

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**Verbatim Report of**

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

**ON**

**10<sup>TH</sup> SEPTEMBER 2003**

**VERBATIM REPORT OF PLENARY PROCEEDINGS HELD AT BOMAS OF KENYA**  
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The meeting was called to order at 10.15 am with Yash Pal Ghai as the Chair.

**Prof. Yash Pal Ghai:** I would like to begin the proceedings in about half a minute so please Move to your designated places. Prayers this morning will be said by Bishop Bernard Njoroge, Sheikh Ali Shee, and Neera Kent Kapila. So, I will call them in the order so please Bishop Njoroge would you please begin? I request you all please to stand up.

**Com. Bishop Bernard Njoroge:** Na tuombe. Baba yetu uliye Mbinguni tunakushukuru kwa ajili ya siku hii. Tunajua hakuna Mungu mwingine hapa ndunian na huko mbinguni isipokuwa wewe. Tunakutukuza, tunakuhimidi. Tunakushukuru kwa ajili ya uhai na afya njema kwa kila moja wetu. Tunakushukuru kwa ajili ya nchi hii uliyo tuweka Mungu wetu kwa mpenzi yako wewe mwenywe.

Tunawaomba wengine wetu kama Delegates ambao wanajisikia vibaya katika mwili, na katikamawazo na roho, ili Mungu uwaguze uwaponye, uwape mili mizuri na akili nzuri waweze kutumika katika kazi uliyo waiea. Tunakuomba utupaiea utulivu, uhusiano mbora na wema wa roho. Na katika kazi hii uliyo tuchagulia tuweze kuifanya kadili ya uwezo wako.

Tunakuomba kwa ajili ya Mwenyekiti na Katbu, ukazidi kuwasaidia katika uongozi wao ili tuwenze kufikia malengo ya mkutano huu. Na katika matatizo madogo madogo katikia safari hii, tunakuomba utusaidie kati ya matatizo haya, ili kwamba tuweze kumaliza jukumu iliyo tuleta hapa kwa ajili ya faida ya watu wa Kenya, na utukufu wa jina lako.

Tunaomba haya tukiamini katika jina la Mungu Baba, Mwana na Roho Matakatifu Amina.

**Hon. Delegate Sheik Ali Shee:** Bismillahi Rahmani Rahim. Kwa jina la Mungu muumbaji Wa Mbingu na ardhi na viumbe vyote vilivyoko kwenye Mbingu na ardhi. Tuko mbele yake

Mwenyenzi Mungu tunatoa shukurani zetu kwake yeye, tunamuomba atupe nguvu zake na busara zake zingie kwenye nyoyo zetu na akali zetu tuwenge kuwa na nguvu za kuweza kuvumilia, nguvu za kuwenzana kusubiri, na nguvu za kuweza kubeba mzigo mkubwa ambao tumebebeba na watu wake na raia wa nchi hii.

Ewe Mola utusaidiye kuweza kupambana na fikra na mawazo mabaya ya shetani ambayo yameanza kuingia katika nyoyo ya baadhi ya Wajumbe wetu na watu wetu. Tusaidie kuweza kuondoa mawazo haya mabaya ili tuweze kufanya kazi hii kwa njia ya amani na masikizano na maelewano. Fitina ziondoke tuwe na nguvu kama hizo za kuweza kufanya kazi hiyo.

Ewe Mola ubariki watu wetu wa nchi hii, ubariki nchi hii, uipe heri, na uiondolee fitina na maafa na balaa ili waweze kuidumisha nchi katika hali iliyo bora katika Bara letu la Afrika. Tunakuomba wewe hatuna mtu mwingine wa kuomba na kutegemea isipokuwa ni wewe mola wetu. Tubariki Amen.

**Hon. Delegate Neera Kent Kapila:** Our merciful God, you are omnipresent love, you know the thoughts of every soul fully. We pray that you bless us with your imperial grace as we move forward into Committees, a step closer to completing the task entrusted to us by our people. We ask you Almighty God, to give us the wisdom and strength to settle down to complete this very crucial task Show us the way to overcome and by pass trivialities in order to work on the relevant Committee matters before us.

We ask that you endow us with compassion, friendliness, and honesty ,as we embark on this crucial task. Bless our endeavors Oh ever gracious Omnipresent, heavenly entity with all your might. Ohm shanty, shanty ohm, peace to all.

**Prof. Yash Pal Ghai:** Thank you very much. I have a request to swear in four new members of the Conference will they please come to the podium in front of me, so that I can administer the oath or the affirmation. Is Gichira Kibara here please? Is Mr. Gichira Kibara here? So, if you are here, please come forward so that we can begin the swearing in ceremony.

Could I please ask you to raise your hand and then to repeat after me, I will say I, and you will say, I but you will mention your names and then you will repeat after me. I.

**Hon. Delegate Emily Odhiambo:** I Emily Odhiambo.

**Prof. Yash Pal. Ghai:** -- Being appointed a Delegate to the National Constitutional Conference.

**Hon. Delegate Emily Odhiambo:** Being appointed a Delegate to the National Constitutional Conference.

**Prof. Yash Pal. Ghai:** Under the Constitution of Kenya Review Commission Act, do solemnly swear and affirm.

**Hon. Delegate Emily Odhiambo:** under the Constitution of Kenya Review Commission Act, do solemnly declare and affirm.

**Prof. Yash Pal Ghai:** That I will faithfully and fully impartially, and to the best of my ability, discharge the task and perform the functions, and exercise the powers devolving upon me by virtue of this appointment, without fear, favour, biased, affections, 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.

**Hon. Delegate Emily Odhiambo:** That I will faithfully and fully, impartially, and to the best of my ability, discharge the task and perform the functions, and exercise the powers devolving upon me by virtue of this appointment, without fear favor biased affections, 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.

**Prof. Yah Pal Ghai:** I welcome you to the Conference and look forward to your contribution. Clapping from the Honourable Delegates.

**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, 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 are not only of Kenyans but of Africa and the world upon us. When I was walking in Bomas yesterday, two Diplomats came to talk to me and they said that their own countries, 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 you would lead the way for others. Now many of these hopes are being decimate, people have become pessimistic, people are beginning to loose 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 involve 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 fulfil 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 as if 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 up on 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 thrusters of money. Nothing can be more damaging to this Conference than the people begin to believe in these allegations. We will loose all moral authority if we are not seen to be acting according to our conscience. One of the longest, on 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 loose 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, which were circulated to sabote 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 your, 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 this, 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 regulation has responsibility for discipline. This is 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 sabotage 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.

**Hon. Delegate Rihal:** Thank you Mr. Chairman, Honorable Delegates. I would like to start by drawing the attention of the honorable Delegates to Article 48, of the Rules and Regulations of the Conference, under which this Committee on Privileges, Discipline and Welfare is set up, as a standing Committee of the Conference. And when we look at the functions and duties of this committee, there are basically three areas, which we are required to cover:-

- a) By the order of the Conference to inquire into any complaint of contempt or any other matter of privilege, which maybe referred to the Committee, and then recommend an appropriate action.
- b) To consider any matter of discipline, referred to it by the Chairperson of the Conference including matters to relating to attendance of Delegates at sittings of the Conference, and sittings of Committees, and to report its findings to the Conference.



- c) To liaise with the Commission in order to facilitate proper attention to the welfare needs of the Delegates.
- d) To carry out such other functions as are conferred on it by these regulations, or as the Conference may assign to it.

Now honorable Delegates, myself as the Convenor or Chairman of that Committee and indeed my whole Committee can only work within the ambit of rule 48. That is what the law and the regulations allow us to do, and this in deed we have been doing all the time. Since this Committee was set up, when we first started in phase 1, I have had about 7 or 8 meetings. Various matters to it have been referred by the Chairman, by the Steering Committee, and also many other matters have been referred to it by the Members of Committee. And also as the Chairman says, there were specific resolution that had been proposed by some of the Delegates, which my Committee was asked to consider and to make appropriate recommendations to the Commission.

Honourable Delegates let me also say one other thing, because yesterday what was happening when some of the Delegates wanted to take me to task and fortunately or unfortunately I happened to slip and fall down in the car park and I was being attended to in the first aid tent, when a big commotion was going on here.

My Committee has done its best, we have met all these times and we have been liasing with the Commission on all the issues through the Steering Committee. The procedures of the Conference are that, whatever is considered and recommended in my Committee, I first have to report to the Steering Committee and then sit with the Chairman and the Secretariat and then they are the final decision makers. Please honourable Delegates, understand I am not the purse holder, I am not the one who is having the big bag with loads of money in it, so that I can dish it out much as I would have liked to do it. So please, whatever we do, whatever we recommend has to be taken in the total context of the funds that are available to the Commission. Money which Parliament has voted. And therefore, to say that Rihal is the one who is sitting on money and he has connived with the Commission, he is not dishing out money, I think are very wrong conception of whoever is trying to spread such kind of misconceptions.

So, Please honourable Delegates, at the last formal meeting of my Committee before we went on the two week recess, we held the meeting on Friday the 22<sup>nd</sup> of August. And as you know, when we came back here on Monday the 25<sup>th</sup>, there were different events, and we had to suspend the Conference for two weeks. But at the next opportunity which arose when we came back last week, I reported the deliberation and the recommendations of my Committee to the Steering Committee. And I like to assure all the Delegates, that every issue that had been raised was deliberated upon, considered by my Committee and we made specific recommendation to the Steering Committee. We took cognisance of the fact that number one item was concerning the arrangements at the hotels, it was indicated to us although I believe, some of the Delegates are divided on this issue. Some would prefer half board, others would prefer bed and breakfast. But we took the view let all the Delegates be considered on the basis of Bed and breakfast arrangement at each hotel. And that we top up their allowance by a reasonable amount to take care of the dinner, and then the lunch and dinners for the weekends. So, this recommendation is with the Commission through the Steering Committee.

Then this matter arose as a result of a Motion that was put up by one of the Delegates, I think Hon. David Rakamba, and we made the recommendation considering that Motion. There was another Motion No. 2 item that something be done about the Observers. Although this matter had been considered even in the previous phase one, and strictly Observers are here at their own invitation but accredited as far as I can understand by the Conference, or by the Commission, and they are attending this Conference as Observers. We did recommend that they be paid a token allowance subject to finances being available to the Commission, and we also recommended that they be given some medical facilities at the first aid tent if anything happens to any of the Observers. So, Honourable Delegates as far as the work of the Welfare Committee is concerned, myself and my Committee have done everything that is humanly possible within ambit 48 C of the regulations. Now if any Delegate is unhappy that we have not attended to these matters adequately and that we are acting as a stumbling block or that Rihal is opposed to increase in the allowances, I think that is a misconception, this is not right.

So, as the Chairman has said, we have to act responsibly., We have to act in the interest and we have to be patriotic to the country. That this is a service that we are doing to our country, and therefore, money should not be the first criteria of being the basis of our being Delegates here to

the Conference (*Clapping*) *Money* should not be the first criteria, so this is all I have to say at this stage. I have urged the Commission particularly the Secretariat, to be open and frank and transparent, and explain the Delegates the exact position on what money has been allocated by the government and through the Parliament. Because I do not have that information, (*clapping*) and I am not privy to that information, and neither do I have the power because I am just an ordinary Delegate like all of you. It is only that I have been entrusted with this duty, but I do not have the power to ask the Secretary to reveal this figures to me. Then there are also demands, that there should be an independent audit of the accounts of the Conference. (*Clapping*) That again, because the Accounting Officer, is there he is responsible, he is the one who may have to be summoned by the Parliamentary Accounts Committee one day, if anything arises out of the accounts. But I am not the one who has the power to ask him to produce the accounts of the Conference, that is not my duty under Article 48, and I do not have the power. So please, Honourable Delegates, do bear these points in mind when you want to make any comments. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. Could I now ask Co. Abida Ali to make a statement

**Com. Abida Ali-Aroni:** Thank you Chairman, honourable Delegates, I will talk to you about two issues. The audit of the Commission accounts, and the issue of allowances very briefly, and accommodation, as the Commission will be engaging at length with the Privilege Committee to sort out other issues that are pending. Now Chairman, the position as far as the Audit is concerned, is that the Commission is utilizing public finances, and as such we are supposed to be audited by the Auditor General, and indeed as we speak now the Auditor General has his men auditing our accounts. And we have been audited from the date we were commissioned, and it has been a continuous process.

What we want to assure you is that our accounts are open to you as Delegates, and to any member of the public who wishes to scrutinize them and we invite you to visit our Secretariat offices, at Kencom house to look at them and verify any queries, or put any questions so that we can be able to answer your questions. We would like to be as transparent and accountable in as much as we can. So, what we want to assure you is that at no time has the Commission refused to make our accounts public. You will be able to look at our budget, and all the budgetary

allocations item by item. So that you will know the amounts that has been set aside to finance the National Conference.

There have also been allegations of corruption, by the Commission and the Secretariat, again as we did mention to the Privilege Committee, we would be very glad to get information, so that we can carry out investigations and be able to rest that matter. So far, nothing has been brought to the attention of the Commission or the Secretariat, but if there is anything out in the public domain please, feel free to bring to the attention of the Chairman of the Privilege Committee, the Secretary, or the Chairman of the Commission. On the issue of allowances, I think from the Commission level we feel that, we need to be very very clear on this issue and rest it once and for all. There are times that it is difficult to swallow the truth, but we feel that the truth must be told, now more than ever before on the issue of allowances. The Commission has a strict budget. And like I mentioned before we have an allocation for the National Conference. When we started off with the Conference, the amount that had been set aside, for the Delegates who were residents was 2000 shillings and 3000 shillings for the non resident Delegates. There was a request from you honourable Delegates, and the Commission gave in and stretched the budget the furthest that we could. As things stand now we are engaging the Privileges Committee, but it is very difficult for us to be able to stretch any further. We are also finding it very difficult, to turn back to the government, to request for further funding. And for obvious reason, we have a strained economy to begin with, Number two the public mood as you have heard in the media is against any enhancement of allowances. Thirdly, and most important to us is that we are here to give service to our country and what we are receiving really is not compensation but a token.

The Commission truly cannot be able to compensate you. We know that you all earn a lot of money outside the Conference. Truly speaking, we cannot compensate you, neither can the country compensate you in terms of monetary compensation. So, we are requesting that as we engage the Privileges Committee, that our sense of commitment and patriotism prevails, and let us not make money the determining factor. Let us all work together to see whether truly the Commission is able to stretch to the extent that some of you are requesting. Thank you Chairman. *(Clapping)*

**Pro. Yash Pal Ghai:** Thank you very much indeed. I have couple of other items I want to bring to your attention. Before we do that, let me just conclude by saying that the Commission is doing all that it can to respond to your needs, the negotiations are still on and we will come back to you soon. I also want to plead with members of the media who are here to give a fair coverage of the work of this Commission. I have had to make this request many times to the media, I believe very strongly myself in the freedom of the media and I want the media to be able to cover all our proceedings and activities. But the media also has responsibilities, indeed the international Covenant of Civil and Critical Rights, which protects the freedom of expression and the media, says explicitly that with this right also comes responsibilities.

And I want to remind the media, the journalists covering this, and the editors, to exercise their functions with responsibility, not to sensationalize matters that are purely designed to discredit the Commission, but also to indicate the very hard work that the Delegates are doing, the great progress that we are making, and the commitment that we collectively have to produce a good Constitution. A great deal of damage can be done by this sensational and often irresponsible journalism and I believe the media have responsibilities as of other citizens of the welfare of the country.

I also want to plead with the Delegates to desist from impromptu Press conferences. I do not believe that it is my function to censor anyone in this Conference, but also the Delegates have responsibilities as well. And this habit of calling the press, making the most serious allegations against other Delegates must be discouraged. We have mechanisms within the Conference to deal with these issues. And if you have complains, please let me know, let the Secretary know and we will institute the procedure to deal with them. But do not take all these things to the media because you are just discrediting everything. And indeed many Delegates have come to me and have said that things are done deliberately to discredit this Conference and this process. We all have an obligation (*clapping*)

**Prof. Yash Pal Ghai:** Yes, I think we are back now sound, so I won't say very much. So, I plead to all groups and individuals, to act with decorum and in accordance with their obligations. There are a couple of other items before we adjourn to our working committees. The first is that we have the Steering Committee received this morning, a request from the Convenor of the

Committee on Transitional and Consequential Provisions. The request is that since they cannot adequately do their task until all the substantive Chapters of the Constitution have been debated and agreed upon. That they would like to adjourn their own work as a Transitional Committee, but sit in other Committees and contribute to their work. And when the work of other Committee is concluded, they would meet and make recommendations on the implementation of the Constitution.

The Steering Committee approved this request and so the members of this Committee will sit in other Committees. We hope that they will disperse themselves equitably in the remaining Committees, so the members of this Committee will be aware of the substantive recommendations, the reasons for them, the priority for implementation of these substantive Chapters, and then I hope they will speedily conclude their work when the other Committees have finished theirs.

I received two Motions on Monday, which I took to the Steering yesterday, and it was agreed by the Steering Committee that the proposers of those Motions be given an opportunity to present these Motions briefly today. Both motions deal with the question of the time that the Conference has for its work in respect, or in the context of the period of mourning that we adjourned for, and I do not want a great deal of discussion on this, but I had promised that the movers that they will have a few minutes today to just very briefly mention their proposals.

The first motion was to be introduced by Delegate 459 Oduor Ong'wen, but he is away at the moment and he requested if Rose Lukalo Delegate 471 could be given a few minutes to introduce the motion. If Delegate 471 is here, I will give her the floor now.

**Hon. Delegate Rose Lukalo:** Thank you Mr. Chairman. As you have stated I am presenting this motion on behalf of Oduor Ong'wen. In bringing forth this proposal we are at all times present to the hopes and the expectations of millions of Kenyans, as they wait for a new Constitution to guarantee them the just society for which they yearn. We recall hundreds of Kenyans who have lost their lives, their health, their jobs, their wealth as they struggled for this new Constitution. Many who fought for the opportunity to review the Constitution are not here

to negotiate it to conclusion. Those of us here as Delegates have been given that singular privilege.

We recall the diligent members of the forces, the Citizens Coalition for Constitutional Change and many others, who for the past ten years many of them left the offices at 5.00 p.m. in the evening, and proceeded to the meeting that lasted well into the night. Where they would work and strategies as to how to achieve this second liberation. In hundreds of pockets around the country, single minded patriots have worked without pay so that we would be here today and we honour them. They are asking nothing from us but a new Constitution.

We have lost a lot of valuable time due to both internal and external factors. And it is in this regard we are calling on all Delegates to support the Motion to extend sitting hours of this Conference. Some people have called for the extension of the process to make up an additional two weeks, we cannot say whether we would be given this, we will be given the additional time. We cannot say whether it will happen this year, we cannot say whether it will happen next year. What we do have control over, is the time that we will spend here. In this regard I beg to move on behalf of Oduor Ong'wen, Delegate 459 as follows:-

Considering that this Conference adjourned on August 25<sup>th</sup> in defiance to and honour of our departed Vice-President Michael Wamalwa, who is also Delegate number 2 at this Conference. Further considering that it is the desire of Kenya to have as soon as is practicable a new and comprehensive Constitution reflecting their views, hopes and desire for a new political, economic and social order. Noting that the National Assembly resumes its sitting at the beginning of the month of October, conscious of the trust people of Kenya have shown in our capacity, will and commitment to delivering a new Constitution. Committed to completing the process of review within the time stipulated in the Constitutional Review Kenya Act. This Conference resolves that the National Constitutional Conference revises its hours of sitting to begin at 8.30 and adjourn at 8.00 p.m. daily, with the exceptions of Saturdays and Sundays, in order to recover part of the time lost between August 25<sup>th</sup> and September the 8<sup>th</sup>. *(Clapping)*  
Dated in Nairobi today.

Thank you Mr. Chairman and I call on Delegate Wahu Kaara to second this motion.

*(Noise from the Honourable Delegates)*

**Prof. Yash Pal Ghai:** Order please order. Please proceed.

**Hon. Delegate Wahu Kaara:** My name is Wahu Kaara, Delegate 521. I stand here to second the motion, very strongly indeed, and like it has been well stated. The issue here is the consideration of the great historical struggle that the Kenyans have undertaken to bring us here to where we are today. It is in view of that, that this historical challenge is going to continue to be on our burden on how we are able to midwife this process. The question here is how we are going to use our time that we have, so that we can be able to deliver this process to its logical conclusion. I am therefore saying that we know very well that this Conference is the lifeline of this nation. At the moment it is the heartbeat of this nation. And as honourable Delegates we have no other option other than to be creative to be able to know, and to use the time that we have irrespective of the fears that we have, irrespective of what perhaps we imagine. Those times can be like I have already observed from the floor, but we are responsible Delegates like it have been well been said and we can be able to sit, and we can be able to guard the process because we are here because of what the society has realized we are. Fundamentally our conscious is with us, and we can work at night during the day, in the morning, but what is very important is to guarantee that this lifeline does not abort. So I strongly support that motion and when it is so said and done, we have to create time whether we like it or not. This is a proposal to provoke the Delegates to make sure that we have time to make sure that we put the motion on the floor. Thank you.

**Prof. Yash Pal Ghai:** Could I please make a plea with the Delegates to keep silent when there is a speaker on the floor. We do not do ourselves any credit by shouting at other. If you disagree you will have the opportunity to express your point of view. Indeed I now invite comments on this motion and I have a request from Delegate number 31.

**Hon. Delegate Mohamed Yussuf Haji:** Mr. Chairman, Honourable Delegates. Mr. Chairman I would like to thank you for giving me this opportunity. I will say very few words. I think the



incident of yesterday was put out of proportion. I think there was no time when Delegates met to say that we are going to agitate for more money.

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**Prof. Yash Pal Ghai:** Haji, we are now on the question of this motion about the time of the...

**Hon. Delegate Mohamed Yussuf Haji:** Okay

**Prof. Yash Pal Ghai:** No, I am sorry that debate is finished. Thank you. Are there any comments on this proposal? 277

**Hon. Delegate Godfrey M'thigaa Mbuba:** Thank you Mr. Chairman. My names are Godfrey M'thigaa Mbuba, a Delegate from Meru South. Mr. Chairman, I have followed carefully, the motion on time, but I wish to bring it to this August house that insecurity is the highest here. We all do not hail around Nairobi and anything can be organized to attack us during the night when travelling, or even when entering into the hotels where we accommodate. I think it has been made very clear in this country that the government cannot afford a policeman for every Delegate here. We our people, and we are supposed to work like other Kenyans, we know there is no country that has more than twenty fours of working. Whether we are here or not, some of us must die, that is natural, others must be born, we have already been having some people being sworn and it will continue. Therefore we can not fight against the nature for the sake of a few of us (*clapping*) who want to rush this Conference for their own self ends We therefore stick to time, that was stipulated by the Commission from 8.30 to 6.00 and go. Otherwise we have committed no crime to warrant such punishment. (*Clapping*) Thank you very much Mr. Chairman.

**Prof. Yash Pal Ghai:** I will take one or two more contributions and then I will try to get a sense of the Delegates. Delegate 316. (*Murmuring*) Order please order.

**Hon. Delegate Gitu wa Kahengeri:** *Honourable Delegates. Jina langu ni Gitu wa Kiahengeri, Delegate number 316. Nimesimama hapa kushukuru Chairman kwa hotuba aliyotoa leo asubuhi. Vile vile nimesimama kuunga hoja hiyo mkono. (Clapping) Nina sababu ya kufanya hivyo. Sisi Delegates tulioko hapa tusijione tu kama sisi ni watu wadogo wa nchi ya Kenya. Sisi*

*tulichaguliwa na wananchi wa Kenya wakitumaini ya kwamba sisi tumekomaa kuwaletea Katiba mpya. Sasa tumeambiwa hapa leo asubuhi ya kwamba labda tutakwenda likizo wakati usio mrefu. Na sisi mpaka leo sasa hivi, hatujafika kiwango chochote cha kumuonyesha mwananchi aliyetutuma hapa, ya kwamba tumefanya kazi. Watu wanapopenda kufanyia kazi yao kazi kama hii, ndugu zanguni, hujinyima. (Clapping) Kama unafikiria wakati umekuja kutengeneza Katiba, unaweza kukaa namna unavyokaa kwako nyumbani, basi hii haiambatani na hali ya wazalendo. (clapping) Mimi kama ningeleta motion hapa, labda wale wanaopinga wangestaajabu kwa sababu ningesema twende mpaka midnight. (Clapping) lakini kwa sababu imesemwa twende ---*

**Prof. Yash Pal Ghai:** Order, order please.

**Hon. Delegate Gitu wa Kahengeri:** *Lakini kwa sababu imesemwa twende mpaka saa mbili, mimi ninakumbaliana na wale walioleta namna hiyo. Lakini ninawaomba Delegates, wacheni tuchukue nafasi hii kwa wananchi wa Kenya. Ya kwamba sisi tuliokoa hawa, katika taabu ya miaka nyingi. Tumeshughulika na habari ya Katiba kama hii, kama mimi nimeshughulika zaidi ya miaka arubaini kupata Katiba nzuri ya nchi ya Kenya. Kwa hivyo tafadhali tuungane na Motion hiyo, tumalize Katiba ya wananchi. (Clapping)*

**Prof. Yash Pal Ghai:** Thank you very much. 505.

**Hon. Delegate Fatma Ali Saman:** Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Order please.

**Hon. Delegate Fatma Ali Saman:** I wanted to comment on this motion. I strongly support the motion (*clapping*) I truly feel that we have adequate time if we put the time God has given us into proper use. I agree with honourable Oduor Ong'wen that the reform process in this country has a long history and those people who had done this process right from the beginning, who protects them, who went to the streets, they were not paid by anybody and they were ready to sacrifice their time. I want to add that I am not only ready to sacrifice my time but I am ready to fast to liberate this country. Thank you. (*clapping*)

**Prof. Yash Pal Ghai:** 271 please.

**Hon. Delegate Amos Kiumo:** My name is Amos Kiumo, Delegate number 271 from Nyambene, District Delegate. I stand here to sympathise with that motion (*laughter*) and to say this. In class my teacher told me that many hours in the classroom does not guarantee the best results. (*laughter*) 8.30 in the morning to 6.30 in the evening are so many hours for adults to work in a day. A lot of people that you see here are Delegates are not very young men, we are not very youthful for our bodies and mind to sustain that work load throughout the day. But what is required of us here is to intensify our work during the day. So that our Convenors, our Rapporteurs will give us adequate and facilitate the groups in a way that by evening, by the time we break off we shall have covered quite a lot of work during those hours. Otherwise during the time we go home, we go to our residential rooms, we read a lot of assignments that we can do individually in our rooms. Given that, I think we are able logically to cover the territory we are required to cover within the time we have. Otherwise, if our time that we are given here is not adequate then I should plead with the authorities, with the Commission to extend our stay here to a time that we shall logically conclude our work here to the satisfaction of the all country. Thank you very much.

**Prof. Yash Pal Ghai:** Thank you very much. I would now like to take some sense of the house, so that those who support the motion that we meet at 8.30 and go on till 8.00 will you say “ayes”

**Hon. Delegates:** Aye

**Prof. Yash Pal Ghai:** Those who say “nay”

**Hon. Delegate:** Nay...

**Prof. Yash Pal Ghai:** Thank you very much. Delegates could I now go to the last item on the business in plenary, which is motion by Delegate 594 Mrs. Manduli. Please be very brief because we need to proceed to Committees soon. Please, please order. Please commence Mrs. Manduli.

**Hon. Delegate Orië Rogo Manduli:** Thank you very much Chair for giving me the floor.

**Prof. Yash Pal Ghai:** Please let Mrs. Manduli introduce the motion. Yes, 599.

**Hon. Delegate Leslie Mwachiro:** Thank you Chair. My point of order is very small. We have taken a vote, you did not announce the results. Did the “nay” have it or did the “ayes” have it.

**Prof. Yash Pal Ghai:** Noes have it, that I thought it was so evident indeed.

**Hon. Delegate Leslie Mwachiro** You did not announce the results Chair. Thank you.

**Prof. Yash Pal Ghai:** Order please. Let us conduct our business quickly so we can proceed to committee work. Yes please.

**Hon. Delegate Orië Rogo Manduli:** Thank you very much Chairman. Thank you very much honourable Delegates, for giving me this opportunity, first of all to thank you all very much for the wonderful way in which you send, and you help send our beloved Vice-President, who is now resting in peace. I am saying that because in the African tradition when one of us falls, we take time to mourn him. So what we did was an exercise which is very traditional and cultural, to all the people of Kenya. Now, because of the honour we paid and the homage we took time to pay, two weeks were spent in this exercise, right in the middle of our programme at Bomas two. It is because of that, that I am humbly requesting in my motion that considering that the Conference adjourned on August 25<sup>th</sup> for two weeks, in honour of our late beloved Vice-President, Delegate number 2, and conscious that, the people of Kenya are very anxious, and they are actually thirsting for a new Constitution at the very earliest possible time we can deliver it to them. Noting that the adjournment adversely affected the programme of Bomas two, this Conference resolves that the sitting of the Conference be extended by a further two weeks, within the remaining period to enable us to mould a proper completion of the review exercise.

This Conference further resolves to request the National Assembly, through the honourable Speaker, to vary and compress the coming Parliamentary calendar, to find time in November and accordingly allow us here, the two weeks. It is a make up request. I am simply asking that the

two weeks that we spend in mourning our brother, be made up for us, and everybody here has had to make sacrifices during these two weeks. We are therefore requesting the National Assembly through their Speaker, and the honourable Speaker was with us when we also took time to adjourn. We are requesting that he finds those Members of Parliament that are also members of this Constitution and are here with us, are aware that we are two weeks behind, but we know that they have to reconvene beginning of October because of the serious business that they have to discuss, the budget. It is important that even as they do this important assignment which is for us all, they find a way of compressing time, and giving us two weeks, so that this important exercise on the completion of this Constitution can be implemented. I am asking this with all the due respect, and knowing very well that in Parliament they have a calendar, they also have Constitutional limitations, but they are the same people who are with us. A third of this Conference is made up of our Members of Parliament whom we cannot deliberate without, and whom we have no intentions of delivering without. So we are only asking that they compress a bit their programme, to rush a bit and be back with us here and give us two weeks, to complete this exercise. Thank you very much Chairman, for giving the opportunity. Honourable Delegates thank you very much for listening and those of us, Members of Parliament who are here who are also our fellow Delegates, I hope that you are going to help the Speaker in this exercise and make it possible for him to implement our request. Thank you very much indeed.

**Hon. Delegate Anthony Kimetto:** I honourable Anthony Kipkosgei Kimetto, MP Sotik, Delegate number 602 support the motion (*Clapping*) and in supporting the motion, I would like all honourable Delegates here, to just give postponement of this day by two weeks, to enable the running and the making of this Constitution to the best of its ability. This people who are here, must not be given that small time which has been given, which was taken by honouring the late Vice-President, should only be postponed because we don't want people to get compressed in working from 8.00 a.m to 8.00 p.m. This will have finished the calories of thinking, the calories of sitting, the calories of reasonableness. (*Laughter and noise*) We want to bring about dependable, reasonable, Constitution come future. With the few remarks ladies and gentlemen, I beg to support and everybody, I wish you a very good support. Thank you very much.

**Prof. Yash Pal Ghai:** Thank you very much. 006.

**Hon. Delegate Abdullahi Ali:** Thank you Bwana Chairman. I am Delegate 006, Abdullahi Ali, Wajir North. I stand here to oppose the motion strongly. Because as a Member of Parliament we know what we do in that place, there is a lot of work to be done, the public are already complaining that the Members of Parliament are not doing the job they are supposed to do, because we have just managed to pass three Bills in the all of this year. If we come back again here extend our time to continue with the Constitution Review process, which is already in problems, because of Delegates demanding to get more money (*uproar from honourable Delegates*) the way you will get that much money (*objections from honourable Delegates*) excuse me

**Prof. Yash Pal Ghai:** Delegates please. Please you have to listen to the speaker, you will have an opportunity to express your views later. (*noisy uproar*).

**Hon. Delegate Abdullahi Ali:** Excuse me, I am entitled to my opinion (*noisy uproar*) please, please allow me to talk. It is my right to stand here and say what I want to say. Give me an opportunity, this is dictatorship, this is very serious. Okay, thank you.

**Prof. Yash Pal Ghai:** Could I please make a plea yet again. (*Noisy uproar*) This shouting is not part of our rules, we have to listen to the speaker in silence and then you will have an opportunity to express your disagreement.

**Hon. Delegate Abdullahi Ali:** Okay, thank you. Give me my time please. (*Noise*) Okay, I apologise. Thank you very much.

**Prof. Yash Pal Ghai:** 608

**Hon. Delegate Martin Shikuku:** Thank you Mr. Chairman. I think the last honourable speaker has violated the rules of this house. We are not supposed to cast aspersions, on other honourable member. And I would like Mr. Chairman, to remind the house that when you are talking, there is what is called a point of order. Now, if you are out of order you should be interrupted. The honourable member said, this people want to sit here in order to earn more allowances. That is aspersion and I would you ask the honorable member, to withdraw that remark and apologize to

this Conference. Mr. Chairman, I would like him to withdraw because I want to tell him one thing. Some of us who are here have struggled for a long time. I don't know where that honourable member was born, when we were struggling and he cannot come and cast aspersion on old men like us that we here for money. What did he do in his life for this country? Nothing *(noise from the floor)* I don't find him in my vocabulary of politics. Mr. Chairman, I would like the honourable member to withdraw that remark and apologise to this house.

**Prof. Yash Pal Ghai:** Delegate 006 I will give you an opportunity to withdraw, this is against our rules and procedures.

**Hon. Delegate Abdullahi Ali:** I do not like the arrogance of the honourable member, whether you have done something for this country or not, it does not matter, what you did, you have done at your time, you are an old man *(shouting from the floor)* I have said and I still insist that the Members of Parliament have a job to do, they are going to pass the budget, which will assist in this decision making .....*(noise from the floor)*

**Prof. Yash Pal Ghai:** Okay, will you sit down please?

**Hon. Delegate Abdullahi Ali:** So there is nothing to apologise for and I don't like the arrogance of the honourable Members *(noisy uproar)*

**Prof. Yash Pal Ghai:** Could you please sit down? 286

**Hon. Delegate Isa Ireri Ngunia:** Thank you very much Bwana Chairman. I would like first of all to support that motion. Two, the extension of the two weeks is going to eat into the Parliamentary calendar. Knowing very well that they have also an important duty to do, I would humbly request that other institution to also sacrifice, and may be, be coming here in the morning, so that we can continue with the Constitution making and in the afternoon, which you all know that is the time they meet, they can continue with that other important bit of national building. Thank you very much Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. Okay, what is the point of order?

**Hon. Delegate Francis Kagwima:** Mr. Chairman, my point of order is that this country is not in crisis in terms of Constitution. And if we are not careful, this Conference will cause crisis. One, the standing orders of Parliament cannot be amended by this Conference. The standing orders indicate that by end of October the budget must be discussed and finalized, otherwise the Government will not function.

**Prof. Yash Pal Ghai:** I think the motion is to have the extra weeks in November, not in October.

**Hon. Delegate Francis Kagwima:** Mr. Chairman, I am proposing that this motion goes back to the Steering Committee, where the Speaker of the National Assembly is a member, so that you get proper guidance, as to how Parliament is supposed to happen (*clapping*) Otherwise we will be –

**Prof. Yash Pal Ghai:** Thank you very much.

**Hon. Delegate Francis Kagwina:** Let us not do what we cannot do.

**Prof. Yash Pal Ghai:** Thank you very much. What is your point of order?

**Hon. Delegate Norman G. K. Nyaga:** Mr. Chairman, my name is Norman M. P. K. Nyaga, Delegate 150. I do notice certain things going wrong, in the first place, this Motion is not properly before the floor, neither was the first Motion properly before the floor. In the sense that once a Mover moves a Motion and seconded, the Chair has the jurisdiction and the power to propose that question, so then it lies properly before the floor. So, at the moment we have no Motion, but be it as it may, let me advise the following: It was wrong on the part of the Secretariat, not to have advised the Mover of this Motion, in the first place, that it would be a superfluous Motion because Bomas of Kenya does not have jurisdiction on the Calendar of Parliament. Now what ought to have happened before this Motion was brought here, and I am surprised that our representation at the Steering Committee may not have brought this one forward. Let us not tire the Delegates of Bomas of Kenya by making the Motion go through, and



at the end it has no power at all. Because it is the CKRC that should come and sit with the Select Committee of Parliament, that is dealing with the Constitutional matters, to discuss matters pertaining to the Calendar of Parliament. And it is only at that point, can that Committee, then come to another Committee called the House Business Committee, that will then move a Motion on the floor of the House, for the House to make a decision. Therefore I would urge the Chair to dismiss this Motion and not continue with it. Thank you

**Prof. Yash Pal Ghai:** Could I make a short statement? I do not think the Conference is presuming to tell Parliament what it should do, but this body is an extremely important body, it has the responsibility to provide for the next Constitution of this country. This Conference is in charge of its own process, just as much as Parliament is in charge of its own process. The rules of procedure provide very clearly, that when this Conference meets it is up to this Conference. The rules of Procedure gave only this Body the authority to adjourn its meetings. Clearly we want to avoid a conflict between this August Body and Parliament. We have to be conscious of the needs of both these Bodies, the needs of one Body cannot always dominate the needs of the other Body. (*Clapping*) We had already agreed that there would be a meeting this week or early next week between the Commission, the Select Committee of Parliament, and some representatives of the Steering Committee, and that Body will look into the question of the timing. The Motion as I read it provides for meeting of this Conference in November on the assumption that the work on the budget, will have been concluded by then. It is clearly desirable that the Commission, the representatives of the Steering Committee, and the Select Committee meet, so we can look at the needs of Parliament and the needs of this Conference.

This meeting is scheduled to take place quite soon, and it will make a recommendation to, I hope both Parliament and to this Conference on the timing. The purpose of this Motion is really to get a sense of this House as to the desirability of meetings in November. And then once this sense of this House is clear then that will be conveyed to this joint meeting to be held later. (*Noise*) Could I get a sense of the House. Those who support the Motion say “ayes”

**Hon. Delegates:** Ayes

**Prof. Yash Pal Ghai:** Those who oppose it say Nay

