

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**Verbatim Report of**

**PLENARY PROCEEDINGS, ADJOURNMENT OF  
CONFERENCE,  
HELD AT BOMAS OF KENYA**

**ON**

**August 25, 2003**

**PLENARY PROCEEDINGS, ADJOURNMENT, HELD AT BOMAS OF  
KENYA ON AUGUST 25, 2003**

The meeting started at 9.40 a.m. with Prof. Yash Pal Ghai in the Chair.

**Prof Yash Pal Ghai:** We would like to commence with prayers, so please take your seats. The prayers this morning will be said by Archbishop John Njue, Sheikh Ali Shee, Hannah Kimani and Baldip Singh Rihal. I will first call upon Archbishop John Njue to lead us in prayers and I would request all of you to please stand up.

**Hon. Delegate Archbishop John Njue:** In the name of the Father and of the Son and of the Holy Spirit, Amen. God our Father, we come before you this morning with heavy hearts. Our nation is mourning. You have called unto yourself our beloved Vice President, Michael Kijana Wamalwa. His departure at this time is a big blow to the family, relatives and the nation of Kenya at large. As we send our condolences, we ask you to touch the hearts of all the members of his family and all Kenyans that we may take this reality with an attitude of faith. In the words of Job, let us be able to say, the Lord has given, the Lord has taken, praised be the Name of the Lord, let your will be done.

Good Lord, you know the situation in our country. We appeal to you to enlighten the hearts of all and especially our political leaders to emulate the late Vice President. Let there be an end to the current wrangles and let all strife to unite Kenyans so that we can live in true peace. Guide our President when time comes to give this country another Vice President who can follow the footsteps of Wamalwa Kijana.

Heavenly Father, all the Delegates gathered here represent the citizens of this country. In fulfilling the responsibility entrusted to us, we ask you to give us the spirit to be truly free in making our new Constitution. Let us never succumb to any external influence but rather struggle to have a Constitution which is truly Kenyan and truly African. Let the good of all Kenyans have priority over personal interests. This is why we come in humility and call you in the words that your Son taught us.

Our Father, who art in heaven, hallowed be your name, your kingdom come, your will be done on earth as it is in heaven, give us this day our daily bread and forgive our trespasses as we forgive those who trespass against us and lead us not into temptation but deliver us from evil. This prayer, we have made to you through Christ our Lord, Amen.

**Hon. Delegate Sheikh Ali Shee:** *(Arabic)* Kwa jina lako Muumbaji wa mbingu na ardhi, tuko mbele yako tukiwa na huzuni nyingi kwa kumchukua mwenzetu mpendwa Makamu wa Rais ambaye taifa limegutushwa na uamuzi ambao ulichukua, uamuzi ambao sisi hatuna uwezo wa kuepuka bali ni kukumbali kwa moyo mkunjufu tukikuomba utupe uwezo wa kuvumilia na kustahimili uchungu kama huo. Mola, tukarimu utuwezeshe kuweko katika hali iliyo bora ya kuweza kufanya mazuri ambayo wewe unataka sisi tuyafanye na taifa letu tufanye pia linataka sisi tufanye. Uchungu kama huu ni kuambatana na matakwa yako ambayo unasema kuwa kila mmoja atakufa, kila mmoja katika vyumbe vyote vilivyoko kwenye bingu na ardhi zitarudi kwako. Mola, utupe uwezo wa kutengeneza Katiba ambayo itaenda sambamba na mwongozo na fikira na mawazo ambayo huyo mwenzetu alikuwa nayo Bwana Mheshimiwa Wamalwa Kijana, mwongozo ambao sisi sote tunajivunia kwa busara na hekima alizokuwa nazo ambazo ulimpa. Sisi sote tutakuwa tayari kufuata hekima kama hizo. Ewe Mola muweke pale ambapo wewe umemtayarishia na sisi sote utupe busara na hekima na uwezo wa kuwa katika hali iliyo bora zaidi. Mola twakuomba wewe, hatuna mwingine na kumuomba, ewe Mola utuondolee balaa, utuondolee fitina, utupe uwezo wa kueza kuendelea mbele na kulinda taifa hili na kuliweka katika hali iliyo bora ambayo itakuridhisha wewe na pia ulimwengu mzima na hasa wakaazi wa nchi hii. Twakuomba kwa jina lako kwani hatuna mwingine, tubariki. Amina.

**Hon. Delegate Hannah Kimani:** Our kind loving Father, we come before you this day in humility seeking thy face, we highly exalt and magnify your Holy name for thy providence, kindness and mercy to others. We do not deserve to even mention your name for we are sinners but we thank you for allowing us such a privilege. This morning, we present our lovely country into Thy able hands. We know very well that without your presence guiding us, we cannot succeed, but with your oh Lord, we are more than conquerors. Glory and honour be to thy holy name. We pray for our beloved President Mwai Kibaki, Honourable Ministers, MPs, Church leaders and all other leaders in general. May you guide them as they take this great task of leading our country Kenya. With sorrow, we pray for the widow of our beloved late Vice President, Mrs. Wamalwa. We truly have lost an important person. May you console his family

members and Kenyans in general. As we get into the business of Constitution making, may you guide us and protect us from the spirit of diffusion, hatred and tribalism. Let us have the welfare of the entire Kenyans at heart. May you influence our minds so that we can think and act in a brotherly way. Guide our Chairman, Secretary and the rest. We trust that by the end of the whole process we shall have a better Constitution which glorifies thy holy Name and enables us to continue worshipping you freely in our country. Be our protector and hope throughout the whole process. We pray this in Jesus name, Amen.

**Baldip Singh Rihal:** Let us pray. (*Hindu*) Oh Lord of the universe, creator of all creations, imminent and not born, God of all nations, please have mercy on this nation. Oh Great Lord, you have exercised your power and will and you have taken away from this nation the beloved Vice President, Honourable Kijana Wamalwa. We mortals know and understand that that is inevitable for all of us. Lord, we know that death comes to everyone it pleases. Oh merciful Lord, please have mercy on this nation, bless the President of this nation Honourable Mwai Kibaki and all the people of this nation and the Delegates to this National Constitutional Conference, bless them so that they can bear with this shock that the country has fallen to. Oh merciful Lord, please have mercy on this nation and bless us all so that we can conclude the task that has been entrusted upon the Delegates of this National Constitutional Conference. Oh merciful Lord, please bless the family of the late Kijana Wamalwa and all his relatives and friends and give them the strength to bear this terrible shock and loss of a dear family member. (*Hindu*).

*The National Anthem is played.*

**Prof. Yash Pal Ghai:** We shall now observe one minute of silence in memory of the late Vice President.

*One Minute Silence was observed in honour of the late Vice President, Hon. Michael Kijana Wamalwa.*

**Prof. Yash Pal Ghai:** You may sit down now, thank you. We are replaying the speech that the Honourable Mr. Wamalwa gave to this Conference at the official opening.

***(Replay of Hon. Michael Kijana Wamalwa's speech on screen)***

***“H. E the Vice President, Hon. Kijana Wamalwa: Your Excellency Mwai Kibaki, President of the Republic of Kenya, Mrs Kibaki, First Lady of Kenya, the Chairman of the Constitution Review Commission Professor Yash Pal Ghai, all the Commissioners, Honourable Ministers, Honourable Assistant Ministers, Excellencies, High Commissioners and I am told there is an observer group from the on going Somalia Constitutional negotiations, fellow delegates, ladies and gentlemen.***

*The tradition according to the system that we are trying to change from today has been that the Vice President was to be seen and not to be heard. **(Laughter and applause)** So I do thank you, Your Excellency, for giving me the latitude to say a word or two before I invite you to address this distinguished gathering. **(Applause)***

*Distinguished Delegates, this is a momentous occasion in the life of the Kenyan nation. For today we are gathered here to redefine our political, cultural and social economic future through the process of crafting a new Constitution. In the whole history of mankind, only a few generations have been given the privilege of rewriting the laws of their country and we are among them. Today we are ranged alongside Thomas Jefferson, Napoleon Bonaparte and other people who have made it their duty to define laws that would serve their countries for posterity. **(Applause)***

*Constitution making in Kenya has been a long and rocky process. We have gone through hell and back, and to be here finally we must thank the Almighty to have kept us alive and having given us this privilege. Ladies and gentlemen, we in this nation are of many tribes and many religions and many cultures. This is not a weakness, this is the strength of this Republic. **(Applause)** In our efforts to write the supreme law of the land, we must go the extra mile to cater for every community however small, **(applause)** for every religious sect however small, for every Kenyan, who has a view. For the Constitution is the defender of the weak, the protector of the mighty and the not so mighty, and the modern defender of the faiths in plural.*

*Ladies and gentlemen, I am sure that we shall succeed in discharging this noble duty that Kenyans have given us the privilege to perform. Many people would have loved to be here today, but the few of us were chosen. We shall be participating in the rewriting of the history of our Country in golden letters. Ladies and gentlemen, I will call upon you to exercise utmost patience, utmost accommodation in this noble task, so that we can give our country a Constitution that future generations will be proud of. As I said, today is the President's day, and it is now my pleasure and honour to call upon the President of the Republic of Kenya to officially open this Conference. Mr. President. (Applause)"*

**Prof Yash Pal Ghai:** Honorable Delegates, on behalf of the Conference I want to convey our condolences to the family of the Late Vice President to the Government and indeed to the entire Nation. We are collectively and individually saddened by this untimely death. The Vice President was a much admired and loved person, he listened to all and he had the ability to inspire and to reconcile. He was a person of great integrity and reliability. He did not lose his cool, he was steadfast in his quiet way.

As you can hear on the speech that we just replayed, he had a sharp intellect and he spoke with great eloquence and conviction, and had great sense of humour. He was a champion of political and Constitutional Reform, a true democrat. His role in the reform movement which proceeded and gave birth to this Review Process, was truly monumental. He helped to define the movement for Reform and to define the agenda that found its way into the Review Act and which has animated the work of the different organs of review. He was a peacemaker, he built bridges across different sectors of our society and of politics. He was committed to the Nation of Kenya, again a point he made in his opening speech for us. He swore to develop a national perspective and to build the unity of this country. I personally was extremely inspired by the speech that we have replayed. It set the tone for our deliberations. He emphasized the importance of national unity, commitment to democracy and rights and emphasized the role of the Constitution as the guardian of our Sovereignty and the protection of our people. He wanted us to work hard in unity and peace so that jointly we could establish a Constitution that would serve Kenya for generations to come.

He inspired us in his life to work for this noble goal and I am sure in his death, he brings us again together in the pursuit of this objective. So I hope that in his memory and to honor him we will

continue our work with the dedication that the Delegates have shown so far and that we shall adopt the Constitution that will be a proud tribute to his search of the life time for peace unity and the Sovereignty of this Republic. Today we meet to mourn him and to honor his memory. We have discussed in the Steering Committee how we should proceed in our work in view of his untimely death. The Steering Committee believes that we must honor him in the appropriate way and has proposed for this Conference that we adjourn for two weeks and resume on the eighth of September. We have considered ways in which we might be able to make up for this time that we adjourn for and we shall discuss this matter with the Speaker and Parliamentarians to see if time could be made available in October so that we are able to conclude our work speedily.

I have no doubt that the late Vice President would have wished us to complete the adoption of the Constitution as quickly as is reasonable. We hope therefore this adjournment will not cause a serious delay in the adoption of the Constitution. I have been instructed by the Steering Committee to propose, to move a Motion which I will read to you in a minute, the report of this Motion is to exercise the power vested in this Honorable Conference to determine its own time table. You remember that Article 17 or Regulation 17 of the Constitution of Kenya Review procedure regulations gave this body the power to determine its program. The Steering Committee considers that it would be appropriate for this Assembly to invoke Regulation 17 so that we decide on an adjournment.

This, I emphasis is the decision of the Conference and no other body. The Steering Committee felt deeply that the great contribution that the Vice President made to the Nation and to the work of this Conference and indeed the review process must meet the appropriate recognition of his contribution and determined that an adjournment of a fortnight which coincide with the period of official mourning would be the way to make that recognition.

So I now have the honour on behalf of the Steering Committee, to read the following Motion:

“That the National Constitutional Conference deeply shocked by the untimely demise of the Honorable Michael Christopher Wamalwa, Vice President of the Republic of Kenya and Minister of Regional Development, Member of Parliament for Saboti Constituency and Honorable Delegate number 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 Constitution Review Process, conveys its heartfelt condolences to his family, relatives and friends and joins the rest of Kenyans in this hour of bereavement, registers its appreciation of the Government's efforts to accord him recognition and a burial defeating/befitting an accomplished Statesman and in pursuance to Regulation 17 of the Constitution of Kenya Review National Constitutional Conference Procedure and Regulations 2002, resolves to adjourn the proceedings of this Conference forthwith and reconvene on Monday 8th September, 2003 at 8.00am."

**Prof. Yash Pal Ghai:** Mr. Shikuku.

**Hon. Delegate Joseph Martin Shikuku:** Mr. Chairman I want to second that Motion.

**Prof. Yash Pal Ghai:** Thank you very much indeed. I would hope that in this sad hour of National bereavement we can endorse this recommendation of the Steering and we adjourn now and reconvene as stated. The Secretary will be in touch with you all about the arrangements for reconvening and the Secretary will make some announcements after this Motion has been endorsed.

**Hon. Delegate Bonaya Godana:** It has been endorsed.

**Prof. Yash Pal Ghai:** It has been endorsed? Thank you very much (*clapping*). I am sure the Nation will appreciate our decision to adjourn for this period. This is of course a period of reflection, reflection upon the life and goals of the Late Vice President and reflection upon our own work and our determination to give Kenyans a Constitution which will strengthen the bonds of unity and facilitate economic and social development. With that I want to pass the floor to the Secretary for some announcements.

**PLO Lumumba:** Thank you very much, Mr. Chairman. In light of this adjournment, it has become necessary to do the following things:-

- a) Allow Delegates to return home and to their various duties as they mourn and to come back on the Seventh day of September. In order that your departure is orderly, between



