

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**VERBATIM REPORT OF**

**PLENARY PROCEEDINGS  
HELD AT THE PLENARY HALL, BOMAS OF KENYA**

**ON**

**04.03.2004**

## CONSTITUTION OF KENYA REVIEW COMMISSION

### NCC – PLENARY PROCEEDINGS HELD ON 4<sup>TH</sup> MARCH 2004 HELD AT THE PLENARY HALL, BOMAS OF KENYA

#### Present:

<b>Prof. Yash Pal Ghai</b>	–	Chairman
<b>Com. Okoth-Ogendo</b>	–	Rapporteur-General

#### Presenters:

<b>Com. Abida Ali-Aroni</b>		
<b>Com. Bishop Bernard Njoroge</b>		
<b>Hon. Delegate Zakayo Karimi</b>	–	Co-Convenor

#### Secretariat in Attendance:

<b>Programme Officer</b>	-	Stephen Mukaindo
<b>Parliamentary Clerk</b>	-	Florence Abonyo
<b>Verbatim Recorder</b>	-	Asha Boru Lydia Moraa

**The meeting started at 9.40 a.m. with Prof. Yash Pal Ghai in the chair.**

**Prof. Yash Pal Ghai:** I am going to ask Mr. Chemwey, Sheikh Ali Shee and Neera Kapila to say the prayers for us. After the prayers, the National Anthem will be played, so please remain standing until that Anthem has been played. I will now request you to stand up for the prayers.

**Hon. Delegate Neera Kent Kapila:** (*Prayers*).

*Hare* Oh! We pay homage to Thee Almighty unparalleled, omnipresence energy. We see and feel your reterial presence in all creation on earth. Giver of light, Remover of pains and sorrows.

Restorer of happiness, Creator of the universe, we meditate on Thee and ask that You inspire and guide our intellect through the Committee task we have set on of agreeing on Articles of the new Constitution for our Nation that we have all worked so hard on.

Bless us, give us the strength to keep us focused on the task. Guide us such that we put aside all individual selfish agenda and focus wholly on our task. Thy world is manifest through the actions of women and men. Show us the way to overcome and by pass self-interest and trivialities. Bless us in our endeavors with success. Oh ever Gracious, omnipresent, heavenly energy. Om, Shanti, Shanti, peace too.

**Hon. Delegate Sheikh Ali Shee:** *Bismillahi Rahmani Rahim. Kwa jina lako Muumbaji wa mbingu na ardhi, tukiwa mbele Yako wanyonge, wanyeyekevu waja wako wa nchi hii. Tukiwa hapa tukiwakilisha watu wako milioni thelathini, ee Mola tunaomba baraka Zako na hekima Zako zitawale kwenye akili zetu.*

*Mola tunatoa shukurani zetu Kwako tukiomba msamaha tusamehe makosa na madhambi ambayo tumetenda. Hiyo ni kawaida ya mwanadamu ya kukosea na umefungua mlango wa watu kutubia kwa yale makosa ambayo wameyafanya. Mola, na sisi tunatubia Kwako, tunaomba msamaha kwa makosa ambayo tumeweza kuyafanya wakati tuko hapa na kwingineko.*

*Mola tusamehe na utupe nguvu na usitunyime baraka Zako na fadhila Zako na rehemu Zako zile ambazo tumekuwa nazo kwa miaka mingi ambazo ni sababu ya nchi hii kubarikiwa na kuendelea na kufika kiwango hiki ambacho tumefika.*

*Mola, tuko katika hali ya mwisho ya kumaliza kazi ambayo tumepewa na raia wa nchi hii na Ukiwa umeibariki kazi hii, na tunaona baraka Zako ambazo zimetufikia na zimetuwezesha mpaka kufika kiwango hiki. Tunatoa shukurani zetu kwa dhati, mimi nikiwa mbele Yako na wenzangu tulioko hapa kwa niaba yao, natoa shukurani kwa dhati Kwako Muumbaji wetu, Mola wetu, Mkarimu wetu. Uzidi kutupa hekima kipindi kilichobakia tuweze kukimaliza kwa salama na amani, tuwapatie wananchi wa nchi hii Katiba ambayo itawasaidia kuendelea mbele kwa kizazi hiki na vizazi vitakavyo kuja baadaye.*

*Mola wabariki wote, viongozi walioko hapa mpaka walioko nje na watawala wote, uwaelekeze kwenye njia iliyo nzuri ili waweze kuiongoza nchi hii katika hali iliyo bora. Na wale ambao wako katika hali ya ugonjwa, ambao si wazima, ambao wanataabu ya maradhi ya akili pia ya kupotea kutoka na kujitenga na wenzao, Ya Rabi tunakuomba uwaelekeza kwenye njia iliyo bora, uingize busara Zako na uwezo Wako kwenye akili zao ili waweze kubadilisha misimamo miovu ambayo ni msimamo ya kusukumwa na shetani.*

*Mola tubariki, tupe kila la kheri na baraka ili tuweze kuendele, Eh Mola kwa Jina Lako litukufu tunakuomba tubariki – Amiin.*

**Hon. Delegate Sammy Chemwey:** Jehovah, Father of Abraham, Issack and Jacob, Creator of heaven and earth, to thee we bow this morning recognizing and acknowledging your supremacy, recognizing God that it is only through you that we are able to gather here today.

Lord, I lift up these people before thy presence because this is the day that Thou has made and hitherto You are being our God, Ebenezer. You have been our God in the desert when it has been so dry. You have been our God when we have crossed the Red Sea. You have fed us when we needed provision. You have been our God of war in times when we have been fought and Lord as we get closer to crossing the river into a land that we presume will be a Canaan, we are trusting the Almighty God Himself, and Yourself, to raise the Calebs, to raise the Joshuas, to raise the people that will go yonder and divide the land for the people and these are the people that You have told unto Yourself, You have brought them here Almighty God and I present because they are from all nations, from all tongues, from all people, from all kindred's and you have gathered them here Almighty God.

I pray this morning in the name of Jesus Christ, that you release Your anointing upon them and break every yoke that brings division, that brings confusion and that in the name of Jesus Christ, every shackle shall fall aside as the King of Glory exalts himself.

You are God over every knowledge, over everything of God that exalts itself against Your knowledge. We recognize that Lord this is a battle, not a battle Almighty God that we can fight with our intellect and with our knowledge and the battle unto Thee and Lord I pray that we

recognize that Jehovah Himself will fight the battle for us, will grant us the way to overcome it all.

I pray this morning Lord for the leadership of this Conference that You release a fresh anointing and a fresh direction. I pray Mighty God for the leadership of this nation and we thank You, dear Almighty God that You have blessed us and given a nation wherein You have said, blessed is the nation that feareth God and I pray this morning Lord Almighty that You release the wisdom of God upon those that would otherwise grant different advice, oh God. You have said blessed is the king whose advisors fear God. We pray for all those that surround the President that the advise that they will give, will come from the fear of God.

Lord, we want to thank You today that as we look to this document today Jehovah, I ask that the presence of God will guide us, grant us the wisdom, grant us the fortitude. Grant us Almighty God a heart that is able to see through any intrigues, any issues Lord that may bring down Your work and be glorified that at the end of it Lord, we will say, the Lord fought the battles and Glory and Honour will come back to You. Now, be with us through this day and through the days coming for we pray with thanks giving in Jesus Name – Amen.

*(National Anthem).*

*(Consultations at the “high” table).*

**Prof. Yash Pal Ghai:** Honourable Delegates, it is our intention this morning to complete the presentation of the Reports and the Recommendations of Technical Working Committees. As you know only one Committee has still to make its presentation and that is Committee “L” dealing with Transitional and Consequential Provisions.

We had originally hoped that after the presentation of this last Committee, we would proceed to the next stage of our proceedings which is to formally adopt the recommendations of the Committees as reflected in the Zero Draft. But this morning, the Steering Committee considered this programme, some members felt that they needed more time to reflect on the Reports and the Recommendations and to further study the Zero Draft and that it would be more appropriate

accordingly to postpone till Monday the making of decisions on the Zero Draft. This was agreed and therefore, what we are proposing is that after the presentation of the Committee Report on the Transition, we adjourn so that those Committees which still need to have their bilateral can do so and conclude their business by lunch and the Delegates can then spend their time studying the Zero Draft and preparing any amendments that they wish to make.

I am going to ask the Secretary to explain to you briefly the procedure we are adopting for receiving proposed amendments from the Honourable Delegates. We hope that you will be able to complete any amendments that you want to propose by four tomorrow so that the Secretariat can then use the weekend to turn your proposals into a legal form which indicates what precisely are the amendments you are proposing, which words or Articles you are proposing should be deleted and how they would be replaced.

So, let me then summarize that we will after the Secretary's explanation and any other announcements that he has, we would receive the Report of the Committee on Transition, then we will adjourn so that those Committees which still need to meet other Committees to complete certain recommendations will meet and will try to conclude their business by lunch and the other Delegates will study the Zero Draft in view of the Reports received and if they wish to propose any amendments, they will start preparing written proposals which the staff of the Commission will turn into very clear formal recommendations. With that, I pass the floor to the Secretary.

**PLO Lumumba:** Thank you very much, Mr. Chairman. First, we wish to report that the Chair of the Welfare Committee and I, visited Mr. King'ori Mwangi yesterday at the Mater Hospital, he is doing well and we believe he will be discharged today.

We also wish to report that Delegate Claire Omanga is unwell admitted at the Nairobi Hospital. She is in a stable condition and we believe she will recover soon. Our people are in constant touch with the Hospital.

On the Motions, we have established an office for Notices of Motion. The office is manned by our own Secretariat Staff and the Assisting Staff from Parliament. We have received a number

of Motions but the decision was made this morning that all Motions must be in conformity with the format which is known to our staff.

So, when you want to do a Motion, they will guide you but just to help you thinking, the example is that if you want a particular Article to be amended, you must indicate what amendment you want made or what Article you want deleted. So, specificity is critical in this regard. For that reason, the following Honourable Delegates who have already submitted their Motions are requested to proceed to the Notices of Motion office after presentation of the Transition Report to amend their Motions.

- Honourable Peter Castro Oloo Aringo, Delegate number 212.
- Honourable John Gitari, Delegate number 284.
- Honourable Saul Kiptingos, Delegate number 350.
- Honourable Mary Teresa Osunga, Delegate number 411.
- Honourable Karu Abdukadir, Delegate number 263 and
- Honourable Isaiah Cheruiyot, Delegate number 346.

Deadline tomorrow for facilitation begins at eleven. God bless you.

**Prof. Yash Pal Ghai:** Thank you very much. Now, we turn to the presentation of the Report on Transitional and Consequential Provisions and I turn over the floor to you.

*(Consultations at the “high” table)*

## **PRESENTATION OF REPORT OF TWC L:**

### **CHAPTER 20 - TRANSITIONAL AND CONSEQUENTIAL ARRANGEMENTS**

**Hon. Delegate Zakayo Karimi:** Good morning Honourable Delegates. This is the Report of the Technical Working Group “L” on Transitional and Consequential Arrangements. My name is Zakayo Karimi, Delegate number 600 and I am the Co-Convenor of the Technical Working Group.

Honourable Delegates, I am presenting this Report on behalf of our Convenor, Honourable Joyce Majiwa who is on safari. With me are our Rapporteurs, Commissioner Abida Ali-Aroni and Commissioner Bernard Njoroge.

May I take this honourable opportunity to thank and congratulate our Convenor, our Rapporteurs and Members of the Committee for their dedication and devotion to the duty that has seen us prepare this Report for presentation to you today.

I also thank the Secretariat staff that ably facilitated our work. At this juncture, I would like to ask our Rapporteur Commissioner Abida Ali-Aroni to take us through the mandate and methods of work of the Committee. Thank you.

**Com. Abida Ali-Aroni:** Thank you, Mr. Karimi, Honourable Co-Convenor. Morning Honourable Delegates. I have been requested to take you through the introductory part of the Report by the Committee “L” this morning.

The Committee “L” dealt with the issues of Transitional and Consequential Arrangements and we started our work on the 26<sup>th</sup> of May, this year and we held a total of 34 sittings and based on our mandate, we have prepared the Report that we will be presenting to you this morning. The mandate of the Committee is pursuant to Regulation 49 of CKRC Regulations 2003 and the Committee on Transitional and Consequential Arrangements was established to facilitate the expeditious disposal of Transitional and Consequential matters relating to the Draft Constitution.

These matters are contained in Articles 298 and 299 of the Draft Bill in Schedule six and eight of the said Bill. The General mandate of the Committee related to setting the effective date of the new Constitution making provisions for the mechanics to achieve a smooth and orderly transition from the existing Constitutional order to the new Constitutional order.

The mandate of the Committee is tied to that of other Committees and we did agree as a Committee that we will continue to receive proposals from other Committees to the end of the Plenary session.



Our method of work was as follows; We deliberated first on Schedule Six then we went to Article 298. We then deliberated Schedule Eight and went to Article 299 and finally we settled on new Articles that we felt had been left out in the Draft Bill.

There was great relationship between those provisions and sometimes it was difficult to make decisions in respect to matters without cross-referencing.

The Committee was guided by the Regulations to the Conference and the guidelines for the National Constitutional Conference, *Ad hoc* and Technical Working Groups that had been developed by the Commission.

The Convenor of the Committee is Honourable Joyce Majiwa and during the proceedings, the Committee felt that we needed to appoint co-Convenors to assist in her absence and Honourable Zakayo who is deputizing today was appointed and we also had another Co-Convenor, Honourable Ruth Oniang'o who acted in the absence of both Honourable Karimi and Honourable Joyce Majiwa.

Honourable David Okiya was nominated as a Whip to ensure that we had full House in the course of our meetings. Bishop Njoroge and I were the Rapporteurs of that Committee and we had the following staff attached to the Committee-

- Stephen Mukaindo who was Assistant Programme Officer,
- Mrs. Liz Kingi – Clerk assisting,
- Ms. Rosemary Mwanza, Assistant Programme Officer and
- Ms. Ann Kiama, Hansard.

Decisions of the Committee were largely arrived at by consensus. However, there were occasions when it would be necessary to conduct voice votes to reach decisions. The Committee in the course of its deliberations established various Sub-Committees to expedite its work. The Sub-Committees would report back to the Committee and the matters would be further discussed and decisions made upon them.

The membership of the Sub-Committee ranged from one Delegate to seven Delegates and was in respect of diverse issues. In establishment of the sub-committees, regard was to the need to have wide participation by all members and on the individual initiative of such members.

### **Summary of Committee debate**

At an early stage of the Committee's deliberations, the Committee was of the view that deliberations on the Report and the Draft Bill on matters relating to Transition would be premature until such time as the Committee of the Whole had discussed and adopted the Reports of other Technical Working Committees.

The Committee noted then that the Conference had not undertaken any general debate on matters of Transition as required in the Regulations. As a consequence, the Committee pended its work at its third meeting, the Committee's decision was presented to the Steering Committee which approved it and directed that members be distributed to other Committees with full rights of membership, save the right to vote.

Thus throughout Bomas II, members participated in the deliberations of other Committees. However, members met at least twice a week to keep contact. It is during the pendency of the Committee's work that the experts listed below were invited to address the Committee. The Committee undertook a general debate during the expert presentation.

The decision to pend the work of the Committee was revised in Bomas III on the realization that other Committees of the Conference had made several preliminary decisions, which decisions would provide a basis for the work of the Committee.

Subsequent to this decision, the Committee considered the Transitional and Consequential Report of the decisions of the Committees as they were updated. As you are aware Honourable Delegates, during the collection of public views by the Commission, not much was said about Transitional matters. The main Report did not contain much useful information.

In addition, Bomas I did not address in detail matters related to the mandate of this Committee. We therefore felt slightly handicapped in our deliberations and we therefore decided to seek expert opinion on a number of issues and the following experts were invited:-

- Prof. Okoth Ogendo;
- Prof. Yash Pal Ghai;
- Mrs. Margaret Dawulla;
- Professor Macharia Munene;
- Mr. Njeru Kirira; and
- Mr. Dennis Kabaara.

After listening to the foregoing experts, the Committee identified the following values and principles as the guiding light in the purpose and design of Transitional and Consequential Arrangements. The following are the values and principles:

- (i) The existence of a single Constitutional dispensation at any given time.
- (ii) A smooth and orderly transition between the old and the new dispensation.
- (iii) The establishment of an independent implementation mechanism to oversee the implementation of the new dispensation.
- (iv) A clearly defined dispute resolution mechanism.
- (v) A determinate date for the coming into force of the entire new dispensation.
- (vi) Certainty in the Schedule and timetable set for the implementation of the new dispensation.
- (vii) Efficiency and cost effectiveness in the implementation of the new Constitutional dispensation.

- (viii) Fairness, equity and justice in the implementation of the new dispensation.
- (ix) Legal continuity of the rights and obligations of the government and other persons.
- (x) Compliance of all laws to the new dispensation and public awareness and education of the people on the new Constitutional dispensation.

In addition to these principles, the Committee underscored the following issues.

- 1) That the new structures and processes proposed must be designed and implemented in consistency with the political and practical realities obtaining at the time.
- 2) The Transitional provisions ought to reflect the purpose of the new Constitution which is to provide for a more equitable, democratic, just and fair society in which constitutionalism, the rule of law and the optimal observance of rights and freedoms of all citizens, peoples and groups.
- 3) That there is a justiciable duty on the organs of government, government institutions and departments, public institutions and citizens to ensure that the new Constitution is implemented in due time. To achieve continuity, the effective and harmonious implementation of the new Constitution must take into account the electoral mandate of the existing political offices.

And with that, then we embarked on making the decisions that will now be presented to you. Thank you. (*Clapping*).

**Hon. Delegate Zakayo Karimi:** Thank you, commissioner Abida Ali for that presentation. We will now go to the decisions that were made by the Committee. These are contained from pages 229 in the refined Zero Draft and in page 8 of the report of the Committee, and I will read.

4.0 Technical Recommendations and Decisions of the Committee as presented in the revised Zero Draft.

Chapter 21 – Transitional and Consequential Provisions.

Consequential Legislation, and this is Article 349.

349(1) Where in this Constitution Parliament is required to enact legislation to govern a particular matter, Parliament shall enact that legislation within the period specified in the fourth Schedule.

349(2) Where in this Constitution, Parliament is required to enact legislation to govern a particular matter within a specified time but fails to do so, any person may petition the High Court for declaration on the matter.

349(3) The High Court in determining a petition under Clause (2), may:

(a) make a declaratory order on the matter;

(b) issue an order directing the Speaker and the Attorney General to take steps to ensure that the legislation required to be enacted under Clause (1) is enacted within a specified period and to report progress to the Chief Justice.

349(4) If Parliament fails to enact legislation in accordance with Clause (2), the Chief Justice shall advise the President to dissolve Parliament and the President shall dissolve Parliament.

349(5) Where Parliament has been dissolved under Clause (4), the new Parliament shall enact the legislation required to be enacted under Clause (1) within the period specified in the fourth Schedule.

On Transitional Matters, Article 350

350 The Transitional and Consequential Provisions set out in the sixth Schedule, shall take effect on the effective date.

And on the effective date;

351 This Constitution shall come into force on the date of assent by the President.

Repeal, Article 352;

352 The Constitution in force immediately before the effective date shall stand repealed on the effective date.

That finishes the Articles that were assigned to this Committee and we shall now go to the Schedules. And the first Schedule is Schedule four, the fourth Schedule. And I would like at this juncture to draw your attention to the corrigendum that was issued yesterday because the one contained in the Zero Draft was an earlier version and is inaccurate. So, I hope you have all received that and if not, then it is being circulated.

So, the **FOURTH SCHEDULE**,

#### **ACTION TO BE TAKEN BY PARLIAMENT.**

On the coming into operation of the Constitution, Parliament shall pass legislation relating to the matters provided for under the first column of this Schedule within the period specified in the second column. I think we need to make some corrections there. That the first column of this Schedule, within the period specified in the second column. On the first column we have, legislation to govern/provide for, regulate and prescribe the action, and on the second, we have the time schedules that we have factored in for those things to be done.

#### **CHAPTER ONE: SOVEREIGNTY OF THE PEOPLE AND THE SUPREMACY OF THE CONSTITUTION.**

We have said that legislation to do with Defence of the Constitution should be in place in one year. Legislation to bring the laws into conformity with the Constitution should be done within three years. Legislation relating to the application of personal law should be in place in one year.

On matters to do with **CHAPTER TWO:**

## **THE REPUBLIC.**

On the status and governance of Nairobi, we need to make a correction that this matter will believe should be done in one year. Because this is a devolution issue as we shall see later, we thought that all matters to do with devolution should be handled in the first one year of the Constitution coming into force.

## **CHAPTER FOUR: CITIZENSHIP.**

Enjoyment of rights and benefits of citizenship and right to a passport	–	Two years
Conditions for citizenship by naturalization	–	Two years
Legislation to provide for dual citizenship	–	Two years
Conditions for entry and residence in Kenya	–	Two years
Entry and residence into Kenya of categories of persons other than those set out in Article 26(1) and the status of permanent residents	–	Two years
Various issues regarding citizenship, we agreed that that should be done within two years.		
Promotion, development and use of Kiswahili, indigenous languages, sign language and Braille, we provided for two years for Parliament to do that.		

## **CHAPTER FIVE: CULTURE.**

The matters to do with protection of indigenous rights, the Cultural Commission, Scientific, technological and intellectual inventions, District Cultural Councils and the African Traditional

Court System, we agreed that all those matters should be addressed urgently and be done within the first year.

## **ON CHAPTER SIX: THE BILL OF RIGHTS**

The realization of rights to social security, health, education, housing, food, water and sanitation and standards for their achievement; and standards for the achievement of the right to social security, health, education, housing, food water and sanitation and the standards for their achievement; and the role of civil society in the promotion and protection of the rights and freedoms in the Bill of Rights; we agreed those matters should be addressed within three years.

Reporting mechanisms by the representatives of the implementation of international human rights treaties and related issues; the measures to benefit the disadvantaged individuals or groups and the rights of women – the promotion, protection and enforcement of the rights of women as guaranteed in Article 35; and the implementation of the rights of the older members of society; we agreed those matters should all be addressed within the first one year.

Legislation to promote the welfare of the youth – one year.

Implementation of the child as contained in the Constitution and international law – one year.

Recognition of marriage under different traditions and religions, we factored in three years for that.

Recognition of personal and family law under any tradition or religion, to be addressed within three years.

Legislation to implement provisions relating to the rights of persons with disabilities – one year.

Legislation to facilitate the enjoyment of rights and freedoms in the Bill of Rights by persons with disability, women with disability and their participation in decision making – three years.



Implementation of the right of minorities and other marginalized groups – one year.

Allocation of air time to political parties, regulation of freedom to broadcast, censorship matters and an independent body for censorship and classification – one year.

The right of access to information, to be done within six months.

Legislation relating to promoting civil society's participation in decision making and management of public affairs – one year.

Principles to be adhered to in legislation of civil society organizations – one year.

Legislation to provide for the continuous registration and civic education of voters – one year.

Implementing international law relating to refugees and asylum seekers – one year.

Implementation of the rights of workers, employers and employees – one year.

Provision of social security by the state – three years.

Implementation of the right to education and regulations for independent educational institutions – three years.

Protection of the right to housing – three years.

Enforcement of the right to food, the right to water and the right to sanitation – three years.

Enforcement of the right to a safe environment – two years

Legislation to do with environmental protection – two years.

Consumer rights, consultation of consumers and the organizations on consumer issues, judicial review of administrative action and efficient administration – three years.

Right to fair and expeditious administrative action, judicial review of administrative action and efficient administration – three years.

Prisoners' rights to be protected against exploitation or abuse of prisoners – one year.

Prisoner's right to complain to Correctional Services, Commission on Human Rights and Administrative Justice, other similar institutions and communication with the Press – one year.

Restricting rights to vote of prisoners serving sentences of more than two years – three years

Standards of the prison system to conform to the international standards – three years.

Legislation to do with the state of emergency – one year.

Lower Courts' original jurisdiction to uphold and enforce the Bill of Rights – six months.

Implementation of provisions on the authority of the High court to uphold and enforce the Bill of Rights – six months.

#### **On CHAPTER SEVEN: LAND**

Legislation to do with the revision, consolidation and rationalization of land laws, sectoral land use law, conversion from one tenure system to another, protection of interests in land, establishment of land administration system, resettlement of the landless, establishment of the land fund and adjudication of communal land – two years.

Review of all grants of government land and reviewing and assessing of all claims of unjust expropriation of land, within a determined period of three years.

Legislation to set the cut-off date for the review and assessment of all claims to unjust expropriation of land – three years.

Acquisition of land by state and regulation of use of land – two years.

Legislation to provide for the organization and powers of the National Land Commission – one year.

Legislation to enhance the protection of rights in property – two years.

On the **ENVIRONMENT**, we made the following provisions:-

Conservation, protection, preservation and management of the environment and natural resources – two years.

Legislation to implement provisions relating to environmental protection; and the establishment of the special Environmental Courts and a framework for enforcement of environmental rights; and giving effect to the provisions of the environment and natural resources; we said legislation to do with that should be in place in two years.

On **CHAPTER NINE: LEADERSHIP AND INTEGRITY**

Legislation providing for the establishment of the Leadership and Integrity Code for persons holding offices specified under Article 277 should be in place immediately and within three months.

Terms and conditions for availing to the public declarations made in accordance with the Leadership Code – one year.

Management of staff of the Ethics and Integrity Commission – one year.

Performance of functions of the Ethics and Integrity Commission – one year.

other than those set out in the Constitution

## On **THE REPRESENTATION OF THE PEOPLE**

Legislation to determine the number of constituencies, Provincial Councils, District Councils, Village Councils and any other local authority, manner of voting at elections, the registration of citizens as voters, conduct and supervision of public elections and registration and voting by citizens who are outside Kenya, we said that should be done within two years.

Legislation to ensure  $\frac{1}{3}$  rd representation of women and special interest constituencies – one year.

Grounds for disqualification from registration as a voter – one year.

Legislation to make provision for unopposed candidates – one year.

Conditions that political parties should meet to obtain state funding – one year.

Regulation of political parties; matters to be included in the Register of political parties; and the maximum contribution to a political party. All those matters should be handled in the first one year.

## **CHAPTER ELEVEN : THE LEGISLATURE**

Matters to do with control by Parliament of the revenue and expenditure of the state; implementation of the provision relating to election of women representatives and representatives of historically disadvantaged groups; moral and ethical qualifications for Members of Parliament; implementation of provisions relating to historically disadvantaged groups; and defections from political parties. We found those are urgent matters that should be legislated in the first one year.

Procedure for the recall of Members of Parliament – three years.

Legislation implementing provisions relating to the prohibition of Members of Parliament from holding other office (s) or engaging in other activity (ies) likely to compromise the member's office; the right to petition Parliament; public participation in legislation; we factored in one year for those matters.

Establishment of a Public Registry of Kenyan laws and additional procedures for the coming into operation of and publication of Kenyan laws – one year.

Powers, privileges and immunities of Parliament, its committees and members – one year.

Power of the Parliamentary Service Commission to carry out functions to promote the well-being of members and staff of Parliament and other incidental powers – one year.

#### **On CHAPTER TWELVE: THE EXECUTIVE**

We made the following provisions:- firstly

Implementing international treaties to which Kenya is a party or signatory, legislation within three years.

Status of diplomatic missions and international organizations and their staff and Head Quarters Agreements – three years.

Time, place and manner of Presidential Poll within one year.

Implementation of the provision granting the President or a person acting as President, immunity from civil proceedings that are not of a private nature – one year.

Implementing provisions relating to the functions of Ministers and Deputy ministers – one year.

#### **On THE JUDICIAL AND LEGAL SYSTEM**

The establishment of subordinate courts; the establishment of traditional/local tribunals and the functions and jurisdiction of subordinate courts; the establishment of the Supreme Court; the establishment of appellate jurisdiction of the Supreme Court; establishment of the Court of Appeal; jurisdiction of the Court of Appeal; establishment of the High Court of Kenya; jurisdiction of the High Court; provision for Code of Conduct for Judges; grounds for removal from office of a Magistrate or a Kadhi; procedure for appointing, disciplining and removing judicial officers; management of the Public Defender's office and the legal aid scheme; and the criteria by the Committee on Presidential power of clemency in the formulating its advice to the President and matters to do with the regulation of the legal provision. We felt that all those matters were urgent and should be addressed within the first one year.

#### **CHAPTER FOURTEEN: DEVOLVED GOVERNMENTS**

Like I had mentioned earlier, we thought that all matters to do with devolution should be addressed immediately. Therefore:-

Procedures for the settlement of inter-governmental disputes; assignment of additional powers and functions of the levels of Government; other functions of the Regional Legislative Assemblies; legislations to provide election of District Councillors; legislation to make provision on procedures of District Council; legislation to provide for the composition and election of locational Council; legislation to make provision for the balance of gender, community and cultural diversity in legislative and executive bodies in the Region, District and Locality; legislation to make provision for ethics of members of devolved governments; legislation to provide for tribunal to enquire whether elected district executives ought to be removed from office; procedures for Commission on Finance and Fiscal Policy; national legislation in respect of national, regional, district and locational budgets; treasury control; legislation respecting procurement of goods and services; principles of taxation; taxation powers; legislation to govern the procedures relating to the National Consolidated Fund as well as Regional, Districts and Locational Reserve Funds; legislation to provide for borrowing by governments; legislation making provisions for the standards of the national public service; and legislation to guide the publication of laws. We felt all these matters should be handled within the first year.

Legislation to provide for management of urban district and urban areas – one year

Code of conduct for regional or district government – one year.

Arrangement for performance of functions of regional or district government during suspension – one year.

Supplementary legislation to provide for various matters – one year.

Legislation to make provisions in respect of election of women Senators and special interest Senators – one year.

Legislation to provide for the replacement of a Senator who is elected Speaker or Deputy Speaker – one year. And,

Legislation to provide for uniform procedures allowing delegations from regions to cast votes on behalf of those regions – one year.

#### **CHAPTER FIFTEEN: Issues to do with PUBLIC FINANCE**

Legislation to provide for the efficient, effective and transparent management of national and devolved government finances – one year.

Imposition of tax – one year.

Legislation to provide for the general principles of taxation; legislation to provide terms and conditions upon which a person or authority would waive or vary taxes - one year.

Legislations establishing the devolved governments' taxation powers - one year.

Legislation to provide for the establishment of the National Revenue Authority - one year.

Legislation to provide for the Commission on Government Finance	-	one year.
The establishment of, and operations of the Contingency Fund	-	one year.
Salaries and allowances to be charged on the Consolidated Fund	-	one year.
Establishment of Revenue Funds for devolved governments	-	one year.

Establishment and regulation of Contingency Fund; financial year estimates; legislation to provide for the plan and budgets of devolved governments; legislation to provide for National Treasury Control; legislation to provide for procurement of public good. All those matters in one year.

*(Consultations at the “high” table).*

The power of governments to borrow	-	one year
Power of devolved governments to borrow	-	one year
Legislation to provide for management of public debts	-	one year
Legislation to provide for the terms and conditions of government guarantee	-	one year
Establishment and functioning of the Central Bank of Kenya	-	one year.
Legislation providing for the accounts and audits of the accounts of devolved government	-	one year
Legislation for Parliament to monitor expenditure or public funds	-	one year
Functions of the Economic and Social Council and its reporting systems	-	one year.



## **CHAPTER SIXTEEN: THE PUBLIC SERVICE**

Discharge of duties by the Public Service Commission	-	Two years
Legislation providing for the functioning of the Kenya Correctional Services	-	Two years
Mechanisms for accountability, governance and general regulation of the Kenya Correctional Services	-	Two years

## **CHAPTER SEVENTEEN: NATIONAL SECURITY**

Legislation in respect of National Security organs	-	One year
Legislation providing for the duties of the Chief of Defence Forces	-	One year
Legislation providing for an intelligence division	-	One year
Legislation providing for the functioning of the National Security Intelligence Service	-	One year
Establishment and the functions of Police Service Commission	-	One year

## **CHAPTER EIGHTEEN: CONSTITUTIONAL COMMISSIONS**

On Constitutional Commissions we made the following provisions:-

Terms and conditions for availing, by the Ethics and Integrity Commission, declarations made in accordance with the Leadership Code	-	Three months
Performance of functions of the Ethics and Integrity Commission other than those set out in the Constitution	-	Three months
Legislation to provide for other functions of the Heroes and Heroines Commission	-	One year
Legislation to provide for other functions of the Health Service Commission	-	One year

And finally on the:-

## **CHAPTER NINETEEN: AMENDMENT OF THE CONSTITUTION**

Enactment of the Referendum Act - Three months

So we will all look at the Sixth Schedule, that is page 650 in the Revised Zero Draft and page 21 in the Report.

**An Hon. Delegate:** Which Schedule?

**Hon. Delegate Zakayo Karimi:** Sixth.

### **4.3 Sixth Schedule: Transitional and Consequential provisions**

#### **Rights, duties and obligations of the State**

1. All rights and obligations arising of the Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligations of the Government or the Republic under this Constitution.

#### **Existing laws**

2. All laws in force immediately before the effective date shall continue to be in force and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

#### **General Elections of the year 2002**

3. The general elections of the year 2002 shall be deemed to have been held under this Constitution and the Parliament elected in those elections shall continue in existence for its unexpired term commencing on the date when Parliament first met after the elections.

## **National Assembly**

4. The National Assembly existing immediately before the effective date shall continue as the National Assembly for purposes of this Constitution.

And on the Senate, Clause 5 and this is one of the issues that I believe will bring problems and will change after the consultations between the relevant Committees.

## **Senate**

5. (1) The first elections of the Senate shall take place at the first elections held under this Constitution.  
  
(2) Until the Senate has been elected under this Constitution, the functions of the Senate shall continue to be exercised by the National Assembly.

## **By-elections**

6. Any by-election held after the effective date shall be held in accordance with this Constitution.

## **Local Authorities**

7. (1) All local authorities under the Local Government Act (Cap.265) existing immediately before the effective date shall continue to exist until implementation of the new structure under Chapter Fourteen as prescribed by an Act of Parliament.  
  
(2) Parliament shall enact the legislation referred to in Sub-section (1) within one year of the effective date.

- (3) All councillors of the local authorities specified under Sub-section (1), shall continue to be councillors after the effective date until elections are called in accordance with the legislation referred to in Sub-section (1).
- (4) As at the effective date, the boundaries of a district specified in the First Schedule the name of which corresponds to the name of a district existing immediately before that date are the boundaries of the first mentioned district; and
- (5) Pending the enactment of legislation under Article 6(3), locations existing immediately before the effective date constitute the locations mentioned in that clause, with boundaries as then in force.

### **Political parties**

8. (1) A political party in existence immediately before the effective date, shall, within twelve months after the date of the appointment of the members of the Electoral Commissions under this Constitution, comply with the requirements for registration as a political party.
- (2) If on the expiry of the period of twelve months, a political party has not complied with the requirements of Sub-section (1), the political party shall forthwith cease to exist as a political party and any person holding an elective position on the basis of the sponsorship of that party shall continue to hold such position but shall be deemed to be an independent member.

### **The Executive**

9. (1) The persons occupying the offices of the President and Vice President immediately before the effective date shall continue to serve as President and Deputy President, respectively, in accordance with this Constitution until the first elections held under this Constitution.

- (2) Any person holding a post in the Cabinet immediately before the effective date shall continue to hold that position under this Constitution.

Sub-clause 3 which was not contained in the original of the Revised Zero Draft is;

- (3) Upon the coming into force of this Constitution the President shall appoint the Prime Minister and the two Deputy Prime Ministers as provided for under this Constitution.

*(Clapping).*

### **Provincial Administration**

10. (1) Upon the holding of the elections referred to under section 7 the system of administration comprising Assistant Chiefs, Chiefs, District Officers, District Commissioners and Provincial Commissioners, commonly known as the Provincial Administration shall stand dissolved and all public officers serving under that system of administration shall report to the Public Service Commission for re-deployment.
- (2) On the effective date, all assets held by the National Government and situated in the provinces, districts, divisions and locations shall become public property.
- (3) Until such time as district and regional governments are constituted all the assets held by the local authorities immediately before the effective dates shall not be transferred or otherwise disposed of without the written authority of the National Government and any transfer without such authority shall be void.

### **Existing offices**

11. (1) A person who immediately before the effective date, held was acting in an

office established by the Constitution in force before the effective date, shall continue to hold office as if appointed to such office under this Constitution, and that person shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence required under Chapter Nine.

- (2) A person who immediately before the effective date held or was acting in a public office established by any written law, shall, so far as is consistent with this Constitution, shall continue to hold office as if appointed to that office under this Constitution, and shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence required under Chapter Nine of the Constitution.
- (3) The provision of this clause shall not affect the powers conferred on any person or authority under this Constitution to abolish offices or remove persons from those offices.
- (4) The process of appointment of persons to fill vacancies arising in consequence of the coming into force of this Constitution shall begin on the effective date and in accordance with the provisions of this Constitution.
- (5) Where a person has vacated an office that the person held before the effective date and that office is retained or established by or under this Constitution, the person may, if qualified, again be appointed, elected, or otherwise selected to hold that office in accordance with the provisions of this Constitution, and shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence required under Chapter Nine.

### **Succession of institutions, offices, assets and liabilities**

12. (1) If a provision of this Constitution has altered the name of an office or

institution existing immediately before the effective date the office or institution as known by the new name shall be the legal successor of the first named office or institution.

- (2) All liabilities, property and other assets that immediately before the effective date were incurred or vested in the Government or the Republic, as the case may be, shall continue to be so incurred or vested after the effective date.
- (3) For the purposes of this clause, the Kenya Revenue Authority in existence immediately before the effective date is continued in existence as the National Revenue Authority referred to in Article 295.

### **Pensions, gratuities and other benefits**

13. The law applicable to pensions, gratuities or personal emoluments in respect of holders of constitutional offices shall be the law that was in force at the date on which those benefits were granted, or any law in force at a later date that is not less favourable to that person..

### **The Judiciary**

14. (1) Subject to the provisions of this clause, a Judge or any judicial officer who held office immediately before the effective date shall continue to hold office as if appointed to such office under this Constitution, but may opt to retire in accordance with the provisions of this Constitution.
- (2) A Judge or the Chief Kadhi who, on the effective date has attained the age of sixty years may retire and is entitled on retirement to the benefits that person would have been entitled to at the date of the retirement.
- (3) The option provided for in sub-section (1) shall be exercised within thirty days of the effective date.

- (4) The Judicial Service Commission shall receive and consider all formal complaints pending on the effective date before the Police, the Advocates Complaints Commission, the Disciplinary Committee of the Law Society of Kenya or the Attorney General, against Judges of the superior courts of record, the Kadhis and magistrates of the subordinate courts.
- (5) Where, upon consideration of a complaint under sub section (4), the Judicial Service Commission finds that the complaint has or may have merit, the Commission shall require the person concerned to proceed on leave on half pay pending the final determination of the complaint through the mechanisms established by this Constitution.
- (6) Where a Judge or the Chief Kadhi fails to exercise the option provided for under sub section (2) and is not affected by the operation of sub sections (4) and (5), that persona shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence required under Chapter Nine.
- (7) Where, after the receipt of the documents and evidence specified in sub section (6), the Ethics and Integrity Commission is not satisfied with the information supplied by that person, it shall notify the Judicial Service Commission of that finding.
- (8) The Judicial Service Commission, shall in writing, inform a person referred to in sub section (5) of the findings of the Ethics and Integrity Commission under sub section (7) and the person shall from the date of the letter, be deemed to have vacated office without loss of accumulated benefits.
- (9) A Judge of the superior courts of record, a Kadhi or a magistrate of the subordinate courts is not entitled to the benefits of office unless the person had completed the performance of the functions of office and has accounted for the funds and property of the Judiciary for which that person is responsible.



- (10) A person who vacates office under sub section (8) is not eligible to hold any public office.
- (11) The vacancies created by the operation of this section shall be filled in the manner provided for under this Constitution.

### **Acting Judges**

15. A Judge who held office in an acting capacity immediately before the effective date shall be confirmed as a Judge as if appointed under this Constitution if that Judge qualifies to be appointed as a Judge under this Constitution and, that Judge shall within thirty days from the date of the appointment of the Ethics and Integrity Commission file with the Commission the documents and evidence required under Chapter Nine of this Constitution.

### **Judicial Proceedings and pending matters**

16. (1) Unless otherwise provided under this Constitution, all judicial proceedings pending before any court shall continue to be heard and shall be determined by the same or a corresponding court established under this Constitution.
- (2) Unless otherwise provided under this Constitution, any matter or proceeding that, immediately before the effective date, is pending before an existing constitutional Commission, office or authority shall be continued before the same or a corresponding commission, office or authority established under this Constitution.

### **Death penalty and other outlawed penalties**

17. (1) Every sentence of death passed by any court before the effective date and which is no longer the subject or an appeal shall, on the effective date be commuted to a sentence of life imprisonment.

- (2) The commutation of sentence under sub section (1) does not affect the exercise of the presidential power of clemency or other reprieve or remission provided for by law.
- (3) Every sentence of corporal punishment passed before the effective date is remitted and shall not be carried out.

### **Constitutional Commissions**

18. (1) The Ethics and Integrity Commission and the Commission on the Implementation of the Constitution, shall be constituted within ninety days of the effective date.
- (2) Within nine months after the establishment of the Ethics and Integrity Commission and the Constitutional Commission (I believe the corrected should be the Constitutional Commission) the following Commissions shall be appointed in the following order of priority:
  - (i) the Commission on Revenue Allocation;
  - (ii) the Parliamentary Service Commission;
  - (iii) the Judicial Service Commission;
  - (iv) the Police Service Commission;
  - (v) the Public Service Commission;
  - (vi) the Commission on Human Rights and Administrative Justice;
  - (vii) the Gender Commission;
  - (viii) the Electoral Commission;
  - (ix) the Salaries and Remuneration Commission;
  - (x) the National Lands Commission;
  - (xi) the Teachers Service Commission;
  - (xii) the National Environment Management Commission;
  - (xiii) the Health Services Commission;
  - (xiv) the Commission on Culture; and

- (xv) the Electoral and Boundaries Commission.

### **Appointment of Judges of Supreme Court**

- 19.** The process of appointment of the Judges of the Supreme Court shall commence and be finalized within ninety days of the appointment of the Judicial Service Commission.

### **Past human rights abuses**

- 20.** Parliament shall, within six months after the effective date, enact a law to empower the Commission on Human Rights and Administrative Justice to:-
- (a) investigate all forms of human rights abuses by any person or group of persons, before the effective date;
  - (b) investigate the causes of civil strife, including massacres, ethnic clashes, political assassinations, land claims and land clashes, and identify those responsible;
  - (c) make appropriate recommendations regarding:-
    - (i) the prosecution of those responsible;
    - (ii) the award of compensation to victims;
    - (iii) reconciliation; and
    - (iv) reparation.

### **Ownership of land**

- 21.** (1) On the effective date any interest in land larger than a ninety-nine

year lease, by whoever granted, held by an non-citizen shall be converted to (we need to add two, three words there) to a maximum of a ninety-nine year lease, unless otherwise revoked.

- (2) Until communities are identified and their title is registered, community land shall be held by the National Lands Commission on behalf of the communities.
- (3) Where on the effective date, any person not being a citizen of Kenya, had a freehold interest in any land in Kenya, that interest or right shall revert back to the Republic of Kenya to hold on behalf of the people of Kenya, and the State shall grant to that person a lesser right or interest at a peppercorn rent not exceeding a ninety-nine year lease.

### **Translation of documents**

22. (1) All documents required to be available in both Kiswahili and English shall be valid if available in either language.
- (2) Translation of documents required to be available in both Kiswahi and English shall be completed by the year 2007.
- (3) All official documents produced after the effective date shall be made available in both Kiswahili and English.

### **Civic Education**

23. From the effective date, the Government shall, through its relevant organs, conduct and facilitate civic education on this Constitution to the people of Kenya, in the National languages and in their local languages.

## **Amendment of Chapter Fifteen**

That is **Chapter on Finance**

24. Article 346 relating to the amendment of this Constitution by referendum shall apply to Chapter Fifteen for five years from the effective date.

### **Public debt**

25. The Minister responsible for finance shall adopt and enforce measures to ensure that, as far as possible, the accumulated public debt as at the effective date is brought into compliance with Article 287(4) within ten years after the effective date.

### **And a new Article as contained in the corrigendum of yesterday on the Standing Orders in Parliament**

#### **Standing Orders**

26. Upon the enactment of this Constitution, Parliament shall amend Parliamentary Standing Orders to increase its working hours from 16 hours to a minimum of 32 hours to enable it to cope with the extra legislation workload required under the Fourth Schedule during the transitional period.

And finally

#### **Currency**

26. Nothing in Article 300(3) affects the validity of coins and notes issued before the effective date that do not comply with that clause.

Thank you, Honourable Delegates for your patience and listening to me. *(Clapping)*. I now move that we adopt this Report on the Technical Working Group “L”. Thank you. *(Clapping)*.

