

# CONSTITUTION OF KENYA REVIEW COMMISSION

## NOTES ON NAIROBI PROVINCIAL VISIT – 07.08.01

### CONSULTATIVE MEETING AT CHARTER HALL

The meeting started at 9.30 with Com. Bishop Bernard Njoroge welcomed the participants to the meeting.

The meeting was opened with Christian and Muslim prayers.

**Com. Bishop Njoroge** invited everyone to observe a minute's silence in remembrance of those who died in the Bomb Blast.

Commissioners introduced themselves.

#### **PRESENT:**

Prof. Yash Pal Ghai	-	Chairperson
Prof. A. Idha Salim	-	1 <sup>st</sup> Vice Chairperson
Dr. Oki Ooko Ombaka	-	Vice-Chairperson
Mrs. Abida Ali-Aroni	-	Vice-Chairperson
Mr. Paul M. Wambua	-	Commissioner
Dr. Mosonik arap Korir	-	“
Mr. Domiziano Ratanya	-	“
Mr. Isaac Lenaola	-	“
Mr. Riunga Raiji	-	“
Mr. Githu Muigai	-	“
Mr. Zein Abubakar	-	“
Hon. Phoebe Asiyo	-	“
Dr. Charles Maranga	-	“
Ms. Kavetsa Adagala	-	“
Dr. Abdirizak Arale Nunow	-	“
Mr. John Mutakha Kangu	-	“
Mr. Ahamed I. Hassan	-	“
Bishop Kariuki Njoroge	-	“
Pastor Zablon Ayonga	-	“
Mr. Ibrahim Lethome	-	“
Ms. Nancy Baraza	-	“
Dr. Wanjiku Kabira	-	“
Ms. Salome W. Muigai	-	“
Mrs. Alice Yano	-	“
Prof. H.W.O. Okoth Ogendo	-	“
Mr. Arthur Okoth-Owiro	-	Commission Secretary

**Com. Bernard Njoroge** invited Prof. Ghai to make opening remarks.

**Prof. Yash Pal Ghai** welcomed those present and said the Commission was glad to see so many people. He said the Commission has been visiting all the provincial capitals with the purpose of explaining to the people the process of the review of the constitution, the different stages of the review, different organs responsible for the review and the method whereby the new constitution will be conducted.

He said although the Commission will be receiving submissions in the next few months, anyone with a written submission could hand it in. He said the Commission has an obligation under the Legislation to visit every constituency to receive the views of the public to the changes to the constitution. He said there will be many meetings in Nairobi to receive recommendations from the people in Nairobi soon before the Commission goes to the rural areas in order to give the rural people a chance to become familiar with the issues relevant to the review process. The meeting was to describe to the people the process of review and to seek their views on a number of things that the Commissions needs to start on very soon. He said one of these was civic education which poses a series of questions, documentation centres whereby people can access documents and other materials and information about the process and about the present constitution and constitutions of other countries. The Commission also has to establish in every constituency a forum which will be the basis under which discussions take place in the constituency and which will be the forum through which the Commission will have its own communication with the people.

Prof. Ghai said that legislative framework under which the Commission is working places heavy responsibility on the people for the review. Sometimes the expression is used that this is a people-driven process which means that people have the final say in what goes in the constitution and that the constitution has to reflect the preferences of the people. The Act says clearly that the recommendations the Commission makes must be made after it has consulted with the people and the people's views must be reflected in those recommendations. He emphasised that the responsibility of the general public, professionals, religious, social and political groups is of fundamental importance to the process and that the Commission will do

everything to facilitate the participation of the people in the process. He said the responsibility that people have as individuals and as representatives of groups is much higher than that of the Commission because the Commission can only make recommendations on the basis of what the people say. He therefore requested that the people have to engage in the process, study the legislative framework of the review and debate constitutional issues that form the main focus of the review process.

He said this is the first time the people of Kenya have been given an opportunity to participate in the making of a constitution. He said the present constitution was made in London when a few leaders went to Lancaster House and the under the chairmanship of the British Government they made certain agreements which became a constitution. The people of Kenya were not consulted in any meaningful way and the British idea of constitutions made for colonies seemed to be that if they get the leaders as far away as possible from their own people they would guarantee a good constitution. He said that idea is completely rejected in the Act under which the Commission is operating and the whole process is based on the participation of the people in order to shape the constitution and therefore shape their own destiny. He said this is an opportunity for Kenyans to reflect on present circumstances, think about the beliefs they want to live by in the future and the kind of relationships they want to see between the different people and the government. This is a great challenge and it is only by working very sincerely, listening to differences of opinion and respecting them and trying to develop a consensus that this process can succeed. He said the constitution must reflect the views of the people of Kenya and it must relate to realities, problems and the aspirations of the people.

Prof. Ghai said consensus is very important to the process of reviewing and making a constitution because the constitution is supposed to belong to everyone, it sets out the values by which people want to live their lives, the rights that they want to protect, the obligations that people want to ensure are observed and also sets up institutions and framework through which public policy is made and implemented. It also sets out mechanisms through which differences between peoples are resolved. Since the responsibility of the constitution in the governance of a country is so enormous, it can only be discharged if a vast majority of the people accept the document. He said therefore that throughout the process, heavy emphasis is laid on consensus and this can only be achieved if we listen to others and respect differences. He said the

Commission will allow everyone to express their views and that people should not shout others down just because they do not agree with ideas expressed. He said the process is a way to start a huge national debate on the most fundamental question of the government.

In describing the different organs of the review he said that so far much of the attention of the public and the media has focused on the Commission, its composition, its procedures and responsibilities. However the Commission is just one of the many organs of review. He said the Commission has a fundamental role to play starting with establishment of a whole set of institutions to inform the public about the legislative framework, to explore the terms of reference, to facilitate participation of the people and then to hear their views, make a report and draft a constitution. He said once the Commission makes its recommendations, its role becomes less important and other organs take the driving seat of the process.

Prof. Ghai said the Commission is required to make recommendations keeping the national interests in mind, it is required to be broad-based and represent different geographical areas, social and ethnic diversity of the people but that it does not represent any particular party, religion or province. He said the Commission was appointed because, in their wisdom, the Parliament and the President thought the Commissioners have the capacity, ability and knowledge to make recommendations on the constitution and that they are independent and impartial. He said the Commission will only focus on what is best for the nation and try to create national unity while standing above any favouritism. He said it is important for the Commission as well as outsiders to respect that independence and adhere to it. He asked the people not to interfere in the Commission's work, not to try to influence individual Commissioners but to speak to the Commissioners as a Commission.

Prof. Ghai said after the Commission drafts the constitution, the negotiation work will start and different interest groups will be invited to discuss the report and decide whether to adopt it or to change it.

Prof. Ghai mentioned again constituency constitutional forums to be established in every constituency. He said the purpose of these forums is to facilitate debate and discussion on the constitution within the constituency and this will facilitate the Commission's discussion with the

people during its constituency visits. He said the work of the constituency forums is very important because they will be the institutions where debate takes place throughout the country about the next constitution. While the Commission will provide guidance to these forums, it believes that it is for the people and their leaders in the constituency to establish mechanisms they think are best suited for promoting discussion and collecting ideas to present to the Commission.

Prof. Ghai said the next organ of review will be the national constitutional conference. This body, he said will consist of about 500 people including all the Members of Parliament, three representatives from every district, representatives of religious groups, professional bodies, political parties, youth groups, women's groups and NGO's. The Commissioners will be members but they will not have a right to vote but will essentially serve as a Secretariat of the conference. He said the Act makes a distinction that the Commission is supposed to be an independent and expert body not linked to any particular group, community, religion or profession. He said the Commission has to stand above all sections and divisions because the draft constitution it recommends should reflect the overall interests of all the people of Kenya. He said the conference is much more of a negotiating body where different interest groups will be represented to look after the interests of those groups. He said this is the body that will have the primary responsibility for making decisions on the future constitution. The Commission will facilitate the work of the conference in a number of ways like allowing the public 2 to 3 months to read and debate its recommendations. It will then collect all the views given on the draft constitution and present these to the constitution conference along with the Commission's own recommendations.

Prof. Ghai said the Act says that if the constitution conference is able to reach a consensus on the constitution the draft constitution will be sent to Parliament for enactment. If, however, the conference is not able to reach a consensus on all the issues or some of the issues, those issues that have not been resolved will be referred to the people directly for their decision in a referendum. He said in a referendum all registered voters will be able to decide on which version of the constitution to adopt. He said the result of the referendum along with the draft constitution and the recommendations of the constitutional conference will be sent to Parliament so that the constitution can be adopted. Prof. Ghai said if there is a referendum, it will be the

first time in the history of Kenya that there has been direct participation by the people in the making of the constitution.

He said the final organ of review is the National Assembly and the President but that the results of the national conference or the referendum will be binding on Parliament.

Prof. Ghai said it is the totality of all these institutions and their activities which is the review process and that the Commission will have less control of the timing of the process when it passes on to another institution.

Prof. Ghai said that what goes into the new constitution depends on what the people tell the Commission but that the Act sets out a framework of parameters for the constitution. The Review Act says the new constitution must guarantee peace, national unity and integrity of the Republic in order to safeguard the well being of the people of Kenya. He said national unity and integrity of the Republic are the most fundamental principles of the new constitution. This means safeguarding the safety of the Republic from enemies from within and without and creating a strong sense of being members of the community. He said citizenship is an important identity and everyone must work together to increase national unity. The Act also says the new constitution must respect ethnic and regional diversity and community rights including the right to organise and participate in cultural activities and expression of their identities. He said there has to be a balance between identity as Kenya citizens and members of different communities in order to work together and nurture the country's national unity.

Prof. Ghai said the Act also requires the establishment of free and democratic system of government that enshrines good governance, constitutionalism, the rule of law, human rights and gender equity. He said there has to be a comfortable system of government where people participate in public affairs and the Commission has to promote people's participation in free and fair elections and the devolution and exercise of power. He said to do this the Commission has to consider a system where power is devolved to districts or provinces away from Nairobi.

He said the Commission has to ensure the provision of basic needs for all Kenyans through the establishment of equitable framework for economic growth and access to national resources.

Citizens of Kenya must have enough to eat, shelter, access to medical care, children should have access to education and those who have the ability have the right to go to university. He said that these goals have always been in the Review Act and the principles were agreed in the Safari Park meetings some years ago where all groups were represented.

Prof. Ghai said the constitution has to be democratic but that there are many ways of being democratic. Britain and India have a parliamentary system which is democratic, USA has a presidential system which is democratic and Switzerland has a power sharing system where every community participates in the government and major political parties are represented in the cabinet, which is also democratic and Kenya has to decide which democratic system is good for her people. He said although all these fundamental principles are laid down in the Act, how they are implemented is very important. It is the task of the review process to make decisions on the precise methods by which these values can be effected.

Prof. Ghai told those present that civic education was one of the topics of the meeting. He said this is very important for the process of review as it involves education, information and discussions which are directed at issues about the governance of a country. It talks about how a country should be governed, the main institutions of government, relationship between different organs of government, the way in which citizens participate in public affairs, how people can influence government policy, citizens responsibilities to obey the law, vote, pay taxes and so on. He said civic education goes on throughout life beginning at home from parents and elders, in schools, mosques, churches and temples where people learn to be responsible citizens. In professions there are professional ethics in case of doctors, lawyers and so on.

He said in the review process, civic education is confined to constitutional issues and the Act says that the Commission must conduct, promote and facilitate civic education with the purpose of stimulating public awareness and discussion on constitutional issues. He said the Commission has spent a lot of time trying to find out how to implement this responsibility of civic education and it believes there are minimum obligations on its part. The Commission has to ensure that civic education is available to all Kenyans in every part of the country however remote and that all the key issues are covered. He said the Commission has a draft curriculum for this process on which it would welcome views from the participants.

Prof. Ghai said the Commission also has to ensure that civic education is provided in a fair, impartial and objective manner in order to allow the people to make up their own decisions. The Commission will insist that anyone who wants to work with it has to adhere to these obligations, not to propaganda for or against the government, for or against any religion and that information is given in a very objective manner. He said for this purpose the Commission is developing a code of conduct which will bind all providers.

He said the Commission has obligation to provide materials for civic education and if some groups have existing material which the Commission thinks is adequate the material will be certified for use by other groups. The Commission will produce a summary of the present constitution in the context of the objectives of review in English, Kiswahili and hopefully in other languages later on. He said at every stage of the review process, people need to be informed of the recommendations of the Commission, deliberations of the national conference, a referendum if there is one and this makes civic education a continuous process.

Prof. Ghai said the Commission does not have enough resources or skills necessary to conduct civic education itself and it believes that the process should be participatory and involve as many people as possible. He said the Commission wanted to hear ideas from those present on how to do this.

Prof. Ghai said that in some places people suggested that documentation centres should be below district level because of the long distances involved and the Commission wants ideas as to where these centres should be located either in public libraries, district offices and what kind of material and documents the people would like to see. He said the Commission will use electronic media, TV and radio stations.

He said the Commission is also required to establish constituency forums in every constituency but it will not lay down any rules on how to set these up but will leave it to the people and their leaders to decide how they want to organise these.



Prof. Ghai said that the Commission will be appointing district coordinators shortly to assist the local community in setting up documentation centres and help the Commission in the collection of documents.

He said the Review Act requires the Commission to ensure that the whole process is concluded by September 2002 and also says that if the Commission considers that more time is needed, it can request an extension. He said the Commission cannot make this request until after October 2001. The Commission will work very hard and he hoped that the other organs of the review will do the same so that process can be completed in time. He said that the Commission has a Strategic Plan that sets out the different stage of the process with a timetable against each stage. This programme will be reviewed periodically and should it appear that the process will not be finished on time, the Commission will start thinking about requesting Parliament for an extension. He said that if the Commission asks for extension other questions will arise, for example, whether Parliament should be suspended or whether elections should be held in December 2002. He said there is the option of having minimal changes to the constitution, have elections and the Commission continues with its work. There is also the option of an interim constitution which is more than minimal changes, have elections and the Commission finishes its work. He said the Commission is not discussing these options in detail because it believes that it will finish the process by September 2002 but that it would like to know what the people think about these options.

He invited Com. Abida Ali-Aroni to give a translation in Kiswahili.

**Com. Bishop Njoroge** asked those present to keep to the topics of the meeting, to respect each other's views and not to shout at speakers. He then invited Com. Raiji to conduct the next part of the session.

**Com. Raiji** recognised the presence of Hon. Raila Odinga, Hon. Adolph Muchiri, Hon. David Mwenje.

He then invited religious groups to give their views starting with Muslim Groups followed by Christian Groups.

**Abdulhafur El-Busaidy, Chairman of the SUPKEM** congratulated the Commission and in particular the Chairman for the manner in which he has been conducting the review process. He assured the Commission of total, unqualified support of the whole Muslim community represented by SUPKEM.

On the Commission's independence he said this will mean very little unless it is jealously guarded. He said even all the guarantees given under the Act cannot stop interference and manipulation of the Commission but that its independence will depend entirely on the will, integrity and commitment of the Commissioners. He said the formation of the Commission involved tough negotiations between various political, religious and social groups and it is crucial that the Commissioners guard themselves against interference from any quarter. He said there are already signs that some political sectors do not want the Commission to do its work independently and impartially. He said this is likely to intensify and he pleaded with the Commissioners not to let political meddling wreck its work because Kenyans have invested a lot of trust in the Commission.

He said no groups should be excluded from conducting civic education.

He disagreed that the budget of the Commission is too high and said constitutional review is a very important undertaking and no cost should be spared to ensure that the process is done in a manner that will ensure that the end product reflects the views of the people of Kenya. He said the Commission must be given whatever resources it requires to accomplish its mission and that the budget for civic education was too low for the exercise.

He said Kenyans have a lot of faith that Commission will complete its work on time and produce the kind of document that will take account of the country's religious, regional, political, linguistic, ethnic and cultural diversities.

He said Kenyans will continue to trust the Commission so long as it does not succumb to pressure from any internal or external political forces.

**Abdirahaman Wandati, of Muslim Council** said the Muslim society have been the easiest target whenever there is a national debate and it could happen in the civic education debate.

He said members of the Muslim community are always questioned as to whether they really are citizens of Kenya and this is making it difficult for Muslims to participate in the review process

without fear. He said Somalis who are part of the Muslim community are required to carry another identity card besides the national ID.

He said Muslims are members of a faith as well as being citizens and most times they are caught up between these two and they have to choose one against the other. He wanted assurance that this will not be the case in the review process. He said in civic education, the Commission has to remember that there are different values among the people of Kenya and they should be respected.

He said that for Muslims to feel part of this process, the Commission has to acquire a Muslim expert who will be consulted on all matters touching on Islamic faith.

**Mohamed Omari Shuguli, Chairman, Kenya Moslems Forum** commended the Commission for its work.

He said civic education should be done according to the wishes of the people and Muslims have their NGO's dealing with the people at grassroots level who will be able to conduct civic education and get the people's views. He said civic education is very important and the Commission should provide resources for it.

He said if the Commission does not finish its work on time, elections should go ahead as scheduled with minimum changes and the Commission should continue with its work.

He said documentation centres should be at constituency centres because these are accessible to everyone.

He said the Commission should provide its own curriculum.

**Fr. Wamugunda wa Kimani representing Archbishop Mwana wa Nzeki, Catholic Church** said the review process represents a historical moment when people have a chance to decide how they want to be governed. The Catholic Church appealed that goodwill should be applied by all concerned at all levels to involve as many Kenyans as possible in the process.

He said the Commission should be granted maximum independence to plan its work, granted means to execute its plans, granted the freedom to choose who it wants to involve in its work and the manner in which to operate. He said the people should be accorded freedom to present their views. He said the role of the provincial administration and government machinery should be restricted to provision of security and order.

He said the Commission should be guided by the principle of equality of all Kenyans rather than parochial ethnic political consideration or victimisation of sections of Kenya's population.

He said the Catholic Church respects the role of all interested parties to participate in educating Kenyans on matters of governance and constitution whether they are politicians, political parties or the civil society.

He said in civic education, emphasis should be laid on grassroots level and the groups participating in the education should be impartial. He said there should be a uniform curriculum. On documentation centres, he said there are existing structures and infrastructure throughout the country like churches, mosques, temples and these should be used so that information is accessible to all Kenyans.

He said everyone should be involved in constituency forums.

He said the Commission should finish its work by September 2002, but if this is not possible a national constitution forum should decide what should happen but that Parliament should not be extended.

**Rev. Samuel Muchuga, Chairman of Justice Peace and Reconciliation, PCEA Church** said the most important aspect of the process is unity of the nation, assurance of peace and justice in the nation and security of the nation, social, political and economic security for everyone. He said the Commission is the answer to a sacred call from the Almighty. He said the Commission should not entertain intimidation from any quarters

He said mandate for the PCEA church to conduct civic education is already given in the constitution and by God. The church has used resources to advance civic education for many years even for the purpose of making Kenya citizens well informed, fully aware of their rights, responsibilities and obligations to the nation.

He said already structured non-partisan groups such as churches, mosques and NGO's should be used for civic education in partnership with the Commission at grassroots level. He said mass media should be used as much as possible.

He suggested that district coordinators should be independent, non-partisan and they should not be controlled by the government.

He said if the Commission does not finish its work on time, a national constitutional conference be convened to decide the next move.

**Nazrin of SUPKEM representing Muslim Sisters Network** said civic education should involve everyone and the Commission should take into account the diversity of interests pointing out that Muslim women observe certain cultures and religious beliefs and may not find it easy to go to open forums. She said women of different religious groups should be involved in teaching civic education to women.

She said documentation centres should be at district level and all documents to be in simple language so that everybody can understand them and they should be in various languages.

She hoped constituency forums will be over a number of days so that no Kenyan is left out in this important process. These should also take into account the diversity of culture and religion so that even Muslim women and all Nairobi women will get an opportunity to air their views without any hindrance.

She said the people have full trust in the ability of the Commission that it will try to finish the work on time and if this is not possible, it should ask for extension.

She said the Network is happy with the work of the Commission and congratulated Prof. Ghai for the part he played in the merger of the two statutory bodies.

**Com. Raiji** recognised the presence of Hon. Beth Mugo and Hon. Sinyo.

**Jan Karanja representing the Chairman of the Disabled Persons of Kenya** said the review process must be comprehensive and inclusive taking into account the diversity of Kenyan people and including marginalised group e.g. women, persons with disabilities, children and so on. He said the fact that there were Commissioners with disabilities in the Commission proves that given an opportunity people with disabilities can deliver at par with other Kenyans.

He said at all forums of the Commission there should be sign language interpreters.

He said the only method to reach people with disabilities in civic education is through NGO's and that resources should be provided for use by disabled people organisations to facilitate this exercise among the disabled.

He said all venues for civic education should be accessible to the people with disabilities.

He said documents in centres which should be at district level should be in a format that the wananchi can verify to ensure that what they said is what is contained in the documents.

He congratulated the Commission for its work and said that despite the problems that it will come up against, if it has a will to succeed it will succeed. He assured the Commission of the people with disabilities support.

**Dominic Majiwa, Chairman Kenya National Society of the Deaf (through an interpreter)** commended the Commission for its work.

He said the deaf need to have interpreters all the time and if they are to be included in civic education, interpreters have to be provided with proper documents.

He said the Society has the right to choose the preferred interpreters. He said there are different levels of deaf people and they must all be reached in order to participate in the review process.

He said the deaf people are always left out and that they must be involved in the review process.

He said the Commission should try its best to finish its work in time but if this is not possible, it should ask for extension.

He said the Commission should include a deaf person since the blind were represented.

**Hon. Sinyo** commended the Commission for the work it has already done and especially for the efforts it has made to get views from people with disabilities. She said the Commission's work will be half done if it does not include everybody in the process including all marginalised groups. She said these groups must be represented in all Commission's forums.

She said people with disabilities were hopeful that through UDPK the Commission will meet them at the grassroots level and that their views will be taken seriously to bring change and improve the lives of people with disabilities. She said besides suffering marginalisation, there are gender issues that affect people with disabilities, issues of street children, poverty and that these issues affect people with disabilities differently from other people.

She asked the Commission to put a lot of emphasis on Chapter 5 of the constitution because unless attention is paid to issues pertaining to human rights and basic needs the whole process will not help everybody. She said the right to life means a right to basic needs like health, education, clothing and shelter and resources should properly distributed.

She said she would like to see a constitution that brings a new look to Kenya.

**Mariam Abdulrahaman of Starehe** said the people themselves will have to assist the Commission in its work because they are the ones who know the problems.

She said civic education should be done by the Commission itself through the administration and MP's and documents should be provided in their offices.

She said already there are groups conducting civic education at grassroots level and they should also be used for this exercise.

**Tony Wambua, Chairman of Kenya Micro Entrepreneurs Association, Starehe** said that although Nairobi is properly represented in Parliament the constitution does not recognise the existence of jua kalis.

He said some constituencies in Nairobi are very large and wondered how the Commission will collect views. He said funds should be allocated fairly for civic education.

He said the life of Parliament should not be tied to the review process and that elections should continue as scheduled and if the Commission has not finished its work, it should ask for extension from Kenyans.

**Evans Gor, Chairman of All Kenya Enterprising Youth and coordinator of KAYO, resident of Starehe** said the Commission has to be independent in deciding who will conduct civic education. He said there is a problem with political goodwill in Kenya and that the youth have been used to fight for things they do not believe in. He said the youth will support the Commission in its decision and that providers of civic education should be non-partisan.

He said there should be liberalisation of air waves so that people all over the country can receive all the channels which should be used to disseminate civic education.

He said civic education should address the question of age limit for politicians.

He said from the support given to the Commission during provincial visits, it must be clear to the Commission that the public supports it and no one will take away the powers it has been given.

He said the Commission is the hope of this country.

He said Parliament should not be extended.

**Martha Koome, Chairperson of the Federation of Women Lawyers, resident of Westlands,** commended the Chairperson for the excellent work the Commission is doing because the process

will ensure a constitution that guarantees every Kenyan, woman, girl, child, disabled person a Kenya within which they can realise their full potential.

She said NGO's and religious organisations must be involved in civic education because they are made up of Kenyans who have a right to associate and express themselves and they have freedom of information. They can propagate what they believe in, they have special skills in civic education and they believe the people should be made aware of their rights.

She said promotion and protection of human rights requires publicity and therefore civic education should be disseminated through the media like KBC and airwaves should be opened.

She said that even while the review process is going on there are attempts in Parliament for piecemeal amendments to the constitution and that this should be an issue for the Commission. She wondered if the Commission has been consulted since it has been mandated to deal with constitution review and said that while the process is going on the constitution should not be tampered with in order to remove power from the Commission.

She said from media reports, it seems like there is an effort to undermine the independence of the Commission and create divisions and the Commissioners must guard their independence very jealously.

There should be extensive research to see what other laws might affect the work of the Commission and change them.

**Mr. E. Ngotho, ex civic servant, resident of Westlands**, said the level of understanding of personnel is very important. He said when leaders are appointed they should have attained a certain level of education. He said their character should also be vetted and that discrimination should be made a criminal act.

**Stella Agala, Kenya Alliance for the Rights of Children, resident of Westlands**, said children and youth are the beneficiaries of the new constitution. Civic education should therefore be conducted in schools and by organisations dealing with children.

She said documentation centres should be accessible to young people living in slum areas.

She said 12 months is enough for the Commission to complete its work.



**Hon. Gumo, MP, Westlands**, said civic education is very important and that it should be at constituency level by people who are able. He said there are many jobless young graduates and they should be trained to educate people and get whatever little money is available for this work. He said it is difficult for the Commission to know how much time will be needed for the process because some constituencies are densely populated, some constituencies are very large and the Commission will need more time to cover these areas. If the Commission does not finish its work on time, elections should be done on minimum changes.

He said documentation centres should be at constituency centres which are accessible to all wananchi.

**Hon. Raila Odinga, MP, Langata**, said the review process is a historical action as it gives Kenyans the opportunity to shape the constitution. He said the Commission has demystified majimbo because Kenyans have not been given the opportunity to discuss alternative systems of government.

He said history is the reason why there is controversy of civic education. He said it should be done by people who are closest to grassroots level. He said if partisan and advocacy groups are not given a chance to conduct civic education, they will say they are being discriminated against. He said the same people who go to mosques and churches belong to political parties and if these people are allowed to engage in civic education, political parties should not be denied the chance.

He said constituency forums should be open and people should be allowed to air their views without any coercion.

As for timeframe, the Act says the Commission has 12 months and the Commissioners have said they will try to finish on time. He said Parliament should not be extended. He said the review process should not be rushed and if it is not possible to finish the work by September 2002, elections should be held under minimum reforms and the review continues.

He said the Bill before Parliament seeking to entrench KACA in the constitution has been imposed on the Government by donors and does in any way interfere with the independence and work of the Commission.

He gave the assurance that the Government will in no way interfere with the independence of the Constitution of Kenya Review Commission and under the Act the work of the Select Committee is to

facilitate and assist the Commission. He also asked interested groups and advocacy groups not to try to blackmail or intimidate the Commission.

**Hon. David Mwenje, MP Embakasi** thanked the Chairperson for refusing to be sworn in at the inception of the Commission until the merger of the two groups. He told the Commissioners to be independent. He said now that the Commission has power it must remain firm in order to discharge its duties independently because Kenyans are looking up to the Commission.

On timeframe, he said the Commission should try to finish its work on time and not to ask for extension.

He said the life of Parliament should not be extended.

On civic education, he said it is important for people to be taught their rights and this should be done by everybody who is capable be it churches, NGO's, leaders and so on and the resources should be divided among the providers.

**Hon. Beth Mugo, MP Dagoretti**, commended the Commission for the work it is doing and especially the Chairperson for standing firm in trying to find the way forward. She said the bravery he showed is needed even more at the moment because she did not believe that there will be no political manipulation of the Commission.

She said the Commission has the power to decide on civic education curriculum and who runs it and no one has any business telling it who should deliver it.

She said the constitution is to ensure the well being of Kenyans socially, economically and politically and the ruled must say how they want to be ruled and therefore political parties should not be party to civic education. She said churches, mosques and the religious sectors have been educating people. All religious groups have institutions at grassroots level all over the country and they should conduct civic education but that the Commission should make this decision as it sees fit. She said the curriculum should be one that unites the country.

She said constitution making should not be dictated by the term of Parliament and that the process should not be rushed because of elections no matter how long it takes. She said the president serves for two 5-year terms and that this should not be part of the minimum changes that may be needed to make the next elections possible.

She said affirmative action should be addressed in civic education and that the curriculum should include a chapter on women who are majority voters.

She said documents should be made available to all the Kenyans who need to be informed and that provincial administration has no role in the review process.

**Hon. Adolph Muchiri, MP for Kasarani** said the Commission should not ask for extension but try to finish its work on time and that Parliament should not be extended.

He said civic education should cover everyone including the sick, prisoners and the Armed Forces.

He said documentation should be available at constituency centers.

He said the Commission should be honest to Kenyans because they have lost confidence with everybody else. He asked the Commission to circulate the present constitution to all parts of the country so that people know what they are reviewing.

**Bertha Juma Kokatch of Kenya Women's Political Caucus and resident of Langata** said the Commission has a duty to ensure a truly people-driven process. She said national sovereignty and rights of citizens to decide their future should be free of undue influence and interference.

She said Kenya women must be able to participate in civic education and the approach should apply the principle of creative cooperation. This should include discussion, debate, drama and local theatre and use of visual aids. The method of delivering civic education should be participatory, highly interacting and flexible to enable women's participation.

She complained that whenever women of Kenya stand up to speak they should be given as much time as the men.

**Antony Muchiri of Children's Caucus** and resident of Langata said civic education should be done by NGO's, religious groups and other civil society organisations who have the infrastructure, with particular attention to children issues.

He said documentation centres should have proper material for children written in a language that children can understand.

**Japheth of Langata** said civic education should be done at grassroots level.

He said copies of the constitution should be made available in chief's offices, churches and all documentation centres in Kiswahili and other languages that people can understand. Electronic media should be used for this exercise and air waves should be freed for this purpose.

He said no group of people should be denied the opportunity to conduct civic education including members of the public.

Churches, NGO's, provincial administration and chief's barazas should be used as forums for education.

The review process should not be rushed and it should not be linked to the general elections.

He said the problems in this country will not end with the review process because they are caused by the attitude of some people who do not adhere to the constitution in place.

**Tony Muchana of Law School and resident of Dagoretti** said there should be no draw back clauses in the constitution. He said the presidency must be limited.

He said the Commission can take whatever time it needs to finish its work but the most important point is that the elections must go ahead.

**Debra Ongewe of NGO Council and resident of Dagoretti** commended the Commission for the good work it is doing.

She said all Kenyans with the ability should provide civic education under close guidance of the Commission to ensure that all people of Kenya, including marginalised groups, are reached.

She said there are many structures in this country and they should be used as documentation centres.

She said that all NGO's and CBO's are willing, able and prepared to assist the Commission.

She said people should respect the Commission and respect one another in this process.

**Mrs. Pamela Mboya, Chairperson Helpage Kenya** said she is happy that for the first time someone was speaking for the aged. She said the older persons are the fastest growing population in the world and it is expected that in another ten years the aged will out-number young people of up to 15 years.

She said the review process should address the problems and basic needs of the older people throughout Kenya. Helpage Kenya has branches in every district and if their assistance is required they will be able to help in conducting civic education .

She said there is urgent need for the government and international community to set higher priority on human rights of the aged. She said the older people are sick and they are poorest of

the poor in this country and she hoped that the poverty strategy paper will improve the plight of the aged most of whom are suffering from a number of diseases.

She said aged people cannot push in crowds but they should be given a chance to talk and tell the Commission what their problems are. She said the extended family system which took care of the aged is being eroded as a result of urbanisation and industrialisation.

She said a number of the aged people are the food producers in this country, those who have retired and doing agricultural work in rural areas, who have no salaries, no social security and they have nothing to claim. The Commission should consider the plight of these people who feed the country without any recognition.

She said when civic education is conducted these people should be included especially in view of the fact that although they are not infected with HIV/AIDS, they are affected more than anyone else because they are looking after HIV/AIDS orphans. She said civic education should be disseminated through the radio because most of these people cannot read and they cannot reach documentation centres.

She said district coordinators should be able to speak a language and have a culture that the aged can understand.

**Josiah Magut, Mayor of Eldoret and National Chairman of Local Authorities of Kenya** commended the Commission for the good work it is doing.

He said that ALGAK represents 175 local authorities throughout the country and that they can serve as documentation centres and avail documents to all locations in every constituency.

He said they agree with the curriculum developed by the Commission to be used by all civic education providers i.e. local authorities, churches and everybody who will be available at constituency level and below.

On time frame he said the review process should not be rushed and it should not be linked to parliamentary elections.

**Com. Raiji** thanked the people for their orderliness and invited Prof. Ghai to respond to a few points.

**Prof. Ghai** thanked those present for their contributions. He said the purpose of the meeting was to listen to suggestions and views and that the Commission will give careful thought to the contributions.

He noted that many people have emphasised the need for the independence of the Commission and agreed that this is a very important issue. He said the Legislation gives the Commission a great deal of protection and whether it is independent or not will depend on how the Commissioners behave and it is important for everyone to have respect for the independence of the Commission.

Prof. Ghai said civic education is important but that it is a process that continues for a long time. He said the Commission's purpose is to stimulate discussion on constitutional issues. He said from the memoranda received from all over the country, it was clear that the Kenya public is ready to give its views and they do not need to have a long period of civic education. He said consultation process is different from civic education and the Commission would like the people to speak from their hearts in simple language. He said the people should tell the Commission about their every day lives, the constraints, what kind of Kenya they want their children to grow up in and the Commission will translate these views into the language of constitutional changes.

Meeting closed at 1.00 p.m. with Christian and Muslim prayers.

### **UHURU PARK - P.M.**

The Meeting started at 2.30 p.m. with singing of the 1<sup>st</sup> Stanza of the National Anthem by way of prayer.

**Com. Maranga (MC)** welcomed those present and invited the Commissioners to introduce themselves.

### **PRESENT:**

Prof. Yash Pal Ghai	-	Chairperson
Prof. A. Idha Salim	-	1 <sup>st</sup> Vice Chairperson
Mrs. Abida Ali-Aroni	-	Vice-Chairperson
Mr. Paul M. Wambua	-	Commissioner
Dr. Mosonik arap Korir	-	“
Mr. Domiziano Ratanya	-	“

Mr. Isaac Lenaola	-	“
Mr. Riunga Raiji	-	“
Mr. Zein Abubakar	-	“
Hon. Phoebe Asiyo	-	“
Dr. Charles Maranga	-	“
Ms. Kavetsa Adagala	-	“
Dr. Abdirizak Arale Nunow	-	“
Mr. John Mutakha Kangu	-	“
Mr. Ahamed I. Hassan	-	“
Bishop Kariuki Njoroge	-	“
Pastor Zablon Ayonga	-	“
Mr. Ibrahim Lethome	-	“
Ms. Nancy Baraza	-	“
Dr. Wanjiku Kabira	-	“
Ms. Salome W. Muigai	-	“
Mrs. Alice Yano	-	“
Mr. Githu Muigai	-	“
Mr. Arthur Okoth-Owiro	-	Commission Secretary

As many people had not attended the morning session, Prof. Ghai repeated his morning opening remarks and Com. Abida Ali-Aroni translated the remarks in Kiswahili.

**Com. Maranga** recognised the presence of the Deputy PC, Nairobi and reminded participants to respect each other’s views even if they did not agree with them.

**Mary Alibiswa** said local people should be given a chance to conduct civic education. She said it is also important that all local churches are involved.

There should be TV’s in documentation centres, radios and radio cassettes and all material should be translated into local languages.

She said the Commission should take its time to make a good constitution that does not need to be amended time and again. She said in some areas MP’s and councillors are respected and they should be given the first priority to participate in civic education.

**Yasin Hassan of the Nubian Community** said they are the most marginalised community in Kenya and although they are voters, they are disregarded in other issues. He said they want their rights to be included in the constitution. He commended Prof. Ghai and said he was chosen because he is a man of integrity.

He said civic education should be done by local people in their areas and Nubians have educated people who can do this in mosques because most of them are Muslims.

He said documentation centres should be at constituency level because everyone can reach these centres.

He said people should be allowed to present their memoranda at constituency forums.

As for timing, he said presidential term is not the only important subject when talking about timeframe and that the review process should not be rushed so that the Commission will come up with a constitution that will last Kenya a long time.

**George Otieno** said the Commissioners should be serious and stop attacking one another in public.

On civic education, he said the curriculum should include social, economic and cultural rights.

**Mary Odero** hoped that the Commissioners will continue to display their integrity and remain united.

She said existing NGO's who have the capacity and existing structures should be used for civic education and documentation centres.

She said constituency forums should be at district level.

**Maali(?) Ramadhan** said civic education should be conducted by religious groups. He said NGO's and religious groups have helped the people a lot and they are the right groups to conduct civic education.

**Ms. Miano, NCK Nairobi Region, physically disabled** said disabled women in Kenya do not have time to go looking for civic education and so it should be taken to them in kitchens and in churches. She said NGO micro enterprises would be a good forum for civic education. She did not think constituencies are good forums and it would be better to have forums in locations where women do their daily jobs and by people who are in daily contact with the people. She said there are special groups for persons with disabilities and these should be used for civic education.

She said documentation centres should be at district and divisional headquarters, churches and mosques.



On timeframe, she said the Commission should start dealing with sections of the constitution that concern election so that if they do not finish their work, elections can be held under minimum changes and the Commission continues with its work.

**Hassan Abdi, a youth group member** said civic education should be done by people who are familiar with constitutional issues because it is not general education and it should be done over the radio and by religious organisations so that it can reach everyone. The curriculum must be comprehensive.

As for time frame, he said elections should go ahead under minimum reforms and the review process should continue.

He said forums should be at grassroots level.

**Argwings Odhiambo** said civic education should be done by religious groups, NGO's and retired civil servants. He said material should be translated into mother tongues.

He said the Commission should try to finish the work in the stipulated time.

**Ayoo Ondipo** said the Commission should make maximum use of the youth in civic education because they have the potential and physical ability to reach and assist all Kenyans.

She said there should be proportional representation in constancy forums so that the views of women, youth and disabled persons can be heard.

**Kihara Waithaka** said the new constitution should correctly reflect the views of the people of Kenya. He said since the constitution is supposed to serve many generations to come it should not be rushed and it should not be linked to the general elections. He said elections should be done under the existing constitution and Parliament should not be extended.

He said civic education should be done by everybody who has the ability to reach the people and that the curriculum should be uniform to suit all areas.

He said constituency centres should be the basic review units.

He said civic leaders, political parties, business people, religious groups and so on should be involved in constituency forums since they are all stakeholders.

**Amina Musa** representing the poor and the youth said these groups are abused by everyone. She said these are the people who should conduct civic education because they can reach everybody.

She said documentation centres should be in schools and places that are accessible to people.

She said the Commission does not have enough time to finish the process. She said Somali people are marginalised and they are becoming poorer because even politically they have been shut out and they do not know where they belong.

**Stephen Marangu** said civic education should be done by anyone who is able.

He said people do not understand the present constitution including the MP's. He said at the moment they are saying that the President should select someone to take over from him whereas the constitution says clearly that the people are to choose the leader themselves.

**Eliud Njela (?)** said civic education should be conducted by anyone who is able, be it NGO's or churches.

He said the review process should not be linked to life of Parliament.

**Helen Otoy** said civic education is a very serious issue and she did not think that churches would be able to conduct it during church services. She said civic education should be done according to the constitution. (Shouting).

She said elections should go ahead under minimum reforms.

**Moses Muga** said civic education should be conducted by churches and Islamic organisations at the grassroots level. He said the foundation of Kenyans is the knowledge that they are supposed to have. (Shouting)

**Chris Murumba of University of Nairobi** said civic education should be conducted by local people and that the Commission should take as long it needs to complete the review process.

**Maureen Andeka of University of Nairobi** said civic education should be conducted by unemployed people especially those who have attended universities so that they can make a living.

**Morris Owika** said Kenyans are becoming poorer and poorer because of mismanagement of government offices, lack of confidence and corruption. He said the government has turned slum dwellers to squatters.

**Dr. Sabai Lihamba** said the present constitution was written in London and Kenyans were not consulted. (Shouting)

**Japheth Ogolla** said civic education should be conducted by anyone who has the ability and the capacity.

He said constituency forums should be composed of different people in that particular community.

Documentation centres should be mobile so that they can reach everyone.

On timeframe, he said general elections should continue as scheduled and the Commission should continue with its work if it needs more time.

**Kwamboka of Maendeleo ya Wanawake** said civic education should be done by all interested groups be they churches, NGO's or individuals.

She said the Commission should draw up an interim constitution in case it needs more time on the review process.

She said men, women and youth in Gucha would like to be involved in civic education.

She said airwaves should be opened so that information is disseminated to as many people as possible.

**Benson Anjere National Chairman of Kenya Programms of Disabled Persons** said disabled persons in Kenya are not given enough attention. He said that even in civic education people with disabilities will be left out when it comes to disbursement of funds.

He said the Commission should also choose venues for meetings that are suitable to people with disabilities.

He said organisations with already existing structures should conduct civic education. He said in every venue people have said that people with disabilities should be given consideration and asked the Commission to give more serious attention to them than to the other people.

He said an enabling environment should be created in order for people with disabilities to participate in the review process.

**Joyce Simbota** speaking for grassroots level women said that this group is always discriminated against and that their views should be considered in the new constitution.

She said that children are also discriminated against and they are not given a chance in life. She pointed out that even the poor people and children should be represented in the Commission.

**Francis Kinyatti, Committee Member, Muungano wa Wanavijiji** said the organisation represents about 100 estates in Nairobi and Athi River. He said that people are brought from outside to conduct affairs in estates while the estates have able people who can run their affairs. He said civic education should be done by the people in various estates.

He said constituency forums should be among the people in the same estates.

**Kiroti wa Wangui** said the Commission must provide proper civic education materials and that trainers must be trained.

He said the Commission should try to finish the process before elections and that the process should not be linked to the general elections.

**Charles Kariuki Wambugu** referred to item 5 of the outline curriculum which talks about different government. He said the people of Kenya have experiences through either bad or good governments and they should be given an opportunity to say what they have found to constitute bad or good government.

He said people should be given a chance to debate whether they want to elect their own leaders in districts, divisions or locations rather than having the provincial administration.

He said there should be a section in the curriculum dealing with leadership qualities.

**Dennis Okumu** said the Commission should not rush the process and if necessary it should ask for extension so that it can make a good constitution.

He said workers should also be given a chance to give their views and their rights should be included in the new constitution. Trade union elections should be free and fair.

He said civic education should be conducted by religious groups, NGO's and anyone who is able.

He said all Kenyans are looking at the Commission to do a good job and that the Commission should not be intimidated.

**Com. Maranga** invited Prof. Ghai to close the meeting.

**Prof. Ghai** thanked those present for the many ideas they had put forward.

He said the Commission does not have power to forbid anyone from conducting civic education but that those groups that will participate will have to abide by conditions laid down by the Commission.

On timeframe, Prof. Ghai said the Legislation says that the Commission should finish its work by September 2002. He said the Commission would review progress from time to time and if it feels that it cannot complete the process in time, it will ask for extension. He said the Commission has noted the comment from many people that the process should not be rushed and that it has no wish to rush the process because it is very important as it deals with constitutional issues. He said the Commission wants everyone to have an opportunity to participate in giving contributions and to become familiar with the provisions of the constitution.

He thanked everybody for participating.

The meeting closed at 5.30 p.m.

