

**CONSTITUTION OF KENYA REVIEW COMMISSION  
(CKRC)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

**Verbatim Report of**

**OFFICIAL OPENING OF THE NATIONAL CONSTITUTIONAL  
CONFERENCE BY H.E. THE PRESIDENT, HON. MWAI KIBAKI,  
CGH, M.P**

**AND**

**PRESENTATION OF RULES & REGULATIONS TO THE  
CONFERENCE, HELD AT BOMAS OF KENYA**

**ON**

**30<sup>TH</sup> APRIL 2003**

**THE OFFICIAL OPENING OF THE NATIONAL CONSTITUTIONAL CONFERENCE  
AT BOMAS OF KENYA BY H.E. THE PRESIDENT, THE HON. MWAI KIBAKI CGH,  
MP, ON WEDNESDAY APRIL 30, 2003 AT 10.00 A.M**

**President arrived at 11.15 am**

**Session started at 11.15 am**

**National Anthem:** Played by the Policemen's band.

**Master of Ceremony:** Get seated. We will start with prayers and the first person to lead us in prayers this morning is Most Reverend, Archbishop John Njenga, wa dhehebu la Kikatoliki.

**Archbishop John Njenga (Catholic Church):** (*Prayers*) In the name of the Father, and of the Son and of the Holy Spirit, Amen. Almighty and Eternal God, you have revealed Your grace to all nations especially to us Kenyans today. God of power and might, wisdom and justice, through You, authority is rightly administered, laws are enacted and judgment is decreed. Assist with Your Spirit of counsel and fortitude to the leaders of this country that their administration may be conducted in righteousness and be eminently useful to Your people over whom they preside. May they encourage due respect for virtue and religion. May they execute the laws with justice and mercy. May they seek to restrain crime and immorality.

Let the light of your divine wisdom direct the deliberations of the Constitution of Kenya Review Commission and shine forth on all the proceedings and laws supreme for our rule and government. May they seek to preserve peace and promote national happiness. And continue to bring us the blessings of liberty and equality. We pray for the Members of Parliament, Legislature and Judiciary, and all others who are entrusted to guard our political welfare. May they be enabled by Your powerful protection to discharge their duties with honesty and ability.

We likewise commit to You, Your abundant mercy to all Kenyan citizens, that we may be blessed in the knowledge and be sanctified in the observance of Your holy laws. May we be preserved in union and that peace which the world cannot give, and after the blessings of this life, be admitted to those which are eternal. We ask this through Christ our Lord, who lives and

reigns in the unity of the Holy Spirit, one God, forever and ever. In the name of the Father, and of the Son and of the Holy Spirit, Amen.

**Master of Ceremony:** Yule mwingine atakuja hapa ni Most Reverend Archbishop Benjamin Nzimbi, wa dhehebu la Anglikana.

**Archbishop Nzimbi: (Anglican Church) (Prayers)** In the name of God, the Father, Son and Holy Spirit. Almighty God, our heavenly Father who has given us the nation of Kenya; we thank you for the love You have shown to us Kenyans over the years.

Oh Lord, You rule all nations and direct them according to your will. We pray that you will guide our President, Honorable Mwai Kibaki and all leaders of our country so that they may always use the authority which you have given them for the peace of the world to your benefit, honor and development of our country of Kenya. And Almighty and Eternal God, lead us in meetings in this very important Conference for the purpose of making a Constitution for Kenyans, we pray that you may give us knowledge and sober minds.

Lord God, we pray that your will may be done in Kenya. May you give us solutions to all those issues, which are difficult so as to arrive at an understanding and agreement. Help us not to think of personalities and benefits of our organizations and institutions, but rather to think of that which will be good for the whole nation.

Our God we are agreeing that we want a new Constitution. Give us a Constitution that will bring us together, a Constitution which will hold us together. Yes, a Constitution which will make us prosper. God, You are the author of love, give us love in Kenya, you are the author of peace, give us peace in Kenya, you are the author of unity, give us unity in Kenya You are the author of justice, give us justice in Kenya.

Oh God of all creation, bless this our land and nation. We ask this in the name of Jesus Christ, our savior, Amen.

**Master of Ceremony:** Yule anafuata ni Sheikh Ahmed Mohammed Kassim, wa dhehebu la Kiislamu.

**Sheikh Ahmed Kassim (Muslim Prayers):** *Audhu bilahi mina sheytani rajim bismismilahi rahmani rahim*, kwa jina la Mwenyezi Mungu, mwingi wa rehema, mwenye kurehemu, sifa njema zote ni za Mwenyezi Mungu, Bwana wa walimwengu, mwingi wa rehema mwenye kurehemu. Mfalme wa siku ya malipo. Wewe peke yako twakuabudu na kwako peke yako twataka msaada. Tuongoze njia iliyonyooka. Njia ya wale uliowaneemesha, isiyokuwa ya wale waliokasirikiwa wala ya wale waliopotea.

Shukurani zote ni zako ewe Mwenyezi Mungu kwa kutupa nchi nzuri yenye amani na uthabiti. Nchi ambayo ijapokuwa ina makabila mbali mbali na dini mbali mbali, vile vile kumekuwa na usamehevu, ufahamiano na ustahamilivu. Tunakuomba ewe Mwenyezi Mungu uendelee kutuletea usamehevu, ustahamilivu na kufahamiana baina yetu.

Shukurani pia ni zako wewe Mwenyezi Mungu kwa kuifanya Kenya iwe ni nchi iliyo mfano bora na yenye kuheshimiwa ulimwengu mzima. Tunakuomba ewe Mwenyezi Mungu, uidumishe sifa hii kwa nchi yetu hii ya Kenya. Shukurani pia ni zako kwa kazi nzuri iliyofanywa na Tume ya Marekebisho ya Katiba chini ya uongozi wa Mwenyekiti wake, Profesa Yash Pal Ghai.

Tunakuomba ewe Mwenyezi Mungu, uwawezeshe waliomo katika Tume hiyo, waweze kukamilisha kazi hiyo nzuri pasi na kukumbwa na matatizo yoyote. Ewe Mwenyezi Mungu, ubariki mkutano huu, wa kujadili marekebisho ya Katiba. Na tunakuomba uwabariki hawa waja wako ambao ni wajumbe katika mkutano huu. Walinde na uwape busara na umakinifu wa kuzingatia maslahi ya nchi yetu hii ya Kenya. Waondoshee chuki, wivu au dharau baina yao au juu ya kundi lolote lile katika makundi yaliyoko katika nchi yetu hii.

Twakuomba ewe Mwenyezi Mungu, uwawezeshe hawa wajumbe katika kukubaliana juu ya Katiba ambayo itakuwa ni yenye kukuridhisha wewe Mwombaji wetu na ni yenye kuwaridhisha wananchi wote wa Kenya. Tunakuomba ewe Mwenyezi Mungu, udumishe haki na ubadhilifu

katika nchi yetu na uendelee kutupa viongozi ambao watakutumikia wewe na kutumikia serikali na nchi yetu pasi na mapendeleo wala ubinafsi.

Endelea kumpa afya nzuri na maisha marefu Mtukufu Rais wetu, Mheshimiwa Mwai Kibaki, na makame wake muaminifu, Mheshimiwa Kijana Wamalwa. Tunakuomba ewe Mwenyezi Mungu uwalinde mawaziri wote na manaibu wao na watumizi wote wa serikali. Wasaidie ewe Mwenyezi Mungu ili waweze kutekeleza wajibu wao kwa njia inayofaa.

Ewe Mwenyezi Mungu, tuzidishie imani kwako na iepushe nchi yetu na maafa ya aina zote na badala yake, tulettee mafanikio, maendeleo na baraka zako zitokazo mbinguni na ardhini, kama ulivyotuahidi katika Kitabu chako Kitukufu Quran uliposema “*na lau kama watu wa miji wangeliamini na wakamcha Mungu, kwa yakini, tungewafunulia baraka kutoka mbinguni na kutoka ardhi.*” Ewe Mwenyezi Mungu, mteremshie rehema na amani kipenzi chako, mtume wako wa mwisho *Allahu masalin alaa sayidina muhamaad waala alihi wasalam. Amin*

**Master of Ceremony:** Yule anafuata sasa ni Ram Krishna Sharma, wa dhehebu la Kihindi.

**Ram Krishna Sharma: (Hindu Prayers)** Please stand up for our prayer.

*(Chanting in Hindu)* Oh God, the giver of life, remover of pains and sorrows, bestower of happiness and creator of the universe, Thou art most dominant, pure and adorable. We meditate on Thee, may thou inspire us and guide our interact in the right direction.

Oh, all pervading Lord, our protector and (?) host of all divine grace, may Thou further fulfill of our desires and attainments, oh bless, shower the blessings from all sides on us, for our peace and well being. Oh Lord divine, may all the physical elements be auspicious for us. May the holy words of the Verdic speech (?) pure knowledge be the source of universal peace and happiness. May the generous one and who have taken the vow of serving all living beings be the promoter of general welfare and may all the heavenly objects, together with our product of earth and mortals be helpful to our prosperity.

Oh Lord, you are the personification of knowledge. Show us the right path which leads to true knowledge so that we may attain (?) and knowledge in our lives through righteous

deeds. Chase away all our ill feelings and sins. We offer in every way our homage and salutation to thee, oh thee supreme and most merciful Lord today. All members and delegates of the National Constitution of Kenya Review Commission, together with their other friends have assembled here to offer their prayers to Thee. Grant them wisdom and understanding for the promotion of mortal love and affection. May they work together with joint effort to achieve success in their undertaking with Your help.

Oh Lord God, may we live in harmony and thankfulness may we be organized and co-operative. May we speak with one voice and make our resolutions with one mind. Let the (?) the place of our assembly, all to be common. Our mind should be of one accord and let our hearts be united together. We also pray for our beloved President, Honorable Mwai Kibaki for his long and healthy life. Oh Lord, lead us from untruth to truth, lead us from darkness to life and lead us from death to immortality. Oh Lord, in Thee may all be happy, may all be free from misery, may all realize goodness and may no one suffer pain. *Om shanti shanti shanti!*

**Master of Ceremony:** You can sit down for the last prayer. Our last prayer this morning ni kutoka kwa Ole Saipein Lekoolol, with the indigenous tongue.

**Ole Saipein Lekoolol (Traditional Prayers):** *(In vernacular)*

*Applause from the audience*

**Master of Ceremony:** Asanteni sana. Kwa wakati huu, I call upon the Chairman of the Commission, Professor Pal Ghai to conduct one short ceremony of swearing in. Mr. Chairman.

**Prof. Ghai:** I will first call upon the Honorable, Speaker, Francis ole Kaparo, to take the oath.

**Hon. Francis Ole Kaparo:** I, **Francis Ole Kaparo**, being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the

exercise of the functions and powers as such delegate, I shall at all times be guided by the national interest. So help me God.

*Applause from the audience*

**Prof. Ghai:** I now call upon the Vice President, His Excellency Wamalwa Kijana to take the oath.

**Hon. Kijana Wamalwa:** I, **Michael Christopher Wamalwa**, being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such delegate, I shall at all times be guided by the national interest. So help me God.

*Applause from the audience*

**Prof. Ghai:** May I please ask you all to rise as the President takes his oath.

**H.E. the President, Hon. Mwai Kibaki:** I, **Mwai Kibaki**, being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such delegate, I shall at all times be guided by the national interest. So help me God.

*Applause from the audience*

**Master of Ceremony:** Thank you, thank you, thank you very much. Mheshimiwa Rais, Honorable Mwai Kibaki, Mheshimiwa Makamu wa Rais, Honorable Michael Kijana,

waheshimiwa mawaziri na manaibu wa mawaziri, waheshimiwa wabunge, wajumbe na kamati ya urekebishaji wa Katiba, members of the Diplomatic corps present here, mabibi na mabwana, kuwatumbuiza hapa siku ya leo, tuna timu tatu na vitimbi. Na ile timu ya kwanza ni Bomas of Kenya, ambayo itawatumbuiza na wimbo mmoja, *Isikuti*, karibuni.

***Entertainment by the Bomas of Kenya Dancers and the Vitimbi Actors***

**Master of Ceremony:** Now I call upon the Chairman of the Review Commission, Professor Yash Pal Ghai lead us through the rest of the programme.

**Prof. Yash Pal Ghai:** Your Excellency President Mwai Kibaki, the First Lady Mrs. Kibaki, Your Excellency Vice President Michael Wamalwa, the Honourable Speaker Francis Ole Kaparo, Your Excellencies High Commissioners and Ambassadors, blessed Somali Peace Makers who are amongst us today, Honourable delegates, distinguished observers, ladies and gentlemen, it gives me very great pleasure to welcome you all to the formal inauguration of the National Constitutional Conference here at the Bomas of Kenya. The review process has a long history. Affairs of that process began in this very chamber on the 11<sup>th</sup> of May 1998. The most formal process that we are now engaged upon started in November 2000, and has now reached its final and critical stage.

The purpose of the review is to enable Kenyans to adopt a Constitution which responds to their needs and their aspirations. In particular, the Constitution of Kenya Review Act requires the new Constitution to uphold and promote national community, democracy, good governance, the rule of law, human rights and social justice. The review has been wide ranging and has actively engaged numerous Kenyans. The review among other things has been an act of self-discovery for us as a nation. Kenyans have explored their constitutional, political and social historical experiences of the last 40 years and have also looked at the Constitutions of many foreign states. The people have expressed freely their hopes for the future. It is a remarkable consensus among the people on the way forward. The Constitution of Kenya Review Commission has proposed a draft, which builds on this consensus.



The process has been rich and complex in which many valuable resources and the energy intellectual, emotional and physical of the people have been invested. The review started with public discussion of the aims and procedure of the review and fundamental constitutional concepts. The views and recommendations of the people were then collected and carefully analyzed. In September last year, the Commission published its report and the draft Constitution which has since been widely circulated and widely debated. Different organs have had responsibility of the carriage of the process. The process was difficult to start with but to separate and then the joint effort of Parliament and the Ufungamano initiative established a common framework within which all Kenyans could take part in the review. Then the primary responsibility for us to the Review Commission which is supposed to be an independent and professional body. Today the primary responsibility is passing to the National Constitutional Conference which is mandated to discuss, debate, amend, and adopt the draft Constitution. The Conference performs for us many of the tasks that are performed in other countries by a constituent assembly.

It is the most representative body of Kenyans which has ever gathered together to design its Constitution and to determine its system of governance. It brings together all the key sectors and stake holders of society. It has had the benefit of more than 2 years of national debate on the country's future in a process which has been inclusive, participatory and has I brought forward a large number of ideas. The Conference has a heavy responsibility. Kenyans now recognize the importance of the Constitution and increasingly realize its role in empowering them through various democratic institutions and processes. They see in the protection of rights, the basis of participation, accountability and social justice. In good governance the notice, the retreat from the appropriation and personalization of state powers and the basis of a better management of the economy and the national resources. Above all, they realize that the peaceful and protected co-existence of our different communities depends critically on the rules of the Constitution which recognize by our diversities at the same time, as they provide for cooperation and unity.

At this critical moment in Kenya's history, the country finds itself in the transition from authoritarianism to democracy. At this moment, the role of the Constitution is fundamental, either in consolidating democracy and human rights or facilitating the reversion to bad old ways. It is clear to me even the very peaceful transition that we have had, that we are going to make a

Constitution which will consolidate the gains we have made in recent weeks. Kenyans showed their strong preference in the last general elections for democracy, accountability and non-ethnic politics. It is the responsibility of the delegates to this Conference to give the country a Constitution which promotes these values. This can be done if the delegates remain true to the oath of appointment, which requires them to place the national interest above all. In the scheme of the review process, the Conference is a negotiating forum to resolve the kind of differences which have surfaced in recent weeks. However, the scheme of review which emphasizes participation, tolerance and consensus also assumes and requires a principle form of negotiations which uphold the goals of review.

The Conference is also a forum for improvements to the draft Constitution. I would be the last to claim that the Commission has produced a perfect Constitution if there is ever such a thing. The extensive public comments on the draft show ways in which it can be improved. I believe that not only does the task of improvement of the draft constitutionally belong to the Conference, but also that the Conference is capable of doing so in a reasonable period of time. We are particularly honoured today by the visit of His Excellency the President, who is also of course a delegate to the Conference. President Kibaki has always stood for constitutional principles of democracy, accountability and integrity. In the short time that his government has been in office, he has shown his resolve to rid the country of corruption and other abuses of state powers. *(Applause)*

Injustices of the past are being corrected, and social justice has become a central concern of his government. New avenues of complaints by citizens against mal-administration are being set up. In these and other ways, President Kibaki is anticipating the reforms that are contained in the draft Constitution. The adoption of the draft will provide secure constitutional foundations for these reforms.

I would like to thank the President for his unfailing support of the review process. At a personal level, I am grateful to him for supporting my efforts in 2000 and 2001 to bring about the merger of the rival processes of the review, those of the Ufungamano initiative and the Parliament. Without that merger, we would not be sitting here today on the eve of what I believe is going to

be an excellent Constitution. It was Sir, your foresight, and the concern with the unity of the nation that led you support the merger for which we are gathered here. Thank you. (*Applause*)

It is now my pleasure to invite Honourable Paul Muite, Chairman of the Parliamentary Select Committee on the Constitution to address you.

**Hon. Paul Muite:** Your Excellency, Mwai Kibaki, President of the Republic of Kenya and Commander in Chief of the Armed Forces, the First lady, Lucy Kibaki, your Excellency the Vice President of the Republic of Kenya, Honourable Michael Wamalwa Kijana, the Chair CKRC, Professor Yash Ghai, the Speaker of the National Assembly, Francis Ole Kaparo, Honourable Cabinet Ministers, Assistant Ministers, Honourable Members of Parliament, Honourable Commissioners of the CKRC, High Commissioners and Ambassadors, our religious leaders, fellow delegates, invited guests, ladies and gentlemen.

This is a joyous occasion for the entire Kenyan nation, because it marks the culmination of what has been truly a long struggle; a just struggle by the Kenyan people in their demands to rewrite their Constitution. It is a joyous occasion here today which marks the beginning of the final phase in the rewriting of the Kenyan Constitution by the Kenyan people. The journey has been long and at times very exciting and interesting. At one stage of that journey, I remember seeing the Vice President at Central Park in Nairobi, lying on his back with his legs in the air, unable to breath because of a very thick cloud of tear gas. At that very moment, my legs were carrying me at a speed I did not know before that I had. (*Laughter and applause*) towards St. Andrews Church, where I eventually found refuge. I do remember that the President was walking at a rather fast pace towards the All Saints Cathedral where he too found some sanctuary. It is therefore very fitting, Your Excellency, that you should be the one opening this ceremony today, because you have been in the forefront. Not just in Uhuru Park, but in fact in Ufungumano, and as the Chair has said, you played a critical role in unifying the two processes.

I would like to take this opportunity to pay special tribute to Professor Yash Ghai because of the unique role which he played at that time in unifying the two processes. I would like to pay tribute also to the religious leaders, because of the role you have continued to play over the years as peace makers in reconciling sometimes different desperate groups, but above all, because of

your prayers for the process and for the Kenyan nation. As we now enter the final phase, we as a nation in this process we will continue to need your prayers as our religious leaders, and we will continue to need you as reconcilers and as peacemakers. I would also wish to pay tribute to all the Commissioners, the 27 Commissioners, because they have delivered a draft which is going to form the basis of debate and discussions and we know that the journey has not been simple, it has been difficult, and at times in very hostile atmosphere.

As we now enter the final phase, I would like to appeal to each of us 600 or so delegates, on whose shoulders, history has placed a sacred duty of guiding the rewriting of this Constitution. When we are assembled here, we must keep remembering that from the very beginning, the Kenyan people demanded to rewrite the Constitution themselves. They did not want a parliamentary driven process. They did not want Parliament to rewrite the Constitution for them, (*Applause*) nor did they want the KANU government that was, to rewrite the Constitution for them. Equally, what I hear is that the Kenyan people do not want the NARC Government to rewrite the Constitution for them. They want to do so (*Applause*) themselves. I want to pay tribute to the NARC Government, because of the commitment which the Government has exhibited in wishing to provide the environment for the Kenyan people to rewrite that Constitution. What we need to ask ourselves, is why the Kenyan people opted to rewrite the Constitution themselves. In my view, it is because the Kenyan people want the new Constitutional dispensation to be people centered. We want a Constitution which is going to provide a just management of the nation's resources, a just and equitable distribution of the resources of this nation. We want to see a Constitution which will have as its objective the uplifting of the economic, social situation of the Kenyan people. It must be people centered.

Now as we go to into the final phase, my appeal is that we exercise maximum patience. Let us listen to each other. Let us be tolerant. Even where what is being said may be most unpalatable to your ears, please let us accord the person or persons saying it the opportunity to say so, so that you too in turn can have the opportunity to say something that may be equally unpalatable to the other side. Constitution is about developing a consensus; a Constitution is about building a nation. May God bless the Kenyan Nation. (*Applause*)

I wish to take this opportunity to invite the Honourable Francis Ole Kaparo, Speaker of the National Assembly, to address the gathering. Thank you. (*Applause*)

**Hon. Francis Ole Kaparo:** Your Excellency the President and Commander in Chief of the Armed Forces of the Republic of Kenya, the Honourable Mwai Kibaki, your Excellency the First lady Honourable Lucy Kibaki, Honourable Michael Wamalwa, the Vice President of the Republic of Kenya, Professor Yash Pal Ghai, Chairman of the Constitution of Kenya Review Commission, Honourable Ministers, Honourable Members of Parliament, fellow delegates, members of the Diplomatic Corp, ladies and gentlemen.

Your Excellency and delegates, although I do have a Speech here it will certainly be shorter than that of the Professor Yash Pal Ghai and the unwritten speech of Mr. Paul Muite. I will do this because Your Excellency, although I am called Speaker, I am actually paid not to speak. (*Laughter*) However, I will seek your indulgence this morning to say a few words about what is happening today, and will continue to happen in the next one month.

Your Excellency, the road to this National Constitutional Conference has been long and difficult. At times, it appeared like the process was going to be still born. Kenyans demonstrated hope and some died in the course of constitutional reform. It was in answer to this overwhelming demand for constitutional review that Parliament put in place the legal mechanism for reviewing the Constitution in the year 2000, through the Constitution of Kenya Review Act Cap 3, of the laws of Kenya. Parliament, when the occasion demanded, amended the said Act to remove any bottlenecks that may have wrecked the constitutional process. We even established a Select Committee to oversee the review process. As Parliament we are happy that at long last Kenyans, through their elected representatives and delegates, are here to discuss the draft Constitution of Kenya review bill.

Your Excellency and fellow delegates, this is a historic moment for our country. We have the singular opportunity to write a new Constitution for our country. Let us rise to the occasion with a nationalistic path. Let us think of Kenya two years, and long after we are all dead. We should make our deliberations devoid of personal and parochial interests. (*Applause*)

It is now, Your Excellency my great pleasure to invite the Vice President, the Honourable Michael Wamalwa to welcome Your Excellency to open this Conference. Your Excellency, the Vice President. (*Applause*)

**H. E the Vice President, Hon. Kijana Wamalwa:** Your Excellency Mwai Kibaki, President of the Republic of Kenya, Mrs Kibaki, First Lady of Kenya, the Chairman of the Constitution Review Commission Professor Yash Pal Ghai, all the Commissioners, Honourable Ministers, Honourable Assistant Ministers, Excellencies, High Commissioners and I am told there is an observer group from the on going Somalia Constitutional negotiations, fellow delegates, ladies and gentlemen.

The tradition according to the system that we are trying to change from today has been that the Vice President was to be seen and not to be heard. (*Laughter and applause*) So I do thank you, Your Excellency, for giving me the latitude to say a word or two before I invite you to address this distinguished gathering. (*Applause*)

Distinguished Delegates, this is a momentous occasion in the life of the Kenyan nation. For today we are gathered here to redefine our political, cultural and social economic future through the process of crafting a new Constitution. In the whole history of mankind, only a few generations have been given the privilege of rewriting the laws of their country and we are among them. Today we are ranged alongside Thomas Jefferson, Napoleon Bonaparte and other people who have made it their duty to define laws that would serve their countries for posterity. (*Applause*)

Constitution making in Kenya has been a long and rocky process. We have gone through hell and back, and to be here finally we must thank the Almighty to have kept us alive and having given us this privilege. Ladies and gentlemen, we in this nation are of many tribes and many religions and many cultures. This is not a weakness, this is the strength of this Republic. (*Applause*) In our efforts to write the supreme law of the land, we must go the extra mile to cater for every community however small, (*applause*) for every religious sect however small, for

every Kenyan, who has a view. For the Constitution is the defender of the weak, the protector of the mighty and the not so mighty, and the modern defender of the faiths in plural.

Ladies and gentlemen, I am sure that we shall succeed in discharging this noble duty that Kenyans have given us the privilege to perform. Many people would have loved to be here today, but the few of us were chosen. We shall be participating in the rewriting of the history of our Country in golden letters. Ladies and gentlemen, I will call upon you to exercise utmost patience, utmost accommodation in this noble task, so that we can give our country a Constitution that future generations will be proud of. As I said, today is the President's day, and it is now my pleasure and honour to call upon the President of the Republic of Kenya to officially open this Conference. Mr. President. (*Applause*)

**H. E the President, Hon. Mwai Kibaki:** Thank you Ladies and Gentlemen.

Ladies and Gentlemen, it is a great joy to be here and to be with you and to be with every other Kenyan who is interested in this new Constitution. It is a joy to be here because on this occasion, we are called upon to write a new proper Constitution of the Republic of Kenya. So, let us not quarrel over small matters. *Applause.* Let us contribute what we would like to be a lasting guide to Kenyans. Let us contribute to every Kenyan, not just for our own self. If we do so, I am sure that we will be doing a very good job to this nation.

Ladies and Gentlemen, this Conference is the culmination of a long struggle by the people of Kenya; a struggle of justice and the recovery of their rights, a struggle for fair and efficient governance, the struggle for the reaffirmation of our destiny as a common political community of Kenyans over the last two decades, the freedom which the people of Kenya fought and died for was snatched from them. The people were deprived of their property and many were denied the opportunity to earn a livelihood. Corruption by leaders became common place. More than half of the entire population was condemned to absolute poverty. It was against this corruption and tyranny that many brave and patriotic Kenyans fought for their rights. Through their efforts we came out of the dark days of one party rule, detention without trial is no more, the Nyayo house torture chambers have been closed forever. *Applause.*

Let us today remember those Kenyans who gave their lives, limbs, careers and suffered torture so that we might again be free. **Applause.** And let us be proud of the indomitable spirit of the freedom fighters. It is indeed the ‘*unbwogable*’ spirit of Kenyans that has brought us where we are. I should like to pay special tribute to Civil Society organizations which played a leading role to bring us to this stage in our review process. Their vigilance and research were essential. The Ufungamano institute has provided inspired leadership and kept our hopes alive in difficult moments. By their own example of unity in diversity, they showed Kenyans the path to the future. The best homage we can pay to all of them is to act in the best interest of our nation and to fight for more democracy and freedom. My government pledges to support this process in every way. We shall not interfere with the review process. **Applause.**

The Constitution of Kenya Review Act sets out the agenda of reform that the Country agreed at Bomas of Kenya and Safari Park in 1998. It is important to remind you these facts; that particular history. All the organs of review, including the Conference and the Parliament, are bound by certain key values. These are democracy, transparency, accountability, integrity and people’s participation in rights and freedoms. The organs of the review must ensure protection of minorities and the dignity of all Kenyans. **Applause.** There are different ways to achieve these values. The delegates must debate vigorously the merits and the demerits of different options. But, these are the values that we as a nation have always committed ourselves to. This Conference must be guided by them. I have been greatly encouraged by the process followed so far.

In the beginning, we were able to overcome deep divisions to create a joint process. That decision required great courage on the part of many political and social groups. The Review Commission did a good job in informing the people of the process and the issues. It provided people with ample opportunities to express their views. People turned out in their thousands to give recommendations to the Commission. They spoke freely and without fear. They made many sensible proposals. These were diligently analyzed. Therefore, we don’t have to go back over those. The process turned out to be the first audit by the people of their nation, since Independence. It happened; people’s recognition of their own strategy. It is unlikely that they will ever accept the dictatorship that previous regimes imposed on them.



I congratulate the Review Commission for a draft Constitution which shows great respect for the people. *Applause*. It is not my intention to preempt, interfere or influence the debate of the Conference, but it is my belief that even the best can be made better. *Applause*. The consultative process had other benefits; it is the affirmed identity as Kenyans. It developed a vision of Kenya which is critical to nation building. It has strengthened the national unity just as the last general elections did. It enabled us to be a people who are prepared to listen to others. It has been peaceful and participatory. People waited patiently for hours, sometimes in the hot sun, sometimes in the rain to express their views. I hope that this kind of open and peaceful process will be an enviable example to us all.

This Conference is a gathering of the whole nation. It should strengthen national unity. The delegates must discharge their duties responsibly. You must be mindful of the national interests. As individuals, we are bound to have our own personal interests. However as Kenyans, we are enjoined to promote national good, the integrity of the state and the rights and welfare of the people. Our narrow interests must be subordinated to the greater good. Like a constituent assembly, we represent the nation and we are accountable to all the people in that nation. Different groups have presented different proposals. These proposals should not be written in stone. We should be ready to listen to each other. Listening is an essential democratic attribute. Good ideas should give way to better ones.

I urge all delegates to shun parochialism and dogmatism in the heat and dust of conflict to remove dictatorship and many proposals which were made to the Commission. This Conference now offers an opportunity for more sober reflection. The prevailing peace and tranquility offers the Delegates an opportunity to arrive at a more practical and realistic conclusion. This Constitution is not being reviewed for an individual, for a group or community; the Constitution is bigger than us all; it is for more posterity. *Applause*. It is my government's wish that this process be concluded as soon as possible because we are busy doing - not waiting until it is concluded, things to promote development. However, decision with regard to its duration belongs to the people of Kenya and this Conference. My government is committed to the establishment of a new democratic culture in this country. The peaceful transition of last year and this participatory review process are part of a new culture for which Kenya is now much admired, both at home and abroad. It is my wish that Kenya remains one inseparable and



## **PRESENTATION OF RULES AND REGULATIONS TO THE CONFERENCE**

The meeting started at **3.00 p.m.**

**Patrick Lumumba:** We are organizing payments for delegates and we will be making that announcement in the next few minutes. Now I will hand the chair to Prof. Yash Pal Ghai to proceed with this session this afternoon. Thank you very much.

**Prof. Yash Pal Ghai:** Well, welcome back and we resume our session for the afternoon. I notice that many delegates are not in the room now and it may be that we should try to conclude our meeting at about four or four thirty. What we would like to do now is to give you some information about the Regulations and in particular about the formation of a Steering Committee of the delegates to the Conference. The Steering Committee will be responsible for managing the work and programmes of the Conference and it is important that we get good representatives who can speak on behalf of all the delegates. You have received Regulations that have been enacted by the CKRC as required under the legislation.

The Regulations provide for the establishment of, among other committees, the Steering Committee and we want to discuss with you today the principles which we should use to establish such a body. The Regulations provide for the composition of the Steering Committee, but we believe that we could benefit from more detailed rules of understanding so that we secure the representation of all categories of members of this Conference. And we may also want to consider whether we need to extend the size of the Steering Committee so that we are all able to include representatives from all the categories.

It may be that we will not have time to discuss the other Regulations, we had hoped to do so, but we are running out of time and we do not really have a full house, so we will maybe briefly describe some of the other Regulations. Today we would like to talk about the Steering Committee and perhaps to suggest a method whereby we can elect or nominate members to the Steering Committee. Perhaps that will have to be done on Friday so that tomorrow can be used by different groups for internal consultation and that will enable us to proceed with some speed when we meet on Friday.

I am going to ask the Chair of the Parliamentary Select Committee, Hon. Paul Muite, to further explain the proposal for these Steering Committees. I can say that the Select Committee and the CKRC had an informal meeting yesterday to discuss these issues and we have certain proposals that Hon. Muite will put to you. So with that I pass the floor to Hon. Muite.

**Hon. Paul Muite:** Thank you, Prof. Yash Ghai. I want to inform my fellow delegates that up to this point in time, up to today, the management of this process has been in the hands of CKRC as constituted by the Act of Parliament and they have been conducting this process in consultation with the Parliamentary Select Committee, that is why we have been having consultative meetings. But under the Act, from today this process is now in your hands. The management of the process from now on is in the hands of the Delegates. So truly the CKRC and the Parliamentary Select Committee are anxious to hand over management to a committee which is set out in the rules, the Steering Committee, which is going to be constituted by you and from now on, once the Committee is constituted, it is going to take charge of the management of this process, of course together with you and on your behalf. And because the management of this process is going to be in the hands of the Steering Committee, it is extremely important that we constitute a Steering Committee which is going to be effective, and which is going to be representative. For example under Regulations, and Prof. Okoth-Ogendo will take you through the particular Regulations in a short while we are required to have two delegates from each Province to sit on the Steering Committee. And this is the committee that is going to take over the management of this process from now on.

We need to agree as delegates on how we are going to identify, select, nominate or elect the two delegates who are going to represent each Province. What the Parliamentary Select Committee and the CKRC were suggesting, we are laying this proposal to the delegates and the decision is that of the delegates. The Regulations say that of the two Delegates one should be a woman and the other one a man. Those are the two representatives from each Province to sit on the Steering Committee. The suggestion we were making jointly as the PSC and CKRC is that perhaps, logistically, one of the ways in which we could go electing these two delegates is to ask the district representatives. As you know each district has got three delegates. So if a Province has got several districts, there would be three delegates from each of those districts in that Province.

We were suggesting that one of the ways of a Province electing the two individuals to sit on the Steering Committee is to ask all the delegates from all the districts in that particular Province to congregate with all the Members of Parliament from that particular Province so that you can focus and bring forward two members to serve on the Steering Committee. I do not know whether that would be an acceptable way of going forward. If it is acceptable then we can perhaps move from there. I doubt that we would be able to decide which Province here, but perhaps you can consult for the rest of the day once we finish the business here and tomorrow which is a public holiday. So when we come on Friday we listen to our Lancaster Conference participants in the morning then in the afternoon when we resume we can now properly constitute that Steering Committee in terms of names for the individuals who are going to serve on that Steering Committee. It is very important that before we get to any other serious business we constitute it. Yes!

**Hon Delegate William Ole Yiaile:** My names are William Ole Yiaile from Narok. I come from Rift Valley, and it was our prayer, knowing the great diversity of the Rift Valley..., the size of Rift Valley constitutes one third of this nation. With all due respect, dear delegates, we are praying that Rift Valley be divided into north and south and I think we want it like that so that we get fair representation. That is my plea to you Chair, the entire Commission and dear delegates.

**Hon. Paul Muite:** Yes I hear the Delegate from Narok; the only modification is that your request is to the delegates assembled here. This is the new culture we are trying to develop; it is for them to make a decision. But just to mention, Nairobi with 3 million people has got only one delegate to come and serve on the Steering Committee. But perhaps we could hear more views on the request from the member delegate from Narok on behalf of Rift Valley. Are there people with any views to express on that particular issue? Yes, Com. Lenaola? Sorry, somebody passing the microphone? Let the microphone reach you so that we can all hear you.

**Speaker:** Mr. Chairman, I was thinking that the political parties should also be effectively represented in the Steering Committee, especially those small parties. The small parties are the ones which are not in Parliament. They should be considered specially, or else they will just die

a natural death. So I ask you to take at least one delegate from each party to the Steering Committee. Asante sana.

**Hon. Paul Muite:** I can hear the views of the delegate although you did not say your name. I was trying, in order to guide progress, to invite reactions on the request from the member from Narok on behalf of Rift Valley. Perhaps one way forward is to say that the delegates have heard your request. Shall we give then an opportunity between now and Friday, because we are not electing these delegates today, and get a final position on Friday.

**Mr. Njuguna Ndung'u:** My names are Njuguna Ndung'u, a delegate from United Political Party. I stand to support the view expressed by the delegate from Narok, that if we go by the formula you suggested, the representation will be very inequitable to some of the Provinces, particularly our brothers from the Rift Valley. Maybe Mr. Chairman, it is good to review the position you have taken when you say two delegates per Province; is it in the rules or is it for this Conference to decide? If we decide on the floor Mr. Chairman, let us look for a more equitable representation so that the delegates from Rift Valley who are more than sixty or around that number and those from other Provinces who are less than twenty will be equitably represented in the Steering Committee.

I have a suggestion, Mr. chairman, while looking at the bigger picture of the Provinces, it is also important to consider the various constituencies beside the Provinces. We have, for example, the Civil Society, Religious Organizations and we have the request from my friend there from Political Parties, that the Political Parties be represented in the Steering Committee. I am therefore suggesting, Mr. Chairman, if we could look at the representation on the number of delegates and if we look at the Provinces, two is good enough from your side, but I would be proposing that we have three delegates from each Province. Thank you.

**Prof. Yash Pal Ghai:** Could I intervene at this stage and say that perhaps we should have Hon. Muite giving us an account on the size of the Steering Committee and the way in which the members are distributed among different constituencies as you put it. So after we have had an account of the total composition as proposed, we can then proceed to see whether there is a fair distribution and whether we will need to increase some categories. I wonder whether Prof.

Ogendo would like to spell out the proposal that was developed by the CRCC as modified in a meeting yesterday with the Select Committee.

**Prof. Okoth-Ogendo:** Thank you, Mr. Chairman, I think in order to guide the delegates, the Steering Committee consists of two groups of people. One group are people who are ex-officio and therefore do not have to be elected by the Conference. The other group which is the most important group are 32 members who should come from the Conference and these are the voting members of the Steering Committee. The suggestion is, among those 32 members you have three Vice Chairs of the Conference who will also be the Vice Chairs of the Steering Committee. The three Vice Chairs will be nominated as follows:

- i) By the Parliamentary Select Committee on the Constitution Review.
- ii) By the Conference, one of whom must be a woman.

Then there are 16 regional or provincial representatives, two from each Province, and we have used the formula under the Act; we treat Provinces as equal, that is what the Act says. The Draft Constitution also as you notice treats Provinces as equal and that is why we have provided for 16 for the 8 Provinces, and the suggestion is that those 16 representative be proposed by delegates from those Provinces and when we are saying delegates from those Provinces we mean the district delegates plus their Members of Parliament, and that the Provinces should ensure that of the two delegates, they propose a man and a woman. And when they propose a man and a woman not both of them should be Members of Parliament.

That then leaves you with 13 other representatives to be nominated as follows:

- i) 5 from Parliament, and when we say Parliament we are talking of Political Parties.
- ii) 3 from Religious organizations.
- iii) 1 from Professional bodies.
- iv) 1 from Women organizations.
- v) 1 from Trade Union.
- vi) 2 from NGO sector.

And we are suggesting that these representatives should be proposed by their respective categories. Once the names of those 32 to represent the core of the Steering Committee are received, then out of those people the conveners of working groups will be appointed. The working groups at the moment are 12, and the suggestion is that each Province should propose at least 7 names for each of the working groups which are listed in the hand book which you have, and that the proposals should consider the expertise of delegates in the thematic area of each committee and the proposal should also pay attention to religious, gender and ethnic considerations.

In addition to that, there are two standing committees of the Conference which will require delegate presentation and that is the Committee on Privileges, Discipline and Welfare eight delegates are needed on that Committee - and the Media Advisory Committee, 4 delegates are required on that committee. We have not set out how to get those 8 and those 4. The conveners of these two working committees will be part of the Steering Committee but once the Steering Committee is constituted they will be appointed and therefore in choosing the 8 delegates for the Privileges Committee, the suggestion is not to indicate who the convener is going to be. The convener will come from the Steering Committee.

So that is the proposal, in other words we are mixing both provincial representation and district representation according to the category stated in Section 27 of the Act. Thank you very much.

**Hon. Samuel Arap Ngeny:** Point of order.

**Hon. Paul Muite:** Yes please.

**Hon. Samuel Arap Ng'eny:** My names are Samuel Arap Ng'eny, Religious Organizations, and I am rising on a point of order. According to the orders for the day, we were supposed to be taken through the procedures of this Conference. I think what you have done is to go to the Steering Committee which is one part of the procedures of the Conference and therefore I think the meeting is getting a little mixed up. Would we be led through so that the Steering Committee position fits into that process? Otherwise the way I am seeing is that we are going to decide things a little bit askewed. Thank you very much that is my point of order.



**Prof. Yash Pal Ghai:** Is that the wish of the House? We had thought that it was important to get the Steering Committee established as soon as possible to take charge of the process, but if the delegates wish to look at the Regulations as they have been gazetted and as the order paper has indicated we shall be happy to follow the procedure. Could I have a sense of what the delegates would like to do? How many of you would like to continue with the discussion on the Steering Committee first and then come to the Regulations? And how many of you would like to look at the Regulations in order in which they are published? I see a slight majority in favour of the Regulations. I do not have a clear sense of what you want, so can you put up your hands if you want to continue the discussion on the Steering Committee? May be you could stand, it will be easier for us to see from this distance.

**Hon. Ole Kaparo:** Point of order, Mr. Chairman.

**Prof. Yash Pal Ghai:** Mr. Speaker, yes. Could you wait till you have a microphone, please.

**Hon. Ole Kaparo:** Mr. Chairman, what we are embarking on today and from today henceforth is a very important process, it is so important that the nation for a long time has been captivated by it. Mr. Chairman, we cannot follow the proceedings properly; we want the public address system rectified first so that we can understand every word said, either by you, Mr. Chairman, or by any other delegate. We are straining very hard to hear what you are saying and what other delegates are saying. So can we have the public address system rectified first and foremost.

**Mr. Kenneth Njiru:** Point of order, Mr. Chairman. My name is Kenneth Njiru I would like to suggest that since what we are going through now is also important and we have already started instead of abandoning it now, why don't we just finish and then we go to the other business, because we still have to do everything else.

**Hon. Paul Muite:** Who is in-charge of this public address system? Can we have the technicians to tell us whether it is something that they can fix? Where is Mr. Ochillo Ayacko to give us an explanation!

**Hon. Martin Shikuku:** Point of order.

**Hon Muite:** Yes Mheshimiwa Martin Shikuku?

**Hon. Martin Shikuku:** Mr. Chairman I do not know whether I have got the right order paper. If you look at order paper number 6, official address by His Excellency Hon. Kibaki, that we have finished. Next, Presentation of Rules of the Conference, why are we skipping, could we stick to the order paper? You go through the rules and the next order number 8, presentation of management of the Conference, and the responsibilities of the Committees. So we shall discuss what we are discussing when we get to number 8. Thank you.

**Hon. Paul Muite:** I think what the chairman, Prof. Yash Pal Ghai, was attempting to do first of all Mheshimiwa Martin Shikuku, is quite right about the order of the order paper. But I think we were trying to explain that from now on the management of this Conference should be in the hands of a Steering Committee and it was felt that it was so urgent that we ought to constitute that Steering Committee so that it can take over, even as we are taken through these Regulations. But it is not a firm position, if a majority of the delegates feel that they want to be taken through the Regulations first, it will be done. I think what Prof. Yash Pal was trying to do was find out whether a majority of people agree with him, that we need to constitute this Steering Committee, at least agree on how we are going to go about electing the Steering Committee and then we get taken through the rules, so that we are taken through the rules when there is a Steering Committee which is in charge of the proceedings.

But if a majority of the delegates feel they want to be taken through the Regulations, which have been gazetted, if that is the wish of the delegates then I do not see that there is any problem. What Prof. Yash Ghai was asking is for those who are in favour of completing the item of constituting the Steering Committee to stand up so that we can see where the majority stands.

Are the delegates now able to hear in terms of public address, the point raised by Mheshimiwa Speaker of the National Assembly? Is everybody able to follow the proceedings? Kila mtu anasikia?

**Mr. Kapila Neera:** Mr. Chairman, I thought this morning the President said this Conference belongs to delegates, it is our Conference and I do agree with you that you are in order to form a

Steering Committee first. If you do not form a Steering Committee of the delegates first, how can we go through the rules? We want those rules to be implemented and looked at by the Steering Committee. So unless we do form a Steering Committee, how do we delegates take over this Conference? Thank you.

**Hon. Paul Muite:** Can I suggest that may be then the Conference adopts a motion to amend the order paper so that we can start with the question of electing the Steering Committee, then we can move on because I believe we also have the authority to amend the order paper.

**Delegate:** Thank you. Hon delegates, Mr. Chairman, I think the best thing is for us delegates to understand the rules which are to be followed in this Conference so that we can be able to raise points of order, because now it is like we do not know what to follow constituting the Steering Committee. The rules are basic so that we are able to follow them and there will be no commotion like is happening now, thank you.

**Mr. Kiriwa wa Ngugi:** Mr. Chairman, Mr. Chairman, Mr. Chairman ... here, here. I am here.

**Hon. Paul Muite:** Go ahead, you have the floor, go ahead.

**Mr. Kiriwa wa Ngugi:** My name is Kiriwa wa Ngugi, a delegate from Kiambu District. I must confess I may have caused the confusion going on on the floor because having read these rules - and they are now gazetted - they are the rules that we should now be taken through. I was not happy with these rules, specifically Steering committee, and I have already written a notice of motion. The point is this, the Commission (CKRC) makes the Regulations, but as we proceed to take over the process as we must, if we are unhappy about these rules, 2/3 majority of delegates can change them, 2/3 of this Conference. But in the meantime, it is possible under dialogue to sit down and get the Commission to change that which is apparently not good enough. What I fear is, with respect to the Commission, that from those noises that came yesterday and the day before, there is now a hurried attempt to correct them and ambush this Conference by having just one Commissioner read them to us. I think the proper procedure would have been to reduce them, put them writing, distribute the new suggestions and give us time to internalize them then on Friday, as the Hon. Chair of the PSC suggests, we come back and we shall consider those

suggestions together with these gazetted rules. It is very important, Mr. Chairman, that these people, particularly the District Delegates, get a chance to internalize any new suggestion that is not in this booklet. And this I fear is what is happening, we cannot make a decision until we have some piece of paper with the new suggestions we are making. Thank you very much.

**Hon. Paul Muite:** Thank you.

**Mr. Njuguna W. Kungu:** Mr. Chairman, can I just say one thing?

**Hon. Paul Muite:** We will recognize you in a minute. What the delegate from Kiambu is saying, is that he has read through the gazetted Regulations and there are some respects in which he is very unhappy with those Regulations. I suspect that he is not the only one, there may be other delegates who may have suggestions to make, and that is the reason why Prof. Yash Ghai was saying that if we now start discussing these rules including what should be amended, without a Steering Committee, who is going to implement the suggestions that are going to come from the delegates? Now I understand the need for the delegates, particularly the ones from the Districts and everywhere else, to be taken through the Regulations so that they can understand them. That, ninaelewa. Our plea, and this is the plea by the Chair here, is that let us constitute the Steering Committee first, so that thereafter the delegates are taken through the Regulations, so that if there are people who are unhappy with some of the rules and may want to have them changed they, can have a Committee to which they will address the need to have those rules changed. Because as it is now, there is no one who is in-charge of managing this process. So, can we have a Secunder, I think somebody posed a motion there.

**Speaker:** Mr. Chairman, please, can we just dispose of this issue ... Mr. Chairman please ...

**Hon. Paul Muite:** Yes, yes.

**Speaker:** I am speaking here. The first thing we are supposed to look at are the Regulations. Regulation 11 really says that even our sitting arrangement is supposed to be done by the Steering Committee, so our sitting here is not procedural unless the Steering Committee is formed. Thank you, Mr. Chairman.

**Hon. Paul Muite:** I thank you because you are supporting the point we are making. So, it is seconded. Can we have an indication of how many people want to proceed with the agenda item of constituting the Steering Committee? Perhaps you can stand up so that we see how many you are so that we move on. Okay, then it would appear that the majority have agreed that we constitute the Steering Committee. Thank you very much, Prof. Yash Ghai.

**Ms. Mary Orié Rogo-Manduli:** Point of order, point of order, Mr. Chairman, point of order. Yes we are agreeing that we form the Steering Committee according to the book. But when I heard the categories mentioned, I heard District, I heard the Civil Society, I heard the Religious Bodies, and they are not in this book. Now, to add further, the Political Representatives - and they are about 45 of them, from the various Political Parties - don't fall into Provinces and Districts. The Political Representatives for about 45 Political Parties don't fall within Districts or within Provinces, where are you putting us? Are you forgetting we are here too? And we need to be in the Steering Committee as well. So I would like that one addressed. Now, at the moment we can't even hear you properly, so I think the first and most important thing is to get acoustics and the public address system working. We can't hear each other. Thank you.

**P. L. O. Lumumba:** I have been asked by the Chair - I hope that you can hear me Orié Rogo-Manduli--. We are already attending to the problem of the acoustics, we recognized it earlier on and I believe that it will be attended to, it is a housekeeping matter. Thank you.

**Hon. Mutula Kilonzo:** Thank you, Mr. Chairman, I am standing on a point of order Mr. Chairman.

**Prof. Yash Pal Ghai:** Yes.

**Hon. Mutula Kilonzo:** Mr. Chairman, I am standing on a point of order. I assume, Mr. Chairman, that we are in agreement that we constitute the Steering Committee in accordance with the rules which are here and gazetted. According to rule 46, the Steering Committee does not conform to the one which you have just proposed. Am I right in thinking, Mr. Chairman, that we have two sets of rules which have a different Steering Committee as you have enumerated, or the one which is gazetted? If we are going by the gazetted rules, when was rule 46 amended to constitute the addition as you have put it? Has it been done outside this

Conference or are we asked to endorse a decision which has been made outside our own knowledge? Thank you.

**Prof. Yash Pal Ghai:** I suppose what it amounts to is an amendment of rule 46 or in a way elaborating rule 46. So what we are asking delegates is if they would support a Committee along the lines that we outline and nobody at the moment is bound by that proposal, it is for the delegates to decide if they want to structure the Steering Committee along the lines proposed.

**Hon. Paul Muite:** The Delegate is quite right about the difference. The Chairman is saying that when the CKRC consulted with the Parliamentary Select Committee, a consensus emerged that the composition set out in the document which you have is not adequately representative and I hear from the gracious lady there saying that even the expanded representation perhaps, is not representative enough. So I think that the logical way in which we are suggesting we move is that we are to proceed along the lines of the composition read out by Prof. Okoth-Ogendo and from there, without over-expanding the Steering Committee, if the delegates feel that their particular constituencies or groups are totally left out, then these proposals could be made so that we constitute a Steering Committee that has got the support of a majority of the delegates here, so that it can then take over the management of this Conference.

**Prof. Yash Ghai:** Yes please, can you identify yourself first so that we have it for purposes of record?

**Mr. Ngorongo Makanga:** Mr. Chairman, my name is Makanga. Since these rules are already gazetted, I thought probably the best thing is to create the Steering Committee according to these rules. Then it is the work of the Steering Committee or the delegates without probably the presence of the CKRC and PSC, to change the rules where they need 2/3 of the delegates. So, I don't think you can alter the rules at this moment because they are gazetted.

**Hon. Paul Muite:** Purely it is a matter of the law. The Act of Parliament which constituted the CKRC and pursuant to which these proceedings have come to the point where they have come, gives the mandate of making these Regulations to the CKRC, that is what the Act of Parliament says. So it is the CKRC which has drafted the rules you are referring to, giving the delegates the right to amend the Regulations by a 2/3 majority. But instead of going to that long route, if there

is a consensus by the delegates here, the CKRC has got the legal mandate under the Act to gazette any amendments without even calling for a vote. And that is why when we did the consultations we felt that we should expand the representation in the Steering Committee in the manner in which Prof. Okoth-Ogendo read here and if the delegates have got other suggestions to make, we don't really even have to go to the voting. If there is a consensus here, then the CKRC can issue a gazette notice pursuant to the powers which they have according to the Act of Parliament. I don't know whether I am making myself clear.

**Hon. Mutula Kilonzo:** Mr. Chairman, my name is Mutula Kilonzo from Parliament. May I take this opportunity Mr. Chairman to support what you are saying that the mandate of changing these rules is vested in the Commission. Secondly, a careful look at regulation 46 clearly shows that the enumeration of delegates there would not adequately represent the various constituencies represented in this House today. I personally feel, and I would like with your permission to move that the proposal made by the Commission through Com. Prof. Okoth-Ogendo, be adopted by this House because if we accept it, and I urge delegates to accept it, then we will be able to move faster and we will be able to start our business because without a Steering Committee, we actually cannot be able to commence the proceedings of this Conference because it is the only Committee with the responsibility of managing the Conference. This is a humble appeal, it is a reasonable request from the Commission and I think it reflects the wishes of the people. Thank you.

**Prof. Yash Pal Ghai:** Do I have a Seconder for that motion?

**Delegates:** Yes.

**Prof. Yash Pal Ghai:** Yes, okay thank you.

**Hon. Paul Muite:** Thank you very much Delegate Hon. Mutula Kilonzo. Then it is really a question of now asking the various groups -- Perhaps, Prof. Okoth-Ogendo, you can remind the delegates of the various constituencies, so that the different constituencies can then go and consult and we come on Friday with the names or with elections in order to constitute the Steering Committee by Friday.

**Com. Prof. Okoth-Ogendo:** Chairman, with the permission of the Conference, the proposal which the CKRC, in consultation with the Parliamentary Select Committee, was making was to expand the Steering Committee. First by introducing the position of 3 Vice Chairs of the Conference who are also Vice Chairs for the Steering Committee, and those 3 Vice Chairs would be elected or appointed or nominated as follows:

1. Will be nominated by the Parliamentary Select Committee.
2. Will be elected by the Conference one of whom shall be a woman.
3. Then the next proposal is that there should be 16 regional representatives 2 from each Province a man and a woman. And we are saying that the Act under which we operate, treat Province equally, and that is also how the Constitution Review Commission was established. It was on a strictly equal basis, if it is Province, it is Province.
4. Then we are suggesting that we will leave 13 other slots on the Steering Committee to be distributed as follows:
  - a) Parliamentarians would have 5 slots
  - b) Religious Organizations will have 3
  - c) Professional bodies (these are categories under Sec. 27 of the Act). Professional bodies will have one,
  - d) Women's organization will have 1,
  - e) Trade Unions will have 1 and,
  - f) NGO sector will have 2 and each of these categories will meet or caucus to present their representatives.

That is the proposal. Thank you.

**Hon. Paul Muite:** Can we agree that the different constituencies for example the Religious sector will get together to do their consultations and their focusing so that on Friday they will give us the 3 delegates.

**Mr. Samuel Tororei:** Mr. Chairman, please, may I have your attention please?

**Hon. Paul Muite:** Actually, Bwana Secretary, we need somebody who can keep track of the people raising points of order so that we can be able to give them the opportunity required easily. I will recognize you in a minute, can I just finish. Would it be a proper way to proceed to ask the different constituencies, for example the NGOs, to caucus between now, tomorrow and on Friday



they bring us the 2 persons who are to sit on the Steering Committee, the Trade Unions to do the same, and the Women organisations to do the same, the Professional Societies to do the same and above all, the Provinces as we had agreed, to get together with their Members of Parliament, with their District representatives and to give us the 2 individuals by Friday. So that when we come on Friday, we come with the names.

**Mr. Samuel Tororei:** Mr. Chairman, I would like to move with the indulgence and permission of the Chair that 1 slot also be given to a constituency of the persons with disability and that is only an increment of one, and since we have supported the motion for enlargement, I would really like to beg indulgence of this Conference to allow that one increment because unfortunately we cannot propose to reduce any group. So we can only propose to add one. Thank you, Mr. Chairman.

**Hon. Paul Muite:** Do we take it from the clapping that that suits a majority of people?

**Delegates:** Yes.

**Hon. Paul Muite:** Can we ask the CKRC to note the mood of the delegates who are the masters of their destiny? You will increase one representative to represent people who are challenged.

**Mr. Dubat Amey:** Mr. Chairman, with your permission, there was a point which was raised. In fact the public address system to me is sounding like German not English. So, can we address the public address system first before we go to the motions? Because some of us are not actually getting what is being talked about?

**Hon. Paul Muite:** Bwana Katibu alieliza kwamba kuna hitilafu kidogo lakini wanajaribu kutengeneza na tunafikiri by the time we come back on Friday it would have been sorted out, it is a problem that developed and it is being attended to and we apologize profusely it is not deliberate.

**Speaker:** Mr. Chairman, Mr. Chairman ...

**Prof. Yash Pal Ghai:** I was going to suggest that in view of the difficulty people have of hearing the announcements and statements of delegates and given that we have reached agreement on the composition of the Steering Committee and Hon. Muite has suggested that different groups may want to use this evening and tomorrow to caucus to get together and to bring if, they can, their nominations on Friday, that this may be a good time to adjourn. We hope that by Friday we will have the sound system acoustics working well and we can make progress. There are a number of you who have asked for the floor... (*interruption*)

**Speaker:** Mr. Chairman ...

**Prof. Yash Pal Ghai:** Let me finish please. I also had a request from Prof. Kibwana who wishes to make a personal statement. Such personal statements are allowed under the rules of procedures and I intend to first invite him now if he wishes to make that statement to come either here or find a mike from near where he is sitting and, please, first make your statement and then I will call upon others to have to raise their hands.

**Speaker:** Mr. Chairman ...

**Speaker:** Mr. Chairman. Can I speak Mr. Chairman?

**Prof. Yash Pal Ghai:** No I have already recognized Mr. Kibwana. You have to wait, I am sorry.

**Hon. Kivutha Kibwana:** Thank you Chair. First of all I want to greet these Hon. Delegates and say that finally we are on the last leg of completing our Constitution writing. The reason I requested an opportunity to make this personal statement from the Chair is that the media, for whatever reason, is undertaking a very interesting onslaught against me.

The 'People' has reported that I am about to propose that this Conference should be postponed for 6 months and they have actually ascribed to me having been in a Press Conference where I certainly wasn't. I called the 'People' and I asked them what precisely they were trying to accomplish, and I have told them that really this is not the way to proceed by saying somebody

was in a Press Conference and by saying that the person said things that he couldn't have obviously said. And indeed they even said that Koigi said if I move to postpone this Conference, Koigi will support me and when I asked Koigi, Koigi told me he didn't tell anybody that as well.

I am told the 'Citizen' yesterday said that I am against Kadhi Courts and obviously I couldn't have told them that and I do ask that they broadcast my own words so that those words can tell Kenya whether I was able to say that.

The 'Nation' on Monday also said that I support powers of the Prime Minister according to the current draft. I didn't tell the 'Nation' that. So it would appear to me that there is a very elaborate plan to ensure that things are said that are completely inconsistent with what I have stood for so that perhaps before the eyes of these delegates, I am really somebody who looks confused and somebody who should not be listened to. I would like to ask anybody who wants to put certain positions not to use me, so that they can put their own positions without using my name. It is common knowledge that I have dedicated quite a bit of my life to this process and I would be the last one to sabotage it. And so really, I am very pained when I see media people being used by some sources to discredit me and to demean me before these Hon. Delegates.

So finally, I would like to say that the Constitution making process is truly '*unbwogable*'. Nobody can stop it at this juncture. And if there are people who are harboring ideas of stopping it, I am sure these delegates and Kenyans will frustrate them. This is something that cannot be stopped, and it is up to these delegates to really do Kenya proud by coming through with suggestions and proposals that better this draft. And when we do that finally, Chair, we will really go down in history as having been people who served our country selflessly and people who really began our country on a democratic path and so I do ask the media, please don't write what people do not say because the media you can actually sabotage this process by making people to clash because you are reporting they are saying different things which they are not saying. Thank you the delegates for listening to me.

**Prof. Yash Pal Ghai:** I now have a list of five names and I do not intend to take any further names, but we will listen to the five delegates who have asked to speak and the first is Cecily Mbarire. Do you have a microphone?

**Hon. Cecily Mbarire:** Yes I do. Thanks, Chair. I am standing here to plead for the young people in this country. For us, the new Constitution is our future, it is what we fought for in 1997 in the streets of Nairobi and everywhere in this country. Being left out of the Steering Committee will be a big blow for us. I am pleading with the delegates to please allow one more slot, just one for a young person in that Steering Committee. Thank you.

**Prof. Yash Pal Ghai:** Again I take it from the floor that we will allow one youth, but this is the last addition that I shall entertain. I will now ask on the Hon. Norman Nyaga to make his statement.

**Hon. Paul Muite:** But I saw the senior J. J. Nyaga, how can we allow the son to talk before the father?

**Hon. Norman Nyaga:** Bwana Mwenyekiti, I concur with the statement of the Hon. Mbarire that we the young should be considered.

Bwana Chairman, you can actually see that going through this process, one, we are very happy that we have been able to accept and adopt that we can do what we are doing. But the process has taken a very long time and it is going to take even more time as we go on. I want to pray to the delegates here, a member from the Rift Valley did request for North and South to be divided, but that is not essentially what I am talking about, but I do see the merit in his request.

If you consider that every one of us is sitting here is capable and in-fact is a leader, many of them may want to sit in the Steering Committee. They need to lobby. Tomorrow is a Public Holiday. We need to be where the Labour officials will be and I will be there as a member of Nairobi. I will not have time to do any lobbying, my prayer is as follows:

Can we leave out may be Friday morning so that Delegates from the big Provinces and the small Provinces - these delegates don't know one another - can interact and get to know each other, so that they can get nominated and get accepted. If you tell them to come here with names, a few members will go sit down and they will bring prominent names to you and there will be

problems here. Let us say that we give up a full day on Friday to do nothing but to lobby and by evening come back here and give out the names. Thank you.

**Hon. Paul Muite:** According to the timetable, and I hear the very sound argument by the Hon. Norman Nyaga, are you suggesting Mheshimiwa that we then ask the Lancaster House Veterans to address us on Monday so that we leave the whole of Friday for sorting out the Constitution, so that we can lobby, consult, caucus and really make sure that before we go home on Friday we have in place the Steering Committee. As that is what is being suggested?

**Hon. Norman Nyaga:** That is what we are praying for and I undertake to take the old man (J. J. Nyaga) home and bring him back on Monday.

**Hon. Paul Muite:** Then I think that the CKRC Secretariat can adjust the programme accordingly because the process is in the hands of the delegates and that is what they wish.

**Mr. George Omari Nyamweya:** Mr. Chairman I am the neighbour of Hon. Norman Nyagah --

**Prof. Yash Pal Ghai:** Sorry you have not been recognized. I have certain names and those are the only ones I am going to allow.

**Mr. George Omari Nyamweya:** I believe my name is there, Mr. Chairman.

**Prof. Yash Pal Ghai:** There is Prof. Wangari Maathai, but I think you are also on my list so please go on.

**Mr. George Omari Nyamweya:** That is what I thought and since I am his neighbour and I am going to oppose him and I might as well do it now.

**Prof. Yash Pal Ghai:** Okay.

**Mr. George Omari Nyamweya :** My name is George Omari Nyamweya from the Democratic Party of Kenya. I have a problem with the proposed distribution of those positions.

One, this morning from the prayers and speeches you made, it was made very clear that this is the people's driven Conference. Now already you are proposing the Parliamentary Select Committee gives us one Vice Chair. That is already taking part in what our job should be. Secondly, you are asking Members of Parliament to go and sit with their Provinces and also participate there.

Then, thirdly. Mr. Chairman, what you have said is that there is a clear constituency here called Political Parties. You have not allowed or proposed any slot for Political Parties. And you cannot really say because Members of Parliament come from Political Parties, therefore we have Political Parties in Parliament. I don't think that should be the case. I am now proposing, like my dear friend there, the Hon. Delegate, that you add an extra slot. I propose that one for Parliament be reduced and Political Parties, as Political Parties, fit themselves in there. Because we do have particular views which will not be represented by Members of Parliament and there are Political Parties here which do not have Members of Parliament, what therefore would happen to them? I believe this is something you ought to reconsider.

Otherwise, I concur with my friend here that we do need Friday to actually get to know each other and do this job you want us to do. Thank you very much, Mr. Chairman.

**Prof. Ghai:** Okay Prof. Wangari Maathai.

**Prof. Wangari Maathai:** Thank you very much, Mr. Chairman. I wanted to raise the issue of language. I am proposing that as much as most of us here are very highly educated and understand English, that you should at least allow to address ourselves both in English and in Kiswahili simultaneously; that we should have simultaneous translations so that people who do not feel confident expressing themselves in English should do so in Kiswahili, but have it translated or we can just speak whatever language we want.

**Hon. Paul Muite:** I think the point raised by Mheshimiwa Prof. Wangari Maathai is valid and we should encourage people to speak either in Kiswahili or English, whichever one is more comfortable with.

**Prof. Yash Pal Ghai:** Next on my list is Rev. Mutava Musyimi.

**Rev. Mutava Musyimi.** Thank you very much, Mr. Chairman. I think following what Prof. Kivutha Kibwana said, I just thought I would stand here to correct a very grievous, mistaken, malicious and unnecessary impression given yesterday. I was walking to register yesterday when somebody pulled me aside to tell me that there was a very strong rumour going on in this building, that I will be behind a motion to bring this Conference to an end. I honestly thought he was joking and I told him as much. Until I came near the entrance when somebody nearly hit me and told me some unprintable words and then I realized that he was serious, and basically he was telling me, “who are you? Kenya is bigger than you, why do you want to stop the Conference” and I tried to plead with him to understand that, that was not the case and then of course mentioned this to you, Mr. Chairman.

I thought before we disperse today I should stand and say that, that is not true; I would be the last person. I think I am as happy as anybody here. I think we have worked as hard as any person to see this day happen. I just wanted to plead through you Mr. Chairman, we took an Oath to be big hearted and to do away with malice. I think mine is really a plea to the Delegates, it is not even a plea to the Media, because I think the Media brings up what the Delegates give them. I tried to ask myself, why would anybody want to malign my name in this manner? And of course I came up with all manner of theories. Mine is really to plead with all of us, let us reach out to one another. We may not agree, but that is the whole point of negotiating. Let us build consensus around the areas in which we do not agree. If we agreed on anything, I don't think we would be here Mr. Chairman. So that is really my plea and also to just say, I totally believe in this Conference and I hope and trust that it would be successful and it would give this Nation the document they has waited for, for a very long time.

**Prof. Yash Pal Ghai:** Thank you very much. I would like to remind the delegates that the Constitution of Kenya Review Act sets out a code of Conduct which bind all the organs of review of which this body is one and that the code obliges us all to conduct the process fairly, honestly without malice and if there are false rumors that occurred, than that is a violation of the code. And I would beseech all the Delegates to behave with due fairness to other Delegates and

to desist from spreading false rumors. I also would like to remind you or to draw your attention that under the current regulation for this Conference, that is to say in paragraph 53 subparagraph 3, there is a provision for the exclusion of any Media house from the proceedings of the Conference for any length of time if in the opinion of the Commission the Media house has been guilty of deliberate or negligent mis-reporting of the proceedings. So I would beseech the Media to report the proceeding of the Conference fairly. A large number of Kenyans would wish to be here but cannot be here due to distance from here or due to lack of space here, they want to follow the proceedings and the Media must ensure that the reporting is completely fair and true, scrupulously so. The final speaker I want to call on is Baldip Rehal.

**Mr. Baldip Rihal:** Thank you Mr. Chairman for recognizing the right side of the Conference Hall. We have been raising our hands so many times but nobody was able to see us this side. Since you are sitting facing the delegates in front of you, you have always been recognizing the delegates sitting on that side. Now, my name is Rihal, I am here as a delegate from the Professional Organizations. I have only two suggestions I would like to make Mr. Chairman to improve the sitting arrangements, while the public address system is also being rectified. Is there any reason why the Chair cannot sit on the top bay so that you can see the whole hall at a glance rather than having to turn yourself left and right? So please I would like to propose, it can be tried, if one of you can go up there now while we are all sitting here and test what I am saying. It can be tried now so that we do not waste time on these little trivialities as we get down to serious business which is writing the new Constitution of our country. So I would suggest very strongly Mr. Chairman, the Chair takes, the top seat and from there, with the help of your staff and other members, I am sure you will be able to cover the whole hall. Thank you very much.

**Prof. Yash Pal Ghai:** Thank you very much indeed, that is exactly what we intend to do. You will note that when we had the Pre-Conference Meeting in October last year that is exactly where I sat. But due to security reasons we were advised after the President left to meet here but on Friday we shall be back there and I can tell you from the morning session, that it is much easier from that vantage point to see all the delegates and to notice those who have raised their hands. So thank you for the suggestion.



