

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report of

**MEETING BETWEEN THE PARLIAMENTARY SELECT COMMITTEE,
THE PARLIAMENTARY HOUSE BUSINESS COMMITTEE AND THE
CONSTITUTION OF KENYA REVIEW COMMISSION HELD AT COUNTY
HALL, NAIROBI**

ON

22.10.03

**VERBATIM REPORT OF PROCEEDINGS OF A MEETING OF PARLIAMENTARY SELECT COMMITTEE,
PARLIAMENTARY HOUSE BUSINESS COMMITTEE AND THE CONSTITUTION OF KENYA REVIEW
COMMISSION HELD AT COUNTY HALL, NAIROBI ON 22ND NOVEMBER, 2003.**

Commissioners:

1. Prof. Ahmed I. Salim	-	First Vice-Chairperson
2. Mrs. Abida Ali Aroni	-	Vice Chairperson
3. Prof. W.H.O. Okoth-Ogendo	-	“
4. John Mutakha Kangu	-	Commissioner
5. Dr. Charles Maranga	-	“
6. Ms. Salome Wairimu Muigai	-	“
7. Mr. Domiziano Ratanya	-	“
8. Bishop Bernard Kariuki Njoroge	-	“
9. Mr. Riunga Raiji	-	“
10. Pastor Zablon Ayonga	-	“
11. Mr. Githu Muigai	-	“
12. Mr. Ibrahim Lethome Asman	-	“
13. Dr. Abdirizak Arale Nunow	-	“
14. Mr. Paul Wambua	-	“
15. Ms. Kavetsa Adagala	-	“
16. Mr. Ahmed I. Hassan	-	“
17. Prof. Wanjiku Kabira	-	“
18. Hon. Mrs. Phoebe Asiyo	-	“
19. Dr. M.A. Swazuri	-	”
20. Mr. Abubakar Zein Abubakar	-	“
21. Mosonik arap Korir	-	“
22. Dr. Andronico Adede	-	“
23. Mr. Isaac Lenaola	-	“
24. Mr. Keriako Tobiko	-	“
25. PLO Lumumba	-	Commission Secretary

Members of Parliament:

Parliamentary Select Committee/

Parliamentary Business Committee:

1. Hon. Moody Awori

2. Hon. Paul Muite
3. Hon. Uhuru Kenyatta
4. Hon. Henry Kosgey
5. Hon. Bonaya Godana
6. Hon. Joe Khamisi
7. Hon. Njoki Ndung'u
8. Hon. Kivutha Kibwana
9. Hon. Kiraitu Murungi
10. Hon. Simon Nyachae
11. Hon. Mutula Kilonzo
12. Hon. Norman Nyagah
13. Hon. Yusuf Haji
14. Hon. William Ruto
15. Hon. Henry Obwocha
16. Hon. Nicholas Biwot
17. Hon. Otieno Kajwang'
18. Hon. Kipruto Kirwa
19. Hon. Joseph Kamotho
20. Hon. Martha Karua
21. Hon. George Saitoti
22. Hon. David Mwiraria
23. Hon. Charity Ngilu
24. Hon. Chris Murungaru
25. Hon. Francis ole Kaparo – Speaker of National Assembly
26. Mr. Samuel Ndindiri - Clerk to the National Assembly.

Meeting was called to order at 10.15 a.m. with Hon, Moody Awori, Vice-President, in the Chair.

Hon. Moody Awori: Ladies and Gentlemen, may I call the meeting to order. May I ask Bishop Njoroge to say a word of prayer.

Com. Bishop Bernard Njoroge: Let us pray. Lord we thank you for this day, we thank you for the gift of good health, the gift of life, the gift of service to your people of this country. Help us this morning to focus our minds to the good and the future of this nation so that the decisions we make will further the well being of your people in this country. We pray for the Vice-President as he guides us in this meeting, that you may endow him with wisdom. All this we pray through your Name's sake. Amen.

Hon. Moody Awori: Thank you, Bishop. I want first of all to thank everybody for having come to this meeting. This is a consultative meeting. I am chairing it because I chair the House Business Committee Meeting that looks at the Order Paper and the Calendar of Parliament. I would like to ask for your assistance.

The House Business Committee has had a meeting with the Parliamentary Select Committee to look at the proceedings, or how

to proceed at Bomas of Kenya and to also allow Parliament to carry out its business. We all know, Ladies and Gentlemen, that a country like Kenya has to depend a great deal on development partners; we cannot exist in isolation. The development partners, without holding any gun on our heads, would like to see certain steps taken within this country in order to assure them that they can continue to be development partners with us.

In Parliament we do have very many important Bills that have got to be passed and made into law in order to fulfill certain pledges that we have given. Right up to the end of October, we are doing what we call Committee of Supply; we are dealing with votes of various Ministries and our Standing Orders say that we must do that up to the end of October after which whatever Bills and votes that may not have been discussed will be guillotined. As a result of that we only have one day in a week to deal with Bills, that is on Thursdays. Certain Bills require more than one day, in fact most of them are two days and others may be more than that.

We appreciate the fact that there was a commitment that Bomas III has to resume on the 17th of November, 2003. If we look at the number of days or number of Thursdays that we have got between now and then, it will not be possible for us to deal with all these Bills. This is the reason why we are requesting your assistance.

Perhaps I will just quote a few of the Bills that need to be passed in order to allow the Government to carry out its obligations to the country. First of all, as we are all aware, we gave a retired President for whom we must now legitimize any payments or any other things that we have to accord him. It is necessary, therefore, that we must pass a Presidential Retirement Benefits Bill.

We know the situation of terrorism worldwide; we have The Suppression of Terrorism Bill in our books. We are very anxious that we can pass that Bill before we go to Recess. Obviously this is a Bill that will require a lot of consultation; I know it will need more than two, possibly three, days in Parliament.

By 31st of October, we will have dealt with old Votes, but those Votes would be of no value if we do not appropriate the funds from the Consolidated Fund. Therefore we have The Appropriation Bill that is coming. Since we need taxation to continue, we have to pass The Finance Bill. We have got The Public Procurement and Disposal Bill which is essential again to the working and running of this country.

We know the situation of HIV/AIDS; all of us are involved in trying to see what we can do to reduce the incidences and to allow those who live with HIV/AIDS some relief. There is a Bill that we would like to pass which is HIV/AIDS Prevention and Control Bill.

Those are just a few of the Bill which this country needs to pass before we go to Recess in order to allow continued services to

wananchi. In numbers they are (*counting*) 1, 2, 3, 4, 5, 6; those are extremely essential. I have left equally important Bills like, for instance, The Persons with Disabilities Bill. We, as a country, have been accused of marginalizing people with disabilities. It really would give them assurance if we were to pass that Bill before we went to Recess.

In fact, I forgot another Bill which goes together with The Presidential Retirement Benefits Bill, there is The Retirement Benefits Amendment Bill. Then there is The Insurance Amendments Bill and then there is The Refugee Bill. We are all aware that we have more than 250,000 refugees in this country and we have never really had an Act that would govern refugees. All we have done to date is to offer them refuge, a place, but have left the responsibilities to the United Nations High Commission for Refugees and other international NGOs like the Lutheran Church, like the World Food Programme. It is now necessary that the Government must own the refugees, therefore it is necessary that we pass The Refugee Bill. At the end of September, early October at the Conference in Geneva we did assure the United Nations High Commission for Refugees that we will have passed The Refugee Bill this year so that we take over full responsibilities for the Refugees.

Ladies and Gentlemen, I do not want to take too long but I have mentioned that there are seven Bills that are absolutely essential for the running of the country, then there are four others which are Supplementary. We have to pass them. We know like The Suppression of Terrorism could take even four or five days, but if we said that there will be at least two days for every Bill, then we need more than twenty one days. We finish off on the 30th so the only other days that we have, we have two Thursdays in November, then we have about three other days on Tuesdays and Wednesdays, three days, so that is a total of five days that are available to us to pass these seven essential Bills and four other Bills.

We are in a problem and, therefore, we need your help. I would like at this stage to ask the Speaker of the National Assembly perhaps to help me clarify any points that I may not have made quite clear. Hon. Ole Kaparo.

Hon. Francis ole Kaparo: Well, Mr. Chairman, I think you have said what had to be said. As Hon. Members will realize, ordinarily we would go on recess just before the holidays as has been our tradition. As you realize, we have those many Bills to transact.

Maybe one other thing, Mr. Chairman, that you did not say is that we have tried as Parliament to create more time because we cannot create days, we can create time, we have created some time on Thursdays; we will ordinarily rise at 6.30 in the evening but because of the current work load we have extended our sitting to 8.00 o'clock at night. That gives an extra one-and-half hours to go through this business. We hope when we finish the Supplementaries we will extend, if the House agrees, time for all the days that we will have which, as the Vice-President has correctly said, are only five available days.

One other business which we must transact before we actually rise, which the Vice-President has not mentioned, is to also extend the life of the Commission itself, that is the Constitution Review Commission because I believe it is coming to an end by

30th of November, 2003. Therefore, within the five days that are still available, part of those days must be used to discuss the extension of the Commission itself.

So, it is not humanly possible to transact all the Bills that His Excellency the Vice-President has mentioned within the time available. As Parliament, as you will all recall, at the very beginning of this process at Bomas we sat here in this very Hall and you will recall I had given the Commission and the Select Committee the kind of timetable we have as Parliament and as a result of that meeting, you will recall we had to adjourn early in March so that we would be able to go to Bomas, do some work and return to Parliament early June to transact the business of the Budget. At that time we also agreed, if you will recall, that we will proceed with the business of the House until the end of July and we would resume Bomas in August when the House is ordinarily on the long Recess, which we did actually. We did anticipate at that time that we would not complete the business of Bomas by August, I think it was everybody's thought at that time that we would finish the business of Bomas in August/September. As it turned out, it did not finish so it has to be finished and so we did not plan with you the very first meeting we had here in April, we did not plan with your for December. But as Parliament we planned that we continue up to our usual time to do business of the House.

So that is the predicament that we do have. You must also understand ultimately that I, as Speaker, do not adjourn the House; I have no such power. The power actually lies with the Members. If they decide we adjourn today, we will adjourn, if they decide that we adjourn on the 11th, we will adjourn on the 11th, if, in fact, they say we go to Christmas, we will go that length because the House runs its own business.

I think that, Mr. Vice-President, is the much that I can say.

Hon. Moody Awori: May I now ask the Chairman of the Parliamentary Select Committee also to say something. Hon. Muite.

Hon. Paul Muite: Thank you, Mr. Vice-President and our Chairman this morning. As the Speaker of the National Assembly has said, you will all recollect that the very first date, 28th of April, was agreed upon, was fixed after consultations and in fact by way of consensus. I think it would be good and proper if we can continue on that basis of having these consultations and achieving a consensus because we all want a new Constitution, there is no question about that. But, of course, life has to continue, the nation has to continue and we must not allow the business of Government to come to a standstill and I think once we find a consensus it is good.

The point I would like to bring out, Mr. Vice-President, is that when we had our joint meeting here between the House Business Committee and the PSC a consensus did in fact emerge, contrary to individuals who disobeyed Mr. Speaker and went talking to the Media suggesting there was a lot of acrimony. In fact there was no acrimony, there was consensus. That

consensus is fair to bring out that we were thinking it more practical, more sensible to resume Bomas in January and proceed until we finish the business of re-writing the Constitution. That is the consensus that was beginning to emerge. One of the grounds on which that consensus began to emerge is because, those who were members of the Steering Committee will recollect - and in fact the entire CKRC are members of the Steering Committee – that there were major question marks suggesting that even if we did resume on the 17th of November, the workload in Bomas up to 19th of December was such that we were unlikely actually to finish it by the 19th of December. In fact, I remember it is Prof. Okoth Ogendo who, at the Steering Committee, said that the work programme of the Programmes Committee should be noted by the Steering Committee rather than being adopted for the reason that he thought that the four days allocated to the Technical Drafting Committee to draft the final document was perhaps a bit too ambitious and unrealistic and that the two weeks actually allocated for debate in the Plenary of the final document again may perhaps be a little ambitious. So there were those question marks and we thought that rather than go back, break on the 19th then go back again to Bomas IV, the neater thing would be for us to resume in January when the House will be on Recess and we go on through February and perhaps part of March and hopefully be able to finish. So we have always had these consultations and we have always made decisions by consensus as a result of those consultations.

The final point that I think I need to allude to is to remind all of us that we are re-writing the country's Constitution in peace time, not during war. Therefore, in re-writing our Constitution, we have got to re-write within the constitutional and legal framework of the existing Constitution. What I am saying is that it is an Act of Parliament, it is Parliament that enacted the CKRC Act to provide the Constitution a legal framework within which Bomas can assist the Kenyan people in re-writing the Constitution. It is that Act of Parliament.

Therefore, the regulations that you, as Commissioners, formulated were regulations formulated under an Act of Parliament. Those who are lawyers will know that subsidiary legislation has to be compatible with the Act and the Act itself has to be compatible with the constitutional framework. I am saying that because I have heard some arguments that there are some Regulations that do not provide this or that and I just wanted us to remind ourselves that the Regulations themselves are subordinate to the Act and the Act itself has to be contextualised within the wider constitutional framework.

So, Mr. Vice-President, I would like to leave it there and perhaps we can then hear views from other Members here. Thank you.

Hon. Moody Awori: Ladies and Gentlemen, the floor is open for contribution.

Hon. Francis ole Kaparo: Mr. Chairman, if I may just say, please those Members who go and speak on our behalf without authority, please be honest. Let us have the intellectual honesty to say what transpires. I think it is terrible for Members to go out of a meeting and go and literally lie because that is what what happened last week amounted to. What happened last week

was a lie and I think that it is below the dignity of Members to actually tell a deliberate falsehood. Thank you.

Hon. Uhuru Kenyatta: Thank you very much, Mr. Chairman. First and foremost I must open up by saying that I appreciate very much everything that you have said and indeed that there is a lot of pending work that is important to this nation that needs to be carried out especially in terms of restoring our relations with our Donor Partners in terms of economic recovery. There are a lot of pending Bills and I think we in the Opposition support, and would want to support Government in trying to ensure that those Bills are passed within the shortest possible time.

I was not present at the last joint meeting so you might excuse me if I go a little bit behind because I think equally as those Bills are important to this nation and we need to focus on them as Parliamentarians, I also think that the Review Process itself is equally as important and I think there is a great deal of pressure in this country for us to find a quick resolution, finality, to this Process. No Process can be open-ended and I do believe what we have seen also in this year this Process has taken a lot from Kenyans, both in terms of political tensions, in terms of time and resource and energy that we have spent on this Process which could actually be spent also in – I won't say more productive because the Constitution is equally important-- But I think there are more pressing economic issues that we need to be dealing with.

So, therefore, Mr. Chairman, it is my considered position that the heart of the matter is not really when we resume, whether we resume in November or in January, the heart of the matter, I think what Kenyans want to hear, is when will this Process end? We need to put an end date to this Process and then let us work ourselves backwards from there and ask ourselves, from that date how much time do we require? Because that is the message I believe that we as political leaders of this country, yourselves as the Commissioners who have been charged with the responsibility of giving this nation a new Constitution, this is the position we need to come out clearly to Kenyans with and I think from there we then can fit in all the other agenda items that we are talking about. But we need to bring this process to an end within the shortest possible time and I think that is what we really need to focus on. We cannot afford to go back to Bomas for a Bomas III and then a Bomas IV and then a Bomas V, it has to end and we must come out clearly. Then on the basis of that let us work ourselves a timetable as to when we shall resume, being very clear and honest to Kenyans as Mr. Speaker has said, this time round. Whether it means that we will be working Sundays, Mondays, Tuesdays all the way through to Saturdays, whether it means we will be working until 10 o'clock at night, but we will not extend this Process beyond a certain date. And from there we all work backwards, together as a team.

I think that is the message, Mr. Chairman, that we need to really focus on and we made that position clear ourselves in a statement that we issue during the Conference and I think this is really the heart of the matter and this is what we really need to focus ourselves on.

Mr. Chairman, I think that is my comment at this particular moment in time. Thank you.

Com. Bishop Bernard Njoroge: Mr. Chairman, it is my understanding that the Parliamentary Select Committee and the Business Committee did discuss and come up with a certain resolution which you have passed to us. It is also a fact that the Chairman of the Parliamentary Select Committee did invite some Members of the Commission and informed us about it. Now, I just wanted direction whether maybe, having heard the position that our Vice Chairman can speak on our behalf, or whether it is going to be an open-ended forum where we can all discuss. I just wanted direction to that.

Hon. Moody Awori: Thank you. I think, yes, I really have opened the discussion in the hope that we can take into consideration the comments made by the Chairman of the Parliamentary Select Committee and certainly by the Leader of the Official Opposition and, of course, our Speaker. So I really hope that we can focus particularly on what Hon. Kenyatta just said. I want just to re-emphasise from the Government side that contrary to any perception, the Government is totally committed to the completion of the Constitutional Review. We are committed to that and perhaps at this stage I could introduce – I do not know whether it is the right stage – a signed memorandum from the Constitution of Kenya Review Commission.

Hon. Francis ole Kaparo: Mr. Chairman, can I suggest at this stage-- The question raised by the Hon. Uhuru Kenyatta is fundamental and I think the people who can help us in that question is the Commission. Can they please advise us how long do they anticipate the work left to take so that as the Hon. Uhuru suggested, we can work backwards.

Hon. Moody Awori: May I ask the Vice Chairman—

Hon. Simeon Nyachae: *(Inaudible).*

Hon. Moody Awori: Let me go to the Vice Chairman first of all, then you will be next.

Com. Ahmed Salim: Thank you very much, Mr. Vice-President and Chairman of this particular session, the tripartite meeting – I think I can safely describe it as such – the House Business Committee, the PSC and the Commission. We have listened with a great deal of interest, Mr. Vice-President, to what has been said so far, we have been made very clearly aware of the tremendous amount of work which is still pending before Parliament and which you, Mr. Vice-President, has eloquently detailed for us. We must not forget that we are also Kenyans, that work has to be done so that the country can keep moving. We have indeed had an informal, courtesy meeting with the Chairman of the PSC a few days ago at which he more or less briefed us as to what the PSC and the House Business Committee had arrived at in terms of time. By that he was hoping that we as a Commission would then sit down and see if we can help one another in this very, very important task. Mr. Chairman, we indeed worked out some programme, both in brief as a synopsis as well as in detail and we be prepared to submit before your good self a set of the documents before we leave.

However, Mr. Vice President, I do not know whether at this juncture you would like me to move further and go beyond this opening statement from our side which I will be very happy to do.

Hon. Moody Awori: I think let me get two more views then I will get back to you so that you can then introduce your proposals. At this stage may I ask Hon. Nyachae to speak, please.

Hon. Simeon Nyachae: Thank you, Your Excellency. We support your briefing and I would like to re-emphasise the statement by Mheshimiwa Uhuru Kenyatta, the fact that there is a lot of anticipation out there for the Constitutional Review to be completed as soon as possible. However, we realize and I also know as a Member of the House Business Committee, that there are very urgent businesses which must be transacted in the House and they cannot be completed between now and the 17th of November. Therefore we support the proposal by the House Business Committee that we seek indulgence of the Commission so that the House is allowed to complete the urgent business for the nation.

However, Mr. Chairman and Vice-President, I think we have to be open here that there is no point of agreeing on a date, say 17th of November, when at the back of the nation's mind there are certain things which must be done before the end of this year otherwise we might bring the Government to a complete halt in its operations. So those Bills are essential. We want to support you in that area.

On the other hand, and I think Hon. Uhuru Kenyatta and myself did issue a statement which some people tended to condemn, but we want to repeat that we stand by that statement, that is, a Constitutional Review must be seen as national exercise and that whatever date we agree to here, then we should go for the Constitutional Review exercise and not as exercises of wrestling for power because some issues are being transported from elsewhere and taken to Bomas. So, Your Excellency, I would like to appeal to you because you are Number 2 in the country, your Party is the Ruling Party and the clear signs of wrangles that are extended to Bomas are coming from that side. So when we go to Bomas whatever date we agree-- There is no point, Your Excellency, asking the Commissioners to give you a timetable because they do not know how much more wrestling is going to occur which they are unaware of, that could extend the time beyond their timetable or their own programme. Therefore we must agree that if we ask them to give us an indication of the timetable the exercise will take, we must also on our part agree that we are not going to add any other burden on that exercise because if you add additional exercises then the timetable would definitely be put out of gear.

Mr. Chairman, I would like us to agree – and this is my appeal to the Commissioners and any other Member who may not be in the Select Committee or may not agree with the Select Committee or who may not have seen the need of what the House Business Committee has supported – that we be allowed to complete the business of the House as planned. That is No. 1. But to do so, it is going to mean changing the date that had been earmarked to start the Constitutional Conference and to get the

Kenyans out there to accept that we are sincere, that the postponement of the Review is not being done through some other behind the scenes exercises, at the same time, very urgently, Parliament must give assurance to the Kenyans that it has renewed the life of the Commissioners so that the Kenyans know that the Commission is not being allowed to die, because it is going to die at the end of November if we do not renew it. There is no point of announcing that we are postponing without giving assurance of the renewal. That is one.

The second one is the assurance we have to give Kenyans in my view is that if we agree – and my personal view is that we should agree-- Let us agree that we complete the business of the House and when we adjourn for December holidays, let us agree that in January we start the Constitutional Review and we do not return to this House to create other businesses and interrupt the Review, until the Review is completed, then we can return to this House. This is my considered opinion because again if we go and say “oh, March is coming, the President should perform the State Opening of Parliament” and the business is not over there, then we are going to have the exercise of a merry go round. So let us agree and assure Kenyans that next time when we meet at the Conference we will not return to the House before we have completed the Constitution. I am putting this in another way because during the statement of Mheshimiwa Uhuru Kenyatta and myself, we said we would like to see the new Constitution in place at the latest end of the first quarter of next year.

Thank you, Mr. Chairman.

Hon. Moody Awori: We have actually heard from the Government side request, we have heard from the Leader of the Official Opposition, we have heard from the Leader of the Ford People, also from the Bishop on behalf of the Commission. May I just request that it appears as if we have heard the opinion of the Parties, that we perhaps could go to the Commission now because otherwise we could be just repeating ourselves. I think if it is agreed, I would ask the Vice Chairman of the Commission now to, not only respond but put out a proposal. Is that agreeable?

Response: Yes, Sir.

Com. Ahmed Salim: Thank you very much, Mr. Vice-President and Chairman of this session called the tripartite meeting. My colleagues and I are very happy to be here to discuss this very, very important topic. We had, as I said, been briefed earlier informally by the Chairman of the PSC on the importance of Parliament finishing some very, very important business nationally and, therefore, the impossibility of Members of Parliament to be with us at Bomas on the 17th of November as agreed. The three of us who had met Hon. Muite went back and we have met as a Commission to discuss the very, very important issues related to that change and, Mr. Vice-President, we have come up with two documents which I hope by the end of this meeting we will be able to pass on to you. So with your permission I would like to go through them.

The first one, and the one of immediate relevance to the subject we are discussing, namely, the reconvening of Bomas

Conference, we would like to call it the Supplementary Memorandum of Request to the National Assembly for further extension of time under Section 26(3) of The Constitution of Kenya Review Act. Mr. Chairman, the question of revising the date of the convening of Bomas III is tied to the whole question of the Conference's programme being organized. Mr. Chairman, we have prepared this document along the following lines.

We prepared it in the form of initially even thinking in terms of opening on the 17th of November. This may now be a moot point, maybe even academic, Mr. Chairman, but I am just saying if we are to reconvene on the 17th of November as agreed earlier we expect the Review Process to proceed up to the 30th of June uninterrupted, should there be no referendum. On the other if there is going to be a referendum, we expect to be at Bomas to complete our till the end of 31st October, in which case we expect the extension to be given to us up to the 31st of October.

Mr. Chairman, this particular proposal is supported by a full programme as to how we will utilize this time day by day, week by week, indeed, Chapter by Chapter and as I said earlier we have the documents to support this particular Option. Please note, Ladies and Gentlemen, that this scenario, if it were to be adopted, would be completed by the 31st of October.

If on the other hand, as it seems the consensus reached by PSC and the House Business Committee, we do not reconvene on the 17th of November as agreed, obviously the programme of Bomas will change. In anticipation of such change in the starting of Bomas, we are saying that the Review Process, if it starts later than November 17th, will go beyond the date of 31st October which I had given earlier and we see it, in fact, going beyond the 31st of October by possibly one or two months, depending on when we started. But, as Hon. Nyachae had said earlier, this now will involve Parliament having also to decide whether they are prepared to be at Bomas right through until we finish; once we convene at Bomas, whatever date it might be early next year, we stay put and on the job until we complete the Process. We have a possible scenario for that which takes us up to November, 2004, Mr. Chairman, and again we have the details of how that time is going to be spent on various aspects of our work on completion of Technical Working Committees' work, on Plenary sitting together going through each Committee's presentation on the re-drafting of the Draft Constitution in the light of these changes, on us preparing it finally to present to Parliament, Parliament debating it also and reaching a consensus. All that has been taken care of in the document which we will present to Mr. Vice President at the end.

So that, Mr. Chairman, is the crux of the material we have in this particular document.

Our second document, Mr. Chairman, deals with a somewhat ticklish issue – I will not call it an insurmountable issue. I as a non-lawyer, of course, I am completely happily overwhelmed by the number of lawyers around this table and I mean and include everybody, Mr. Chairman, including Members of the PSC and the House Business Committee. We are of the opinion that the National Constitutional Conference which was adjourned on 26th of September, 2003, it adjourned with a resolution to reconvene on the 17th of November, 2003. This date of 17th November was initially proposed by the PSC and subsequently tabled before the Steering Committee of Bomas by the CKRC. The Steering Committee of Bomas then presented the Motion

to adjourn to the 17th of November to Plenary at Bomas for adoption, which took place. Under Section 27 (1) © of The Constitution of Kenya Review Act, Cap. 38, the power to convene the Conference is vested in the Commission. By Regulations dated 18th August, 2003, on the conduct of work at Bomas, the power to adjourn the Conference was “donated by the Commission to the Conference” (*Laughter*). This donation, however, does not oust or exhaust the power of the Commission to re-possess or to convene and reconvene the Conference after an adjournment, and I will refer you to Regulations 17 and 46 3 (a) and (b). I did say this is a ticklish matter and would like us to be aware of it.

Therefore, in view of the political sensitivity, Mr. Chairman, the legal intricacies are referred to, the history of the Review Process itself, its ups and downs. A Colleague of mine, in fact, describes it as (?) of the Review Process over the last two and a half years plus. The Commission is of the view that this is a matter which ought to be handled with extreme caution.

Mr. Vice-President, I say this because the Commission has gone through turbulent times. We have been batted, stones and bad eggs have been euphemistically thrown at us over time because people thought we are in this for the money it brings, the big luxury cars and so on and so forth and, therefore, we have become somewhat sensitive to wananchi’s perception of the Commission. Therefore, we feel that having agreed that there should be no reconvening of the Conference on the 17th of November as agreed, we feel that we have something like four different options we can adopt, hopefully by consensus.

Mr. Chairman, the first Option we would like to present is that having agreed that we cannot meet on the 17th of November and persuaded that Parliament cannot be with us because of the amount of work pending and which has to be completed, that CKRC should announce reconvening of the NCC, that we shall postpone 17th November to a date to be agreed upon, hopefully, before we depart from this room. Now, there is merit in this in that it is quick and involves no consultations since CKRC would be invoking the power under Section 27 (1) © of The Review Act which we referred to earlier.

However, Mr. Chairman – and this is somewhat the biggish part – this Option is the most unfavourable to us as CKRC as it would give the impression that CKRC, on its own volition, has acted unilaterally without consulting with the Delegates at Bomas and postponed the reconvening of the Conference on the 17th of November. It is also likely to have, if I may say so, an adverse effect on the image of the Commission which has been, as I said, previously accused of perpetuating the Process for money to be gained, perpetuating its existence. That is the first Option, Mr. Chairman.

Option 2, we suggest that perhaps the Parliamentary Select Committee, as the body that has consulted with the House Business Committee, Mr. Vice-President, which you share, that the two of you announce the postponement of the Conference. Of course, this will raise the legal question as to whether the Parliamentary Select Committee has the statutory power under the Act again, to convene or to postpone the NCC. It is also bound to set the Parliamentary Select Committee on a coalition course with other categories of Delegates at the Conference, a situation that I am sure we all agree is most undesirable. That is Option

2.

Option 3, Mr. Chairman, is that the Steering Committee of the Conference be recalled at short notice to consult on the proposed change of the date of reconvening of Bomas III. This Option 3 may appear attractive at first sight, but we see certain risks attached to it.

The first risk is that the Steering Committee is an advisory Committee of the Conference, so convening the Steering Committee may invite the possibility of having to convene the entire Conference to determine this programme. In other words when we meet they may say “no, we cannot speak for the whole Conference, let us call everybody and discuss this particular issue. The Steering Committee itself, Mr. Chairman, may invite unguarded controversy and fail to reach decision of any kind. So these are the problems we see related to any possible calling of the Steering Committee.

Option 4, Mr. Chairman, the PSC, House Business Committee and the CKRC, three of us, prepare a joint statement stating that the Conference reconvening is going to be postponed to a date which, as I said will be agreed upon before the end of this particular meeting and, of course, very, very important, enumerating the reason for postponing it till early next year. I think, Mr. Chairman, we owe it to the people of Kenya. It has been impressed upon us by the Hon. Leader of the Opposition and Bwana Nyachae here that people of Kenya are out there waiting and waiting, they have been very, very patient, but also the people of Kenya over time, from our experience as Commissioners, are very, very mature people. As long as we are able to explain to them the reasons why we are postponing, I am sure, Mr. Chairman, we will be able to persuade them that there is a lot of sense in re-starting Bomas early next year. If I may dare, Mr. Vice-President, with your own personal stature as our Mzee, as our Vice-President, someone who is totally respected countrywide, if you were perhaps to be the Chair of that particular meeting, reading the joint statement, with us and the PSC flanking you, I am sure things would work out.

Mr. Chairman, we feel that in the prevailing circumstances, this Option is the most commendable and the most attractive of the four Options and on behalf of the Commission I would like to “sell” it to everybody around the table.

Thank you very much.

Hon. Moody Awori: Thank you very much, Vice-Chairman. I think to me the most important point here which makes me a very happy man is that there is indeed a consensus in that Parliament will be allowed to continue and complete its business and that we now are faced with how to tell wananchi. So I want first of all to thank you, Mr. Vice Chairman, and the Commission very much for having considered the dilemma in which we are. Perhaps at this stage I would just like to invite some comments on the four Options.

Hon. Mutula Kilonzo: Thank you, Your Excellency, our Chairman for this morning. First of all I would like to thank you a

great deal for the elaborate manner in which you indicate the dilemma that is facing both Parliament as well as the CKRC.

Having said that, Mr. Chairman, I would like to say that I entirely agree with both the Leader of the Official Opposition and Hon. Nyachae on the approach they have taken that there are two fundamental issues here facing us. One, if there is a possibility that by meeting on the 17th of November, we are going to finish the Constitution by 30th November when the mandate expires, then it would be reasonable that we meet on 17th of November, 2003. But if that possibility does not exist it sounds to me rather awkward if not ridiculous, meeting on the 17th of November seeking to continue with the process of creating a Constitution. And with all due respect to the Commission, Mr. Chairman – I normally speak very frankly, I could do so this morning – I have noticed – and a lot of us will confirm – the amount of time wastage that takes place at the Conference and you will notice that when we do start actual business may start on the 20th of November because there is registration and so on. So technically if we were to meet on 17th November, the chances are that we will only have very few working days, 7 at the very most. So that raises the very major problem as to how to resolve that and I will come to that in a minute.

Second major, substantial issue is how long, Your Excellency, is it expected that we will finish a Constitution and I am extremely frightened this morning when I hear October next year because, like all of us in this room and the rest of the country, we all know the anxiety that there is and I have a feeling that when we finish this, we go out and say the new Constitution is going to be finished in October next year, there is going to be a lot of murmuring in this country, and justified murmuring, as well as in international circles. So personally I am extremely uncomfortable with a date like October and I would not want to participate in an extension which goes to October next year, with all due respect to what is expected.

So then what we do in view of the wrangling that, with all due respect, Your Excellency, we accept-- I personally accept and can tell you sincerity when you say that the Government is committed to Constitutional Review, but you see that sincerity, unfortunately, does not come across when we listen to other Members of the Government starting from Assistant Ministers all the way to senior members of the Cabinet. In fact the reason that we ended up with 17th November arose because of what was perceived as a betrayal of the sincerity that this Committee has brought to bear on the need for a new Constitution. So, is there any guarantee that when we do resume, as Hon. Nyachae so ably put it, there wouldn't be external wrangling? Personally I am of the view that there will be wrangling and there will be wrestling.

So, having said that, personally I would prefer, Mr. Chairman, that then we address the legality of an adjournment; fortunately there are very able lawyers here – my seniors like Hon. Paul Muite, Senior Counsel. A meeting once it adjourns itself and fixes a date for its adjournment it can only change the date through modalities envisaged by that meeting itself. It is the procedure of the people constituting that meeting who decide how to change the date. I am sorry I differ with the Vice Chairman when you say that you can retake this power under Section 27. The fact still remains that it is the Plenary that decided to meet on the 17th, therefore, you are faced with a serious handicap of how to go about it.

Personally I think, and I buy the idea, of a joint Parliamentary Select Committee, House Business Committee and CKRC, but the emphasis then will be that we are all totally convinced that even if we meet on the 17th we will not complete the Constitution.

If you do not approach it that way I am sorry you are going to hurt a lot of people in this country and they will not understand why we have actually adjourned.

So my recommendation is that CKRC should stop being so generous with time. I do not see why we need to extend this to 31st October, 2004, we should give a fixed date of 30th June, that this Process be completed and the Conference itself can deal with the programme for a referendum should that arise so that they all come within 30th of June. I was happy myself with what the Leader of Opposition and Hon. Nyachae have said, that we finish the Process by the first quarter of 2004. But after listening to everybody it looks like 30th of June, Mr. Chairman, perhaps is more appealing to me. October, I cannot accept. Thank you, Mr. Chairman.

Hon. Martha Karua: Thank you, Chair. I would want to agree with the fourth proposal by the Commission of a similar meeting to this one announcing the postponement. I differ with my Learned Senior, Kilonzo, on the interpretation of what should happen. I think we are splitting hairs because we can also go on and make analogies and say that in the first place because the Select Committee had not come back to the House for endorsement-- We can go on and on and show weaknesses here and there. I think the Commission has tackled the matter admirably to come to a very good decision because it is not a question of who has the mandate to do what, it is that we must move together as a country, we need each other to finish the Process and we need to take into account all the things that are going on because the country is not stopping at a standstill while the Review goes on and the Commission has taken all those factors into consideration.

The only area that I would quite agree with my Senior Colleague, Hon. Kilonzo, is that we have to find ways of saving time so as to agree on the calendar of the Commission and I think it occurred to me – I could be wrong but it was my considered view at Bomas – that somewhere along the line as Delegates we did become confused about our mandate. We are supposed to be guided by the report of the Commission and the Draft Bill. We went beyond this and we started giving fresh views. You realize some of the Delegates were nowhere when the views were being collected, including Members of Parliament because more than half are new. So people now have treated Bomas as the forum for additional views. If you look at the Act, Section 5 (d), it tells you clearly to ensure that the final outcome of the Review Process faithfully reflects the wishes of the people of Kenya. Are the 600 Delegates going to claim to be the people of Kenya or is it the wider group who gave the views? So there is a way in which, by being faithful to the provisions of the Act, the Commission can steer us towards a faster pace when we resume Bomas and I am of the view that it may be possible to compress the sittings and have the Process finished by the first quarter so that with or without referendum, by June we are through the Process. I am urging you also to consider that there is no way Parliament can be expected to adjourn for half the year or whole year. It is possible - because we normally do not resume until the third week of March - to push that date, it even may be possible to go slightly beyond where we normally go in, but it would not be possible in my view to paralyse operations of Parliament because then the representative democracy would have been

irreparably distorted and that is not what we would want to do in Constitution making.

There is also the budgetary process which has to finish by June, which is what has been tying us now. So, if we consider all these, you want to take those factors into account, we take your fourth Option and then you try and do a calendar and also give us direction as Delegates, you have that mandate - I am not asking that you go outside the law – and let us do what we went there to do, let us not begin another round of fresh views every time a proposal comes and then we will complete. Thank you.

Hon. Nicholas Biwot: Thank you, Mr. Chairman. First of all let me thank you for the manner in which you have conducted the meeting and also thank those who have spoken because it is from the way you introduced it and the way the others took it that brought about the sincerity and the goodwill which is necessary for consensus.

It is now quite obvious that we are all converging on the need to extend the period, in other words we are rapidly agreeing now that we should postpone the date from 17th to another date maybe in January. If that is the case I would suggest, so that we save time, that we move rapidly so that we dispose of that element and then we will discuss the other aspects of the time because it is the time that will take most of our discussions. In any case if you look at what it involves actually it is the Constitution making itself and most of it is what the people said they wanted, but the real stuff is how the experts, the legal draftsmen, will actually draft it. So we should actually put more emphasis on that and less emphasis on the argument. I think we better not ignore the point raised by Nyachae, the point of extraneous issues brought in, some of which are issues which were agreed somewhere else which are not part of the Constitution. I think we should all look at the problem of Constitution making as Kenyans and none of us here is isolated from that. I think we are the same people in different positions playing different roles which are meant to converge together into one meaningful constitutional document.

So I will therefore appeal that we agree on this question of postponement so that we do not resume on 17th November and I think if it is done the way it has been suggested under Option 4, it is all inclusive and there is an element of goodwill. This is in fact the second time that we will be postponing dates. Remember during Wamalwa's sad demise we adjourned and Kenyans agreed. Kenyans actually agree on sensible things. This time we need to complete the work and to extend the period and one of the Bills that we will need this extension for is the Bill to extend the life of the Constitution Review Commission—

Hon. Francis ole Kaparo: It is a resolution.

Hon. Nicholas Biwott: It is a resolution. So that one is also one of the resolutions that we need to move in the House in addition to the others. So I will therefore suggest that we proceed accordingly. Thank you very much.

Hon. George Saitoti: Thank you very much indeed, Mr. Chairman. I do not think I am going to say very much because much of what I wanted to say has already been said but it looks to me that we have indeed basically agreed broadly that going

by what we had agreed, the fact that the Commission should resume on 17th of November, will really create a number of problems. For example, if we go by the 17th of November then there are difficulties, as you have already stated. So I think we have already appreciated the fact that we, therefore, should allow the Parliament to finish its own business and that next year then the Commission reconvenes for Bomas III. So the question really which is before us is how to articulate reasons behind the decision which hopefully we are going to be able to announce after this meeting. A proposal of the tripartite approach I think is noble, we have already agreed, but I think it is important that when we draft a statement we are able to explain clearly to the Kenyans why we have agreed that we cannot now reconvene on the 17th November and I am sure Kenyans will agree. That I think is absolutely important.

The next thing obviously will be to agree on a roadmap as to when the deliberations of the Constitution Review will come to an end. In stating that, I will want to say that we should bear in mind that we are not amending a Constitution, we are indeed reviewing a Constitution and even if we do set a certain date, I think we should always bear in mind that we want to ensure that the Constitution which is reviewed is going to be the one which is going to take us for a number of years. We do not want to end up in a scenario like the one we find ourselves in now with the current Constitution which has been amended so many times that now it is full of patches. I think is very, very important that we take that into account.

Let me also say another thing. I know that reference has been made to the fact that we are in the governing Party and it is found that there are a number of conflicting views. I think we should accept that within the framework of democracy. I think there is freedom of expression or views and in that one respect I think we should be tolerant; people can say what they want to say. However, fundamentally, I think we ought to know where we are headed and frankly I do not think that if, let us say, I say something somewhere in a public meeting, that does not itself mean that that is Government policy. What I think should be accepted is the fact that that is an expression of one's views within the framework of freedom of expression. But I think we should be very clear where we are headed. Thank you.

Hon. Moody Awori: May I have just three more now. I will go to the Speaker and then to Ruto.

Hon. Francis ole Kaparo: Mr. Chairman, I want to always be able at the end of the day to defend my decision and you know I have to be very honest with you and to be very honest to everybody here present, I do not think it is right or even tenable to have Parliament absent up to June. It could even be illegal. You know the Constitution is silent on how long we shall be away after adjournment; it is silent. But there is a Constitutional provision that after Parliament has been dissolved, Parliament must reconvene within 90 days of that dissolution. That could be a good beacon as to how long the Kenyan people would expect Parliament to be away. Therefore, I think we must say here that Parliament would be available, absent from its work, in January, February, you can even go to March. Beyond that I foresee problems. In any even Parliament cannot be away in June because the Constitution says we must be there before the 20th of June to pass the Budget. So we must be there.

However, my view is the following – this is my personal view, the other one is as Speaker-- Next time you might come here again and say “Mr. Speaker, can you give us your guidance on how it is going to be” if you need more time. I need to come here and come here with my head upright as an honest person and I want to continue that way, to have honesty as well. I think personally now if we are serious, if truly everybody is serious in the job of Constitution making and we are in Committee and we stop all the side shows and unnecessary bickering in the whole of January, the whole of February and March, unless we are truly thick, we should be able to come back with a written, ready Constitution and I do not believe Bomas is a collection of thick people. I think they are very, very clever people only that sometimes they are distracted by unnecessary sideshows which I hope this time will be stopped. I think by end of March we should be able to have the agreed framework which we should then give to the experts to fine tune and polish and you can call us for one or two days in June to complete it. That is my view as a person. Thank you.

But Option 4, Mr. Chairman, again I think is the most rational, I think is the best and I further advise that having taken into account whatever we have said, I think we should proceed and go by Option 4 today so that we do not have further sideshows to distract it. Thank you.

Hon. Moody Awori: I will ask Honourable Ruto and then Professor.

Hon. William Ruto: Mr. Chairman, thank you. While I support the consensus that is developing, I think I would want to say that, as a means of getting us where we want to go, we should, Mr. Chairman, initially agree on the dates that we anticipate and expect this Process to come to a close, as originally suggested by the Leader of the Official Opposition.

Mr. Chairman, if we can agree on that date - and I think a date proposed by the Speaker of 30th March looks to me reasonable - if we can agree on that date we should firmly commit ourselves, even in the Statement we are going to issue, that we will do everything in our power to make sure that we deliver a new Constitution to the people of Kenya by that date.

Secondly, Mr. Chairman, to create the necessary good will in the minds of the people of Kenya, that we also extend life of the Commission and we do not make it look like we are using it as a bait of some sort to intimidate the Commission, that we can actually refuse to renew their mandate. I do not think the people of Kenya anticipate at any one time that we will refuse to extend the life of the Commission until we have a new Constitution. Therefore, I do not think we should continue to hold that date back anymore because the longer we hold that date back, the more suspicion we create in the minds of the people as to what we intend to do as a Parliament.

Having done those two things, Mr. Chairman, I think those who wish to negotiate about the date of the 17th can therefore go ahead and talk about it but I think as a premise for us making good meaning of this meeting, we should agree on those two

things first. The issue of postponing the date, the mechanics and the modalities of how to do it should really be secondary issues. Let us first agree on what the People of Kenya want. Thank you.

Hon. Moody Awori: Prof. Okoth Ogendo?

Com. Okoth Ogendo: Mr. Chairman, I just wanted to make two clarifications. My Vice Chair has already given the position of the Commission. Clarification number one is that what we are calling the National Constitutional Conference ends, whether or not there is a Referendum. A Referendum is not the business of the National Constitutional Conference. Therefore, if the National Constitutional Conference adopts a document that also requires a Referendum, that National Constitutional Conference mandate is over. I think we want to understand that because some people think that we will conduct a Referendum, then call Bomas again; that is not the legal position.

The second point I want to clarify is that our original Memorandum, looking at the history of the Process, the fact that it has been impossible to determine exactly how the Process moves, has suggested that the extension of the mandate of the Commission should be tied to the completion of the Process. Under Section 33 of the Act, if the Process ends in December this year, the Commission is automatically dissolved. In other words, the life of the Commission cannot continue beyond the completion of the Process. But we were advised to put dates on it. The danger with dates of course is that people sometimes go and say; “These people want to go this far to June, to December.....” whatever and this is why we thought originally that if we said that there should be a continuous mandate until the Process is over, then we concentrate on the management of the Conference to get that Process over as soon as possible, the Law will automatically take effect. These are the two points I wanted to mention to these two Committees. Thank you.

Hon. Moody Awori: I will now ask the Professor here and I will finish with-- Anyway, carry on.

Hon. Kibutha Kibwana: Thank you very much, Your Excellency. I think that in terms of our progress, our progress has been very good in terms of building consensus so that we complete our Parliamentary outstanding business. I think the point that Hon. Mutula Kilonzo made, the point of how we communicate this, I think this is quite important. First of all, we do it in the context of the fourth option, so that the consensus that has been developed here is apparent to the country.

But two, we said that there are two basic reasons why this postponement is necessary. The completion of the pending Business and that is itemized very carefully, so that it is shown that that business will take some time. The second point that Hon. Mutula Kilonzo mentioned was, if we start on the 17th, we will not finish by 19th December when we recess. Therefore, we will have to go back next year. For me, those are the two critical points on which we can build anything else.

Chair, I think also as Hon. Nyachae had said, this meeting can recommend to the Parliamentary Select Committee that the

Commission be renewed so that even from here we have a decision of the joint Committee saying that the Parliamentary Committee should proceed and renew the Commission so that it is known that there is no monkey business.

I think it is important for us to say that we are going to begin, I think like 5th January, that is the first Monday, or 4th. The June 30th date, I think is a very, very important date because I think, Hon. Ruto, the 30th of March is when the Conference would have done its bit so that there is a bit of drafting, then there is a bit of Parliament going through the Constitution so that it is passed and if there is a Referendum that is also done. But the date of June 30th, as Colleagues have said, is very critical, so that we show that that is actually the outside date and we will have to get the Constitution then.

Finally, the Chair, the issue of wrangling and wrestling and so on, I think we need, within this meeting, to do something that we have always avoided doing and that is to say that either the Parliamentary Committee, the Commission and even the Business Committee as we might decide, create a forum of actually building consensus on the hard questions. Because the hard questions keep on prolonging this Process and we need to have either a formal or informal system of beginning to build consensus on that, so that we can transmit such consensus to the rest of the Stakeholders and I think if we run away from that responsibility, as Leaders of this Process, then we could still have a problem. Therefore, Chair, His Excellency the Vice President, it is my plea as I have always pleaded, for us to develop a mechanism for developing consensus on the hard issue because ultimately, it is that consensus that makes the Constitution. It is not good enough for us to wheel away paddling and all those wrangles if we do not actually provide the forum for ourselves, which is as depoliticized as possible, to arrive at those decisions and then we transmit that consensus to the rest of the Society. Thank you for the opportunity to share with you.

Hon. Moody Awori: Prof. Wanjiku, then Dr. Godana, then I think we wind up there.

Com. Wanjiku Kabira: Thank you, Honourable Chair for this session. In fact, some of the things I wanted to say have been explained by Prof. Kibwana. We wanted to clarify that 30th June will take the whole process up to the end, but the Conference is not going on until 30th of June, although by the way it had gone on to about 15th April in our second option. So we may probably need to think about the two weeks that Hon. Kaparo was talking about. But the Conference, from the beginning up to the end was going up to around 15th April, the rest of the period has to do with the finalization of the Draft Bill, presenting it to the Attorney General, gazettelement within 14 days, debate in Parliament and then having the Constitution passed by 30th June, 2004.

What we had done is actually given a contingency month, just in case the side shows take more time than we expect, that is why we have said 30th July. Maybe later if you get the programme you will find that it is not actually an extravagant programme. In terms of the Committee work, we had given it four weeks and this was the request by the Convenors. We had a meeting immediately after the Conference and most of the Convenors, at least 50% of the Convenors, were asking for between three to four weeks.

We had given the Reports to the Plenary; very few days, in fact the one with the highest number of days, which is two and a half days, is Devolution and all the others including Executive, Legislature and so on, one and a half days or two days. So, it is quite a tight programme. If we manage it properly, I think we can make it.

Then we have two weeks of final approval where we go through the whole document clause by clause. Therefore, the Process of the Conference itself goes to around 15th April, so maybe we have overshot the (?) by two weeks, but the rest does not involve Parliament so Parliament could be back in Session, because the rest is dealing with the AG's Office, the Commission and so on.

I think we gave the upper limit of 31st for the extension of the Commission, again because we do not know whether we are going to have a Referendum or not. That is why we gave the other limit and as Prof. Okoth Ogendo said, if the Constitution is enacted by 30th June, the Commission automatically is dissolved.

Hon. Moody Awori: Thank you Professor. Dr. Godana?

Hon. Bonaya Godana: Thank you, Your Excellency, the Vice President. I think I want to re-emphasize a point because when I put up my hand, the point had not been brought out, but it has been brought out by the two last Colleagues. It is possible, we could still come back and ask for further extension so I think let us ask for an extension which will look reasonable, hink not to 30th March but to 30th June; I would even be willing to say 30th October. But let us say, at least extension of the mandate to 30th June. But we want also in the same breath as the Commission announces, clear explanation, that the roadmap envisages the Conference to conclude its work by 30th March, so that the remaining three months, if necessary, will be for the follow up of enactment and what have you. The roadmap indicates commitment to end the Conference work of the Constitution by 31st March.

Thirdly, I think we have still not got a clear statement of how Government intends to come out with that unequivocal statement to public relations, that it is still committed to the conclusion of this Process by that date.

Finally, the announcement of reconvening in January, not on 17th November, has to be done by the Commission, not by the three Institutions.

(Inaudible response from the floor).

Hon. Bonaya Godana: I think the law vests responsibility in the Commission, that is the body which has been vested with the authority under the Act and the Commission should not shy away. The Commission can say; "We have done appropriate

consultations with the Parliamentary Committees.....” but, take the responsibility. (*Laughter*). You were given the mandate by the Act, do not try to share it with us. Thank you. (*Laughter*).

Hon. Moody Awori: As brief as you (*referring to Com. Mutakha Kangu*) can and we must finish with you. I am sorry.

Com. Mutakha Kangu: Thank you very much, Hon. Vice President. I just want to mention one point which I think Dr. Godana has touched on. It is extremely urgent that we give Kenyans a date that does not suggest that we are just stretching out. But my worry is that on the realistic part of it, we have already held some preliminary consultations and this started last year, taking into account the fact that the Act provides for a possible Referendum, we had consultations with the Electoral Commission and their advice was that the minimum period you will require to prepare for and conduct a Referendum, is three months. My view would be that, looking at the tentative programme we have, 30th June, including Referendum, would be over ambitious. As Godana has said, to avoid appearing to be stretching out, I would suggest that we put in the Statement “30th June, if Bomas avoids a Referendum”. That will be understandable if later on you start trying to extend again.

(Inaudible response from the floor.)

Hon. Moody Awori: Thank you very much, Ladies and Gentlemen, for all the contributions that you have made. I think we are now to decide, because I think the consensus is that because of the request from Parliament, Bomas III will have to reconvene in January. What we need now is to see how to tell this to wananchi, and there are these four options.

But before we do that, because there is a signed Memorandum where CKRC is requesting extension, I think we must deal with that immediately and from what I see around the room and considering the anxiety of Kenyans, we will have to give them these two dates. I think the first date is, when we would like the Process to end. Aside from what Professor has mentioned - the gazettelement and what not, you know, really the discussion there - I think if we agreed it has to be on 31st March.

Secondly, that we are extending the life of the Commission to 30th June. I think if we do that, then I think we will be covering, we will be honest to people out there and it will also actually give, you know, *wale wenye kwenda pole pole, watajua hakuna njia, siku zao zimefia tarehe thelathini na moja*. So if everybody has the responsibility of trying to avoid the side shows, they will always be there, but I think we will have just to work hard and move them. So what option? I think almost everybody is happy with Option 4. Sorry, Bwana Godana, we will have to go with Option 4 and that means now, Vice Chairman, you have got to have a Committee *mara moja*, where we will have to prepare a Statement that we will have to deal with now, before we depart.

(Inaudible Response from the floor.)

Hon. Paul Muite: Mr. Vice President, I was--

(Noise from the floor).

Hon. Moody Awori: Let us hear from Muite.

Hon. Paul Muite: I was suggesting that since it is not a very detailed Statement, because the salient issues are agreed upon, the extension up to 30th, we finish by 30th March, the reasons--

An. Honourable Member: *(Inaudible).*

Hon. Paul Muite: Yes, 30th of June, extension of mandate, but the Conference we finish by 30th March. I was making a suggestion that in order not to allow for perhaps an opportunity for disinformation, we could ask the Official Whip, the Government Official Whip and somebody perhaps from the other side--

Hon. Members: PLO.

Hon. Paul Muite: PLO, to draft this Statement while we are winding up, so that it can be issued right away.

Hon. Members: Yes.

Hon. Paul Muite: And if you are in agreement, perhaps it can be signed by four people. It can be signed by you, Mr. Vice President and the Vice Chairman there and perhaps Leader of the Official Opposition and myself. And we issue it as a signed Statement perhaps.

(Inaudible response from the floor).

Hon. Paul Muite: While we are discussing the date of the reopening.

(Inaudible response from the floor).

Hon. Paul Muite: I was suggesting that if they agree, perhaps we could be asking the Honourable Secretary to be drafting this Statement while we discuss about the date.

(Inaudible response from the floor).

Hon. Moody Awori: Thank you.

Hon. Simon Nyachae: Mr. Chairman, let us go step by step. The first one, and which is agreed and there is no debate about it, is the extension of the life of the Commission to 30th June, 2004. I think that one requires only one sentence. Right? That is agreed.

The second one, I think we have to be very careful the way we word this 30th or 31st March and June. I think we have to be very careful because if we become very rigid that it is 31st March, then we find that we have not finished for whatever reason, then you have to come back and explain to Kenyans why you have come back to extend again. I think we should say - the work programme we have agreed to – “It is expected that we will complete by 30th March”; expected. I must emphasize this. Expected to complete by 31st March, so that if we do not complete then we will not have made a total commitment. I know Honourable Godana may not agree with me, but that is the position.

The last point I want to make is this. Mr. Chairman, I think when we are going to Option 4, we should commit you, as the Leader of Government Business, we should commit the Opposition, we should commit the Speaker--

(Noise from the floor.)

Hon. Simon Nyachae: Yes! Because he is the one who guides us on the Parliamentary timetable, the Vice Chairman of the Commission and Hon. Muite as the Chairman of the Parliamentary Select Committee. We would be quite happy with those people and I would further move on and say that while the Statement is being drafted, let us have four Chairs there.

Hon. Members: Yes.

Hon. Simon Nyachae: You are not going to address a Press Conference out there, the rest of us will sit here, four of you will sit over there and address a Press Conference while we are all here. *(Laughter)*.

Hon. Members: Yes! *(Clapping)*

Com. Idha Salim: Mr. Chairman, if I may. Before we discuss the date of resumption, probably if I may just inform you, that once we agree on the dates, the Commission is going to put an advert in the Papers to inform the Delegates of these changes and of the reasons for postponement of the Conference and notifying them of the date of reconvening.

(Inaudible response from the floor)

Hon. Moody Awori: But up to now we have not said the date. Is it 5th or is it 12th?

(Debate on the floor)

Hon. Moody Awori: 12th ? Okay. Now, I see a lot of hands being raised. We have now just the date of reconvening. We are not going back to any points.

Com. Bishop Bernard Njoroge: Mr. Chairman, I was suggesting 12th January, because in the early week of January there are parents returning children to school and there is so much within the first week of January.

(Debate on the floor)

Hon. Moody Awori: Anyone else? Just the date. Therefore, it is agreed that it is 12th?

Hon. Members: Yes.

Hon. Moody Awori: Therefore PLO, the date of 12th. Whenever you are ready.

Com. Ahmed Hassan: I think we are over now.

Com. Idha Salim: Mr. Chairman, much as I would like not to be seen to be differing with one of my own Colleagues and in the light of the fact that time is of the essence, we would be happier I think with 5th January 2004, so that we start early and that way, gain time to work.

Hon. Members: No, no. 12th.

Hon. Moody Awori: Ladies and Gentlemen, let us sacrifice, let us make sacrifices and I think let us start on the 5th.

(Debate on the floor).

Hon. Prof. George Saitoti: I want to say something here. Mr. Chairman, I know it is the date of reconvening, but I believe let us be fairly honest with us. The first week of January is a time, I am sure, that all the Delegates or the majority of them will be busy looking for places in Form I, for their own children; it will be the same case with Standard One. It is also a period of great anxiety when many of them will be waiting to hear when the results will be announced.

Therefore, what we are likely to have, if we say that we report on the 5th, there is going to be a lot of absenteeism out there. But I think let us really go for a all inclusive gathering there. It will make a lot of sense.

Com. Charles Maranga: Mr. Chairman, I want to support the date of 12th for practical reasons.

Hon. Henry Obwocha: Mr. Chairman, I just wanted say that we should to make a compromise. That we know there are preparations, getting together, trying to get to the Conference, getting to the Hotels, that I was going to propose a Friday, which is on 9th, so that on Monday, 12th January, we start the work.

Hon. Henry Kosgey: Well, since you mentioned Henry and there are two Henry's around and I am the older one-- The date of 5th that was suggest earlier by the Vice Chairman and somebody else, I know everybody is talking, but I would like to talk and be heard. I do not subscribe to what Hon. Saitoti was talking about; "Oh, people will be looking for money", people will always be looking for money in other places. I think if we are serious and this is the point, Mr. Chairman, when we actually say that the Government should be serious and when we have made concessions even to this level, somebody still wants to get a few more days here and there. I support 5th and let us show that we are serious.

Hon. Moody Awori: Thank you, Henry. I think the consensus is on the 12th (*Laughing*). So, Henry, I think that is democracy (*laughter*). Thank you very much for your contribution. I think while waiting maybe, those who are going up there--

Hon. Paul Muite: *(Inaudible)*.

Hon. Moody Awori: The Chairman of the Select Committee is asking, is there Any Other Business?

Hon. Francis ole Kaparo: Mr. Chairman, I suggest--

(Inaudible noise on the floor).

Hon. Francis ole Kaparo: If I can have one meeting, Kipkalya arap Kones? Now, Mr. Chairman, I further suggest that we do proceed now with haste as a House, to have that resolution done next week.

Hon. Members: Tomorrow?

Hon. Francis ole Kaparo: To extend the life-- We could even do it tomorrow if you please.

Hon. Members: Let us do it tomorrow.

Hon. Francis ole Kaparo: We could do it tomorrow if we agree, because now there is no Business Committee until Tuesday, but now that we are all here, Mr. Chairman, I now recommend that you reconstitute yourself into the Chairman of the House Business Committee and we make that resolution then we can do it tomorrow, if you please.

Hon. Moody Awori: The House Business Committee is indeed constituted! *(Laughter)*

An Hon. Member: They are too many strangers, Mr. Chairman. *(Laughter)*

Hon. Moody Awori: It is agreed indeed that a resolution will have to be brought to the House tomorrow to extend the mandate of the CKRC to 30th June.

Hon. Paul Muite: Mr. Vice President and Honourable Speaker of the National Assembly, I think the Act does say that the resolution will come from the Parliamentary Select Committee.

(Inaudible response from the floor.)

Hon. Paul Muite: I think they need to bring it to us so that we can present it to--

Hon. Members: No, No!

Hon. Paul Muite: Mr. Chairman, I agree we present tomorrow, I am just saying we comply with the Act. I am quite happy, I will be present tomorrow, I shall present it, but it comes from the Parliamentary Select Committee, in accordance with the Act.

Hon. Francis ole Kaparo: Correct! You are here and we are here, that is the whole idea of all of us being here--

Hon. Moody Awori: Order! Order! Mr. Speaker. *(Laughter)*. Since the House Business has passed on to the Parliamentary Select Committee, so the Parliamentary Select Committee is sitting. Mr. Chairman, please. *(Laughter)*
(Referring to Paul Muite).

Hon. Paul Muite: Yes and the Parliamentary Select Committee - and I see all the Members here - have now resolved that they will present this resolution on the floor of the House tomorrow, Thursday, in the afternoon.

(Short adjournment for drafting of Press Statement)

PRESENTATION OF JOINT STATEMENT BY THE PARLIAMENTARY SELECT COMMITTEE, THE PARLIAMENTARY HOUSE BUSINESS COMMITTEE AND THE CONSTITUTION OF KENYA REVIEW COMMISSION ON 22ND OCTOBER 2003:

Hon. Moody Awori: (*Reading*)

The Parliamentary Select Committee and the Parliamentary House Business Committee and the Constitution of Kenya Review Commission met today, the 22nd day of October 2003 and after comprehensive consultation agreed as follow:

1. That owing to the heavy business agenda of the National Assembly which requires attention, it is not possible for Members of Parliament to attend the Proceedings of the National Constitutional Conference, if it reconvenes on 17th of November 2003.
2. That in appreciation of the above, the three organs unanimously agreed that the Conference reconvenes on Monday, the 12th day of January 2004 and is expected to conclude its business by the 31st day of March 2004.
3. That the mandate of the Constitution of Kenya Review Commission be extended by a resolution of the National Assembly to the 30th day of June 2004.
4. That the Constitution of Kenya Review Commission, as the managers of the Conference will publish a paid Statement in all the National Daily Newspapers, giving detailed reasons for the above decisions.

Dated at Nairobi this 22nd day of October 2003. It is also signed by:

1. Leader of Government Business;
2. Leader of the Official Opposition Party;
3. The Speaker of the National Assembly;
4. The Chairman of the Parliamentary Select Committee; and
5. The First Vice Chairperson of the CKRC.

Thank you very much. (*Clapping*).

Meeting was adjourned at 12.30 p.m.

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