Working groups/committees have considered the areas relevant to them.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 of the Commission's Report and Chapter 10 of the Draft Bill on Devolution)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Wednesday, May 21, 2003 resumed;

**And the time being twenty minutes past Eleven O'clock, the Session Chairperson (Hon. Joseph Nyagah) interrupted the Proceedings and adjourned the**

**Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at fifteen minutes past Twelve O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 of the Commission's Report and Chapter 10 of the Draft Bill on Devolution)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being ten minutes past One O'clock, the Session Chairperson (Hon. Joseph Nyagah) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at thirty-five minutes past Two O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 of the Commission's Report and Chapter 10 of the Draft Bill on Devolution)*

**(Mrs. Grace Ogot on behalf of the Chairperson,**

**Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being thirty minutes past Five O'clock, the Session Chairperson (Hon. Joseph Nyagah) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at thirty minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Friday, May 23, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, MAY 23, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty-five minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Conference Administration has organized a weekend excursion on Saturday, 24<sup>th</sup> May, 2003 to the following places:-

- a) David Shedrick Animal Orphanage  
(11.00 a.m. to 12.00 p.m.) – free entry
- b) Giraffe Centre  
(12.30 p.m. – 1.30 p.m.) - Ksh100.00 Entrance fee
- c) Bomas of Kenya – Lunch & Entertainment ( 2.00 p.m. to 5.00 pm)

He requested delegates who were interested in the activities to register their names at the auditorium entrance by 2.00 pm on Friday 23<sup>rd</sup> May, 2003. All resident delegates would be picked from their hotels at 10.00 a.m. Non-resident delegates would be picked from 680 Hotel at 10.00 a.m. on Saturday, 24<sup>th</sup> May, 2003.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 & 14 of the Commission's Report and Chapters 10 & 11 of the Draft Bill on Devolution and Land and Property, respectively)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Thursday, May 22, 2003 resumed;

**And the time being fifty minutes past Ten O'clock, the Session Chairperson (Hon. Joseph Nyagah) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at fifteen minutes past Eleven O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 & 14 of the Commission's Report and Chapters 10 & 11 of the Draft Bill on Devolution and Land and Property, respectively)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being thirty minutes past Twelve O'clock, the Session Chairperson (Hon. Joseph Nyagah) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at ten minutes past Two O'clock.

6. **COMPOSITION OF AD HOC COMMITTEE ON CULTURE**

The Chairperson gave the names of the following delegates who will constitute the Ad-hoc Committee on Culture:-

<b><u>NAME</u></b>		<b><u>ORGANISATION</u></b>
Prof. Wangari Maathai	-	Parliament
Gacuru wa Kareng'e	-	Central Province
Eliud Paul Nkithare	-	Western Province

J.P. Nyakundi	-	Political Parties
Del Maasai	-	Nyanza Province
Jamila Mohamed	-	Professional Organisations
Atsango Chesoni	-	Women Organisations
Rajab Mwondi	-	Trade Unions
Dubat A. Amey	-	North Eastern Province
James Kosgey	-	Rift Valley Province
Dubat A. Amey	-	North Eastern Province
Nyangau Onwonga	-	NGOs
Arch. Bishop Gitari	-	Religious Organisations
Rev. Macharia Mucuga	-	Nairobi
Mwandawiro Mganga/ Jillo Onotto	-	Coast Province
Kureya Esintele	-	Eastern Province

### **Commissioners**

Kavetsa Adagala  
Abubakar Zein Abubakar  
Bishop Bernard Njoroge Kariuki

## **7. DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 & 14 of the Commission's Report and Chapters 10 & 11 of the Draft Bill on Devolution and Land and Property, respectively)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being seven minutes past Four O'clock, the Session Chairperson (Hon. Joseph Nyagah) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

## **8. CONFERENCE ROSE** - at seven minutes past Four O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Monday, May 26, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, MAY 26, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that after morning tea-break, Working Groups should assemble in the tents to elect Convenors as follows:

<b><u>COMMITTEE NAME</u></b>	<b><u>TENT ALLOCATED</u></b>
<b>Technical Working Group A</b>	
Preamble, Supremacy of the Republic and National Goals, Values and Principles	Committee Tent No.1
<b>Technical Working Group B</b>	
Citizenship and the Bill of Rights	Committee Tent No.2
<b>Technical Working Group C</b>	
Representation of the People	Committee Tent No.3
<b>Technical Working Group D</b>	
The Executive	Committee Tent No.4
<b>Technical Working Group E</b>	
The Judiciary	Committee Tent No.5
<b>Technical Working Group F</b>	
The Legislature	Committee Tent No.6

**Technical Working Group G**

Devolution

Committee Tent No.7

**Technical Working Group H**

Public Finance, Public Service,  
Leadership and Integrity

Committee Tent No.8

**Technical Working Group I**

Defence and National Security

Committee Tent No.9

**Technical Working Group J**

Land Rights and Environment

Committee Tent No.10

**Technical Working Group K**

Constitutional Commission and  
Amendments to the Constitution

Committee Tent No.11

**Technical Working Group L**

Transitional Consequential Arrangements    Committee Tent No.12

A Commissioner and a member of the Secretariat are attached to each Working Group to facilitate the elections and future operations of the Group.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 & 14 of the Commission's Report and Chapters 10 & 11 of the Draft Bill on Devolution and Land and Property, respectively)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Friday, May 23, 2003 resumed;

**And the time being ten minutes past Eleven O'clock, the Session Chairperson (Prof. Wangari Maathai) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at twenty-five minutes past Twelve O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 & 14 of the Commission's Report and Chapters 10 & 11 of the Draft Bill on Devolution and Land and Property, respectively)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

6. **PERSONAL STATEMENT UNDER RULE 23**

By indulgence of the Conference, delegate Prof. Makau Mutua made a Personal Statement in response to statements he had made which were reported in the local media and which were seen to undermine the credibility and competence of the Conference.

**And the time being twenty-five minutes past One O'clock, the Vice-Chairperson (Hon. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 12 & 14 of the Commission's Report and Chapters 10 & 11 of the Draft Bill on Devolution and Land and Property, respectively)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being thirty minutes past Five O'clock, the Vice-Chairperson (Hon. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at thirty minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, May 27, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**TUESDAY, MAY 27, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:-

Hon. Prof. Peter Anyang' Nyong'o  
Hon. Joseph K. Munyao  
Hon. Kipruto arap Kirwa  
Ms Wahu Kaara

4. **COMMUNICATION FROM THE CHAIR**

- (i) The Chairperson introduced the Assistant Resident Representative of United Nations Development Programme (UNDP) to the delegates. He received equipment donated by UNDP which will be used at the Conference to facilitate recording and other relevant activities.

The Chairperson thanked UNDP for the donation and other support given to the Conference.

The Representative informed the Conference that UNDP was proud to be associated with the National constitutional Conference. She assured the members that UNDP was committed in its assistance to the Conference until the review process is finalized.

- (ii) The Vice-Chairperson (Mr. Wilfred ole Kina) made a statement in response to an issue raised on Monday, 26<sup>th</sup> May, 2003 by a delegate to the effect that some delegates were entering the Plenary hall with their firearms. The Chairperson appealed to the delegates to make arrangements for safe keeping of their firearms with the Secretariat before entering the Conference Hall.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13 & 14 of the Commission's Report and Chapters 11 & 12 of the Draft Bill on Land and Property, and Environment and Natural Resources)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Monday, May 26, 2003 resumed;

**And the time being fifty minutes past Ten O'clock, the Session Chairperson (Hon. Norman Nyagah) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at thirty minutes past Eleven O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13 & 14 of the Commission's Report and Chapters 11 & 12 of the Draft Bill on Land and Property, and Environment and Natural Resources)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

**Debate interrupted resumed;**

**And the time being five minutes past One O'clock, the Vice-Chairperson (Mr. Wilfred Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

## **AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13 & 14 of the Commission's Report and Chapters 11 & 12 of the Draft Bill on Land and Property, and Environment and Natural Resources)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being thirty minutes past Five O'clock, the Vice-Chairperson (Mr. Wilfred Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at thirty minutes past Five O'clock.

### **MEMORANDUM**

The Chairperson will take the Chair on  
Wednesday, May 28, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, MAY 28, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty-three minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13 & 14 of the Commission's Report and Chapters 11 & 12 of the Draft Bill on Land and Property, and Environment and Natural Resources)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Tuesday, May 27, 2003 resumed;

**And the time being Eleven O'clock, the Session Chairperson (Nancy Lungahi) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at fifty minutes past Eleven O'clock.

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Conference administration had organized a weekend excursion on Saturday, 31<sup>st</sup> May, 2003 to the following places:-

- (a) National Museums of Kenya  
10.30 a.m. to 12.00 p.m. – Ksh100.00 entrance fee
- (b) Bomas of Kenya – Lunch
- (c) Nairobi National Park  
2.30 p.m. – 5.00 p.m. – Ksh150.00 entrance fee

The Chairperson requested the delegates who were interested in the activities to register their names at the auditorium entrance by 2.00 p.m. on Thursday, 29<sup>th</sup> May, 2003. Resident delegates would be picked from their hotels at 10.00 a.m. Non-residents delegates would be picked from 680 Hotel at 10.00 a.m. on Saturday, 31<sup>st</sup> May, 2003.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13 & 14 of the Commission's Report and Chapters 11 & 12 of the Draft Bill on Land and Property, and Environment and Natural Resources)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

**Debate interrupted resumed;**

**And the time being one minute past One O'clock, the Vice-Chairperson (Mr. Wilfred ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at thirty-five minutes past Two O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13 & 14 of the Commission's Report and Chapters 11 & 12 of the Draft Bill on Land and Property, and Environment and Natural Resources)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

7. **QUORUM OF THE CONFERENCE**

Rising in his place on a point of order, delegate Daniel Rasugu drew the attention of the Session Chairperson (Ms Nancy Lungahi) to the fact that there was no Quorum in the Conference.

And the Session Chairperson having counted the delegates present and confirmed that there was no quorum caused the Division bell to be rung;

And there being no Quorum after expiry of five minutes;

**And the time being ten minutes past Five O'clock, the Session Chairperson (Ms Nancy Lungahi) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at ten minutes past Five O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Thursday, May 29, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**THURSDAY, MAY 29, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Steering Committee had received several Motions. It was deliberating on them and would make a decision on 30<sup>th</sup> May, 2003 on the Motions which should be discussed by the Conference.

The Vice-Chairperson expressed the need to conclude debate on land before tea-break so that the Conference could debate on the next Chapter – Environment and Natural Resources.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 13, 14 & 15 of the Commission's Report and Chapters 11, 12 & 13 of the Draft Bill on Land and Property, Environment and Natural Resources, Public Finances and Revenue Management).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Wednesday, May 28, 2003 resumed;

**And the time being twenty minutes past Eleven O'clock, the Session Chairperson (Ms Nancy Lungahi) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at ten minutes past Twelve O'clock.

5. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Ad hoc Committee on Culture would meet at 6.00 p.m. on Thursday, 29<sup>th</sup> May, 2003 at the Commissioners tent.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 13, 14 and 15 of the Commission's Report and Chapters 11, 12 and 13 of the Draft Bill on Land and Property, and Environment and Natural Resources, Public Finance and Revenue Management)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

**Debate interrupted resumed;**

**And the time being fifteen minutes past One O'clock, the Session Chairperson (Nancy Lungahi) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

7. **STATEMENT UNDER RULE 23**

Delegate Ms Miriam Muto made a statement under Regulation 23(i) to clarify the position of the technical committee on Representation of the People regarding election of the Convenor.

She informed the delegates that since each delegate carries several identities, it is wholly the right of the committee members to elect a Convenor and that their choice of Convenor be respected by the Conference.

8. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 13, 14 and 15 of the Commission's Report and Chapters 11, 12 and 13 of the Draft Bill on Land and Property, and Environment and Natural Resources, Public Finance and Revenue Management)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being twenty-five minutes past Five O'clock, the Session Chairperson (Elkanah Odembo) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE** - at twenty-five minutes past Five O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Friday, May 30, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, MAY 30, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR**

The Chairperson clarified on the circulation of documents and materials to the delegates and informed the Conference that the delegates were free to collect and read documents which were circulated or to ignore them. He advised the delegates and interest groups not to circulate documents, which might appear inflammatory in nature.

The Chairperson further informed the delegates that the discussion on the Report and the Draft Bill may not be completed before the end of the Conference sittings on 6<sup>th</sup> June, 2003. Hence, there was need to maximize the remaining time to ensure the discussion on the Draft is completed as per the Conference Time table.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11, 13 and 15 of the Commissioner's Report and Chapters 12, 13, 14 and 15 of the Draft Bill on Environment and Natural Resources, Public Finance and Revenue Management, Public Service and, Defence and National Security).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Thursday, May 29, 2003 resumed;

**And the time being twenty minutes past Twelve O'clock, the Session Chairperson (Mr. Elkanah Odembo) interrupted the Proceedings and adjourned**

**the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

### **AFTERNOON SITTING**

The Conference assembled at thirty minutes past Two O'clock.

5. **STATEMENT BY THE SPEAKER OF THE NATIONAL ASSEMBLY UNDER RULE 23**

By indulgence of the Conference the Speaker of the National assembly made a statement concerning adjournment of the Conference pursuant to provisions of Rule 23. Thereupon he informed the Conference that it was necessary for it to adjourn for sometime in order to facilitate the reading of the budget and to have members of Parliament debate on it because it is their Constitutional mandate and it is scheduled in the Parliamentary Calendar.

He further informed the Conference that members of Parliament would be available for Conference deliberations from around 10<sup>th</sup> August, 2003.

6. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Conference is set to adjourn to a day other than the next normal sitting day on Friday, 6<sup>th</sup> June, 2003 and will reconvene around 17<sup>th</sup> August, 2003.

However, the final decision will be reached on Tuesday, 3<sup>rd</sup> June, 2003 after the Steering Committee makes further consultations.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 13, 14 and 15 of the Commission's Report and Chapters 11, 12 and 13 of the Draft Bill on Land and Property, and Environment and Natural Resources, Public Finance and Revenue Management)*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being fifteen minutes past Four O'clock, the Session Chairperson (Mr. Elkanah Odembo) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at fifteen minutes past Four O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, June 03, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**TUESDAY, JUNE 03, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that adjournment of the conference sittings should be pursuant to provisions of Rule 17. Since the adjournment scheduled for Friday, June 06, 2003 exceeds three days, the Rule requires the Conference approval before the said adjournment can be undertaken. However, the Steering Committee would meet at 1.00 p.m. to deliberate on the matter and its decision would be communicated to the Conference.

The Chairperson further informed delegates that Plenary sitting time should be extended so that debate on the remaining paragraphs of the Draft Report and Bill could be completed soon. To achieve this, morning sittings should start at 9.00 a.m. while afternoon sittings should end at 6.30 p.m.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 15 of the Commissioner's Report and Chapters 13, 14 and 15 of the Draft Bill on Public Finance and Revenue Management, Public Service and, Defence and National Security).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Friday, May 30, 2003 resumed

**And the time being twenty minutes past Eleven O'clock, the Session Chairperson**

**(Mrs. Tabitha Seii) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at fifty-five minutes past Eleven O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 15 of the Commissioner's Report and Chapters 13, 14 and 15 of the Draft Bill on Public Finance and Revenue Management, Public Service and, Defence and National Security).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being One O'clock, the Session Chairperson (Mrs. Tabitha Seii) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at thirty-five minutes past Two O'clock.

6. **COMMUNICATION FROM THE CHAIR**

The Vice-Chairperson informed the Conference that delegate Martin Shikuku had been involved in a road accident in the morning of 3<sup>rd</sup> June, 2003. The Secretary to the National Constitutional Conference had visited him in the hospital and confirmed that he was in good health. Delegates would be given more information about him on 4<sup>th</sup> June, 2003.

7. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapters 11 and 15 of the Commissioner's Report and Chapters 13, 14 and 15 of the Draft Bill on Public Finance and Revenue Management, Public Service and, Defence and National Security).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

8. **QUORUM OF THE CONFERENCE**

Rising in his place on a point of order, delegate Simon Mwai drew the attention of the Vice-Chairperson (Mr. Wilfred Koitamet Ole Kina) to the fact that there was no Quorum in the Conference.

And the Vice-Chairperson having counted the delegates present and confirmed that there was no quorum caused the Division bell to be rung;

And there being no Quorum after expiry of five minutes;

**And the time being twenty minutes past Five O'clock, the Vice-Chairperson (Mr. Wilfred Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE** - at twenty minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Wednesday, June 04, 2003 at 9.00 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, JUNE 04, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at ten minutes past Nine O'clock.
2. Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson called upon the delegates to be time conscious and to work hard in order to ensure that the remaining chapters are concluded before the conference adjourns on Friday, 6<sup>th</sup> June, 2003. He asked the delegates to be present at all times and ensure that there was quorum.

He announced that the Motion filed by Hon. Joe Khamisi proposing extension of the Conference sittings beyond Friday, 6<sup>th</sup> June, 2003 would be discussed when the Conference reconvenes after lunch break.

4. **STATEMENT UNDER RULE 23**

By indulgence of the Conference, the Chairperson of the Welfare Committee (Delegate Baldip Singh Rihal) made a Statement concerning Mr. Martin Shikuku, a delegate representing political parties. He informed the Conference that he had visited Mr. Shikuku in hospital and that he (Mr. Shikuku) was in stable condition and responding well to treatment. He further stated that his committee was taking care of Mr. Shikuku's welfare.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commissioner's Report and Chapters 14, 15 and 16 of the Draft Bill on Public Service, Defence and National Security and, Leadership and Integrity).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Tuesday, June 03, 2003 resumed;

**And the time being Eleven O'clock, the Vice-Chairperson (Mr. Wilfred ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at thirty-eight minutes past Eleven O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commissioner's Report and Chapters 14, 15 and 16 of the Draft Bill on Public Service, Defence and National Security and, Leadership and Integrity).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being eight minutes past One O'clock, the Vice-Chairperson (Mr. Wilfred ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at thirty minutes past Two O'clock.

7. **MOTION - ADJOURNMENT OF CONFERENCE PROCEEDINGS**

Motion made and Question proposed:-

NOTING that the Conference has made very good progress and has reached a most critical stage in its deliberations; appreciating that the time allocated to the Conference for the current Session is due to expire on 6<sup>th</sup> June, 2003, this Conference now resolves that the Conference adjourns on 6<sup>th</sup> June, 2003 and reconvenes on 17<sup>th</sup> August, 2003 until the conclusion of its deliberations.

*(Delegate Joe Khamisi)*

Question put and agreed to.

**RESCINDING OF A DECISION EARLIER MADE BY THE CONFERENCE**

Motion made and Question proposed:

**THAT**, this Conference rescinds the decision made on the Motion of adjournment;

*(Delegate Musikari Kombo)*

Debate arising;

Question put and agreed to.

Debate on adjournment Motion resumed;

**AMENDMENT PROPOSED:**

**THAT**, the Motion be amended by deleting the words “6<sup>th</sup>” and “17<sup>th</sup>” appearing in the fifth and sixth lines respectively and inserting in place thereof the words “10<sup>th</sup>” and “4<sup>th</sup>” respectively .

*(Delegate David Marcos Rakamba)*

Debate arising;

Question of the first part of the amendment that the words proposed to be deleted, be deleted, proposed, put and negatived;

Debate on the original Motion resumed;

Question put and agreed to;

**RESOLVED ACCORDINGLY**

**NOTING** that the Conference has made very good progress and has reached a most critical stage in its deliberations; appreciating that the time allocated to the Conference for the current Session is due to expire on 6<sup>th</sup> June, 2003, this Conference now resolves that the Conference adjourns on 6<sup>th</sup> June, 2003 and reconvenes on 17<sup>th</sup> August, 2003 until the conclusion of its deliberations.

8. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 11 of the Commissioner's Report and Chapters 14, 15 and 16 of the Draft Bill on Public Service, Defence and National Security and, Leadership and Integrity).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being fifteen minutes past Six O'clock, the Vice-Chairperson (Mr. Wilfred ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE** - at fifteen minutes past Six O'clock.

#### **M E M O R A N D U M**

The Chairperson will take the Chair on  
Thursday, June 05, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**THURSDAY, JUNE 05, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifteen minutes past Nine O'clock.
2. Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the members that delegate Martin Shikuku was recovering relatively fast and may join the Conference on Friday, 6<sup>th</sup> June, 2003. On behalf of the Conference, he sent condolences to delegate Chris Okemo whose wife had passed away, and delegate Mwangi Kiunjuri who had lost his mother. He congratulated delegate Martha Koome on her appointment as a High Court Judge.

The Chairperson further informed the delegates that H.E the President could not attend the adjournment session on June 6,2003 due to other duties but had reiterated the Government's commitment to the Constitutional Review process.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 16 of the Commissioner's Report and Chapters 17, 18 & 19 of the Draft Bill on Constitutional Commissions, Amendment of the Constitution, Interpretation and, Transitional and Consequential Provisions).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Wednesday, June 04, 2003 resumed;

**And the time being forty minutes past Ten O'clock, the Session Chairperson (Mr. Kennedy Kiliku) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at thirty minutes past Eleven O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 16 of the Commissioner's Report and Chapters 17, 18 & 19 of the Draft Bill on Constitutional Commissions, Amendment of the Constitution, Interpretation and, Transitional and Consequential Provisions).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

**And the time being eight minutes past One O'clock, the Session Chairperson (Mr. Kennedy Kiliku) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at forty minutes past Two O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 16 of the Commissioner's Report and Chapters 17, 18 & 19 of the Draft Bill on Constitutional Commissions, Amendment of the Constitution, Interpretation and, Transitional and Consequential Provisions).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

7. **STATEMENT UNDER RULE 23**

By indulgence of the Conference, delegate Appolo Njonjo made a Statement concerning a Motion he had submitted requiring that after adjournment of the Conference on 6<sup>th</sup> June, 2003, its organs should cease to be operational until resumption of the Conference on 17<sup>th</sup> August, 2003.

Thereupon, he informed the delegates that after consultations with the Chair, the Motion would be debated on 6<sup>th</sup> June, 2003.

**QUORUM OF THE CONFERENCE**

Rising in his place on a point of order, delegate William Kabogo drew the attention of the Session Chairperson (Mr. Kennedy Kiliku) to the fact that there was no Quorum in the Conference.

And the Session Chairperson having counted the delegates present and confirmed that there was no quorum caused the Division bell to be rung;

And there being no Quorum after expiry of five minutes;

**And the time being Five O'clock, the Session Chairperson (Mr. Kennedy Kiliku) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Friday, June 06, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, JUNE 06, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty minutes past Nine O'clock.
2. Proceedings were opened with Prayer.
3. **MOTION -**

Motion made and Question proposed:

THAT, noting the adoption by the resolution proposed by the Hon. Delegate No.053 that the Conference adjourns on the 6<sup>th</sup> June, 2003 and reconvenes on 17<sup>th</sup> August, 2003, this Conference resolves that the organs of the Conference, save for the CKRC, do similarly adjourn to 17<sup>th</sup> August, 2003.

*(Delegate Apolo Njonjo)*

Debate arising;

**Amendment Proposed:**

That, the Motion be amended by inserting the words “and Ad hoc Committee on Culture” immediately after the words ‘Constitution of Kenya Review Commission’ appearing in the third line.

*(Delegate Wangari Maathai)*

Debate arising;

Question put and negatived;

Debate on the original Motion resumed;

Question put and agreed to;

**RESOLVED ACCORDINGLY**

**THAT**, noting the adoption by the resolution proposed by the Hon. Delegate No.053 that the Conference adjourns on the 6<sup>th</sup> June, 2003 and reconvenes on 17<sup>th</sup> August, 2003, this Conference resolves that the organs of the Conference, save for the Constitution of Kenya Review Commission do similarly adjourn to 17<sup>th</sup> August, 2003.

4. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 16 of the Commissioner's Report and Chapters 17, 18, 19 & 20 of the Draft Bill on Constitutional Commissions, Amendment of the Constitution, Interpretation and, Transitional and Consequential Provisions).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted on Thursday, June 05, 2003 resumed;

**And the time being forty minutes past Ten O'clock, the Session Chairperson (Mr. Kennedy Kiliku) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at forty minutes past Eleven O'clock.

5. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

**THAT**, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 16 of the Commissioner's Report and Chapters 17, 18, 19 & 20 of the Draft Bill on Constitutional Commissions, Amendment of the Constitution, Interpretation and, Transitional and Consequential Provisions).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

And the time being thirty minutes past Twelve O'clock, the Session Chairperson (Mr. Leslie Betawa Mwachiro) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.

## **AFTERNOON SITTING**

The Conference assembled at thirty-five minutes past Two O'clock.

6. **DEBATE ON THE REPORT AND DRAFT BILL OF THE CONSTITUTION OF KENYA REVIEW COMMISSION**

Motion made and Question proposed:

THAT, pursuant to Regulation 19(1), this Conference debates the Report and Draft Bill prepared by the Constitution of Kenya Review Commission tabled on Tuesday, May 06, 2003.

*(Chapter 16 of the Commissioner's Report and Chapters 17, 18, 19 & 20 of the Draft Bill on Constitutional Commissions, Amendment of the Constitution, Interpretation and, Transitional and Consequential Provisions).*

**(Mrs. Grace Ogot on behalf of the Chairperson,  
Constitution of Kenya Review Commission)**

Debate interrupted resumed;

7. **STATEMENT UNDER RULE 23**

Pursuant to Regulation 23, delegate Gitu Kahengeri made a Statement commending the Conference for the noble task it had carried out in deliberating on the Report and Draft Bill of the Constitution of Kenya Review Commission.

8. **FORMAL CONSTITUTION OF THE TECHNICAL WORKING COMMITTEES**

The Chairperson presented the following names of Convenors of the respective Technical Working Committees:-

### **TECHNICAL COMMITTEES CONVENORS**

9. **ZERO HOUR**

By leave of the Conference, statements were made on behalf of the following groups:

Sengwer, Watta, Ogiek communities and the Widows Association.

10. **CLOSING REMARKS**

The Commission Secretary called upon representatives of various groups and organizations to make brief closing remarks.

In their presentations, they all commended their fellow delegates for their patience, understanding and determination to forge ahead and deliver to the people of Kenya a constitution that they could proudly bequeath to the future generations.

11. **CHAIRMAN'S REMARKS**

The Chairman of the Constitution of Kenya Review Commission, Prof. Yash Pal Ghai, thanked all the delegates for their very active participation during the deliberations. He particularly thanked the Commission secretary, Mr. PLO Lumumba for his dedication and hard work which was instrumental in ensuring the success of the Conference.

The Chairman further thanked the management of Bomas of Kenya for hosting the Conference and the staff of Parliament and CKRC for ably facilitating the entire process.

**And the time being thirty minutes past Four O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

12. **CONFERENCE ROSE** - at thirty minutes past Four O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, August 19, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**END OF SESSION I (BOMAS I)**

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## **SESSION II (BOMAS II)**

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**TUESDAY, AUGUST 19, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.
2. The Proceedings were opened with Prayer.
3. The Chairperson of the Constitution of Kenya Review Commission led the Delegates in observing a minute's silence in honour the departed delegates, the late Hon. Geoffrey Parpai, MP, and the Hon. Dr. Gikonyo Kiano.

4. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegates:

- Kimani Michael Ng'ang'a
- Charles Mutavi Kilonzo

5. **COMMUNICATION FROM THE CHAIR**

The Chairperson welcomed the delegates back to the Conference and reminded them that there was no doubt that the Conference would be affected by agreements or disagreements within political parties. He explained that delegates should remember that they came to the Conference as individuals and have to exercise their own discretion and make objective assessment of the different opinions.

The Chairperson then explained in details what constitutional making was all about and the problems to be confronted. He cited the difficulties experienced in Bomas I as lack of proper management of time and constant interruptions of speakers through spurious points of order.

The Chairperson further cautioned the media on misreporting of what transpires at the Conference and asked journalists to be responsible in their reporting.

6. **MINISTERIAL STATEMENT**

The Minister for Justice and Constitutional Affairs, Hon. Kiraitu Murungi, issued a Statement under Regulation 23(1).

**And the time being thirty minutes past Ten O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at     minutes past Eleven O'clock.

7. **PRESENTATION OF THE RAPPORTEUR GENERAL'S REPORT**

Prof. Okoth Ogendo presented the Rapporteur general's report on the general debate held between April 28 and June 06, 2003 at Bomas of Kenya.

**And the time being One O'clock, Vice-Chairperson (Dr. Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**A F T E R N O O N   S I T T I N G**

The Conference assembled at thirty-five minutes past Two O'clock.

8. **COMMUNICATION FROM THE CHAIR**

The Chairperson clarified on issues raised by delegates concerning deliberations in the Technical Committees.

Commissioner Lenaola and Mr. Samuel Ndindiri, Clerk of the National Assembly, briefed the delegates on the regulations to be followed during the Technical Committee meetings.

Thereupon, the Plenary broke into Committees.

**And the time being ten minutes past Five O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

9. **CONFERENCE ROSE**     -     at ten minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Wednesday, August 20, 2003 at 9.30 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, AUGUST 20, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at twenty-five minutes past Nine O'clock.
2. The Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath of Office to the following delegates:

- Daniel Karaba
- Lorna Laboso
- Were W.K. Domitila
- Asenath Kaimuri Nyamu

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Welfare Committee, the Convenors and the Rapporteurs would be meeting today during lunch time. He further informed the Conference that he had received a Motion from Eng. Muriuki Karue on Affirmative Action.

5. **PRESENTATION OF THE REPORT OF THE TASK FORCE ON CULTURE**

Commissioners Kavetsa Adagala and Salome Wairimu Muigai presented the Report of the Task Force on Culture.

**And the time being Eleven O'clock, the Vice-Chairperson (Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at Fifty-five minutes past Eleven O'clock.

6. **PRESENTATION OF THE REPORT OF THE TASK FORCE ON CULTURE**

Commissioners Kavetsa Adagala, Salome Wairimu Muigai and Zein Abubakar Zein presented the Report of the Task Force on Culture.

**And the time being One O'clock, the Vice-Chairperson (Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

## **AFTERNOON SITTING**

The Conference assembled at thirty minutes past Two O'clock.

7. **DEBATE ON THE REPORT OF THE TASK FORCE ON CULTURE**

Commissioners Kavetsa Adagala, Salome Wairimu Muigai and Zein Abubakar Zein presented the Report of the Task Force on Culture.

Debate arising;

**And the time being fifteen minutes past Five O'clock, the Vice-Chairperson (Mr. Koitamet ole Kina) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at fifteen minutes past Five O'clock.

## **M E M O R A N D U M**

The Chairperson will take the Chair on  
Thursday, August 21, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**THURSDAY, AUGUST 21, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at twenty-five minutes past Nine O'clock.

2. The Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson reminded delegates that they should make best use of time. They should arrive on time in the morning, maintain quorum and promptly return to the Conference Hall after tea break and after lunch.

He informed the delegates that they should not impute improper motive on one another.

According to the rules of procedure, Conference proceedings are open to the public. Members of the public who are interested in the proceedings should be treated with civility and be welcomed within the rules.

He also informed the delegates that the Report of the Task Force on Culture will be distributed to all delegates.

4. **REPORT OF THE TASK FORCE ON CULTURE**

Commissioners who presented the Report of the Task Force on Culture responded on Plenary deliberations of the Report.

5. **PRESENTATION OF THE REPORT OF THE TASK FORCE ON DEVOLUTION**

Commissioner Dr. Wanjiku Kabira presented the Report of the Task Force on Devolution.

**And the time being Eleven O'clock, the Vice-Chairperson (Dr. Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at Fifty-five minutes past Eleven O'clock.

6. **PRESENTATION OF THE REPORT OF THE TASK FORCE ON DEVOLUTION**

Commissioner Dr. Wanjiku Kabira resumed her presentation of the Report of the Task Force on Devolution.

**And the time being One O'clock, the Vice-Chairperson (Dr. Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at twenty minutes past Two O'clock.

7. **PRESENTATION OF THE REPORT OF THE TASK FORCE ON DEVOLUTION**

Commissioner Mutakha Kangu continued with the presentation of the Report of the Task Force on Devolution.

**And the time being forty minutes past Four O'clock, the Vice Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at forty minutes past Four O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Friday, August 22, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, AUGUST 22, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at twenty-five minutes past Nine O'clock.
2. The Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the Welfare Committee would be meeting today during lunch time.

4. **DEBATE ON THE REPORT OF THE TASK FORCE ON DEVOLUTION**

Debate interrupted on Thursday, 22<sup>nd</sup> August resumed;

**And the time being forty-five minutes past Ten O'clock, Vice Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at twenty minutes past Eleven O'clock.

5. **DEBATE ON THE REPORT OF THE TASK FORCE ON DEVOLUTION**

Debate interrupted resumed;

**And the time being One O'clock, Vice Chairperson (Dr. Bonaya Godana) interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

The Conference assembled at forty minutes past Two O'clock.

**AFTERNOON SITTING**

The Conference assembled at twenty minutes past Two O'clock.

6. **DEBATE ON THE REPORT OF THE TASK FORCE ON DEVOLUTION**

**Debate interrupted resumed;**

7. **INTRODUCTION OF A CHAPTER ON AFFIRMITIVE ACTION**

Motion made and Question proposed:-

THAT, having observed with concern that some groups in our social-economic set-up do suffer unfair basis of gender, illiteracy, disability, age, geographical area and other unjustified grounds; this Conference resolves that a Chapter be included in the new Constitution devoted to *Affirmative Action* and requiring Parliament to enact a law that will adequately address the root causes of such unfair imbalances.

*(Eng. Muriuki Karue)*

Debate arising;

**AMENDMENT PROPOSED:**

THAT, the Motion be amended by

- i) to consider inclusion of a chapter on Affirmative Action with particular regard to all groups in the Kenya society that have hitherto been discriminated against on the basis of gender, disability, age, geographical situation and other forms of social affliction;
- ii) to propose ways and means of mainstreaming inter-generational equity as a principle in the entire Draft Bill so as to be able to make a constitution for all ages and generations as long term solution to these forms of discrimination.
- iii) To identify and make recommendations on relevant chapters of the Draft Bill of the Constitution of Kenya Review Commission with a view to incorporating social equity as fundamental principle in the entire Draft Bill.
- iv) Propose, where necessary, amendments to and aspects of the Draft Bill with a view to entrenching the principles of intergenerational and social equity.
- v) Prepare a report for consideration by relevant Technical committees of the Conference to which the recommendations may apply.
- vi) Explore and recommend possible legislative and institutional frameworks for the realization of inter-generational and social equity after the enactment of the Draft Bill into law.

*(Suba Churchill)*

Debate arising;

Question of the amendment that the words proposed to be added be added proposed, put and agreed to;

Motion as amended agreed to:

**And the time being twenty minutes past Four O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at twenty minutes past Four O'clock.

### **M E M O R A N D U M**

The Chairperson will take the Chair on  
Monday, August 25, 2003 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, AUGUST 25, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at forty minutes past Nine O'clock.
2. The Proceedings were opened with Prayer.
3. **REPLAY OF THE LATE VICE-PRESIDENT'S SPEECH**

The Chairperson led the delegates in listening to the speech made by the late Vice-President, Hon. Michael Christopher Wamalwa, MP, during the Official Opening of the National Constitutional Conference held on 30<sup>th</sup> May, 2003.

Thereupon, the Chairperson requested the delegates to observe a minute of silence in honour of the late Vice-President, followed by the National Anthem.

4. **ADJOURNMENT OF THE NATIONAL CONSTITUTIONAL CONFERENCE**

Motion made and Question proposed:

**THAT**, the National Constitutional Conference, deeply shocked by the untimely demise of the Hon. Michael Christopher Wamalwa, Vice-President of the Republic of Kenya and Minister for Regional Deveopment, Member of Parliament for Saboti Constituency and honourable delegate No.2 of this Conference; recognizing the sterling role he has played with resolve and dedication in the reconstruction and development of his motherland; noting with gratitude the unflinching support he has all along extended to the constitutional review process –

- a) conveys its heartfelt condolences to his family, relatives and friends;
- b) joins the rest of Kenyans in this hour of bereavement;
- c) registers its appreciation of the Government's efforts to accord him recognition and a burial befitting an accomplished statesman; and
- d) pursuant to regulation 17 of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, 2002 resolves to adjourn the proceedings of this Conference forthwith and reconvene on Monday, 8<sup>th</sup> September, 2003 at 8.00 a.m.

Question put and agreed to.

5. **COMMUNICATION FROM THE CONFERENCE SECRETARY**

The Conference Secretary informed the delegates that their welfare will be looked into between 3.00 p.m. and 4.00 p.m. today to enable them travel to their respective home districts.

**And the time being forty minutes past Ten O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference after Question put pursuant to the National Constitutional Conference Regulations.**

6. **CONFERENCE ROSE** - at forty minutes past Ten O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Monday, September 08, 2003 at 8.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, SEPTEMBER 08, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at Ten O'clock.
2. The Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

The Chairperson administered the Oath to the following delegate:-

Margaret Muchai

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson welcomed the delegates back to the Conference and thanked them for mourning the late Vice-President, Hon. Michael Wamalwa peacefully. He asked them to continue to reflect on his resolve to have a good constitution for the country.

He informed the Conference that there would be three weeks of intensive work in the Technical Working Committees. He asked members to rededicate themselves to this important task and to work diligently to prove to Kenyans that the Conference means business.

The Chairperson further informed the Conference that the Steering Committee would meet in the afternoon to agree on the final list that will have been proposed by the Provincial Groups and thereafter the Working Groups would begin business.

**And the time being ten minutes past Ten O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference after Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at thirty minutes past Two O'clock.

5. **COMMUNICATION FROM THE CHAIR**

The Chairperson clarified the modalities and procedures on the deliberations in the Technical Committees and the mode of deliberation in Committees.

**MONDAY, SEPTEMBER 08, 2003**

The Chairperson requested the delegates to be at their Working Tents from 8.30 a.m. on Tuesday, the 9<sup>th</sup> day of September, 2003.

**And the time being forty-five minutes past Three O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference after Question put pursuant to the National Constitutional Conference Regulations.**

6. **CONFERENCE ROSE** - at forty-five minutes past Three O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, September 09, 2003 at 8.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, SEPTEMBER 10, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at fifteen minutes past Ten O'clock.
2. The Proceedings were opened with Prayer.
3. **ADMINISTRATION OF OATH**

**The Chairperson administered the Oath to the following delegate:-**

**Odhiambo Emily**

4. **COMMUNICATION FROM THE CHAIR**

**The Chairperson conveyed the following Communication from the Chair:-**

I have a communication from the Chair, the Steering Committee met this morning to review the progress of the Conference, and the work done in the Committees yesterday. The Conference discussed the events of yesterday which included the refusal of many Delegates to proceed to the Committees to discuss the Draft Constitution, because they felt that they had not been compensated adequately for their work here.

We also considered the allegations, which were voiced in Bomas yesterday, Tuesday, September 09, 2003), through some Press Conferences, through statement to the media, which were then broadcast on the media and which are now in print in the newspapers today. The steering Committee was very concerned with these developments, we are at critical stage of our work, the nation is watching us with very great anxiety as well as expectation, that we will deliver them a good Constitution in reasonable time.

The eyes of Kenyans, Africa and the world are upon us. When I was walking in Bomas yesterday, two Diplomats came to talk to me and they said that the future of their own countries depends in very significance measure on the progress that we make in our deliberations here, and in our ability to agree upon, and implement a good Constitution. So they reminded me and I am reminding you that our obligations are very heavy for they do not only affect the future of our own country, but that of perhaps the rest of Africa.

Two months ago we were looked upon as charting a path for ourselves and for our neighbours and there was very high expectation that we would lead the way for others. Now many of these hopes are beginning to dissipate, people have become pessimistic, people are beginning to lose confidence in this process.

It is of course quite true that we discharge our responsibilities in accordance with our consciences, and in accordance with the procedures. We begin our proceedings every morning with prayers, we invoke the blessings of God upon us. We seek his wisdom, we place the ability to listen to others, and we seek the Creators assistance to make us tolerant and to reach out to others. And then almost all mornings, we also swear in new members and you all listen as the new members repeat the oath that you all have taken yourselves. I have several times commented on this oath and the sacred responsibilities that we undertake when we commit ourselves to this oath.

We have therefore, legal moral, spiritual obligations to act in good conscience, to listen to others and to fulfill the expectations that the public have over us. But the events for the last few days do a great deal to jeopardize that mission of ours, we have become a laughing stock in this country. The newspapers and the Television programmes are full of the demands that Delegates make for increased allowances, and they give the impression that, the only thing we ever do in Bomas is to ask for more money to fight about more money, which of course is not true, but there is of course some substance in these allegations.

Now to these allegations, we have even more serious charges, charges that some Delegates are bribing other Delegates to subvert the process, or to act contrary to their own consciences and their own judgment. We have allegations that people in highest offices, are engaged in the subversion of the process. That many Delegates do not want a new Constitution or are being induced to believe that the Country does not need a new Constitution, that this persuasion is lubricated by offers of money. Nothing can be more damaging to this Conference that the people begin to believe in these allegations. We will lose all moral authority if we are not seen to be acting according to our conscience.

One of the longest, one of the best pieces in our Draft Constitution is the Chapter on Integrity. Integrity of Leaders, and we are all here as Leaders, we have very heavy obligations to use public funds according to the purposes of which they are given. We have to act in good conscience, we should not abuse our power. If we are seen to be violating these norms that we are propagating in our new Constitution, we will lose all respect of the public. And the result may well be that we will never be able to give the country a new Constitution. Indeed there are allegations that this is precisely the intention of some Delegates, I would like to believe that these allegations have no foundation. But the public out there now believes this and yesterday I did not myself see the TV programs, but fellow Delegates tell me that there were Delegates who were there, who mentioned names, who mentioned incidents designed to sabotage the spirit of this Conference. So, I want to plead with you all to respect your oath of

office, to consider carefully the Draft Constitution that is before you, to make your judgment on the basis of what is good for a democratic and just society that we want to build in our country.

I think that we have to deal with two issues today, we have to deal with the issue of allowances, which has bedeviled this Conference ever since we started meeting in Bomas early this year. And we have to secondly lay to rest allegations of corruption, allegations of the sabotage of this process, through this Conference. The Steering Committee considered these two issues and I have been authorized to state that as far as the charges of corruption are concerned, these are extremely serious charges, for the impact not only on the work of this Conference and the good faith of the Delegates, but they also involve the proved criminal liabilities, and we have to proceed with great caution on this matter. My own view is, which I believe is shared by the Steering Committee; that since these allegations have been made in public, and have received the widest circulation possible, we have to deal with them. We have to investigate these allegations. We either clear the names of all the Delegates and re-establish our moral authority, or if the allegations are proved, we have to deal with the people who have brought us into this disgrace. (*clapping*)

The Steering Committee recommends that this matter be referred to the Disciplinary Committee, which under our Regulations has responsibility for discipline. This is a disciplinary matter, the Chair of the Welfare Committee has mentioned that there may be need for beefing up the Committee. So that it is properly equipped to investigate what could be quite intricate issues. But Steering Committee will have to do that, and we would ask the Disciplinary Committee to begin investigations as soon as possible and to give a report to the Steering Committee, as soon as possible, before the end of the week hopefully. And those who believe they have evidence of corruption and substation of the process through other methods, should please present their evidence to this Committee, which will let you know in due course when the Committee will be meeting and what procedure it would adopt. The question of the allowances, there was indeed a proposal, a Motion from a Member maybe more than one Member, which raised the question of allowances, and asked for an increase. There were also proposals for some adjustments and the arrangements we have made for accommodation and meals, so that perhaps the Delegates could be given money in lieu of some meals or some needs, so they can decided where they want to eat.

In accordance with the procedure the Steering Committee referred this matter to the Welfare and Disciplinary Committee, which also had the benefit of submissions from those Delegates who had introduced the motion. This Committee I believe has met more than once to discuss this, they have engaged the Members of the Commission and the Secretariat on these issues. The Finance Committee of the Commission has met and considered the report of the Welfare Committee, the Secretary Mr. Lumumba has previously talked to this Conference, about the legal position as regards the fund of the Commission, and his own responsibility and role as the Accounting Officer. The stage we have reached now, is that the views presented by the Welfare

Committee, have been considered by the Finance Committee and I believe the next step is for the two Committees to meet again to resolve this issue. But resolve this issue we must, we do not want a cloud over us for the rest of our work, attached to this debate about the adequacy of the allowances. I would like even today to dispose off this issue following the procedures that I have mentioned.

In order to give you a little bit more details, I am first going to ask the Chair of the Welfare Committee to present the situation as it is at present, and then I will ask the Chair of the Commissions Finance Committee, Com. Abida Ali to give a brief account of the constraints, and the possibilities that there are for dealing with this problem. So, I first invite the Hon. Delegate Rihal to make a statement.

5. **REPORT BY THE CHAIRMAN OF FINANCE COMMITTEE**

The Chairman of the Finance Committee reported that the Committee had submitted its recommendations on increase of allowances to the delegates and payments of allowances to observers to the Commission, which will then make a decision.

6. **AUDIT OF THE COMMISSION'S ACCOUNTS**

The Conference was informed that the Commission's Books of Accounts are audited by the Auditor-General and that the delegates were free to inspect the accounts and the budget of the Commission.

7. **EXTENSION OF SITTING HOURS**

Motion made and Question proposed:-

THAT, considering that this Conference adjourned on August 25, 2003 in deference to and in honour of our departed Vice President, H.E. Michael Wamalwa, who was also delegate No.2 at this Conference;

Further considering that it is the desire of Kenyans to have, as soon as is practicable, a new and comprehensive constitution reflecting their views, hopes and desire for anew politico-economic and social order;

Noting that the National Assembly resumes its sittings at the beginning of the month of October;

Committed to completing the process of review within the time stipulated in the Constitution of Kenya Review Act (Cap 3A);

This Conference resolves that the national constitutional conference revises its hours of sitting to begin at 8.30 a.m. and adjourn at 8.00 p.m. daily with exception of

Saturdays and Sundays in order to recover part of the time lost between August 25 and September 8, 2003.

*(Rose Kasiala Lukalo-Owino on behalf of Oduor Ong'wen)*

Debate arising;

Question put and negatived.

**8. EXTENSION OF THE SITTING PROGRAMME**

**Motion made and Question proposed:**

**THAT**, considering that this Conference adjourned on August 25, 2003 for two weeks in honour of our late Vice President an Delegate No.2; conscious that the people of Kenya are clamoring for anew Constitution at the earliest possible time, and noting that the adjournment adversely affected the programme of this conference; this Conference resolves that the sitting of this conference be extended by a further two weeks within the remaining period to enable a smooth and proper completion of the review of this Constitution; this conference further resolves to request the National Assembly through the Speaker to vary and compress the coming parliamentary calendar, finding time in November accordingly thus allowing for the two week extension.

*(Orie Rogo-Manduli)*

**Debate arising;**

**Question put and agreed to;**

**And the time being forty-five minutes past Eleven O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at forty-five minutes past Eleven O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Thursday, September 11, 2003 at 8.30 a.m

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**MONDAY, SEPTEMBER 15, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at Ten O'clock.
2. The Proceedings were opened with Prayer.
3. The delegates observed a minute's silence in honour the late Prof. Odhiambo Mbai.

4. **COMMUNICATION FROM THE CHAIR**

The Chairperson gave a Communication on the death the Chairperson of the Devolution Committee. He paid glowing tribute to the late Mbai and re-affirmed the commitment of the delegates to complete the constitution review process despite all difficulties and obstacles in the way. The Chairperson reiterated his devotion to the review process.

5. **DEATH OF THE CHAIR OF THE DEVOLUTION COMMITTEE, THE LATE PROF. ODHIAMBO MBAI**

**Motion made and Question proposed:-**

*(Mr. Martin Shikukuk)*

Debate arising;

**Question put and agreed to;**

**And the time being twenty-five minutes past Eleven O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE** - at twenty-five minutes past Eleven O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Tuesday, September 16, 2003 at 8.30 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**TUESDAY, SEPTEMBER 16, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.

2. The Proceedings were opened with Prayer.

3. **ADMINISTRATION OF OATH**

**The Chairperson administered Oath to the following:-**

4. **COMMUNICATION FROM THE CHAIR**

5. **PRESENTATION OF THE CHAPTER ON CULTURE**

Commissioners Prof. Wanjiku Kabira and Mosonik arap Korir presented the Draft chapter on Culture.

Debate arising;

**And the time being One O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

**AFTERNOON SITTING**

The Conference assembled at fifteen minutes past Two O'clock.

6. **DEBATE ON THE REPORT ON DEVOLUTION**

**Debate on Devolution Report resumed;**

7. **QUORUM OF THE CONFERENCE**

Rising in his place on a Point of Order, delegate Kiptingos Saul Kipkoech drew the attention of the Session Chairperson (Ms ) to the fact that there was no Quorum;

And the Session Chairperson having confirmed that there was no Quorum;

**And the time being forty-five minutes past forty minutes past Five O'clock, the Session Chairperson (Ms            interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations.**

8. **CONFERENCE ROSE**        -            at forty-five minutes past Five O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Wednesday, September 17, 2003 at 9.00 a.m.

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Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, SEPTEMBER 26, 2003**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Eleven O'clock.
2. The Proceedings were opened with Prayer.

**3. COMMUNICATION FROM THE CHAIR**

The Chairperson informed the Conference that two delegates, namely, Hon. Moody Awori (Delegate No.10) and Hon. Musikari Kombo (Delegate No.73) and been promoted in public service.

Hon. Awori had been appointed as Kenya's Vice-President while Hon. Musikari Kombo had been appointed as a Cabinet Minister. The Chairperson conveyed the congratulations of the Conference to the two delegates.

**4. PRESENTATION OF THE PROGRESS REPORTS BY COMMITTEE CONVENORS**

The Convenors of the respective Technical Working Committees appraised the Conference on the progress made by their committees in the consideration of the relevant Articles of the Draft Bill and Report.

**5. PERSONAL STATEMENT**

By indulgence of the Conference, the Chairperson permitted Hon. Gitu wa Kahengeri, delegate No.316, to make a personal statement regarding his eviction from the Nairobi City Council house.

Thereupon, he informed the Conference that he had occupied the flat for over 30 years.

**6. REMARKS BY THE CONFERENCE SECRETARY**

The Conference Secretary made the following announcements:-

- i) women delegates to meet on Sunday, 28<sup>th</sup> September, 2003 at Pan Afric Hotel.
- ii) Check out time from hotels by delegates will be on Sunday, 28<sup>th</sup> September, 2003.
- iii) Delegates travelling for the funeral of the late Dr. Crispin O. Mbai to assemble outside their hotels at 8.00 a.m.

7. **REMARKS BY THE CHAIRPERSON**

The Chairperson made farewell remarks to the Conference and congratulated the delegates for their dedication despite several setbacks.

He appealed to the delegates to hasten their deliberations upon their return.

8. **REMARKS BY THE MINISTER FOR LOCAL GOVERNMENT**

By indulgence of the Conference, the Chairperson permitted the Minister for Local Government to respond to the subject matter raised by Hon. Gitu wa Kahengeri.

9. **ADJOURNMENT OF THE CONFERENCE**

Motion made and Question proposed:

**THAT, the National Constitutional Conference be now adjourned until November 17, 2003 at 10.00 a.m.**

**(Prof. Yash Pal Ghai)**

**Debate arising;  
Question put and agreed to.**

**And the time being fifty minutes Twelve O'clock, the Chairperson interrupted the Proceedings and adjourned the Conference after Question put pursuant to the National Constitutional Conference Regulations.**

10. **CONFERENCE ROSE** - at fifty minutes past Twelve O'clock.

**M E M O R A N D U M**

The Chairperson will take the Chair on  
Monday, November 17, 2003 at 10.00 a.m.

Approved for circulation

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**END OF SESSION II (BOMAS II)**

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## **SESSION III (BOMAS III)**

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**TUESDAY 13<sup>TH</sup> JANUARY, 2004**

**VOTES AND PROCEEDINGS**

Prayers

1. National Anthem
2. Administration of Oath
3. Communication from the Chair
4. Rapporteur-General's Report

Approved for circulation.

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**WEDNESDAY 14<sup>TH</sup> JANUARY, 2004**  
**VOTES AND PROCEEDINGS**

**Prayers**

Work in the following Technical Committees –

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
C	Representation	Committee <b>Tent No. 3</b>
D	The Executive	Committee <b>Tent No. 4</b>
E	The Judiciary	Committee <b>Tent No. 5</b>
F	The Legislature	Committee <b>Tent No. 6</b>
G	The Devolution	Committee <b>Tent No. 7</b>
H	Public Finance, Public Service, Leadership and Integrity	Committee <b>Tent No. 8</b>
I	Defence and National Security	Committee <b>Tent No. 9</b>
J	Land Rights and the Environment	Committee <b>Tent No. 10</b>
K	Constitutional Commissions and Amendments to the Constitution	Committee <b>Tent No. 11</b>
L	Transitional and Consequential Arrangement	Committee <b>Tent No. 12</b>
M	Culture	Committee <b>Tent No. 13</b>

**Approved for circulation**

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**THURSDAY 15<sup>TH</sup> JANUARY, 2004**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees –

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
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Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**FRIDAY 16<sup>TH</sup> JANUARY, 2004**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**MONDAY 19<sup>TH</sup> JANUARY, 2004**  
**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**TUESDAY, 20<sup>TH</sup> JANUARY, 2004**  
**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**WEDNESDAY, 21<sup>ST</sup> JANUARY, 2004**  
**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
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M	Culture	Committee <b>Tent No. 13</b>

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PLO LUMUMBA  
**CONFERENCE SECRETARY**

**THURSDAY, 22<sup>ND</sup> JANUARY, 2004 .**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
C	Representation	Committee <b>Tent No. 3</b>
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L	Transitional and Consequential Arrangement	Committee <b>Tent No. 12</b>
M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**FRIDAY, 23<sup>RD</sup> JANUARY, 2004**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**MONDAY, 26<sup>TH</sup> JANUARY, 2004**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**TUESDAY, 27<sup>TH</sup> JANUARY, 2004.**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

WEDNESDAY, 28<sup>TH</sup> JANUARY, 2004.

VOTES AND PROCEEDINGS

PRAYERS

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
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L	Transitional and Consequential Arrangement	Committee <b>Tent No. 12</b>
M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
CONFERENCE SECRETARY

**THURSDAY, 29<sup>TH</sup> JANUARY, 2004 .**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
C	Representation	Committee <b>Tent No. 3</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**FRIDAY, 30<sup>TH</sup> JANUARY, 2004 .**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
B	Citizenship and the Bill of Rights	Committee <b>Tent No. 2</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**MONDAY, 2<sup>ND</sup> FEBRUARY, 2004 .**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**TUESDAY, 3<sup>RD</sup> FEBRUARY, 2004**

**VOTES AND PROCEEDINGS**

**PRAYERS**

Work in the following Technical Committees

A	Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles	Committee <b>Tent No. 1</b>
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M	Culture	Committee <b>Tent No. 13</b>

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**THURDAY 12<sup>TH</sup> FEBRUARY, 2004**

**VOTES AND PROCEEDINGS**

**PRAYERS**

1. Administration of Oath
2. Communication by the Chairperson of the National Constitutional Conference.

Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**MONDAY, MARCH 01, 2004**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Committee of the Whole Conference assembled at thirty minutes past Nine O'clock.
2. Proceedings were opened with Prayers.

**3. ADMINISTRATION OF OATH**

The Chair administered Oath to:-

- Odhiambo Makoloo

**4. COMMUNICATION FROM THE CHAIR**

The Chairperson informed the Conference that the Committee reports would be presented by the Technical Working Groups' convenors and that there will be no discussions during the presentations.

**5. BRIEFING ON PROCEDURE**

Commissioner Dr. Andronico Adede briefed delegates on the procedure to be followed during the Committee of the Whole

**Conference:** He indicated that there were two phases:-

- The presentation of the committee reports by the convenors during which the convenors would simply read out the decisions by their committees.
- The adoption of the Articles during which stage the Chair would put the question of the Articles to the Committee of the Whole Conference for adoption. He explained that during this stage, delegates would be allowed to move motions on the Articles they were dissatisfied with and urged the Honourable Delegates to submit their motions before Thursday, 4<sup>th</sup> March 2004. He directed that motions on typographical errors should not be raised on the floor but should be made to the secretariat.

**6. PRESENTATION OF THE COMMITTEE'S REPORTS**

During the presentation of the report of TWG A, there were numerous points of order seeking to have the Convenor's report circulated to the members. This was acceded to by Chair.

The reports of the following Committees as reflected in the revised Zero Draft were presented by the respective Convenors:-

- **TWG A on the Preamble, Supremacy of the Constitution, Sovereignty of the People, The Republic and National Values, Goals and Principles.**
- **TWG B on Citizenship and Bill of Rights**

### **AFTERNOON SESSION**

The Committee of the Whole Conference assembled at Three O'clock. Presentation of the Committee Reports continued during which the following Reports were presented by the respective Convenors:-

- **TWG M on Culture**
- **TWG J on Land and Environment**
- 

**7. CONFERENCE ROSE** - at Four O'clock.

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### **MEMORANDUM**

The Chairperson will take the Chair on Wednesday, March 3, 2004 at 9.30 a.m.

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Approved for circulation

**PLO-LUMUMBA**  
**CONFERENCE SECRETARY**

**WEDNESDAY, MARCH 03, 2004**

**VOTES AND PROCEEDINGS**

1. The proceedings were opened with prayers.

2. **COMMUNICATION FROM THE CHAIR**

The Session Chair (Hon. Fadhil Sultana) informed the delegates that Minority Reports will be presented to the Conference together with the respective Committee Reports. Delegates wishing to have their minority positions incorporated into the Draft Bill may do so through amendment motions. Where such a motion is adopted, then the Draft Bill will be amended to reflect the amendment. Delegates should submit their amendment motions, duly signed by them, at the Press Tent on or before March 04, 2004 at 6.00 p.m.

3. **PRESENTATION OF THE COMMITTEE'S REPORTS**

The report of the **Technical Working Group "G" on Devolved Government (Devolution)** as reflected in the revised Zero Draft was presented by the Convenor.

**And the time being thirty minutes past One O'clock, the Session Chairperson (Hon. Fadhil Sultana) interrupted the Proceedings and adjourned the Conference until Two O'clock.**

**AFTERNOON SESSION**

The Committee of the Whole Conference assembled at Forty-Five Minutes past Two O'clock.

4. **ADMINISTRATION OF OATH**

The Chairman of the Conference administered the Oath of Allegiance to the following delegate;

*Hon. S. A. Dahir*

5. **PRESENTATION OF THE COMMITTEE'S REPORTS**

The following reports were presented by the respective Convenors:-

- ⑨ **TWG G on Devolution**
- ⑨ **TWG H on Leadership and Integrity, Public Finance and the Public Service**
- ⑨ **TWG I on National Security**

**6. CONFERENCE ROSE** at Forty Five Minutes past Four O'clock.

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**MEMORANDUM**

The Chairperson will take the Chair on Thursday, March 4, 2004 at 9.30 a.m.

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Approved for circulation

**PLO LUMUMBA**  
**CONFERENCE SECRETARY**

**THURSDAY, MARCH 04, 2004**

**VOTES AND PROCEEDINGS**

1. The National Constitutional Conference assembled at thirty minutes past Nine O'clock.
2. The Proceedings were opened with prayers and National Anthem.

3. **COMMUNICATION FROM THE CHAIR**

The Conference Chairperson informed the delegates that the Steering Committee has considered the Plenary programme and resolved to postpone the substantive debate/decisions on the Draft Bill by the Committee of the Whole Conference to Monday, 8<sup>th</sup> March, 2004.

The delegates were further informed by the Conference Secretary that those wishing to propose amendments during the Committee of the Whole Conference to submit their motions to the designated office. The motions should specify the Article to be amended and the proposed amendment.

4. **PRESENTATION OF THE COMMITTEE'S REPORTS**

The report of the **Technical Working Group 'L' on Transitional and Consequential Provisions** as reflected in the revised Zero Draft was presented by the Co-Convenor (Zakayo Karimi).

**And the time being Ten O'clock, the Conference Chairperson interrupted the Proceedings and adjourned the Conference without Question put pursuant to the National Constitutional Conference Regulations until Monday, March 08, 2004 at 8.30 a.m.**

5. **CONFERENCE ROSE** - at Ten O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Monday, March 08, 2004 at 8.30 a.m.

Approved for circulation

**PLO LUMUMBA**  
**CONFERENCE SECRETARY**

**MONDAY, MARCH 08, 2004**

**VOTES AND PROCEEDINGS**

**MORNING SESSION**

The Chairperson called the meeting to order at 9.30 a.m.

The proceedings were opened with prayers.

**ADMINISTRATION OF OATH**

The Chairperson administered the oath of allegiance to the following;

1. Dr. Margaret Chesang Hatchinson.

**COMMUNICATION FROM THE CHAIR**

The Chairperson explained the procedure during the consideration stage.

The Chairperson informed the conference that the Government had assured him of its commitment to the review process.

**CONSIDERATION OF THE REVISED ZERO DRAFT OF A  
BILL TO ALTER THE CONSTITUTION**

**Articles 1 – 4** Agreed to;

**Articles 5 – 6** Agreed to;

**Article 7**

**AMENDMENT PROPOSED**

That clause 7(1) be deleted and the following be inserted in place thereof;

- (1) **The sovereign authority of the people is exercised at different levels and forums:**
  - (a) **the national level;**
  - (b) **the district level as the principal unit of devolution;**

- (c) **such other forums as prescribed by law which may include regional, constituency, locational or village forums.**

*(Hon. Kiriro Wa Ngugi Del. No. 320)*

Question of the Amendment proposed.

Debate Arising

**Consideration of this clause was deferred pending further consultations on the procedure at the consideration stage.**

**CONFERENCE ROSE:** At fifty minutes past Ten O'clock.

**CONFERENCE RECONVENED:** At 12.45 p.m

**COMMUNICATION FROM THE CHAIR**

The Chairperson informed the Conference that the steering Committee had resolved that Article 7 be deferred and be considered together with the Chapter on Devolution

**CONSIDERATION OF THE REVISED ZERO DRAFT ON A BILL TO ALTER THE CONSTITUTION**

Article 8

**AMENDMENT PROPOSED**

That clause 8(1) be amended by inserting the word “city” immediately after the word “capital”.

That the clause be further amended by deleting the words “is Nairobi” and insert the words “shall be determined by legislation”.

**POINT OF ORDER**

Rising on a point of order, Hon. Kivutha Kibwana, (Delegate No. 57) drew the attention of the chair to the provisions of section 27 of the Constitution of Kenya Review Act (Cap 3A) with regard to the adoption of Articles by a fixed majority.

And the chairperson acceding to the claim ordered for a division.

The Conference then proceeded to a division to adopt articles 1, 2, 3 and 4 of the draft Constitution.

Question put and, on a division Agreed to.

AYES  
345

NOES  
0

ABSTENTIONS  
0

**CONFERENCE ROSE:** At thirty minutes past One O'clock until 2.30 p.m. this afternoon.

### AFTERNOON SESSION

The National Constitutional Conference assembled at 3.00 p.m.

### CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION

Article 5 - Agreed to

**Article 6** - Deferred to be discussed with Devolution Chapter

#### Article 8(1) – Amendment proposed

**THAT**, Article 8(1) be amended by inserting the word “city” immediately after the words “is Nairobi” and substitute in place thereof the words “shall be determined by legislation”. (Hon. Sammy K. Ruto – 180)

Debate arising.

#### Further amendment proposed

**THAT**, Article 8(1) be further amended by inserting the following words immediately after the word “Nairobi”.

“or such other place as shall be determined by legislation”.

*(Hon. Prof. Kivutha Kibwana – 057)*

Question of the amendment to amendment proposed, put and negatived.

Question of the original amendment proposed, put and negatived.

**Article 8(1) – Agreed to**.

**Article 9 – Agreed to**.

#### **Article 10 – Amendment proposed**

**THAT**, Article 10 be deleted and substitute in place thereof with the following:-

- (1) Kenya shall be a multi-religious state

- (2) Christianity shall be the state religion
- (3) That state shall treat all other religious equally

*(Hon. Onesmus Kihara Mwangi – 132)*

Question of the amendment proposed, put and **negatived.**

**Article 10** – Agreed to

**Article 11 – Amendment proposed**

**THAT**, Article 11(1) be amended by inserting a new sub section (c) on national dress code and renumbering the existing (c).

*(Hon. Gacuru wa Karengi – 314)*

Debate arising

Question of the amendment proposed put and **negatived.**

**Article 11** – Agreed to.

**Article 12 – Amendment proposed.**

**THAT**, Article 12 (b) be amended by deleting the words “Heroines

Day” and substitute in place thereof the words “Mashujaa Day”.

*(Hon. David Erulu – 397)*

**Debate arising**

Question of the amendment, proposed put and **agreed to.**

**Article 12** – Agreed to as amended.

Voting results on Articles 5, 8(1), 9 10, 11, and 12 – (AYES - 320); (Noes – 2 ); (Abstentions 1).

**Article 13 - deferred**

**CONFERENCE ROSE** - at Six O'clock.

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**MEMORANDUM**

The Chairperson will take the Chair on Tuesday, March 9, 2004  
at 8.30 a.m.

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Approved for circulation

**PLO-LUMUMBA**  
**CONFERENCE SECRETARY**

**TUESDAY, MARCH 09, 2004**

**VOTES AND PROCEEDINGS**

**1. MORNING SESSION**

The Chairperson called the meeting to order at 10.15 a.m.

The proceedings were opened with prayers.

**2. COMMUNICATION FROM THE CHAIR**

The Chairperson explained that in order to conform to the law on voting, the Steering Committee had resolved that collecting of voices and the use of two-third rule voting by the Delegates present and voting will be applied in making decisions in consideration of the revised Zero Draft.

Further, to make voting simple and quicker, it was resolved that Delegates would remain seated as tellers take the votes.

The Chairperson informed the Delegates that in order to save time, lunch break would be served for only one hour while the secretary will read the headings of the Articles before consideration.

**3. CONSIDERATION OF THE REVISED ZERO DRAFT BILL TO ALTER THE CONSTITUTION**

**Article 13**

The Conference proceeded to a division to adopt article 13. which had been deferred in the provisions sitting.

Question put and, on a Division, Agreed to as follows:-

<b>AYES</b>	<b>NOES</b>	<b>ABSTENTIONS</b>
<b>387</b>	<b>1</b>	<b>0</b>

**Articles 6, 7 & 8(2)**

Hon. Delegate Joel Sang, asked the Chairman to revisit the decision he had made on Articles 6,7, and 8(2), that they be deferred and be considered together with the Chapter on Devolution.

By indulgence of the Conference, the chairperson allowed the consideration of the postponed Articles.

The Conference hence proceeded to a division to adopt the 6, 7 & 8(2).

Question put and, on a Division, Agreed to as follows:-

AYES

334

NOES

6

ABSTENTIONS

2

Articles 14, 15, 16, 17

Article 18 - Amendment proposed:

**THAT**, Article 18(1) be amended by deleting the words “**at least**” and replacing it with the words “**ten**” thereon.

*(Hon. Prof. Wangari Maathai)*

Motion made and Question proposed;

Debate arising;

Question put and negatived.

**Further Amendment Proposed:**

**THAT**, Article 18(2) be amended by deleting the word “**no**” in the sub-paragraph.  
Motion made and Question proposed;

Debate arising;

Question put and negatived.

Article 19 – Amendment proposed;

**THAT**, Article 19 be amended by deleting the words “**naturalized as a citizen**; and substituting therefor the words “**made a permanent resident**”

*(Hon. Wangari Maathai)*

Motion made and Question proposed;

Debate arising

Question of the amendment put and negatived.

Article - 20 Amendment proposed;

**THAT**, Article 20(1) be amended by deleting the words “**who appears to be less than eight years of age and**”.

*(Hon. Dr. Sammy K. Ruto)*

Motion made and Question proposed;  
Debate arising;  
Question of the amendment put and negatived

**Article – 21 Amendment proposed;**

**THAT**, sub-article 21(3) be deleted in its entirety.

*(Hon. John Kiniti)*

Motion made and Question proposed;  
Debate arising

**Amendment withdrawn.**

**Article 21** - Agreed to  
**Article 22** - Agreed to  
**Articles 23-25-** Agreed to

The Conference proceeded to a Division to adopt the inclusion of Articles 14,15,16,17,18,19, 20,21,22,23,24 and 25 in the Draft Bill.

Question put and, on a Division, Agreed to as follows:-

<b>AYES</b>	<b>NOES</b>	<b>ABSTENTIONS</b>
<b>332</b>	<b>0</b>	<b>0</b>

**Chapter Five - Amendment proposed;**

**THAT**, the subheading be amended by adding the following words “**Science and Technology**”.

*(Hon. John P. Nyakundi)*

Motion made and Question proposed;  
Debate arising  
Question of the amendment put and negatived

**Articles 26-28** - Agreed to

**New Article 28A-**

**THAT**, new article 28A be part of the Draft Bill.

*(Hon. Mghanga Mwandawiro)*

Motion made and Question proposed;  
Debate arising

Question of the amendment that the new Article be part of the Draft Bill put and negatived.

**Article 30 - Amendment proposed;**

**THAT**, Article 30(2)(c) be amended by adding the words “**only during ceremonies**” immediately after the word “**drinks**”.

*(Hon. Martha C. Rop)*

Motion made and Question proposed;  
Debate arising  
Question put and negatived.

**Article 31(e) - Amendment proposed;**

**THAT**, Article 31(e) be amended by inserting the following words after the word “**culture**” “**and encourage the people to design, develop and popularize the use of a national dress code and costumes which are culturally acceptable**”

*(Hon. Gacuru wa Kareng'e)*

Motion made and Question proposed;  
Debate arising  
Question of the amendment put and negatived.

The Conference hence proceeded for a Division for inclusion of Articles 26-33 in the Draft Bill. Question put and, on a Division, Agreed to as follows:-

4.	<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>
	337	0	1

**CONFERENCE ROSE:** -at One o'clock until 2.00 p.m. this afternoon.

## AFTERNOON SESSION

The Conference reconvened at 2.15 p.m..

## CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION

### CHAPTER 5 – BILL OF RIGHTS

#### PART I

Article 34-40 - Agreed to

#### PART II

Article 41(1) - Agreed to

Article 41(2) - Agreed to

**THAT**, Article 41 be amended by adding the following new sub-clauses immediately after Article 41(2).

- (3) **The life of a person starts at conception.**
- (4) **Abortion is not allowed unless on medical advice when the life of the mother is in danger.**

*(Hon. Joachim Gitonga – 311)*

Debate arising

Question put and Agreed to.

**Article 41(2) Amendment proposed,**

**THAT**, Article 41(2) be amended by deleting the word “no” between “be” and “death”.

*(Hon. Prof. Ruth Oniang’o - 221)*

Question put and Agreed to.

#### (1) MINISTERIAL STATEMENT

By indulgence of the Conference, the Minister for Justice and Constitutional Affairs, Hon. Kiraitu Murungi gave a Ministerial Statement concerning the need for the

formation of a Consensus Building sub-committee of the Conference to look into the contentious issues contained in some Chapters of the Zero Draft. He sighted contentious issues contained in the Chapters on **Devolution, Representation of the people, Transition and, the Executive.**

Thus the Minister assured the Conference of the Government's support and commitment to the Constitutional Review process.

After lengthy deliberations on the Minister's statement, his proposal that a consensus building sub-committee be formed, was put to vote and agreed to.

Deliberations on Chapter Six-Bill of Rights resumed.

**Article 41(2) Amendment proposed,**

**THAT, Article 41(2) be amended by adding the following words after the word "penalty", "except in the case of murder, child, defilement and any other matter as per legislation".**

*(Hon. Ruth Oniang'o Delegate No.221)*

Question put and Agreed to.

The Conference proceeded to a Division to adopt the inclusion of Articles

**34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,  
52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,  
72,73,74,75,76,77,78,79,80,81,82,83,**

The results of the Division were as here below indicated;

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>
<b>280</b>	<b>3</b>	<b>0</b>

The Division was subsequently deferred to Wednesday, 10<sup>th</sup> March 2004 after the tally of the results indicated that the Conference did not constitute a quorum.

**ADJOURNMENT**

And the time being Thirty Minutes after Six O'clock, the Chairperson adjourned the Conference without Question put in accordance to National Constitutional Conference Regulations.

**CONFERENCE ROSE:** - at Thirty Minutes past Six O'clock

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**MEMORANDUM:**

The Chairperson will take the Chair on Wednesday, March 10, 2004 at 9.00 a.m.

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**Approved for circulation**

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**WEDNESDAY, MARCH 10, 2004**

**VOTES AND PROCEEDINGS**

**1. MORNING SSESSEION**

The Chairperson called the meeting to order at 10.00 a.m.

The proceedings were opened with prayers.

**2. COMMUNICATION FROM THE CHAIR**

The Chairperson announced the presence of guests from Canada and Sweden who were in attendance to observe the proceedings.

He also informed the Conference that the Steering committee had resolved to have a Consensus Building Committee, with a membership of seven and Chairperson, established and that it was agreed that Hon. Bishop Philip Sulumeti be the Moderator of the Committee.

The Committee whose membership is as follows should start working as soon as possible and submit a report to the Conference by

Friday March 12, 2004:-

Bishop Philip Sulumeti - Moderator  
Hon. Gitu Wakahengeri  
Hon. (Dr.) Ruth Kibiti  
Hon. Grace Ogot  
Hon.. (Prof) Wangari Maathai  
Hon. Sheikh Ali Shee  
Hon. Sophia Abdi and  
Hon. (Maj. Rtd) marsden Madoka

The membership of the Committee was increased by one upon a motion by Hon. Orio Rogo Manduli that Hon. Kimaiyo arap Sego be a member of the Committee.

**3. CONSIDERATION OF THE REVISED ZERO DRAFT  
BILL OF A BILL TO ALTER THE CONSTITUTION**

**CHAPTER 6 – BILL OF RIGHTS**

Article 41(2) - Amendment proposed,

Motion made ad Question proposed;

**THAT**, Article 42(2) be amended by adding the following words after the word “penalty”, “except in the case of murder, child, defilement and any other matter as per legislation”.

*(Hon. Ruth Oniang’o Delegate No.221)*

Debate arising:

Question put and, on a Division, the motion put in abeyance after the tally of the results indicated that the requisite two-thirds majority required to pass a vote was not present.

The results of the Division are as follows:-

<u>AYES</u>	<u>NOES</u>	<u>ABSENTIONS</u>
205	106	0

The Conference proceeded to a division to adopt articles -  
42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57,58, 59, 60, 61, 62, 63, 64, 65,  
66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83,

Questin put and, on a Division, Agreed to as follows:-

<u>AYES</u>	<u>NOES</u>	<u>ABSENTIONS</u>
327	0	0

### **CHAPTER 67 – LAND AND PROPERTY**

New Article 91(3)

Amendment proposed;

**THAT**, a new Article 91(3) inserted immediately after Article 91(2) to state as follows:-

“Community means a group of Kenyan citizens living in a specific geographical area irrespective of their ethnicity and culture”

*(Hon. Wangari Maathai Delegate No.084)*

Motion made and Question proposed;

Debate arising

Question put and on a Division, negatived.

<u>AYES</u>	<u>NOES</u>	<u>ABSENTIONS</u>
85	246	0

The Conference proceeded to a Division to adopt the inclusion of Articles - 84, 85, 86, 87, 88, 89, 90, 91.

<u>AYES</u>	<u>NOES</u>	<u>ABSENTIONS</u>
318	9	0

**CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION**

**CHAPTER EIGHT – ENVIRONMENT**

The Conference proceeded on a Division to adopt articles - 92, 93, 94, 95, 96, 97, 98, 99, 100.

Question put and on a Division agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSENTIONS</u>
350	0	0

**CHAPTER NINE - LEADERSHIP AND INTEGRITY**

**THAT**, Article 105 1(b) be amended by deleting the word “fourth” appearing between the words “every” and “year”

*(Hon. Ruth Kibiti)*

Motion made and Question proposed;  
Question of the amendment put and agreed

The Conference proceeded on a Division to adopt Article 101, 102, 103, 104, 105, 106, 107 and 108.

Question put and, on a Division, agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSENTIONS</u>
358	0	0

## **CHAPTER TEN - REPRESENTATION OF THE PEOPLE**

**Article 109** – amendment proposed;

**THAT**, Article 109 be amended by inserting two new clauses immediately after Article 109 (7) as follows:-

- (8) All persons in elective offices shall ensure adequate consultation with their electors on all matters that have consequences and impacts on the livelihood of electors in questions
- (9) Parliament shall within one year of coming into force of this Constitution, put in place legislation to give effect to the above principles.

*(Hon. Sheikh Ali Shee)*

Motion made and Question proposed;  
Debate arising  
Question of the amendment put and negatived.

**Sub-Article 109(1)** – Amendment proposed;

**THAT**, Article 109(1) be amended by inserting the words “only indigenous citizens” be “and” and “be” appearing in the second line.

*(Hon. Godfrey M’Thigaa)*

Motion made and Question proposed;  
Debate arising  
Question of the amendment put and negatived.

**Sub-Article 109(7)** – Amendment proposed;

**THAT**, Sub-Article 109(7) be deleted in its entirety.

*(Hon. Ruth Oniang’o)*

Motion made and Question proposed;  
Debate arising  
Question of the amendment put and negatived.

**CONFERENCE:** - at ten minutes past One O’clock

## **AFTERNOON SESSION**

The conference reconvened at 2.50 p.m.

The Chairperson invited Hon. Bishop Sulumeti, the Moderator of the Consensus Building Committee to make a presentation on the Committee's Terms of Reference.

Hon. Bishop Sulumeti introduced the members of his Committee.

He thanked the Conference for appointing them to the Committee, and said that his Committee had met over lunch hour.

Bishop Sulumeti informed the Conference that the Consensus Building Committee has suggested that the Conference deliberates on Chapters on the

Representation, Judicial System, Public Finance, Public Service and commissions and consider the contentious chapters later.

He noted that his Committee may have to hold night meetings. He asked the delegates not to impute any ill motive on any of their night meetings.

After lengthy deliberations, the Conference rejected the above proposal.

### **CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION**

- Article 110 (1)** - **Agreed to**
- Article 110 (2)** - Amendment proposed;

**THAT**, Article 110(2) be deleted.

*(Hon. Nancy Lungahi – Del. No. 224)*

Debate arising

Upon a complaint from the Convenor of the Representation Committee, Hon. Caroline Ng'ang'a that the chapter on Representation was incorrect, the Chairperson of the Conference Rule 28 deferred further consideration of Chapter Ten: Representation of the People and Chapter Eleven: The Legislature, until the correct version of the Draft bill on the Representation of the People was prepared and circulated.



*(Hon. John Gitari Munyi – Del. No.284)*

Question of the amendment proposed;

Debate arising

Question put and negatived.

**Article 173 – Further Amendment proposed.**

**THAT**, in Article 173(2)(a) insert the words “Head of Government” immediately before the word “and” in the first line of the paragraph and further insert the words “and the Chair to the Cabinet” immediately after the word “Council”.

*(Hon. Wangari Maathai – Del. No. 084)*

No debate arising.

**Hon. Wangari Maathai** resolved to withhold this Motion and all the other Motions that she had filed on this Chapter.

The Conference resolved to deter further consideration of Chapter Twelve on the Executive, to Thursday, 11<sup>th</sup> March 2004, when it would receive a report from the consensus Building Committee.

The Conference rose at thirty minutes past Four O’clock for a tea break.

The Conference reconvened at Ten minutes past Five O’clock.

The Chairperson apologized for his earlier remarks which imputed improper motives on the part of the delegates.

He reminded the delegates that the Conference is determined to finish its work by

19<sup>th</sup> March, 2004. In that regard, he informed the delegates that the conference may have to sit on Saturday 13<sup>th</sup> March, 2004.

**ADJOURNMENT**

There being no quorum and the time being Fifteen Minutes past Five O’clock,

The Chairperson adjourned the Conference without Question put in accordance with National Constitutional Conference Regulations.

**CONFERENCE ROSE** – at Fifteen Minutes past Five O'clock.

**MEMORANDM:**

The Chairperson will take the Chair on Thursday 11<sup>th</sup> March, 2004 at 9.00 a.m.

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Approved for circulation

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**THURSDAY, MARCH 11, 2004**

**VOTES AND PROCEEDINGS**

**MORNING SESSION**

1. The Chairperson called the meeting to order at thirty minutes past Nine O'clock.
2. The proceedings were opened with prayers and the National Anthem.

3. **COMMUNICATION FROM THE CHAIR**

The Chairperson requested the delegates to forgo the afternoon tea and work until 6.00 p.m. in order to conclude the work. They were also urged to consider working on Saturday, should the consideration of the Zero Draft not be over by Friday.

He also apologized to the delegates for the apparently harsh words he had used the previous day.

4. **REPORT OF THE CONSENSUS BUILDING GROUP**

Hon. Bishop Philip Sulumeti, the moderator of the Consensus Building Committee presented the report of the results of the Consensus Building Group meeting held on Wednesday, 19<sup>th</sup> March, 2004.

He informed the delegates that the Committee had worked in harmony on the understanding that the nation's interests came first.

He said that the outcome of the meeting had been given to the draftsmen to come up with a report which will be presented in the afternoon.

5. **CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION**

**CHAPTER THIRTEEN - JUDICIAL AND LEGAL SYSTEM**

Motion made and Question proposed;

**Article 207** - **agreed to.**

**Article 208** - **agreed to.**

**Article 209** - **Amendment proposed:**

**THAT**, Clause 209(3)(a) be amended by deleting the words “**the Kadhi’s court**” and substituting therefore the words “**religious courts**”.

*(Del. No.534 – Hon. David Oginde)*

Question of the amendment proposed;

Debate arising;

Question put and negatived.

**Article 210(7)** - amendment proposed:

**THAT**, Clause 210(7) be amended by inserting the words “**and to rotate its sittings to the regional headquarters**” immediately after the word “**Nairobi**”.

*(Del No.599 – Hon. Leslie Betawa Mwachiro)*

Debate arising;

Question put and negatived.

**Article 211** - agreed to.  
**Article 213** - agreed to.  
**Article 214** - agreed to.  
**Article 215** - agreed to.  
**Article 216** - agreed to.  
**Article 217** - agreed to.  
**Article 218** - Amendment proposed:

**THAT**, Clause 218(1) be amended by deleting the word “**persons**” and substituting thereof the words “**Kenya citizens**”.

*(Del No.599 – Hon. Leslie Betawa Mwachiro)*

Debate arising;

Question put and negatived.

**Further amendment proposed:**

**THAT**, a new sub-article 218(a)(iii) be inserted immediately after 218(a)(ii) to read as follows:-

**“scholar and teacher of the law in a recognized university”**

*(Del. No. 599 – Leslie Betawa Mwachiro)*

Debate arising;  
Question put and negatived.

**Article 218** - agreed to.  
**Article 219** - agreed to.  
**Article 220** - amendment proposed:

**THAT**, Article 220(6) be amended by inserting the word “**one half of**” immediately after the word “**retain**”.

*(Del. No.368 – Kipyegon Sang)*

Debate arising;  
Question put and agreed to.

**Article 221** - agreed to.  
**Article 222** - agreed to.  
**Article 223** - agreed to.

**Article 224** - Amendment proposed:

**THAT**, Article 224(1)(f) be amended by deleting the words “**Chief Kadhi**” and substituting thereof the words “**religious representatives as Parliament shall legislate**”

*(Del No.599 – Hon.Victoria Mutheu Musyoka)*

Debate arising;  
Question put and negatived  
Debate arising;  
Question put and negatived.

**Further amendment proposed:**

THAT, Article 224(1) be amended by inserting a new sub-clause immediately after 224(1)(h) to read as follows:-

**“Two deans of law schools in the faculties of law nominated by the local Kenyan universities”**

*(Del No.599 - Leslie Betawa Mwachiro)*

Debate arising;

Question put and negatived.

Article 225 - agreed to.  
Article 226 - agreed to.  
Article 227 - agreed to.  
Article 228 - agreed to.  
Article 229 - agreed to.  
Article 230 - agreed to.

5. **ADJOURNMENT**

The Conference adjourned at twenty-five minutes past Eleven O'clock until Twelve O'clock.

The Conference reconvened at five minutes past Twelve O'clock.

6. **CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION**

**CHAPTER SIXTEEN - PUBLIC SERVICE**

Articles 302, 303, 304, 305, 306, 307, 308, 309, 310, 311 & 312 - agreed to.

**CHAPTER SEVENTEEN - NATIONAL SECURITY**

Articles: 313, 314, 315, 316, 317, 318, 319 - agreed to.  
Article 320 - Amendment proposed:

THAT, Article 320(2) be deleted in its entirety and substitute thereof with the following:-

**“The Administration Police Service shall be an integral part of the Kenya Police Service but administered as a separate branch of the Police Service”.**

*(Del No. 406 - Hon. Shakeel Shabir)*

Debate arising;

Question put and negatived.

**Further amendment proposed:**

THAT, new sub-clauses be inserted immediately after Article 320(2) to read as follows:-

- (a) The Director-General of the National Intelligence Security Services should hold office for a term of ten years and shall not be eligible for re-appointment.

**Further amendment to the amendment proposed:**

THAT, Article 320(c)(a) be further amended as follows:

**“The Director-General of the National Intelligence Security shall only be in office for a term of two five-year terms.”**

*(Prof. Kivutha Kibwana)*

Debate arising;  
Question put and negatived.

- (b) The Director-General may be removed from office by the President in accordance with the provisions of Article 324 of this constitution.

*(Del. No. 361 – Hon. William ole Yiaile)*

Debate arising;  
Question put and **agreed to.**

**Further amendment proposed:**

**THAT**, Article 320(2) be amended by deleting the words **“with the approval of Parliament”** and substituting therefor the words **“in consultation with the National Security Council”**.

*(Del No.250 – Abdullahi Haji)*

Debate arising;

Question put and **agreed to.**

**Article 321** - **agreed to.**  
**Article 322** - **agreed to.**  
**Article 323** - **agreed to.**  
**Article 324** - **agreed to.**

**Article 325** - **Amendment proposed:**

THAT, Article 325(2) be amended by inserting a new paragraph immediately after paragraph (f) to read as follows:-

**“The Commission shall have a civilian oversight body to investigate complaints against Police officers and take appropriate correctional measures”**

*(Del No.305 – Hon. Muraguri Nderi)*

Amendment withdrawn by the Mover.

7. **ADJOURNMENT**

The Vice-Chairperson adjourned the Conference at fifty-five minutes past One O'clock until 2.30 p.m.

**AFTERNOON SESSION**

The Conference reconvened at 3.15 p.m.

8. **CONSIDERATION OF THE REVISED ZERO DRAFT OF A BILL TO ALTER THE CONSTITUTION.**

By indulgence of the Conference the Chairperson allowed delegate Nancy Ngeiywa to move an amendment to Article 312 (1)

Article 312(1) - amendment proposed;

**THAT**, Article 312(1) be amended by inserting the words *“comprising the Prisons Department, Probation Department and the Childrens Department which shall be autonomous”* immediately after word *“service”*

**(Hon. Nancy Ngeiywa - Del No.387)**

Debate arising;

Question put and on a Division, negatived as follows:-

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>RESERVATIONS</u>
270	11	3	8

**Article 312** - **agreed to.**

**Chapter Sixteen as amended was adopted.**

**9. CHAPTER SEVENTEEN – NATIONAL SECURITY**

**Article 313** - **agreed to.**

**Article 314 (1) (d)** Amendment Proposed;

THAT, Article 314(1)(d) be amended by deleting sub clause 1(d) thereof.

Question of the amendment proposed;

Debate arising;

Question on the amendment proposed, put and negatived

**Article 314** - **agreed to.**

**Article 315** - **agreed to.**

**Article 316** - **agreed to.**

**Article 317** - **agreed to.**

**Article 318** - **agreed to.**

**Article 319** - **agreed to.**

**Article 320** - **agreed to.**

**Article 321** - **agreed to.**

**Article 322** - **agreed to.**

**Article 323(1)(h) - Amendment proposed: (New Sub Article)**

THAT, Article 323(1)(h) be amended by inserting a new sub-clause to read as follows:-

*“Co-ordinate, supervise and control all private and guests government security organizations to ensure safety and security in the Republic of Kenya.”*

**(Hon. Muraguri Nderi - Del No.305)**

Question of the amendment proposed;

Debate arising;

Question on put and agreed to.

**Article 323** as amended **agreed to.**

**Article 324** - **agreed to**

**Article 325** - **agreed to**

**Article 326(2):** Amendment proposed;

**THAT**, Article 326(2) be amended by substituting the words “*be a separate service from*” for the words “*operate in support of*” appearing therein.

**(Hon. John Waitiki - Del No.305)**

Debate arising;

By leave of the Conference,

The Mover withdrew the Motion.

**Article 326** - **agreed to.**  
**Article 327** - **agreed to.**  
**Article 328** - amendment proposed;

**THAT**, Article 328 be amended by inserting the word “*General*” after the word “*Commandant*” in the title and accordingly in clauses (1) and (2).

**(Hon. Ezekiel Kesendany - Del No.356)**

Question to the amendment proposed;

Debate arising;

Question on the amendment proposed, put and **agreed to.**

**Article 328** as amended **Agreed to**

10. **CHAPTER EIGHTEEN - CONSTITUTIONAL COMMISSIONS**

**Article 329** - **agreed to.**  
**Article 330** - **agreed to.**  
**Article 331** - **agreed to.**  
**Article 332(1)** - Amendment proposed;

**THAT**, Article 332(1) be amended by deleting the word “*ten*” and substituting therefor the word “*fourteen*”.

**(Hon. Ahmed Maalim Omar - Del No.255)**

Question if the amendment proposed;

Debate arising;

Question put and **negatived.**

**Article 332(1)** - Amendment proposed;

**THAT**, Article 332(1) be amended by deleting the words "*at least three and not more than ten Members*" and substituting therefor the words "of one nominee from each Regional Assembly" and as in Article 296(2) (c) and Article (2)(d).

**(Hon. Leslie Betawa Mwachiro - Del No.599)**

Question of the amendment proposed;

Debate arising;

Question put and the requisite two thirds majority required to pass a vote being not present.

The decision was deferred.

The result of the Division were as follows:-

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>
215	116	Nil

**Article 332(2)(a)** - amendment proposed;

**THAT**, Article 332(2)(a) be amended by inserting the words "*regional diversities and*" between the words "consideration and the principal's."

**(Hon. Nur Ibrahim - Del No.256)**

Question to the amendment proposed;

Debate arising;

The Mover withdrew the Motion.

**Article 332(7)** - amendment proposed;

**THAT**, Article 332(7) be amended by inserting the words "*taking into account gender balance the*" immediately before the word "*members*" and further insert the words " and a vice chairperson" between the words "*chairperson*" and "*from.*"

**(Hon. Mary Wambui - Del No.467)**

Question to the amendment proposed;

Debate arising;

Question on the amendment proposed and negatived

**Article 332** - agreed to  
**Article 333** - Amendment proposed;

**THAT**, Article 333 be amended:

- (i) by deleting the title "*Article*" and substituting therefore the following:-  
"*Secretary to the Commission*".
- (ii) by inserting the following words "*under the Secretary of the Commission*" as in Article 303(3) and (4) immediately after the word "*function*".

**(Hon. Leslie Betawa Mwachiro - Del No.599)**

Question of the amendment proposed;  
Debate arising;  
Question put and negatived.

**Article 333** - agreed to.  
**Article 334** - agreed to.  
**Article 335** - agreed to.  
**Article 336** - agreed to.  
**Article 337** - agreed to.  
**Article 338** - agreed to.

**Article 339** - amendment proposed;

**THAT**, Article 339 be amended by inserting a New Sub Article (e) after Sub Article (d) known as "*The Kenya Fisheries Commission*."

**(Hon. Winston O. Adhiambo - Del No.603)**

Question of the amendment proposed;  
Debate arising;  
Question put and negatived.

**Article 339** - agreed to.

**Article 340** - Amendment proposed;

**THAT**, Article 340 be amended by deleting the paragraph in its entirety and substitute therefore the words "other members consisting of one nominee from each Regional Assembly and also as in Article 296(2)(c) and (d)

**(Hon. Leslie Betawa Mwachiro - Del No.599)**

The proposed amendment was dropped.

**Article 340** - agreed to.  
**Article 341** - agreed to.  
**Article 342** - agreed to

**Article 343(2)** - amendment proposed;

**THAT**, Article 343(2) be amended by inserting a New Clause immediately after Clause (b) as follows:

*( c ) the difference between the highest and the lowest salary and remuneration of public officers shall not be more than one hundred times.*

**(Hon. Ngorongo Makanga - Del No.605)**

The proposed amendment was dropped.

**Article 343(2)(a)** - amendment proposed;

**THAT**, Article 343(2)(a) be amended by inserting the word "*offices*" immediately after the words "*all constitutional.*"

**(Hon. Michael Gitau - Del No.355)**

Question on the amendment, proposed put and negatived.

**Article 343** - agreed to.  
**Article 344** - agreed to.

## **CHAPTER NINETEEN - AMENDMENT OF THE CONSTITUTION**

**Article 345** - agreed to.

**Article 346(1)** - Amendment proposed;

**THAT**, Article 346(1) be amended by deleting the words "*citizen registered to vote*" immediately after the word "*million*" and inserting therein the words "*voters drawn proportionally from all districts of the republic*".

**(Hon. Alexander Chepkwony - Del No 367)**

Question on the amendment, proposed;

Debate arising.

**11. QUORUM**

Hon. Delegate Levi Wangula Ahindukha (No 379) pointed to the Chairperson that there was no quorum.

And the Chairperson being ascertained that there was no quorum after expiry of five minutes, thereupon adjourned the proceedings.

**12. ADJOURNMENT**

And the time being thirty minutes past Five O'clock, the Chairperson adjourned the Conference without question put in accordance with National Constitutional Conference regulations.

The Conference rose at thirty minutes past Five O'clock.

**MEMORANDUM**

The Chairperson will take the Chair on  
Friday 12<sup>th</sup> March, 2004 at 9.00 a.m.

—————  
**Approved for circulation**

**PLO-LUMUMBA  
CONFERENCE SECRETARY**

**FRIDAY, MARCH 12, 2004**

**VOTES AND PROCEEDINGS**

**1. MOTION SESSION**

The Chairperson called the meeting to order at 9.15 a.m.

The proceedings were opened with prayers.

**2. COMMUNICATION FROM THE CHAIR**

The Chairperson announced that members of the consensus building committee should proceed to their meeting at the committee tent No. 9.

**3. CONSIDERATION OF THE REVISED ZERO DRAFT BILL TO ALTER THE CONSTITUTION**

The Conference proceeded to a division to adopt chapter 18 articles: 329, 330, 331, 332, 334, 335, 337, 338, 339, 340, 341, 342 and 343 which had been deferred in the proceedings of the previous sitting.

Question put and, on a division, agreed on as follows:-

<u>AYES</u>	<u>NOES</u>	<u>ABSENTENTIONS</u>
336	0	0

**CHAPTER NINETEEN – AMENDMENT OF THE CONSTITUTION**

The Conference proceeded to a division to adopt articles 344, 345 and 346.

The results of the division were as here below indicated:-

<u>AYES</u>	<u>NOES</u>	<u>ABSENTENTIONS</u>
331	0	0

**CHAPTER TWENTY – GENERAL PROVISIONS**

The Conference proceeded to a division to adopt the inclusion of articles 347 and 348. The results of division were as here below indicated:-

<u>AYES</u>	<u>NOES</u>	<u>ABSENTENTIONS</u>
345	0	0

The Conference adjourned for a tea break at 10.30 a.m. The Conference reconvened at twenty minutes past eleven o'clock.

## **CHAPTER TEN – REPRESENTATION OF THE PEOPLE**

Article 110 (2) – Amendment proposed;

**THAT**, Article 110 (2) be amended by deleting it in its entirety.

*(Hon. Nancy Lungali)*

Question proposed;

### **ADJOURNMENT**

And the time being thirty minutes past twelve o'clock the Chairperson adjourned the sitting for lunch break.

### **CONFERENCE ROSE**

At thirty minutes past twelve o'clock until two o'clock this afternoon.

### **MINISTERIAL STATEMENT**

By indulgence of the Conference, His Excellency the Vice-President, Hon. Moody Awori, gave a ministerial statement concerning the Government's commitment to the constitutional review process. He implored the delegates to tolerate and bear with each other's views so that the process continues and is concluded smoothly.

The Vice-President assured the Conference of the Government's commitment to give Kenyans a new constitution by June, 2004.

### **AFTERNOON SESSION**

The Conference reconvened at 2.45 p.m.

### **CONSIDERATION OF THE REVISED ZERO DRAFT A BILL TO ALTER THE CONSTITUTION**

The Chairperson invited the Rapporteur General to clarify issues related to corrigenda on article 110 (2) before the Conference proceeded to vote on the article.

**Article 110 (1)** - **Agreed to**

**Article 110 (2)** - Amendment proposed;

**That**, Article 110 (2) be deleted.

**(Hon. Nancy Lungahi – Del. No. 224)**

Debate arising.

Question put and negatived

**Article 111** - **agreed to**  
**Article 112** - **agreed to**  
**Article 113** - **agreed to**  
**Article 114** - **agreed to**  
**Article 115** - **agreed to**  
**Article 116** - **agreed to**

**Article 117** - Amendment proposed;

**THAT**, Article 117 (2) sub articles (ix) be deleted.

**(Hon. Hubbie Hussein Al-Haji Del. No. 251)**

Question proposed,

Debate arising,

Question put and negatived.

**Article 118** - **agreed to**

**Article 119** - Amendment proposed;

**THAT**, Article 119 be amended by inserting the following new sub-article (4):  
“Political parties may form coalitions the running of which shall be regulated by an Act of Parliament.

**(Hon. Mark Osili Onyango)**

Question proposed.

Debate arising,

Question put and agreed to

**Article 120** - **Agreed to**  
**Article 121** - **Agreed to**  
**Article 122** - **Agreed to**  
**Article 123** - Amendment proposed;

**THAT**, Article 123 sub-article (1) (b) be amended by inserting the words “ethically and morally acceptable”.

**(Hon. Sammy Ruto, Del. N0. 180)**

Question proposed  
Debate arising  
Question put and negatived

**Article 124, 125** - agreed to

**Article 126** - Amendment proposed;

THAT, article 126 (2) and (3) be amended by deleting the words “Auditor general” and substituting therefore with the words “an approved certified auditor”.

**(Hon. Daniel Njoroge)**

Question proposed.  
Debate arising.  
Question put and negatived

The Conference proceeded on a division to adopt Chapter ten:

Articles 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130 and 131.

Question put and on a division agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSENTENTIONS</u>
362	1	1

### **REPORT OF THE CONSENSUS BUILDING COMMITTEE**

The Chairperson invited the Hon. Bishop Philip Sulumeti, Moderator, Consensus Building Committee to make a presentation on the report the committees deliberations.

He thanked the delegates for giving him the honour to serve in the committee and said that his committee had several meetings. He thanked the Convenor of the committee on the Executive for having steered it with dignity although the committee was handling a difficult Chapter.

He implored the delegates to look at the views of the Consensus committee from a wider perspective – not as views of individual for individuals but as decisions made taking into account what the people of Kenya wanted vis-à-vis the ‘Zero Draft’.

He presented the committees’ report on: the Executive, Devolution and the Representation of the People as follows:-

The views of the committee were as follows:-

**I The Executive**

The Committee agreed that the structure of the executive should be based on the following:

1. That the Executive authority of the Republic of Kenya will repose in the President, the Prime Minister and the Cabinet.
2. That the President shall be elected in accordance with the rules, which require the President to garner majority of votes countrywide and certain percentages in specified number of regions.
3. That the President is the Head of State, Head of Government, Commander-in-Chief of the Armed Forces and Chair of the National Security Council.
4. That the President shall appoint the Prime Minister from the party or coalition of parties with the majority support in Parliament and shall submit the name of the appointed Prime Minister to the Parliament for approval by at least 50% vote of all Members of Parliament.
5. If the Parliament does not approve the nominated Prime Minister, the President shall nominate the leader of the second largest party or coalition of the parties and if the Parliament rejects the second nominee, then the President shall nominate the third nominee who shall be accepted by the Parliament.
6. That Cabinet Ministers shall be Members of Parliament.
7. That the number of Cabinet Ministers shall be between 17 and 20.
8. That most of Government decisions shall be through the Cabinet.
9. That the Prime Minister shall be the leader of Government Business in Parliament, shall coordinate work of ministries, shall prepare legislation and shall be responsible to the Cabinet and the Parliament.
10. That the Prime Minister may be dismissed in one of two ways:
  - (a) Through a motion introduced by the president and supported by fifty percent (50) of members of parliament.

- (b) Through a vote of no confidence introduced by a Member of Parliament and supported by a third of Members of Parliament and voted for by at least fifty percent (50) of Members of Parliament.
- 11. That the functions of the president, the Prime Minister and the Cabinet are largely as stated in the zero draft.
- 12. That the president shall serve a maximum of two-five year terms.
- 13. That the emphasis is on the president and the prime minister working in harmony.
- 14. That the cabinet should reflect the Kenyans regional and ethnic diversity.
- 15. That the president shall appoint permanent secretaries and public service commission in consultation with the prime minister.
- 16. (i) the president shall appoint ministers of the cabinet.  
(ii) the president shall consult the prime minister and take into account the advice of the prime minister before appointing ministers of cabinet under (i) above.
- 17. It was agreed that a review of the system of the Executive will be undertaken before the general elections of 2012.

## **II Devolution**

Levels of government:

1. There shall be three levels of government as follows:
  - (a) National,
  - (b) District (as listed in the first schedule of the revised zero draft, subject to review by a boundaries commission).
  - (c) Location.
2. Districts may cooperate with other districts or purpose of joint ventures and may set up joint committees for that purpose.
3. There shall be regional forum meeting at least twice a year for cooperation and coordination of activities of districts within the region. The regions shall be those which are listed in the first schedule of the revised zero draft, subject to review by a boundaries commission.

### **The Principal Unit of Devolution**

4. The district shall be the principal unit of devolution.

### **Powers and functions of different levels of government**

5. (a) *National level*
  - (i) Legislative
  - (ii) Taxation
  - (iii) Resource allocation and utilization
  - (iv) Administration
- (b) *District level*
  - (i) Legislative
  - (ii) Taxation
  - (iii) Resource allocation and utilization
  - (iv) Administration
- (c) *Location level*
  - (i) Resource allocation and utilization
  - (ii) Administration

### **Capital city and urban areas**

6. There shall be special legislation for the governance of capital city.
7. Legislation shall provide for the governance of other cities.

### **Equitable distribution of resources**

8. (a) The national government will be responsible for ensuring equitable distribution of resources to all districts.

## **III Representation**

9. Representation at the various levels shall be as follows:-
  - (a) *National level*
    - (i) National Assembly – one representative elected from each Parliamentary constituency and one woman representative elected from each district.

- (ii) Senate – 3 representatives elected from each region, one of who must be a woman.

(b) ***District level***

- (i) One councilor elected from each location in the district.
- (ii) Special seats for women to ensure one-third representation.

(c) ***Regional forum***

Two representatives, one woman and one man from each district government within the region.

Style of drafting

- 10. Provisions on devolution should, wherever possible, be simplified and matters of detail should be removed and included in legislation.

**ADJOURNMENT**

And the time being forty minutes past four o'clock, the chairperson adjourned the sitting without question put pursuant to the National Constitutional Conference Regulations.

Conference rose at forty minutes past four o'clock.

**MEMORANDUM**

The Chairperson will take the Chair on Monday, March 15, 2004 at 9.00 a.m.

**MONDAY, MARCH 15, 2004**

**VOTES AND PROCEEDINGS**

**1. MORNING SESSION**

The Chairperson called the meeting to order at 9:35 a.m.

The proceedings were opened with prayers.

**2. COMMUNICATION FROM THE CHAIR**

The Chairperson requested delegates to be tolerant to each other's views.

He further appealed to politicians to moderate their language to reduce antagonisms.

He reminded delegates of the tremendous responsibility bestowed upon them by Kenyans and asked them to promote consensus and unity in the country.

The Chairperson appealed to delegates not to let Kenyans down in their aspirations to have a new constitution.

The Chairperson also informed the conference that the steering committee had deliberated on the consensus report presented by Bishop Sulumeti on Friday, 12 March.

The Conference upon a division resolved to consider the Zero draft of the Bill taking cognizance of the proposed amendments by the Consensus Building Committee.

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
275	151	1	427

**3. CONSIDERATION OF THE DRAFT BILL TO ALTER THE CONSTITUTION**

**Article 171**

**Amendment Proposed**

**THAT**, Article 171 be amended by inserting a new sub-clause (3) to read;

"(3) The Composition of the National executive shall reflect the regional and ethnic diversity of the people of Kenya".

*(Hon. Philip Sulumeti - Del. No. 546)*

Question of the amendment proposed.  
Question put and Agreed to.

**Article 172**

**Amendment Proposed**

THAT, Article 172 be deleted and the following be inserted in place thereof;

"The executive authority of the Republic at the national level of government is vested in the President, the Deputy President, the Prime Minister, and the Cabinet, all of whom, in the performance of their respective functions, shall work in harmony for the good governance of Kenya and the progress of the people of Kenya".

*(Hon. Philip Sulumeti - Del. No. 546)*

Question of the amendment proposed;

The Chairperson interrupted the proceedings at 10.35 for a tea break.

The Conference reconvened at 11.30 a.m.

Interrupted business resumed.

**Article 172**

**Amendment Proposed**

THAT, Article 172 be deleted and the following be inserted in place thereof;

"The executive authority of the Republic at the national level of government is vested in the President, the Deputy President, the Prime Minister, and the Cabinet, all of whom, in the performance of their respective functions, shall work in harmony for the good governance of Kenya and the progress of the people of Kenya".

*(Hon. Philip Sulumeti - Del. No. 546)*

Question of the amendment proposed  
Debate arising  
Question put and Agreed to

**Article 173**

**Amendment Proposed**

**THAT**, Article 173(2) (a) be deleted and the following be inserted in place thereof;

"(a) is the Head of State, the Head of Government, the Commander-in-Chief of the Kenya Defence Forces, the Chairperson of the Cabinet, and the Chairperson of the National Security Council".

*(Hon. Philip Sulumeti - Del. No. 546)*

Question of the amendment proposed;

Question put and Negatived

### **VOTING SYSTEM**

Rising in his place on a point of order, Hon. Amos Kimunya - Delegate No. 063 requested the Chairperson to change the voting method from the one currently being applied to secret balloting to protect delegates against intimidation.

Thereupon, the Chairperson put the Question on the proposed new voting methodology and on a division Negatived.

<b><u>AYES</u></b>	<b><u>NOES</u></b>	<b><u>ABSTENTIONS</u></b>	<b><u>TOTAL</u></b>
193	214	0	407

Article 173 - Agreed to without amendment

<b><u>AYES</u></b>	<b><u>NOES</u></b>	<b><u>ABSTENTIONS</u></b>	<b><u>TOTAL</u></b>
314	151	1	466

### **Article 174**

#### **Amendment Proposed**

**THAT**, Article 174(1) (a) be deleted

*(Hon. Philip Sulumeti - Del. No. 546);*

The Chairperson explained that the provisions of this proposal are covered by Article 173.

#### **Further Amendment Proposed**

That 174 (3) be deleted and the following be inserted in place thereof.

"(3) The President, in accordance with this Constitution, shall appoint and may dismiss -

- (a) the Prime Minister;
- (b) Deputy Prime Minister;
- (c) Cabinet Ministers and Deputy Ministers;
- (d) the judges of the superior courts of record;
- (e) any other public officer whom this Constitution requires the President to appoint;"

(Hon. Philip Sulumeti - Del. No. 546)

Question of the amendment proposed  
Debate arising;

### **ADJOURNMENT**

And the time being fifty minutes past Twelve O'clock the Chairperson adjourned the sitting for lunch break.

**CONFERENCE ROSE:** At fifty minutes past Twelve O'clock until  
Two O'clock this afternoon.

### **AFTERNOON SITTING**

The Conference reconvened at 2.25 p.m.

### **CONSIDERATION OF THE REVISED ZERO DRAFT A BILL TO ALTER THE CONSTITUTION**

#### **Article 174**

#### **Amendment Proposed**

THAT, article 174(3) of the Zero Draft bill be deleted and substituted thereof;

"(3) The President, in accordance with this Constitution, shall appoint and may dismiss:

- (a) the Prime Minister;
- (b) Deputy Prime Minister;
- (c) Cabinet Ministers and Deputy Ministers;
- (d) the judges of the superior courts of record;"

*(Hon. Bishop Philip Sulumeti Del. No. 546)*

Question put and on division negatived

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
58	311	1	370

**Article 175** - Agreed to  
**Article 176** - Agreed to  
**Article 177** - Agreed to  
**Article 178** - Agreed to

**Article 178**

**Amendment proposed;**

**THAT**, Article 178(1) be deleted and substituted by the following;

"That the President shall be elected by a college of the National Assembly, the Senate and chairpersons of all regions and districts of all regions and districts in a joint sitting".

*(Hon. William arap Ruto - Del. No. 179)*

Question proposed;  
Debate Arising;  
Question put and Negatived.

**Article 179**

**Amendment Proposed**

**THAT**, article 178(2) (b) be amended by deleting the word "second" and substitute with the word "fourth".

Question proposed;  
Debate Arising;  
Question put and Negatived.

**Article 180** - Agreed to  
**Article 181** - Agreed to  
**Article 182** - Agreed to  
**Article 183** - Agreed to  
**Article 184** - Agreed to

Article 185 - Agreed to  
Article 186 - Agreed to  
Article 187 - Agreed to  
Article 189 - Agreed to  
Article 190 - Agreed to  
Article 191 - Agreed to  
Article 192 - Agreed to

Article 193

**Amendment Proposed**

THAT, article 194(4) be amended by deleting the words "in the absence of the President".

Question proposed;  
Debate Arising;  
Question put and Agreed to.

Article 194 - Agreed to  
Article 195 - Agreed to  
Article 196 - Agreed to  
Article 197 - Agreed to  
Article 198 - Agreed to  
Article 199 - Agreed to  
Article 200 - Agreed to  
Article 201 - Agreed to  
Article 202 - Agreed to  
Article 203 - Agreed to  
Article 204 - Agreed to  
Article 205 - Agreed to  
Article 206 - Agreed to

**Adoption of the Chapter Twelve - The Executive**

THAT, the conference adopts Articles 172 - 206 (The Executive) as Amended to be part of the Constitutional draft Bill.

Question proposed and Agreed to.

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
325	5	2	332

Article 231 - Agreed to

**Article 232** - Agreed to  
**Article 233** - Agreed to

#### **Chapter Fourteen - Devolved Government**

##### **Article 234**

##### **Amendment proposed;**

**THAT**, Article 234(2) be amended by inserting the words "giving special consideration to indigenous minorities and marginalized communities like the Nubians, Isakhia and the Swahili in the city of Nairobi.

*(Hon. Isa Ileri Ngunia - Del. No. 286)*

Question proposed  
Debate Arising  
Question put and Negatived.

**Article 236** - Agreed to  
**Article 237** - Agreed to

##### **Article 238**

##### **Amendment Proposed;**

**THAT**, article 238 (1) (a) (ii) be amended by inserting the word "Metropolitan" immediately before the words "Mayor" and "Deputy mayor".

*(Hon. Kipyegon Sang - Del. No. 368)*

Question proposed  
Debate Arising  
Question put and Negatived

**Article 239** - Agreed to  
**Article 240** - Agreed to  
**Article 241** - Agreed to  
**Article 242** - Agreed to  
**Article 243** - Agreed to  
**Article 244** - Agreed to

##### **Article 245**

**Amendment Proposed;**

**THAT**, article 245(1) be amended by inserting a new clause after article 245(1) (b) as follows:

"Marginalized groups including persons with disabilities older persons and youth that at least two shall be persons with disabilities".

*(Hon. Samuel Tororei - Del. No. 462)*

Question proposed

Debate Arising

Question put and Agreed to

**Article 246 - Agreed to**  
**Article 247 - Agreed to**  
**Article 248 - Agreed to**  
**Article 249 - Agreed to**  
**Article 250 - Agreed to**  
**Article 251 - Agreed to**  
**Article 252 - Agreed to**  
**Article 253 - Agreed to**  
**Article 254 - Agreed to**  
**Article 255 - Agreed to**  
**Article 256 - Agreed to**  
**Article 257 - Agreed to**  
**Article 258 - Agreed to**  
**Article 260 - Agreed to**  
**Article 261 - Agreed to**  
**Article 262 - Agreed to**  
**Article 263 - Agreed to**  
**Article 264 - Agreed to**  
**Article 265 - Agreed to**  
**Article 266 - Agreed to**  
**Article 267 - Agreed to**  
**Article 268**

**Amendment Proposed**

**THAT**, article 268(5) be deleted and substitute thereof a new clause as follows:-

"District legislation prevails over regional legislation if Article 235 (c) does not apply".

*(Hon. Ahmed Madim Omar Del. 255)*

Question proposed  
Debate Arising  
Question put and Negatived

**Article 269** - Agreed to  
**Article 270** - Agreed to  
**Article 271** - Agreed to  
**Article 272** - Agreed to

#### **Adoption of Chapter Fourteen - Devolved Government**

**Articles 231 - 272**

**THAT**, Articles 231 - 272 (Devolution) be adopted by the Conference as part of the Constitutional Draft Bill.

Question put and Agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
318	2	0	320

#### **Chapter Fifteen - Public Finance**

**Article 273** - Agreed to  
**Article 274** - Agreed to  
**Article 275** - Agreed to  
**Article 276** - Agreed to  
**Article 277** - Agreed to  
**Article 278** - Agreed to  
**Article 279** - Agreed to  
**Article 280** - Agreed to  
**Article 281** - Agreed to  
**Article 282** - Agreed to  
**Article 283** - Agreed to  
**Article 284** - Agreed to  
**Article 285** - Agreed to  
**Article 286** - Agreed to  
**Article 287** - Agreed to  
**Article 288** - Agreed to  
**Article 289** - Agreed to  
**Article 290** - Agreed to  
**Article 291** - Agreed to  
**Article 292** - Agreed to  
**Article 293** - Agreed to

Article 294 - Agreed to  
Article 295 - Agreed to  
Article 296 - Agreed to  
Article 297 - Agreed to  
Article 298 - Agreed to  
Article 299 - Agreed to  
Article 300 - Agreed to  
Article 301 - Agreed to

Articles 273 - 301

**THAT**, Articles 273 - 301 (Public Finance) be part of the Constitutional Draft Bill.

Question put and Agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
325	0	0	325

#### **Chapter Eleven - The Legislature**

Article 132 - Agreed to  
Article 133 - Agreed to  
Article 134 - Agreed to  
Article 135 - Agreed to  
Article 136 - Agreed to  
Article 137 - Agreed to  
Article 138 - Agreed to

#### **Article 139** **Amendment Proposed**

THAT, a new clause be inserted after clause (2) as follows:

"Any representative of a marginalized group shall be eligible for re-election to Parliament as a representative once".

*(Hon. Atsango Chesoni Del. No. 510)*

Question proposed

Debate Arising

Question put and Agreed to

Article 140 - Agreed to  
Article 141 - Agreed to  
Article 142 - Agreed to

Article 143 - Agreed to  
 Article 144 - Agreed to  
 Article 145 - Agreed to  
 Article 146 - Agreed to  
 Article 147 - Agreed to  
 Article 148 - Agreed to  
 Article 149 - Agreed to  
 Article 150 - Agreed to  
 Article 151 - Agreed to  
 Article 152 - Agreed to  
 Article 153 - Agreed to  
 Article 154 - Agreed to  
 Article 155 - Agreed to  
 Article 156 - Agreed to  
 Article 157 - Agreed to  
 Article 158 - Agreed to  
 Article 159 - Agreed to  
 Article 160 - Agreed to  
 Article 161 - Agreed to  
 Article 162 - Agreed to  
 Article 163 - Agreed to  
 Article 164 - Agreed to  
 Article 165 - Agreed to  
 Article 166 - Agreed to  
 Article 167 - Agreed to  
 Article 168 - Agreed to  
 Article 169 - Agreed to  
 Article 170 - Agreed to

THAT, Chapter Eleven Articles 132 - 170 - The legislative be adopted as part of the draft Constitution Bill.

Question put and Agreed to.

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
325	0	0	325

**Chapter 21 - Transitional and Consequential Provisions**

Article 349 - Agreed to  
 Article 350 - Agreed to  
 Article 351 - Agreed to

THAT, Chapter 21 - Transitional and Consequential Provisions Articles 349 - 351 be adopted as part of the Draft Constitutional Bill.

Question put and Agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
325	0	0	325

### Preamble

### Amendment Proposed

To insert the words "heroically" between the words "who" and "struggled" in the second line of the preamble.

Question Proposed

Debate Arising

Question put and Negatived

**THAT**, the Preamble be adopted as part of the Constitutional Bill

Question put and Agreed to

<u>AYES</u>	<u>NOES</u>	<u>ABSTENTIONS</u>	<u>TOTAL</u>
325	0	0	325

### SCHEDULES

Schedule 1	-	<u>Agreed to</u>
Schedule 2	-	<u>Agreed to</u>
Schedule 3	-	<u>Agreed to</u>
Schedule 4	-	<u>Agreed to</u>
Schedule 5	-	<u>Agreed to</u>
Schedule 6	-	<u>Agreed to</u>
Schedule 7	-	<u>Agreed to</u>

**The Draft Constitution stands adopted.**

### **ADJOURNMENT**

And the time being thirty minutes past seven O'clock, the Chairperson adjourned the Sitting without Question put pursuant to the National Constitutional Conference Regulations.

**CONFERENCE ROSE** - at thirty minutes past seven  
O'clock.

**MEMORANDUM:**

The Chairperson will take the Chair on  
Tuesday, March 16, 2004 at 9:00 a.m.

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**Approved for circulation**

**PLO LUMUMBA**  
**CONFERENCE SECRETARY**

**TUESDAY, MARCH 16, 2004**

**VOTES AND PROCEEDINGS**

**1. MORNING SESSION**

The Chairperson called the meeting to order at 9.50 a.m.

The proceedings were opened with prayers.

**2. COMMUNICATION FROM THE CHAIR**

The Chairperson thanked the delegates for their contribution, tolerance and compromise in the constitutional process making and for their affinity as delegates and thanked the Observers who had done their work diligently.

He informed the Conference that the Steering Committee had resolved that every delegate will receive an attendance certificate.

He also informed the Conference that there was a lot in the Constitution that is common to all Kenyans and that all decisions made in the Articles were resolved by two-thirds (2/3) of the delegates present and voting and that all the rules and procedures in the Conference had been followed to the letter. He further informed the Conference that a Kiswahili version of the Constitution will be in the offing soon.

Further that the Conference will stand adjourned until Friday, March 19, 2004 for a thanksgiving ceremony and the official handing over of the Draft Bill to the Attorney General. Meanwhile the Drafters will be working on the document and urged the delegates to give the Constitution as wide publicity as possible for it to flourish.

**3. ADJOURNMENT**

And the time being Twenty minutes past Ten O'clock, the Chairperson adjourned the Sitting without question put pursuant to the National Constitutional Conference regulations.

**CONFERENCE ROSE:** - at Twenty Minutes past Ten O'clock

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**MEMORANDUM:**

The Chairperson will take the Chair on Friday, March 19, 2004 at 9.00 a.m.

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**Approved for circulation**

**PLO-LUMUMBA**  
**CONFERENCE SECRETARY**

**FRIDAY, MARCH 19, 2004**

**VOTES AND PROCEEDINGS**

**1. MORNING SESSION**

The Chairperson called the meeting to order at 9:45 a.m.  
The proceedings were opened with prayers.

**2. COMMUNICATION FROM THE CHAIR**

The Chairperson informed the delegates that the preparation of the final draft was not ready and the draft constitution would be ready for distribution on Monday, 22<sup>nd</sup> March, 2004 and therefore delegates should meet on Tuesday, 23<sup>rd</sup> March, 2004 at 9.00 a.m. to adopt the draft.

He also clarified that the document would be handed over to the Attorney General together with the report of the proceedings by Constitution of Kenya Review Commission.

He thus assured delegates that Constitution of Kenya Review Commission would not change the Draft Constitution, as the Act does not mandate the Commission to do so.

**ADJOURNMENT**

And the time being fifteen minutes past Ten O'clock, the Chairperson adjourned the Sitting without Question put pursuant to the National Constitutional Conference Regulations.

**CONFERENCE ROSE** - at fifteen minutes past Ten O'clock.

**MEMORANDUM:**

The Chairperson will take the Chair on  
Tuesday, March 23, 2004 at 9.00 a.m.

**Approved for circulation**

**PLO LUMUMBA**  
**CONFERENCE SECRETARY**

**TUESDAY, MARCH 23, 2004**

**VOTES AND PROCEEDINGS**

1. **MORNING SESSION**

The Chairperson called the meeting to order at 9.45 a.m.

The proceedings opened with prayers.

2. **COMMUNICATION FROM THE CHAIR**

Hon. Delegates, Observers, distinguished guests, ladies and gentlemen;

Today we come to the end of the most critical phase of the review of the constitution. the National Constitutional Conference is the body charged with the adoption of the new constitution. On 15<sup>th</sup> March 2004 the Conference, voting by two thirds of the members present and voting, adopted all the articles of the constitution. The refined text of its decisions are now tabled and will be formally endorsed by the Conference. Through its text the people have spoken. Many have made sacrifices, some of lives and limbs, in their attempt to give us a better instrument of governance. These people were driven by their love o the country and the passion for social justice and the dignity of individuals and communities. Their long struggle for constitutional reform has borne fruit.

However, since certain persons, goaded by some powerful state officials, are bent on scuttling the review process, in various ways, including hrough the courts, it is necessary to remind ourselves of the background to the reform movement. ery briefly, that background lies in our history of the last forty years - in the dismantling of freedoms and democracy following independence; the establishment of one party rule; enactment of draconian laws like preventive detention and the intimidation of those who dared to criticize the government; the emergence of a highly personalized system of rule, with heavy reliance on patronage; corruption and plunder of the state; the decline of the rule of law; the transformation of the police from being protectors of the people to becoming their oppressors; the subordination of the judiciary to the executive; the marginalisation of social groups and communities; and the sufferings of extreme poverty.

In this environment it became irrelevant whether an act of the president based on legal authority or not – presidential word substituted for the law. Predictability, which depends on clear rules of law, became dependent on the ability to read the whims of the president. There was massive misappropriation of state resources; unbelievable greed in which the concerns of the nation, of present and future generations, were sacrificed to personal accumulation.

The Democratic Party and the National Alliance of Kenya, speaking in the year 2002, to CKRC through their then Shadow Attorney-General, now the Minister of Justice, the Hon. Kiraitu Murungi, correctly diagnosed our constitutional malady when he said that the fundamental cause of our difficulties was an imperial presidency, above the law. The institutions of the government and economy decayed under the shadow of a powerful president and his inner circle. Power was centralized at the national level, and in the hands of the president. There was no effective separation of powers. Parliament became ineffective. There were few institutions for accountability, such as an ombudsman, and such institutions as existed, like the auditor-general, were rendered toothless. There was no easy access to public service or other state agencies; merit as the criteria for appointment or promotion was replaced by political or ethnic connections, or monetary payments. There was a sharp decline in economy and the breakdown of the infrastructure; decreasing levels of production and export; illegal acquisition of huge tracts of land without productivity; and massive unemployment.

People increasingly lost access to the most basic necessities of life, their life scourged by poverty, while a few lived in unimaginable affluence. Guarantees of the security of person or business disappeared. Consequently there was a massive retreat from public life, an inward lookingness, the lack of openness and trust; and pervasive fear that drove many into exile.

The movement for reform was a response to this total collapse of Constitutionalism, that is to say, the arbitrariness of the exercise of state power, the refusal of the government to respect limits on its power or authority, the disregard of the rights of people, the absence of checks and balances, and consequent lack of the separation of powers. The movement took the form of constitutional reform because the problems the country faced were seen to arise from bad and oppressive governance and the lack of respect for constitutionalism – symbolized by the overweening powers of the presidency.

The Process, which the people adopted for the review and reform of the constitution, was, as we now call it, people driven. This meant no more than the primary agent of reform would be the people, not Parliament, which people trusted little. So the process was designed to give a central role to the people at all stages of the process, and this Conference was constituted to represent them for the purposes of final scrutiny and adoption of the recommendations for the new constitution.

### **A Compact**

A constitution is many things. First and foremost, it is the manifestation of the sovereignty of the people. The review process has given voice to all Kenyans, including groups hitherto largely ignored in public discourse and organs of state –

women, religious minorities, the disabled, pastoralists, forest people, and hunters and gatherers. The exercise of the sovereignty of the people is a compact among them on the how the country will be governed. It is not, as is frequently stated, a compact between the rulers and the ruled. The rulers remain subject to the ultimate authority of the people. The Draft Constitution represents the first time in Kenya's pre- or post-colonial history that the people have designed and adopted such a compact. It reflects the widest consensus among them on the values by which they want to live and institutions and procedures for the achievement of these values. The Draft

Constitution is a negotiated instrument, through extensive consultations with all the communities and people of our country, and the intense and protracted negotiations in this Conference. It provides the basis for the co-existence of the people and shows us the way forward for us as a people and a state. Let us seize, consolidate and build on this consensus.

Let no one be deluded by the petty but expensive squabbles among political factions into thinking that the Draft Constitution does not represent the national consensus. The task of the CKRC in preparing the original Draft Constitution was easy precisely because there was such a high degree of unanimity on the constitutional way forward as expressed to us in the consultation period. Professional, gender and other social groups gave us very similar proposals, and so did political parties. Indeed, I would venture to say that over 90% of the Draft Constitution reproduces proposals made to us by KANU-LDP and the various parties that then constituted NAK. The squabbles among the political factions have little to do with fundamental values or problems of the nation; they represent no principled discourse on vital issues like the future of our society or economy, or the myriad choices of policy, for example about agriculture, industry, education, social justice, the relief of poverty, or the challenges facing a multi-ethnic and diverse people. The squabbles are about power without purpose or responsibility – and as thus have little to do with constitutional engineering. People have been able to rise above these petty pre-occupations and have developed a national consensus on constitutional values and approaches, which we have tried to reflect in the Draft Constitution – that surely is the way forward.

### **Vision of Kenya**

Another purpose of a constitution is to delineate a vision of the country and a statement of its values. Kenyans and foreigners alike have observed how Kenyans have lost a sense of their identity, particularly their national identity, and the sense of national purpose. Kenya is like a ship without a chart or a rudder, lurching from one crisis to another. The starting point in designing the constitution was to define our collective and individual identities. This in turn depended on the choice of values. What the vision of Kenya is manifest in the Draft Constitution? The Draft

envisages a republic, which is at peace with itself and its neighbours. The welfare of the people is its primary goal. This goal is to be attained through national unity and consensual basis of authority and decision-making. But the concept of the welfare of the people does not mean that the people are passive recipients of state largesse. Kenyans are no longer subjects subordinated to external authority but citizens who control their own destiny. They control their destiny and organize state and society through the values and procedures of democracy. The democracy through which Kenyans decide their destiny is not majoritarianism. It arises from the protects the rights of individuals and communities. Rights constitute the fundamentals of our democracy because they protect the legitimate space of the autonomy of individuals and communities, and compel the state to respect basic entitlements and procedures. Nor is the democracy envisaged in the Draft Constitution merely representative, in which people wake up to vote every five years and then became powerless – and go back to sleep. Instead, it envisages a citizenry actively engaged in public affairs. Citizens participate continuously in the governance of the country through the devolution and exercise of power. They keep a constant vigil over wthose who claim to act on their behalf, politicians and governments. It is a democracy in which the free exchange of ideas is actively promoted, particularly by giving people information and resources.

The Draft Constitution has also the vision of Kenya as a nation of great diversity – of ethnic origins, religion, culture, traditions and geography, living in peace and harmony. The Act say that we must respect and cherish this diversity, for we are the richer as a result of this diversity. The accommodation of this diversity is not easy. Total recognition of diversity in all its manifestations will make us a patchwork of communities, not a nation, with little to hold us together and no values or procedures to mediate relations between communities. Yet to force us all into a common mould is to deny individuals and communities the deepest impulses that define their identity – and to lay the foundations of conflict. The draft has struck a balance, assisted by a core set of national values and aspirations – without unnecessarily jeopardizing the legitimate interests of minorities. It was evident to the Commission as it toured the country and met people in all provinces that they do subscribe to a common core of values, and that the differences between the various communities pose no threat to our unity or

common purposes, especially when the differences can be accommodated in the private or familial sphere. It is this framework, which has been used to resolve the controversy about Kadhi courts and the limited application of the sharia to Muslims, and many other inter-community and inter-regional issues.

Another component of the vision of Kenya that the Draft reflects is that of a caring society in which the basic needs of all its members are provided for. There is no reason why any Kenyan should be without shelter, or go hungry, or be deprived of opportunities of education and employment. Society bears special responsibilities for the welfare of its vulnerable members – the aged, the children, the disabled and

women. Through the Draft, Kenyans have committed themselves to an equitable framework for economic growth and equitable access to national resources in which the basic needs of Kenyans would be met. I believe this formula captures very well the nature of our obligations to the disadvantaged. It is not charity that the disadvantaged ask of us, but fair policies and opportunities. The enormous disparities that exist in our society between the rich and poor, the privileged and the disadvantaged are not the natural order of things. They are man made, by the plunder of state and communal resources, and by policies that favour particular groups and classes. Kenyans want the proper and honest management of our national resources and they want equal opportunities for all. They want a caring, humane and just society. No country can be proud of itself if over 60% of its people suffer in extreme poverty while 10% live in great affluence. The notion of a caring society extends beyond our present predicaments and extends to the concern for future generations. The Draft Constitution seeks to promote sustainable development and the conservation of the environment.

We also have a vision of Kenya as a responsible member of Africa and the international community. We want to play our proper role in the emerging global politics and institutions. We want to promote and facilitate regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights. In developing our vision and values, the Conference has been guided by our African culture and traditions. And the support of culture and traditions is mandated in the Draft Constitution, which lists the goals to be achieved and sets up a commission for the conservation and development of various aspects of culture and arts. The Draft also places social obligations on the state to promote local languages.

There is thus a great deal that unites Kenyans in their views on where the nation is now, and what went wrong in the past and what the future should be. They have emphatically rejected the reality of Kenya as they perceived it (corrupt, uncaring, exclusionary, numerous communities held in contempt and mired in poverty). People want a Kenya which respects human dignity, ensures social justice, provides for the disadvantaged, does not marginalize communities or minorities, has proper respect for the culture of groups who want to preserve their traditional life style, and treats nature with greater consideration of present and future generations. People want more control over decisions, which affect their lives and bring government closer to them. They want leaders who are honest, responsive and accountable. The Draft constitution reflects all these concerns and aspirations.

### **Constitution as a legal development**

A constitution is also a legal instrument, the fundamental law of the country, which governs the validity of all other laws and regulations, and policies. The drafting task was of ensuring that the document met high standards of legal technique and

accuracy, which with the help of our able drafting team we have been able to do. We have also been mindful of the fact that every word, indeed every comma, may become the subject of interpretation and even litigation. At the same time, in a people centred democracy, the ordinary person must be able to read and understand the constitution. We have therefore, drafted the constitution in as simple a language as possible, avoiding legal jargon wherever possible. This need to meet these two objectives – of accuracy and accessibility – means that not all the words, formulations and procedures in the Conference decisions have been retained. However, I can assure you that all the decisions have been preserved. The search for precision has not resulted in the elimination of all poetry in the constitution. We have many ringing statements and aspirations and have tried to manifest will of the people and the direction of change through broad principles. Let me give you an example: the chapter on Leadership and Integrity, in describing the responsibility of leaders, says that the holding a state or public vests the officer with obligation ‘to serve the people, rather than the power to rule them’

With a view towards the easy accessibility of all Kenyans to the constitution, we shall soon be publishing a Kiswahili version of the constitution.

### **Structure of Government**

Let me now turn briefly to specific aspects of the Draft Constitution. First, the structure of government, where the Conference has been guided by the need to establish a system which respects democracy, the rule of law, the separation of powers, and accountability. We propose to deal with the massive concentration of power in the national executive, particularly the president, by three principal methods: (a) moving away from a highly centralized presidential system to one where there is a Prime Minister but also a President with a high degree of moral legitimacy and a clearly defined role in maintaining constitutionalism. We have not replaced the Imperial Presidency with a Presidential Prime Minister! The dispersal of national executive powers, principally between the President and the Prime Minister! (b) the devolution of power to regions and districts, with adequate guarantees of powers and resources; and (c) a number of controls over the exercise of executive power at all levels. We have proposed the strengthening of legislative bodies, both by making them truly representative of all Kenyans and their communities or social groups (through where necessary and appropriate, separate representation for marginalized groups or communities), and giving them new instruments and resources to discharge their functions of participation and accountability. The Draft requires the composition of governments and organs of state to reflect national or local diversities.

Devolution is central to the re-organization of state power. There are several provisions, running through the Draft Constitution aimed at getting devolution off the ground and sustaining it. Equally, there is the recognition that devolution must proceed with due deliberation, so that powers are transferred to lower levels as

governments at that level demonstrate the capacity to handle them. The Draft emphasizes co-operative rather than adversarial relations among governments at different levels.

It is impossible in modern times for democracy to operate without political parties. But equally, political parties must be organized and operate to strengthen national unity, practice internal democracy and be accountable, offer people choices, and avoid corruption. The Draft sets out important principles for the governance of political parties. They would come under a strict regime of control and accountability. In return they will receive state subsidies so that they can become effective mechanisms of representation and policy formulation, moving away from ethnic and personal politics.

### **Accountability**

Accountability is central to the Draft as it was to the concerns of the people. Corruption is a major cause of our poverty, of irrational decision making, and of cynicism about government on the part of the citizens. The Draft provides various mechanisms to fight corruption, including a code of conduct and a powerful commission to implement and oversee the code.

It seeks to set up an independent, impartial and competent judiciary; a framework under which the judiciary would not be under pressure to collude with the executive, nor to sell justice to the highest bidder. We all know that in the past the doors of the courts have been open to all only in the way that those of the New Stanley Hotel are open to all. And unfortunately that many of those who have come to the court do not come through the front entrance – but obtain their judgments by backdoor methods. The Draft opens the doors of justice to the poor and the disadvantaged in many ways: by setting up institutions to provide legal services to the poor and by expanding the scope of those who are entitled to come to court, when issues of the environment, constitutionalism or human rights are concerned. And the appointments process has been strengthened: better to ensure that the right people are appointed in the first place than to have to invoke dismissal procedures.

Prevention is better than cure in other ways too. The machinery for the management of natural and financial resources has been strengthened. There is to be better control in advance of spending by, for example, the creation of a separate office of the Comptroller of Budget. The national budget process is to be more transparent and Parliament is to have a larger role in it.

A number of independent commissions are proposed, both for accountability and to insulate of sensitive tasks from partisan politics. Notable among these is the Ethics and Integrity Commission, which has a role in appointments to other commission

and bodies as well as being the Commission with the responsibility for codes of leadership and corruption investigation.

Civil society has played a pre-eminent role in the whole campaign for a new Constitution and in the process leading up to today. In response to the wishes of Kenyans the Draft lays emphasis on the need to involve civil society in decision-making, and in holding public officials accountable.

### **Human Rights**

At the heart of the constitution lies the Bill of Rights. Politicians perhaps believe that the heart is the system of government: that part that they hope will get them into power and not constrain them too much once they are there. But for the people in their everyday lives, whether in interaction with officialdom or with each other, human dignity is a fundamental issue, and rights are the impediment of human dignity. Dignity lies in being able to make ones own decisions, in being treated as a full member of society regardless of gender, disability, age, religion, ethnicity and other factors that are so often used to divide rather than unite people. But dignity is equally impaired by having to live in a miserable hovel, or drink dirty water collected after a long trek with a bucket, or being unable to learn to read. These often called economic, social and cultural rights, have a central position in the Bill of Rights, and are not separated out or treated as mere aspirations.

The provisions about equality and non-discrimination are concerned with real equality – not just technical equality. And they make provision for active achievement of equality for all, including for members of marginalized communities and the disadvantaged. And there are carefully thought out educational and enforcement functions for the various bodies that are charged with making rights a reality, notable the Commission on Human Rights and Administrative Justice and the Gender Commission.

### **Preserving the Constitution**

It will no longer be possible to change the constitution made by the people without full prior national consultation and, in the case of important provisions, the consent of the people. Older Kenyans will remember only too well how the independence Constitution was emasculated by an all too willing Parliament. In important areas this constitution will require a referendum – and there is even an innovative provision for popular initiative to amend.

### **Impelementation and enforcement of the Constitution**

I have often said that the world is a graveyard of excellent constitutions.

This Draft is innovative and inspirational; it aims to change things; patterns of authority and distribution of power and vested interests. It is for these reasons, likely to be resisted by the establishment. There is, therefore, need for special attention to implementation. The Draft deals with this firstly through transitional provisions: a detailed timetable is set out to achieve the change in an orderly fashion, but an inexorable fashion. Another innovative contribution is the establishment of commission on implementation of the Constitution with the mandate to keep the process under constant review and by publicity, pressure and if necessary by legal action, to ensure that the transition happens, and on time.

Again, this is something that will also require the constant vigilance of society. The most wonderful protective and participatory mechanisms will achieve nothing if the people are not watching – and not just watching but taking action when needed.

### **Thanks**

It is my great pleasure to express the most heartfelt thanks. I fear that it is impossible to do justice to enormous number of people who have contributed in so many ways. In a sense, I express those thanks on behalf of the people of Kenya. But the first thanks must go to those very people: for their courage, engagement and commitment. If I may be personal for a moment, it has been those qualities of Kenyans that have kept me going for the last almost three and a half years, and I am sure this is so for other people involved in the process. I must also thank that cross-section of the people of Kenya, the delegates to the NCC or the watu [wa Bomas]. To my fellow Commissioners of CKRC and staff of the Commission. To the wide variety of consultants who have prepared papers, attended workshops, people who came from Kenya and from a variety of countries. To the donors who have paid for air fares and fees of consultants, for workshops for delegates, for publications and civil education. And to the Bomas management and staff who have been welcoming and efficient. If an army marches on its tomach a constitutional conference must deliberate with satisfied stomachs, and the contribution of the Bomas caterers has been splendid.

A special place is reserved for my thanks to the indefatigable Secretary to the Commission, Patrick Lumumba, or PLO. When one says on occasions like this that such and such could not have been achieved without the help of certain people, it is often a form of words. Let me say that it is no form of words to say that, without PLO we would never have got anywhere near today. A splendid organizer, an excellent lawyer, a public face of the Commission in many situations always able to speak fluently, forcefully and colourfully.

### **Way Forward**

The Constitution provides us the way to come together, and rededicate ourselves to the nation etc. Let me say in closing, that the document that the NCC has adopted is a good constitution: I can say a very good constitution. It represents an investment not only of money (of which there has been as everyone knows a considerable amount) but also more importantly of effort, of thought, of prayer, of hopes for the future. Visitors to the country have often commented that Kenyans are astonishingly well informed about and interested in the whole constitutional question. To those who must now take over this task, I say "Please do not let them down".

**3. ADOPTION OF THE DRAFT CONSTITUTION**

The Draft Constitution was adopted amid song and applause by delegates.

It was handed over to the Chairman of the Constitutional Review Commission Prof. Yash Pal Ghai for onward transmission to the Attorney General by Hon. Dr. Bonaya Godana, Delegate No. 029, Vice-Chairperson of the Conference.

An advance copy of the Document was then presented to the Attorney General amid cheers and applause from Delegates by the Chairman of the Constitution of Kenya Review Commission, Prof. Yash Pal Ghai in accordance with the Review Act.

**4. ACCEPTANCE SPEECH BY THE ATTORNEY GENERAL,  
HON. AMOS WAKO, DELEGATE NO. 575**

The Attorney General made his acceptance speech to the applause of Delegates. He told the Conference that even the Court Orders issued yesterday could not prevent him from receiving the Draft Constitution from the Conference. He assured the Conference of the Government's commitment to deliver a new Constitution to Kenyans by June, 2004, that he had received the document as required of him by the Law, he would proceed in accordance with the Law and publish a Bill within 14 days for enactment by Parliament.

**5. PERSONAL STATEMENT**

By indulgence of the Conference the Hon. Gitu wa Kahengeri, Delegate No. 316 made a personal statement, thanking delegates, Commissioners, support staff for the support they accorded him during his participation in the Conference for the entire period he was a delegate. He urged delegates to lead by example, disseminate information to all in the villages since information is power. He also extended his gratitude to the delegates and the Minister for Local Government for having the sympathies extended to him and his wife when they were thrown out of their City Council house maliciously. He thus assured the conference that the

Minister's order made in the Conference Hall ensured their reinstatement to the House.

6. **VOTE OF THANKS**

Hon. J. Dennis Akumu, Lancaster Veteran, gave a vote of thanks.

7. **MOTION OF ADJOURNMENT**

The Conference adjourned sine die at twenty minutes past Eleven O'clock.

**CONFERENCE ROSE:** - at twenty Minutes past Eleven O'clock

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**Approved for circulation**

PLO LUMUMBA  
**CONFERENCE SECRETARY**

**END OF SESSION III (BOMAS III)**