

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report of

MEETING BETWEEN CKRC COMMISSIONERS AND MEMBERS OF

THE PARLIAMENTARY SELECT COMMITTEE (PSC) HELD IN COUNTY HALL, NAIROBI

ON

17.06.04

**PROCEEDINGS OF MEETING BETWEEN CKRC COMMISSIONERS AND THE PARLIAMENTARY
SELECT COMMITTEE (PSC) HELD IN THE COUNTY HALL, NAIROBI ON 17TH JUNE 2005**

Commissioners Present:

1. Mrs. Abida Ali-Aroni	-	Chairperson
2. Prof. Okoth Ogendo	-	Vice Chair
3. Prof. Wanjiku Kabira	-	“
4. Ms. Nancy Baraza	-	Commissioner
5. Dr. Charles Maranga	-	“
6. Ms. Salome Wairimu Muigai	-	“
7. Mr. Domiziano Ratanya	-	“
8. Mr. Riunga Raiji	-	“
9. Prof. Githu Muigai	-	“
10. Mr. Ibrahim Lethome Asman	-	“
11. Mr. Ahmed I. Hassan	-	“
12. Dr. Mosonik arap Korir	-	“
13. Mr. Keriako Tobiko	-	“
14. Hon. Phoebe Asiyu	-	“
15. Mrs. Alice Yano	-	“
16. Mr. Mutakha Kangu	-	“
17. Dr. Andronico Adede	-	“
18. Ms. Kavetsa Adagala	-	“
19. Ms. Salome Muigai	-	“
20. Dr. PLO Lumumba	-	Commission Secretary

Secretariat Staff in Attendance

1. Ms. Pauline Nyamweya	-	DS, RD&TS
2. Mr. Irungu Ndirangu	-	Programme Officer – CEPIC
3. Stephen Mukaindo	-	PO/PA to Chairperson
4. Leah Symekher	-	Asst. Programme Officer, RD&TS
5. Hellen Kanyora	-	Asst. Programme Officer, Hansard

Parliamentary Select Committee Members Present.

1. Hon. Simeon Nyachae	-	Chairperson
2. Hon. Kiraitu Murungi	-	Member
3. Hon. Dr. Christopher Murungaru	-	“
4. Hon. Musikari Kombo	-	“
5. Hon. Raphael Tuju	-	“
6. Hon. Paul Muite	-	“
7. Hon. Njoki Ndungu	-	“
8. Hon. Moses Wetangula	-	“
9. Hon. Adelina Mwau	-	“
10. Hon. Norman Nyagah	-	“

11. Hon. Moses Cheboi - “
12. Hon. Kipkalya Kones - “
13. Werunga Murumba - Clerk

Meeting was called to order at 10.13 a.m. with Hon. Simeon Nyachae in the Chair.

Hon. Simeon Nyachae: Chairlady, CKRC Commissioners, my colleagues, Honourable Members of Parliament including Ministers, I think we must start. It looks as if a lot of people do carry watches but they do not look at them. But, the Commissioners, you have been more prompt than the Honourable Members who were supposed to be here at 9.30 a.m. Now, before we start, with the permission of the Chairlady from CKRC, can I request *Mheshimiwa* Lumumba to lead us in a prayer. I know he has all types of languages but on this one he can do it very well, can we stand up. (*Laughter*).

PLO Lumumba: (Prayers) Almighty God, we seek Your presence in this meeting, we come to this meeting at a time when the country has recognized the value of unanimity. We urge You to guide us in our deliberations, we urge you to lead us in our discussions, we urge you to be the leader of this Process, in Your Almighty Name we pray, Amen.

Hon. Simeon Nyachae: Thank you, *Wakili* Lumumba. Chairlady of CKRC, Commissioners, my colleagues, first let me say, thank you very much for your coming, you have responded to our invitation. The main purpose of inviting you today is specifically to formalize the presentation of your Draft Bill and the Report, the work you have done. I know you are not carrying the cartons with the Report here because they have already been delivered to the Clerk of the National Assembly and the Members of the Parliamentary Select Committee have received them but as a matter of record and fulfilling the formalities, it is important that the Commissioners confirm today that they have given us the Report and make any clarifications they want to make as they present their Report formally. That is the purpose of our meeting.

For my colleagues here, I would like to let you know that because we did not start in time, confirmation of our Minutes of the last meeting will come after the Commissioners have left so that we can proceed with the rest of our work and the programme for the future, but for now it is important that we receive this Report.

As we receive the Report, I would like to emphasize on behalf of the Parliamentary Select Committee that we have very little time left for us to go to the Referendum and for us on our side as representatives of the National Assembly, we have recognized the speed that is needed to get the job done and we would like all round the major players – and CKRC is a major player – to recognize the fact that many debates that have been taking place in the past must come to an end and let us now concentrate the Report you have prepared on the Bill you have presented and let us also look at what can be accommodated in what you have presented to us. I would like to let you know on behalf our Committee here that the stories you read in the Papers that some of us as Members of Parliament do not recognize the good work that you have done, those stories are not correct. We

recognize the good work you did and that is the main basis upon which PSC is going to work. Whatever adjustments are going to be made based on the consensus discussions that have taken place, the Commission was represented at Naivasha, any other discussions that have taken place elsewhere are not part of our work. I want this to be understood and also I want to make it quite clear that we are not in a position-- This work that we have been assigned to do within a specified time, that this is the time again to start accommodating new suggestions, new proposals coming from all sorts of quarters, no. The truth of the matter there is nowhere in the world a Constitution has been drafted by angles. Somebody may not agree with everything that you have done, that is human but you have done your best on behalf of our country and you have done most of the work which is based on what you assessed to be the opinion and the thinking of the people out there and therefore for us to start accommodating other thoughts that keep on coming, I am sorry we cannot keep on going by seasons, when it is drought, we have different views about the Constitution, when it is raining we have different views about the Constitution, it is just not going to work.

The last point I want to make, Chairperson, is this. Kenya is a secular State, we do not want anything that will divide us. Kenya is one country, it has several tribes and it has numerous Religious groups. In fact these days some of us are confused as to how many denominations and Religions we have in this country. I happen to have been allocated an office in a place called Nyayo House, from 12.30 p.m. to around 2.15 p.m., I am working in the office and I hear about ten groups preaching in different places, all those belong to various understanding of their Bible or Koran or whatever. Now, if we are going to accommodate everybody the way you perceive your Religion and the rest of it, I think we are going to run into problems.

Now, as I say this, I must also remind you that there has been a convention worldwide and a tradition among us, particularly we Africans that if you have given a child a banana and the child has got all of it, you do not take away that banana again when the appetite of the child is already there, you do not take that away and therefore, for anybody to imagine that what has been granted to the children of Kenya for the last several years you are going to take it away, I think that is not traditional also among the Africans. I think you are getting my message, if you do not get it, (*laughter*), you can imagine I am an old man so I am going with tradition so I am conveying a message which I think all of you would understand.

Therefore, I thank you for coming and now on behalf of my colleagues here, Chairlady, I will pass on to you because the purpose of the meeting today is really to meet you and receive your document and whatever presentation you wish to make. Thank you very much.

Com. Abida Ali-Aroni: Chairman of the Select Committee, Honourable Ministers, Honourable Members of the Select Committee, Commissioners, Mr. Chairman, you will allow me to begin by congratulating you for your recent appointment to chair this Committee and I also want to congratulate the old Members and the new Members of your Committee for their appointments.

On behalf of the Commission, I wish to appreciate the recognition that your Committee has on the role that we have played towards the Process and we thank you for that. Mr. Chairman, we have looked forward to this meeting with you for quite a while now and I will seek your permission and indulgence to allow me to say a few things that are dear to us as a Commission in this last phase of the Review Process.

Before I do that Mr. Chairman, we wish to thank you as leaders of this country for getting together and refocusing the Constitutional Review debate we attempted as a Commission but you know there are limits and sometimes we need you leaders to do that and we are glad that it is happening and we hope that your Committee will take advantage of the current political opportunity to bring this Process to a rapid and quick conclusion.

We are glad today, Mr. Chairman, to have this opportunity to formally present our Report and the Draft Bill and like you have said, we did present it but due to various reasons we were not able to do that in a formal atmosphere like today. Mr. Chairman, I would like to point out to you that as a Commission we feel greatly honoured and privileged in the role that we have played in this long journey of rediscovering ourselves as a country. Our experience with the people and the twist and turns of the Process have humbled our lives and inspired the actions that we have undertaken throughout the Process. We would like to pay tribute to you as our leaders and particularly to the Government and the people of Kenya for the support and cooperation and encouragement that we have received in the course of our work. The courage and determination of the people of this country was the source of our comfort and inspiration in the face of many challenges and uncertainties that we encountered.

We wish to thank the people of this country, you represent them so we hope you will pass over the message to them that we thank them sincerely and we wish to assure them that on our part as a Commission we have captured their aspirations both in the Draft Bill and the Report.

Mr. Chairman, the Report that we have presented to you carries quite a bit in it, it is a technical account of the whole Process and a summary of independent Reports that the Commission has prepared. The Report has five parts and I will quickly take you through the parts of our Report, Mr. Chairman.

The first part of our Report has the first and second Chapter that deal with the establishment of the Review Commission, the appointment of the Commissioners, the mandate and the method of work of the Commission.

Part Two, Mr. Chairman, consists of Chapters 3 to 6 that discuss the constitutional development in Kenya since the pre-independent days and describes the various phases of the clamour for constitutional change. Key points, Mr. Chairman are:

- the Independence Constitution and the impact of the amendments made to it,
- an assessment of the current Constitution and its weaknesses, a definition of the social-economic, cultural and political context of the Process; and
- synopsis of the people's expectations of the Process.

In Part Three, Mr. Chairman, we have Chapter 7 to 21 and this is an analysis of the views of Kenyans and the summary of key recommendations by the Commission. This part summarizes the concerns and the aspirations that the people wanted to see addressed in the new Constitution. This information is organized under 14 thematic areas which come as independent Chapters. Each Chapter is designed to explain what the Commission was required to do in respect of the matter under the mandate of the Commission; to give a conceptual discussion of the subject matter addressed in the Chapter; to describe how the current Constitution deals with the issues; to examine how other countries deal with the issue; to summarize and analyze the views and concerns of the people and to present key recommendation in respect to the matter under the Constitution. Chapter 21 considers the key recommendations of the Commission which formed the basis of the 2002 Draft by the Commission.

Part Four gives an account of the National Constitutional Conference in Chapter 22 to 29. Key points covered under this part include the Legal Framework of the Conference including the election of the Delegates, the stages of the Conference, Consensus Building initiatives of the Conference and their results, the Drafting process of the Bill and the challenges experienced at the Conference and the attempts to overcome challenges.

Part Five discusses the post-Conference developments and their impact on the whole process. We have 19 Appendices which give various information relevant to the Process and also data related to the Process.

The Report provides an important philosophical basis of the Draft Constitution and the Commission hopes that Members of Parliament will read it carefully in order to appreciate the Process and to equip themselves adequately for the Parliamentary debate on the Report and the Draft Bill.

Mr. Chairman, I will also take liberty to say a few things about the Draft Bill. There have been several arguments on the Draft Bill, some for the retention of the Draft as it is, others for improvement and/or amendment of the Draft Bill. Mr. Chairman, that is within your mandate to consider; however, the Commission wishes to share with you a few points that may inform your deliberations in the regard to the Draft Bill.

The provisions of this Draft were designed to the concerns and aspirations of the people of Kenya and as such, their views provide the philosophical basis behind the design and structure of the Draft Bill. The concerns of the people of Kenya as enumerated to us included the fact that the current Constitutional and governance structure is inefficient, authoritarian and remote and encourages the violation principles of constitutionalism, the abuse of human rights and the mismanagement of

national resources and opportunities.

The interpretation of this submission was clear to the Commission that as a bare minimum, Kenyans wanted to achieve at least six objectives. Mr. Chairman, please allow me to refer you to those six objectives:

1. the reconstitution of state on the basis of the sovereignty of the people, the supremacy of the Constitution and an entrenchment of the an elaborate value system to guide public action;
2. the entrenchment of the rights and obligations of the citizenry as individuals and as communities and Affirmative Action principles to protect minorities and marginalized groups in our society;
3. the decongestion of state power through the vertical and horizontal dispersal of executive authority, devolution of state powers to more participatory and responsive levels of government and an embedded system of elaborate checks and balances between all organs of government;
4. the exercise, control and supervision of state authority through an independent public service, the establishment of independent constitutional commissions and the entrenchment of a system of leadership and integrity;
5. the establishment of a more rational, efficient, accountable and transparent fiscal management system that emphasizes public ownership and management of national resources and opportunities and the equitable allocation of resources across all regions and priorities of the people; and lastly, Mr. Chairman
6. the establishment of a strong effective and elaborate system of representation and participation of citizens in decision making and in public life of this country.

In an attempt to capture the above, the Commission came up with the initial Draft in 2002, which Draft formed the basis of discussions at the National Constitutional Conference.

Honourable Members of the Select Committee, the Bill has been accused of being too detailed and too costly to implement. However, we wish to emphasize that the Draft Bill was not made to comply to any established standard size of Constitutions in the world. Rather it was made to respond to the experience, concerns and aspirations of Kenyans as perceived by us as a Commission. One of these concerns was that Parliament had failed in its role to check the Executive and to legislate for the benefit of the people. The second major concern was that the judicial system had failed to be the people's protector. It was subject to manipulation and was often used to settle scores. In this context, the people of Kenya wanted a detailed Constitution so that they remain protected even if the Executive, Parliament and the Judiciary were to abdicate their responsibilities.

These and many other criticisms on the Draft are made without the appreciation in our view of the philosophy behind the Draft. We are happy to note that the Parliamentary Select Committee has embraced this philosophy and has agreed to confine reopening of the Draft Bill only to the Contentious Issues as stipulated in the Amendment Act and as identified by this Committee.

Mr. Chairman, we would wish to emphasize, although we know that you also take great care of the fact that it is important to confine ourselves to the foundational principles as laid down in CAP 3A, Mr. Chairman, we have as a Commission considered how this Process ought to be safeguarded within the emerging concerns of the Law.

Mr. Chairman, CAP 3A as amended has drawn great criticisms from individuals as well as members of Organized Groups. Indeed, there are three cases pending in court since the last amendment.

Although the considered view of the Commission is that despite the criticisms, stakeholders should concentrate on finalizing the issues of content and exploiting the ample opportunities created by the Act rather than seek for loopholes, to enable us move the Process, we request for an opportunity to be created where your Committee and the Commission can brainstorm on the possible strategies for protecting the Process from any future challenge.

Mr. Chairman, last but not least, I did receive a letter dated the 15th of June this year requesting me to nominate four Commissioners to assist the Technical Committee and due to the short notice, Mr. Chairman, and the fact that Commissioners seated here are all experts in their different fields and in their different themes where emerging issues have come up, I decided to nominate the Chairs of the Standing Committees of the Commission and one Commissioner representing the Chair of his Committee who is currently out of the Country.

The names, Mr. Chairman are as follows:

- (i) Prof. Okoth-Ogendo;
- (ii) Prof. Wanjiku Kabira;
- (iii) Mr. Riunga Raiji; and
- (iv) Dr. Charles Maranga.

In addition, Mr. Chairman, I wish to point out that all of us as Commissioners are ready and willing to be called upon to contribute in that Technical Committee in our area of expertise.

Lastly, Mr. Chairman, I humbly request on behalf of the Commission that the Chair of the Commission be allowed to sit in that Committee as and when she is available to be able to have an institutional linkage between the Committee and the Commission.

Lastly Mr. Chairman, I wish to say the following, that the new Constitution represents the hope of all Kenyans for a prosperous and secure future and the decision that you will make in the next few weeks will inform the destiny of our country. Therefore the Commission in solidarity with Kenyans urge you to recognize the privilege in which you stand and the gravity of the issues

that you will be dealing with. We call upon you to seek to compliment each other in the task ahead of you, to shift from the “We versus us” and to embrace the “We versus the outstanding issues”. We encourage you to adopt a framework of mind and heart that seeks to put the national interest above all others and to remember that the alternative that arises from open and genuine consultation is the higher and better alternative for this country. May this exercise become a personal commitment for each of you so that when finally the work is done and the new Constitution is at hand, this Nation may be healed by the courage, the determination, the faithfulness and the sacrifice made by many Kenyans in the Process including yourselves.

With this remarks, Mr. Chairman, it is our great pleasure to officially hand over the Report and the Draft Bill to you and to Parliament. Thank you.

(Clapping).

Hon. Simeon Nyachae: Thank you very much. The statements although you said originally it was brief, but it is comprehensive enough for our use (*laughter*) and I would like to make a request that you kindly pass on a copy of that statement to us so that whatever we are doing here we take into account what you have stated, it would be very useful to us.

(Leah Symekher distributes copies of the Chairperson’s Speech to Members of PSC)

Hon. Simeon Nyachae: Oh, you have many copies? Start with-- You can start with *Mheshimiwa*-- Where is Wetangula? Keep a copy for him because he is the Chairman of the Technical Committee, thank you.

The other request we would like to make is if you would kindly send us additional copies, we need additional copies between 35 to 40 copies. The reason being that the Clerk of the National Assembly is getting a lot of pressure from other Members of Parliament who are not on the Select Committee, you gave us enough copies for the Select Committee but you see for the other Members of Parliament to make effect contribution, they will also like to have access to your Report and by making this request, it shows that there is appetite for your document (*laughter*) as opposed to whatever perception that has been created out there.

(Hon. Moses Cheboi walks into the Conference Hall).

Hon. Simeon Nyachae: *Karibu Mheshimiwa.* You have missed a very good message from the Chairlady but we will give you a copy of the Report. Let me say this, today we are receiving your Report and we have received it, we do not wish to debate on the Report. We also wish to confirm that we have accepted your nominees. Now our request is this and I am making this request on behalf of *Mheshimiwa* Wetangula who is the Chairman of the Technical Committee, that the first meeting of the Technical Committee where your Commissioners should be there will be on Monday at 3.00 p.m. in this

building--

(Inaudible Comments from the floor)

Hon. Simeon Nyachae: Committee Room in the main building? Make it possible for them to enter freely so that they are not asked any questions by policemen. Room 7, main building, 3.00 O'clock for your Commissioners.

Now, for your information as Commissioners because you are the key people in this, we want to indicate to you how we are going to proceed. The Technical Committee starts work on Monday then we are planning that before end of this month, we will have placed a Motion before Parliament on Contentious Issues that have been debated so that they can pass a Motion on that, that is in the month of June. We are planning that within the month of June before it ends, the Parliamentary Select Committee will have met other Stakeholders because we do not want people to claim that they have been ignored after we have received your Report but this does not include receiving new things. I think I must emphasize that point, we want to meet them to brief them on the way forward but not receiving new reports because we are not Commissioners, that job has already been done. So we are planning to meet the following;

- (i) Representatives of the Episcopal Conference;
- (ii) The Ufungamano Initiative;
- (iii) The Law Society of Kenya;
- (iv) The Judiciary;
- (v) SUPKEM;
- (vi) The Kenya National Union of Teachers;
- (vii) COTU;
- (viii) The Association of the Disabled;
- (ix) Women Representatives; and
- (x) The Association of Media Owners.

Those are the groups we are going to meet. After meeting these groups, we are also expecting that the Technical Committee would have finished their work, would have looked at the Bill you have given us and within the month of July, we would have tabled all these before Parliament so that when Parliament goes into the long recess in August, the job will have been done by Parliament and be left to your side, Madam Chairlady, for you to do your education. You can even plan your programme of educating *wananchi* out there what you have done, maybe you have to wait and see what your representatives inform you of what has come out of the Technical Committee so that you can include it in your education programme.

My appeal to you is when we go out to educate *wananchi* and I am appealing to you as Commissioners, I will appeal to all my

colleagues in Parliament, let us not go back there engaging in academic exercises with *wananchi*. Let us tell them what you people have done and what is contained in that document, let us not have other confusing statements because *wananchi* out there have given us the privilege of leading them, if we go there again divided in the name of educating *wananchi*, then of course we will not have done the job in the name of leaders and therefore I must ask you, just as I am going to ask my colleagues in Parliament, let us have our own political differences in Parliament, let us have our parties but let us look at Kenyans as one united people of one country and let us give them a message for their document. This document is not going to belong to Politicians, it is not going to belong to a tribe, it is not going to belong to Parties, it is going to belong to the Kenyans and at that time it is also not going to belong to you as Commissioners, it is going to belong to *wananchi* so why do we not look at it as a document, when you start education, let us look at it as a document belonging to *wananchi* as opposed to belonging to us any more.

I think this is what I would have wished to say and if my colleagues would agree, we should now be in a position-- I do not want to be seen as a Dictator although I have been accused in the past that I am a kind of Dictator (*laugher*), but I like pushing things to happen quickly and if you think I am a Dictator you better blame somebody else who is not alive, that is my father. With your permission, Chairlady, can we call the Press, brief them of what we have done this morning then we will have a cup of tea thereafter, then you can leave us. That is how I see it. Right? Agreed. *Mimi nawasukuma tu! (Laughter)*. Can somebody call them.

(Members of the Press are invited in for a Press Briefing).

PRESS BRIEFING

Hon. Simeon Nyachae: Chairlady of CKRC, Commissioners of CKRC, Honourable Members of Parliament including Ministers who are Members of PSC, Members of the Press, let me thank you, members of the Press, for coming to join us this morning. The main purpose for today's meeting was to receive the leadership, that is the Chairperson and Commissioners of CKRC with one important discussion or subject that is to present to us formally the Report of their work and the Draft Constitution. This is the Draft Constitution CKRC has presented to us, this is the Report which we would go through in conjunction with their Draft. We are grateful for the good work the Commissioners have done for us having gone through quite a struggle, going throughout the country to consult *wananchi* and then they have done a comprehensive job at Bomas and then down to drafting this Report. We are on the home stretch now because having received this Report, we as the PSC will rely very heavily and I repeat, we rely very heavily on their Report and the Draft that they have given us. We have also established as PSC, a Technical Committee which will be chaired by the Honourable Wetangula to go through these documents and also-- (*Hon. Nyachae sneezes*) excuse me. You Press men you will now take my sneezing, is it? (*Laughter*). Because you always like covering MPs when they are either sleeping or-- (*Laughter*).

Anyway, in addition to these documents, the Technical Committee will also take into account the contents of the consensus discussions that took place at Naivasha. The Committee will then also prepare a list of the Contentious Issues which must be known by the National Assembly and we plan that we will put before the National Assembly, the issues which are considered Contentious to be cleared so that they can then be included in the Draft and we are planning to do this before the end of this month, because we do not have much time. Thereafter, after passing the Motion in Parliament, we will then go ahead in conjunction with representatives of the Commission, do the Final Draft of the Bill which we are hoping to table in Parliament before end of July. Now, as we go ahead to table the document as a Bill in Parliament, that would also give green light to the Commissioners to go start their work of educating Kenyans, they know them, they were there, they heard what they said, they will now go back and tell them, “What we heard from you, this is how we have synchronized it and this is the message”, they are going to go out and educate *wananchi* before the Electoral Commission goes ahead to do their Referendum. That is very clear and I am emphasizing all these points because in Kenya even the Press have not been very helpful, they have also contributed in making people feel there is something seriously wrong going on in writing the Constitution. As far we are concerned, that Commission and the PSC, they are on the same journey, they are working together.

Now, you are going to raise a question about the other Stakeholders, we have laid down a programme of inviting Stakeholders immediately we have cleared, before end of June, we will have cleared a Contentious Issue Motion in Parliament. Immediately after that we will invite the Stakeholders, roughly they are around 10, 11. We will invite them, not as a group all together but individually, to brief them, now I want to emphasize the word “brief them” because we here we have no mandate to receive people to tell us how the Constitution is going to be written again because a lot of work has been done, we cannot accept and we have no mandate to do that, to get new documents now “This is what you should”, no, we are not having that mandate and I want it to be known that I am not blocking anybody, if you have any issues to make, Referendum is there *lakini* for us to receive new documents here to be told that “There is something new here again you better go ahead with it”, that is not our job.

So when we call the Stakeholders, it is out of respect and as the leaders in Kenya, we want to brief them of the way we are moving. So the Press must not go away with the message which would be wrong, that we are going to invite Stakeholders to come and renew ideas to us here, that is not the purpose but they are entitled to be briefed of what we are going to do.

Now, having said that, it covers a quarter of a page of your Newspapers, so I better now ask the Chairlady of CKRC, to whom on behalf of the Commissioners we are so grateful, she has briefed us on a lot of details in addition to this document, like a *mwalimu* in a classroom and we are very, very grateful for her briefing-- So may I request you please to say a word or two to the Press *ili wasije wakasema ni Nyachae tu alizungumuza. (Laughter).*

Com. Abida Ali-Aroni: Chair of the Parliamentary Select Committee, Honourable Ministers, Honourable Members of the Parliamentary Select Committee, fellow Commissioners, Members of the Fourth Estate, this morning we paid a visit to the Parliamentary Select Committee to enable us comply with yet another mandate given to us by the Law to hand over the Draft Bill and our Report to the Parliamentary Select Committee. We have done that and in the process we shared our experiences

with Members of the Parliamentary Select Committee, we also took them briefly through the Report, it is a Report that is 700 pages plus and we thought that we needed to give them a summary of the Report. In our deliberations this morning, we shared our experience, we shared the concerns and the aspirations that we received from the people of this country in regard to the Process, we shared the philosophy and the rationale behind the design and the structure of the Draft Bill, we also appreciated the current political mood in the country and suggested to our leaders here that they need to take advantage of the mood in order to give this country a Constitution within a short time.

We also requested our leaders to concentrate together on the emerging issues so that they can resolve those issues together as they compliment each other as opposed to competing against each other.

I think with that, Mr. Chairman, I will probably hand over the document so that the members of the Press are sure that the Commission did that. Thank you.

(The Chairperson of CKRC officially hands over the Report of the Commission together with the Draft Bill to the Chairperson of the Parliamentary Select Committee in the presence of members of the Press.)

Hon. Simeon Nyachae: Thank you very much. (*Clapping*). It is not just one copy you have seen here, we have been given 27 copies for each member of PSC but we have also requested the Secretary to the Commission to give us another minimum of 35 so that we can pass them on to our colleagues in Parliament who may also want to look at them before they finally discuss the Bill which would be going out to Kenyans. Now, do you have any questions, members of the Press? Any of you with any question? You are very happy people?

Response: No.

Hon. Simeon Nyachae: You are saying no and you are taking--

Openda (Standard Newspaper): Right here.

Hon. Simeon Nyachae: Oh yes.

Openda (Standard Newspaper): I am Openda from Standard Newspapers. I wanted to establish, KANU has petitioned the Speaker about your Chairmanship and now that they have decided to keep off from the whole process, are you people going to bring in new members to replace the missing KANU members or you will just do without them?

Hon. Simeon Nyachae: Let me just tell you and I repeated this earlier, the Select Committee has a membership of 27

members, PSC has 27 members. The Law authorizes the quorum to be five, now if you counted here and found we are more than five, then that issue should not arise.

Openda (Standard Newspaper): It is not out of the quorum issue but just out of consensus, you know? Or an all inclusive exercise.

Com. Charles Maranga: There is KANU there. (*Referring to Hon. Moses Cheboi*).

Hon. Simeon Nyachae: My friend, the letter is addressed to the Speaker and you should address your question to the Speaker because he is the one who has received that letter, I have not seen it myself but the question of contesting my Chairmanship is not for me to defend myself because it is the House which endorsed me as Chairman. I never staged a coup my friend, (*laughter*), so that should not arise and specifically if you are talking about KANU, there is *Mheshimiwa* Cheboi here, he is KANU MP, elected, so I do not know what you are saying. I do not know whether you are a Parliamentary Reporter?

Openda (Standard Newspaper): I am.

Hon. Simeon Nyachae: If you are a Parliamentary Reporter, from January to December, have you ever seen any debate where MPs have agreed 100%? In my experience, I have been in that Parliament for a long time now, I do not remember a day when you have obtained 100% agreement, in issues which are sensitive we have always voted, sometimes you just win by a margin so that should not be an issue and I thought today at least you would be so good to be proud that this document has been received for you, we should not be dwelling about the few arguments among Politicians, you go and cover this document. Any other question.

Question: **(Inaudible).**

Hon. Simeon Nyachae: Thank you for the question. Firstly let me say this, when we are talking about the Naivasha Accord on Contentious Issues, we are talking of one Naivasha Accord, we are not concerned about Kenyans in a free country like ours where freedom of assembly is allowed. People have been calling themselves to meet everywhere, that is not our concern. So we are talking about the Naivasha Accord where all of us went as PSC which was there that time which was chaired by Hon. Ruto, that is what we are referring to, that is the Naivasha Accord. The Naivasha Accord on Contentious Issues is not covered in this document and therefore we are saying we must have a Technical Committee which will see, in conjunction with the Commission, how to accommodate what was agreed as Consensus and that is as the Law requires, we have to report that as a Motion in Parliament. That is what we are doing, there is nothing new we re doing there.

Now, seminars for instance which are taking place all over, let me tell you, in Kenya, one of the greatest things about Kenyans

in my observations, is that they know how to occupy themselves and they occupy themselves by going to seminars, by going to this, all of us even we MPs, we keep on, even when on weekends we feel we should go to Mombasa or some other place, we also want to occupy ourselves. So I am not bothered about that as Chairman of PSC, those people can continue meeting, they are entitled to meet but that is not the work of the Commission, it is not the work of PSC.

Now, you mentioned about the Commission, the Commission is not there as robots. They are very highly qualified national leaders. Now, when they are debating particularly how they are going to educate Kenyans, they have to try and foresee issue which may crop up in the way of their programme of educating people. When they are debating it, it does not mean they have disagreed, so please, we have no disagreement at the moment, give us a chance to do a job. Have I answered you?

Response; Yes.

Hon. Simeon Nyachae: Okay, now, who else wants an answer? There is a lady now, we must give a lady. Mary?

Nelly (KBC): Nelly from KBC.

Hon. Simeon Nyachae: Nelly from KBC? Moraa? Uh-huh, *Wakire? (Laughter)*. I do not know whether you come from there but the name sounds-- *(laughter)*. Well, forgive me for that.

Nelly (KBC): **(Inaudible).**

Hon. Simeon Nyachae: Yes, the programme, actually I had outlined it that we have established a Technical Committee which is starting its work on Monday. They will basically be working on this document and looking at the Naivasha Accord, that is their work. When we have put our Motion in Parliament and once it is cleared, we will invite the other Stakeholders to brief them. They can give us other comments for refining the document but we are not entertaining new ideas so that we can now start debating whether this is right or wrong, no, because we have spent public funds through very experienced people to do this job. How can we again have groups coming up and telling us, “*Wacha hiyo, tufanye hii, chukua hii yangu*”. We cannot work that way, you do not run a country like that. There is nowhere things just go smoothly, you are a Reporter are you not? Have you seen what has been going on in the European Union on their Constitution? And those people call themselves developed. So we are also developed, that is why we are reasoning.

Any other? *Asanteni sana*, thank you. Let us have a cup of tea.

Meeting adjourned at 11.17 a.m.

& & & & & & & & & & & &