

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report of**

**MEDIA OWNERS CONSULTATIVE BREAKFAST MEETING HELD  
AT NAIROBI SAFARI CLUB**

**(LILIAN TOWERS)**

**ON**

**27.04.2005**

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**PROCEEDINGS OF THE MEDIA OWNERS CONSULTATIVE BREAKFAST MEETING HELD AT NAIROBI  
SAFARI CLUB ON 27<sup>TH</sup> APRIL 2005**

**Present:**

1. Mrs. Abida Ali-Aroni - Chairperson
2. Prof. Ahmed Idha Salim - 1<sup>st</sup> Vice Chairperson
3. Prof. Wanjiku Kabira - Vice Chairperson
4. Prof. W.H.O. Okoth Ogendo - Vice Chairperson
5. Hon. Dr. Phoebe Asiyo - Commissioner
6. Dr. Andronico Adede - “
7. Dr. Mohammed Swazuri - “
8. Dr. Charles Maranga Bagwasi - “
9. Dr. Abdirizak Arale Nunow - “
10. Mrs. Alice Yano - “
11. Bishop Bernard Kariuki Njoroge - “
12. Pastor Zablon Ayonga - “
13. Mr. Abubakar Zein Abubakar - “
14. Dr. Mosonik arap Korir - “
15. Mr. Riunga Raiji - “
16. Mr. Ibrahim Lethome - “
17. Mr. Domiziano Mtuchokera Ratanya - “
18. Mr. Paul Musili Wambua - “
19. Ms. Kavetsa Adagala - “
20. Ms. Salome Wairimu Muigai - “
21. Mr. Ahmed Isaack Hassan - “
22. Ms. Nancy Baraza - “
23. Dr. PLO Lumumba - CKRC Secretary

## **Media Owners:**

1. Mr. Tom Mshindi - Vice Chairman MOA, CEO, The Standard Media Group
2. Mr. Wilfred Kiboro - Group MD & CEO, Nation Media Group
3. Mr. Ian Fernandes - MD, Nation Broadcasting
4. Mr. Hanningtone Gaya- Hon. Sec. MOA MD & CEO, Media 7
5. Mr. Cyrille Nabutola - Marketing Director, National Media Group
6. Mr. Chris Kirubi - Executive Chairman, Capital FM
7. Mr. Cyrus Kamau - General Manager, Capital FM
8. Mr. S.K. Macharia - Executive Chairman & CEO, Citizen FM
9. Mr. Herman Igambi - Group Managing Editor, Citizen TV & Radio
10. Ms. Sheila Amdany - CEO, Radio Simba FM
11. Ms. Ivy Matiba - CEO, The People Newspaper
12. Mrs. Eunice Mathu - CEO, Parents Magazine
13. Mr. George Gitau - MD & CEO, Kenya Broadcasting Co-operation
14. Mr. Arjun Ruzaik - CEO, East FM
15. Mr. Mitch Odero - Chairman, Media Council
16. Mr. Salim Mohammed- IQRA Broadcasting Network (Station Manager)
17. Mr. Patrick Ndeda - General Manager, Classic FM
18. Mr. H. Mucheke - Group Managing Editor, Kenya Broadcasting Co-operation
19. Ms. Pamela Makotsi-Sittoni- Managing Editor, The Standard Media Group
20. Mr. Absalom Mutere - Media Council of Kenya
22. Mr. Daniel Wabwire - Radio Waumini
21. Mr. Richard Mugo - KPMG – GJLOs
22. Mr. Kathurima M’Inoti- GJLOs Representative
23. William Oeri - Nation

## **Secretariat Staff in Attendance:**

1. Irene Masit - Deputy Secretary, CKRC
2. Charles Oyaya - Programme Officer
3. Kibisu Kabatesi - “
4. Irungu Ndirangu - “
5. Triza Apondi - “
6. Solomon Mukenion - “
7. Joash Aminga - Assistant Programme Officer
8. Stephen Mukaindo - Programme Officer (Personal Assistant to  
Commission Chair)
9. Jane Mbau - Secretary
10. Lucy Mbithe - Assistant Programme Officer
11. Grace Gitu - Verbatim Recorder
12. Jacob Ondara - Assistant Programme Officer

The meeting was called to order at 8.05 a.m. with Dr. PLO Lumumba as the Prompter.

## **Welcoming remarks and Introductions:**

**PLO Lumumba:** Ladies and Gentlemen, I take this opportunity first to welcome you, although Prof. Salim will do that formally, because this is an occasion like no other. It is an occasion like no other because as you remember we have before us those whom your newspapers and media organs describe as the big wigs of the Fourth Estate and what you know about the Fourth Estate is that it can destroy and build and one of the things that we are trying to do here very cleverly is not to bribe you but simply to entice you to ensure that when the Constitution goes out to the public it does so in a manner that the public will embrace and that is why we think an occasion such as this is important for cross fertilization of ideas and that is the reason why we are feeding you very well so that the soil is as fertile as it must be. Wisdom demands that even as you eat, we know who is present here because I see somebody that looks like Wilfred Kiboro and Cyrille Nabutola but I must hear it from Wilfred himself. So starting with what has been fashioned as the “High Table” if you could kindly just tell us who you are, it would be very useful.

*(Those present introduce themselves by saying their names).*

**PLO Lumumba:** Thank you, Ladies and Gentlemen, we now know that there are no enemies in the house and that having been confirmed permit me now to-- Oh, PLO Lumumba from CKRC. Now we know that there is no enemy in the house. You will permit me now to introduce Prof. Salim who is the First Vice-Chair of the CKRC, to formally welcome you. Prof. Salim.

**Com. Idha Salim:** Patrick is not only the MC but is also the Prompter and after his incomparable start of this programme, I can only say what a famous poet said “I wish I had said that before he did”. He virtually has done half of what I wanted to do, namely arrange for introductions. But I am glad we have already gone through that.

I see this really as a get-together of friends and colleagues. Most of us know one another and this is really just getting together of friends and I therefore I have nothing but extreme pleasure to welcome you all to this gathering. Your attendance has surpassed our expectations, not that we felt some of you may not come but it is just that you are such a busy group of people that we felt that at the last minute some of you may not be able to make it. But I am glad you have and I want to very warmly welcome you all on behalf of CKRC.

Ladies and Gentlemen, we are getting together at a very critical time in the history of our nation. As Patrick said, we are meeting at a time when the country is at a crossroad in the sense that for some years now, the people of Kenya have been yearning for a new Constitution. It is almost within their grasp and therefore we have now reached a stage where something has to be done, that final push is required for us to eventually and at last give the Kenyans the Constitution they deserve. CKRC is mandated to do that but we feel that at this last stage, we need as many Kenyans as possible particularly those in authority,

those who are poised to influence the turn of events in any country, particularly the Media. We need to join hands with you and in this last stage of the Process help push it to a final conclusion. I need not dwell on the problems besetting the Process, they are very well known to you, the Media people than anybody else. Nor need I in fact dwell on them because we have our Chairperson coming to address you in a short while. Mine is simply to ask you to kindly participate with us in this exercise and more so if you look at the Programme in front of you or in your folder, you will find that we are not here just to talk to you, but rather to also listen to you as well as seek to consult with you. It is a Consultative get-together. We have balanced the Programme, make sure that as many of you in the Media are going to address us as much as Members of CKRC are going to address you.

We finish the Programme by what we regard as a very important item, the Way Forward. After listening to each other, we need to know what is the Way Forward and it is my sincere hope and that of CKRC as a whole, and indeed the nation at large, that we will find the Way Forward. We see more than just a light at the end of the tunnel but a way out, a solution to the problem besetting the Process. Let me not proceed any further otherwise I might encroach or anticipate what other speakers are going to say. So, let me finish by again saying welcome and we look forward to interacting with you this morning and also agree hopefully on the Way Forward from now on. Thank you very much. (*Applause*).

**PLO Lumumba:** Thank you very much, Prof. Salim. Permit me now to invite a lady with whom I have a long history. Abida Ali-Aroni, who is the Chairperson of the CKRC, many of you may not know was my classmate. At that time we were taught by Hastings Wilfred Opinyo Okoth Ogendo whom I have come to appreciate even more and it therefore gives me great pleasure because one day Abida Ali-Aroni, when I wanted to be the class representative in year number one, and I was about to lose the elections – she has forgotten since then – she marshalled the lady (?) that I won the elections.

Abida Ali, on that note, may you now address this gathering.

### **The Media, the Constitution and National Interest:**

**Com. Abida Ali-Aroni:** Thank you, Lumumba. Ladies and Gentlemen, I feel a bit disadvantaged this morning, one, because I am extremely full, secondly, I look at the topic, the subject matter, and I hope Mr. Kiboro and Tom will forgive me, I am supposed to be giving a lecture. So please forgive me if I appear as if I am doing that, but I will do that with a lot of humility.

Chairperson of the Media Owners Association, Chairperson of the Media Council of Kenya, Members of the Media Owners Association, Members of the Media Council of Kenya, Members of the Press, fellow Commissioners, Ladies and Gentlemen, I want to begin by thanking the Media Owners Association and the Media Council of Kenya for accepting to have this breakfast with us. The Commission and the whole country is indeed indebted to you for the role that you continue to play with regard to the Review Process. My colleagues have said it, and I also hope that you will continue to deepen your partnership with us as a

Commission and other players as we embark on the last but most important phase of the Review Process. I also want to thank the Sponsors of this meeting, the GJLOS programme under the Ministry of Justice and Constitutional Affairs.

Coincidentally, this is our first consultative meeting since last Friday, the 27<sup>th</sup> of April, 2005, when the amendment to Cap 3A was published. This means that we are now finally and formally embarking on the last leg of the Review Process. The amendments to the law have given us a 7 months time line for the completion of the Review Process. What it means is that time has began to tick and for us, as a Commission, in the last one year or so we were preparing for this time to begin and I feel a sense of urgency and the need for all of us as partners in the Review Process to put our act together and to prepare to hand over the Constitution to the rest of the country.

The law as amended requires us as a Commission to do two things: to conduct and facilitate civic education in support of the Referendum and to monitor the conduct of the Referendum. In the conduct of these roles the Commission requires the support of its partners and stakeholders and in order to build the necessary synergy the Commission is undertaking a series of meetings to consult with partners, that is yourselves, on possible areas for collaboration and to brainstorm on strategies for successfully completing the Process. This meeting with yourselves, as I said before, is the first of a series of meetings that we will be undertaking and mainly in the months of May and June.

Before considering the details of the possible areas for the Commission's collaboration with yourselves, I wish to reflect on the gravity of the responsibility that we are all engaged in. The right to make a new Constitution is a right that belongs to you and I as Kenyans. It is a sacred right that we enjoy not only as individuals but in association. It is a right that carries great responsibility and I say this because we are lucky as a generation to be undertaking this. We are charged with the duty of reconstituting the State and redefining our posterity. In many respects the prosperity of our country for many years to come will fundamentally depend on whether we will be able to seize this opportunity for the common good of our country. The Constitution Review Process is therefore a matter of exceeding national interest not only for our generation but for posterity. You will no doubt agree with me that all players in the Process, the Press, our leaders, ourselves as a Commission and Kenyans in general must therefore discharge this duty with a sense of humility and responsibility.

In my view, Constitution making is much more than a mechanical exercise of sticking to timetables and deadlines, as has become the great concern of Kenyans today. It is not only about the substance of the Constitution that we write, it is also about the Process itself and what it transforms us to be. Experience of other countries throughout the world has continued to indicate that in addition to the Constitution as a document, a national psyche must be built around it so that years after the ink dries on paper the principles, the values and the aspirations embraced by the Constitution will live on. A constitutional culture is as important as the Constitution itself. This is because the culture then gives life and meaning to the principles of the Constitution and in this way makes them become a way of life amongst the people.

Having said that, you will permit me to look at how the Media can feature and help in the remaining phase. I believe that there are a number of things that you can assist in, in order to move the Process forward and in order to promote participation and consciousness within our people for purposes of a successful conclusion of the Process.

One are the provisions as amended by Parliament a few months ago. I am of the opinion that there is need to understand the provisions as amended and their significance to the Process. The Act as amended envisages various activities including consensus building on the so-called contentious issues - do not know whether they are still so called now that the law is in place – and the debate and adoption of the Draft Bill by the National Assembly as published by the Attorney General and also the changes that are likely to be incorporated by Parliament, the conduct and monitoring of civic and voter education, the conduct and monitoring of the Referendum and finally adoption and promulgation of the new Constitution.

My considered view is that despite the arguments going around as to whether the Act is adequate or not, or as to whether the roadmap it establishes is sound or not, or instead of seeking to see loopholes in the law, we should all concentrate on exploiting the ample opportunities created by the Act for the conclusion of the Process. What we need in my view more than ever before is the goodwill of all players in the Process. In any event since the inception of the Review Process the law has always had its problems. Certainly I consider mobilization of the people as an important role that the Media can undertake and in this regard I consider the need to revitalize and sustain the momentum for the new Constitution by refocusing the debate and wiping out apathy that has developed due to the fatigue generated by the dynamics of the Process and to sensitize politicians as they embark on the parliamentary debate on the Commission Report and Draft Bill, of the need to remain faithful to the views of Kenyans.

People's participation is a cardinal principle of the Review Process. This is of particular importance at this time when people are expected to adopt the new Constitution through a Referendum. The new Constitution cannot be adopted unless more than 50% votes are cast in its favour. There is therefore need to ensure that there is sufficient constituency in support of the Process.

A sufficient constituency can only be achieved if the Final Draft is acceptable to the widest cross section of Kenyans as a people.

Certainly I consider building national consensus as a role of the Media, the politicization of the constitutional making exercise has contributed in a large extent to the delay in the finalisation of the Constitution. For a year the Constitution Review debate has focused on individuals and their interest rather than issues and their merits. With due respect, the Media has had its share in creating this perception and has therefore a responsibility, together with the rest of us, to ensure that Kenyans engage themselves in constructive debate that helps to resolve the outstanding issues and facilitate a conclusion of the Review Process.

The Media can play an important role in promoting national dialogue and consensus on issues by adopting reporting strategies that lessen rather than heighten the antagonism between stakeholders with varying opinions.

Confidence building and national consensus on the Draft Bill are important values emphasized by the Act and are now an important component of the Process. National consultations are important for an inclusive, dynamic, legitimate and acceptable Constitution.

Fourthly, public debate and dissemination of information and I propose that we may do this by dispassionate dissemination of information relating to the Review Process. This indeed is a critical component or requirement of Chapter 3A of the Laws of Kenya. The Commission hopes that the Media will continue to play its role in disseminating information to the public with a view of ensuring that they continue to participate in the Constitutional Review debate from an informed point of view and that they eventually make the decision on the new Constitution in the Referendum on the basis of knowledge. The Commission also views public education as an important strategy for stimulating public debate, mobilizing people's participation in the Process leading to the Referendum and strengthening national dialogue and consensus building as Parliament embarks on amending, if at all, the Draft Bill.

Fifth, I consider the role of the Media as a watchdog over the Process. It is my humble view that in this Process where stakeholders have varied interest, the Media could act as a watch dog to ensure that the principles for democratic constitution making recognized by CAP 3A are particularly upheld and safeguarded. These principles include the need to ensure that the Process is inclusive, transparent and accountable to the people of Kenya.

Lastly, after promulgation of the Constitution and long after we have been dissolved as a Commission, I believe that you will continue to have a role to ensure a constitutional culture continues in our country.

I have also been requested to look at National Interest, Media Objectivity and the Review Process and I will do this very quickly having said so much about what we can do. But in addition to what I said before I believe that the remaining phase of the Review Process is going to be particularly politically sensitive and as such it is expected that the Media will portray a high sense of objectivity. It is my view also that the Media needs to develop a culture of discovering facts and relying on carefully established credible evidence for its stories. In the context of the Review Process and consensus building, the Media must take abundant caution to be dispassionate in its reporting to ensure as much gap is bridged as possible and again, as I said before, by focusing on the positive aspects of issues, opinions and events.

We will also be making a plea to you, as our partners, as in the remaining phase the Commission will undertake comprehensive civic education and we intend to use the Media as much as possible. In this campaign we will seek to create sufficient understanding of the issues of the Draft Bill and the dynamics of the Process. We will facilitate most of the activities but as you all understand at the end of the day we use your funds from the Consolidated Fund. We may not have sufficient funds and we are reaching out to you to facilitate us as you have done before, by giving us sufficient Media space as and when you can.



Ladies and Gentlemen, in conclusion I want to remind ourselves here today that the quality of governance of any society is reflected in the quality of its laws and the attitudes that develop around this document. It is therefore for good reason that the new Constitution is so dear to all of us as Kenyans and that we are anxious at this point in time to conclude the Process. However, the conclusion of the Review Process seems to have become a national rhetoric with everyone calling on everyone else to finalise the Process. The Commission holds the view that the successful finalisation of the Review Process is the responsibility of every Kenyan in their individual capacity and in association with others. This is an individual as well as a collective struggle in which the Media will play a critical role alongside other stakeholders. I therefore call upon the Media Owners to seek to discharge their responsibility with honour, dignity and in partnership with others so that the new Constitution may become a reality for all of us in the very near future.

Thank you very much.

*(Clapping).*

**PLO Lumumba:** Thank you very much, Madam Chair. Madam Chair was actually saying to Wilfred, Ivy and Tom that for every advert we pay for you give us two for free. That would be your contribution and we hope that that will happen. That is why it is my joy now, in the absence of Rose Kimotho, the Chairman of MOA, to invite a gentleman whom I respect. Tom Mshindi has a name that is very interesting. He is a *mshindi* and he *shindas* and he has succeeded in making the Standard compete completely and reasonably with the Nation, Wilfred will not agree, but that is happening. That is why it is my pleasure therefore to invite Tom Mshindi to speak about Media Perception, Challenges, Expectations of the Review Process. A round of applause for Tom Mshindi.

### **Media Perceptions, Challenges and Expectations of the Review Process:**

**Mr. Tom Mshindi:** Thank you, Patrick. Obviously I cannot claim to be prepared for this. I assumed that my Chairman would be back from her safaris to take on this responsibility this morning but Hannington reminded me yesterday that I have no option but to come here and respond to the statements that are being made this morning.

Before that, allow me on behalf of the MOA to thank CKRC for inviting us this morning to entice us with this very lovely breakfast and win our confidence and support for the remaining process in the constitutional review issues. But perhaps, it might not actually have been necessary for this expense because Media has not, at any one moment, been averse to supporting this Process. I think I can state here without any fear of contradiction that from as long as this Process started well before the removal of the clause that made this country a one-party state, the performance of Media in articulating the need for the review

to be done and comprehensively done in a public spirited mode have been very clear and we have consistently argued that the issues that have come up, the issues that have appeared to compromise the integrity of the Process, issues that have actually sometimes appeared to threaten the successful completion of this Process were not desirable, were actually quite criminal and we have said so.

We have argued in our columns, in our editorials and in other fora where we have had occasion to interact with those of you and the politicians who maybe are not here this morning, we made that point because as Media we do have obviously the dual role of reporting things as they are, clearly. We try to be objective, we try to get the truth out there; you know, as much as we have got to do that, obviously there are other issues that come in that might compromise or might affect the extent to which we succeed in doing that. But fundamentally, we do report and have reported and we continue to do so but there of course there is also the responsibility of the people leading the Process to be honest and to be true to the Process and activities that surround the whole issue of this Review.

You will agree with me that this has been a fairly challenging Process and there are a fair number of parallel issues that are running around that have made it very difficult sometimes to actually distil what issues one can say are overriding at any one point because after the Bomas Process, what we thought was a fairly intense, very, very passionate process at Bomas kind of got derailed. The contradictions, the issues that came up there, what the Bill is calling, you know, some of the personal issues that emerged, have flown out of Bomas to be issues that are preoccupying debate. We cannot run away from the fact that even as we sit here and as the clock has ticking towards that Referendum day, we can anticipate a fair amount of dynamism in there. The contentious issues we are talking about are still contentious. Last week I think the Ufungamano guys were out at Limuru trying to do something else again purporting, as it were, to be contributing, to clarifying issues, to making the Process more transparent, as it were. There are still the issues of people feeling that they are not part of this Process even as we started the countdown towards the Referendum. Within Parliament itself we have seen, and it is clear, that those interests are still trying to manifest themselves within that House so that again, ultimately, selfish interests do seem to emerge at the top.

Our challenge clearly is to try to explain this. It is very remiss of us, as Media, to bury our heads in the sand and not try to highlight some of these concerns and clearly depict them for what they are because we believe that at the end of the day what you are seeing here is not necessarily something that is actually embedded in what we all agree is a Process that is historic and rare and that therefore needs to be handled extremely carefully.

But I believe that we need to obviously go beyond that and to echo what Abida said, as we reflect those things because we have to probably go beyond it and keep coming down to the issue of what are the fundamental issues, what is the key issue and objective that we want to reach to and how can we ensure that we go there, even recognizing that at the end of the day politicians will always be politicians, they live for the moment and what in the long term is particularly not of fundamental use to them.

We have done this and I will admit here, speaking for myself as one of the people who lead a Media, we probably need to do a lot more but one might ask the question why we have not done as much we should and the question that one would want to raise here is whether the CKRC, being one of the bodies charged with ultimately delivering this document, has done all it could. I will not pass any judgement but I think that there are always ways in which we can do these things a little better. At some point actually we did feel, sitting where we sit, that even within the CKRC itself there were some issues about whether there was still consensus around the document that came out of Bomas and, you know, we tried to be fairly frank and honest because again one has to be committed.

We were looking for more engagements with you as, of course, the key players; we are looking forward to cooperating with you as we help educate people, educate Kenyans about the issues, the concerns that they are likely to confront as we head towards that critical Referendum because my understanding is that if you do not get a 50% vote on this thing, that is it. We basically have not been doing anything for the last so many years.

So it will be fundamental that we do that but I think it is also important to recognize that there will be some very significant challenges. I am not going to be surprised if in another one week or two we are back here sitting possibly with LDP or with KANU or with somebody else also trying to entice us to understand why it is must be important that certain issues within this Constitution are important in a manner that clearly works in their interest. So everybody recognizes this thing. I think at the end of it we really sit in the middle of the very difficult assignment that we have but we are and will obviously do our job.

Let me assure you that I do not believe that there is anybody within the Media Owners who does not want to see a successful, speedy resolution to the issues that have hampered this Process and ultimately I believe come up with a document that actually resonates with the aspirations of the people, aspirations that were very, very articulately and passionately presented at Bomas.

What we will ask is that we leave channels of communication open, we recognize the challenges that are there, we anticipate some of these challenges and probably at one point we will have to ask ourselves whether, having listened to all the sides that have issues at stake here, we want to leave Kenyans confused, wondering who to support, wondering whether the document as amended, because that is going to be the critical thing, the document as amended still responds to the interests of Kenyans? Ultimately, therefore, as one Media might have to come up and say, we do actually support this thing. But my question even as I sit here is to wonder whether the CKRC has got any input into what will be going on in Parliament ultimately and that therefore feels confident that in seeking support from Media as we go forward, we are actually seeking support for something that ultimately answers to the calls of Kenyans to give them a Constitution that they will be proud of and that will protect them as they move forward into the future.

Thank you very much.

**PLO Lumumba:** Thank you very much, Tom. When Wilfred stands to speak he will tell you that news is when man bites a dog and that in the Review Process many men have been biting many dogs. That is why the news has taken the path that it has.

Permit me now to invite a gentleman whom I love introducing. Like good wine, he grows better with age, Hastings Wilfred Opinya Okoth Ogendo, Professor of Law. He will talk to you about comparative gains in the Verified Draft. Over the years his locomotion has been compromised, therefore as he walks forth clap for him. (*Clapping*). As I told you his mind is like good wine, you will see it for yourself.

### **Comparative Gains in the Verified Draft:**

**Com. Okoth Ogendo:** Ladies and Gentlemen, when we started this Process four years ago, I always reminded my colleagues that we were on to a pretty perilous road; we started with an ambitious programme called a people-driven process that involved public consultations. I did not know about any constitution making process in recent times that has gone to as much public consultation as this one terminating with the National Constitutional Conference which the courts are telling us was not a people-driven exercise and I have said, and the Media know, that I disagree with that position.

The assumptions that we made were first that you can make a Constitution in peace time. One of my students came to me and said, “I want to write a dissertation on how constitutions can be made in peace time” and I asked her, “If you can find one country that has done it, then I will not approve this topic.”. She could not find any, but we made that assumption in this country. We also made the assumption that there was political commitment to carry this Process to the end, we also assumed that public enthusiasm for this Process could be sustained. Those assumptions were wrong, constitutions are not made that way, not even the American Constitution was made in peace time, it was made after a war, it was made by the Commander of the Continental Forces, George Washington. All constitutions that have been made in Africa, whether they were military constitutions or not, have in a sense been forced down the throats of executives.

We have gone through a Process that has tried to reconcile conflicting interests mainly of the elite and in that Process we have quite frankly left Wanjiku behind. I was at one point convinced that Wanjiku was driving the Constitutional Review vehicle, I am now convinced that Wanjiku was dumped long before the Bomas Conference.

Now, one of the things, of course, that has led to this is that the Process has become extremely protractive. In all Constitution making Processes that I know of time is always of the essence: you are to go in there quickly, sharply and conclude it. If you take as long as we are taking you give opportunity to saboteurs who want to derail the Process, you very quickly lead to fatigue, boredom and huge economic and political reforms and of course you also create an opportunity for impostors, people who think they know what constitution making is. We have had very many other organizations produce their so-called draft

constitutions and of course the difference between that and what the Commission very, very carefully captured was basically what those people did not like about it and that is part of the genesis of the so-called contentious process.

The document which we crafted, and I would have been myself a lot happier if the Process had ended after we published the first Draft in 2002-- I think the time and the mood was right at that point, the document which we crafted is a revolutionary document if I may use that word, revolutionary in the sense that it reconstitutes the stakes very deliberately and in a form that is truly democratic and when I am talking about democracy I am not talking about free and fair elections, I am talking about an opportunity for the people to manage their own affairs and that Draft quite clearly does it to a fault.

We have also provided for an extremely comprehensive Bill of Rights, it is the most modern as far as Drafts go, of any kind of Bill of Rights that you will get in any Constitution. The one that comes closest to it is the South African Constitution and of course people have said that we are asking in that Constitution for things that cannot be done. But let me remind everybody that aspirations are as important constitutional principles as achievability. The fact that the State is under an obligation or would be under an obligation to stride towards certain kinds of ends is as important as the ability to receive it and I know this because the courts in South Africa now are using those aspirations and converting them into concrete entitlements for the people.

Thirdly, the Draft provides for the first time comprehensive provisions that would enable the people of Kenya to control their own national resources. It would not be possible under that Draft if it became the Constitution of Kenya today to have some of the rampant rubbing of London forests that we have seen in recent years because for one, we are now talking about the resources that belong to the public, not resources that are privy to the Government and which the Government will use as and when it wants.

Finally also, that document provides mechanisms for the supervision of constitutionality. All these questions about corruption, ethics and so on, if you enacted that Constitution today, the mechanisms would be in place, you would not have to have new legislations, you would not have to fill forms on Wealth Declarations that have no meaning whatsoever except that they are locked up somewhere else and I know that what most people do, they photocopy what they have done and the next year they reproduce. Nobody will ever know the difference because they are not meant to enable the public to understand how the wealth of this country is being stolen.

However, these gains and I want to be quite frank with you, these gains are daily being whittled down especially by an executive that is determined that we should not have a Constitution that is different from what we have now and I myself, I am convinced that when the Parliamentary process is over something else is going to come up. If Parliament wants to approve the Bomas Draft and everybody is assuming that Parliament will savvy the Bomas Draft, but it is also perfectly possible that the Bomas Draft can go through Parliament without being savvy and if that happened, I can assure you that another roadblock will emerge and that at the end when we have a new Constitution, if we do, that new Constitution will not be the *Wanjiku*

Constitution and that to me is the greatest cost, the greatest political and moral cost that we are going to have to bear and at the end of that exercise I will ask myself the question, was it worth the effort at all?

Thank you.

*(Clapping).*

**PLO Lumumba:** It is Lenin who used to say, if you can't say it in three minutes you can't say it and he has said it. Moral cost, Tom, we have spent 2 billion not 6. **(Laughter).** Now permit me to invite a man who is retired several times but is never tired, the ever green Mitch Adero, who is one of the granddaddies of journalism in this country. Mitch Adero, the Media Council and Self-Regulation, that is where granddaddies sit to look at the youngsters as they grapple with news. Mitch Adero. He has dyed his hair but the white hair still emerges. **(Laughter).**

### **Media Council and Self-Regulation:**

**Mr. Mitch Adero:** Distinguished Ladies and Gentlemen, being here today gives me pleasant memories and quite a reunion with centers that were part of my past and part of my journey of faith. We include one PLO Lumumba, I had opportunity to serve with him in the Task Force on Press Law early in the 1990s when we were invited by the Attorney General to try and develop a better Media environment and as it was noted that we were beginning to propose a liberalized system we were abandoned along the way by those who had asked us to perform the task and it would seem to me today that perhaps the fire that burnt in PLO continued into the Bomas process, that we got the sense that the Bomas process was pro-Media and the Naivasha process killed our hopes.

I would like to speak on Media Council of Kenya and the values of self-regulation. My assumption was that by a choice of this subject the organizers must have been aware that the Ministry of Information and Communication appointed a Task Force that within one month it came up with a panacea to solve all the problems they see in the Media industry, among their recommendations being to revive the Media Council of Kenya 1998 Bill which called for Government control of a statutory council and which therefore would either compete or cause us to abandon the present Council.

Let me, therefore, approach this subject from an unexpected approach to emphasise the value of liberalized atmosphere. A few years ago Kenya had an extensive Agricultural Extension Service, you will recall, but at some point we abandoned the service. Consequently our jobless Extension officers were left loitering until some tiny African country called Botswana came to their aid with employment offers. Today Botswana is Africa's leading exporter of livestock and livestock products, thanks to Kenya's Extension officers working in Botswana, and Botswana's liberalized political and economic system in which deregulation is the catch word. In fact a few months ago a Kenyan delegation went to Botswana to learn from Botswana how they made it.

In South Africa the national community forum uses Internet and satellite for dissemination of knowledge and exchange of programmes among its 100 community radio station members. What this means is that one Extension Officer or one Health Officer or one Development Worker can teach thousands, if not millions, of our rural folks using our Media channels if legislation allows it. But this is not possible in Kenya because of the restrictive legislation against establishment of community media, the media that is owned by communities and I have to make a distinction here, that when you talk of community media we are talking of media owned by communities who become in charge of programming, not an investment by one rich fellow in Nairobi who decides to broadcast in vernacular language. Ironically, South Africa gained its independence from the apartheid system only 12 years ago while Kenya has been independent for 42 years. How about Somalia? A country that in the last 12 years has experienced stateless anarchy. Today incidentally Somalia is the most telecommunicated country in Africa because of its situation that did not allow for regulation.

In our global world today knowledge is privatized for profit. Indigenous knowledge is digitalized and re-packaged as new knowledge to be available at a fee. In the United States for instance, 40% of drugs used are plant-based valued at USD 32 billion a year but that figure represents a small fraction of the global rip offs of community knowledge on plants and their medicinal value particularly in Africa except for South Africa and you often will see gipsy looking fellows visiting our rural areas, the chiefs saluting to them and they pick up that knowledge themselves. If we had policies that relate knowledge to the economic value then our communities would be lifted out of poverty and our dream for the millennium development goals by 2015 could be achieved.

In our situation the use of indigenous knowledge by industry is done without informed consent of our communities and therefore they cannot negotiate their terms and share derived benefits. Yet we live in a world where knowledge is communicated as information using Media channels. Citizens benefit when the free flow of information is guaranteed by governments. When free flow of information is restricted then we will belong to the bracket of the knowledge poor nations. The danger is that the next form of colonization will be worse than the previous one because it will be colonization of the mind by the knowledge-rich nations. The era when raw materials counted is gone, it is knowledge economy that comes today. Even when we dance to the fact that Kenya is a party to the Courteneau (?) agreement that will keep us as a raw material economy for the next 25 years, others actually laugh at us.

The Media Council of Kenya is a self regulated body set to provide complaints resolution service free of charge and with speed. We also aim to promote freedom of the Press, free flow of information and knowledge and we also undertake Media policy research.

Freedom of the Press in our view is in essence freedom of citizens to enjoy freedom of expression and freedom to use Media channels. In other words the Media merely mediate that freedom of expression, they help point A to communicate with point

B. So when restricted then it amounts to restriction of citizen's free expression.

It is acknowledged that nations which are politically and economically stable do not need to fear freedom of the Press. In other words, Governments which restrict freedom of the Press project an image of political and economic instability and I hope the Ministry of Information is hearing this.

It is also acknowledged that there can never be free society without free Press. Put another way, there is no freedom without freedom of the Press and of opinion. Those who restrict the Press and freedom of individual's opinion are therefore considered enemies of the society. Respect of opinions of others is a measure of the society's democratic maturity. As such freedom of the world becomes inseparable from freedom of individuals. Equally so freedom of the Press is essential for a democratically governed nation. Accordingly, freedom of the Press and opinion include the right of individuals to their own opinions and free flow of information. Freedom, as a value of civil and free society has often been defined in terms of communication right while freedom as a communication principle is defined as the right to publish or broadcast.

Press freedom as a value of communication right should not be expected to predict any specific Media performance outcome as advocates of restricted Media tend to contend that we have to respect the Media because they behave in a, b, c, d manner. How often is it that what is seen to be an error turns out to be true and what is supposed to be true turns out to be an error? We used to believe that the smallest item was atom and that was supposed to be true but today it is not.

These are experiences that Kenya society have also witnessed at various levels. Freedom is thus a condition rather than a criteria of Media performance. It is not a choice for Media performance. Advocates of restricted Media further tend to fear expression of divergent voices in the Media yet it is such divergent views that are essential for democracy. Separate voices in our view rather than conformism make up a healthy political society.

Freedom is better served by self regulation. Serving freedom by regulation never works. Ideally it should be guaranteed by the Constitution or the country. The central feature of self regulation is the retention of independence from Government control. The Kenyan Media fraternity therefore opted for self regulated Media Council to serve as a bridge of trust between the public and the Media and we believe that a Government controlled Media Council, or a Government outfit, can never quite serve as a bridge of trust between the public and Media. State controlled Media Council cannot effectively protect the Media and the public from all forms of manipulation, misinformation and disinformation because States can also be sources of disinformation and misinformation and, therefore, if they are to own a Media Council and regulate the Media, we begin to wonder how much protection they really can give the Media against those evils.

The fraternity, therefore, gave the Media Council of Kenya unrestricted mandate as a mediation platform in service of the public and for the protection of freedom of expression because some of the arguments against Media Council of Kenya is that we do



not have teeth to bite and we tend to emphasise that our role really, our approach is that of mediation rather than punitive approach.

Otherwise it is for this reason that the Media Council of Kenya is engaged in the protection of freedom of the Press and development of high standards of journalism performance in Kenya among other activities which include complaint resolution service as I mentioned earlier. Accordingly, the Media Council of Kenya subscribes to the notion of Press responsibility as spelt out in our Code of Conduct for Journalism in Kenya. The Code, drawn by the Kenyan Media fraternity, spells out the guidelines and standards of professional conduct and performance. The Code further helps to uphold a conscience of Media social responsibility.

We are aware that freedom of the Press imposes a corresponding responsibility upon the Media involving the acceptance of and compliance with high ethical standards by journalists and editors. Through a sense of responsibility, the Media aim to serve the general welfare of the society by informing people and enabling them to make judgement about issues of the time such as the Referendum we expect.

The Code further upholds fair play with respect to the right of people involve in news as well as observance of decency, giving opportunities for reply, respecting confidentiality, accuracy, methods of obtaining information among others and we have something like 23 Articles under our Code.

In October last year the Media Council of Kenya was admitted into the membership of the World Association of Press Councils. During its Conference in Bagamoyo in Tanzania last October the World body underlined that the Media profession has the right to undertake self regulation through independent Media Councils and that is the global mood. The World body filed a Code on Governments to enact constitutional provisions guaranteeing and protecting free Media. It noted *inter alia* that basic human rights include freedom of expression, (?) information and free Media.

How should freedom of the Press be guaranteed, one may ask? There are three options. The British model is one example where Britain took the route of absence of specific law. Then there is the US model where United States opted for prohibition of any law which limits freedom of the Press. In fact it becomes illegal to even attempt to come up with a law that limits freedom of the Press. And then there is the Franco-German model where France and Germany ensure constitutional guarantees. We would prefer the third model which leads to specific legislation for Freedom of the Press Act. Within it should be the protection of sources of information. It is not right in law that communication between lay members of society and the professional cadre, when done in confidence, should be accorded legal immunity. The legal and medical professions as you know have professional gnomes that prohibit disclosures of communication with clients. We believe that journalists have not been accorded such legal protection that their profession deserve.

We often hear a call that we should support the war against corruption, but we are not fighting powers. So what happens is that an honest who person discloses corruption perpetuated by the powerful and mighty in society to the Press is usually facing some danger when we think that he should be accorded immunity.

The Information Act, I do not have to say much, you are all aware of the kind of heavy penalties that the Media in this country have had to face in the past; it amounts to intimidating the Media again not support the war against corruption.

Article 79 of our Constitution is the part that attempts to present the freedom of expression but it does not provide any governance to ensure and guarantee transparency for compelling Government officials to make official information available to the party.

Then there is the so-called classified information which we are told never to touch and we often wonder who plays the role of classifying information in Government It has never been clear.

In democratic systems of governance, State leaders are constitutionally obliged to open their acts of governance to the glare of the public. They are legally required to give information and explain their actions to the public through the Media because if access to official information is restricted it then affects freedom of Press and flow of information and yet we believe that people have the right to know how they are being governed and the midwife of information flow is the Press.

I finally submit that while self regulated Media Council is the better option, it should be remembered that free Press is the better watch dog of the rights and welfare of society than a million policemen. At this point I would also like to extend our invitation to all of you to join us next Tuesday for a public encounter. We have been holding public debates on issues affecting the Media every first Tuesday of the month at the New Stanley Hotel starting at 5.00 p.m. I look forward to your presence at 5 o'clock which will also be a day when Kenyan Media fraternity will be joining the rest of the global Media fraternity to mark the World Press Freedom Day.

Thank you.

*(Clapping).*

**PLO Lumumba:** Thank you very much and Mitch tells me there will be cocktails at that event so we need not worry.

So this is the occasion when we receive reactions and responses from the floor and I want to know who is sufficiently enthused to break the ice. Hannington Gaya looks at me as if he has something to say, I hope it is not about cars. Any response? We have roving mics? Reactions, responses? We will take it for 10 minutes only, the reactions so that it does not end up being

brunch instead of breakfast.

**Mr. Hannington Gaya:** Mine will be very simple. It will be important to the public if also the CKRC are seen to be working in harmony. That is the first sign. The other point is, I think one of the speakers has already mentioned, we need linkage between CKRC and the Parliamentary initiatives.

**PLO Lumumba:** Thank you very much, Hannington. Point taken, Prof. Salim and Cepic are here. I see Cyrille Nabutola looks like he wants to say something as I must also acknowledge the arrival of Vyas Fernandes and Kathurima Mtuinoti who is the Chairman of the Kenya Law Reform Commission and Members of the Fourth Estate who have come to immortalize these proceedings both in print and otherwise. You are welcome. Cyrille Nabutola.

**Mr. Cyrille Nabutola:** Thank you very much, PLO. I was just concerned about the limitation of time already placed on the Process, the last leg and I am wondering whether in fact, given the experience you have gone through and the fact that we do not want to place any particular limitation, whether there are ways that we can repeal that and ensure that the Process  
(Inaudible) that delivers rather than a short (?)

**PLO Lumumba:** Thank you. The Chair, I hope you have noted that. Mr. Muccheke from KBC. You know the law says you give us free air time; can you say something about that among other things in your reactions?

**Mr. Muccheke (KBC):** Thank you. To the best of our ability we will try to do that.

**PLO Lumumba:** Thank you. Eunice, what are the *Parents* saying in reaction to what has been said today?

**Mrs. Eunice Wambaa:** Well, I think between now and the next seven months I think the CKRC and all the other interest groups have a lot of work to do because I believe that Kenyans have lost faith in the Constitution. In actual fact a lot of them do not believe that they will see a new Constitution between now and 2007. So I think there is a lot of work that needs to be done in terms of brining that faith back to Kenyans so that they can participate in the Process just like Abida said that you need a constitution of everyone for this to succeed or come to fruition. But there is a lot that needs to be done and I believe this is where you need to engage the Media so that we can bring that faith back to Kenyans.

**PLO Lumumba:** Thank you very much. The *People* must have something to say. Ivy.

**Ms. Ivy Matiba:** I guess mine is a question of clarification because I have not looked at the new Bill. I am interested in this 50% representation, that 50% of registered voters and if so how you will work with Electoral Commission to ensure that registers are updated for this purpose.

**PLO Lumumba:** I believe the Chair will have occasion to respond to some of these issues. Iqra, what are we reading on the screens? You must have something to say.

**Mr. Salim Mohammed:** Thank you. We have actually been depending on CKRC when NARC took over and giving us the promise of 100 days. We have actually experienced the failures which, I am sorry to say, could not work out on the Bomas. I do not know how we are going to be sure that what you are telling us now will bear any results? We hope, and every Kenyan wishes, that we will be able to have the Constitution before the General Elections of 2007. I hope you get my point.

**PLO Lumumba:** Thank you very much. The *Citizens* must have something to say and Herman is here on their behalf.

Mr. Herman Igambi: Thank you very much, PLO. I know you invited Media Owners to come here for this important function. You know really the policy makers in Media Houses are the Owners. Most of us who are here-- I have looked around and I have seen very few Media Owners. We just have Chief Executives here and when it comes to matters of this magnitude I can assure the Media Owners have a very, very big say. If every morning you wake up you read the Standard and Nation on certain issues, you will see there are very divergent approaches. If you listen maybe to Citizen Radio and KBC on the same issue, they are very different. Some of these differences are brought about by maybe Chief Editors, the CEOs of these stations but the actual Media Owners-- I would make an appeal to CKRC to make a point to get the actual Media Owners on this extremely important subject. After all, all stakeholders must actually have unity of purpose to achieve the objective. I do not know, even CKRC itself is not very united in this matter. I do not know if the division that was brought about by Sharad Ghai, now that he is gone, I hope that we have our dear Lady here, we will all unite behind her and have one voice.

*(Inaudible comment from the floor).*

**Mr. Herman Igambi:** Oh, not Sharad Ghai, I am talking about Yash Pal Ghai. There was so much division and my hope is that his departure maybe would make it better for the Commissioners to unite behind Professor to come up with something definite. I know the Process is going to be very complicated considering the divergent views in Parliament. Apart from Parliament, there are divergent views of individual politicians in this country on this matter. It is a Process that must be handled with a lot of care, it is a Process that even the Media must handle with a lot of care because our role can make a difference in the whole of this Process if we tell the Kenyans the truth. But if we are going to tell Kenyans different interpretations of the same issues we will get nowhere and remember we have never had a Referendum in this country before. This is the first time we are having it. Kenyans must get it clearly, what is this thing you are calling a Referendum? Are we voting again

(?) or what is this? So that communication must be handled extremely carefully. Thank you very much, PLO.

**PLO Lumumba:** Thank you very much, Herman. I believe that Ms Sittoni is here from the Standard. Herman says he is a

*mtu wa mkono*, I do not believe it but he says so, so who am I not to believe him? Ms Sittoni, what have you to say in response?

**Ms. Pamela Makotso-Sittoni:** I am just curious about how far the CKRC is going to support this Process because once it goes to Parliament I believe that is where you have already lost the war by allowing Parliament to open it up for discussion and mutilate it if it so wishes. So, if you get a document that is not really what the people wanted, are you still going to go ahead with that Referendum because you are obliged by the law and at what point can we really support you if you completely mutilate this document?

**PLO Lumumba:** Thank you very much. I hope the Chair, as at the head has taken note of that. There is a Law Reformer in the person of my good friend Kathurima Mtuinoti who is soon joining the Njuri Ncheke. What does the Njuri Ncheke and the Law Reform Commission to say in response?

Mr. Kathurima Mtuinoti: Thank you, Patrick. Just two questions, the first one is to take slightly further the issue that was raised by Ms. Matiba about the relationship between CKRC and the Electoral Commission in this Process. The Electoral Commission under the Constitution has very clear provision that provides that it is not subject to the control or direction of any other person or authority and it would be interesting to hear how you intend to work with the ECK. At least you have appraised the Media that you have also been having differences about issues like who will announce the results of the Referendum. It would be interesting to find out clearly what you are thinking on that.

My friend, Mitch, I am wondering about the Media Council. I think we understand about its functions but what we are not getting is the kind of thesis you have handled. The public needs to read from the Media that you have handled this case and resolved the dispute for people to get confidence in the Council and to be able to bring forward their complaints to you. Thank you.

**PLO Lumumba:** I wish to acknowledge the arrival of DJ CK DJ CK will, for the sake of his lateness, give us free air time. Welcome DJ CK. Thank you very much. Eastern FM, you must have something to say about what you heard today and how you will be useful to us.

**Mr. Arjun Ruzaik:** I think now a way forward has to be planned because it is really getting too long a Process and we need to say, this is the way forward and we need to get on with it.

**PLO Lumumba:** Thank you very much. Madam Chair, you can see free air time is something that we will not be worrying about. I do not know whether there is anybody else who would want to say something in reaction to the contributions we have had. If I have not recognized you and there is fire under your belly this is the time for the fire to spew out. Let DJ CK settle

and have a feel of the water melons. As DJ CK settles, does Madam Chair wish to respond to some of the concerns raised?

**Com. Abida Ali-Aroni:** Thank you, Lumumba. Let me give Salim the first opportunity then I will answer whatever he leaves out. Thank you.

**Com. Idha Salim:** Thank you very much, Commissioner Abida. Quite clearly most of the questions seem to revolve round the issue of CKRC (?) group. One suggestion made--

*(Inaudible comments from the floor).*

**Com. Idha Salim:** One question that seems to have to preoccupied everyone is the question of CKRC and what it intends to do in the light of recent developments. Let me start with the question raised by *Bwana* Gaya, wondering whether CKRC is pulling together? Let me say quiet frankly that we may have had differences within CKRC as triumphasis but we are pulling together and on the basic issue for example of the Draft Bill or the Draft Constitution, we are all together. We are behind the Draft Constitution that emanated from Bomas. We took weeks of painstaking and critical assessment and listening and reading through the Verbatim Reports of Bomas with a view to make sure that the decisions made at Bomas are reflected in the Draft Bill. Initially, I recall there were suspicions that we may play around with the Bill and then come up with something doctored in cause, but we can assure you we did the opposite. We worked together, we may have had differences as to emphasis here and there but the final product, I challenge anyone to say that it is in any way not what the decisions at Bomas were.

So, that is a sign that whatever differences of emphasis we may have within CKRC, the final product which is the most important issue to consider is that the Draft Bill, we are all behind it, we all support and we took, as I said, days to make sure that it is in place.

People have lost faith, we are agree to a larger extent but given the amount of time that has transpired since we finished Bomas and since indeed we verified the Draft, there has been this stalemate, call it stalemate, call it amorphous, call it indeed the end of the road for the Process, but the important thing is that listening to some of your own Medias, FMs and so on, people are interested. What people are feeling is the frustration that we were virtually there and yet there are *pingamizis* here and there, obstacles placed artificially by people for either personal interest or party political interest and sectarian interest in some case. But these are problems that are not only facing CKRC but facing everybody in the country and that is why in fact we have this occasion today. We are getting together, as I think initially I said in my welcome remarks, we need to get together to see what we can do to get over this problem and make sure that people's aspirations are again addressed and something done about them. CKRC has its limitations, we are not super men and women, we need support from the people and the frustrations that are there are in fact reflected, you listen for example sometimes in the morning on Citizen Radio or you listen on Nation FM and the message is the same. The blame is not on CKRC *per se* for letting people down, the blame indeed is not on the fact that

there is no Constitution or Draft Constitution, the blame rather is on the politicians who have stood in the way of finalizing the Programme. So, I would say it is more frustration than loss of faith. I do not know, I see a distinction between the two but we need not quarrel or argue about that one.

The only other issues I think I want to probably comment on, the Parliament has hijacked the Process and what is CKRC's view on that? I would rather leave that very, very fundamental question to Chairperson, not that I am trying to duck it or avoid it, I have my views on that. But I can assure you again we are not divided and I am sure Abida when she comes to answer it, will assure you that on whole we feel that *Wanjiku's* view must prevail in the end. We have got across that message already to Parliament in different ways, we have told them about our worries and concerns, we have even analyzed within CKRC, the so-called Consensus Bill and we have dwelt on that particular point and we have been assured here and there that the Bill when it comes to Parliament, will not see drastic changes. So, the only thing I can say from my end is that we hope they keep their promise. But I can assure the person who asked this that we are not just indifferent to this issue of Parliament now hijacking the Process. We are concerned, we are watching and we hope that Parliament will not disappoint the people. Thank you very much. Abida. (*Applause*).

**Com. Abida Ali-Aroni:** Thank you, Professor. I was hoping that you tackle most of the difficult questions but it looks like I have not escaped but thank you for helping and I would ask any of the CKRC members to chip in where we are unable to give conclusive answers.

I have this strong feeling, but before I say that, whether we are together please judge for yourself. I think that is the easiest option now because if you ask me I will say all is under control, we are together as Prof. Salim has said but on the other hand as individual Kenyans we may have personal views, but we are together as a corporate entity and I want to believe that you have seen that happen in the last, is it eight months or so.

The question that comes out quite clear is whether CKRC is in charge of the Process right now and is there anything we can do? My reaction is this, that we are all in charge as Kenyans and as Prof. Okoth said, more often or not, constitutions are pushed down the throat of the Executive. As from the word go in as far as the Review Process is concerned, I think as Kenyans we have been pushing. During the Moi era we pushed from Ufungamano on the streets and so on and so forth. I see it happening now although Civil Society may not be as strong as it was before and I think we must forge ahead. It all lies on all of us as Kenyans. I do not see how Parliament will hijack the Process unless we allow them to do that and that is why we re looking up to you as the Media to re-focus the debate and to say things that we may not say from where we sit. We may not be able to tell Parliament what to do but if we re-focus and if we give information to *Wanjiku*, I am sure *Wanjiku* will push to see that Parliament takes the right and the correct Process.

I also want to believe that the Law as amended has not entirely given Parliament the right without consulting and they have 90 days within which to consult key stakeholders. I am hoping and praying that they will do that. If they do not, then going on the

streets and doing what we have done in the last 10 years, we can still go to that, we do not need Parliament to give us permission neither do we need Chapter 3 of the Laws of Kenya to tell us that we need to ensure that Parliament does not mutilate the Draft.

I think information is the best tool that we can give Kenyans and with that partnership between CKRC and the Media, I think we do have an upper hand.

Ivy asked a question about the threshold. The Law requires 51% as the threshold. ECK has embarked on voter registration, they will carry out voter education and we do hope that when we embark on civic education we will try and mobilize as many Kenyans as possible to participate in the Referendum.

Kenyans have despaired -I want to say I do not think so. We are just fatigued, everywhere you walk. In fact we feel extremely embarrassed. A few times I do not introduce myself because everywhere you go people ask you, when are we getting the Constitution. I think there is fatigue but Kenyans are looking forward to receiving that Constitution. Rightly or wrongly we all believe that all answers to our problems are in the Draft Bill so I think with the call for Media to revive the debate, we will do a great deal to allow Kenyans to engage in the last phase of the Process.

The seven months time frame – I agree that it may not be very attractive but again we are fatigued and if Parliament had not set a time frame in my view I think we would have despaired even more. I see the rest of the players, ECK, the Commission, sticking to the timetable. Let us together ensure that consensus is built round the issues that are emerging so that Parliament does not go beyond the 90 days that have been set for them although if you read the Law keenly you will see that there is room for them to seek for extension of the 90 days. I do not think we should allow them. Seriously speaking I do not think there are issues.

If you talk to Raila today – and do not quote me – he will tell you that he has no problem with the Naivasha accord safe Section 47, talk to Kiraitu, Kiraitu will tell you, I have no problem with the Process and the Naivasha Accord and you ask yourself, what is this Process that we are talking about? Is it Section 47 so that Parliament does not take away the role of the people? For me the Njoya case answered that question. It has made it very clear that the people *are* to enact the Constitution for themselves. So, is that the Section 47 that we are talking about? If that is so, and if the amendment to the Law is very clear that it is you and I who will eventually give this country a Constitution, what is it that we want to amend? If they met in Naivasha – and a few of us sat in as Observers – and we saw them agree in the shortest time in the history of this country on the amendments that they would like to see on the contentious issues, the question is, where is the problem? If you ask me the problems are the self-interests and the partisan interests that we see in our politicians. If that is removed, 90 days is too long for us to build consensus and move on.



So the issue of the timeframe will not worry me. Let us see the best that we can do and I want to quote Prof. Ogendo, I wish he could say this much more often, that a country decides how it wants to enact the Constitution. Let us agree that the 90 days are too long, let us agree that the partisan interests are no longer important and let us move the Process forward. Let us take them to task and move on. From where I sit I have refused to despair. I guess a mother cannot. We are mothering and nurturing a document. As CKRC we would like to see it happen.

Thank you.

*(Applause)*.

**PLO Lumumba:** Eunice, *atafutae hachoki, akichoka kisha pata*. That is the message. We now must stop at about 10 otherwise it would be a lunch meeting and for that reason, the way forward, I want to introduce a man whom I knew as the quintessential CEO until the other day I learned that he is an expert at *Mugithi*. *(Laughter)*. This gentleman is no other than Wilfred Kiboro, who is the MD of Nation Media. He has another profession when he retires, *Mugithi*. Wilfred. Thank you.

### **Way Forward:**

**Mr. Wilfred Kiboro:** I would just like to make a correction, I was not doing *Mugithi*, I was doing some more up to date dancing.

I thank you. I must say that I was firstly hijacked to come and make these closing remarks trying to discuss the way forward because I was totally unprepared. Hannington in his usual style called me at 9.30 last night when I was just going to bed and said, would you make a summary of the closing remarks on the way forward and of course our Chair of MOA is not here, so again I could not duck the responsibility.

I would like to thank CKRC most sincerely to inviting the Media to come at this very important time as we go towards the last leg of our constitutional making process. Just listening to the various speakers I know CKRC and Media have a very heavy duty in the coming months to manage the divergent interests that are bound to emerge as we head towards the last lap of the Constitutional Process. We do expect that the politicians who are key stakeholders in the whole Process will go to overdrive to try to shout louder than they have done before particularly in public fora to try to sway public opinion their way. Unfortunately, we know that most of the statements that will be coming forth from the various competing interests, many of them will be founded on untruths, misconceptions, ignorance and even sometimes mischief and the challenge we are going to have as the Media is how we are going to manage all these converging and divergent interests. The Media will be in the middle of all this because as the various debates take root, the various interested groups will be trying to influence the Media in an effort to sway the public opinion their way because here it is just a question of perception and so on and I think the Media are going to be in a

very, very difficult situation.

Media can only play its rightful role in terms of showing the way forward if they themselves are well informed about what is going on and I think after the Bomas Draft a lot of water has gone under the bridge and I think a lot of us in the Media are not quite sure, and we do not quite remember exactly where we are in the whole of this Process. Some things have happened in Parliament, the Final Draft came about, we read it at the time and of course we have forgotten most of the things they wrote as the Draft. So I think the assumption here that the Media is up to date with all the things that are going on I think is fallacious and therefore one of the key things and challenges we want to do is to say, how can we in the Media House first of all ensure that our people in the Media understand exactly what the issues are, where matters lie so that interpreting the things as we go forward, then we can make some intelligent proposals and even showing the way forward. So that is going to be a key challenge for the Media.

I would like to suggest that the Media needs to try to go the extra mile to understand what that Process is all about and also more particularly to rise above narrow, partisan or even business interests. I think what we saw at the Bomas was a lot of theatre and entertainment and I think for television it was great in terms of entertainment value and people making whole fools of themselves under the guise of trying to – what is called – midwife a constitution and I think it was okay for that time. But I think now we have got into a very serious stage in the whole of this Process and I think I would like to maybe suggest to our Media brothers and sisters that this is no longer a joke so in as much as we are going to have some fellows, especially the politicians, trying to make a whole capital out of this thing, this is not fun and it is not funny any more.

Therefore we need to maybe exercise a sense of responsibility in this because I think the political atmosphere is going to be extremely charged and I think we need to be sensitive to the fact that we are probably at a crossroad where anything and everything can happen in this country. So I am just urging our fellow people in the Media that when people come and say, *mukiwaona!* let us move away from it. It is very entertaining and especially when people go to the floor and they have guitars and they are telling us some juicy things, that is great value for entertainment especially on the television. But I think I would like to say that maybe for the next seven months if we can just desist a little from these theatricals which could have very serious political and security implications for our country. I think we need to be cognizance of that.

I would also like to say that I have not given up on the whole Process, I was at Bomas myself and spent more time than I care to think about, sometimes I feel very frustrated why I spent so much time instead of working for my Company, but I have not given up hope because I do believe that in fact if we work together, and particularly the Media is committed to this, I can we can see the light at the end of the tunnel.

I am not terribly worried about the delay that has happened since the Bomas Draft came into being because in many ways it might even have been a blessing in disguise because it has given us time to reflect on some of the things we did discuss at the

Bomas Draft and also particularly to see people and institutions in their proper light and context. In this, I am talking about maybe the behaviour of Parliamentarians and I think at Bomas we did go into a lot of discussion as to whether people should or should not have a recall clause for the politicians and I think in the last twelve months we have seen exactly what perhaps, if we get an irresponsible Parliament, what it could do for a country. So I believe that the time that has passed, in terms of the kinds of institutions we are trying to build, it has given us time to reflect on that so that as we go into the last leg we can internalize some of our experiences and what we have found in order to be able to come up with something that we know will last the test of time.

The challenge we are going to have, Ladies and Gentlemen, is, I sense a situation of public fatigue in the whole of this Constitutional Review Process because whereas maybe a year ago everybody was all wired, enthusiastic in terms of the Constitutional Review, I just do not get that sense that the Kenyans now think constitution making is a major national priority. That is very dangerous in itself because then what happens to all the time and effort and why we went into the Constitution making in the first place and, therefore, how can we get out of the public apathy that is there to try to again ignite the public opinion to try to make sure that they are all fired up saying, yes, we want it, we will go for it and nothing is going to stop in our way, because it is only the public who can do that. Therefore, I think the Media and the CKRC and other stakeholders have a responsibility to say, how do we get that mood back on the road?

There is also the issue about ignorance and I think whereas maybe a year ago a lot of people understood the issues, now perhaps if you went to the street today and ask the first person you meet, “what do you think this Constitutional Process is all about and where do you think the differences lie?”, they will probably tell you that the only thing they are quarreling about is whether we should have an Executive Prime Minister or an executive President or both or a combination of the two factors. But there are a lot of other things that we had talked about in Bomas many of them where in fact there is consensus already and the pity of this whole Process is the fact that we have not been able to internalize some of the things that are so good for this particular country which are enacted, and we have focused on very few items which in my view, and I think as the Chairperson of CKRC said, are all based on narrow partisan personal interests. I think maybe if the Media can rightly say, what are we talking about here because this Constitution making is not about ensuring that so-and-so or such-and-such a party or that group of people succeed and also gain above everybody else. And I think this is the challenge for the Media because in many ways we are asking the Media to undertake a responsibility that they may not be properly prepared for.

The other thing is the whole issue of the lack of constitutional culture within the country because there is skepticism within the Media to say, even if we come up with a Draft that everybody agrees on, will that make a whole difference to our own rights because if we do not really have the constitutional culture of people saying, this is how we want to live, this is how we are going to care for each other, is it going to make a difference? Therefore, in many ways I am also saying, how do we start building that constitutional culture of saying where we emphasise ethics and good governance and what can really make a big difference for this particular country?

One of the things I get frightened about is our national culture of not caring for each other and this “me” factor. We have seen it in Parliament, we have seen in Executive, we have seen it in everything, we have seen it in the Constitutional Constituency Development Fund and sometimes you give up, you feel you could almost give up and say, will this Constitution make a difference?

Therefore I would like to say that as we write the new Constitution, let us focus on how we are going to build institutions that can help to move us forward so that irrespective of who is in power this country will move forward. I think in America today it does not really matter who is the President, they can have-- They have Bush, for heaven’s sake and they are still going on! If we can get a situation where-- Because like now we have seen very, very clearly, it does not matter which Party is going to be wielding power next year, it does not matter whether it is LDP, DP, KANU, KANU A, KANU B, whatever it is, the whole bunch of them are the same. The whole bunch of them are the same so basically I hope we can look at this and say, let us build institutions so that we really do not give a damn whether we are going to have an LDP Government, a KANU Government, a DP Government, but we have institutions that can help this country to move forward and I think that is where the Media can come in because when we start saying that, Kibaki *tosha*, *tosha* what? Because we will have another Raila *tosha*, but we have seen all of them and that is why I was saying within that context that the time that has past has given us time to reflect and to see the various institutions and individuals for what they really are. Therefore, maybe we can now think calmly and say, let us midwife this Constitution that can help the generation. As the CKRC Chairperson said, we are privileged to be sitting here in the history of our country to be making a Constitution. How many people are privileged to be in that sort of situation? Hardly any. Therefore, we must exercise that privilege with a sense of responsibility and I am talking to all across as Kenyans here because I do not whether you are a Media, CKRC, or whatever it is.

So let me end my remarks by saying this, what I would like to suggest to my Media fraternity. One is, in reporting on this whole Process, let us ensure that whatever we are going to report on, we are going to be fair and objective. We are going to be very fair and objective. Let us also go the extra mile to be accurate in what we report. Let us also go the extra mile to try to appraise ourselves and understand about the issues concerned. Let us also be cognizant of the fact that various political and even tribal or ethnic interests are going to be working themselves through the Media and they will be working through our journalists to try to influence their point of view. Let us try to be objective, let us be truthful in our reporting, let us try to the best of our ability to be non-partisan, even though we are not saying that we do not hold opinions in our own personal capacity, but let us understand that our Media is not to propagate our own individual thoughts. Let us try to be professional and let us uphold the highest degree of professional ethics.

I would also like to say, maybe many people do not like this word, but I would also like to talk about patriotism, this is about our country, it is not about Nation, it is not about Standard, this is about our country, it is about our future, it is about the future of our children. So let us exercise that sense of patriotism and sense of responsibility. Let us de-emphasise the side shows

because as Lumumba was saying, if a man bites a dog is news. I think to a certain degree that is true but let us also not over-emphasise the man biting the dog. Let us find out a lot of other things because there could be other preoccupations which we can intelligently report about. Let us also recognize that the people who shout the loudest are not necessarily the people who impart some sense of wisdom in anything. So the entertaining theatricals, I think let us de-emphasise in the next seven months.

I would like to say that in the essence of all this, what I am trying to say is let us try to keep our Nation together, we may hate our Government for various reasons and many of them in fact totally justifiable, but let us love our country and also in exercising that responsibility, let us understand that it is our country that matters. Governments come and go and in fact it is guaranteed in our Constitution that they will come and go so let us not worry too much about who is up at State House, whoever is there, they will come and go and they will do their own thing but let us understand that our country will be here and is here to stay. Therefore let us look at what is in the national interest and emphasise that because I think that is what matters. Let us do our best to support the consensus building. I think in any Constitution making there will be some people who will lose and others who will feel that they have gained so basically, because we can never get 100% consensus on anything, it is a question of negotiating. So let us help to build the consensus and also particularly to be very sensitive and to highlight the fears that will emerge as the debate goes on especially from the minority and disadvantaged groups. I think a good Constitution presupposes that in fact you do take the interests of the minority because if you take the interests of the minority, automatically I think the majority will, because it is a Constitution that takes care of the minority, take care of the majority.

I would like to appeal that we provide enough time, air time and space in columns to make sure that we have divergent opinions so that it is not just where so-and-so is in our papers, in our television day in day out. Let us go the extra mile to try to provide a balanced platform where the various opinions can come out. I would like to suggest that we have a regular review and consultation between the CKRC and the Media.

Finally for the Editorial staff, I would like to say that this Process is not just going to happen. I think it has to be managed and I would like to maybe suggest that the Editorial management for the various Media Houses should debate internally and introduce a roadmap within their own Media Houses, how they will manage this Process so that they need to have gate keeping processes, they need to know how they are going to monitor that and also to be sensitive to the fact that a lot of our journalists may be compromised in the whole of this Process. So we need to have some gate keeping process to ensure that where that happens we can be on top of it and also mitigate against it.

I am told here that there is a proposal that we should have regular Media briefings by CKRC and I would welcome that. Let us not wait until things are boiling for us to get together. I would suggest that maybe in the seven months we can have maybe monthly regular briefings to say, where are we, what have we done well, what have we not done well, how are we going to move forward? This is a Process for all of us and I thank you very much for giving us this opportunity to interact with you this

morning.

Thank you.

**(Clapping).**

**PLO Lumumba:** Thank you very much. In a nutshell Wilfred says many squirrels will be thrown in our path but the prize is the antelope. That is what we must look at and Wanjiku will now tell us how we will get that antelope. Prof. Wanjiku Kabira whom I call *mama* but tells me it is Professor and I oblige.

**Com. Wanjiku Kabira:** Thank you very much, Lumumba, *kijana*. I do not really want to say anything, after Kiboro has spoken I do not think anything is left. I will just make two points so that we can take them on board as we move towards the next Press briefing which I think we will be looking forward to.

In terms of building consensus the Commission is actually organizing a series of activities with various stakeholders, the Civil Society Organisation, the Religious groups, Political Parties, Womens' organizations and so on and actually this is the first one of that series. What we are trying to do which we did not do here today, but we intend to do that with the various stakeholders, is to first of all highlight the gains of Bomas so that they appreciate why they have to struggle to make sure that we have the new Constitution.

Then we are also trying to ensure that they develop strategies to ensure that we do not actually go to an extent where the Bomas Draft, as people have been saying, is mutilated but it remains within the identified contentious issues and therefore they debate along that area. Like a lot of speakers have said, constitution making is about negotiation. We do not have a new Constitution and therefore the negotiations must continue but we must keep protecting the gains that we have made so far and only move along with the issues that have been identified as contentious. So that is one of the main things that we want to do in the next few months in order to ensure that we have a Draft that is acceptable to all the Kenyans.

The other thing that we want to do is keep reminding the various stakeholders who are debating it, particularly Parliament, that we need to stick to the principles as they appear in Cap 3(A). These principles, if for instance you take the issue of Devolution, you cannot actually decide to totally decentralize the system, you will be going against the principles of devolution. You cannot decide that you are going to go back to a purely Presidential system where you bring back all the powers to the President because people wanted power devolved. The question as to which levels is that you can discuss but you cannot get rid of the principle and then move on and decide that actually we do not need to devolve power at all to the people. So we think that we want to keep reminding them that as they debate the contentious issues they have to take the principles guiding the Review Process into consideration.

We are planning for the Civic Education for the Referendum. That is the main role that is given by the new Law and the strategies we have actually take us to the grassroots. We intend to use 3Cs and other Civic Education providers as well as the District Coordinators to make sure that as many people as possible have access to the information and that they vote from a position of knowledge. Although the Law says that the Referendum will require %1% we believe that, unlike the election of the President, the Constitution is a very important document and therefore we hope that with the agreed upon Draft, we should aim at getting 90 or over 90% of the Kenyans to endorse a new Constitution and any strategies we want to develop, we want to ensure that we have maximum participation of Kenyans because we are also going to mobilize them to participate in the Referendum and that they will come out in great numbers and endorse the new Constitution. Like Abida said, we cannot give up and we have talked about this with Okoth. We also have our own problems, sometimes you feel so down you do not know where to go tomorrow, which way things are going. But we have to keep telling each other that we have a historic role and that we must ensure that we do not give up until we have the new Constitution.

I think with those few remarks then I will say we endorse everything that Kiboro and the other speakers before him said.

Thank you.

**(Clapping).**

**PLO Lumumba:** Thank you very much. In that spirit we want to inform you that we will very soon be holding a workshop for journalists and we will be asking you to nominate your high voltage reporters so that they get it right and we move in the same direction as we run the last leg.

Ladies and Gentlemen, these will be my last words because we are in danger of transgressing into the lunch period. A lady who abandoned her Christian name a long time ago, and I refused, I therefore christened her Patricia, but her proper names are Kavetsa Adagala. She will now move a vote of thanks. Kavetsa Adagala.

**Com. Kavetsa Adagala:** Thank you very much, my young brother Patrick, for sharing your name with me.

It is with pleasure that we come to the end of this function, it is a function which, it has been right said that we should have more often. Sometimes the mist is so thick that you do not see the other person but I am glad we have able to shed some light on this.

I would like to thank all the persons who have come today, the Media Owners Association, although Igambi has told us that they have sent their policy ambassadors, but we shall struggle to get to the *mwenyewe* at your Media Houses. Thank you very

much, Media Council, for coming. Thank you everybody for coming and the reporters also for coming. You have taken time from your busy schedules and have given time to reflect and share with us and we are not strangers to each other but I am glad that we can see that amongst ourselves we are friends, colleagues, some students, like my very bright Pamela there, and classmates and that we have been able to work out something in terms of cross pollination. It is a protracted and perilous road as the Professor said but perfect or not we have to travel it and we are glad the Media has traveled with us thus far and it has been very-- Sometimes you do not know whether to buy the newspaper or not and you think, if I do not buy it how will I know what he said. So, we know that you are with us, we would like to work through all of this as we have said in all the speeches, for national consensus, for patriotism, for performance and really for the Truth.

Zein usually tells us a story of Condoleeza Rice, whom you all know now, but she called a Press Conference when 9/11 happened and they all agreed they would not show the bodies which were being taken out of the Twin Towers but they would report in such a way as to keep the spirit of the people upbeat and to show the heroic side of things. I think that we need to do that. CKRC, we do not ask the Media to be kind to us but we ask you to be truthful so that like this Breakfast we have had does not add up to 4 billion. We want it to stay way under as we have tried to keep things under.

We are developing a win-win strategy which every CEO knows about in the Commission and I think this is part of that process, that we should really win and not win-lose or lose-lose because it is for the sake of our country as Mr. Kiboro has told us. Let us keep this up, let us do a synergy so that we can really come to a real consensus and not something that is superficial.

I want to thank the hotel for hosting us at short notice and I want to thank the workers who have served us very discreetly and for the very nice breakfast. I did not have my usual breakfast at home but if I tell the people at home I ate *ingokho* for breakfast they will really think this was a sumptuous breakfast.

So I want to thank lastly the good Lord and we hope that the words of our mouths and the meditations of our hearts have been acceptable in His sight and that what we do will be for His glory and the benefit of His people, this generation and posterity.

Thank you very much.

*(Clapping).*

**Meeting adjourned at 10.17 a.m.**



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