

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**VERBATIM REPORT OF**

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

**ON**

**26.02.04**

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**NCC - PLENARY PROCEEDINGS HELD AT THE PLENARY HALL,  
AT BOMAS OF KENYA ON 26.02.04.**

**Present**

<b>Prof. Yash Pal Ghai</b>	-	<b>Chairperson - NCC</b>
<b>Hon. Delegate Sultana Fadhil</b>	-	<b>Acting Chairperson - NCC</b>
<b>Koitamet Ole Kina</b>	-	<b>Vice Chairman</b>
<b>Prof. Okoth Ogendo</b>	-	<b>Rapporteur General</b>
<b>PLO Lumumba</b>	-	<b>Commission Secretary</b>

**Secretariat Staff in attendance**

<b>Ann Kiama</b>	-	<b>Verbatim Recorder</b>
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**The meeting started at 10.05 a.m. with Prof. Yash Pal Ghai in the Chair and Hon. Delegate Sultana Fadhil acting as Chair.**

**Prof. Yash Pal Ghai:** Honourable Delegates, please take your seats, so that we can resume our meeting-- We can convene our meeting. So in about thirty seconds I am going to start this meeting, so please take your seats and observe silence so we can have the meeting conducted properly. Thank you.

I would like to request Sheikh Ali Shee and Fibie Ochola to say prayers. After the prayers there will be the National Anthem. So please keep standing until the National Anthem has been played. So, I will request you now to stand up and Sheikh Ali Shee to begin the prayers.

**Hon. Delegate Sheikh Ali Shee:** *Bismillahi. Kwa jina la muumbaji wa Mbingu na ardhi na viumbe vyote, Mola wetu mkarimu, mtukufu, tuko mbele yako tukiwa wanyonge, wanyenyekevu katika hali ambayo ni ya kutatanisha. Mola, tuna haja kubwa zaidi sisi na uingiliaji kati ya nguvu zako. Mola, ingia katika hali hii tulivyo, hali mbovu ambayo hivi sasa tuko nayo katika dakika hizi tulizo hapa.*

*Mola, tupe uwezo wa kuweza kushinda nguvu zote ambazo zitaleta mvurugano na kuleta fujo na kutoelewana katika kazi hii yetu. Ee Mola tupe uwezo wa kuvumiliana na subira kubwa ya kuweza kufanya kazi hii kwa pamoja. Ee Mola, shetani ameanza kupata nguvu za kuingia baina yetu sisi na kuleta ushawishi ili tufarokane na tusiwa wamoja. Mola, sisi waja wako wanyonge, tuna haja kubwa ya msaada wako ili tuweze kupambana na shida hii ambayo iliyoko.*

*Ni imani yangu na imani ya Wakenya wote kuwa Wewe umekuwa ukitulinda, Wewe umekuwa ukitupa nguvu zako na ukijaza subira zako kwetu. Kwa sababu ya hiyo Kenya imeweza kuvumilia na kupita mitihani mingi ambayo nchi nyinginginezo za Bara la Africa na penginepo, zili-fail kuweza kufaulu katika matatizo kama hayo. Sisi tumeweza kufaulu, Mola, na tujalie tufaulu tena, tupite kwenye mitihani kama hii. Tuweze kutengeneza Katiba ambayo sasa imebakia dakika za mwisho. Mola tuwezeshe, tupe nguvu ili tuweze kumaliza kazi hii.*

*Ee Mola tulinde, linda wananchi, ulinde Wajumbe wote walioko hapa na uwalete pamoja ufanya maskizano na maelewano, ili tuweze kufanya kazi hii. Mola, tubariki, bariki nchi yetu na wananchi wote na Wajumbe wote. Amina.*

**Hon. Delegate Fibie Ochola:** Almighty and everlasting Father, we come before You this morning King of Glory, to thank You. We want to thank You for the gift of life that You have given unto us to enjoy even up to this minute. King of Glory because the Devil came to steal, kill and destroy but we want to thank you this morning for the Son of man, Your Son Jesus Christ came unto us to give us life and to give it in abundance.

We stand this morning Father before You, for this is the day that You, Yourself had given unto us. Jehovah, God, we raise our eyes, we set our eyes upon the mountains, King of Glory surrounding us, where does our help come from? Our help comes from the Lord. King of Glory, we want to pray this morning as we intercede for the thirty million Kenyans outside this assembly and we want to bring our prayers-- United prayers King of Glory unto You that You may hear our prayers this morning.

We remember for forty years, King of Glory Your servants were in the wilderness. The Israelites were crying unto Moses, You called Your sons and assembled them by Mount Sinai. King of

Glory, we want to thank You for them, that You gave them a second Commandment, Kenyans are yearning for a second Constitution that is going to give them efficient and effective management of powers and resources and that is why we are assembled here. King of Glory, we have seen Your hands in Bomas I and in Bomas II. We are here in Bomas III and today we are building an Ebenezer for we know, You have the power King of Glory and with You, nothing is impossible, that all that is impossible with man is possible with You.

We want to praise You, we want to thank You and we want to invite You King of Glory that as we start this meeting this day, that You are going to be with us, remain in our midst. Give us the peace that surpasses all understanding. King of Glory, You created us for a purpose. We want to thank You for the creation. Jehovah God, You said before we were created, You knew us and before we were born, You had already selected each and every one of us for a purpose.

This is the day Father that we want to know men and women of this nation that are standing before you. You came down to deliver the Israelites and You told Your servants, "I have heard the cries of my people and I have come down to deliver them". You never went up; God You stayed with them until they were delivered. We want to ask You, this is the time we want to be delivered, King of Glory. We have sacrificed our lives, men and women in this assembly, King of Glory for the purpose to have a peace of paper in the form of a Constitution.

King of Glory, we want to ask You, that it is You who gives all that is good for Your people and You know what is good for Kenyans and You are able to give it. This is the time we want to ask You to use Your people wisely for the heart of man is full of evil and You know it King of Glory. You know how selfish the man is but You know your people and You are a God who is not selfish. You come down to deliver Kenya and we want You to deliver them today. We want to ashame the devil, King of Glory in the name of Jesus Christ and we want to ask You Father that as you come before us this day, as we start this day, Father, You know what is in it. Before this day started, You knew what would be in it.

Father we want to command the power of the devil to be cursed away from us and that You send the Angel Meshack to come, and come down with, King of Glory, with all the blessings. Shower us with Your blessing King of Glory. We want to ask You Father that even as we sit, let Your

peace that surpasses all understanding, remain always in us and with us. In the name of Jesus Christ, our Lord and Savior. Amen.

*(The National Anthem).*

**Prof. Yash Pal Ghai:** There are two new Delegates who will be sworn in today. That is Francis Atwoli and Odhiambo Mak' Oloo. Could you please come just here on the podium or rather in the arena and in the usual way, I will administer the oath? Maybe the other Delegate is not here, so Mr. Atwoli, you know our procedure for swearing in? So, I will read this and you will repeat after me. When I say "I" then you say "I" and your name and then repeat after me. Okay?

**Francis Atwoli:** I, **Francis Atwoli**, 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 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 powers and functions as such Delegate, I shall at all times be guided by the national interest. So help me God.

**Prof. Yash Pal Ghai:** I welcome you to this August body and look forward to your contributions. (*Clapping*). Honourable Delegates, the purpose of this Special Plenary is to give you some information. We would like to give you this information, so that you can think about this and we shall give a document that you can read. This is not an occasion for debate on the information that we are going to give you; we will be considering this matter further in the Steering Committee tomorrow and there will be Plenary tomorrow as well, where we want to inform you of the program for next week when we begin the Committee of the Whole Conference and other matters that need to be resolved.

However, the purpose of this meeting today is limited and the rest of this meeting will be chaired by my colleague, Sultana Fadhil and I urge you to listen to her carefully.

*(Sultana Fadhil Acting as Chair).*

**Hon. Delegate Sultana Fadhil:** Good morning, Honourable Delegates?

**Hon. Delegates:** Good morning.

**Hon. Delegate Sultana Fadhil:** As the Chair has just told you, the purpose of calling this meeting was to give you copies of this document and the urgency was that this document is going to be presented to the Parliamentary Select Committee in the afternoon at two o'clock. So, we did not want you to read in the Media about it. The Steering Committee got a copy this morning. So, I appeal to you to read the document, understand it before you react to it because the impact of this document is fundamental to this process.

The Conference being an independent corporate body-- In this process, there are three bodies; the Parliamentary Select Committee, the Commission and the National Constitutional Conference. Whatever is going to be adopted in this document, will directly affect the conference. So, the Conference - that is through the Delegates - must study this document and with your authority, I will request the Steering committee to form a Special Committee, to study this document, plan strategies and we will also maybe tomorrow or on Monday, get a feedback from the documents after you have read them, so that all the information or the proposal you will come up with, will be incorporated in the Special Committee which will be formed.

In the Special Committee, I would suggest with your authority, should be comprised of Members of the Steering, the Conference and some of the Commissioners because this is a joint effort. So-

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*(Consultations at the "high" table).*

**Hon. Delegate Sultana Fadhil:** The reason why I have said this Special Committee should comprise of the Commissioners and the Delegates, is because according to the views given by some Members of the Commissioners, the Chairmen, the Vice - that is Professor Okoth Ogendo, the Secretary and a certain number of Commissioners did not participate and they were not part of this process. So, we need to get their input also (*clapping*) and despite each body said, we are

