

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report of

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**CKRC/ECK JOINT CONSULTATIVE WORKSHOP ON THE
REFERENDUM PROGRAMME,**

HELD AT LEISURE LODGE, MOMBASA

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15.06.05

CONSTITUTION OF KENYA REVIEW COMMISSION,

**CKRC/ECK Joint Consultative Workshop on Referendum Programme, Leisure Lodge, Mombasa,
held on 15th June, 2005.**

Present:

- | | | |
|--|---|----------------------------|
| 1. Mrs. Abida Ali-Aroni | - | Chairperson |
| 2. Prof. Ahmed Idha Salim | - | 1 st Vice-Chair |
| 3. Prof. Wanjiku Kabira | - | Vice-Chair |
| 4. Dr. Charles Maranga Bagwasi | - | Commissioner |
| 5. Mrs. Alice Yano | - | “ |
| 6. Mr. John Mutakha Kangu | - | “ |
| 7. Mr. Ahmed Issack Hassan | - | “ |
| 8. Mr. Riunga Raiji | - | “ |
| 9. Dr. Andronico O. Adede | - | “ |
| 10. Mr. Paul Musili Wambua | - | “ |
| 11. Mr. Domiziano M’ tuchokera Ratanya | - | “ |
| 12. Ms. Kavetsa Adagala | - | “ |
| 13. Mr. Ibrahim Lethome Asman | - | “ |
| 14. Dr. Mohamed Swazuri | - | “ |
| 15. Dr. Abdirizak Arale Nunow | - | “ |
| 16. Hon. Mrs. Phoebe Asiyo | - | “ |
| 17. Mr. Abubakar Zein Abubakar | - | “ |
| 18. Dr. Mosonik arap Korir | - | “ |

CKRC Secretariat in Attendance:

- | | | |
|-------------------------|---|-----------------------|
| 1. Col. J.P. Gichuhi | - | DS/Mobilization |
| 2. John Watibini | - | PO/Mobilization |
| 3. Daniel Karao | - | |
| 4. Teresa Apondi | - | PO/CEPIC |
| 5. Samuel Wanjohi | - | PO/CEPIC |
| 6. Hassan Mohammed | - | PO/Mobilization |
| 7. Fatuma Jama | - | PO/Mobilization |
| 10. Jermiah Nyegenye | - | PO/R&D |
| 11. Charles Oyaya | - | PO/R&D |
| 12. Stephen Mukaindo | - | PO/Personal Assistant |
| 13. Evans Menach | - | APO |
| 14. Noor Awadh | - | APO |
| 15. Leah Symekher | - | APO |
| 16. Helen Makone | - | Human Resource |
| 17. Patricia Mwangi | - | PO/Hansard |
| 18. Beatrice Mwangi | - | |
| 19. Lilian Udoto | | |
| 20. Lawrence Kasungi | | |
| 21. Richard Maranga | - | IT |
| 22. Brian Anguba | | |
| 23. Samuel Bobby Anditi | | |
| 24. Joseph Mitoka | - | |
| 25. James Nganga | - | |
| 26. Gerald Ndwiga | - | |
| 27. Evans Ondwari | - | |
| 28. Shiundu Wafishino | - | |
| 29. Daniel Karao | - | |

ECK Commissioners present:

- | | | |
|------------------------|---|--------------|
| 1. E.C. Cheron | - | Commissioner |
| 2. J.B. Tumwa | - | “ |
| 4. Sammy Manyunza | - | “ |
| 5. Frank Kwinga | - | “ |
| 6. Jeremiah Matagaro | - | “ |
| 7. Nathaniel Chebelyon | - | “ |
| 8. Edward Lopokoiyit | - | “ |
| 9. Kihara Muttu | - | “ |
| 10. Habel Nyamu | - | “ |
| 11. Rachel Mzera | - | “ |
| 12. S.B. Tunu | - | “ |
| 13. Henry Jura | - | “ |
| 14. G.K. Mukele | - | “ |
| 15. W.M. Karanja | - | “ |
| 16. Anne Wambaa | - | “ |
| 18. Pastor M’Thambu | - | “ |

19. Abuya Abuya - “
20. Bashir Sheikh Ali - “

ECK Secretariat in attendance:

1. J.H. Tola
2. S. Chege
3. D. Kiiru
4. J. Keli
5. Christine Ndegwa

Observers

Jacqueline Olweya - Assistant Resident Representative, UNDP Kenya.

The Meeting was called to order at 9.15 a.m. with Commissioner Rachel Mzera(ECK) in the Chair.

Com. Rachel Mzera(ECK): Ladies and Gentlemen, I think it is quarter past now, we should start.

(Inaudible discussions from the floor).

Com. Rachel Mzera(ECK): One meeting, please. We should start now. Commissioner Mukele, Vice Chairman, ECK, Commissioners, Ladies and Gentlemen, Good Morning. It seems as if people did not have a very good rest last night, because the room is almost half, unfortunately. I hope you had a very good breakfast. Now, before we start I would like to call upon Pastor M’Thambu, ECK, to say some prayers and after that I will also request if there is any Muslim here and would like to say some prayers, please, you are welcome to do that. Pastor M’Thambu.

Com. Pastor M’Thambu(ECK): Let us pray. We are grateful to you once again, Heavenly Father, for gathering us in this place on the second day of our deliberations and surely, Lord, we would like to acknowledge your supremacy and power over every creature, because we are nothing but the pottery, You are the potter. We submit humbly in your hands and ask that the divine intervention will be in this place as it was yesterday, to enable us, O’ God, to go through that remaining bit of our deliberations and come out with the amicable solutions that we shall be in a position, dear Father, to carry out the Referendum and bring peace to this Nation. O’ God, we have go to recognize where we are and how we are placed in this place. We are not better than Kenyans out there, O’ God, neither are we more qualified than they are, but it is because of your divine grace that you have extended your hand onto each and every one of us, man and woman, O’ God, in this place, that we can be able to stand before you and make decisions for this Nation. We can see the magnitude of the work, O’ God, we can see the load which, dear Lord, the two Commissions are carrying.

O' God, the two Chairmen, the way they are sleepless thinking about what to do and especially when there are obstacles in their Commissions, or there are obstacles to be answered in higher authority. God, we are asking you, in Jesus' name, to help us and give us direction, give us light, give us that wisdom and understanding to be in a position to pick those areas, dear Lord, that we may term as gray and they are bringing obstacles in this particular Referendum and above all Lord, we just want to pray that your divine intervention also will be required to the Parliament, the PSC and the Parliamentarians, O' God, because we may sit here, eat and drink, spend money from the poor and when we submit all that to those people, they just turn them down. Father we pray for your advice and especially to touch the Parliamentarians and those that are making decisions concerning the Referendum and even the Zero Draft *per se*. God, we pray that you shall do your will, have your own way in this system, even as we sit here we need your blessing, we need your cover we need your protection. In Jesus' name we pray. Amen.

Com. Rachel Mzera(ECK): Do we have a Muslim who would like to say some prayers, or is that enough? Yes, okay, good.

Com. Ibrahim Lethome: Let us pray. *Bismillahi Rahman Rahim*. In the name of God, most merciful, most gracious, we thank you God, for giving us another opportunity to see another day. God, you know that the task ahead of us is difficult, but we believe and trust that with your blessings and guidance we shall succeed. Give us sincerity in all that we do so that we do it for your glory and do it for the people of this country. Give us what is good in this world and what is good in the hereafter and protect us from the torment of hellfire.

Com. Rachel Mzera(ECK): At this juncture, I would like to recognize some Commissioners from the CKRC who are here with us today. Commissioner Phoebe Asiyo and Commissioner Salome Muigai. Welcome Commissioners. I think we have also to hear from the ECK, Christine is also here. Now, have I covered everybody? I wonder whether there is anybody who has not been recognized and who was not with us here yesterday. Anybody else? No. Okay.

Yesterday we had a very good meeting and I think people were very frank and candid, so it is expected also today we will have similar deliberations. We covered quite a lot yesterday, if you look at the programme there is no need for me to repeat what was covered yesterday, but it was quite good. So, today, our first presenter is the Vice Chairman of ECK, Mr. Mukele, who is going to talk on the mandate of ECK on the Referendum. After his presentation, it will be followed by Plenary discussions. Mr. Mukele, you have the floor.

Com. G.K. Mukele(ECK): Thank you. Sisters and Brothers, Good Morning. I will go to my paper straight, it is a short paper and I will do it largely by reading what is there and in the introduction I am stating, this topic could easily overlap with what the Chairman was talking about yesterday, that is the Chairman of ECK. However, it is harmless if part of it is repeated.

“The majority of Kenyans have not heard of a Referendum. It is interesting to note that the Referendum has been carried out in

the neighbouring countries like Uganda and Rwanda, who have specific legislation on the issue, but not Kenya”. This does not just apply only about the Referendum, it also applies in the law reform in East Africa. Our neighbours who were behind us are way ahead of us for the reasons you know.” There is no reference to the Referendum in the Kenya Constitution or any legislation covering this. Referendum legislations is provided for in the Constitution of many countries. In Uganda, under Article 61(b) of the Constitution and Section (1) of the Referendum Act, the Electoral Commission is charged with the responsibility to organize, conduct and supervise elections and Referendum. We have such provisions in England, Canada, Australia and many other countries. Ideally, there should be a permanent law to deal with the Referendum and plebiscites”. There is very little difference between the two, but we use the word the plebiscites when we are talking about voting on issues. Do we want bars in estates in Nairobi? That would be a very ideal item to go for the plebiscites of the residence of Nairobi.

“The law we are dealing with in this exercise, goes off the Statute books on completion of the project, thus Section 36(1) of the Constitution of Kenya Review Amendment Act, 2004 states:-

“this Act shall expire when the Commission is dissolved”, yet Kenya has many issues on which leaders and the population are divided. It would be proper to take some of the dividing issues to the people/voters”. Could you please switch off all your mobiles so that we can listen to one source as we proceed.

The existing law. Kenya has reasonably good law on elections and the Referendum is basically an election. It is not a choice of political parties or individual candidates, it is a choice by the electoral between opposing political views, often with the Yes or No answers. The Kenyan electoral law is set up mainly in the Constitution and the National Assembly and the Presidential Elections Act. it is common knowledge that written Constitutions provide for how they are amended or replaced. This is the case with Section 47 of the Kenya Constitution that provides for the alteration thereof. The word ‘alter’ as provided in the Collins Wordfinder means among others, adopt, amend, change, modify and transform”. All those words are included in the word ‘alter’ which is in Section 47 of our Constitution. “Section 3 of the said Constitution highlights the supremacy of the Constitution and it states:- “throughout Kenya and subject to Section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void”.

The mandate of the Electoral Commission under the Constitution starts with Section 5 on page 6 of the Constitution. The Section provides for the election of the President of the Republic of Kenya. Sections 41 to 43 provide the basic electoral law and set out the Electoral Commission as the only body with the mandate to carry out elections. The Commission's independence is enhanced with the protection of the Commissioners and the Commission's decisions as stated in Section 41(9). The responsibilities of the Commission are outlined in Section 42(a) with the marginal note put as “Conduct of Elections”. The ECK is responsible for *inter alia* (d) promoting Voter Education throughout Kenya. Section 42A(e) provides for such other functions as may be prescribed by law. That law, of course, will be void if it contravenes Section 3 above and by extension the Electoral Commission can ignore if it directly encroaches on the independence of the Electoral Commission”.

“Apart from reference to the courts of law that hear disputes on results, the administration of the election in this country is exclusively the work of the Electoral Commission. our courts have usually never directed the Commission to repeat an election as stated in Section D(1), (c) and (d) of the Constitution of Kenya Review Act. Section 3 of the National Assembly and Presidential Elections Act provides for the appointment of the staff of the Commission. Section 17A states:-

“The Electoral Commission shall have the overall conduct of elections under this Act and shall give general directions and exercise supervision and control thereof and take the necessary measures to ensure that the elections are transparent, free and fair”. This is the mandate of the Electoral Commission.

The mandate under the so-called Consensus Act. “Some of the Act would be caught up with Section 3 of the current Constitution. The Act has been enacted by Parliament, the supreme law making body of the Republic and unless the contrary is shown, the Electoral Commission has duty to implement the law as it is”. I am pausing to indicate the stress under that Section.

The provisions of Section 28 of the Act are specific and are as follows:-

28(1), Within 90 days after the Attorney General publishes the proposed new Constitution under Section 27(3) , the Electoral Commission shall hold a Referendum to give the people of Kenya the opportunity to ratify the proposed new Constitution.

(2) The question upon which the people shall vote in Referendum shall be whether they are for or against the ratification of the proposed new Constitution.

This was discussed at length yesterday.

(3) The proposed Constitution shall be ratified by a simple majority of the votes cast in the Referendum.

This again, was discussed yesterday.

(4) The persons who may vote in the Referendum are the persons who are registered to vote in elections to the National Assembly.

(5) The National Assembly and Presidential Elections Act shall apply, with necessary modifications, with respect to the conduct of the Referendum, subject to the regulations under Section 34(3).

Yesterday, the Chairman was wondering what it was all about.

(6) The Election Offences Act shall apply with respect to the Referendum as though it were an election within the

meaning of that Act.

Thus, with the mandate clearly given, the Electoral Commission has to look at the following aspects of the Referendum:-

- (i) The register of voters has to be revised and be in place as it forms the basis of the choice by the people. It is an elementary rule of the electoral process that no election can be free, fair and transparent without a good register.
- (ii) There must be officers to carry out the exercise. As most of the Electoral Commission election officials are hired on temporary terms, work must start with the hiring process.
- (iii) The logistics must be worked out and put in place for the exercise.
- (iv) The election materials must be assembled in time. In accordance with Section 28(2), the Electoral Commission has no role in framing the important issue of the questions to be taken to voters.

It simply has no role except perhaps to those who want to say, oh, put it in Swahili and put it in some other language in order for the majority to reach. It has no role.

- (v) The Electoral Commission has to make rules in accordance with Section 34 of the Act.

And I would like to inform you at this time, as the Chairman said, the Committee concerned has already made rules. In fact, the comments you are making, or you made yesterday will be very useful for completion and after the rules have been approved by the Plenary of the ECK, they will be sent to CKRC and they will be sent to the Committee in Parliament, under the Clause saying, in consultation with. So, they are coming to you.

- (vi) The funds must be available early to facilitate the preparations for the same.
- (vii) Voter Education is a Constitutional obligation for the Electoral Commission of Kenya.

We also saw yesterday that there is very little difference between the two, Civic and Voter Education.

Now, groundwork. "Getting down to the ground work, the ECK as a neutral body that arbitrates between opposing views would have to look at the following:-

- (a) The wording of the question or questions which would be explained to the people.

That is what we are supposed to do, but I have already commented on that.

- (b) The handling of campaigns by opposing groups.

I was very surprised to hear some very Honourable members who are here, saying, you cannot even put in the ballot papers yes or no and give colors and give symbols (?) to the people. I do not know what that means.

- (c) Conflict resolution.
- (d) The monitoring and access to the Media.
- (e) Providing public information and a giving a balance to opposing arguments.
- (f) Carrying out and supervising actual polling.
- (g) The counting, the declaring and gazettelement of the results.

Conclusion:

The mandate of the Electoral Commission, under the law, is clear. Time is of the essence. Let this workshop decide on where the two Commissions can work together without infringing the provisions of the basic law of the land, the Constitution. Where such problems arise, solutions can easily be found e.g. the CKRC can carry out Civic Education but when it comes to Voter Education and the conduct of Referendum, they can come as observers and I do not think we need to quarrel so much on the word 'monitor' and 'observer', because, like even in the last General Election, we had people who were mobilized and supposing the CKRC mobilized its personnel and they carried the label, 'CKRC'? You would be everywhere. So, the only thing we are saying is that you cannot be giving your orders while you are down on the ground there.

The problem is that the Parliamentary Select Committee, which is to identify contentious issues of the Constitution and get the approval of Government, has not been involved in the joint meetings of the two Commissions. I think this is the fourth meeting, probably, adjoined, third or fourth meeting we are having. I have never heard somebody stand here and say he is representing Parliament and that is where the real issues, for now, are. However, let the workshop thoroughly examine the law and the time frame for the process. Problems, if any, can be solved in accordance with the existing law. There are no insurmountable problems that ECK and CKRC cannot sit and talk, discuss and reach a conclusion and I would like to put, at this time, when we talk about the provisions of the law, we should not be taken as opposing the process, we should not be taken as being

hostile to anything. The right thing is to say the law as it is. After you have said it, then you get down and say, how do we go about it.

With all the respect, Ladies and Gentlemen, now that the opposing groups are beginning to talk at national level, our leaders, our groups, this thing you called IPPG 1997, that thing was just meeting of leaders. It was put into writing and the law was changed in, I think, a week or two. I can assure you that even before we go to the Referendum we can have a more decent Act to organize this law and incorporate it into the Constitution. That is my personal opinion, so once they agree and they put down the points involved, you get what you call experts, you may not like lawyers if you are not a lawyer, but lawyers will always be there where there is law, they will always be there. So, if you get those experts and say, even one from each of the 8 provinces, lock them up, these 8 people, lock them up for 3 days, they will come up on the proper procedure of how to amend the Constitution.

Nevertheless, I am not saying we cannot amend the Constitution under the existing law, I am only saying, as an opinion of one of these lousy lawyers in Kenya, that the Act as framed is defective in many respects, but that does not have to stop the Process. Thank you very much.

Com. Rachel Mzera(ECK): Thank you very much, Commissioner Mukele, for your very elaborate paper. Now, this is open now for questions or discussions, anybody who would like to comment. I think I saw your hand first. Okay.

Tape 2

Com. Abuya Abuya(ECK): On contentious issues, As it was discussed in Naivasha, and up to now, Chair, I have not seen--

(Inaudible discussions from the floor).(Laughter).

Com Abuya Abuya(ECK): Up to now, Chair, the two Commissions, I do not know. At least ECK, we have not seen what came out of the Naivasha discussions. I would be better off and I am sure all of us would be better off, if we were given the document.

Two, I would like to stress that, yes, lawyers, it is true as you have said, that they have a part to play, but all along, even before Bomas and indeed, there were actually Committees hired, Committees of prominent lawyers. I do not know what happened, that is why I say, also you cannot do without political leadership. Thank you.

Com. G.K. Mukele(ECK):: Thank you. I prefer, I think, to answer the question instead of writing down any questions, at the

end of it you begin explaining and even leave out some.

Now, on the question of contentious issues, I do not know. I do not know, I have no answer. Maybe some of us here who occasionally meet the people who matter, might know about it. I do not know and it is important, much as the section of the law is saying, the question will be this, but those contentious issues will affect the thinking of the people when it comes to voting. Now, the lawyers, Commissioner Abuya Abuya, have never been popular in history. Even in England they said, if you want justice in this country, kill all the lawyers, Shakespeare said so in one of the plays. So, nevertheless, you cannot do without vehicles on the road, they kill people, but you must go into them. The same thing with the lawyers, you cannot do without them except where there is anarchy, then you can do without them, as Amin did. He through some out of the courts and did whatever he did. So, I have no answers to your question, thank you.

Com. Rachel Mzera(ECK): Yes, has anybody got an answer to this question from the CKRC? No.

A Commissioner: *(Inaudible).*

Com. Rachel Mzera(ECK): Oh, you did not hear the question?

Com. G.K. Mukele(ECK):: Whether you have the contentious issues in your possession, they have been listed down for you and you have them. That is what the Chairlady is asking.

A Commissioner: *(Inaudible).*

Com. G.K. Mukele(ECK):: Oh, please do forward to us so that we also have them. Thank you. The Naivasha Accord.

Com. Rachel Mzera(ECK): Okay, good. I think you were the second person, or you.

Com. Ibrahim Lethome: Thank you, Commissioner Mukele, for your paper, I just want some clarification. On page 5 of your paper, item (b) on the things to be done on the ground, groundwork. It is a little bit confusing because from yesterday, I started hearing about opposing parties, when you are talking about the campaigns. I am not very clear about who these parties are. My understanding is that there will be Civic Education to all Kenyans, then after that there will also be Voter Education, Kenyans will be given information on how to vote. Then, the campaign here, it is where I get a little bit lost, especially when you talk about opposing parties. Which are these parties that we are talking about? I thought all Kenyans will be given the same document, it is for them to decide, depending on whatever they want, to say a yes or a no. I seek further clarification, thank you.

Com. G.K. Mukele(ECK): Thank you very much. That is to me a very important question and thank you for raising it. The picture we have about a Referendum is that you are asking people to vote yes or no. You do not just go to the people, because obviously, there will be political issues unless our leaders agree it becomes more or less a consensus, but if they are opposed and the regulations we have drafted, we have provided for each side and the sides we are talking about, people who are saying no and people who are saying yes. Each side will have to have a national office and a provincial office and a district office just as political parties have and those sides will be identified, that this belongs to this side and that belongs to that side. When you are voting, you will have agents for the sides, the people who are saying no will have agents at the polling station, those who are saying no will have agents at the polling station. They will have been appointed by a side, we are not basing it on political parties, but it will be a side, but in practice, if you look very carefully you will find some political parties are on the 'no' side and others are on the 'yes' side. So, those are the sides, or groups we are talking about, so to come to (b), handling of campaigns, there will be campaigns, there will be campaigns by the side saying no, there will be campaigns by the side saying yes and there will even be conflict, that is what we anticipate in terms of this election.

Now, probably our understanding of it is different from yours, it is very easy. You will get your very experienced group with some lawyers in it, we shall get our experienced group with some lawyers on it, across the table, we discuss in private and we will agree. I see no problem, but that is how we understand it.

Com. Rachel Mzera(ECK): Okay, I saw your hands first. Okay, you lady and then I will come to you.

Com. Alice Yano: Yes, thank you very much, Commissioner Mukele. I think I would want to start from yesterday. From the look of things, it is that we have really bonded together and I can see we are really going to go ahead and provide the mechanism for having a new Constitution, maybe before then end of the year or next year.

I want to pick up from your conclusion, that is the second line, that let this workshop decide on where the two Commissions can work together without infringing the provisions of the basic law of the land, that is the Constitution. From the look of things, my mind is very clear, that we can now take an honest view, we know what the law is, but from the presentation you have done, I can see we have so much that we can be able to do together in arriving at getting the positive results of the Referendum. I would want to look at the infrastructure of the two Commissions, like CKRC, we have the District Coordinators Offices and the 3Cs on the ground. I know, ECK, you have district offices and I think that if the two can be harnessed together, that is for the infrastructure of the two Commissions, we would be able to forge ahead and move together, that is using both, for the purposes of the remaining part of the Review Process.

Also, I would want to look at the materials that maybe, we would have to use in the Civic Education. For the Commission, I remember one of the CKRC Review Commissioners yesterday presented the paper and said that we have already prepared Civic Education materials and I know very well that you also are prepared in the issue of Voter Education. Supposing when we

go to the ground, can the two be done in tandem by the two Commissions, so that we can have a joint, meaningful way forward in terms of Civic Education? I am happy with what Commissioner Mukele has said about the issue of monitoring, that we do not have to make a hullabaloo out of it. At the end of the day, if we can both agree on the modalities of moving ahead, so that we can be able to do monitoring, not strictly *per se* as per the law provides, but do it in an agreeable manner so that we can see the end of whatever Civic Education we are going to provide for the people, so that they can make informed choices when it comes to a Referendum.

On the issue of the personnel to handle Civic Education, I know very well CKRC, we already have a number of NGOs, CBOs, we have professional bodies and all that, that maybe we used last time and we are still updating our list and I believe that ECK also, you have your own personnel that you have been using to do Voter Education. Can the same be harnessed together, put together, so that both Commissions can see the results of a joint venture in terms of that?

In conclusion, what I would say is, can we now forge ahead and come up with a joint way forward for purposes of ensuring that we have a process that will benefit us during the Referendum. Thank you very much.

Com. G.K. Mukele(ECK):: Right, thank you very much. In fact, you have touched largely on the last item on the Agenda this afternoon. Unfortunately, I have to attend some international workshop tomorrow morning and I have attended it in Kampala and Dar-es-Salaam, I do not want to miss it, but it will come under the last item basically, but what the Madam is saying is quite right, because now, if you have decks, we call them in short, decks, that is the District Coordinators, in our language we just say decks and you have decks at the same time and these people are earning from the same source, the Treasury, from the poor Kenyans pockets. Surely, we can find a way in which we can assist one another. Basically, my view has been that our decks could do a lot of work if each had a vehicle, even Voter Education, Civic Education, whatever it is. If these people had vehicles and means of transport, they would do quite a lot. So, that is now the way forward, we will come to the idea, that do we then look, in the context of the law, at what our decks can do, you will look into what your decks can do and then we come together and say, how can we share that for the convenience and the reducing of expenses.

The staff. We have temporary staff and I believe also, with your way to be all over the country, you will also need temporary staff and we can actually work either jointly to some level, or separately, but with a very good understanding for the purpose of convenience and for the purpose of saving on costs. As we said, Civic Education and Voter Education, just what is the difference? And as we have confessed to you, we have been given, I think, 7 Million Shillings or so, yearly for Voter Education, that is just a drop in the ocean, it is nothing. So, that money has been spent on advertising. If you hear when we are having registration of voters or an election, that item you hear just before the news, or just after the news and KBC does not say it is a public service and we get it free, no. You will hear one advertisement for one week has taken 100,000 Shillings. So, the coordination can be done, you have work to do, we have work to do and to me, there is nothing we cannot actually solve. The idea that I object to is people thinking that when you point out what is wrong, then you are hostile to the Process. Far from it.

Com. Rachel Mzera(ECK): You over there.

Com. Riungu Raiji: Thank you very much, Chair. I also want to associate with those who want to thank Mr. Mukele, I think like a senior lawyer he has been precise and to the point and I liked very much your conclusion and the sentiments that you have made about pointing out the weaknesses and trying to find a way forward, but there are two issues that I wanted to comment on and seek clarification.

The question to be put to the people, in fact, I am glad because we did spend sometime yesterday and I think it has been occupying our mind and I think you have said that probably, the ECK has no role to play in the framing of the question, probably as it appears to be already framed in Section 28(2) of the Act. I think that is an issue we have been thinking about, both yourselves and ourselves for sometime. The other issue, which I am not quite clear in my mind and I know it has been raised. The question of opposing sides, agents doing this and that. I know this is a new area which we have not dealt with in this country, but I am just wondering in my mind-- I know in ordinary elections we have parties and they have the agents they have accredited, therefore they can put observers, I suppose they raise money and all that. I would imagine that probably in a situation like this, there are no registered groups in support or opposing and therefore accreditation may be an issue. But, it is something, I think, that we need to put a lot of thought in, I notice that the law says that you apply your regulations *mutatis mutandis*, whatever that means, I suppose with necessary modifications, because those are the issues I think, which we have to do a lot of thinking on, because on way, probably it looks like you may even need no campaigners, people just go and campaign, the other one is that you may also have organized groups that want to officially be recognized as opposing or supporting the Referendum. I think I would want to seek some clarification, because I am not quite settled on exactly how this thing will look like when we have it and then perhaps, which side do we join and all that. Thank you.

Com. G.K. Mukele(ECK):: Right. Thank you very much. In fact, you have explained it and I have already concluded that the way we are looking at it and the way you are looking at it is different and the regulations, if we were not going round the country, would have been ready, I think, in another one week and you would get them, then you would study them. In those regulations, we copied quite a lot from our neighbours, the Ugandans. You see, in Uganda, when they were voting for multi-party, should they have a multi-party system, one party had a bus as a symbol and people climbing over the bus and its distinct colour. Now, you see, you are saying, we want many people, so you enter a bus and people can choose and say, if you want many people it is as simple as that. When you are going in for Voter Education, what are you telling the people? Surely, you must reach somewhere, Voter Education or Civic Education, you must reach somewhere where you are telling people that you make a choice between the two and they cannot make a choice between the two without making those two clearly distinct, clearly separate. So, they will say, those who want the Constitution, choose a bus, or those who want *status quo* choose a mountain. *Si unajua hii mulima tuu iko hivi? Eh. Sasa kama hutaki badilika na hii mulima yenu Mount Kenya, ubaji hivo*, choose Mount Kenya. You see how simple it is? (*Laughter*). And the people will choose Mount Kenya because the

Mount Kenya has never changed and it is not going to change for now. It is not going to change.

Now, that is what Ugandans did and if you want to change, then you may have probably a jet plane or this thing going to the moon and if you want to change, then you may probably have a jet plane or this thing going to the moon--

(Inaudible discussions from the floor)

Com. Rachel Mzera(ECK): Can you listen, please? Listen, listen, listen please, let us have one meeting.

Com. G.K. Mukele(ECK):: A popular insignia where people will say, now we want the new one, we are tired of the old one. Otherwise, I do not know what Civic Education on the issue you will do without telling people clearly, to distinguish and the one way to distinguish, you must have a symbol, one way to distinguish, you must have a colour. That is how we are looking at it, but nevertheless, I am not saying you are wrong, no, please. When you look at the regulations, you will look at it carefully, we will hold a meeting and I am sure we will agree. Now, yes, I think that is all I can say about that particular issue.

As for the issue of yes or no, 28(2) that we are talking about. Whether they are 'for' or 'not', the words are 'yes' or 'no', *ndio au hapana, si ndio?* Thank you.

Com. Rachel Mzera(ECK): Thank you, Mr. Mukele. Now, I think I want to raise a question here. Now, when we are talking of 'no' and 'yes', I am also very confused. It seems as if the whole Constitution now, will have only one answer or one item, so that is it. Yes, so it is possible to have that. Okay, jolly good.

Com. G.K. Mukele(ECK):: I can explain. Can I explain, maybe add to what you have said?

Com. Rachel Mzera(ECK): Please.

Com. G.K. Mukele(ECK):: That is the understanding of some people. Some others are saying, take out those contentious areas and list A,B,C,D,E, so, if the majority on one item says yes, it will be there. If the majority-- In the Constitution, in which case we are splitting the Constitution into bits. There is a thinking, also, on those lines, but I am not saying what others are saying is wrong. Thank you.

Com. Rachel Mzera(ECK): Okay. I think I saw Commissioner Asiyo, you had your hand in the air a long time ago. Please, can you come with your question?

Com. Phoebe Asiyo: Thank you, Madam Chair. Allow me also to thank Mr. Mukele very sincerely for his very elaborate

paper. There is one issue that appears on page 4, under 'groundwork', the work that ECK has to do. (a) says, 'The wording of the questions or questions which would be explained to the people'. I was just wondering, Mr. Mukele, whether this is not an area where you might want to act with the CKRC, which indeed drafted the new Constitution and who went round the country and got the views of the people, they might have a deeper insight into how these questions you are referring to would be explained to the people. How do you intend to go about this work without involving the CKRC or other people who have been on the ground? Thank you.

Mr. G.K. Mukele(ECK): Thank you, Madam. We want to involve CKRC and this issue is more explained. First of all, the way it is worded here, the wording of the question or questions, in fact, we have looked at it and found the question will only be one, or questions. You never know, as I am saying, IPPG or consensus, whatever those words you like using, or people like using, could come up with a different shape all together, in which case this comment would still be relevant, but for sure, that issue is going to be shown in the Draft regulations, which you have done, as soon as the Plenary approves, it will come to CKRC and CKRC will study it, make their comments then we can have a joint meeting of the Commissions, or a joint meeting of the Technical groups or legal groups, or whatever you call them, of the Commissions. So, we are working with them.

Com. Rachel Mzera(ECK): Commissioner Nyamu.

Commissioner Habel Nyamu(ECK): Thank you very much, Chair. This morning I am the first one to talk, contrary to everybody else.

Com. G.K. Mukele(ECK):(ECK): Good.

Commissioner Habel Nyamu(ECK): My mind does not want a Referendum, particularly because of 1.7 Billion and 1.4 Billion, that is 3.1 Billion shillings. As a teacher, I would rather have that money go Bursaries, or to do some good work for the El Molo or other poor people. I think we are talking as though Referendum is a foregone conclusion. I do not think so, I may not be a lawyer, but I do not think it is a must, that the Referendum must happen, for this reason. The same politicians who have so far caused all this fracas because of disagreement, because of seeing matters in different ways. They are the same politicians who are now telling us they are coming together and they are very good friends, and since these disagreements have led, in my view, to the mis-wording of the Review Act, I believe that the new friends can reward the same Act in a manner that makes it possible to write off the Referendum. The disagreement, Madam Chair, is about amendment or Review. Some very leading Kenyan lawyers have quit this process on the grounds of, can the Constitution be reviewed, or can it only be amended and altered?

Now that we have friendship between the warring parties, surely they can be told to re-word. It is just the top line, instead of using Review, just use alter or amend and since we have been told that Parliament has limitless powers to legislate, let them say

something like, 'an Act of Parliament empowering the people of Kenya to share with Parliamentary powers of amendment and alterations to amend the Constitution' and then let us make the Referendum, in my view, unnecessary.

Com. Rachel Mzera(ECK): Thank you, thank you. I think we had better stick to the agenda. (*Laughter*). Yes, you want to react?

Com. G.K. Mukele(ECK):: With the permission of the Chair, I can react in very few words. I have said it elsewhere that if we are not ready to change the Constitution in a sensible manner, leave it. There is no provision in the Constitution saying it must be changed within so many years, so if we are not ready, leave it. It more or less ties up with what the Commissioner is saying, but, no, we are not the leaders in this country on the political scene, we are not the drivers. If the drivers have passed the law and that law has been signed and it has been gazetted, we must be ready, all of us. We do not want to be ambushed and then be blamed. So, we are saying, because the law is already effective and I have said that law could be changed in just two days if people were serious, if need be. So, you may as well even say all you are discussing here, as Commissioner Nyamu is saying, you now go to section 47, put in all you want to say, vote two thirds majority and we have a new Constitution or an amended Constitution, that is possible, but let us work on the presumption that the law we are applying is the one that has become effective. Thank you.

Com. Rachel Mzera(ECK): I think it was either Henry or Ali first. Now, who was it, was it Henry? Okay, Henry and then we will come this side. Please, we will go that side and then come this side. Can we do that? Oh, good. Now, Henry.

Com. Henry Jura(ECK): Thank you, Madam Chair. I think the--

(Inaudible discussions from the floor).

Com. G.K. Mukele(ECK):: Go on.

Com. Henry Jura(ECK): Thank you, Madam Chair. I think the Vice Chairman, ECKs paper has laid there very clearly, the mandate of ECK and I want to confine myself to that paper. I only want to comment in passing that now we have come this far and as the Vice Chairman has said, we are just the technical people, the people who matter we will have to go back to them.

I see this as-- There are two levels. We have the political level, which is represented in Parliament by the Committee and the technical level and the technical level is both the CKRC and ECK. I think we go back to the operations and confine ourselves to strictly dealing with how best to interpret the law and apply it on the ground. To this extent, therefore, it means, to start being practical there will be Committees, that the Vice Chairman has alluded to, between ECK and CKRC. I can see we are covering the ground and we are reducing the gap. We have agreed in principle that Voter Education, Civic Education, who is

doing what and we have agreed that we shall do it. We have agreed on another issue which looks rather contentious, I have just forgotten, there were two main issues between ECK and CKRC, so what we need to do now is to go on the ground and fine tune this issues without being distracted to more legal and political matters. So, I think as Commissioner Edward Cheronu suggested yesterday, we shall have to come up with points, we shall have to appoint technical Committees because we have no way out, we have been given instructions. We cannot go back and say, okay, we do not want the Referendum, we do not have the power to say so. So, I think that is what we should do, thank you very much, Madam Chair. I think we should go down to thinking of how to form Technical Committees to deal with specific operational issues. Thank you.

Tape 3

Com. Rachel Mzera(ECK): Thank you. I think Commissioner Baraza has got a very burning issue, okay my dear. *(Laughter)*. Yes, the floor is yours.

Com. Nancy Baraza: It is not a bad issue, but I thought I would put my hand up very--

Com. G.K. Mukele(ECK):(ECK): No, she said burning, not bad. Burning.

Com. Rachel Mzera(ECK): Not bad, burning.

Com. Nancy Baraza: Yes, thank you for the opportunity. I think how I want to react to Commissioner Nyamu, is that, I think now his question, his concern takes us back to a theory of Constitution making into all that stuff, Constitution making, the theory, because the only way known in Constitutional theory about making new Constitutions is either through a Referendum or through a Constituent Assembly and we see every country that makes a new Constitution either go the way of Constituent Assembly like Uganda and South Africa, or Referendum. That is the only way you can bring in a new Constitution and in Kenya, we are changing the basic structure of the old Constitution and we are bringing in a new Constitution and it can be done only, either through a Referendum or through a Constituent Assembly. So, it is a necessary path that we have to follow.

Now, secondly, the Billions, they frighten people, but democracy is not cheap. I think that is money that we have to close our eyes and spend if we are to bring structures that will ensure democracy in this country. I did visit the El Molo and I know they are in a dire position, but for as long as we have no institutions that reach the El Molo, I think drolling to them a few shillings every year will not help them at all. I think the best way is for us to spend the 2 Billion, but create democratic institutions that will make sure that the El Molo become part and parcel of this institution. I think that should not deter us, we have no way out, we have to follow the Constitutional theory and we have to give Kenyans a new Constitution.

Com. Rachel Mzera(ECK): Yes, Ali, then I go to this lady here.

Com. Bashir Ali(ECK): Thank you, Madam Chair. I think I have no quarrel with the process or the decision that we should have a new Constitution, this was a decision of the people of Kenya at all levels and this Commission, CKRC, have gone throughout the country and they have heard people and I think what they present here today is what, in fact, the people of Kenya said and wanted and I think that is okay, because the amount of money we are spending, I think should not be an issue, because money is what you spend on the value rather than the amount itself. So, I think this is a very good investment for the future of this country.

Now, having said that, Mr. Chairman, I want to take the Vice Chairman to task for what he said. Now, after we read his paper, I think he alluded to the fact that in his considered opinion as a senior lawyer, he thought the Act was defective and I think that statement should have been made many, many months ago, not today. He should have told us, we sat even with him at so many meetings looking at that Act. So, if it was defective it was his responsibility to tell us where it was defective and how those corrections should be done. Now, advising us to go ahead with that defective Act and carry out the Referendum, I think it does not impress me at all, so I would ask the Vice Chairman, all those wires among the two Commissions, to tell us if in fact, the Act is defective, if it is so, then can we follow a law that we know in our hearts is wrong? Should we not have a duty to the country to say, we can do this or that, we can go round about it that way and therefore, we can research our duty. I think it will be cheating people actually, to follow a law which we know to be defective. Thank you very much.

Com. G.K. Mukele(ECK): I know Commissioner Ali and that question is quite him calling it as it is. Yes, we are pointing out, the law can be effected, let me tell you one example where the law can be terrible and it has been going on for the last 50 years. Section 6 of the Land Control Act says, if you buy a piece of land and you do not get the consent of the Land Control within 6 months, that agreement is void. At home people simply tell people, this is the piece I have sold you and somebody brings bricks and tiles and puts up a beautiful house, you come back six months later on, the other person who has been selling to several people has gone and he says, the agreement was void, if you want, carry away your house. You see that is bad law and then somebody has already developed and you go away empty handed. I have know two murders, three, in Western Province because of that. It is bad law, but nobody has brought in a good law, Mukele does not make law, he can only shout as he is shouting and somebody picks the point and goes somewhere and the law is amended. Thank you, that is all I want to say on that.

Com. Rachel Mzera(ECK): Commissioner Wambaa and then Adagala.

Com. Anne Wambaa: Thank you, Madam Chair. Madam Chair, I am referring to the earlier comments of Commissioner Alice Yano and our Vice Chairman, on what we can do to work together. Madam Chair, first of all, the objective of both Commissions is to have a Referendum and have it successful and from yesterday the argument as to the responsibilities of the ECK versus CKRC and I find ourselves given a job we want to do and do it well. When you are referring to the law that has empowered ECK to do so much, you are right, but by involving CKRC, ECK is not breaking any law. So, as long as you

follow the law and you involve CKRC to the extent that you are not breaking the law, it will help us reach our objective.

Madam Chair, earlier on when this Commission was formed, ECK felt left out even during the Bomas work and I think that is where the feeling that we are separate bodies arose and since now we have sat down together in order to run the Referendum, let us forget about-- I hope that I will not be blamed by my colleagues in the ECK, let us not emphasis so much as to who is monitoring, who is observing, let us look at it, that we want to achieve this objective over a very, very successful Referendum. I think we need to involve ourselves, our staff out there in the districts and I was thinking mainly of training. We are always trading our staff whenever we have a by-election or a General Election and I was looking at it in a situation where we can even save funds by getting the ECK Coordinators and the CKRC people instead of holding different training sessions, because we have one message that we want to give them, maybe a different vehicle of doing it, let us see how we can involve them. even the area of transportation, it would be almost unthinkable to have one District Coordinator from CKRC and our Coordinators, they are driving to the same venue and they go in two different vehicles, or one leaves the other because we are two different organizations. It can be worked out where we can work together.

Madam Chair, there are also areas where the two Chairpersons of the CKRC and ECK can also work together in the Media coverage. We can go and we have a message, we are putting it in the Nation today something to do with the Referendum. We spent KShs.50,000 or KShs.100,000 per page to advertise what we are doing. The next page is CKRC, paying the same amount, giving the same message, so I was thinking that probably these things can be coordinated in order for us to work together. The Chairmen can go to the electronic Media, they can be interviewed on all these talk shows where people want to ask questions, the two groups can work together in order to educate the masses on the Referendum. But, let us look at the objective of the two Commissions rather than the diversities. Thank you.

Com. J.B. Tumwa(ECK): Procedural matter.

Com. Rachel Mzera(ECK): Okay, procedural matter. You are welcome.

Com. J.B. Tumwa(ECK): Madam Chair, I take note that Mr. Mukele has discussed the mandate of ECK and the next topic is going to be mandate of CKRC. I am wondering, some of the issues which seem to be coming up now, will they not have waited for us to hear from the CKRC and then we discuss all these matters together so that all that leads to what we are going to discuss in the afternoon. Thank you.

Com. Rachel Mzera(ECK): Yes, I think that is a very good idea, actually.

Com. Kavetsa Adagala:

(Inaudible).

Com. Rachel Mzera(ECK): Pardon me?

Com. Kavetsa Adagala: Mine is the mandate of ECK.

Com. Rachel Mzera(ECK): They are overlapping.

Com. Kavetsa Adagala: I agree with him, but mine is on the mandate of ECK.

Com. Rachel Mzera(ECK): Yes, I was going to give you a chance to talk, but I was going to finish first and then what he has said, my dear. (*Laughter*).

Com. Kavetsa Adagala: No, it is the mandate of ECK.

Com. Rachel Mzera(ECK): Okay, you have the floor.

Com. Kavetsa Adagala: Yes, I am surprised to hear members of ECK – with all due respect – saying that we do not need a Referendum, because actually, a Referendum is a mandate of ECK. CKRC will only do this one Referendum and then all the others that will ever come, whether they are the Switzerland style or which one, it will be ECK that will be doing them.

Now, it is true we have basic needs, I think Nancy has answered it in a different way. It is true we have basic needs, but let me assure you, Commissioner Nyamu, through the Chair, your salary and mine donated to a primary school every month will improve your district and mine. You have not dealt with that aspect on a personal level, we have, being told you have all these exorbitant salaries, you have this, so it starts there. If indeed, we do not need voting and democracy, then we dissolve ECK, because that is what it comes down to, but because people want to be involved, because people are human beings who want to make decisions, that is why we are having the Referendum. The Referendum is not coming from CKRC, it is a voting, a democratic tool. It is like we all decided that we want to have test tube babies instead of going through the whole pain of childbirth, you know. (*Laughter*). It is really something quite fundamental and there are different needs in society, there are basic needs and there are needs of self-actualization and they are just at that level where we are. When we go through the Referendum, Kenya will be a different country and the Civic Education is actually educating the entire society. So, if we are feeling guilty – me, I do not – I am a teacher so I know I am teaching the whole society and I have no qualms about that.

Com. G.K. Mukele(ECK): Sorry, Chair, I think since I was the presenter of this, I am happy by the reaction to what we are discussing, it is quite good, but I want to correct *Mwalimu* a little, the *Mwalimu* who has just spoken, that it is not ECK Commissioners or members, it is a frank opinion of one Commissioner and this frank opinions are good because you see the feelings of the people.

Com. Rachel Mzera(ECK): Okay, yes, the next one.

Com. Mutakha Kangu: Madam Chair, I would like to make some comments about the issue that was discussed earlier about opposing groups. We need to recognize that an election is one way for putting into effect the democratic processes to enable people to enjoy their right to democracy and a Referendum is a higher level of democracy where people are not voting to choose leaders but to decide on issues and in democratic processes it is accepted internationally that an election has to be free and fair and if it is to be free and fair, those who are participating must be given an opportunity to mobilize support for their views or for their candidates. So, in this case if we are going to have a 'yes' and 'no' choice, there must be people who will want to mobilize people around their opinion. If your opinion is that you are voting 'yes' to the Constitution, democracy demands that you be allowed an opportunity to mobilize people who think the same way you do and therefore, that is why it becomes necessary that you be allowed an opportunity to campaign and see whether you can win more supporters on your side.

So, I think Commissioner Mukele is quite right in saying that we must have sides, there must be some rules of governing how those sides are going to be allowed to mobilize support for their views and if you go down you will find that in every election there is an opportunity to rig. There are those who will want to rig the elections and so, if you do not have clearly defined sides, one side can easily overrun the others and impose their view on the others by rigging. So, that is why you need agents for each side, campaigns for each side, those agents will be vigilant, overseeing that the other side does not manipulate the Referendum so that the result is reflecting what the people do not want. So, I think it is quite proper that we should have sides, we should have opposing groups, they should be given time to mobilize support, they should be given time to have agents to oversee, to ensure that there is no rigging, so that at the end of the day the results truly reflect the wishes of the people of Kenya.

Com. Rachel Mzera(ECK): Yes, the Chairman of ECK. Mr. Kivuitu.

Com. Samuel Kivuitu(ECK): Thank you very much, Mr. Kivuitu. I notice you are sitting behind my name. (*Laughter*).

I do not know, I have got a problem with this issue of sides, because I do not know how you will identify them. The Referendum is an amorphous thing if you do not know, it is an issue which is put to people and they choose. Now, how do you identify these people and will you have them registered so that you know who are on this side and who are on the other side? That kind of effort, to me, seems to be wasted. If you just put the question people will queue and they take their sides there. I cannot understand, when they are campaigning they go out and say, 'I do not support', 'you support', they will be telling the people and my worry was that the freedom of the political parties, it will be like you are suppressing it if you do not just let people campaign the way they want. Why should I know the way they are campaigning and waste a lot of my time trying to group them? My problem is very big on this issue and my Vice Chairman knows, I have got a real big difficulty in understanding the

purpose of these sides.

Com. Rachel Mzera(ECK): Yes, over there.

Com. G.K. Mukele(ECK):(ECK): I have a reaction to what my Chairman has said. You have rules to apply, Election Offences Act, you have the Electoral Code of Conduct governing the elections, in this case, groups opposed to one another. So, immediately this matter is declared that we are going to have a Referendum, you will see people coming and they will be saying, 'say no'. So, we are saying, if you are going to be a leader and a group saying no and it is to be identified, register, so that we know that the national Chair of that group is so and so. The provincial Chair or district Chair is so and so. When you are choosing agents to come to the station, who is signing for these agents? Now, if we just leave it and say, anybody can run around in the evenings and give people money and so on, in a disorderly manner, then it runs a risk of what somebody said, some group can hijack it on one side and impose on it. Nevertheless, it is something which we have put in the regulations, copied mainly from a neighbouring country and we will definitely have a forum to go into more details.

Com. Rachel Mzera(ECK): There was a gentleman behind there. Yes, over there.

Com. Abubakar Zein: Thank you, Madam Chair. I entirely agree with the Vice Chair of ECK and if you look at the experiences of other places where they have had Referendum, the question of sides is an important question, particularly if you are thinking in terms of, for example, access to public Media. How do you apportion access to public Media with unnamed faces? If you are thinking about campaign financing, a limitation to campaign financing, how do you administer and manage campaign financing? How do you – like the Vice Chair said – when you are talking about Referendum offences and penalties, how do you administer or manage that without putting specific faces and identities to people and organizations which are proposing one side or opposing another side, including the observation of the Referendum and I think it will be important.

What I am also sure about and I would like to pick the brain of the Vice Chair, on this one. I am sure that it is not enough to say you can anchor the principle of sides on regulation, that I am sure about. you need to have the principle in the Act, then develop the rules and regulations of administering the principle in the regulation. So, I would like to pick his brain on that. Thank you, Madam.

Com. Rachel Mzera(ECK): One more question and then we go for tea. Did I see--

Com. G.K. Mukele(ECK):(ECK): If you could allow me to just react on that.

Com. Rachel Mzera(ECK): Okay.

Com. G.K. Mukele(ECK): That is good, because even when we talk about, and our regulations as drawn are talking about advance voting. If Rwanda can have a polling station for the Rwandese to vote, why can't Kenya have a polling station in Kampala and our people there can vote and my Chairman has said, how are you bringing this *vide* the regulations, exactly what you have said and now, when the regulations are circulated, those are very good ideas, it will be discussed.

Com. Rachel Mzera(ECK): Can we have one more question? Did you raise your hand? Yes.

Com. Wanjiku Kabira: Thank you very much, Chair. I also want to associate with those who have thanked the Vice Chair of ECK on this paper and the spirit that it carries. I think there are a number of things that we still need to pick up in relation to the law, which are coming through. I know we talked about, for instance, the question of who will frame the question for the Referendum and we know it is silent. I think we need to make some proposals on that issue, whether one of the Commissioners can initiate the framing of the question and then consult with both PSC and ECK. I also think that when we work out the detailed programme for the Civic/Voter Education, that there are some weaknesses within the law that we could probably handle. Like you say in your last sentence, that maybe we can operate within the law to deal with some of these problems.

For instance, in the original Act there was regional representation. I think it said 51% of registered voters-- Not registered voters, of those who vote and then 25%, like the Presidential election, I do not know how that disappeared in the preparation of this Act, but it is possible for us to ensure that that happens, that the majority of the provinces vote for the Referendum and we get more than 25% without necessarily amending the law and depending on the programme, I think that is something that we can do. I know we have been talking about the 51% of those who vote and not registered voters. I think, again, that is a question where depending on the kind of programme that we put in place, we can actually deal with a much higher percentage. I think Rwanda got almost 98% support for the Referendum, so it will depend on the kind of programme both ECK and CKRC put in place. I am still hoping that there will be some distinction between the period for Civic Education and the period for the campaign. Maybe it will be in the rules. Thank you.

Com. G.K. Mukele(ECK): Thank you, Prof. I think I will just-- The other aspects, most of what you have said, in fact it is very good information for us and everybody who is there, but on the issue of the regulations, what we have done in the ECK generally, is that we say these will be the regulations then the Chairman calls all political parties, the leaders of political parties to have a go at it, they also look at it. You do not necessarily have to be bound by what they are saying, because eventually or at the end of the day it is the ECK who will be making regulations. So, since these 3 bodies have consulted with one another, us and in Parliament, then the right thing would be to call leaders of political parties, there are not yet sides. If they agree they will be merging into sides, they will have strengthened the rules, if they say forget about it, we just delete it and go the way they want, but that is the right thing because now you avoid being abused and the rest. Call them in Parliament, representatives from the 3 Commissions and hear what they have got to say. Thank you.

Com. Rachel Mzera(ECK): Thank you very much, Vice Chairman. I think we are closing now.

Com. Alice Yano: *(Inaudible)*.

Com. Rachel Mzera(ECK): Really? Okay, go on.

Tape 4

Com. Alice Yano: Thank you, Chair. I do not know, I had not really thought in depth about the issue of the campaign. When I look at the issue of the campaign and the way we do our campaigns usually, is that we try to convince the electorate to vote for a certain person or vote for a certain issue because of whatever convictions you have and you can go out of your way to use all means possible to do the same so you can be able to convince the other party or that party to vote for you and when I look at this, the essence of doing Civic Education is to ensure that the people have an informed choice when it comes to voting for the Draft Constitution, to say 'yes' or 'no' to this Draft Constitution.

Now, when I look at the issue of the campaign, even after we have done Civic Education and maybe now, the people have made informed choices in their mind then campaigns come in, it will mean that these people must be swayed in one way or another, so that they will leave their own convictions, how they believe in and about the Draft and then follow the ideals and the ideas of the person who is trying to convince them otherwise. I know the law is very clear, Section 28, is it (h)? Provides "That the national and Presidential Act shall apply, but with necessary modifications". That is what is really a point of concern to me. If we really campaigned after doing Civic Education, are we going to ensure that the people make informed choices when it comes to this Draft, or they will go to elections and elect to say 'yes' or 'no' as per what they have been convinced about by the people who are convincing them. thank you.

Com. G.K. Mukele(ECK): May I just put a very short opinion on that. Last 2002, and this every Kenyan knows, you people educated the people. You educated the people of their rights and even vegetable sellers, vendors knew, when you came they told you, *kwenda na maneno yako unasema*. So, you will do your part, but still the political leaders will come with theirs, you cannot stop it, at that time you will have stopped, but because of the information you will have given the people, they might ignore salt, ignore 20 Shillings or ignore whatever and make the right choice. That is my opinion.

Com. Rachel Mzera(ECK): Oh, Lopokoiyit, this is the last one, please. Okay, a quick one.

Com. Edward Lopokoiyit(ECK): Thank you, Chair. Already there are people in Kenya, some people are for 'no' as it is now. There are some people who are for 'yes' now. So, already we have the groups, already, so if you take the case of France or Netherlands, the President campaigned for a 'yes' vote, the opposition went for a 'no' vote. So, in Kenya it will not be exceptional, so let us just look at it rather than ignore that there will not be any two opposing sides. Thank you.

Com. Rachel Mzera(ECK): Okay, we must thank the Vice Chairman very much, for his elaborate paper and I would also like to take this opportunity to thank all the people who contributed to this paper and we thank you very much, indeed and I would like us to continue reminding ourselves that this is a very noble assignment which we are carrying out, very. We have, therefore, to do our best to come up with decisions which will help us to make a Constitution for this country. This is our country and we should be very proud to be involved in this programme. Thank you very much for your time. You can come back at 11.00 a.m.

Meeting broke for tea at 11.00 a.m.

Meeting reconvened at 11.30 a.m. with Commissioner Phoebe Asiyo in the Chair.

SESSION 7

Chair: Commissioner Dr. Phoebe Asiyo, CKRC.

Topic: MANDATE OF CKRC

**Presenters: Commissioners Dr. Mohammed Swazuri.
Commissioner Dr. Charles Maranga.**

Plenary Discussions

Com. Phoebe Asiyo: The Meeting is called to order, Ladies and Gentlemen. Can I ask those who are still outside to please join us so we can get started, we are running a bit late and we need to recover the lost time. *Karibuni, karibuni tuanze mazungumuzo sasa.*

Ladies and Gentlemen, earlier on we heard the very elaborate statement by Mr. Mukele, the Vice Chair of the ECK, about the mandate of the ECK in the Referendum. We now shall hear the mandate of the CKRC in the Referendum and up here with me are Commissioner Dr. Mohammed Swazuri and Commissioner Dr. Charles Maranga, both of them will talk on the same issue starting with Dr. Swazuri and rounded up by Dr. Maranga. So, I will call upon Dr. Swazuri, to please set the ball rolling. Thank you.

Com. Mohammed Swazuri: Thank you very much, Madam Chair--

Com. Bashir Ali(ECK):

(Inaudible).

Com. Rachel Mzera(ECK): I think if you do not have the documents now by the two Commissioners, you do not have to worry, you will get it after the statement. Thank you.

Com. Mohammed Swazuri: Thank you very much, Madam Chair, fellow Commissioners. My paper is based on Section 17(f) of the amended law on the mandate of monitoring the Referendum which has been debated since yesterday. Given that it has been debated since yesterday I am very happy, I am very fortunate, that there is nothing more that I have to add on that and this is one thing I like about CKRC, they always give me presentations towards the end which always makes me happy because in most cases everything has already been said and I just have to summarize and recap.

Now, I do not want to go back to the debate as to the meaning of the word monitor or observe or whatever, because I think we have discussed that since yesterday and even today. My view is that given that it is the first time that we are undertaking such a massive exercise, at the end of it someone must give an account of what has happened, either in the way of a report, in the way of an analysis but we must have some kind of a report of what happened at every stage and that report will be used now, because I am sure this will not be the first and last time that we are going to carry out a Referendum, I am sure instances will occur in the future where we shall be required to undergo the same and therefore, the experiences that we shall undertake must be documented somewhere for them to be used in the future as reference.

Now, as I said, most of what I want to say has been said, especially by Commissioner Mukele, on page 4 of his presentation and that is where I will pick from, the groundwork and activity that has to be done and what requirements we are supposed to put forward before those stages are undertaken. First of all, we need to sensitize the people on the contents of the Draft Constitution and the processes involved, that is through Civic Education, which our Commission, CKRC, is supposed to undertake. We also need to sensitize the people on the need and importance of taking part in the Referendum. We need to sensitize the people on the procedures for voting, which is the mandate of ECK, that is Voter Education. There is also participation of would be voters in acquiring national identity cards, it is already done and I am told it is still ongoing at district level. I think ECK has also designated where they are going to have the polling stations, we also need to identify and recruit staff that will be required for all these stages, Commissioner Mukele has mentioned that.

After recruitment we need to train them and then there is also campaigning for or against the Referendum, we must factor that in, then the materials that are going to be used for the Referendum must be prepared, possibly inspected before they are disbursed. Then there is the actual voting, casting of votes and counting, the announcement and publication of the result and then challenge, if any, of the results of the Referendum. For all these to take place we must have created an enabling environment for free and fair elections during the Referendum. Now, having those in mind together with what we had in the

morning, what are the requirements that we need to put in place for them to be accomplished?

One is time. Time is both in terms of adequacy and the timing of the activities. For example the Legislature, Parliament has 37 days to go to finish the consensus building and so on and I do not know whether we have already consulted all the required stakeholders in this, so we have remaining activities within the 37 days that have to be accomplished by Parliament. So, it is both the adequacy, is there enough time and also, when to do some of these things and time has never been enough in this process, it is always short.

Secondly, we need to activate and reactivate our infrastructure. CKRC has District Coordinators, ECK also has Coordinators, I am told they are called decks. We also have the provincial administration, which CKRC used during the previous stages of the Review Process. So we need to activate these and reactivate them, is the time there, have we done it, when are we going to do it? Then the recruitment of the staff. CKRC mainly recruits staff itself, but I understand ECK subcontracts some of this recruitment of staff, for example the voter educators and so on. We also have to factor time there, we have to recruit Civic Education Providers and that will require some time. Then we need to develop materials, training materials, at each level of training for those people whom we have already recruited. I think the issue of the materials for Civic Education, how they have been developed and how they will be developed will be discussed by Commissioner Maranga here, but what I am saying is that at every stage of training will require some materials and they have to be developed by the organizations concerned, then you can test those materials whether they are effective in sending the message across and most likely we need to have pilot trials of these materials.

The other issue we have to put in place is, for example, in CKRC we said we need some communication, effective communication between headquarters and the ground, between the people on the ground themselves, the Coordinators and CEPS so installation of radio communication, high frequency may be looked into. The necessary materials, a lot of stationary is going to be required, a lot of equipment, computers and tools, will be required, we have to cater for them to avoid last minute purchases. We have to develop the tools that I mentioned in the beginning, whether we call it monitoring, observing or assessing, we have to develop a criteria to see and to be able to say at the end what happened during the entire process. We can use that in terms of either time taken to accomplish specific tasks, or cost involved against the budgeted amounts, or you can look at the extent of coverage of the activities, whether they were extensively covered all over the country or not, you can also measure the turn out in actual numbers against the expected totals-- Someone is greeting me. We also can look at the accessibility and knowledge of the people on the subject that is being discussed.

The most important logistical arrangement we require here is finance. Every stage that I have mentioned, every stage that we have talked about since yesterday requires the resources in terms of money and if all goes well, from what we have been told, I think between the two of us we have 3.1 Billion, which we can use for these processes. So, barring any cancellation or last minute change, we are assured of these resources. I do not know whether they will be enough or not, but I am sure if there is a

short fall we can be able to apply for more. So, these are the resources that I thought we would require and the arrangements which have to be put in place before we really successfully conduct this Referendum. There is this tendency to believe that there is a lot of time, but time is the greatest constraint that will make this process to be successful or not.

Finally, we need close coordination between officers on the ground and the headquarters. We also need close coordination and cooperation between the two bodies that are concerned here, ECK and CKRC and then we also need to consult with PSC. As someone has said, we will need a round table meeting between the three, PSC, ECK and CKRC for us to be able to forge a common front and be able to give the people of Kenya a new Constitution. My suggestion, having heard what we have discussed since yesterday is that, all is not late. If there is a bad law we can recommend what we think is bad about the law and what should be done to make it good. If there are procedures which we think are not going to be compatible there is also room for that so that we make sure that we have the Referendum going on as planned.

So, as I said in the beginning, I do not want to repeat everything that has been said since yesterday and I think I will end up there. Thank you very much.

Com. Phoebe Asiyo: Thank you very much, Dr. Swazuri. You have taken us through the mandate of the CKRC and you have mentioned very important issues, especially that of sensitizing the people of Kenya on the contents of the Draft Constitution. Before we make any comments I would like to call upon Dr. Maranga, to also take us through the Civic Education Programme. Dr. Maranga is on the CKRC Committee on Civic Education.

Tape 5

Com. Charles Maranga: Thank you, Madam Chair, Ladies and Gentlemen. I think I am going to be very brief, but I will take you through some of the main points, actually, discussion points. It is not a paper which you can say is a complete one, but I think a gathering like this one requires that people air their views and be able to enrich the paper before it becomes a real paper which can be retained. So, I am going to give you a number of points and my paper is entitled, 'approaches to Civic Education and Voter Education for the Referendum: Challenges facing the CKRC and the ECK'.

This particular paper sets out some discussion points for the two Commissions regarding, for example, the first thing is the interpretation of the mandates of the two Commissions in the conduct of Civic Education and Voter Education for the Referendum. The other point which has been mentioned by many other speakers is monitoring the conduct of the Referendum as stated in section 17(f). The other one is assumptions on the possible variance of Civic Education and Voter Education for the Referendum. We need to have the clear objectives, content and the conduct of Civic Education and also Voter Education. Collaboration challenges and opportunities facing the two Commissions in fulfillment of the Referendum mandates given lack of clear demarcation lines between Civic Education and Voter Education in the Referendum process.

We should discuss the mandates of the two Commissions in terms of Civic Education, Voter Education, noting the following major points. First is the mandate of the two Commissions. “The Constitution of Kenya Review Act, 2005, is the legal framework that provides for the complementary roles and apportions responsibility to both the Constitution of Kenya Review Commission, CKRC and the Electoral Commission of Kenya. The Act sets the parameters for a consultative engagement between the two Commissions in effecting the Referendum”. I think the main point there is consultative.

The CKRC Mandate. “Section 17(e) of the Act mandates the CKRC to conduct and facilitate Civic Education to support the Referendum under Section 28 of the Act. Section 28(7) mandates CKRC to facilitate and coordinate Civic Education on the Referendum. In addition Sections 17(a) and 24 of Cap 3A provide that the CKRC shall promote, conduct and facilitate Civic Education during the entire period of the Review Process in order to stimulate public discussion and awareness of Constitutional issues. The issues at hand are:-

- The proposed new Constitution and;
- The Referendum.

This particular Referendum is a decision making Referendum which will be binding. So, whichever way the Referendum goes, it will be binding. Whether those people vote for ‘yes’ or ‘no’, whichever way, it will be binding.

ECK Mandate.

Section 28(1) of the Act provides that the ECK shall hold a Referendum. ECK does also have the originating Constitutional mandate to carry out Voter Education under the National Assembly and Presidential Elections Act, Cap 7.

So, the two Commissions have complementing mandates. The two need to work together because they have a complementary mandate. Section 17(a) and 24 provide that the CKRC will continue to provide Civic Education in the entire period of the Review Process. Section 28(1) states; within 90 days after the Attorney General publishes the new Constitution under Section 27(3) the Electoral Commission shall hold a Referendum to give the people of Kenya the opportunity to ratify the proposed new Constitution.

During the 90 day period, the CKRC will therefore, be coordinating, promoting, facilitating and conducting Civic Education for the Referendum. Consequently, the two Commissions need to agree on the practicalities for realizing this mandate.

I have tried to give some definition assumptions of Civic Education and Voter Education and the following interpretative assumptions about Civic Education and Voter Education in relation to the Referendum need discussion and agreement on whether:-

(a) (i) Civic Education should only concern itself with the objectives of:-

- Creating awareness and
- Imparting knowledge and skills to enable Kenyans to make informed choices at the Referendum.

(ii) Coordination, monitoring and evaluation for the provision of Civic Education for the Referendum.

(b) Voter Education should target information dissemination on the Referendum Process explaining:-

(i) Information about Referendum activities particularly:-

- What a Referendum is, what will be voted for or against in the Referendum.
- How it will work,
- Registration of voters, and this brings an issue of registration of voters, especially for Kenyans who are not within this country, that means the Kenyans in the Diaspora, what do we do with them, because they have shown some interest to ensure that they also participate in the voting process.
- The meaning of the vote and outcome.

Well, if the vote is going to be binding and suppose there are people who are for and against the Referendum, whichever side wins, because I have heard people talking about sides, those who are for and those who are against. If, for example, there are those who are against the Draft Constitution it means Kenyans will go back to the old Constitution, the status quo remains. That is the point, so it needs to come out very clear from the onset that once this Referendum is carried out there will be decision which will be binding.

There are a number of activities during the Referendum. For example, we will need some information which will be used to relay messages on the how to vote mechanisms, for example, mechanics similar to what is done during the General Elections and I think the idea of the Electoral Commission and CKRC working together and making paid up adverts and other things, I think it is an important point. There is the issue of Referendum campaigns, that is an issue which needs to be discussed by the two Commissions, education on the Referendum, languages to be used. The Draft Constitution has already suggested or proposed that we are going to have English and then Kiswahili as official languages, are we going to have the ballot papers, for example, in two languages? How about the others who cannot be able to read and write, are we going to use Braille for example, for people with disabilities? What are we going to do? This is a challenge which needs to be addressed. Polling and other related issues. For example, where to vote, how to vote, are we going to use electronic voting? That is a question which needs now to be decided. The ballot papers, features which are going to appear on that ballot paper, what are we going to do? The funding, how are we going to get it?

Then there is the issue of the Referendum question, the phrasing of that question, or the wording or framing of the question will be critical, because it will depend on how the question is framed, or how it is phrased then people will be able to respond appropriately. You can easily give the wrong message when actually you mean something else. How about the resolution of disputes during and after the vote? If there are going to be campaigns, definitely there are going to be disputes, there are going to be a number of issues created out of all this, so the two Commissions may want to consider some scenarios of how they are going to maybe carry out Civic Education. That encompasses Voter Education which implies that Civic Education on the proposed new Constitution and Referendum will also integrate Voter Education where necessary. The two Commissions will then develop maybe a joint collaborative structure in the delivery of Civic Education and Voter Education as one exercise. That way, maybe we will save on time and money and maybe we will need to complement ourselves on that. This would require a joint Task Force between the two Commissions, to develop their collaboration, networking, structure and logistics, including to look out whether we have adequate financial resources and their apportionment, Human Resource requirements, the demand on the capacities of the two Commissions.

We are also going to develop a joint programme that covers Civic Education and Voter Education, that is an issue for discussion. Phrasing, I have said about the Referendum question, that is another issue, setting organizational, administrative and procedural rules, settling the issue of eligibility to enable Civic Education to create public confidence in the Referendum. There is the issue about 18 years, yes, how about the other Kenyans? Of course, the law is very clear, but I think, it is an issue we need to discuss.

The other scenario is where we have separate conceptions for Civic Education and Voter Education, which implies division of labour with CKRC and ECK each handling the different aspects of Civic Education and Voter Education on the basis of their comparative advantages. That is another issue we need to discuss, we can easily decide on that. This also needs a joint Task Force between the two Commissions to define the areas of jurisdiction in terms of collaboration and networking, structures, logistics and timeframes. However, this option faces a number of challenges because that will include, for example, development of separate curricula and other materials resulting in high costs, the diversity of literature leading to mixed messages, differences over jurisdictions and the legal mandates, then the need to allocate separate timeframes within the 90 days for dissemination activities for Civic Education, Voter Education, interest based campaigns and actual voting day or polling day, for that matter.

The CKRC Civic Education Programme which is being undertaken, in preparing to implement its mandate the CKRC interpretation is that the objective is to educate the public on contents of the proposed new Constitution to enable them to vote on the Draft Constitution from an informed position. Civic Education will be carried out by the CKRC itself and in partnership with other Civic Education Providers. These are being identified by the Commission. Is CKRC prepared, yes, has developed a standard Civic Education curriculum for the Referendum. That is ready and soon we will be able to launch that. Then we are also in the process of finalizing materials for a source book and a training manual. All these are based on the Draft Constitution and you know very well that the Draft Constitution will only come out once Parliamentary Select Committee and Parliament has

agreed on the content of that Draft Constitution, that is when we will finalize completely, the source book and the training manual. I think what we also need to highlight here is that CKRC is also developing complimentary materials such as pamphlets, fliers, billboards and so on.

What methods are we planning to use to disseminate this particular Civic Education? We have what we call the CKRC infrastructure which starts at the national level, moves down to the district level, constituency and even within the constituency we also have smaller units like the 3Cs and so on and I hope Commissioner Swazuri will be able to answer that when the questions, maybe, will be put forward. The other way of disseminating this, we want to use the Civic Education Providers, we are thinking of schools, we are thinking of institutions, we are thinking of religious organizations and so on, that kind of infrastructure can easily be tapped in to both Commissions, both CKRC and ECK.

The Media. The Media will be an important issue and I think we need to start engaging the Media from the start, the two Commissions. Once we agree, we need to move forward where we can have, where necessary, joint statements about certain issues as we move forward. So challenges for preparedness, we need to design the criteria for partnership with Civic Education Providers on facilitation and monetary implications. Budgetary needs for materials production, physical logistics for dissemination and finally, I want to talk briefly about monitoring and evaluation of the Referendum.

The issues that emerge under this include; the time frame for monitoring and evaluation of the Referendum. When does it start? Nobody has told me whether it has started or not yet. When does it start? Does it start during the poll or do we wait until the polling day? That is what we want to monitor, when does it start? Developing a conducive partnership framework between CKRC and the ECK, human resource requirements is an issue, the capacity demands on CKRC to ably carry out the responsibilities. Considerations on outsourcing the service, this might be a big question, how do we deal with that? The financial requirements and finally the accreditation and role of observers and independent monitors. How do we deal with that? Ladies and Gentlemen, thank you. (*Clapping*).

Com. Phoebe Asiyo: Thank you, thank you very much, Dr. Maranga. Dr. Maranga has raised some very, very fundamental issues, especially the mandate of the CKRC, but also on the need for the two Commissions to develop a complementing mandate in the remaining period of this process. He has also raised many other issues that I believe will come out during this Plenary discussion, so I now open the floor for questions and comments. I see Alice Yano, followed by Mr-- Can you give me your name please, Sir? Yes, Alice Yano will talk first, Commissioner Alice Yano then the ECK Commissioner will follow. Yes, Commissioner Yano.

Com. Alice Yano: Thank you, Chairperson, and also I should thank the presenters for this. From the presentation, Chair, it looks like there is lots of overlapping between the presentation done right now and the presentation done by ECK in the first session. What I was thinking and I thought I should share with you is, is it possible not only to discuss the mandate of CKRC as

presented, because when we look at the presentation by Dr. Maranga, it was a presentation not only touching on the mandate of CKRC, but also touching on the common mandate of CKRC and the ECK. Is it possible maybe to move to the next session and discuss a way forward by looking at the mandate of CKRC differently, the mandate of ECK differently and where we can collaborate together, or the common mandate, then we can move ahead, because if we restrict ourselves to discussing only the mandate of CKRC, I do not think we will really be using our time in a very positive way and I was suggesting that, if it were possible, maybe you could even move ahead and right away form a Task Force, a small Task Force to look into these issue of the mandate and the way forward for us, so that maybe we can meet later in the course of the day, around 3 o'clock and sit together and brainstorm on what the Task Force has come up with. Thank you.

Com. Phoebe Asiyo: Thank you, Commissioner Yano. That is a proposal made by Commissioner Yano, let me move on to the ECK Commissioner, please. Do take the floor.

Com. Edward Lopokoiyit(ECK): Thank you, Madam Chair, and the presenters. My concern is on section 28, I do not know whether it has been amended, where it says, “the Commission shall, on the basis of the decision of the people of Kenya at the Referendum and the Draft Bill adopted by the National Conference, prepare a final report”. so, I do not know whether this final report, especially on the Referendum, whether the Commission, that is CKRC, will submit its final report to the National Assembly, or what happens to that report after monitoring, which the issue now is that the monitoring maybe is on the process or not on the process, but where will that particular report be? ECK will be making its report and gazette it in the Kenya Gazette for the people of Kenya, so my issue is that there should not be any confusion to the people of Kenya as to the result of the Referendum. Thank you, Madam.

Com. Phoebe Asiyo: Thank you for posing that question. I am sure that both Dr. Swazuri and Dr. Maranga, will deal with it. Commissioner Nancy Baraza.

Com. Nancy Baraza: Thank you very much, Madam Chairperson. I think I will entirely agree with Commissioner Alice Yano’s proposal. We are joined at the hip and there is no way we are going to run away from each other. So, I think a Task Force to forge the way ahead will move things faster.

Com. Phoebe Asiyo: Nancy is seconding the proposal by Commissioner Alice Yano of CKRC. Can I have other proposals or comments? Commissioner Salome Muigai, followed by Commissioner Kavetsa Adagala.

Com. Salome Muigai: Thank you, Madam Chair. First of all, for me, when I am out there in the fields I find that Kenyans do not actually know the difference between these two Commissions. There are very many times when I have been bought a cup of tea because the ECK has done a very good job and many times when I have been asked to say hello to Madam Mzera, both from Uganda and even last Friday from a prominent Kenyan. So, the difference between us as two Commissions is not

very clear to the Kenyans and now, as we go into the Referendum together, I think it is an opportune time for us to synergies, to put our energies together. I would like to agree with the people who have said that that is for us, the best way forward and I would like to agree with the Vice Chair of ECK who talked about strategic management of available resources, by making sure that when we put our energies together and synergize them, it will be a good use of resources, but even more importantly, it is calling of the Kenyans. It will be very difficult for me as a Civic Educator from CKRC to call people to come to Butere, Mumias, so that I can teach them Civic Education and then a fellow Commissioners from ECK comes the following week and asks the farmers to stop cutting sugar cane to come again and learn about Voter Education.

So, it makes good value, it adds value, for us to start thinking of synergizing, pooling our resources and sharing the times so that the Kenyans can be brought together just once and use their time appropriately and I would also like to agree with the group that has suggested that we get a small Sub-Committee together who look into the logistics and modalities and the parameters of cooperation and then in the afternoon we may be able to look at it. Thank you.

Com. Phoebe Asiyo: Thank you very much. I will have Commissioner Kavetsa and then the Vice Chair of the CKRC, Commissioner Hassan, (?).

Com. Kavetsa Adagala: I am in support of the Task Force, only that there are some areas which have been better fleshed out than others. For instance, the finance, we need to probably discuss it a little bit more, whereas there are, under previous presenters, been dealt with more, but if we feel that the Task Force can do that, it is okay, we go ahead with the Task Force. I suppose the Task Force is of Commissioners? Joint.

Com. Phoebe Asiyo: Yes, both from the ECK and CKRC. *Mweshimiwa Mukele*, please.

Com. G.K. Mukele(ECK): Thank you, Chair. While we are talking about Task Force or Committees at this stage, I was inclined that probably the details of the groups, where we meet and where we do not meet, would need more time between 12.00 a.m. and 2.00 a.m., I do not know how much they would do, maybe they are expecting from these papers or they agree already they have a good picture, as you say, they are Commissioners, I am not sure. But probably, the setting up of those Task Forces would have been a recommendation in the way forward. I am not quite clear in my mind about that. Thank you.

Com. Phoebe Asiyo: Thank you, Commissioner Mukele. I see the Chair of CKRC has her hand up, can you please take the floor, then Hassan, of course you will come after the Chair.

Com. Abida Ali-Aroni: Thank you, Chair. I wanted to second Commissioner Mukele, in the sense that between now and 2.30 p.m. we cannot have a Sub-Committee quickly go through the recommendations and proposals that we have listened to. I think the Task Force can be useful for the future, so that you allow us to have discussions now and then, as part of the way

forward I am sure we will want to see more Task Forces or Sub-Committee to pick up from where we have left in terms of discussions and so on and so forth.

Com. Phoebe Asiyo: Thank you, Chair. Can I have Commissioner Hassan, please.

Tape 6

Com. Ahmed Hassan: Thank you, Madam Chair. I do not know whether the Task Force can really be able to come up with the full report by 2.00 in the afternoon when we meet, but I think it is still a very useful idea to have the Task Force, although I see that the proposer and seconder are from the same Commission. It would have been good if there was also a seconder from the other Commission, so that it is shared across.

Apart from this area of looking at the mandate and how to work together, maybe also we could have the same or another Task Force which can look at the legal issues that were raised from yesterday, because I know there are those who have raised, instead of talking about meandering, perhaps politely, a Committee could be formed from both Commissions and look at the law and then try and see how we can engage PSC and try, if there are errors which have been agreed upon, need amendments, maybe the we can engage PSC to do that. So, I want to add also a further point that perhaps, also we look at the law in this Task Force, or another one which we are going to form.

However, as a point on the way forward, Madam Chair, I think also, we need to look at the strengths of each Commission in the context of the law. I think it is something which is a foregone conclusion, it is known by everybody that ECK has got the experience of holding elections and the Referendum is just another way of calling the elections and therefore, the whole area of the Referendum, starting from the preparation of the ballot boxes, the question, getting the officials, everything to do with the Referendum is done by that Commission using their own infrastructure and their networks and that the Civic Education that the Commission is going to conduct, perhaps will also include the Voter Education, because ECK-- Yesterday we heard that apart from the officials themselves, they also used Civic Education Providers to conduct Voter Education, so maybe this is only where the Commission can also assist and come in instead of the ECK also getting Civic Education Providers to do Voter Education for the Referendum, they can let the Commission take up that role also, in the course of the Civic Education provision also do the Voter Education and for the Commission, they can get ECK to do the monitoring of the Civic Education run by the Commission, so that it is a complementary role. ECK, therefore, will be left to do the Referendum, to publish the rules, to enforce the Code of Conduct and so on and so forth, so that we try and maximize on our strengths on both sides. Thank you.

Com. Phoebe Asiyo: Thank you, Hassan. I was going to ask the two speakers to respond, but I guess Commissioner Mosonik has a burning issue, so we will give you the floor before we bother to respond.

Com. Mosonik arap Korir: Thank you, Madam Chair. I want to comment first on what my colleague to my right just said. I

think we agree that the law states that Voter Education is the responsibility of ECK and Civic Education of the CKRC. I think the CKRC cannot afford to look like they know what Voter Education is and vice versa. It seems to me that we can conclude already that this education, as Dr. Maranga was asking, let us say, will be conducted simultaneously. I can already see the kind of situation in which we were, as the CKRC, as we did Civic Education, we had a panel to go at any given time, it was not an individual and when we are talking of the costs of transport, for example, I can imagine a situation in which there would be two Commissioners or two facilitators, one for Civic Education and another for Voter Education and they go on the same trip so that the *wananchi* do not have to come to Kakamega, as we were told this week and the following week just to be told more or less the same thing. This pairing would be extremely good when the two reach a venue, then we would have the Civic Education first, to talk about the content of the Draft and so on, and then Voter Education follows immediately to say, what you have heard, this is how to go about it. so, can we assume already that we shall have joint panels is a group of people working together.

Secondly, the issue of the Task Forces, I think we can agree already, that there will be one or several. One is the legal one that was proposed, we can agree in principle today that there will be the following Task Forces and then each Commission goes back to its home and then they identify their members and then the next time we meet, we meet as Task Forces or a Task Force as opposed to having to assemble the two Commissions together again, but the principle of the Task Force is the one that I think we should decide on, not the details.

Finally, there was a very important point raised by Dr. Maranga, on the issue of monitoring. Some people think that monitoring means when the voting is being done then you stand there and watch how it is going on. But, are we monitoring the actual voting or are we monitoring the Referendum understood as a process. For example, let me give this example on the issue of registration which has been going on and which is going even now. Should we, for example, as CKRC the monitors, official ones, have some idea what has happened or what is being done in that respect, or do we just leave our counterparts in the ECK to do the work and hope that they have done it right and vice versa? So, could we please answer that question, thank you.

Com. Phoebe Asiyo: Thank you, Dr. Mosonik. I have a point of information from Commissioner Adagala, but I really would like to have a Commissioner from the ECK make some comments now.

Com. Kavetsa Adagala: It is not a point of information.

Com. Phoebe Asiyo: Oh, it is a contribution? Okay, you can go ahead and do that. Any ECK Commissioners who want to address themselves to these issues that have been raised? Okay, after Kavetsa, Mr. Jura, you will have the floor. Thank you.

Com. Kavetsa Adagala: I would like to propose that one of the most immediate things we need to do, not in terms of

urgency, but more in terms of necessity, jointly, is work out a Media programme where we can go. I think if we are agreed, probably in the afternoon we would be able to do this, so that the Civic Education part of it, I think Maranga mentioned it, although the way I am looking at the Task Forces is that they have come out almost like the structure of CKRC. So, maybe we need to talk about that, what Task Forces would there be?

I think, even if we are setting out people to work out the technical part we need to feed in the policy. So, I am seeing that there is the legal – like Mosonik said – there is the finance, there is the Civic Education and Voter Education under logistics. So, I am seeing that we can do that, but one of the things I would like to suggest, since we are on KBC now and on the FM stations, as CKRC we could find a way of going jointly together and then we talk about the two Commissions. So, in terms of an immediate action, and a necessary one, because time is running. Thank you, Chair.

Com. Phoebe Asiyo: There are some good proposals coming from the floor, but maybe these can be discussed in the next session when we deal with the emerging issues and the way forward. Commissioner Jura.

Com. Henry Jura(ECK): Thank you, Madam Chair. I want to comment about this question of monitoring. I do not know, probably, Commissioner Mosonik has in mind the quality management of the preparedness towards the day, how do we make sure that the preparations are correct, as opposed of course, to observing elections. There are two different things, we want to know how we are sure that the preparations are going right, the Voter Education is right, the Civic Education is right, the preparation with regard to logistics is right, that would be done continuously and ECK have experience in this area and these should be separated from voter observation. I thought that is probably what Commissioner Mosonik had in mind, how do we make sure that everything we are doing in our preparation towards the date of the poll is of the required quality? Thank you.

Com. Phoebe Asiyo: Thank you, Commissioner Jura. Any-- Yes, you have the floor.

Com. Bashir Ali(ECK): Thank you, Madam Chair, I want to raise two points, one of them is-- I do not know whether you have carried out any studies to the extent we can use our existing Coordinators. We have people in the districts who are very well trained, who have a long experience in managing elections and they have been on duty for many years and they are well know to the local people. I think they have an enormous capacity of undertaking what we are recommending here today and I think, with a little bit of assistance from your side you might find these peoples are better rather than appointing new Coordinators for yourselves. This is one suggestion.

Now, coming to the Task Force, I think, Madam, the idea of a Task Force itself is not a bad one, but we already had consultative Committees between the two Commissions for many months now and I do not see why we cannot extent their mandate to identify the areas now, we are discussing, like this monitoring and sides of the parties and the strengthening of the polling stations and so on. So, I suggest that we use the existing Committee that we have from both sides instead of forming a

new Task Force to undertake this tasks. Thank you.

Com. Phoebe Asiyo: Thank you very much, Commissioner. Yes, you can have the floor for the second time, Sir. Just go ahead.

Com. Edward Lopokoiyt(ECK): Sorry to come the second time, Madam Chair, and the presenters. The Task Force, to me, I do not think it is necessary at the moment since we have a consultative Committee composed of legal experts who have been working together and who produce some of the programmes that we have been going through for these two days.

What I wanted, probably to add to what Commissioner Jura has said, is that we would like to see how the CKRC, what is their programme on monitoring? It puzzles the Commission because there is observation internationally, how an election or Referendum can be observed and how monitoring can be done. So, I do not know, I have not seen any paper or a programme on how the CKRC will carry out the monitoring. I do not know whether a mechanism has been put in place. Thank you.

Com. Alice Yano: Point of clarification.

Com. Phoebe Asiyo: Point of clarification by Commissioner Yano and then Commissioner Raiji.

Com. Alice Yano: Chair, when I raised the issue of a Committee or a Task Force, really, I was not bringing in a permanent Committee to look into these issues. What I thought was that from yesterday, I think we have had lots of emerging issues that can be synthesized among ourselves for purposes of the way forward in the afternoon and what I had in mind is just some few Commissioners from both sides who can sit down and come up with a paper for purposes of brainstorming later in the afternoon. Thank you.

Com. Riunga Raiji: Thank you. Oh, sorry.

Com. Phoebe Asiyo: Commissioner Raiji, you will have to wait until we get the point-- Is it information? Point of information.

Com. Abida Ali-Aroni: Chair, I just wanted to add to what Alice is saying. We are circulating quietly among the Chairs of the afternoon and myself, I think the ECK Chair is still there on the emerging issues as we have captured them for discussion in the afternoon. So, we do not need to form a Sub-Committee, the issues have been captured by or staff around, so the paper is there for discussion this afternoon.

Com. Phoebe Asiyo: Thank you. Commissioner Raiji.

Com. Riunga Raiji: Thank you, Chair. I think the issues have already been settled by that and perhaps we can now get full clarifications sought from our presenters who are CKRC from the ECK Commissioners and then we can get a response, because I think this discussion and there are very good points coming up, are actually the Agenda for the afternoon session.

Com. Phoebe Asiyo: Thank you, Commissioner Raiji. From what I am hearing from the floor, that is filtering through, is perhaps the need for the two Commissions to develop a complementing mandate, to work out a Media programme, the need to set up one or more Task Forces and the need not to set up any Task Forces at all, but for the two Commissions to go ahead and work together. I will now give the floor to the two presenters to respond to some of these recommendations and questions. Thank you.

Com. Mohammed Swazuri: Thank you, Madam Chair. I think most of them have been general comments or specifics sometimes on issues which all of us have now discussed, so I do not think there is something that was directly directed at us, but we can still touch on some of them.

Kavetsa talked about the budget. We in CKRC have the budget lines outlined, what we are going to use for particular activities for the process. It is so detailed, I did not think it was necessary for it to be brought out here. I am sure our colleagues in ECK also, before they presented their estimates to the Minister, must have had budget lines for the activities they are anticipating, so I think those details are there. But, on the finances, the only caution there is that between approval and actually a location, there is normally a time lag, so we might have been awarded 1.7 and 1.4, but when shall it come and yet, we believe that the process is already ongoing.

Alice was talking about the Task Force, I think that has been answered. Section 28, prepare a final report according to this Draft, that final report will be handed over to the AG, I think that is what 28(2) was saying and then it is taken to Parliament. Now, I do not know whether you are talking about the current report we have or the report after the Referendum, but we know that all our reports have to be handed to PSC and to Parliament. Many people have talked about the importance of having Voter Education and Civic Education done at the same time or on the same platform to avoid duplication and to avoid fatigue among the audience. That one has been discussed.

Then we have also – I think that has been discussed even by Mosonik – he also mentioned the question of monitoring when Commissioner Jura asked for the contents of our monitoring programme, someone else mentioned there. I think we are developing the monitoring programme, what we understood it to be and I think we can share that with you. I do not know, ECK, I think we will share with you our monitoring, but what I want to say is that-- The son of Nguyu should not be so worried about monitoring. There is a likelihood that monitoring this report might say that ECK has done such a wonderful job that you can even get sub-contracted to go and carry out Referenda in other countries, so it will be a plus on your side so do not be so-- You might get a contract to go and others in the Commonwealth. That is with a light touch.

Then, Commissioner Bashir, asked about, can we use existing Coordinators, those ones who are very experienced in the districts and they are known to the local people. Unfortunately, we have already recruited ours, yes, we have already interviewed. We are ready for re-deployment, so I do not know whether in the Task Forces that are being mentioned we can see how to do that, but the tasks are slightly different so maybe the only thing is for them to be able to work together and I think that is all that I have picked from the questions that were put forward.

Com. Charles Maranga: Yes, to comment on what my brother has done, I think I do not want to add much, except to say that when you look through the papers, even the ones that were presented yesterday and so on, we have what you call something like an umbilical cord which is connecting the two Commissions, none of the two Commissions can do it alone. The law also requires that we must work together and I think the whole point here, which is coming out is this particular mandate cannot be accomplished by one Commission. What we need is joint effort and joint agreement on many of these issues and I think as far as I am concerned there were no specific questions which came to the presenters, but I think what we were doing was just commenting and I think, now that we have another session in the afternoon for emerging issues, maybe that is where they will come up. Otherwise, thank you very much. (*Clapping*).

Com. Phoebe Asiyo: Thank you very much, Dr. Swazuri and Dr. Maranga, for your presentations and thank you very much those participants who took the floor and made their presentations. It is has been a fruitful discussions, I am really hoping that when we come to the way forward that some of these issues that have come up and recommendations will be taken up seriously and will be debated and that they will find room in the way forward in both the ECK and the CKRC, otherwise, I thank you for your participation and it would appear that we will have an early lunch which we did not have yesterday. Yes, Sir, you want to thank all of us? (*Laughter*).

Com. J.B. Tumwa(ECK): No, Chair, I do not want to thank you. The point that has been raised by the Chair of CKRC on emerging issues and the way forward, the Rapportuer is just about to complete the paper that she referred to and I would request that we use part of the lunchtime, since we are breaking a bit early, to look through so that when we come in the afternoon we will know exactly what issues have been captured and perhaps, what else needs to be included in that stuff. Thank you.

Com. Phoebe Asiyo: Thank you very much, Sir. We are not breaking up early to do nothing, it seems like we will have a lot of work. For those of us who are not in the Task Force, we will ask questions and have our inputs in that paper before it comes this afternoon. Yes, Sir?

Com. Bashir Ali(ECK): I would like to make a suggestion. I think we can continue until these papers are ready and finish off. Maybe until 1 o'clock or 1.30. I do not see why we stop now. (*Laughter*).

Com. Phoebe Asiyo: Well, the papers are not finished, so there is no way you are finishing now.

Com. Bashir Ali(ECK): They will come when they are ready, but meanwhile, can we continue until we finish? Thank you.

The Meeting broke for lunch at 12.15 p.m.

Tape 7

The meeting reconvened after lunch at 2.50 p.m.

Session 8

Co-Chairs: Professor Wanjiku Kabira, Vice Chairperson, CKRC.

Commissioner Jack Tumwa(ECK).

Topic: Emerging Issues and Way Forward

Presenters: Hon. Samuel Kivuitu, Chairperson, ECK.

Mrs. Abida Ali-Aroni, Chairperson, CKRC.

Com. J.B. Tumwa(ECK): Fellow Commissioners, Ladies and Gentlemen, allow us to call the meeting to order. Residing are Commissioner Kabira and my name is Tumwa. The topic this afternoon is emerging issues and the way forward, it is time to take stock of the work we have been doing from yesterday, we are in a position to know where we are coming from, we are in a position to know where we are and I think we want to see where we should go.

We agreed yesterday-- By the way, I am hoping that all of us have got the paper that has been circulated, some in single form, others have go a complete set and if the Vice Chairman of ECK is around, the Chair – when he comes here, or whoever he will have asked to sit here – Kihara, I am told you are supposed to be here. Commissioner Kihara Muttu, please, can you come over.

(Inaudible discussions from the floor).

Com. Jack Tumwa(ECK):: I have had a quick look at all the topics that have come up and if we agree that we do not talk in circles, if we go in a straight line, we should hardly take one hour before we are through with the business. We agreed

yesterday, Ladies and Gentlemen, that we are not discussing the merits and demerits of the Draft Constitution, I think that (?) we leave it to what one Gentleman referred to as our warlords, they will discuss, they will come and tell us what they have agreed and ours is to implement what will come from them, but, perhaps it is important for me to mention here that we have been given a responsibility from among the 30 Million Kenyans to midwife this child and it is important that we do it and do it in the best way possible.

I am aware that some of us hold very strong views about that Draft Constitution, but that is neither here nor there. Since we are referees I think that it is important that you sit on your strong views and in the spirit of collective responsibility to do everything possible to be impartial in this assignment, failing which it is difficult to know how we are going to conduct this Referendum with people being seen in public as raiding from different scripts. Although we may differ in private in our boardrooms, it is important that when we go out there we should demonstrate that we are all reading from the same script.

Having said that, I have had a quick look at the emerging issues, we are going to share the Chairing, as I said, with the Professor and each of us will be commenting on each of the topics before throwing them to you, but as I have said, I think a lot of these issues have been taken care of in the course of our discussions, perhaps all we need to do is to confirm yes or no, that this reflects what we discussed. Having said that, I want to start with, one, key issue number one, as you have read in your paper and my observation is that the discussions that we went through with both the Chair of CKRC and the Chair of ECK and the contribution that we got from the floor yesterday and part of it this morning, made me think that perhaps we have been overplaying the differences between the ECK and CKRC. It has been, in my view, a matter of interpretation why ECK was thinking that some of the things seem to contravene what is in the Act and I think we all seem to be of the view that irrespective of those positions we can proceed and conduct the Referendum.

There are two issues that are going to come up in the paper, we are going to look at them, but I am just mentioning them in passing. I think we are all happy with what we said about that thing we call observer or monitor. The second one was on Civic Education/Voter Education. They very clearly spell out and I believe there is hardly any controversy, the way I see it. The suggestions that come from the floor are 1), that we should have frequent structured consultation, 2), minimizing Media involvement in internal matters, 3), have joint planning of activities, 4), Respect for each other's mandate and institutional integrity, 5), Maximizing on the comparative strengths of each of the Commissions and the suggested framework of action is, 1), We need to establish the framework for collaboration and coordination, 2: Regular joint meetings, 3), Establish a Committee to sort out differences that may emerge.

I want to ask my colleague to make a comment or two before we throw it to the floor.

Com. Wanjiku Kabira: No, I think it is okay.

Com. Jack Tumwa(ECK): I am not allowing the Chairs to talk at this stage, I would like that they listen and sum up what we have discussed, last.

Okay, does this reflect our thinking? Does this capture what we talked about from yesterday up to today? What options do you suggest would be best out of these that have been recommended? Commissioners, any comments? I see you are struggling to put up your hand, you can as well put it up. (*Laughter*). Yes, Commissioner.

Com. Charles Maranga: Yes, Mr. Chairman, after going through the key issues, number one, I propose that we approve it the way it is.

Com. Jack Tumwa(ECK): That is one suggestion, that we approve it the way it is. A seconder, if any. Edward.

Com. Edward Lopokoiyit(ECK):: Thank you, Chairman. I wish to second it. Thank you.

Com. Jack Tumwa(ECK): Thank you, Edward. Any comments? Let us have him, he has had his hand up, before I take the Vice Chairman, ECK.

Com. Bashir Ali(ECK): I will support that, but, Mr. Chairman, I do not see the sites. I think we discussed in details in the morning, whether the sites should be identified and whether they should be registered or not, whether they should have colors and symbols, I do not see any of those things here, I do not know whether--

Com. Jack Tumwa(ECK): No, I think you are ahead of us, Commissioner. We are looking at item number 1.

Com. Bashir Ali(ECK): Okay, I have read through.

Com. J.B. Tumwa(ECK): Okay, we are going down systematically. Commissioner Mukele.

Com. G.K. Mukele(ECK): Basically, there is actually nothing to quarrel with, with what has been put out, because as we have said, these are the issues that have come out and the suggested framework of action. 'Suggested', carries a lot of meaning, in my view, in other words, our Commission would look at it and see where to vary, if at all.

Now, another issue which I would raise is that, for example, when we suggest a framework of action, joint legal advisory Committee, the meaning of the word--

Com. Jack Tumwa(ECK): Sorry to cut you short, Gabriel. We are on item number one, let us finish that then we go down to

the others.

Com. G.K. Mukele(ECK): They are inter-related to an extent that is not easy for me to separate, so if you allow me to make general comments it would be okay and these might be the last ones I am making this afternoon.

So, joint carries a meaning of oneness, it does not necessarily mean working together, because now it becomes a joint Committee. I would rather think the relevant Committees, in which case you are talking about two Committees which then come together to work as a Committee, in which case, if that is the meaning of joint, then I have no quarrel with that, but when we are talking about a legal Committee there is one on the other side, there is the other one on the (?). So, joint Committees, maybe, but still I have no real serious issues on that.

Now, when you come to 9 to about 11 or 12, Referendum question and the actual Referendum--

Com. J.B. Tumwa(ECK): Gabriel, you are going to put us in some problem.

Com. G.K. Mukele(ECK): I am just finishing, it will come to the mind later on when you reach it. A Referendum question or the Referendum, now it becomes a question of the law, what is the law saying about the Referendum. Thank you very much and I am sorry not to follow the order. (*Laughter*).

Com. J.B. Tumwa(ECK): I allowed the Vice Chairman to talk because he is leaving in the next few minutes and I guess it is right that perhaps he gives us some of his thinking before he leaves the room. We still go back to item number one, which is differences, if any between the CKRC and the ECK. It was proposed to be okay, it was seconded and I think that we have had two speakers who have supported that it remains the way it is.

Com. Ann Wambaa(ECK): Point of information.

Com. J.B. Tumwa(ECK): Information?

Com. Ann Wambaa(ECK): Yes. Mr. Chairman, looking at what our Vice Chairman is commenting on, I was thinking that we discuss this as the issues that have come up since we started this workshop and I am not seeing it as us passing a resolution, that we have adopted everything that is on this paper. I would think that if you go through it as the issues that are already discussed, that the two Commissions will go and have their full board meeting and a full Plenary meeting and we digest and we see the implications and the repercussions and then we pass it as a resolution of the Commission and then of course when we get into another meeting as both Commissions, then we will come out with a final document. I see a danger where we will pass this document as it is as the final resolution of these two Commissions without us going back individually as two separate

Commissions and then sieving through it and digesting it and looking at the repercussions and then adding or deleting as per how the Commission feels. That is my own feeling.

Com. J.B. Tumwa(ECK): Commissioner Wambaa's fear, I think, is based on the way we work at the ECK, that nothing is adopted until it goes through what they call Plenary, but I want to remind Commissioner Wambaa, that if you read this thing it says suggested framework of action, suggested points of action. So, what we want to come here with is what we have talked about and what we have agreed should be done. Of course, it will be subject perhaps, to other discussions, but what do we think is the right way for us to go forward as one team now, because we are moving as one. That is, I think, what we are doing for now.

Yes, I have got ECK. Commissioner Baraza.

Com. Nancy Baraza: Thank you very much, Mr. Chairman. I think I want to disagree a little bit with my learned junior in the making and agree with you, Chairman, that the basis upon which we have had these joint meetings is that at the end of the day we were to come out with a joint communiqué. If we go back to our individual positions, then are we going again to make another one like this one? So, I think we should agree on the issues then if they need tidying up, that can be tidied, but this meeting needs to come out with a clear communiqué, as I will call it.

Com. J.B. Tumwa(ECK): Thank you, Commissioner. I hope you heard what I said about some of the practices that have been internalized by what I call CKRC.

Com. Nancy Baraza: Yes, we also have Plenary, but the idea that we have this joint one here, it means we come out with something. That is my understanding, I do not know, I could be wrong.

Com. J.B. Tumwa(ECK): Thank you. Commissioner.

Com. Zein Abubakar: Thank you, Mr. Chairman. I thought the Vice Chair, *Bwana Mukele* and Commissioner Bashir, was taking us the right way. I do not think people have problems with the issues which have been identified. Maybe people have issues they would like to add that they have said have not been contained here. Then, on the question of working relationships, I think we have started on a good stead. What we can say, is to adopt this as a working document, we adopt it as a working document and then both Commissions go back to their decision making processes, analyze, reflect on them, refine them and then through our Chair's offices, Madam Abida and *Mweshimiwa Kivuitu* or the Vice Chairs, we can then decide what are the areas which we need to work on immediately and others which can wait a bit and start building confidence. Our Chair was talking about building trust and confidence and I am sure because we worked together yesterday and today, we are much better off now than we were before, but please also allow for these internal consultations to go on, but with the caveat that we

should not take too long on these questions. Thank you, Mr. Chairman.

Com. J.B. Tumwa(ECK): Thank you, Commissioner. I agree entirely. The only reason why we are going through this is exactly what you have said, that we want to understand what we have gone through. One way of doing it would have been for us to say fine, we distribute this paper and say, fine, read it quietly, give you ten minutes and you agree or you do not agree and we adopt it all in total, but I think it is good for us to be thorough in what we are doing, by revisiting in a very, very quick way and I think we are moving fast. As I said, we do not want to talk in circles, if we say we accept what is here with the observation (?) have made, we move forward to the next item. Bishop.

Bishop M'Thambu(ECK): Mr. Chairman, I think we have progressed very well, to the extent of producing this document and I quite agree with what Commissioner Zein has said, that we look at these topics, adopt the paper and then we go back to our respective places, isolate flesh and bones and each side to communicate to the other having made a thorough postmortem and I believe that would be the best way that we can really come out with a solution knowing precisely that CKRC, this is what they are going to do, ECK, this is what they are going to do and at the same time, where the Committees would come in. I believe we have produced a document, a very important document and I quite agree with what he has said. Thank you very much.

Com. J.B. Tumwa(ECK): Just a minute, what do you agree with? Do you agree with the suggestion that we have had an opportunity to look at it, so all we have to do at this stage is to adopt it as it is?

Bishop M'Thambu(ECK): We have not looked at it per se, but what I am saying is this, some of us were given the first page, the way we are going is we go through it. Let us go through it, let us go through it, adopt the paper that this is what has come out of this meeting then the nitty gritty of isolation of issues one by one, let us do it, that is in our respective place, without saying we adopt that. That is what I am saying.

Com. J.B. Tumwa(ECK): Thank you. Two speakers--

(Inaudible comments from the floor).

Com. J.B. Tumwa(ECK): Two speakers-- Out of order. Two speakers, Salome and Henry and then we move to the next topic.

Com. Salome Muigai: Thank you, Chair. I want to agree that there is need to adopt this paper as a working document of this joint meeting, but I also think there will be value added if we go through it and see whether there are things that we may need to add, some things that we may need to refine, some points that we can be able to do at this sitting since we are already there.

Then, our staff, our Secretariat will pick our issues and then give us a more refined document that we take to our individual and separate Plenaries, but there is value added, Mr. Chairman, towards looking at this paper together and looking at what it is that we would like to adopt and what it is that we are able, actually, to refine and focus on a little bit more now that we are together. Thank you.

Com. J.B. Tumwa(ECK): Thank you very much. That is the thinking of those of us sitting on this side of the table. Henry.

Com. Henry Jura(ECK): Thank you very much, Mr. Chairman. I think I want to agree that we glance, we scan through this paper and adopt it as a basis for discussions, but we already have Committees in our respective Commissions, at least in the ECK we have the Ad Hoc Committee, which has been meeting with CKRC. These individual Commission, Committees would, after we have adopted this at this joint Plenary here as a working document, these individual Committees would now look at this and advise our respective Plenaries and then finally, jointly meet and agree on which ones we want to use and which ones not to. I hope you understand me.

Com. J.B. Tumwa(ECK): I do understand you, Commissioner Jura. I think that is a refinement we are talking about, because when we go back to set these Committees, we may say, well, we already have in place an Ad Hoc Committee which is doing a fantastic job. Within that Ad Hoc Committee we have got the Voter Educators, we have got Civic Educators, we have got lawyers, so those are the matters that can be dealt with, but right now what we have on the paper is set up the Committee and I think we all agree on that. Any objections? I see none, we will take that one. Thank you.

Com. Wanjiku Kabira: Thank you, Tumwa. So, can we go to the second issue, which is on the advocacy of the legal framework to conduct the Referendum. With all the discussions we had yesterday and this morning, we said, we note the gaps, if any, in the law and proceed on the basis of the law, we want to use regulations to cover for any inadequacies in the Act and we also want to engage PSC on legal concerns if any. We have put 'if any', because if you remember our discussion yesterday when the Attorney General said this is an area that requires much more time to look at, the law itself and we are proposing we have the Advisory Committee, a Joint Legal Advisory Committee and maybe, as Mukele was saying, we could actually say Legal Advisory Committee made up of the whatever Committees we have in the two Commissions. I know we have a Legal Committee, we understand ECK also has a Legal Committee and we are saying that they could come together and address these issues and we need to do further consultations with PSC. Any comments?

Those who agree say "Aye".

Commissioners: "Aye". (*Laughter*).

Com. Wanjiku Kabira: And those who disagree say "Aye" also. (*Laughter*). Okay, thank you. So, we move on to the next

point.

Com. J.B. Tumwa(ECK): Thank you. The third item is to conduct Civic and Voter Education. Again here, we did not seem to have any problems, I think the spirit of our thinking was captured by Commissioner Yano when she said that there are lots of materials that have been developed by CKRC, there are lots of materials which have been developed by ECK and ECK has got, in the district, what we call district registration Committee which also takes care of the Voter Education. All we need is to look at these institutions and find ways of helping them to work together. I believe that takes care of that issue. Any objections? Any Ayes?

Commissioners: Aye.

Com. J.B. Tumwa(ECK): Any Nays? Thank you. (*Laughter*). We proceed.

Com. Wanjiku Kabira: Okay, now we have item number 4 and the discussions was that we really need to make the Referendum legitimate by ensuring that we have a high turnout. So, the concern was the low turnout and the proposals are that we mobilize for maximum turnout of voters, Civic Education and so on and we also engage PSC on a provision providing for a minimum threshold of voter turnout for the vote to be considered successful. Engage PSC on a provision providing for a minimum number of provinces voting in the affirmative for it to be considered successful and we have proposed that we have a joint Civic Voter Education Task Force, but that would address number one, so we may actually want to talk about the Joint Legal Committee as well, because the second bullet, third bullet actually, refer to looking at the law again and making an amendment. So, maybe we should think about the Legal Joint Committee as well.

Com. Kavetsa Adagala: For number 4?

Com. Wanjiku Kabira: For number 4. Any comments? Commissioner, yes.

Tape 8

Com. Edward Lopokoyit(ECK): Thank you, Chair. I think we could delete the joint Civic and Voter Education and in its place we put the Legal Advisory Committee, because this is essential, really, to the life of the Referendum. This is my opinion.

Com. J.B. Tumwa(ECK): Come again.

Com. Edward Lopokoyit(ECK): Number 4. That we put Joint Advisory Legal Committee instead of Joint Civic and Voter Education. I think that touches more on the law together with the PSC. That is what I thought.

Com. Wanjiru Kabira: Yes, I was saying that if you look at bullet 1, I agree with you for bullet 2 and 3, but if you look at bullet 1 we are talking about maximum mobilization of the voters so that they turn out. Yes, Kavetsa.

Com. Kavetsa Adagala: Thank you, Chair. Then bullet 1 does not belong in here. Yes, bullet 1, it is about mobilization, logistics, but the others belong together, the two bullets.

Com. Wanjiku Kabira: I think it belongs there as well. You know, we are saying that we have a possible low turnout of voters. One of the ways of ensuring that we do not have low turnout is actually mobilizing and educating the people to make sure that they participate in the Referendum. It is a solution to a low turnout of voters.

Com. Kavetsa Adagala: My point is that the other two are legal and this other one is-- Maybe we need it to be, maybe--

Com. Wanjiku Kabira: To separate them?

Com. Kavetsa Adagala: We need to separate them and code them, but the first one belongs to Joint Civic and Voter Education Task Force, the first bullet.

Com. Wanjiku Kabira: Yes, okay. Chair.

Com. Abida Ali-Aroni: I wanted to suggest a way forward. Can we just say, Joint Committee, then when we get there we can decide what goes to a Civic Committee and what goes to a Legal Committee, but for now, if you look at 4, possible low voter turnout, all the three points are relevant there. So, let us just talk about a Joint Committee and sort the differences much later.

Com. Wanjiku Kabira: Okay, thank you. Bishop.

Com. Bishop M'Thambu(CKRC): That bulletin coming just immediately after 9, almost at campaign period, that one will join very well with the campaign if it comes earlier. Where it is placed could have appeared there just before the campaigns.

Com. Wanjiku Kabira: Okay, we can have that bullet in two places, in number 4 and number 9. Okay, any other comments on this one? Yes, please, next to Bishop.

J. Keli: Thank you, Madam Chair. I think the issue of the engaging the PSC on the provision for minimum threshold, it should come under the legal framework, bullet number 2. So, we tackle all the issues to do with the adequacy of the legal framework at the same, number 2, they come there, because we are saying engage PSC on legal concerns if any. You will see that in the

last bullet, number 2.

Com. Wanjiku Kabira: Yes. Okay, maybe, let us just keep in mind the issue we are dealing with at this stage is the low voter turnout. If the law does not change, for instance, what will we do, because we still have to deal with the low voter turnout, but I think it should be, as you say, it is actually a legal issue, it will be dealt with by the same Committee. So, some of these things overlap from one point to another and I think what Tumwa said a little earlier, that once we adopt it, I think these things will be sorted out within our Commission to be able to say, this issue will go into this Committee and the Legal Committee will, as you say, address all issues concerned with the law and Referendum. Okay, Nancy and then I will come back here. Nancy Baraza. Abuya Abuya, I will come back to you.

Com. Nancy Baraza: Madam Chair, I think as you rightly put it, quite a few issues overlap, but what we are doing, specifically under 4, is the legwork, logistics. So, subject to what the Commissioners of CKRC proposed, I propose that we adopt it.

Com. Wanjiku Kabira: Okay. Thank you. I will go to the two at the back and then finish with Abuya, because you are nearer me.

Com. Bashir Ali(ECK): Thank you, Madam Chairman. I want to comment on the low turnout. I think we should not be expecting low turnout, everything is done properly, this is not an election, this is a Referendum. When we hold the elections there are low turnouts for many reasons and especially for by-elections, people do not turn out in big numbers. But now, here I think we are restricted by law, because we are told those who voter will be only those on the register, yes? The best thing would have been to say everybody over 18 and the other thing will be to make the contest itself (?) by just giving one question. I think the question of saying, do you approve this Constitution, I think it is not very clear. I would like to say specific items should be taken up and the people should know that in advance. The other way, of course, would be to reduce the level of violence, in some areas the country is very violent and people might, for practical reasons, never turnout. So, I think most of this will actually be legal until that law can be amended somehow, which I think it is too late now. It cannot be done now, but I would not expect a low turnout for this kind of exercise. I think, in fact, we should have 80% or 90% turnout, it is not an election, in elections people do not turnout because they do not like the candidate, sometimes parties field unpopular candidates and therefore, people say *ya nini, ya nini*, we do not care about this. So, you find a lot of people have the card and they do not vote. When you ask them they will tell you nothing changes, so why should we bother, but I think this is a different exercise and I will not anticipate a low turnout unless something drastic happens. But still, I feel this legal action should be taken to make sure that people actually turnout. Thank you.

Com. Wanjiku Kabira: Okay, thank you for the spirit and the belief. We had said possible, but you have added a number of things that we should take on board, apart from mobilizing, ensuring reduced violence and so on and I think, since ECK is an

expert on mobilizing for elections, the same strategies, I think, will be used to mobilize for the Referendum. You said 90%? About 80%. Okay, so that is good. Thank you. Yes.

Com. Henry Jura(ECK): I think, as we had said earlier, we scan through this and we go form what one would call a Joint General Purposes Committee, which would meet and identify Sub-Committees again joint, to deal with specific items of the process. Joint General Purposes Committee, ECK, CKRC, identify individual issues including the legal Committee which should now pursue individual issues like – of course as we had said, logistics and the rest – including even what is in number 4, possible low turnout. That will come when we give that particular item a Sub-Committee which is, of course, Voter Education and Civic Education. So, one Committee for general purposes, which will form Sub-Committees. Thank you.

Com. Wanjiku Kabira: Thank you. Abuya Abuya, but before Honourable Abuya Abuya speaks, I think all we are doing is to build a general consensus that this is the general direction in which this meeting has been going. So, at least by the end of the day we will say, yes, we actually discussed these issues, they emerged and there are certain proposals, and then all those details will be done when we get back to our boardrooms or to own Plenaries.

Com. Abuya Abuya(ECK): Number 4, looking at the two and bullet 4, that has to do with the law and to involve PSC which means they go back to Parliament and seek Parliament to make the amendments and we had already agreed that we are dealing with a bad law and we want to meander. I think that going back to Parliament, it will look like there is going to be manipulation even if there isn't any manipulation and that will bring again a lot of debate and I am sure it will bring suspicion and we had concluded that this (?)with the bad law. I do not think we should go beyond to ask PSC to do the amendments, otherwise then we will have to take all those Acts, the bad law, tell them we need all these amendments. I think we should leave it silent. For example, we are going to say we need that majority to come from 5 provinces or the percentage should be this. It is going to require a lot of debate, it is going to generate a lot of debate, it will bring a lot of suspicion at this late hour.

Com. Wanjiku Kabira: Okay, thank you. Any comments? Okay, Raiji then Zein and then Ratanya.

Com. Riunga Raiji: Thank you, Chair. I think the way we are going, it is obvious that at the end of the day once the issues are identified, almost all recommendations are basically to form joint Committees or rather, refer the matter to our existing Committees to work together on a number of these issues. So, I do not know whether perhaps-- Maybe the only issue we need is to look at the key issues, but I think we need to take on board the issue that was raised by Honourable Abuya seriously, I think it is Dr. Maranga who told us according to the law as it is now, there are some 37 days remaining for Parliament to vote. We are operating on a very strict timetable and I think, I know we do this in the Commission, to go on options and scenarios. I think the first scenario is to assume that no law is changed, or we cannot get it changed and that we are going to, as you say, to operate on the basis of the law as it is despite its weaknesses and then plan our activities. ECK is an implementer of considerable experience and find out how we can implement this on the basis of the law as it is. There is, of

course, nothing to be lost if we engage these other actors to see if something can be done, but I think in doing so, some of you have been in Parliament, I hear there is budget, several days are to be devoted and so forth and a lot of bureaucracy so that even if Parliament were to listen positively, it might be that by the time they do it the whole timetable has run astray and since, I thought, we have already had a consensus that we proceed on the basis that we are prepared to-- At least the ECK is going to implement or to conduct the Referendum on the basis of things as they are. If they improve, I think that will be a blessing for all of us, if they do not, nevertheless, we shall go ahead and fulfill the mandate.

So, in the same vein, I think once we are through with the issues, since we have recommended the same, we might want to put a timeframe before we leave here, a deadline, so that the respective Commissions can work backwards to ensure that it is not--

I know, sometimes we recommend Committees, they take days and ages and we lose the value that we wanted to gain from this Committee. So, perhaps, joint Chairs, once we come to the end I think we need to put a time limit and then we can work backwards and perhaps, suggest a time when we can come and bring our products back to Nairobi and go to the next stage.

Com. Wanjiku Kabira: Okay, thank you, Raiji. Zein.

Com. Zein Abubakar: Thank you, Madam. My view is slightly different. I thought we had already build consensus that we will endeavour to make sure that we will do all that is possible in our hands to make the Referendum a success, including allowing a Technical Committee to look at some of the legal matters and advise us. If we do not allow the Committee to meet and look at these matters and we are saying we should put roadblocks now, it means that they will not even advise us. I agree with Commissioner Raiji, that time is of essence and also take Honourable Abuya's caution on the politics involved in amendments, but let us allow a small Technical Committee to look at these matters. I was going to add, when we come to the campaigning that we forgot to add something there saying, to try and separate the campaign period from the Civic and Voter Education period. Something like that, if we do not handle it carefully, will give us problems, plus the others which we have identified since yesterday and today. That is why I am saying, maybe the small Committee can advise us, but if we reopen the questions now and say, okay, some of the suggestions here we should remove them, we will reopen the whole debate.

Com. Wanjiku Kabira: Okay, thank you. Ratanya and then Chair, Abida.

Com. Domiziano Ratanya: Okay, thank you very much, Madam Chair. I have a problem with this one, this number 4, possible low turnout. We have listed a number of key issues and for me, in my view, I do not think that one is an issue. In my view, we should not be concerned with low turnout, it is not something that we have control over, we cannot easily control that one. This is why, Madam Chair, maybe I would suggest that if we conduct number 2 properly, legal framework, then number 3, that is the conduct of Civic Education and Voter Education and I have gone through all the others like Referendum regulations. If we do our duty in all those, there may be other listed numbers, then we can be sure of getting a possible law out depending on what people are going to agree to. We cannot force them, Madam Chair, that is my view, it is something that we cannot

have control over. We cannot allow political parties to campaign so that their supporters come to vote, that one we cannot do and this one may also vary depending on the areas. You will be surprised to find that if you go to some areas where people find that their gains are not addressed, like along the Coast, if they find that land issues are not addressed in this Draft, maybe in some areas we would expect those people not even to go there. There are areas where there are special interests, if they are not addressed you might find few coming and so on and so forth. So, this one is not really something that we can generalize, it may depend on the areas depending on what they think they are going to get in the Draft.

So, this is why I suggest, Madam Chair, we delete number 4 and then we take the contents in number 4 to number 2, the legal issues. This will be addressed when we deal with legal framework and then, mobilization for maximum turnout can go to number 3, where we deal with Civic Education and Voter Education. We completely delete this one, number 4, from our records.

Com. Wanjiku Kabira: Yes. Thank you very much, Ratanya. Chair and then we need to wind up this particular one.

Com. Abida Ali-Aroni: Thank you, Professor. I am just thinking about what *Mweshimiwa*, although he says he is no longer *Mweshimiwa* Abuya Abuya, Raiji and Zein's comments and I am thinking that we are going in circles, because number 2 captures and we have said that we are noting gaps if any, because that is debatable from our discussions here and we are saying that we will take our concerns to the PSC. I think that is the best that we can do, let the Legal Committee come up with the concerns and there is no harm in us bringing that to the attention of the Parliamentary Select Committee, because that is their problem and they can take it up from there. So, I am proposing that we agree that we have taken care of that issue, number 2 covers both the concerns by the three gentlemen.

Com. Wanjiku Kabira: Okay. On the same? Okay, Nancy then Mosonik. Sorry, I had given Nancy, she had her hand up earlier, I was wondering whether we should veto everybody and move on to the next one.

Com. Nancy Baraza: I was going to refer to my proposal.

Com. Wanjiku Kabira: Okay. So, what was the proposal? We adopt.

Com. Nancy Baraza: The proposal was, I think, the Chairperson of CKRC had said we form a Committee which we can go and refer and call it whatever, but adopt what is here, because I think we are going in circles. We said--

Com. Wanjiku Kabira: Yes, because the issues were debated.

Com. Nancy Baraza: Then it can be referred and then I had made a proposal we adopt subject to that proposal and we move ahead, otherwise, we are going into substantive debate which preoccupied us yesterday and today.

Com. Wanjiku Kabira: Okay, thank you very much. We do not want to open the whole debate all over again. Mosonik.

Com. Mosonik arap Korir: Madam Chair, I just wanted to say, the two points under number 4 are actually points that were raised here and we do not want to leave it open and say it is taken care under, engage PSC on legal concerns, if any, because we said there are concerns and the concerns are the two under number 4. so, what we need to do is to push those two points, engage PSC to number 2, so that we do not say the Committee will raise, if any. It is this Plenary that said there were issues and these two in particular were mentioned here, so that we do not hold them responsible for wanting to engage the PSC. The need to engage the PSC is something that was raised here, not by a Committee to advise us back.

Com. Wanjiku Kabira: Okay. So, do we agree that we are comfortable with that? Maranga, now what do you want to say? (*Laughter*).

Com. Charles Maranga: I am sorry, Madam Chair. The point I am saying, the way we are going we are actually going to lose out on the content of this paper. Chair, I was going to propose that one of you reads through all the 15 points, so that if there is anybody who has an issue to raise on one of those points, then we raise those points and then we finish this document. The way we are going we are going to leave here at 8.00 p.m. and we do not want to do that. Otherwise, again, the whole point here is we are reopening debate which we have already done, the Rapporteurs have already done their job, actually, what you are now questioning are the Rapporteurs who did this work. I think what we need to do, if there are things we need to shift we do that. If there is something we need to edit out we do that, but otherwise, this paper, each one of these Commissioners here can read and can be able to raise a question. I think, let us do that and we adopt this paper in the next 15 minutes and we move out.

Com. Wanjiku Kabira: Thank you very much, Maranga. When Swazuri insists, it must be very important, so I will have to let him talk. Swazuri.

Com. Mohammed Swazuri: Thank you, Madam Chair. In fact, it is to re-enforce what Maranga is saying. My proposal is that we adopt this paper. We have already read through, I know-- No, they do not have to read through, the Chairs, we have already gone through this paper.

Com. Wanjiku Kabira: We can change the Motion, we can say number 5.

Com. Mohammed Swazuri: So, I am proposing, Madam Chair, we adopt this paper and then, there is a rider at the end there that says, "a joint CKRC/ECK meeting should be considered to receive and make policy decisions after the Joint Task Forces have finalized their work". In other words, once we adopt this paper and I am asking for a seconder, the

recommendations at the end, forming joint forces will have been agreed, they will go ahead and appoint the Task Forces and then we bring it to a joint CKRC/ECK meeting.

Com. Wanjiku Kabira: Okay, Nancy, you are seconding?

Com. Nancy Baraza: Yes, I am seconding, I have read through, we have all read through it. it is a true reflection of the proceedings of yesterday and today (*Laughter*) and I am seconding Commissioner Swazuri.

(Inaudible discussion from the floor).

Com. Wanjiku Kabira: Yes, Tumwa, can you help me?

Com. J.B. Tumwa(ECK): There is a proposal that has come up and a proposal that has to do with changing the way we are doing it. That proposal has been seconded and it is only fair that since the proposal came from the floor and do not forget, that we asked you some question when we started and you adopted the method that we are now using. Now, in the middle of the river we are saying we change, we have no problem from this side, changing so that perhaps, we can move faster. Is there anybody who objects to the idea of us-- Wait, reading through, perhaps not all the content, but assuming that we have all had a time to look through what is contained in this paper and we are in a position to add value or delete or change as appropriate. So, what we are going to do from this end is to say, item number 5, anybody to add value, anybody to delete. Is that acceptable? That is a deviation from the spirit of adopting the paper as it is, is it?

Com. Nancy Baraza: *(Inaudible).*

Com. J.B. Tumwa(ECK): Just a minute, I have not allowed you to talk. Okay, let me allow Ms. Baraza, if I do not allow you to talk I will not have food at home. (*Laughter*). Ms. Baraza? Commissioner Baraza.

Com. Nancy Baraza: Mr. Chairman, thank you. There is a Motion which is duly seconded on the floor and we cannot just overlook it, unless there is some substantive Motion again, to do away with my Motion with Commissioners Swazuri's Motion. It has been supported.

Tape 9

Com. J.B. Tumwa(ECK): Thank you. The paper is presented to you, fellow Commissioners, you have read it--

Com. Wanjiku Kabira: And you have agreed. (*Laughter*).

Com. J.B. Tumwa(ECK): And I am not seeing any serious problem of disagreement.

(Inaudible comments from the floor).

Com. J.B. Tumwa(ECK): Just a minute, just a minute. Okay, just a minute. Yes, Commissioner Wambaa.

Com. Ann Wambaa(ECK): (?) exactly what has come out now, from the beginning. I suggested that we agree that this is the record of what we had discussed for the two days and then we go back and do what you are saying and it was not supported and we have now come down. This is what we have all discussed, this is what we had agreed, the words that we have used, the language that we have used and that is the record and now, for us to pass or delete or add, we agreed that we will go back to our Commissions and to the various Committees and have the last joint thing which is on this page and then adopt it. That is what I had suggested.

Com. J.B. Tumwa(ECK): Thank you, Commissioner Wambaa. You know, some of us are slow learners, it takes time for us to-- *(Laughter)*. Now, what we are going to do, we adopt the paper as it is, a proposed and as seconded and any changes, with a view to sending them to our parent Commissions for further discussions.

Having said that, it is now my pleasure to invite, first Mr. Muttu--

Com. Alice Yano: There is some clarification I need.

Com. J.B. Tumwa(ECK): Commissioner, you want to take us back?

Com. Alice Yano: I do not have a problem by us adopting the whole document as it is, but there is a rider that you have made, that thereafter, the whole document is taken to respective Commissions for purposed of deliberations before we come up with the joint Committees to re-look into the issues. Is that the position?

Com. J.B. Tumwa(ECK): Yes.

Com. Anne Wambaa(ECK): Kindly, when do you want us to come back?

Com. J.B. Tumwa(ECK): I can see someone becoming very disorderly. I think I will order her out of this place. *(Laughter)*.

Okay, I want to ask Commissioner Muttu to say one or two things and then I will ask the Chair of CKRC to make a few observations and I believe she will proceed to close our sitting. Thank you. I am told the Press is not very far from here and the Chair wants to make one or two comments. You know, you have complemented ECK for having made a very successful

election during the 2002. The secret of it was that we did not have any secret. We informed people about all the things we did and I think it went very well, so I think it is only fair that the public also knows a few of the things that we are doing.

(The Press comes into the room).

Com. Kihara Muttu(ECK): Thank you, Chair. Ladies and Gentlemen, we are coming now, to the end of our 2 days working session. This has been the first and I believe not the last, joint working session with our colleagues in the CKRC, but at least one thing is certain, you have done a good job. It has been a very successful workshop and we have come out with issues that we consider relevant and that will require further observations to ensure the whole process is finally workable and successful. There appear to be about 15 major issues, if we have adopted these issues on our part, the ECK, the Plenary will in the end have to confirm or adopt whatever and make its observations. That is how we sort of confirm our operations, that the final word will be with the Plenary and I believe, the same operates with you.

However, out of the 15 issues, if you may allow me and this is with very great respect and here I stand corrected, it would appear to me – I may be wrong – that number 9, number 10 and perhaps 11, may appear to be a theory operation for the operation (?) and perhaps that may be just the ECKs problem. I said I may be wrong, but there appear to be the operational side of the-- Otherwise, we will all have a chance to look at it, perhaps you may look at this from that side as well, but I must say, we from the ECK, we are grateful, it has been a great success, we have all cooperated will and we thank you all and all those who have taken part in it and we do hope to have more fruitful joint discussions to make the Referendum a success. Thank you.

Com. Abida Ali-Aroni: Colleagues, friends, the Chairs of the session, senior colleague Kihara Muttu, I also wish to thank you all for this wonderful meeting that we have had for the last two days. At the beginning we said this meeting was long overdue and I think we all agree that we needed to have this meeting to discuss the issues that were outstanding and to look for possible solutions and I think, we leave this place with lots of solutions in our heads and for us from the Review Commission, I think we have been able to learn a lot from you, you are our seniors in a lot of respects and we have watched your calmness, we have watched the wisdom in which you have engaged in this meeting and we are happy that we have been able to learn a great deal from you.

I should also say that it is quite obvious that the meeting has been a success. We had about five objectives at the beginning and from the look of things I think we have achieved the objectives that were set for this particular meeting and we will do what has been suggested here, we will look at the emerging issues and the suggested way forward at the level of the Review Commission. We will also make our decisions through our Plenary and I am sure, since this is not the first meeting, we will be able to get back to you after deliberating on the document that we have been discussing this afternoon and we will give you a feedback, but I can assure you that at the level of our Commission, we are more or less agreed to the points of action and the suggested

framework of action, subject to your deliberations and suggestions that we are ready and willing to deliberate to enable us move the process forward.

We also wish to give you as much support as you may wish, even where the items or the activities squarely lies on ECK. I want to remember what Ann Wambaa has said since we came here, that whichever way you look at it, if the Referendum succeeds, we shall all swim in the glory of the success of the Referendum. If it does not succeed, each of the two Commissions will be blamed equally and individually. So, we want to assure you of our support as and when you think you need it, if things are too hard or too many within the 90 days, call on us, teach us the tricks that you have been using for the successful elections that we have had in this country and we will give you a hand and with that, I wish you a good evening and a good trip back to Nairobi and I hope that we will be able to engage each other effectively as we have done so in the last two days. Thank you.

(Clapping).

Now, yesterday the Press visited us in the morning, but we felt that we did not have much to tell them and we thought that we would engage them immediately after our deliberations. We have prepared a small Press release and with your permission, I would request that we address the Press. As Ambassador Tumwa said, there is nothing to hide, I think the only reason that we kept them out is because we had in-house domestic matters that we wanted to discuss and now that we have effectively discussed the issues, maybe we can let the rest of the country know what we have been doing here, although briefly, because we still have a bit of work to do when we get back to Nairobi. If that is acceptable, I will proceed to read the Press release. Do I have your blessings, Bishop?

Commissioners: Yes.

Com. Abida Ali-Aroni: Members of the Press, the following is a Press released jointly by the two Commissions, it is a one-page document and we will circulate copies of the same to you after this.

“Following preliminary consultations between the two Commissions that have been going on since last year, it was felt that there was need for the two Commissions to hold a workshop to brainstorm on them. We have looked generally at four areas, namely the mandate of the two Commissions as contained in the Constitution of Kenya Review Commission as amended last year, the Referendum law and regulations, areas of mutual interest and cooperation with regard to Civic Education, Voter Education and the Referendum, we have also looked at general logistics for the Referendum.

We have also considered a number of key issues, namely the need for collaboration and coordination amongst the two Commissions, the need to use the existing legal framework to prepare for and conduct the Referendum and to engage the Parliamentary Select Committee on legal concerns as identified by the two Commissions. The conduct of Civic and Voter Education, the infrastructure and logistics for Civic and Voter Education, Voter eligibility and registration, the framing of the

Referendum question, the management of campaigns in the Referendum period, the timing for the Referendum and the monitoring of the Referendum Process.

On the way forward the two Commissions have established joint Committees to address details of the above matters and to work out modalities for their implementation”. Thank you.

And with that happy ending, thank you very much and see you later. (*Laughter*).

The meeting adjourned at 4.05 p.m.

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