

**CONSTITUTION OF KENYA REVIEW COMMISSION
(CKRC)**

**NATIONAL CONSTITUTIONAL CONFERENCE
(NCC)**

VERBATIM REPORT OF

**PLENARY PROCEEDINGS, HELD AT THE PLENARY HALL,
BOMAS OF KENYA**

ON

16.03.04

CONSTITUTION OF KENYA REVIEW COMMISSION.

NCC – PLENARY PROCEEDINGS HELD AT BOMAS OF KENYA

ON 16TH MARCH, 2004.

Present:

- | | | |
|---|----------|--------------------------|
| 1. Prof. Yash Pal Ghai | - | Chairperson |
| 2. Hon. Delegate Koitamet Ole Kina | - | Vice Chair of NCC |
| 3. Hon. Delegate Sultana Fadhili | - | Vice Chair of NCC |

Meeting started at 9.57 am with Prof. Yash Pal Ghai in the Chair.

Prof. Yash Pal Ghai: Honorable Delegates, let us start our meeting and I am going to ask the following to say prayers. Rhoda Loyor, Zablon Nthamburi, Sheikh Ali Shee and Kamla Sikand. So, please stand up for the prayers as well as the National Anthem. Thank you.

(Inaudible discussions on the floor).

Hon. Delegate Sheikh Ali Shee: *Bismillahi Rahmani Rahim. Kwa jina lako Mola, muumbaji wa mbingu na ardhi na viumbe vyote. Tuko mbele yako mara ingine tukiwa waja Wako wanyonge, wanyenyekevu, tukiwa na furaha za hapa na pale. Tukitoa shukrani zetu kwako kwa sababu ya kutuweka katika hali iliyo bora na kutuwezesha kumaliza kazi ambayo tumepewa na watu wako. Kazi ya kuandika Katiba hii. Mola kama si vile ulitujaza kwa nguvu zako kwenye nyoyo zetu, hatungeweza kumaliza kazi hii. Kwa hivyo tunakushukuru Mola uzidi kuendelea kutupa nguvu kama hizo na busara na uwezo, ili tuweze kufanya mengi zaidi kuliko haya tulioyafanya. Pia, utupe uwezo wa kulinda Katiba hii ambayo leo tumeitengeneza, uwezo ambao ndio uwezo wa kulinda haki za wananchi wa nchi hii na kulinda heshima yao na vile vile kuifanya nchi hii iweko katika hali ya amani, hali ambayo wewe ndiye unayoipenda iweko kwa waja Wako.*

Mola twakuomba vile vile uingize roho ya mapenzi baina yetu sisi na wale wenzetu ambao kidogo walikuwa na tofauti na sisi. Uwape roho ambayo ni ya kuweza kuvumilia na kurudi kukaa na sisi pamoja na kusikilizana ili tuweze kuendelea kuipeleka nchi hii katika hali iliyo bora. Mola tunakuomba vile vile utusamehe makosa ambayo tumekukosea wewe au tumekoseana sisi kwa sisi, ambayo bila shaka sisi ni wanadamu. Makosa kama hayo mara nyingi yanatokea, kwa hivyo tunaomba utusamehe, na sisi kwa sisi utupe uwezo wa kusameheana na kuvumuliana ili tuweze kuishi katika maisha yaliyo bora. Mungu tubariki, bariki nchi nzima, ubariki watu wetu, ubariki Wajumbe wote waliokuwa hapa na wengine ambao wako nje ya boma hili, wabariki. Amina.

Hon. Delegate Zablon Nthamburi: Almighty God, we thank You for this time that You have given to us. We thank You for Your love, we thank You for Your Provision and Your Providence. Particularly, we want to thank You for uniting us together as we come from different parts of the country, so that we can be together in this place, in order that we may continue with the Constitution making.

Now, Lord, we ask You to give us peace of mind, peace in our hearts so that as we continue to finish the business that is ahead of us, we ask that You be with us. That Your Spirit may be hovering over us at every time, so that whatever we utter, we utter that which is pleasing in Your sight. Lord we know that this is not an easy task, we ask that You may forgive us where we have wronged one another, You may continue to forgive us so that You may continue to bring unity in our midst. Unity that we need in order that we may have a prosperous country, a prosperous nation, so that we may go out in unity to do that which pleases You.

Now, we want to pray for the whole country, even those who sent us here, for the thirty plus millions of Kenyans that are watching us, as we deliberate upon many matters concerning the Constitution, that You may bring Your blessing upon each and everyone of them. That You may bring tranquility and peace in our nation, so that we can make progress, that we can do development work in this peaceful atmosphere. Lord, bring us together even when we have differences. We know that You can work out those differences and make us one because without that unity, we will not be able to do what we plan to do here.

Lord, let Your love forever prevail upon us, so that we may be able to love each one even when we differ. So that Your love may go beyond our human inclinations. Lord, be with us. in Jesus name we pray. Amen.

Hon. Delegate Rhoda Loyor: I will pray and then those who know shall respond. In the name of the Father, Son and the Holy Spirit. Lord, we thank you for this beautiful morning. It is a beautiful morning, in the fact that we have been waiting for this baby to be born and now we have the baby at our hands. Lord, bless the baby so that it can grow in good health. Lord hear us.

Hon. Delegates: Lord graciously hear us.

Hon. Delegate Rhoda Loyor: Lord, we thank You for the unity of this country. We want You to bless our Government. We want You to bless this country so that all people are the same Kenyans, so that we do not observe the tribal factors. Lord, we want You to bless this country. Bless this Conference, this Conference has been here since Bomas I up to now Lord. We are very happy where we have arrived. Lord hear us.

Hon. Delegates: Lord graciously hear us.

Hon. Delegate Rhoda Loyor: Lord, we want You to bless all the people here in Bomas, the leaders, all those who are Delegates, those who have taken their time, those who have sacrificed many other things to come here to deliver the new Constitution to this country. Lord hear us.

Hon. Delegates: Lord graciously hear us.

Hon. Delegate Rhoda Loyor: Lord, we want You to bless this day, so that it can be a peaceful day, so that we shall take each other as brothers and sisters. Lord, we want You to be with us, we know You have been among us since Bomas II, up to now we know You are with us and You will be with us to the end of time. Lord hear us.

Hon. Delegates: Lord graciously hear us.

Hon. Delegate Rhoda Loyor: Lord, in short, I pray that You bless this Conference, so that we go home with a new Constitution for the Kenyans. Lord hear us.

Hon. Delegates: Lord graciously hear us.

Hon. Delegate Rhoda Loyor: I pray that in short. In the name of the Father, Son and the Holy Spirit. Amen.

Hon. Delegate Kamla Sikand: *Om! shanti, shanti. Om! shanti, shanti* You have heard this words very often but it means God give us peace. God I and we just pray for Your blessings on Kenya and every Kenyan and for the unity of the country. God be with us. So, let us all meditate for a minute and just get to ourselves. Are we true to ourselves? Are we true to others? Let us meditate for a minute and that is where we will get all our answers from. Thank you. *(Meditation)* *Om! shanti, shanti*, God give this country peace and unity and give us all peace within ourselves. Thank you. God.

(National Anthem).

Prof. Yash Pal Ghai: Could the Delegates and the Observers who are still standing please take their seats.

(Noise on the floor).

Prof. Yash Pal Ghai: Honourable Delegates, I want first of all to thank each one of you for your contribution to the success of the Bomas process. *(Clapping)*. You have all worked very hard and you have always kept in front of you, the mandate from the people and the recommendations that were made to the CKRC by the people. I think it is because we have respected the views of the people, that we were able to agree last night on the Draft Constitution. So, I want to thank you for your dedication, your hard work, for your spirit of tolerance and compromise that enabled us to conclude our work yesterday. I also want to thank the Observers who have been with us throughout this process, attending diligently-- *(clapping)* --and giving us a comment periodically, so that we can improve our process. Thank you very much. *(Clapping)*.

The Steering Committee has decided sometimes ago and reiterated that today every Delegate will receive a certificate of the membership of this August body and of the attendance. *(Clapping)*. We would also provide certificate for the Observers-- *(clapping)* --I know it is not a big amount, but it is a token of the appreciation of the nation for the hard work that you have done.

The Steering Committee met this morning and we had a good discussion on the way we are and what remains to be done until the Constitution is adopted, but even more importantly what we can do in a different way after the Constitution has been adopted. So, let me just say that there was a strong feeling that we should make sure that our document gets the widest publicity possible. There are very many excellent features in the Constitution which have not been sufficiently highlighted because-- *(clapping)* --the press has forecast on some of the most controversial issue, but I will say 80% of the Constitution was adopted almost unanimously and also there is a broad consensus and these other provisions in which in a more sense, are the heart of the Constitution. They have defined us a nation, as a people of goals and I think we need to make sure that these parts of the Constitution are also known and understood by the public and so we should be taking various measures to bring to the attention of the public the content other than or in addition to those which are controversial and which to some extent have divided us. There is a lot in the Constitution which represents a common will of us and of Kenyans, that unite us and I think we need to emphasis those parts as well. *(Clapping)*.

It was also a great commitment on the part of the members of the Steering and I am sure members of this Plenary, that our work does not finish with the adoption of the Constitution. May be as a Conference, we have no formal rule after the adoption, but as individuals and as representatives of different organizations; the churches, religious organizations generally, NGOs, women's groups, trade unions, professional groups, all of us have affiliations with institutions that also commit themselves to working for the implementations of the Constitution. At the moment what we have are word on a piece of paper, we must breathe life into those words and we shall need together and individually think of strategies to ensure that the Constitution does not remain a piece a paper. I sometimes say that-- *(Clapping)* --in my academic talks that, the word is a graveyard of wonderful Constitutions, but they have never been given a chance to be implemented, which we can also say about the 1963 Constitution, was not a bad Constitution, but

we did not embrace it fully and give life to that. This Constitution must not suffer defeat, it must flourish, must grow and we must water it everyday. *(Clapping)*.

Now, you may be interested to know what the programme for the rest of the week. Our Drafters needs about one or two days to tidy up the document, take care of consequential changes, which depend on our decisions that we made last night and earlier in the week. We hope that all that work will be finished in good time for you to look at the final document and we intend on Friday to have our final ceremony in which the document will be handed to you and to others. I want to emphasize one point here, that yesterday we did adopt the Constitution. *(Clapping)*. Every decision we made over the last few weeks including last night was made by at least by a two-thirds vote-- *(clapping)* --and that is what the law requires us to adopt the Constitution. So we have followed the formalities. *(Clapping)*. So, on Friday we will have a document that correctly registers all our decisions and we can formally endorse that decision on Friday. *(Clapping)*.

There was also a suggestion that we should have thanksgiving to thank the Almighty for his blessing on us and seek His blessings on the new Constitution. The suggestion was that we might meet on Thursday, but in my discussions with the Secretary, it seems that it might be possible to combine thanksgiving with the ceremony on Friday. We will keep you informed, we still have to look at the logistics, but there will be a thanksgiving ceremony so that collectively as people from all religious communities, be together to thank the Almighty. I am not sure I have other announcements. We will be meeting with the media so that we get good coverage of all aspect of the Constitution. As I mentioned earlier, we have in hand plans to produce a *Swahili* version of the Constitution and we hope that will be ready within a week or so. *(Clapping)*. We had very much hoped that we could have both documents together but unfortunately for reasons you understand it was not possible, but we do have a team working on the translation and I can assure you one will be available soon and we will give them maximum publicity and dissemination that we can.

Finally, I want to say that, thank you again and to say that you have done a wonderful job. *(Clapping)*. This Constitution has been made in very difficult political circumstances and I had reached time with myself that we had, had a more congenial environment for our work, but we have not had that opportunity, but you have stood firm and in the very difficult circumstances

you have committed yourselves to the work at hand and you have focused on the issues in the midst of all the disturbances you have kept a steady head. Thank you very much for that. *(Clapping)*.

(Consultations at the “high” table).

Prof. Yash Pal Ghai: I have a request from Honourable David Musila to make an announcement and I am giving him the floor to do so. *(Clapping)*.

Hon. Delegate David Musila: Thank you, Mr. Chairman, distinguished Delegates. I have been asked to make an announcement here concerning Honourable Members of Parliament, that at 10.30 am all Members of Parliament who are here and who have been supporting this process, please meet at the Press Tent. There is a press statement that you are going to make. *(Clapping)*. Thank you.

(Consultations at the “high” table).

Prof. Yash Pal Ghai: Well, the Secretary would like to make an announcement about what we will do in the next day or so. I will leave it to him to do it rather than summarize it.

PLO Lumumba: Thank you very much. Chairman has already thanked everybody, I believe we will have occasion to do so on Friday. What we will do is that immediately after this, we will have cultural activities to the glory of all us-- *(clapping)* --and to the joy of mzee Paul Naitare and I believe to the joy of my very good friend Kavetsa Adagala. *(Clapping)*. We believe after that we will have lunch, you have had to squeeze the juice of your energy. In the afternoon you will go back to your hotels, visit relatives, visit the Bomas inside here, *(clapping)* you are encouraged. We are arranging with my good friend Paddy Onyango, to visit the Nyayo torture chambers-- *(clapping)* --and we believe that it will be achieved on Thursday. All other communications for the resident Delegates, will be made through the resident hotels representatives and for the non-residents, we will try to post notices on the notice board. Otherwise on Friday we will report as usual and you will have a full programme. Thank you very

much and may God bless you. On behalf of the Secretariat, we thank you very much, we have tried our best and we need your support until the very end. God bless you. *(Clapping)*.

(Consultations at the “high” table).

PLO Lumumba: Note it is very clear tomorrow you can rest and enjoy, you have not known Nairobi, know Nairobi, but avoid Koinange Street. *(Laughter and clapping)*.

Prof. Yash Pal Ghai: On that happy note, we adjourn the meeting.

Meeting adjourned at 10.20 am.

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