



Verbatim Record of Proceedings

---

**CONSULTATIVE FORUM**

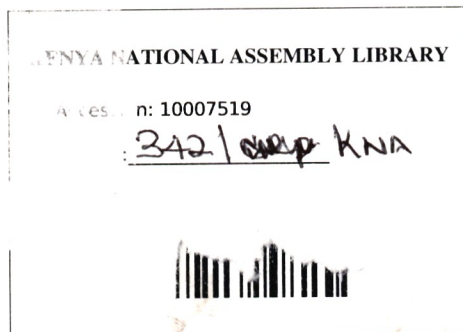
**FOR**

**CONSTITUTIONAL REVIEW PROCESS**

---

24th August, 1998

**Safari Park Hotel**



TYPESET BY THE HANSARD TEAM, KENYA NATIONAL ASSEMBLY  
(SEE APPENDIX)

## CONTENTS

INTRODUCTION AND OPENING REMARKS .....	1-7
SPEECH BY THE PRESIDENT .....	7-9
PRESENTATION OF THE DRAFT BILL .....	10-22
GENERAL REMARKS ON THE DRAFT BILL .....	22-44
PRESENTATION BY THE KENYA WOMEN POLITICAL CAUCUS .....	45-69
CLOSING REMARKS .....	69-76

# THE CONSULTATIVE FORUM ON THE CONSTITUTIONAL REVIEW PROCESS HELD AT SAFARI PARK HOTEL ON 24TH AUGUST, 1998.

## VERBATIM REPORT OF PROCEEDINGS

*(The Forum met at 10.00 a.m)*

*(The Chairman (Mr. Wako) in the Chair)*

**The Master of Ceremony** (Mr. Imanyara): The Forum is now called to order. We will start the meeting with prayers.

*(Prayers were then said by the following: Archbishop J. Njenga and Sheikh A.M. Khalif).*

**The Master of Ceremony** (Mr. Imanyara): I have the pleasure to ask the Forum Chairman, the hon. Amos Wako, to speak to you.

## OPENING REMARKS

**Mr. Chairman:** His Excellency the President, hon. Daniel Toroitich arap Moi, President and Commander in Chief of the Armed Forces, leaders of Parliamentary political parties, Members of Parliament, Members of the NGO community, women organizations and youth organisations, distinguished participants and observers, ladies and gentlemen, it is my pleasure and privilege to welcome you to this resumed Consultative Forum on the process of constitutional review which was adjourned from 29th June, 1998 to 27th July, 1998. It was not possible to hold the meeting on 27th July, 1998 because the Drafting Committee which had been appointed by this Consultative Forum had not yet completed its task whose report was going to be the single item on the agenda. It was, therefore, decided to postpone the holding of this Consultative Forum to 10th August, 1998. Again, the Consultative Forum could not be held on 10th August, 1998 because of the national tragedy and calamity which visited this beloved and peaceful Republic of Kenya on the morning of Friday 7th August, 1998. The preparatory committee which had been making arrangements for this Consultative Forum considered and made a wise decision that we could not hold this Forum immediately after the evil acts that left the nation in a state of shock, grief, sorrow and sadness. The Consultative Forum was, therefore, postponed to today. Before we embark on the deliberations of today, let us all be upstanding for a minute of silence in remembrance of those who have departed from us. Let us also put the families of the bereaved persons in our thoughts. We should also take the opportunity to wish and pray for the speedy recovery of those who were injured in the bomb blast.

*(Members observed a minute of silence)*

Dear participants, much has been said about what happened on Friday 7th August, 1998. The single event happening in a minute or two has, more than any other event in the recent

**[Mr. Chairman]**

history, caused Kenyans to focus and reflect on the event itself and on what happened thereafter. It was Archbishop Ndingi Mwana Nzeki who reminded us during the memorial service on Thursday 20th August, 1998 that even in such a satanic and evil act "God draws good out of evil". I, therefore, hope that we, Kenyans, have emerged from this national crisis wiser than we were before. It is in adversity that a person or a people's character is tested and revealed. As Francis Bacon once stated: "...Adversity doth best discover virtue". Is there anything that has either been refreshed in our memory or we have learnt about the national character of Kenya and her people? I think we have learnt that Kenyans come out best when we act as one people irrespective of tribe, race or ethnicity. All Kenyans should, therefore, rededicate themselves to upholding, both in words and deeds, the words of our national anthem which in particular state that we should "dwell in unity, peace and liberty" and exhorts us to move "with one accord, in common bond united build this our nation together".

One weekly commentator in a leading local daily whom I do not always agree with because he tends to get his facts wrong or twist them has nevertheless made a pertinent comment which I agree with. He wrote:

"At the same time, Kenyans need a break from the belligerence that has come to be associated with the nation. We have come to a point where dialogue is no longer a virtue but a vice...."

Dear participants, this Consultative Forum is to consider debate and adopt with or without amendments the report of the Drafting Committee who had been mandated to prepare a draft Bill to amend the Constitution of Kenya Review Commission Act on the basis of the verbatim report of the proceedings of this Consultative Forum which were held on 22nd, 23rd and 29th June, 1998 which included the reports of the rapporteurs.

As we discuss this report of the Drafting Committee, let us do so taking into account the invaluable experiences of this month. Let us do so with a spirit of a constructive dialogue which we should all recognise as a virtue and not a vice.

Let us express our views soberly with respect and without rancour and let our thinking and our discussion on the issue of the process of constitutional review be motivated and inspired by a vision of a united and peaceful Kenya, with a common purpose in which all the people of Kenya feel and know that their rights are protected and their security assured. Let us all today work together, strive together for the common good which is the realization today of an agreement on the process of constitutional review, so that the process of the constitutional review itself can start in the not too distant future as this is what Kenyans are patiently waiting for. I am confident that if we approach our discussions and consultations in this positive manner, this noble objective will be realized.

It is now my pleasure to call upon the Chairman of the Drafting Committee, the Right Reverend Bishop Philip Sulumeti to make his remarks and present the report. Thank you.

**The Rt. Rev. Bishop Sulumeti:** Your Excellency, Daniel T. arap Moi, President of the Republic of Kenya, hon. Members of Parliament, distinguished religious leaders, distinguished guests, ladies and gentlemen, after that eminent address from the chairman of today's forum, my task is very easy. It will be recalled that the process that brings us here this morning can be traced directly to the meeting held at the Bomas of Kenya on 11th May, 1998. At that meeting, political and non-political groups interested in the comprehensive review of the Kenya Constitution submitted various memoranda and comments that were the subject of further debate at other meetings at this venue, held on 22nd, 23rd and 29th June, 1998. At the conclusion of the last meeting here, a decision was made to create a 12 member drafting committee comprising of the following: Hon. Ms. M. Karua, MP, Hon. Mrs. Z. Kittony, MP, Dr. Wanjiku Kabira, Mrs. Phoebe Asiyoy, Mrs. Abida Ali. We are gender sensitive. The others were Hon. G. Imanyara, MP, Hon. G. Anyona, MP, Hon. J. Sunkuli, MP, Hon. Raila Odinga, MP, Prof. Kivutha Kibwana, Mr. Erastus wa Mugo and myself. This was the team that formed the drafting committee.

The mandate of the Committee was stated as follows and I quote:-

"THAT the drafting committee, on the basis of the verbatim report of the proceedings to be submitted by the secretariat and on the basis of the report of the rapporteurs, do prepare a draft Bill to amend the Constitution of Kenya Review Commission Act, which draft Bill will be presented to this forum for debate and adoption."

At its first meeting on 7th July, 1998, the Committee formulated its procedural formalities and agreed on the following:-

1. All its decisions would be reached by consensus with a right to any member to make a reservation where no consensus would be reached.
2. Its decisions would have to be within the spirit of the Safari Park meetings that gave the Committee its mandate.
3. All issues before the Committee be dealt with as comprehensively as possible.
4. The 1997 Constitution of Kenya Review Commission Act would be the basis upon which we would commence our work.

At that first meeting, the Committee elected me unanimously as its chairman and Hon. M. Karua and Dr. Wanjiku Kabira as Joint Secretaries. Thereafter, we embarked on our mandate diligently for five weeks. Minutes of all our meetings are available. At our request, a technical team of drafting experts from the Attorney-General's office was made available to us. At this juncture, I must acknowledge our Committee's profound gratitude to both Mrs. Margaret Nzioka and Mr. Dan Ameyo who between them, did not miss a single session of our Committee's proceedings and who, at the end, were able to satisfactorily reduce our recommendations into a draft Bill, the contents of which we will presently present to you.

As I have stated earlier, the committee decided that it would work as a unit and that all

**[The Rt. Rev. Bishop Sulumeti]**

decisions would be arrived at by consensus. If a consensus was not reached on any major issue, we would bring it back to this forum for further debate and decision. What we present today to this forum, therefore, is what the Committee, on the basis of its study and interpretation of the verbatim report and summary reports from the forum of 29th June, 1998, has come up with. The spirit guiding the drafting committee was based on what we understood to be the spirit of the meetings at the Bomas of Kenya and Safari Park, namely:-

- (a) The constitutional review process must be people-centred.
- (b) It must be a process that the people of Kenya can take ownership of.
- (c) The process must facilitate maximum participation of all people, taking into consideration their diverse interests, religions, gender and all occupations of life.
- (d) There is need to take cognisance of the diverse social, cultural, religious, political, economical and ethnic differences of the Kenyan people. There is also need to ensure that this diversity is reflected in the process.
- (e) All the views expressed by the different parties must be given opportunities to help build a process that the Kenyan people feel they can identify with.
- (f) The process recognises the sovereignty of the Kenyan people and that this is, first and foremost, their process.

Ladies and gentlemen, we have spent far too much time talking about the need for comprehensive review of our Constitution. Let us not let this year end without taking a decisive step. Let the year 1998 be the year for us to take steps towards transforming our constitutional environment. As we go to the end of the millennium, we must get to work, rebuilding the moral and social foundations of our society, starting with our Constitution. We must make it "unKenyan" for any citizen of this land to grow up feeling insecure or without adequate food, shelter, education, safety from neglect, abuse and violence. We have no other choice. The mounting economic and social problems are a rebuke to everything Kenya professes to be.

They will bring Kenya to its economic knees and increase violence and discord unless we confront them. For nearly seven months since the last General Elections, our nation has focused much of its energy and resources on rhetoric. If we have to be a real island in a sea of turmoil, we have an opportunity to build a future based on traditional Kenyan values - values that we saw vividly illustrated after the aftermath of the bomb blast two weeks ago. Values that make us Kenyan. What better time to begin than now as we prepare for a new century.

As Forum delegates and observers, we must give Kenyans hope that there will be no further delay to commencing the task of reviewing the Constitution. We must demonstrate to Kenyans that it is not ethnic or racial differences that distinguishes us as Kenyans; that it is our vision of liberty and justice for all. We must demonstrate to them that what has

**[The Rt. Rev. Bishop Sulumeti]**

drawn the almost 200,000 foreigners to Kenya to seek refuge is our moral determination to be different. Yes, we must remind Kenyans that what will heal our lost sense of community and national striving are our common hopes and dreams for the generations that will come after us. We must build a constitutional foundation that draws in the gains we have made over the last 30 years in constitutional experience.

During our many meetings as the Drafting Committee, I was amazed by our ability to reach agreement despite what initially appeared to be irreducible differences.

The Bill that we present to you is the result of agreements on all issues save one - and that is the number of the Commissioners. That is the only issue that we bring to you for your determination. And even that need not detain us for more than one hour. With adoption of the three-tier system of review, namely, the Commission at its apex, the National Consultative Forum and the District Forums, there is no, in my view, reason why we should delay to come to an agreement. The National Consultative Forum will have representatives drawn from all districts and all interest groups. There is, therefore, in my view no justification for a Commission that exceeds 25 members. One of the options we have presented to you only in an outline is for a 25 member Commission. You will find that on page 38, proposal three. I would suggest that this matter be given serious thought by you delegates.

Today, millions of Kenyans are looking at this Forum to give them leadership. Let us not disappoint our people. Let us not spend much more time on endless debates and semantics and air-splitting. We have no atom to split. We are a peace-loving nation. I urge you to approve the draft Bill that we are about to present to you with a reduced number of Commissioners appointed solely on the basis of the criteria set out in the Draft Bill.

Ladies and gentlemen, if you approve the Draft Bill that we are presenting to you, it sets the following time-frame within which to come up with a new people-centred Constitution of Kenya.

**Nomination of Commissioners:** 45 days after the Act has been published.

**Stage 1 (2 months):** This period will be taken up by the following task:-

- Capacity building for the Commissioners.
- The establishment of the Committees.
- Establishment of the Secretariat.
- Development of the Programme.
- Identification and hiring of staff and experts.
- Development of materials for the review process.

**Stage 2 (2 months)**

- Establishment of the District Forums, interviews etc.
- Capacity building for the Committees.
- Development of materials for civic education.



**[The Rt. Rev. Bishop Sulumeti]**

Development of the programmes for the districts.

**Stage 3 (3 months)**

Education and mobilization of the Committees.  
Preparation for the Commissioners.

**Stage 4 (6 months)**

Conducting of hearings in all the districts.  
Documentation of the districts' views.  
Depositing of the documented views in the libraries and the districts.

**Stage 5 (3 months)**

Preparation of the report and the Draft Constitution.

**Stage 6 (3 months)**

Publication of the summary report, main report and the Draft Constitution.

**Stage 7 (3 months)**

Constitutional Conference scattered over a period of three months, finalizing the Constitution and adoption.

**Stage 8 (1 month)**

Enactment of the new Constitution by Parliament.

In my concluding remarks, I once again plead with you: Today, let us arrive at decisions. Let us not just prattle and plan and pray, like the oft quoted case of a country vicar to whom a homeless woman turned to for help - and he could not help - except that he promised to pray for her. So, the woman later, wrote the following poem: As I read that poem, I want you to see in it the country and the people of Kenya. The poem goes like this:

I was hungry,  
and you formed a humanities group to discuss my hunger  
I was imprisoned,  
and you crept off quietly to your chapel and prayed for my release.  
I was naked,  
and in your mind, you debated the morality of my dress and appearance.  
I was sick,  
and you knelt and thanked God for your health.  
I was homeless,

**[The Rt. Rev. Bishop Sulumeti]**

and you preached to me of the spiritual shelter of the love of God.  
I was lonely,  
and you left me alone to pray for me.  
You seem so holy, so close to God  
but I am still very hungry, naked, lonely and cold.

Thank you very much, brothers and sisters.

This is the Constitution of Kenya Review Commission (Amendment) Bill 1998. You will find it in your folder.

**The Attorney-General** (Mr. Wako): I thank the Rt. Rev. Bishop Sulumeti, the Chairman of the Drafting Committee for his remarks in introducing the report and the draft Bill.

Dear participants, we are honoured today to have the presence of the President of the Republic of Kenya and it is now my pleasure to call upon him to make his remarks. Mr. President.

*(Applause)*

**SPEECH BY THE PRESIDENT**

**The President** (Mr. Daniel T. arap Moi): Religious leaders, hon. Members of Parliament, observers, I came here with no written speech.

The idea of changing the Constitution or discussing about the Kenyan Constitution was mooted in 1990. Over this period, seven years have passed and people have been discussing about Kenya's Constitution casually. Wananchi have been thrown into a sea of confusion, mistrust and a sea of hate. In fact, there should have never been an Act of Parliament to discuss the Constitution of Kenya. If all of us belong to one country, called Kenya, we should have simply appointed a Commission in the normal way, select constitutional lawyers to decide whether the present Constitution is useless and needs to be overhauled or we need to go into the Constitution and check areas---

We need to go through the Constitution and check the areas where we need to change, and the concern of many is, of course, that the future Constitution should be a Constitution which does not concentrate power on one person because you need checks and balances. How are we going to do this? Which areas should be amended to enable powers to be spread and discussed by people belonging to one nation? Now, people have fear because of remarks here and there. What do wananchi expect from those of us who are elected; party leaders of the Opposition who were elected and given mandate by wananchi to go and do the job and look after their interests? And when we come to these place, we talk about civil society, behind the elected representatives, meaning, those who were elected are not qualified.

I feel sorry myself, because, I was even forced to sign the IPPG package which was done

## [The President]

in a hurry and resulted in people drinking beer. Because people thought, chiefs should not be given powers to organise things. How many people are dying? Now Government administration is sometimes being blamed. The administration is not responsible, because Parliament through IPPG package approved this, because that was not given serious thought. Which areas do we need to amend? Which areas are good for us? I heard a passage from His Grace the Bishop, namely: Capacity Building. Why should we borrow words like, capacity building? Other words should be substituted. Others include, transparency and the rest. Can we not think as Africans? People are dying and they will die because people do not seem to understand one another. In Kenya since there are several constitutional lawyers, I should have expected this august assembly of hon. Members to say: Let us go for lawyers to represent differing opinions and discuss how this can go on. And then memorandums from different people to say: This is it. In fact, there should have been six or eight technical constitutional lawyers to represent the Commission if you want each of them to represent one province. Then bring these views closer together. Such as areas of agreement and so on, and then you arrive at a Constitution that would unite Kenyans. Because, that is my interest; a Constitution that will unite Kenyans. How many constitutions have been thrown down by military regimes? So many. But because of hate, people forget to consider living in harmony.

I was invited by President Mandela on Saturday, to attend a meeting of the SADC, to discuss the Congo crisis. So, I flew on Saturday afternoon and came back yesterday. And the problem again is the same. How many people in Congo have died? So many have died in the first round. About 7,250 people are dead. This way, we can easily wipe out the number. Can we not as Kenyans see what is happening elsewhere? We discuss about petty things.

There are people who have been in Parliament for long, for example, hon. Kibaki and others, who know what has brought us to where we are, 34 years after Independence, is the Constitution we have. If there is something wrong with it, amend those areas that we think are wrong. If the whole Constitution is to be overhauled, then we should get constitutional lawyers to discuss about it, draft it and then Parliament will approve it by two thirds. There has been a tug of war. I am not advocating KANU's stand. I am not representing my party here. I am leader of KANU and they expressed their views all over the country. Other parties represent their views. I am for Kenya that will hold the present and the future generation. Kenya that will safeguard interests of every individual. A Constitution that will safeguard freedom of worship.

My appeal to you is really for you to think of Kenya and not petty issues. Moi is here, but he will not be there in future. Leaders come and go, but Kenya remains. Let us discuss these things rationally without emotions, so that we can carry Kenyans, in the hope that they will see the future more clearly. We have the economic problems. These problems face the whole country. I wish you could visit other countries and see what is happening. Africa is going haywire. I pray that God to spare lives within this Continent. People think about multi-party, democracy and other kinds of things. That depends on harmony amongst the people. The world is changing pretty fast. Nobody will consider you, unless you take a stand as one country, one people and not this tribe or that tribe. If we want to have a

**[The President]**

Constitution where 42 communities want their own, we would not have a nation called Kenya.

So, without labouring too much, I seriously stress the need to consider setting up a technical committee of constitutional lawyers, and then you supply these things. This representation must come from provinces. Provinces can prepare their own documents and present them to this technical people who will jointly act as one, to meet and decide how many lawyers we want to represent each province. For example, Rift-Valley and so on, should present their view point; what they want and to know where these views merge and the time cost. That is the problem. We are not fighting for one group or the other, we are fighting for Kenyans. So, as I said, I did not come with an already written speech, I just came to ask you: Are we really doing justice to Kenyans or we are delaying their problems? The reason why I am suggesting a small commission of, say, 28 or 20 persons and time factor of two months and so on, is so that each province will organise itself properly. Why should we bring in district organisations based on civil society? What is it? We should come forward, channel these things and know what should be done. I am serious because I want these things to be done. But all Kenyans must have confidence in that Constitution. People should not think about this community or that community should have this or that. So, your Grace, I wanted to make these few major remarks for you to ponder and consider reducing the number. In fact, we do not have money to carry so many people. We need a smaller Commission and then channel all the documents from all interested groups from provinces and so on, to check whether those are workable and then we discuss as leaders who represent the people and find out whether these represent the general views of the people throughout the country or not. That will make things better. And discuss issues as brothers and sisters. Mnazungumza mambo kama mko mbali kabisa. Hiyo ndiyo adui ya kwanza. Do not do that. Discuss things as Kenyans living in Kenya and this will help Kenyans know and see their future more clearly.

With these few remarks, hon. Members, I want to wish you a better understanding. Thank you.

**Mr. Chairman:** I thank the President for his remarks. I think we all agree that the remarks he has made as Head of State, are remarks that would help us this day to think about the way forward. Those remarks, Your Excellency, have helped to clarify certain issues which I know were of much concern with the people gathered this morning.

We shall, on that note, adjourn for coffee break and when we resume, we shall start with brief remarks from the list of organisations stated under 9.45 a.m. to 11.30 a.m., which would now be part of the First Session. They will have a few minutes each to make representations, we shall then have a more detailed brief from the Secretary of the Drafting Committee, hon. Martha Karua, and then we shall proceed on from there. So, when we resume, it will be Bishop Philip Sulumeti in the Chair, and I will be co-chairing, but he will be the one effectively in the Chair. The meeting has been adjourned to 11.20 a.m.

**Mr. Kathangu:** Bw. Mwenyekiti, Rais wa Jamhuri, kwa sababu mambo mengi yamezunguzwa katika Jumba hili na kwa kamati ambayo imekuwa ikiendelea na Rais ametoa maoni katika Jumba hili kuhusu kamati ile ambayo itashughulikia uandikishaji wa Katiba; ningelimwomba, kwa hisani, na kwa unyenyekevu sana, kwamba baada ya chai, asiende, lakini ajiunge nasi ili asikie maoni mengi ambayo yatatoka kwetu ili mambo ambayo huenda yakafikiwa katika Jumba hili yasiwe yanapinga maoni ya Rais ama yawe kwamba yanaunga mkono kwa haraka. Kama vile Rais amesema, hakuna pahali nchi inaenda, viongozi watakuja na wataenda halafu nchi itabaki. Katiba haitakiwi kukimbizwa upesi kwa sababu tunajua kwamba inaweza kuleta maafa makubwa. Ninashukuru sana.

**Mr. Chairman:** I have already made a ruling. The Head of State is Head of State and he has many responsibilities and a lot of programmes to attend to. In fact, we are in a sense fortunate that he was able to spare his time to come here out of what I know myself to be an extremely busy day. The other people are here. We should now adjourn and resume at 11.20 a.m.

*(The Forum adjourned for tea at 11.00 a.m.)*

*(The Forum resumed at 11.20 a.m.)*

*[The Forum Chairman (Mr. Wako) in the Chair]*

**The Master of Ceremony (Mr. Imanyara):** The Forum is now called to order. I also call upon the Forum Chairman, Mr. Wako, to give us directions on how we are proceeding.

**Mr. Chairman:** As participants will note, we have still in our midst the Head of State. He must have heard the cries from hon. Kathangu. So, he will be here for a very brief time and then move. Now, because of that, I would want to alter the programme just slightly by calling upon hon. Martha Karua, at least, to give us an overview of the recommendations made and then thereafter we shall follow the programme by asking for brief remarks from the various bodies.

#### PRESENTATION OF THE DRAFT BILL

**Ms. Karua:** Thank you, Mr. Chairman. Your Excellency, distinguished participants, I will just quickly run through the Act without reading word for word. If you look at page 1, the title of the Act is set to change from the *Constitution of Kenya Review Commission Act* to the *Constitution of Kenya Review Act*. The reason being that we now have a three-tier structure not just the Commission as it was. In Section 3, we would delete the word "Commission" appearing in Section 1. Similarly, definitions will be added "District Forum". We have also put in definitions of the "Kenya Broadcasting Corporation" (KBC). This, basically, we will want the KBC to give the Commission air-time to publicise its work.

The "National Forum" has also been introduced and the "Kenya National Library Services", where we will want the work of the Commission or the review work to be deposited for members of the public to address it. Without reading word for word, we have introduced in Section 2B(1) on page 4, "the organs of review", and these organs of review are the "Commission, District Forums and the National Forums" which, I think you will recall, we

[Ms. Karua]

had discussed earlier. In Section 2C, we have introduced "guiding principles" and I will read them:-

"In exercise of the powers or the performance of the functions conferred by this Act, the organs specified in Section 2B shall-

- (a) be accountable to the people of Kenya;
- (b) ensure that the review process -
  - (i) accommodates the diversity of Kenyan people, including socio-economic status, race, ethnicity, gender, religious state, age, occupation, learning and the disadvantaged;
  - (ii) provides the people of Kenya an opportunity to actively, freely and meaningfully participate in generating and debating proposals to alter the Constitution;
  - (iii) is subject to Act conducted in an open manner;
  - (iv) is guided by the respect for the universal principles of the basic human rights, gender equity and democracy; and,
  - (v) ensure that the final outcome of the review process faithfully reflects the wishes of the people of Kenya."

Section 6 deals with the establishment of the Commission, and that is where we are suggesting three alternative proposals for this Commission which you will see on the Schedules attached and, therefore, the actual number of Commissioners will depend on which of the three proposals we adopt. I would be coming to that at the end. Section 7 sets the time limit. I would like under Section on page 8, you can see here we have introduced gender equity. We are saying that there shall be a chairperson and a vice-chairperson of the Commission. We are trying to use gender sensitive language taking note that the "chairer" of the Commission could very well be a woman.

I am being reminded that I ought to read the criteria of Commissioners in Section 8 on page 7, under 4A(1) which reads thus -

Subject to subsection (2), a person shall be qualified for the appointment as a Commissioner, if such person is -

- (a) of sound mind,
  - (b) a person of integrity, good character and good understanding and with learning or experience in public affairs; and,
  - (c) educated up to a minimum of "O" Level or its equivalent.
- (2) Notwithstanding the provisions of subsection (1), a person shall not be qualified for appointment, as a Commissioner, if such person -
- (a) is an undischarged bankrupt;
  - (b) or has been convicted of an offence other than an offence of a political nature and sentenced to imprisonment for a term of six months or more without the option of a fine."

Section 9 talks of the manner in which the appointment of the chairperson and the vice-

[Ms. Karua]

chairperson of the Commission will come about. The criteria is set out on page 8 subsection (3) which says:

- "(3) A person shall be qualified for appointment as the chairperson if such person:-
- (a) holds or has held office as a judge of the High Court or the Court of Appeal; or
  - is an advocate qualified for the appointment as a judge of the High Court under Section 61 of the Constitution;
  - (c) or has been engaged in the teaching of law in a recognised university in Kenya for, at least, 15 years.
- (4) Persons qualified for appointment in terms of subsection 3 shall include any commissioners so qualified."

So, here the chairperson of the Commission need not be a Commissioner, so to say. He or she could be sourced from outside.

Without going to the rest of the provisions, the staff of the Commission is also provided for and the manner in which they will be appointed. I will read about the staff of the Commission, Section 10 on page 10:-

The principal Act is amended in Section 7 by deleting subsection (1) and inserting the following new subsection:

- (1) The staff of the Commission shall comprise such officers and other staff as the Commission may appoint to assist in the discharge of its functions under this Act; and,
- (a) and such public officers as may be necessary for the purposes of the Commission, as may upon the request of the Commission be seconded thereto by the Public Service Commission and such public officers shall, during their secondment, be deemed to be officers of the Commission and subject to the direction and control of the Commission."

In Section 12 on page 11, the principal Act is amended by inserting the following new section immediately after Section 8 -This is Section 8A, the code of conduct.

(8A) (1) "For the better discharge of the functions of the Commission, the District Forums and the National Forum, under this Act, the code of conduct prescribed in the Third Schedule shall apply to:-

- (2) A person who breaches the provisions of the code of conduct shall -
- (a) in the case of a commissioner, the secretary of the Commission or a member of a District Forum or the National Forum subject to the provisions of Section 9, be disqualified from holding office as such; and,
  - (b) in the case of a member of the staff of the Commission, be liable to such disciplinary action as the Commission may prescribe."

**[Ms. Karua]**

We will later see what the code of conduct is. But this is meant to keep the standards of the Commission to a level where they would perform their duties as expected by Kenyans. We have also changed the criteria of disqualification from the Commission, and this is on page 12 subsection 3:

"The office of a commissioner, the secretary or a member of a District Forum or the National Forum shall fall vacant if the person:-

- (a) dies; or
- (b) resigns from office; or
- (c) is surcharged bankrupt, or
- (d) is convicted of an offence carrying a sentence of imprisonment of not less than six months, without the option of a fine, or
- (e) is in breach of the code of conduct prescribed under Section 8A; or
- (f) without reasonable excuse fails to attend eight consecutive meetings of the Commission, the District Forum or the National Forum; or
- (g) is by reason of physical or mental infirmity, unable to discharge his or her duties as a commissioner or secretary, or if for any other reason unable or unwilling to act as a commissioner; the secretary to the Commission or as a member of the District Forum or the National Forum, and in any case to which paragraph (e), (f), (g), and (h) apply; the breach, failure, inability or unwillingness is noted by the Commission, the District Forum or the National Forum in its records and supported by a resolution of two-thirds majority of the members and the person is informed of the termination of their appointment in writing through the secretary or where the affected person is the secretary, through the chairman."

We have also provided for the filling of a vacancy in the Commission and we have said it will be filled in the manner in which the appointment was made in the first place. So, if the appointment was by an interest group, the same interest group will fill the occurring vacancy.

The functions of the Commission are spelt out on page 14, Section 10.

The functions of the Commission shall be:-

- (a) To facilitate the conducting of civic education in order to stimulate public discussions and awareness on constitutional issues.
- (b) To collect and collate the views of the people of Kenya on proposals to alter the



**[Ms. Karua]**

Constitution and on the basis thereof, to draft a Bill to alter the Constitution for presentation to the National Assembly.

I will only read what appears in heavy print because those are the additions. We assume that you are all aware of the previous provisions of the Act.

(d)(ii) Examine the federal and unitary systems of the Government and recommend on appropriate systems for Kenyans.

In (d)(iii), we have introduced next to the words "respect for human rights" and "gender equity."

(d)(iv) Examine and recommend improvements to the electoral systems of Kenya.

(d) (vi) Examine and review the place of local Government in the constitutional organisation of the Republic of Kenya and the degree of devolution of powers to local authorities.

(d) (Viii) Examine and the rights to citizenship and recommend improvements that will in particular, ensure gender parity in the conferment of the right.

(d)(ix) Examine and review the socio-cultural obstacles that promote various forms of discrimination and recommend improvement to secure equal rights for all.

Now, I will take you to the Committees of the Commission on page 19, section 16 which reads thus: The principal Act is amended by repealing section 12 and replacing it with the following new sections:-

"The Commission may establish such Committees of the Commission as it may deem necessary for the better carrying out of its functions under this Section."

Section 17. The principal Act is amended by inserting the following new sections immediately after Section 12.

12 A. (1) Notwithstanding the provisions of any other written law, the county council of every district shall facilitate the establishment by the Commission of a District Forum in the district which shall consist of:-

(a) Three elected representatives of each location in the district one of whom shall be a woman and one a youth.

So, the District Forum as you have noted will have presentatives from each location. There will a youth, a woman and a man. The county council is the one facilitating and is expected to house the operations of the Commission. This takes care of the monetary element so that not so much money is spent on establishing the forums.

(b) Elected representatives of the major religious organisations in the

[Ms. Karua]

district who shall comprise not more than ten per cent of the total membership of the Committee under paragraph (a).

(c) Two other persons elected by the members under paragraphs (a) and (b) and appointed by the Commission as co-ordinators of the District Forum who shall be the joint secretaries of the forum at least one of who shall be a woman.

(2) A person shall not be qualified for election as a member of a District Forum under paragraph (a) or (b) of Section 1 unless such a person is a person of integrity and good character.

(3) A person shall not be qualified for appointment as a co-ordinator under (c) of subsection (1) unless such a person:-

(a) has a minimum of "O" standard of education or its equivalent; and,

(b) is a person of integrity and good character.

(4) The Members of the District Forum shall, at their first meeting, elect one of their number to be the chairperson.

(5) The functions of the District Forum shall be to mobilise communities at the local level for the purpose of civic education in preparation for the Commission's work and to perform such other duties as the Commission may assign.

(6) The Members of the District Forum, other than the co-ordinators shall serve on a voluntary basis. This takes care of unnecessary expenditure.

(7) Any vacancy in the Membership of a District Forum shall be filled through the election of a qualified replacement by the body required under this section to elect the person in respect of whom the vacancy occurs.

(8) The Commission shall, in regulation prescribe:-

(a) the procedure for meetings of District Forums;

(b) the manner of discharging the functions of District Forums under this Section; and,

(c) provide for the manner of meeting expenses related to the operations of District Forums.

(9) Subject to any regulations made under subsection (8), the District Forums shall regulate their own procedure.

I hope this clears the air on the role of District Forums and the civic education envisaged is a better understanding of the current Constitution of the various alternative models that are being suggested to enable our people to make informed participation. I wish also to stress that representation of the forum apart from the three people elected from each location, there will be religious organisations getting at least, ten per cent of their members into the forum. No heavy expenditure is expected because the members of the District Forum will be volunteers except the two co-ordinators.

The Commission's records under Section 13A, will be kept at the districts and will be available for members of the public and National Libraries throughout the country.

**[Ms. Karua]**

I will now read for you the amendments to Section 13 which appear as Section 18 on page 22.

Section 13 of the principal Act is amended:-

(a) by deleting subsection (2) and inserting the following new sections:-

(2) Subject to subsection (2A) the Commission shall hold such number of meetings in such places, at such times and in such manner as the Commission shall consider necessary for the discharge of its functions under this Act.

(2A) Notwithstanding the provisions of subsection (2), any meeting of the Commission for the collection of the views of the public shall be held in public except on the written request of any person being heard that the hearing be in private.

(b) In subsection(3) by deleting paragraph (a) and renumbering paragraphs (b) and (c) as paragraphs (a) and (b) respectively.

Subject to subsection (2A) of Section 13, the Commission shall avail the record of the proceedings of every meeting of the Commission within 10 days thereof through:-

(a) the document centres established under Section 13B.

(b) the libraries provided by the Kenya National Library Services Board throughout the country.

(c) through the print and electronic media.

(2) Notwithstanding the provisions of any other written law the Kenya Broadcasting Corporation shall, for the purposes of subsection (1)(c) allocate to the Commission free airtime on both radio and television as follows:-

(a) in the case of radio, at least one hour per day on the Kiswahili service and the English service and such airtime as the Corporation may, in consultation with the Commission deem sufficient on the vernacular services.

(b) in the case of television, at least one hour per day.

Section 13B(1) Notwithstanding the provisions of any other written law, the county council of every district shall facilitate the establishment by the Commission of a documentation centre in the district for the preservation and dissemination to the public of the records of the deliberations and proceedings of the Commission and such other information as the Commission may direct.

(2) Any person may, during working hours, inspect at the documentation centre any of the records preserved therein and may obtain copies thereof upon payment of such fee as may be prescribed.

Section 20 is equally important and I will go through it.

20. The principal Act is amended by repealing Section 16 and inserting the following new section:-

16(1) The Commission shall complete its work of collecting and

[Ms. Karua]

collating the views of the people within 13 months and shall, at the end of that period compile its report together with a summary of the recommendations and on the basis thereof, draft a Bill to alter the Constitution.

(2) The Commission shall:-

(a) present copies of its report together with the Draft Bill to the President for information; and,

(b) cause the contents of the report, the summary of the recommendations and the Draft Bill to be disseminated through the District Forums, the libraries provided by the Kenya National Library Services Board throughout the country and through the print and electronic media for a period of three months for public information and debate.

Section 21, appearing on page 25 provides for the National Consultative Forum.

21. The principal Act is amended by inserting the following section immediately after Section 16:-

16A(1) There shall be a National Consultative Forum comprising of:-

(a) all Members of Parliament;

(b) all members of the Commission;

(c) three representatives from each district to be nominated by the District Forums, at least one of whom shall be a woman and one a youth;

(d) representatives of the bodies specified in the First Schedule other than political parties, nominated in accordance with that Schedule; and,

(e) such other members appointed by the Commission to represent interests not adequately represented under the fore-going paragraph as the Commission may determine: Provided that the members under paragraphs (d) and (e) shall not exceed one-third of the total membership of the forums under paragraphs (a), (b) and (c)

(2) Any vacancies arising in respect of the members of the forum under paragraphs (c), (d) and (e) shall be filled through the nomination of a qualified replacement by the body required by this section to nominate the member in respect of whom the vacancy occurs.

(3) The Commission may employ such number of experts or consultants as the Commission may consider necessary for the performance of the functions of the National Forum.

(4) The chairperson of the Commission shall be the chairperson of the National Forum.

(5) The Commission shall, within thirty days after the expiry of the period prescribed in Section 16 for the publication and public debate of the report and the Draft Bill to alter the Constitution convene the National Forum and shall, at least twenty-one days before the date of the first meeting thereof, send copies of the report of the Commission together with the draft Bill to all members of the National Forum.

(6) The functions of the National Forum shall be to study the report of the Commission together with the draft Bill to alter Constitution and to debate, amend and adopt the proposals contained therein.

(7) The National Forum may, if it deems it necessary, refer any

**[Ms. Karua]**

matter arising from the report or the draft Bill back to the Commission for further study, investigation or inquiry and the Commission shall, upon such reference conduct the necessary study, investigation or inquiry and report back to the Forum within the period prescribed for the completion of the Forum's work under section 8.

(8) The National Forum shall complete its work within three months and shall on the expiry thereof, submit the report and the draft Bill as adopted by Forum with or without amendments to the Commission.

(9) The chairperson of the Commission shall forward the report and the draft Bill as adopted by the National Forum to the Attorney-General for introduction to the National Assembly.

(10) The Attorney-General shall, after the receipt of the report of the report and the draft Bill under section (9), table it before the National Assembly within thirty days of the day the Assembly next sits after the report is received.

If I may pause there, I hope now, there is a clear understanding of the three-tier structure; the District Forum, the Commission and the National Forum so that those who are for a small technical team can see that the grassroots are represented right from the location and after the Commission completes its work, representatives from the districts will again meet at the National Forum where everybody can see whether the final draft is actually representative of what was debated. We have recommended that the Commission Chairman chairs the National Forum to avoid having two parallel bodies that can overrule each other and bog down the Commission. You have seen that we have provided that if the National Forum refers anything back to the Commission, they have to finish that work within the time frame given for the National Forum to complete its work. This is to avoid unnecessary delays in the completion of the work of the Commission.

The expenditure of the Commission is provided for in Section 22.

22. The principal Act is amended by repealing section 17 and replacing it with the following new section:-

17(1) The expenses of the Constitutional Review process incurred by the Commission, the District Forums and the National Forum in accordance with this Act shall be charged on, and issued out of the Consolidated Fund without further appropriation than this Act.

Section (2) without prejudice to subsection(1), there may be made to the organs specified in the subsection (1) through the Permanent Secretary to the Treasury grants, gifts, donations or bequests towards the achievement of the objectives of the review process specified in the Section 2A:

Provided that no grants or these donations of requests shall be made on any condition that the said organ perform any function or discharge any duty, obligation other than the duties under this Act aimed at achieving the objective of the Constitution review process.

Under section 17A there is established a Fund to be known as Constitutional of Kenya Fund which shall be administered on behalf of the Commission, by the Permanent

**[Ms. Karua]**

Secretary to the Treasury.

The accounting procure is detailed there which is in accordance with the current Government accounting procedure.

Section 17B which a new introduction on page 30. The financial year of the Commission be the period of twelve months ending on 30th June in each year.

On the annual estimates, Section 17C(1). At least, three months before the commencement of each financial year, the Secretariat of the Commission shall prepare estimates of the revenue and the expenditure of the Commission, the District Forums and the National Forum for that year.

(2) The annual estimates shall make provisions for all estimated expenditure of the Commission for the financial year concerned, and in particular shall provide for:-

- (a) the payments of sitting and other allowances for expenses in respect of the members of the Commission, the District Forum and the National Forum;
- (b) the payment of salaries, allowances and other charges in respect of the Secretariat and the staff of the Commission;
- (c) the remuneration of such experts or consultants as the Commission may engage for the discharge of its functions of the National Forum;
- (d) the acquisition, proper maintenance, repair and replacement of the equipment and other movable property necessary for the purposes of this Act;
- (e) for the creation of such reserve funds to meet future or contingent liabilities in respect of such matter as the Commission may deem fit.

(3) The annual estimates shall be submitted to the Commission for approval before the commencement of the financial year to which they relate and shall, upon approval by the Commission, be submitted to the Permanent Secretary to the Treasury for approval.

(4) All expenses incurred in accordance with the estimates approved under subsection (3) shall be paid out of the Fund.

(5) No expenditure shall be incurred for the purposes of this Act except in accordance with the annual estimates approved under this section.

Mr. Chairman, Sir, if I may take you back a little, we said that members of the District Forums will be volunteers. You may wonder why we are talking again of their allowances. It is envisaged that, perhaps, it may be considered necessary to give them travel allowances

**[Ms. Karua]**

to and from the district. That is why we are talking of their expenses although they are volunteers.

On the accounts and audit of the Constitution of Kenya Review Fund, 17D. The accounts of the Constitution of Kenya Review Fund shall be kept, audited and reported upon to the National Assembly in accordance with section 18 and 19 of the Exchequer and Audit Act.

Now, the last but one section 23. The principal Act is amended by repealing section 18 and replacing it with the following new sections:-

18(1) Notwithstanding anything to the contrary in this Act or in any other written law -

- (a) the submission of the report and the draft Bill to alter the Constitution to the Attorney-General under subsection (8) of section 16A shall operate to dissolve the District Forums and the National Forums;
- (b) the enactment of the Bill to alter the Constitution will be tabled before the National Assembly under subsection (9) of section 16A shall operate to repeal this Act and to dissolve the Commission;

and the terms of office of the Commissioners shall expire from the date of enactment save that the secretary and such number of staff as shall be necessary, shall remain in office to conclude the financial and the winding up of the Commission's work.

Mr. Chairman, you have seen that there are two time schedules for when to dissolve the District Forums and National Forum and the Commission. For the District and National Forums, we felt that once they complete their work, they should also be dissolved immediately to avoid further expenditure. But for the Commissioners until the enactment of the new Bill we need to retain them just in case they may be necessary.

Now, the last section 24. The principal Act is amended by inserting the following new section immediately after section 18 -

19(1) The Commission may make Regulations generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this section may -

- (a) prescribe anything required by this Act to be prescribed;
- (b) subject to this Act, prescribe the procedure for -
  - (i) nominating the chairperson, the vice-chairperson and the members of the

[Ms. Karua]

Commission and any members of the National Forum required by this Act to be nominated;

- (ii) electing the members of the District Forums - it means that the Commission will work out the details - and for filling any vacancies arising in respect thereof; and
- (c) prescribe the disciplinary procedures applicable to the staff of the Commission.

25. The principal Act is amended by repealing the Schedule and inserting the following new Schedules:

Now, before we read the Schedules giving the numbers of Commissioners, I would ask you to turn to page 43. We first go through the code of conduct. Code of conduct for members of the

Commission, District Forums, the National Forum and the Staff of the Commission.

*Impartiality and Independence of Members*

- 1 (1) Every member of the Commission, a District Forum or the National Forum shall serve impartially and independently and perform the functions of his office in good faith and without fear, favour or prejudice.
- 2. (1) No member of the Commission, a District Forum or the National Forum shall, during tenure of office, be eligible for appointment or nomination to any political office.
- (2) No member of the Commission, a District Forum or the National Forum may:-
  - (a) by his or her membership, association, statement, conduct or in any other manner jeopardize the perceived independence of the member, or in any other manner prejudice the credibility, impartiality, independence or integrity of the Commission, the District Forum or the National Forum;
  - (b) make private use of or profit from any confidential information gained as a result of being a member of the Commission, the District Forum or the National Forum.

*Disclosure of Conflicting Interests*

- 3. If a member of the Commission is directly or indirectly interested in any contract, proposed contract or other matter before the Commission, such member shall disclose the fact and shall not take part in the consideration or discussion of, or vote



[Ms. Karua]

on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.

4. This code shall apply with necessary modification to the staff of the Commission.

Now, before we come to the alternatives we have given for the Commissioners. If you look at page 1, the preamble to the Act has also been changed. It goes under section 2, the replacement of the long title. It now reads:- "An Act of Parliament to facilitate the comprehensive review of the Constitution by the people of Kenya and its eventual alteration by Parliament; to provide for the establishment, powers and functions of the Commission, District Constitutional Forums and the National Constitutional Consultative Forum, and for connected purposes".

Now, the final bit is on page 35, First Schedule, Proposal A - Composition of Commission. This is the first method that the Drafting Committee came up with. It provides for 77 Commissioners divided among political parties, religious groups, women's organisations, youth and student organisations, labour movement, professional bodies, disabled persons, Non-Governmental Organisations, Kenya National Farmers Union, co-operative movement, Federation of Kenya Employees; Kenya Association of Manufacturers; National Chamber of Commerce and Industry, Pastoralists, National Convention Executive Council and Association of Local Government Authorities of Kenya.

We have distributed the 77 Commissioners to all those organisations. I need not to go through. The lion share is going to the political parties who have 42 Commissioners, the religious groups have nine, women organisations have eight, but more women will come from the political parties as you see on page 35, KANU has been allocated 17 seats; 11 seats may go to men and six seats must go to women. Democratic Party has been allocated eight seats; three of which must go to women. The NDP has been allocated five seats, two of which must go to women. All the other parties have one each, except FORD(K) which has three and one must go to a woman. SDP, has been allocated three seats, one must go to a woman. So, the total number of women is raised to a total of 28 out of the 77.

Then, we have proposal B which again is for 77 Commissioners based on the provinces. They are being called district representatives, but they are distributed according to the provinces. It is then distributed to the organisations listed there under one each.

Third alternative which is a proposal which found favour with all the members of the Drafting Committee is a small technical team comprising of 25 persons of integrity, good standing and with learning in public affairs chosen on the basis of the criteria we have already set out. You will notice that we have not said how the 25 will be nominated. If this distinguished gathering find favour with the small technical team, then we can go into the modalities of how they will be appointed. I do not think it is difficulty from a personal point of view, the same way, the 77 were arrived at we can constitute ourselves into an electoral college and get a small technical team that will be able to complete the work that is ahead.

[Ms. Karua]

*[The Chairman (Bishop Sulemeti) in the Chair]*

GENERAL REMARKS ON THE DRAFT BILL

**The Chairman** (Bishop Sulemeti): I now invite you back. Please let us go back to the programme and have a few brief remarks.

**The President** (Mr. Daniel T. arap Moi): I have listened very attentively to the presentation by the hon. Karua. The only thing I wanted to comment on is that, when you set up the District Forum, take note that this is political. Being political, it must automatically be elected by the elected representatives at the district level, which will include women and everybody. I do not think it is fair for this organisation to select people to decide what should be done at the district, if we are following democratic process.

*(Applause)*

Mr. Chairman, secondly, I can see the advantage and disadvantage of the National Forum. The elected representatives are waiting for the Electoral Commission to pass what they have decided to them. I should have thought that the elected representatives should be behind the Electoral Commission, supplying the views of the people to its finality. Now, I cannot understand the elected representatives being on the receiving end, who will then decide what the constituent should be. I think this is a debating point. For instance, if you go to Turkana, you ought to know how to approach Turkanas. If you go to Pokot, you ought to know how the Pokots feel and if you go to Coastal group, you should also know their feelings, and this is my advice. Since people have different views about certain things, and unless you approach these cautiously--- My interest is to preserve and keep our nation as a country. If we do not do it, it can break and it will be very difficult to restore confidence. I can see the idea of starting at grassroots is very important. It is important to get the people to know what they want, and so they will express at that level. So, the Members of Parliament should be ready to pass it to Parliament. Of course, the advantage is to minimise debate in Parliament and to eliminate any major disagreements and attain major agreements. I can see that point of sifting valve, so that when it goes to Parliament, it is just the question of "Ayes", then everything goes through.

*(Laughter)*

I do not object it seriously, but I only want the role of the Members of Parliament to be clear. Either they go there again and come and wait for it to come through, that is another advantage. There are also matters touching the Commissioners themselves. You will have to decide on the numbers and of course, I agree with hon. Karua who presented it following the method. But I think they should not say that there must be gender, the men--- At one stage or the other, this will receive some resistance, and we do not want this sort of thing. I agree and would suggest that, it should be helped and guided by the representatives so that the ladies and anybody else are not denied playing their role and I also agree that the women and the youth be represented at the grassroots level. I think that is a good suggestion that can be proposed here and I have no objection there. But for other major

**[The President]**

issues, we want harmony to go through if a Constitution that is acceptable to Kenya is accepted.

Mr. Chairman, another matter is on the constitutional lawyers. We tend to agree on the number 25, but all the same, I want to put more emphasis on the elected representatives. But how many technicians and other professionals will be there, that is up to those areas of decision making using the formula they used on getting 77 or 42. But all the same, I want to put more emphasis on the elected representatives. That one is very important, because they will be answerable. Because if you say: "So many to this area," who will defend that decision other than the representatives? It is difficult for others to do so and I am not going to say: "It has been decided." This is freedom for everybody. Maybe my attendance will reduce tension and facilitate some decisions which would have been delayed.

I think you will now proceed and eliminate a few things that you may think are not necessary.

With these few remarks, I wish you success.

*(Applause)*

**The Chairman:** (Bishop Sulumeti): Where are the other people? Do we wait for them to come back?

**The Master of Ceremonies** (Mr. Imanyara): At the request of the Head of the Catholic Church, who has another function, we have agreed that he makes his contribution now before the heads of political parties, so that he can attend to the next function.

**The Chairman Kenya Episcopal Conference** (The Right Rev. J. Njue): Mr. Chairman, Cabinet Ministers, Members of Parliament, the Drafting Committee, Ladies and Gentlemen. I am pleased to have been invited to this very most important endeavour in the history of our country. It is wonderful that now Kenyans are talking to each other and with each other, about the most important contract document of our country, that is the Constitution.

The Kenya Episcopal Conference (KEC), as you know, and the Catholic Church at large, has in the last eight years consistently pressed for the constitutional reforms, consonant to an independent nation that embraces all tenets of a Democracy. The KEC has done this through the Pastoral Letters, which I believe most of you have read. There are, of course, those in our midst who juggle political cards and if they had their way, they would mould this very important document to suit their whims. I think it is important to note that the constitutional matters hold supreme to each and every Kenyan. Remember that politicians come and go, but Kenya will still remain. Do not let history judge you as the ones who hobbled the hope of the Kenyans.

I am asking that we rise above all politics for the sake of Kenya.

## **[The Chairman Kenya Episcopal Conference]**

Mr. Chairman, as you very well know, the current Constitution is truly alien. We know that our Constitution is so alien that Kenyans have had little chance of seeing it, at least a great majority; and neither has there been a deliberate effort to create awareness about it. I wish to remind the gathering that our current Constitution was drafted many years ago by the United Kingdom, and the same United Kingdom that has no written Constitution chose for Kenya to be independent, a Constitution had been written and given to us. The Constitution was, therefore, drafted, discussed and ratified. There were few Kenyans who went to Lancaster Conference, but their hearts were deeply on Independence. It is little wonder, therefore, that once Britain handed over Independence, there was that rush for amendments that have put us into the situation that we are in now. The lesson we must learn, therefore, is that we should not repeat the mistakes of the past in this process that we have now embarked on. No effort must be spared to ensure that Kenyans are actively and qualitatively involved.

Mr. Chairman, I would like to commend the work that has been done so far, and particularly, the work of the Inter-Parties Parliamentary Group (IPPG) reforms package, which saw the minimum constitutional statutory and administrative reforms effected, albeit, the fact that these reforms came too late and were too few.

The focus was to level the political playing field before the elections of 1997. Therefore, the primary motive of these reforms was purely political. This may be seen as a congenital weakness in the IPPG reforms package since no constitutional amendments must be dictated by short-term political mileage. Members of Parliament, without consulting the Kenyans whatsoever, selectively amended what they felt would benefit the political scenario, to the advantage of political parties. We again must strive to build on the few gains of the IPPG initiative and what has gone on so far and avoid political motives. We should not be using political milestones such as general elections as indicators of the progress of the review.

I now wish to call upon the stakeholders, that is all Kenyans, to face the many challenges of the reform process. First among these include the need to build confidence and trust in the entire process. This challenge falls squarely on the shoulders of our Government and the ruling party which must seek to divest itself and any party to divest itself from active control of the process. There are fears that even the constitutional review structures agreed upon, such as at the district levels, may be manipulated by the Administration and by political parties. The Catholic Church will be willing to provide the resources for all the dialogue that will be taking place and we hope that the other churches will do the same.

The second challenge that I would like to place in front of you is to ensure active and quality involvement of as many Kenyans as possible. The document will belong to all Kenyans living in the present times and for future generations. For them to own it, they must meaningfully contribute to the process at all stages. Let it be heard and let it be understood, that the Constitution is too important and too serious a document to be left only to the "elected" Members of Parliament.

So, then the other challenge that I would like to present is the need to act expeditiously to enable the process to go on and to be fully focused on the issues at stake and avoid

**[The Chairman Kenya Episcopal Conference]**

diversions whatsoever. Kenyans must learn to tolerate one another and to accept one another for what we are now. The longer the process takes, the more the threat of a stale and obsolete end-product becomes real. I would like to take this opportunity to acknowledge the wonderful work that has been done by the drafting committee and we commend tremendously the document that has now been presented to us. We would like however to note this: We would be very comfortable with the 25 representatives for the Commission, but the mode of selection could very well follow the structures of the Third Schedule. If that fails for any reason, then we will be quite comfortable with the First Schedule.

Finally, there is the question of the finances. We do not feel very comfortable with the Committee having to depend on the Treasury for its financial activities. You know we have put our money in the Treasury before--- I have finished.

At the same time, I wish to affirm our support at the Kenya Episcopal Conference and by-extension that of the Catholic Church for the noble intentions that have brought all of you here. I pledge the active involvement of the Catholic Church in the subsequent stages. May you all have a fruitful meeting today and in future, and may the heavenly Father from whom all good things come, inspire all of you.

Thank you.

*(Applause)*

**The Chairman** (Bishop Sulumeti): May I Invite hon. Mwai Kibaki of DP.

**Mr. Kibaki:** Thank you all, Mr. Chairman, ladies and gentlemen. First, I would like to---

*(Loud consultations)*

**The Chairman** (Bishop Sulumeti): Please, brothers and sisters in that corner, give the speaker your two eyes, but better still, give the speaker your two ears! Thank you.

**Mr. Kibaki:** Well, ladies and gentlemen, first, I would like to congratulate and thank the Drafting Committee for a job very well done. I am particularly happy about the manner in which they have drafted the guidelines that would be observed by various commissioned committees and, in particular, by the Commission itself because those guidelines spell out where we are trying to go. So, I thank you very much for that job. Equally, I would like to join by agreeing that we reduce the number from 77 to 25 members but let us agree that we do it proportionately to the numbers given in Schedule (1) so that we do not miss out any of the people represented in that schedule. I think the momentum where we have been seen to be inclusive, it would lose too heavily for us if we allowed ourselves to narrow it and omit some organisations that have participated in it to this far. We have come this far together and let us try and hold together so that we will go where we are going together and we shall succeed. Let us make that concession. So, let us agree that we reduce the number proportionately from that schedule, where some organisations are given one person and there is no way of reducing. So, you cannot have "half a person". So, it is just to

**[Mr. Kibaki]**

reduce the numbers of those who have more than one and then we shall come to 25.

Equally, I would like to say whoever is on that point that the emphasis which is placed on the effort to take an affirmative action in recognition of this question of gender and it appears where we are talking about representation in the district forum, national forum, commission itself, and in so other of the constitutions, please, let us have no doubt and hesitation. Actually, if we believe in the future that we are trying to build, we must accept without any hesitation that we need affirmative action to assist women. We are making a Constitution for the 30 million Kenyans and the Constitution for 30 million Kenyans, slightly more than half are women, and I think it is important that we should have any doubt on this issue.

Equally, I join with the previous speaker, Bishop Njue, that the powers you have given to the PS (Treasury) where the budget is first agreed by the Commission and then it is given to the PS to approve, you just delete "approval". We then do not have anything about approval. Let the Commission work its budget. They will know the total sum they have. Let them work their own budget. It must not be subject to approval by the PS (Treasury) because he is unreasonable. We have a Commission from whom we are expecting a draft bill on the Constitution. We should not demean them by requiring them that they must have their budget be represented to one person, the PS (Treasury), whom is subject to other influences which we do not know and then he is going to be the one who is going to make final decisions. That should just be deleted. It is a small matter but very important for the working of this body.

Mr. Chairman, regarding the timing, first and foremost, it is we here that should agree to complete, during this sitting, the kind of thing that we want and everything has been done. It only remains for us to deal with this one item of the numbers and we can complete it now so that timing will begin with the next sitting of Parliament. Parliament is coming back on the 6th of October and we should have a draft bill ready for that day for Parliament to give its priority on the very first week of our meeting so that we are able to pass it quickly and set up this Commission before we go for Christmas so that we start this work early and that timing is what would help us a lot.

Finally, let me say this. When we are choosing the 25 of us here, we should lay great emphasis on having professionally qualified people. This is because now that we have left the whole rigmarole about district *et cetera*, we want to chose people who will do the job. We should focus on the individual merit and quality of the persons who can draft a Constitution which is a serious matter and maybe, as lawyers would say, for avoidance of doubt, on behalf of the Democratic Party, let me say quite firmly, that, "we view this exercise as a very major review of the Constitution of Kenya". So, we should not hesitate. We shall review all aspects of the Constitution of Kenya.

Thank you very much, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Let now have the FORD(K) Chairman.

**Mr. Wamalwa:** Mr. Chairman, hon. Members, ladies and gentlemen, I would like to start by stating categorically that FORD(K) salutes the members of the Drafting Committee and commends the fruits of their labour in the form of the Constitution of Kenya Review Commission Amendment Bill, 1998, which has been very ably read to us by the hon. Martha Karua. Constitution making in a democratic society, Mr. Chairman, is a continuous process and we, in this country, can be proud of the fact that, we are one of the few emerging democracies that has been governed under a constitution for the entire period of our nationhood. This is not to say, in any way, that our Constitution has been perfect. In fact, far from it. The fact that we are gathered here today is an acknowledgement of the imperfection, and that is why we seek a structured and all-inclusive review process that will result in a constitution that will not only last, but will also safeguard and protect the fundamental rights and freedoms of Kenyans in the context of our diverse cultural, ethnic and racial makes.

Bishop Sulumeti has told this meeting that in the performance of its task, the Drafting Committee sought to arrive at decisions by consensus. We, in this hall, have something to learn from that. I believe that the time has come when hard and inflexible positions on issues that do not really divide us should be left truly behind us. We face great challenges as a nation, and just as we have proved to the world that at a critical moment, such as we experienced when international terrorist murders' hands hit us two week ago, the capacity to rally together in the national interest is a truly Kenyan tradition. Let us, once again, close ranks in this matter of constitutional reform and approve the Draft Bill by consensus, so that the actual task of constitutional review can begin without any further delay. We would like the first agenda in the next Session of Parliament, just the same as the hon. Kibaki said, to be the enactment of this Draft Bill into law.

Mr. Chairman, I have had the opportunity to go through the proposed amendments in great detail, and I am satisfied that it has removed shortfalls and weaknesses in the IPPG reform Bill, that was the subject of so much controversy. I have also looked at the three proposals with regard to the one area of disagreement, and like Bishop Sulumeti, I am satisfied that a small technical team of experts, not exceeding 25; maybe even less, should form the Review Commission. The fears expressed about marginalisation of communities can now be sufficiently addressed in the composition of the National Constitutional Consultative Forum that will study and approve the draft Constitution prepared by the Commission after collecting and collating the views of Kenyans. FORD(K)'s basic position on Constitutional Reform is simple. And it is this:

"We believe that all lawful power derives from the people and must be held in check by the people themselves to preserve their freedom and dignity".

We are satisfied that the Bill just presented by the Sulumeti Committee offers Kenyans an appropriate opportunity to begin the process of Constitutional Reform without any further delay, realising that it is urgent to have this thing done, and procrastination is the keep of time.

Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Let us now have a KANU representative.

**The Minister for Trade** (Mr. Kamotho): Thank you, Mr. Chairman, Bishop Sulumeti; the Chairman of the Forum, the Attorney-General Amos Wako; and also the delegates attending this particular forum. I would like, on behalf of my colleagues in the party, to endorse the words of our party Chairman, who is also the President of the Republic of Kenya, in total; and state very clearly that we share the sentiments expressed about the draft of the Drafting Committee. To come out much more clearly, we are in agreement with the proposal of the smaller Constitutional Review Commission, and therefore, endorse proposal C, but to blend it with B. I hope you get the message correctly. We accept proposal C but we blend it; we do artificial insemination with B. I think that would you give a super breed. I am sure, the President having spent a lot of time with us this morning; and knowing how busy he is, it is an indication of the seriousness he, himself, personally, and the ruling party KANU, is taking in this matter. Therefore, I would like to take issue with hon. Kiraitu Murungi, for having read an article yesterday. I do not know what he meant, and I hope he is around. All the Members of Parliament were invited to this meeting by the Chairman of the Drafting Committee. KANU did not invite any of its Members of Parliament to come and attend this meeting.

**The Chairman** (Bishop Sulumeti): Order! Please, do not personalise issues.

**The Minister for Trade** (Mr. Kamotho): So, it is absolutely necessary that hon. Kiraitu Murungi withdraws those words and apologizes to the party. Even if you defend him, you do it, but we took offence about it.

So, what I wanted to say is, count on us; count on KANU, and KANU has no intention whatsoever, to derail the constitutional review process. Additionally, we support the other institutions proposed in the recommendations, provided they are organs of the Constitutional Review Commission. As regards the district forum, I think, it may be necessary that Members of Parliament and councillors from a particular district are also members of such a forum, because they would help to guide the local people in terms of understanding what a constitution is. This is because a lot of local people do not understand what the Constitution is all about. Most of them have never seen it, and even if they have seen it, they do not understand it.

So, with those few remarks, thank you very much, Mr. Chairman, and we look forward to having the draft amendment Bill ready before Parliament resumes work.

**The Chairman** (Bishop Sulumeti): Let us now have the SAFINA representative.

**Mr. Kigano:** Your Grace, Bishop Sulumeti, I would to express and offer SAFINA's congratulations to the erstwhile Committee of 12 that has done a very good job. For me, as a person experienced in these matters of drafting, I can assure you that you have done a fantastic job. Please, accept SAFINA's congratulations. I would also like to thank the President, today, for the first time, for speaking off the cuff because that is apparent that he was speaking matters from his heart. Now that we do not have a Vice-President, I would like to request those close to His Excellency to tell him to make that habit, speaking off the cuff more often. Please, do so. Now, the most important matter as far as we are concerned is that, SAFINA has not taken a position between A and B, under the schedule. Certainly, we take a negative position against B. I was surprised that, hon. Kamotho, today appeared



**[Mr. Kigano]**

to differ from his Chairman. This is because, if I understood the President well, he spoke in favour of the 25. But SAFINA's position is, provided the mode spelt out of the bodies nominating under A is put into effect, we have not quarrel with the number; if the numbers can be reduced proportionately to table A. Equally, we have no major problems with the structure under the Act. There are a few omissions; for example, we would have preferred to see a spelt-out role of the armed forces, the police and the intelligence institutions, because these are institutions that have in the past been used to oppress Kenyans. We equally agree with hon. Kibaki that the approval of the PS, Treasury, under Section 17(C)(iii), should be deleted altogether; the word "approval" should be deleted. Equally, we also have a situation where a lot of our good people; teachers of law, renown and reputable teachers of law took flight and went into exile, and these are good Kenyans; well versed; they know about throughout Kenya. We should not exclude them under Section 5(3)(C), where we say that, the teacher to be appointed as an alternative, should be a person who has taught locally, continuously for 15 years. We have a lot good people who took flight and went into exile.

With those few remarks, Sir, I wish this Forum successful deliberations.

**The Chairman** (Bishop Sulumeti): Let us have the Chairman of FORD(A), Mr. George Nthenge.

**Mr. Nthenge:** Mr. Chairman, all the leaders, ladies and gentlemen; first of all, I should confess, at the outset, that I am one of the few remaining people in politics, who drafted the 1962 Constitution.

*(Applause)*

It is very unfortunate that it was not given a chance to work. It was given a few days, and within a short time I used to be on the Electoral Commission of Kenya we were told: "Please, create seats for Senators; the Senate will go". Within a short time, Provincial representative were gone. Ladies and gentlemen, I am asking you, as Kenyans and colleagues who are going to live in this country longer than I, because my sun is setting; please, give things a trial and stop too much rush. This is because rush, as is said in Kiafrika, "haraka haraka haina baraka". Kwa hivyo, nawatakia kheri njema, na wale waliofanya kazi hii yote, nawapa ahsante. Nitamuuliza Bw. Wanguhu Ng'ang'a asome statement yetu ambayo tumetayarisha tukiwa chama cha FORD(A).

Ahsante sana.

**Mr. Ng'ang'a:** Mr. Chairman, the Speaker of the National Assembly and fellow delegates; you will have to bear with me because I am going to read very fast because we have very limited time, up here on the podium.

First and foremost, FORD(A) would like to send most sincere condolences to those who lost their dearly loved ones at the hands of the terrorists who exploded bombs in Nairobi and Dar-es-Salaam. We, as a party, stand with them at this hour of grief, to them and the

[Mr. Ng'ang'a]

countries involved. We also condemn the heartless and cowardly butcher of human beings, and wanton destruction of property which took place.

However, it is when reflecting on the tragedy and its aftermath, that we are vividly reminded that we are all Kenyans in happiness or in sorrow, and with common destiny, irrespective of our differences; our different community origin, religious or political affiliation, Kenyans, at the site of the bomb explosion, un-hesitatingly acted as brothers and sisters, which they are, in saving lives, and we are all very proud of them. A big thank you goes to them.

But we have very strong feelings that the best way of recognising and honouring the heroic demonstration by the Kenyans in reference, is for us here gathered, to act in the same manner, by recognising that we are all Kenyans with the same destiny, our political or religious backgrounds, notwithstanding. All of Kenya today is focused on Safari Park Hotel, hoping that we are here for them, and not for our selfish self. We earnestly beg all of you to make today's date, 24th August, 1998, a day when leaders would serve Kenyans first and a new democratic society is born.

*(Loud consultations)*

And, Mr. Chairman, I would like to request you to ask the participants to maintain some silence. We are holding more than one meeting.

**The Chairman** (Bishop Sulumeti): I think you have heard him.

**Mr. Ng'ang'a:** Regarding the proposed amendments--- If you hear there is some disjointment, it is because I am trying to cut it short. Regarding the proposed amendments in front of us, FORD(A) would like, first and foremost, to congratulate the Committee for a well-done job. Apart from the fact that we have some one or two amendments to propose, we are delighted that they have succeeded in forming the three-tier body constitution of the process so successfully, that all districts, and therefore, people in the grassroots, will be so effectively represented at the district level, through the District constitutional forums, and nationally, through the National Consultative Forum, where the actual final comprehensive review of the Constitution, and its eventual alteration by Parliament, will take place.

A Commissioner representing a district, as was suggested, whose role will be restricted to collecting and collating what Kenyans would say only, as is prohibited by the Code of Conduct, which is in Section 8 (a), and Oath of Office, Section 8, cannot play any useful role to any district. FORD(A), therefore, specifically supports without reservation, the proposed replacement of long title, to provide for the establishment of the Commission, district constitutional forums and the National Consultative Forum. FORD(A) specifically supports proposed amendment to Section 4 as contained in the First Schedule, Proposal (a), without reservation. Proposal (a) is definitive as to who the stakeholders are, who will appoint Commissioners, and does not divide Kenyans into communities, groupings, provinces or districts. However, while distribution of Commissioners among the

**[Mr. Ng'ang'a]**

stakeholders is very reasonable, 77 Commissioners is a large number, and FORD(A) proposes that a provision be made in the amendment to divide the Commission into three groups of 25 or nearest number, for operation purposes. This, therefore, covers those amongst us, who have proposed Schedule C, which may not be as inclusive, but cares for effectiveness. Once again, we thank the Drafting Committee for their good work.

FORD(A) proposes an amendment to the Amendment Bill before us, in respect of Section 16 (a) and Third Schedule, Section 8 (a) on the Code of Conduct, because there is no record anywhere in the world, where a democratic Constitution has been written without active representation of political parties. While political parties will appoint Commissioners, such Commissioners, as we have already seen, are prohibited by the Code of Conduct and the Oath of Office, from being partial, and political parties are partial, as they have their manifestos and policies. The Commissioners, therefore, cease to represent political parties as such, on appointment. Political parties will, therefore, need direct representation. In fact, this is what the Chairman of KANU and the President of the Republic talked about. You cannot start telling people there in the districts, that they cannot elect somebody who is in FORD(A), KANU or any other political party. It is for those electing to decide. You cannot alienate political parties. While Section 16 and Third Schedule Section 8---

**The Chairman** (Bishop Sulumeti): Your time is up, please.

**Some Delegates:** He should stop there!

**Mr. Ng'ang'a:** Do you think it is fair?

**The Chairman** (Bishop Sulumeti): Endelea.

**Mr. Ng'ang'a:** Okay. I have been told that I can give the Speech, so that it can be recorded and they can take into consideration what I am saying. The most important thing I would like to say before I sit down, is to support what has been stated by the Leader of the Democratic Party. Here in the Act, you find that the independence that is given to the Commission is withdrawn by various sections, which gives power to the Permanent Secretary, Finance, who will approve the budget. It is also provided in the Act here, that if the Commission under-estimates their expenditure, they will not be able to get any more money. I think that is all very dangerous and we should amend that accordingly. Also, the donations to be given to the Commission must all be passed to the Permanent Secretary, Ministry of Finance. That is not proper. There should be a better way, and that should be amended to provide full and complete independence of the Commission, including the finances that it will need. If need be, let the Permanent Secretary, Ministry of Finance become a member of that budget Committee, but not to exclude. Thank you, very much.

**The Chairman** (Bishop Sulumeti): Thank you. Let us have the FORD(P) Chairman, Mr. Kimani Wanyoike.

**Mr. Wanyoike:** Thank you, Mr. Chairman. I have very few remarks; very few indeed, because the points that we wished to raise have already been raised, and there is no point of labouring on something that has already been said. Having said that, let me record our party's appreciation for the work that has been done by the Drafting Committee. They have done something that is very useful. They managed to work out various compromises, so that what was brought before us here today, was a document that shows a great deal of maturity. We thank them very much.

Secondly, I would like to react to some of the remarks that were made this morning by His Excellency the President. I am very grateful to him because he obviously lowered the political temperature. There were some concern in many quarters in the country that, maybe, this meeting would degenerate and in the end, we would be unable to agree on anything. We thank him for coming and we thank everybody who has contributed towards the unity of this meeting. But one thing that is very clear is that in dealing with the matter of the Constitution, we must bear in mind that the country has been divided over the last few years. The politics in this country has been very, very divisive, and we hope that this Constitution will bring us together. One of the ways that we were divided was that most of the Opposition parties and the civil society were agitating for the review of the Kenya Constitution comprehensively, and there was a feeling, rightly or wrongly, that the ruling party was not very keen on it. I am very grateful to the Sectary-General of KANU for having reassured us and the country that KANU is very serious. But there has been that feeling. In order to overcome this feeling, we have to go an extra mile, and that is the point that I am coming to. We have been discussing about the ownership of the process of the constitutional review. A feeling that we want a Constitution that is not reviewed as it was in 1962 by a few people in Lancaster House in London, or as it has been amended by a few people in Parliament, but that we wanted a people-oriented process, wholly owned by Kenyans. Now, in the process of getting the ownership of the process of the constitutional change, I feel that it will be served better, by Schedule A, Proposal A, 77 Commissioners. This may be unpopular with the Committee because they have already recommended 25 Commissioners to us; and I have respect for them, but we are developing democracy and it is important to look at all issues. For example, the reason why they went through the process of getting all these organisations is to try and reassure Kenyans that the Constitution is not going to be reviewed by just a few people; that the ownership of that process is going to be national; that the Constitution will be people-oriented. That is why they came to the number 77, and broke it down nicely. I have been told that one of the considerations is money. I do not accept this because I believe that money has been used for other purposes, which are less-worthy than the constitutional process. I believe that we can get the money if we decide that this should be done. Secondly, I have been told that number 77 is unwieldily; that it is too large a group, and that they would not be manageable. I would like to suggest humbly that it may be even better because as we are going to the districts, and we want to get views from every district, and they are 65 of them; it might be useful to have a group of 77 Commissioners and divide them into groups so that they can attend to all areas. My own view is that you, ladies and gentlemen, mean well, and I know that you will do the best. I would like you to consider expanding the Commissioners from the 25 that have been recommended, to the 77 Commissioners that are in Schedule A. I believe that it will not in any way become unwieldily and it will not become too expensive because the Constitution is a very vital document for us. I would like also to comment on the question of funds in Section 28. I would like to emphasise the

**[Mr. Wanyoike]**

fact that although by law, all monies coming to the State must go to the Treasury, we must specifically give independence to the Commission as far as money is concerned. There should be no room for the PS, Treasury or anybody else, to have to veto certain expenditure. I think in the drafting of the Constitution, you should make sure that you do that. Lastly, I believe that we have travelled a long way, and we have become a much more civilised nation than we were three years ago; and therefore, it is necessary that we have affirmative action. The Schedule recommending women representation must be adhered to religiously. We must do so and make sure that women are properly represented. Thank you very much, Mr. Chairman.

**The Chairman (Bishop Sulumeti):** Now, we will give the floor to Shirikisho Party. Mr. Leslie Betawa Mwachiro, I give you five minutes.

**Mr. Mwachiro:** Fellow participants, I think the Drafting Committee has done a very commendable job. We, members of Shirikisho Party, will be quite at home with either schedule A or Schedule C. But going by what hon. Kamotho said, if we have to go by Schedule B or Schedule C, modified according to Schedule B, we have done some computation here using the ratio of 25 to over 77 and we have found that it totals up to .32 per those figures given in Schedule A and Schedule B. Therefore, for Schedule A, the disabled persons will have one person, the pastoralists one person, the NCEC one person, the NGO one person, the professionals one person, the Labour Movement one person, the youth one person, the women two people, Muslims one person, Christians one person and other religions one person. KANU will have five people, DP two, NDP, FORD(K) and SDP one member each, Parliamentary parties two members and non-Parliamentary Parties one member. That gives us 25 members under Schedule A.

Under Schedule B, Nyanza should have two members, Western two, Rift Valley four, Central two, Eastern four, Coast two, North Eastern one, Nairobi one, Christians one, Muslims one, other minorities one, women two, disabled one and the Labour Movement one person. That gives you a total of 25 members as well. However, the non-political groups are full of Christians and men. Therefore, we must take into account Muslim interests, the youth and the women because if we use the figures as given, we will find that majority of the members will be Christians and men. And, in fact, most of these non-political groups, apart from religious groups, have not been heard outside Nairobi, Central or Rift Valley. Therefore, we should make sure that we look at those other regions which do not have representatives from the non-Parliamentary groups.

When you look at Schedule B, Coast Province has been given six members. I think this is an error by the Drafting Committee. Coast Province has seven districts and we do not understand why we were given only six members. If it is a district representation, we should have been given one member per district. Therefore, Coast should have seven members, in case, we opt for Schedule B.

The other thing that Shirikisho Party has talked about is federalism or majimbo. We have heard people from Nyanza supporting majimbo and I think hon. Raila is on record as having supported majimbo. People from Central Province have as well supported majimbo.

**[Mr. Mwachiro]**

They even want the kingdom of Kirinyaga to encompass Nairobi. Shirikisho Party has no quarrel with that. What we want is majimbo to be basically embraced and be implemented. We will be very happy if we actually incorporated federalism within the object and purposes of this Bill. What I mean is that we want to include on page 2, section 5(2A), line four, the words "with an equivocal declaration that Kenyan shall forever be a federal Republic. No region will be allowed to secede from the Federal Republic of Kenya and no one shall be expelled from the region they will have chosen to reside". And everywhere else where we are talking about Republic of Kenya, we should insert "Federal Republic of Kenya". Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): We will give the floor to NDP, hon. Raila.

**Mr. Raila:** Thank you, Mr. Chairman. Hon. Members of Parliament, ladies and gentlemen, I was a member of the committee of 12 and, therefore, I find it very hard to congratulate myself.

As NDP, we consider this meeting today a very important historical landmark in our long constitutional journey as a people of Kenya. The journey has been very long. The Chinese say that a journey of 1,000 kilometres begins with the first step. I think that you have already made the first step because we believe as NDP that today we are in the process of laying a very firm foundation upon which the dreams of millions of Kenyans can be realised. I am very pleased to see this galaxy of leaders of Kenya gathered here today to talk about the constitutional reform, something that would not have been possible some times last year. I keep on saying that we as Kenyans share something in common and that there is no historical phenomenon that can be replicated. You cannot say that we do it this way because it was done this way in this and that other country. The social, economic, cultural and historical circumstances are unique to us, as Kenyans. The reason why we are talking about reviewing our Constitution is because we have had a problem with the Constitution that we have had. But we also recognise that we are operating in a constitutional vacuum. We say that, 35 years our original independent Constitution has been patched so many times that we can no longer recognise the original material with which it was made. As we have said, when we are doing this kind of exercise, it is a unique exercise because we are having an opportunity in this generation to revisit the Constitution which was drafted in Lancaster House when we had only a few people representing the people of Kenya. So, what we are going through is very historical and important and Kenyans should take it with equal importance. When we are doing this, we should not begin by criminalising some other systems. That is what I said, I never said that I support majimbo. I said that we need to re-examine all other modalities. Let us not begin by saying that the people talking about majimbo want to dismember this country. Let us look at federalism as a modern system of governance. The USA model is different, the German model is different and the Switzerland model is very different. Switzerland is a very small country. It is smaller than Eastern Province, yet they have a functioning federal system. Let us not begin by saying that it must be a unitary system. Let us look at a unitary system, a decentralized unitary system and a loose federal system among other options.

In this process there has to be a political will, otherwise, all the statements will just remain

[Mr. Raila]

in the domain of rhetoric. There has to be a political will to change and that is why in my party we realised that circumstances had changed. That the theatre for campaign for change had shifted from the streets to the negotiating table. Our history has been a dual history marked by duality, that is, the forces of domination versus the forces of change. But let us now harmonise this history. Let us not look at them as two mutually exclusive histories because we want to lay a foundation of a united country; Kenya. That is why we need constructive dialogue. It has been said that the biggest danger to the thriving of a multi-party democracy in Africa is lack of internal democracy within the institutions, lack of democracies within the political parties and lack of democracy within other institutions; religious organization and other civil organizations included. So, let us try to internalize democracy by creating democracy within our own institutions. It is important that we agree - and I see no problem in agreeing - on the structure. Let us also commit ourselves collectively to creating a conducive climate for proper political participation in this constitutional review process.

I am concluding by saying that we, as a committee, recommended a three-tier system. We deliberated on the composition of the Commission because we were empowered to go and look at how we could expand the original figure of 29. But when we sat down as 12 people and soberly reflected, we realised that we are somehow trying to confuse two things here. When you talk about ownership of the process, you are talking about people themselves owning and you will only facilitate that ownership by taking it to the people. That is why we came up with the district forum. And that is why we came up with the national forum which is a much larger group of people. But then we said that we needed a professional commission; a Commission that would consist of Kenyans of integrity, which would go out and collect views of Kenyans and present them in a report and a draft Bill. These people are not going to represent their respective religious, political or ethnic interests. We are talking about an independent Constitutional Review Commission for Kenyans. Let us not confuse the two because I see that we run the danger of not agreeing on this very important issue. We want this Commission, once it has concluded its work, to let all other political parties, religious organisations and ethnic communities to come to the national forum. Let us not say that we are not represented on the Constitutional Review Commission.

Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Kenya Social Congress (KSC): Hon. George Anyona.

**Mr. Anyona:** Chairman of the forum, Chairman of the drafting Committee, hon. Speaker of the National Assembly, hon. Ministers, Members of Parliament, members of the religious community, members of the civil society, it is my great privilege to stand before you here and offer a few thoughts. However, having had the honour bestowed by this distinguished forum to participate in the drafting process, it would be presumptuous of me to begin to educate this distinguished forum as to how they should go about this business. My job is to help this forum appreciate fully why some of the recommendations that we made were made at all. For instance, there has been the question of the role of Members of Parliament and councillors in the district forum process. His Excellency the President did propose that this should have been a much more formal participation than it appears in the Bill. I think

**[Mr. Anyona]**

other leaders have been of the same opinion.

Mr. Chairman, on behalf of the committee, I would like to confirm that at the back of our minds, it was quite clear that elected leaders, both Members of Parliament and councillors, and other leaders, would be behind the whole process of mobilization of the people at the district level. So, if this forum wishes to make that role formal by saying so in the Bill, we have absolutely no problem. We did envisage that they have that crucial role. We do understand that the people understand their role. Now, on reflection, it makes much better sense that having participated in the local fora, they can bring the same clarity to the national forum when they participate. I thought I would make that one clarification.

Mr. Chairman, secondly, we are very grateful that you think the Committee has done a good job. I can assure you that we had very long protracted arguments and discussions. That is the reason why the draft Bill is the way it is. We tried to take into account the various perceptions and feelings that have been expressed here. It is because of that, and some kind of soul searching that we came to the realization that, infact, all other things put aside, we can come up with an efficient small technical commission that will do the job of collecting and collating views so that Kenyans in these other fora can debate those views. That is why, although we had no specific mandate to deviate from what this forum had decided, we thought we would put in that proposal (c). We also said that we would not be presumptuous by saying how it should be structured. We left it to this forum. I for one would like to propose that along other views which have been expressed here, we as the Kenya Social Congress party have put forward some proposals. We shall be circulating a paper over the lunch break which offers some thoughts as to how we might structure that commission on the basis of 25 commissioners.

Mr. Chairman, the next point I would like to clarify is the one of affirmative action. Again, you can see from the Bill that we went totally affirmative. You can see we even changed the title; we said the constitution must take cognisance of that when it is written. However, we do want to clarify that the meaning of affirmative action in this context is much larger than just women. It includes the disabled, the youth, the disadvantaged, the entire spectrum. Although the women may constitute the larger proportion of that - the youth might contest that - but indeed we did consider that all aspects of affirmative action must be considered. I would like to clarify two other points, if I may, because this will help this forum to reach common ground. There is the question of the role of the Treasury. We, as the Drafting Committee, clearly were bound by rules and procedures that are in place. The provisions of Cap 412 have a particular procedure---

**The Chairman** (Bishop Sulumeti): On a point of order. Hon. Anyona, with due respect, you are supposed to speak for the KSC and not for the drafting committee.

**Mr. Anyona:** Mr. Chairman, be that as it may, I thought I may not want to speak again because I have taken part in the drafting. That is why I thought I would offer my thoughts for what they are worth. All I was saying is that we followed the procedures that are laid down in Cap 412 and also in Section 101 of the Constitution of Kenya in the provision of funds and Treasury provisions. I will leave it at that.



**[Mr. Anyona]**

I would like to conclude by saying this: That this gathering takes place at a historic and unique moment in our history. It is historic and unique because for the first time, we are discussing the fundamentals of our Constitution. Secondly, it is historic and unique because for the first time, we have all been able to assemble here, together with the Head of State. We have heard him, he has heard us. Nobody can run away from this meeting and say: "So-and-so is hijacking or playing tricks". We are all here together. All this is taking place under the shadow of the recent tragedy. Our people out there are waiting. For once, no section of this forum or society has any excuse to run away from this process. Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): The Social Democratic Party (SDP): Hon. Francis Wambua.

**Mr. Wambua:** Mr. Chairman, thank you very much. I stand here to represent the SDP. I do not have any written statement and I have not prepared any. Maybe, my colleagues who are not here are engaged in other national issues. That is why I stand as an elected national leader on an SDP ticket to join my colleagues in supporting the gathering of today. I would like it to go on record that the SDP was represented. Thank you.

**The Chairman** (Bishop Sulumeti): The National Council of Churches of Kenya (NCCCK): Rev. Mutava Musyimi.

**Rev. Musyimi:** Mr. Chairman, fellow delegates, the NCCCK is very pleased to be invited to make a few comments. I would like to say the following few words. First, I would like to express our unqualified appreciation and satisfaction for the work done by the Drafting Committee. Secondly, we should remind ourselves that as a nation, we have gone through and we are still going through a very major tragedy. As we observed the process and all the pain after the bomb blast because we are very near the American embassy, we saw courage, solidarity and sacrifice. Indeed, we went through a defining moment in our history at this point; a very costly reminder of who we are. It is our hope and prayer that we shall embrace that spirit that we saw among fellow Kenyans and be seized by it as we come into the process of constitutional review.

Constitution making is about political power, economic power and many other powers. I am satisfied this morning that much as I was afraid about the tension that normally exists between the people and the political and social realities, this will not be something to worry too much about if we carry on the way we are carrying on. And so, one looks forward to creative tension as the two come together, that is the people and the political reality. We look forward to transformative and rejuvenative tension and not tension that would destroy or debilitate the process that we have set on a very sound footing today. It is our hope that we shall have the opportunity to reinvent Kenya. The nation is due for reinvention and reconstruction. It is my hope and prayer that the spirit of courage, solidarity and sacrifice will be with us during this process.

Mr. Chairman, let me, on a more technical point, make the following remarks. First, we share the views and concerns of SAFINA. Enough has not been said about institutions.

**[Rev. Musyimi]**

The late Thomas Joseph Mboya reminded us that no nation is greater than its institutions. We have done a lot to weaken and destroy our institutions. Unless we invest in our institutions during this constitutional making process, we will not be able to get our economy, politics and unity back on track. Institutions play a very critical role, particularly public institutions. So, it is our intention that due respect and regard be given to public institutions as we review the process. There was a point by hon. Raila on behalf of his party about private institutions. I think what we are saying about public institutions must also be true of those of us who run private institutions. Unless these private institutions are democratic, it will not be possible to have democratic institutions in the public sector. From the way we manage our private institutions, we must be prepared to demonstrate the values that we wish to see in the public sector. We share DP's concern about financial autonomy as expressed by none other than a former Minister for Finance. He should know what he is talking about. We need a commission that enjoys financial autonomy and independence. So, we would like to ask that that matter be looked at again. A point about affirmative action was also raised. We support it. We have supported it in the past and we support it again. When it comes to determining how many people will be involved, we need to go back to women, the youth, pastoralists, and persons with disabilities. So, we do need to have affirmative action and make sure that it does not in any way compromise the very high standards that we expect from the committee.

I would like to make a comment about the number of commissioners. I am glad that we now have a district forum that will be able to mobilize our people. We have a national consultative forum. I must say we feel very proud to see this here. As the NCK, we have been arguing for it for a very long time. This is an instrument that will give us some sort of political audit. We have always felt and argued that what we really need is a small technical committee. So, we very strongly support the idea of 24 persons, bearing in mind the need for affirmative action as I have said earlier. That is what I would like to say. I hope that we all understand that representation has been taken care of. We were all concerned about how our people will be represented. Our people will be represented at both the district level and the national consultative forum. What we want is a small competent technical committee which gives due respect to affirmative action. Let us hope that there will be an enabling environment. I would like to say that we pledge the support of the NCK. I am sure I also speak on behalf of the Protestant churches in this country.

Thank you.

**The Chairman** (Bishop Sulumeti): The next speaker is Al-Haji Yusuf M. Murigu for the SUPKEM.

**Mr. Murigu:** The Chairman of the delegates and my fellow delegates and observers, Bismillahi Rahmani Rahim. I stand before you on behalf of the Muslims of Kenya. I was sent here by the Supreme Council of Kenya Muslims (SUPKEM).

I start by re-condemning the bomb blast that made us Kenyans lose a lot of property, lives, others sustained injuries, and also those who were not Kenyans, who were in Kenya; and also, those our brothers in Tanzania. We are very sad about that loss, and I may here

[Mr. Murigu]

inform you that the word "Islam" means peace and condemns all violence.

I wish to continue to congratulate the Drafting Committee like my other brothers have done. They have done a very good job. I am also here at risk that everything I would say is like repeating what has been said. I recognise that a lot of good spirit has been displayed here. Myself on behalf of all Muslims and my organisation, I am very happy at the spirit that you have displayed here. It is my hope that God will help us to continue with that spirit and succeed in what we are trying to do. Again, it is just a reminder. This is day today is a historic day. What we are doing is a very important issue. I am not teaching you, but we are just reminding one another. We have come a long way, if we can remember, from the days of the IPPG. I want also to congratulate ourselves for the last meeting where we sort of broke the deadlock, and now, we seem to be discussing and knowing the importance of the matters before us.

The progress that we have made is good. I would like to say that the document we have got here, reflects faithfully what we discussed last time. It is only a few things that we need to add like on page 2, you would see we have left very, very many places to the question of religion. We talk about cultures and others, and forget religion and it is very important. We have some ways to add some things. I want also to say that the Muslims of Kenya support the affirmative action in total as it is. But also, I want to remind you that when you have Schedule A, if you look at it, you would see Muslims, then you will see Catholic, the NCKK *et cetera*; and in the end, very many christian organisations. So, we support the affirmative action, even more than it is being supported now. So, I hope you understand what I mean and I hope that we shall look at it and do what we can about it. You may wish to know that, the Muslims in Kenya are not less 30 per cent. So, you can understand the implication.

Mr. Chairman, now, I want to say my final issue on the three-tier structure. I want to refer to it more importantly, because one of my colleagues was very interested or affected by the fact that Commission we are recommending is small. In the Muslim community, we feel that at the district level, every person should be represented. We also understand that at the National Level, a draft Constitution would be brought and every body from every district will come here and see whether the draft reflects what they wanted. If does not, they will take it back to the people who were drafting to re-draft it. So, we feel that this middle committee, the Commission, should be a small commission of experts who can do justice to the views of the people. According to the Muslims of Kenya, it does not have even to be 25 members; it can be just as small as it is effective. It should do us a job. So, as far as we are concerned, there is no worry that by having a small Commission, it is not being inclusive. The inclusiveness would be dealt with by the districts.

Thank you very much.

**The Chairman** (Bishop Sulumeti): Next is the representative of the NGOs Council, Mr. Odembo.

**Mr. Odembo:** Thank you, Mr. Chairman, leaders of political parties, Members of Parliament, all delegates and observers. On behalf of the National Council of NGOs, I would like to thank the Drafting Committee for a job so well done. I was just mentioning to the Chairman, Bishop Sulumeti, that if there was to be an award for the most effective committee in the last 10 years, perhaps, the Sulumeti Committee would be the one to get that award. Today, it presents us with both a challenge and an opportunity, and my feeling so far is that, we have seized the opportunity and not squandered it, judging from what has been said by everyone who has spoken this morning. I say this, because as a nation and as a people, we do not have a very impressive record of sacrificing our selfish individual interests for the good of 30 million Kenyans, but I think today, we are about to demonstrate that we are capable of doing that as we so ably demonstrated a few days ago, when that unfortunate event happened in Nairobi.

Mr. Chairman, the position of the Council with regard to this Bill, first of all, we would like to fully endorse the three-tier structure. It is one that we have proposed and advocated for, all along, because it is a structure that makes sense, given our intention to come out of this process with a Constitution that is truly owned by all the people of Kenya. I think the three-tier-structure would also be a good indicator of the democratic ideals that we would like to see promoted and practised in this country. We also would like to fully endorse the various provisions for affirmative action provided for in this Bill. This again, has been an issue that we have felt very strongly about and have advocated for very loudly, and, we therefore, are happy that the Drafting Committee has so ably taken care of this aspect of it.

Our position on the size of the Commission is that, we need a Commission which is lean, technical and professional. Therefore, the proposal of 25 Commissioners makes sense, but I would like to suggest that an even smaller Commission would make more sense. We have seen what a Drafting Committee of 12 persons has so ably done. If what the Drafting Committee has been able to do is anything to go by, I would like to suggest that we have a Commission not in excess of 15 people, to ensure meaningful participation and ownership by all Kenyans, which is something that everyone seems to be agreed upon. The proposal of a district consultative forum makes a lot of sense. However, we would have some reservations about how we actually operationalise the three or so individuals who will be representing the locational levels. Our experience as NGO community workers is that, if you want people at that level to be effective, you must empower them and give them all the necessary facilities for them to do what you expect them to do. If you look at the functions of the District Consultative Forums, they are expected to do the work of mobilising Kenyans and doing civic education. We would, therefore, like to propose that the Budget include, and have provision for the work of these representatives at the locational level, because their work is the most important. The work that these representatives will be doing is not the meeting at the District Forums; but rather the meeting and the community mobilising work that will be happening at the community level. That is a full-time job and cannot be done on a voluntarily basis. So, if we are serious about these people being our frontline workers in civic education and mobilising people for effective participation in this process, we must make provisions for this group of people to do what they have to do.

**[Mr. Odembo]**

Mr. Chairman, with regard to civic education, I think the role of the civil society as much as, it is a bad word, sometimes, the NGOs and other civil society organisations would like to see some recognition of the role that we can play in doing civic education and community mobilising. Therefore, we request kindly that, provision be made for an official role by the NGOs and other civil society organisations to actually do civic education and also to monitor the participation of Kenyans.

Finally, if an independent Commission is what we are aiming for, then we must also have an independent fund. Therefore, the idea that the fund will be controlled and management to some extent by the Permanent Secretary, Treasury; I think this is a proposal that, perhaps, needs to be reviewed.

Thank you very much, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Next is the representative of the NCEC, Prof. Kivutha Kibwana.

**Prof. Kibwana:** The Chair, my friend, Bishop Sulumeti, the Attorney-General, hon. Members of Parliament, fellow delegates, the NCEC has titled its short statement "A Season for Dialogue". One must start by condemning and the NCEC condemns in the strongest terms possible, the 7th August, 1998 terrorism which has grieved, injured, bereaved, pillaged and disorientated the nation and its people. The NCEC grieves with all affected Kenyans during this trying moment of pain, sorrow and loss. It is our prayer that, justice will be done. The laws should leave no stone unturned in the pursuit of the evil architects of 7th August. The generosity so far extended to those affected by the tragedy must be sustained.

Mr. Chairman, NCEC is happy to be part of this constitutional jigsaw; what one NCEC activist called, "Constitutional game of snakes and ladders". We are ready and willing to embrace all women and men of goodwill. We always believed we were better players in a forum of dialogue as opposed to mass action. We hope all Kenyans will come to realise that we are not a stubborn, rigid, super-radical, violent-addicted bunch of elites, but rather a national asset; men and women of reason. We intend in the coming months and years, when given opportunity, to mark reason for reason.

Allow me to read from the Bible: 1 Kings:3; One day two women came and presented themselves before King Solomon. One of them said: "Your Majesty, this woman and I live in the same house, and I gave birth to a baby boy at home while she was there. Two days after my child was born, she also gave birth to a baby boy. Only the two of us were there in the house; no one else was present. Then, one night, she accidentally rolled over on her baby and smothered it. She got up during the night took my son from my side while I was asleep and carried him to her bed. Then, she put the dead child in my bed. The next morning when I woke up and I was going to feed my baby, I saw that it was dead. I looked at it more closely and saw it was not my child. But the other woman said: "No, the living child is mine and the dead one is yours". The first woman answered: "No, the dead child is yours and the living one is mine". And so they argued before the King. Then King Solomon said: "Each of you claims that the living child is hers and that the dead child

**[Prof. Kibwana]**

belongs to the other one." He sent for a sword and when it was brought he said: "Cut the living child into two and give each woman half of it." The real mother, her heart full of love for her son, said to the King: "Please, Your Majesty do not kill the child, give it to her." But the other woman said: "Do not give it to either of us, go ahead and cut it into two". Then, King Solomon said: "Do not kill the child, give it to the first woman. She is the real mother". When the people of Israel heard of Solomon's decision, they were all filled with deep respect for him, because they knew that God had given him the wisdom to settle disputes fairly".

The moral of the story, which I hope is told in other Holy Books is: "Constitutional reforms must not be used to divide and fragment the living Kenya". If we see Kenya as our country, our home and our love, how can we dismember her in the name of tribe? As we reform the Constitution corporately, our people must have an enabling environment to promote peaceful and orderly change and living. They deserve an economy and basic needs, security, infrastructure, viable public institutions, services, social hope and well-being. It, for example, defeats all logic to see the livelihood of hawkers being bulldozed and torched; all legitimate labour actions being suppressed through brutal police force, as we engage in constitutional reforms. Also, the politically motivated ethnic violence of the 1990s is still an unresolved act of terrorism, since terrorism is terrorism, whatever the its source. The---needs filling as expected by the Constitution, bearing in mind that as we make a new Constitution, we must be faithful to the old. Corruption must urgently be shut down, because it obstructs all progress, constitutional and otherwise.

One could multiply these examples in relation to developing an enabling environment for constitutional review. The test of whether leaders are committed to constitutional reform is simple. Once constitutional review starts, as it is has already started, the country and life are thereafter, run in accordance with democratic principles. The leaders abandon the old crusade of hurting or marginalising the people. To secure the process of constitutional reforms further, the Government should legislate where applicable, and implement in total the IPPG reforms, the 1997 NCEC and Religious sector suggested reforms and the reforms proposed by the Attorney-General's task forces. If these changes are adopted, the democratic space for constitutional review will truly be expanded. Our leaders must accept the civil society, organised and unorganised citizens, as a legitimate actor in societal affairs. If the civil society, germinates an idea which is impressed widely in society such as the imperative of good governance, enhanced citizenship and democratic Constitution building, the society thereby has, so to speak---

We are thus confident to speak on behalf of society in relation to the popular ideas that the citizenry and ourselves have germinated. This is the first time NCEC is speaking. Civil society groups and the Government have a joint responsibility to ensure wide spread and deep civic education country wide so that the people; the owners of the country know what rules they are changing and why. Ultimately, the people must own the process of constitutional review and resultant body of constitutional principles. The politics of control must now give way to the politics of consensus building. We must together endeavour to build a sustainable social contract; Katiba ya kudumu, ya mwananchi. Nobody will stand to benefit if we bring the country to its knees. No one will reap a harvest from

[Prof. Kibwana]

constitutional disorder, chaos and anarchy. From now henceforth, we need to pull and tap on the decisional power and creativity of each sector to move our country forward. A Government of national unity is an idea whose time has come. The unstructured co-operation of a segment of the political class, the multi-sectoral approach to constitutional reform, as well as the bi-partisanship approach adopted in the recent August 7th tragedy, all point to the need of structured national co-operation. As a collective, we are likely to take care of our interests and one another. All of us are needed to jump-start and save our country. We have trouble. Let us together, work to overcome it. Our leaders must create for us a grandfather or grandmother State. Instead of running from our leaders, we want to embrace them. Today, I wanted to embrace President Moi. We are weary of conflict. However, Government must scale itself down so that the citizen has not space to himself or herself. We require a kind and loving State.

Certain questions will continue to linger until they are resolved. Will the constitutional contentious issues ultimately be approved by all Kenyans in a referendum? The Drafting Committee left that question for this forum. Can there be a snap election before the Constitution is reviewed? If we reach final consensus at Safari Park III, will the text of our agreement be translated into a Bill by the Attorney-General with the help of the Drafting Committee and the IPPC? And will such Bill be passed by Parliament without alterations? Are there persons interested in stalling constitutional review, so that no Constitution is in place by the next elections or even if it is in place, there will be no time for implementing it? Will Kenyans from all walks of life be in charge of the Constitution making exercise? Will they ultimately author our destiny? More questions can be posed. I would like to end by reciting a short poem.

*Partners, my friend,  
I want to talk to you,  
Talk to me, answer me back.  
I thirst for dialogue, don't you?  
Don't ignore me as if I am nobody,  
I am somebody, let us talk.  
Companion, speak truth to me,  
words I can rely on.  
Hang on, believe.  
I cannot stand hate-talk any more.  
Abstinence, stone men and women  
As you hurt me, you must also hurt,  
because we are flesh and blood.  
Give me a shoulder, and here is a shoulder.  
I wish healing, humanness, progress, prosperity  
I am a citizen.  
We give birth to Government;  
We are bigger than Government;  
We matter. Don't you understand?  
Partner, let me see you smile.  
(Today, I wanted to see the President smile)*

*Let me see you care, let us embrace.  
Together we shall fall or rise.*

Thank you, for the indulgence of the forum.

PRESENTATION BY THE KENYA WOMEN POLITICAL CAUCUS

**Mrs. Asiyo:** Thank you Mr. Chairman, Sir. Distinguished ladies and gentlemen, allow me, on behalf of the Women Political Caucus, to congratulate very, very sincerely all those participants who affirmed in their statements the principle of affirmative action; their commitment to the principle of affirmative action.

Mr. Chairman, Sir, what worries the women of this country through the Women Political Caucus is the disparity; the gap between what is said and what is practised by various institutions. And if we go by these institutions, it might be very difficult to have women represented in various fora in this country. Because, almost everybody who has talked since this morning has been a man. This goes to say that in actual fact, women, the disabled or the youth do not exist in the minds of most leaders in this country. I want to appeal to the leaders who are here now, that when they go back to their institutions, that they must start the deliberations on how they will accommodate women, the disabled and the youth in all their fora and their organizations. Because, this disparity is too wide for some of us.

Mr. Chairman, Sir, the Women Political Caucus recognizes that we have come a very long way due to the goodwill that has evolved since the discussions of the process started at the Bomas of Kenya where many organizations as well as individuals submitted their views on the process that we are discussing today. There have been a lot of consultations and a lot of give and take from the various interest groups since this process started, and perhaps, it is because of this that we are seeing a lot of co-operation this time round. We want to emphasise that the process of Constitution making should and must belong to the Kenyan people. Because, Kenyans can only own this process if we adopt, for example, the three tier system. This system will guarantee a win-win situation for all Kenyans at the end of the exercise. The District Forum, for example, will ensure full participation of all sectors of society. I want to allay the fears of hon. Kamotho when he talked about councillors. We have agreed that, indeed, it is the local authorities which will initiate and bring together the District Forum. We are saying that, at the District Forum, we should allow for the participation of all farmers, all pastoralists, religious groups, non-governmental organizations, teachers, nurses, men, women and youth at that level, so that they own the process of the review of the new Constitution. They will also make sure that the district recommendations are taken into account at the national forum when the Commission will have gone round, throughout this country and made their recommendations. That, at the national forum, the district representatives will be represented to make sure that all their recommendations and their views are reflected at the national forum.

Mr. Chairman, Sir, we hope that everybody here at the end of this meeting, will support the three tier system for the success of this process. The Caucus will support fewer members of the Commission, if the three tier system is accepted. Because, logistically, it will be impossible for 77 commissioners to debate and negotiate meaningfully and reach at a consensus. We know that it is not the views of the Commissioners, but those of all Kenyans



[Mrs Asiyó]

that will contribute and prevail in the review of the Constitution. We in the Women Political Caucus are saying that regardless of the number of commissioners this forum agrees upon, the observance of the principle of gender equality should not be negotiable, but should become the rule henceforth in all our deliberations. So, if we decide on the 25 commissioners, the minimum of eight women commissioners will be guaranteed.

Mr. Chairman, Sir, finally, we feel that those elected to serve in the Commission will be facilitators of the constitutional making process on behalf of all Kenyans. They must therefore, be people of integrity who can negotiate on behalf of all Kenyans with wisdom and experience as set out in the draft Bill. In this regard, the interest of Kenyan people must be paramount in all our discussions. On behalf of the Women Political Caucus, I wish to congratulate all those who have made it possible for this forum to come this far. We would like to appeal to all leaders in our nation, especially political party leaders, the NGOs and representatives of youth and children, the disabled who are assembled here today, to make this day a success for all Kenyans who are eagerly waiting to receive positive results of this gathering of great minds of Kenya.

I thank you, Mr. Chairman, Sir. We will reserve our right to speak again when we come back this afternoon. Because as you can see, we have been very, very badly marginalised since we started our discussions this morning.

Thank you very much.

**The Chairman** (Bishop Sulumeti): The next speaker is Bishop Dr. Gerry Kibarabara, Evangelicals.

**Dr. Kibarabara:** Mr. Chairman, we, from the Evangelicals, would like to put in record our appreciation for the entire nation of Kenya during the last bomb blast. We saw a great unity across the tribes and the peoples of Kenya, when they came to help one another regardless of who they were. We hope that in future, we do not experience this kind of unity only when we have a problem; we would like it to continue even when we have good things to share. We in Evangelicals believe that Jesus was a man of few words, but definite. So, I am not going to keep you long here.

This is a historical meeting today in the sense that, we are flowing and there is harmony. But we notice that, it is because of what I would call political authority. Anywhere there is no political authority, you know whatever you will do, whatever you will contribute; or whatever you are about to do; there would be a lot of problems. I want to register also, our thanks to the President for coming this morning to be with us briefly and be able to share a little bit of his mind in this forum. We in the Evangelicals support a smaller Commission, but we want to say that, let those representatives from the various groups that have been there from the beginning be there. They have come from far, even to be able to have this Commission to be what it is now. When we say 25 members, we want also to urge from the Evangelicals, we should have able men and women not necessarily by kind of influence; we want able and qualified commissioners, just as we have had from the 12 members of the Drafting Committee. That will give us a quick job and definite, like the Kenyans want.

**[Dr. Kibarabara]**

We are also asking, and this will come maybe during the time the Commissioners will be at work, that such laws which will deal terrorism and religious fanaticism be emphasised in our country. Even though Kenya for the first time had this act of terrorism, we know next time that, something might happen and we need laws that are really there to deal with religious fanaticism totally, so that our country may live in peace. We support your document in totality.

Thank you.

**The Chairman** (Bishop Sulumeti): The next speaker is from the Hindu Council of Kenya, Mr. Shashikant K. Raval.

**Mr. Raval:** Mr. Chairman, hon. Ministers, hon. Members of Parliament and fellow delegates, it has been a proud privilege for the Hindu Council of Kenya to participate since initiation, in June this year. We thank the Government of Kenya, the various political parties for recognising the role played by the Hindu Council of Kenya. The Hindu Council of Kenya represents 121 religious institutions throughout Kenya. We could have brought in various names to use through monetary and so forth, and got additional participation. But we said no; let us go as a united council. We too, condemn very strongly, the event which happened on 7th August, 1998. It was a scene to be seen, that we all joined hands, because it was not an attack on one particular tribe or people; it was an attack on the nation. I am glad that the Hindu Council of Kenya joined hands with the nation and we will continue to join our hands with the nation.

On behalf of the Hindus in Kenya, I would like to thank most sincerely, the hon. Attorney-General, Bishop Sulumeti and his committee for doing an excellent job. Much has been said and I do not wish to repeat; but I can assure you that you have the support of the Hindu Council of Kenya, when you require it. So, it will be our privilege to work with you. We are delighted by the affirmative action and we will work together. I hope by the end of the day when we go, we will be joining our hands, left and right and going happily, because what we want to do is to achieve, not for you and me, but for the good of this country and this nation.

Thank you very much.

**The Chairman** (Bishop Sulumeti): The next speaker is the representative of the Kenya National Students Union (KNSU), Mr. Hassan Omar.

**Mr. Omar:** Mr. Chairman, hon. delegates, I am here on behalf of the KNSU and also the youth movement. First and foremost, I want to record our appreciation and congratulations to the Drafting Committee which has come up with a commendable piece of document, which we are going to deliberate today. Secondly, we would wish to express our condolence to the families and victims of the bomb blast. The students and the youth community condemn in the strongest terms possible, this act of terrorism.

I would like to just make one observation. We are getting very used to being normally the last speakers as the youths and students. I think, may be the level of importance is only to

**[Mr. Omar]**

politicians than the students on the streets. Very soon, you will hear students also ejecting some of these politicians from their institutions. We support all kinds of affirmative action for women, the youths, the students, the disabled and even for the street kids, and all other marginalised groups which today, are not present here and by virtue of the fact that their voice is not heard. We have slum dwellers and other big groups, which today have been left out. But I want to register our appreciation to Rev. Musyimi, who whenever he talks, he must mention the youths. I believe he has a first position, and we welcome you to our institutions.

**The Chairman** (Bishop Sulumeti): He is a useful Reverend.

**Mr. Omar:** Yes, Mr. Chairman. First of all, the students would like to endorse and approve the composition of the District and National Forums. Secondly, we want to support the other proposal that the technical committee of 25 members be carefully selected from people of high integrity and people who will be able to represent other interests and curb away, the issue of representation. What we are talking about, is the district and tribal representation. It is absurd and sad that, Kenyans have come from a long history of tribalism. Where we have been used trying to do away with district organisations in our institutions, these organisations have been to destabilise the general unity of the students unions and other unions in the various institutions; here, we want to promote the aspect of district representation. I believe this union or this kind of stratification is aimed at having more allegiance to tribal interests, rather than the national interest. They have been destructive, and we are sure they will be destructive if they are adopted now. We, therefore, ask those people who are in the wrong side of suggesting district representation in the manner of commissioners, to adopt the position that is for the national interest.

We have a suggestion on how we intend this representation to be and how it can be improved. The political parties, both parliamentary and non-parliamentary should have top positions in the committee. We are talking about 5 to KANU, DP - 2, NDP, SDP and FORD-K each one, FORD-P, KSC, FORD-A and Shirikisho Party to deliberate on one, and the non-parliamentary political parties to have one. On the side of the civic society, we are asking that the Catholic Church be given one, the NCKC - 1, Muslims - 1, the NGO Council - 1, NCEC - 1; in dire recognition of the women and the youth - 2 each; the labour and trade unions - 1, disabled - 1 and the professionals - 1. We can amend and add to this list.

The youths also want to talk about the spirit of the district consultative forums. We believe that the district consultative be constituted on the spirit of having more youths by a mere fact that, this can be a job creation opportunity for the thousands of university and other graduates who are in the districts and, yet, have no employment. For that matter, we consider that, may be, it might be wise to have a honorarium for all those who are qualified, but are unable to get employment, rather simply travelling allowances. This will help them to understand their people and also to be able to sell their position to them. So, in relation to the timeframe, we do not have much, and we endorse the three-tier structure. We are saying that the constitutional process must not be rushed, but at the same time, it must not be stagnated to the extent whereby it will be incomplete before we go to the next

**[Mr. Omar]**

elections. We believe the new Kenya of 2002, must be that which will be under the new Constitution.

Mr. Chairman, we are calling on all the stakeholders to have sensitivity in terms of affirmative action in relation to youths, women and religious communities, because we have seen in the past that when people are given the opportunity, it only happens that a calibre of people have been appointed. Therefore, we do not want to translate this constitutional reform process into another Lanchester, where we have Lanchester generals leading us. We need the new generals we have here, the consortium and luminaries of today.

We want also to say that, Kenyans are getting very impatient with all of us; those who are in this process and those who are facilitating it. It is time may, be that, the Act or the Amendment Bill be presented to Parliament the soonest possible when Parliament reconvenes. In fact, by January next year, at latest, we must be getting on with the constitutional review process, because this process is one which every Kenya is holding with a lot of anxiety. This is the time when every Kenyan spoke up on the constitutional review process and among other things, there is the question of corruption, which I think the Constitution will address. I hope the new Constitution will address the question of the national cake and the separation of powers and the balance of powers between the arms of the Government.

Lastly, we have heard that a lot of people are saying that they are the elected representative of the people. But the elected represented of the people are also created by the sovereignty of those very people. The people pass and create those offices. Therefore, this process of constitutional making, you cannot sideline our people by the mere fact that, you are elected representatives of the people. We too hold elected positions and, in fact, very volatile constituencies, not whereby you go with a packet of sugar and milk to buy them out.

Thank you very much.

**The Chairman** (Bishop Sulumeti): The next speaker is Mr. A.M. Wandati for the Muslim Consultative Council.

**Mr. Wandati:** Mr. Chairman, distinguished delegates, ladies and gentlemen, I would like to convey my appreciation to the 12-member Committee that so ably captured and rendered into writing what was discussed here in our last meeting. But like very good thing, that is made of human hands, there must be room for improvement. Therefore, I would suggest that I would concur with the previous speaker from the SUPKEM who said that, just like we proposed during the last meetings the word "religion" as one of the criteria that we shall be looking at and one of the things that we would like to guarantee should also come out very clearly in the Act. Secondly, in terms of what we have embarked upon to do, I think it is very important that we have our objectives clear. If our objectives are to try and dominate each other, we shall not go far. Our activities and the whole process will be fraught with suspicion and fears to the extent that, if we are not careful and do not carefully balance the composition of the Commission, of course, without compromising its technical ability and its competence, it is possible that in some places the people might refuse to

**[Mr. Wandati]**

come before the Commission feeling that they do not identify with the Commission.

We have talked about affirmative action, we supported it in our recommendations and presentations here. But like the previous speakers, we would like to say that affirmative action should be a vehicle to redress the injustices meted out against all those groups that are marginalised. It is not enough to redress the injustices meted out against women or the youth and forget that history has shown that the Muslims, really are among the communities in this country that have always remained in the periphery of power and every time groups are given a chance where it is taken for granted that those groups will take care of the interests of Muslims, they have ended up not appointing or nominating even one muslim. We are trying to set up a new dawn in Kenya where every community, individual and group will have reason to celebrate whatever we are doing and we would like the Muslims also to be assured through affirmative action that what we embarked upon is calculated not to marginalise them again but to offer them also a hand; to bring them closer to the centre of power.

Thank you, very much.

*(Applause)*

**The Chairman** (Bishop Sulumeti): Our next speaker, is Mr. D.S. Rihas from the Association of Professional Societies in East Africa.

**Mr. Rihas:** Mr. Chairman, hon. Ministers, hon. Members of Parliament, delegates, observers, ladies and gentlemen. I am here, standing before you as a delegate from the Association of Professional Societies in East Africa. The Association comprises of 24 corporate member bodies ranging from all professional disciplines in the country.

First of all, I would like to join other delegates in condemning the dastardly act that took place in our country on 7th August this year. The Chairman of the Association has passed his condolences and sympathies to all those who perished in this disaster and all those who are still suffering from the injuries they sustained. The Association has set up various committees that will work and look into how we can cope with any future emergencies, of whatever kind that may befall this country. But we all pray that such emergencies like the one we saw on August 7th August this year, shall not befall this country again in the future. The Association would also like to commend the Drafting Committee which has done an excellent work in producing the amendments to the Constitutional Review Commission Act that was passed last year. But I feel that things would have been a little easier to understand if the amendments were accompanied by the previously enacted Act. This morning, we have only been looking at the amendments without the benefit of having the main Act in our possession.

**The Chairman** (Bishop Sulumeti): It was there.

**Mr. Rihas:** It was? Maybe, we did not get it. Anyway, the Association, would like the whole constitutional process to be realistic. We all know that the resources of this country

[Mr. Rihas]

are limited and therefore, a Commission comprising of 77 will be very unwieldy and I do not think it will be workable. From the Association, I would, therefore, support the idea of a smaller 25-member committee, or whatever number we agree, upon. From the Association, I can tell you that we have a lot of experts, not only in the field of law but in other professions who will be able to contribute towards the drafting and gathering of views of wananchi from all walks of life. We also support the district forums and the proposed national forum. But the Association, would like to suggest that when the final report goes to the Attorney-General's Chambers, he should not try and slip in any amendments to the final draft. This is based on the experiences we have had in this country. Whatever will be agreed by the national forum should be the final draft Bill that should go to Parliament and be debated and approved by all Parliamentarians. I am sure the Parliamentarians will have the full authority and will be able to debate the whole matter in a very thorough manner.

Finally, since we started this morning, a conciliatory mood has been established. I would like to urge you, on behalf of the Association that we should start working in the spirit of conciliation from now. The politics of confrontation where we used to argue and bitterly disagree with each other should be side-stepped. We should look at the future of this country and the future of the children of this country. I can promise you that our Association will be able to provide whatever expertise you will need in order to make the smaller professional and technical Commission workable.

Thank you very much.

*(Applause)*

**The Chairman** (Bishop Sulumeti): Now, we will have the Pastoralist Forum Group. I now call upon hon. Dr. Wako to speak on their behalf.

**Dr. Wako:** On behalf of the Pastoralist Group, I would like to take this opportunity to congratulate the Drafting Committee who have done quite a good job in collaboration with the IPPC. I think, for the first time, we from the marginalised groups like the pastoralists, feel that at this moment, our interests have been taken care of. This goes the same for the women groups, the labour movement, the youth groups, the Asians and the Europeans and also the disabled who have been marginalised in this country and this is the time they feel that they have been considered. So, for this, we actually congratulate the Members of the Drafting Committee.

I would like to take this opportunity too, to send my condolences to the people who have been affected by the bomb blast. At the same time, we would like to condemn those wrongdoers who did this treacherous act to this loving country. As a Muslim, I would like to say here that it is in the interest of Kenyans not associate this with Muslims because Islam is supposed to be a religion which does not condone violence. But it is the act of evil doers who do not take any religion into account.

I would like to take this opportunity to say that we support the three-tier system; because

**[Dr. Wako]**

the problem which we have in this country is the problem of suppressing each other. The three-tier system ensures that all the three systems make sure that they are actually supporting each other which will take the Constitution as the Constitution for the Kenyan people which we think will help to actually serve this country. What has happened most of the time is that certain constitutional acts or certain civil servants have used their positions to encourage corruption which has now brought the economic crisis which we have in this country. So, by having checks and limits, we think that we are going to have the best Constitution possible.

In the district fora we think that this is the best method because it will involve the people from the grassroots who are the backbone and the majority of this country. So, it will take care of each and every Kenyan. Secondly, we support Schedule C which has been proposed. We support the proposal that 25 members should be selected to review the Constitution. But I think in these 25 members, to be fair to the marginalised groups, women organisations, labour movement, religious organisations, the minority, the Asians, the youth organisations, the disabled, the NGOs and the pastoralists must be taken into consideration. It is only at this point that we can be able to be sure that these marginalised groups have actually got the best possible Bill so that they can be able to contribute fully in the Constitution making of this country.

With those few remarks, I thank you so much.

**The Chairman** (Bishop Sulumeti): The next speaker is from the Kenya Association for the Deaf, Mr. Elphas Onyango Kodongi.

**Mr. Kodongi** ( Through an Interpreter (**Mrs. Kasisi**): The Forum Chairman, hon. Members of Parliament, Kenya National Association for the Deaf, I have our views today to share with you.

First, we send our condolences to the bereaved families of the 7th August bomb blast. Even now, we will have more disabled people through this tragedy and we must take this into serious consideration. We also had one hon. Member of Parliament who came out alive and we thank God for that. We are glad for what the Drafting Committee has done but we want to comment on the public information centres. You talked of the electronic media. We as deaf people, it will be very difficult for us to get information without interpreters. Therefore, we would suggest that when you are thinking about the electronic media, you should involve interpreters on the Television. We also support the affirmative action and the Government of Kenya must support this document fully by accepting disabled people as citizens of this country. Following UN standard rules it clarifies how important it is to give equal opportunity to persons with disabilities. I ask political groups of good will to influence this issue. If there is no political influence, this cannot work out.

We also propose that Members of Parliament appoint special rapporteurs to help supervise the process of the Constitutional Review, so that they are able to update themselves with what is going on in the process. We also support the idea of professionals and technical

[Mr. Kodongi]

support on the Constitutional Review and also the implementation of UN standard rules of equal opportunities for all human beings, from children to the disadvantaged groups. We also support the idea of reducing the number of groups to 25 members. They have done a good job and as you know, our country has economic hardships.

Lastly, we propose that when you are thinking of these district fora, you should think of disabled people also as participants. As you choose these people, either in the district or national level, you must choose at least one person who is disabled.

Thank you very much.

(Applause)

**The Chairman** (Mr. Sulumeti): Ladies and gentlemen, we have been talking about the financial provisions of the proposed amendment draft Act. And on my left side here, we have hon. Minister, Mr. Nyachae, who will tell us how much money he will give us.

**The Minister for Finance** (Mr. Nyachae): The Bishop, who is also co-chairing this Forum with the hon. Attorney-General, Solicitor-General, ladies and gentlemen. I am not standing here to talk about provision of funds. I would wish to make a request to this forum with regard to the proposals that have been made. The financial regulations of this country does not allow the Permanent Secretary to the Treasury to become an Accounting Officer. Therefore, I would request this Forum to reconsider that proposal because the Permanent Secretary to the Treasury co-ordinates revenue disbursement and appoints Accounting Officers. In this particular case, this Forum may consider making the Secretary to the Commission the Accounting Officer.

The other point that I would like to clarify is with regard to the arrangements in the proposed draft Bill about obtaining money from the Consolidated Fund. At the same time, those funds are subjected to Cap.412 of the Laws of Kenya, that is the Exchequer and Audit Act. So long as the accounting is subjected to this Act, then the funds can only be realised from the Consolidated Fund with the approval of Parliament. It is a requirement of the Constitution. There is no single cent that can be withdrawn from the Consolidated Fund without the approval of Parliament. Thank you, Mr. Chairman.

**The Attorney-General** (Mr. Wako): Dear participants, I believe that we have heard a very useful morning. I deliberately went ahead with this morning programme because I wanted it to be finalised before we go for lunch. The morning programme has enabled nearly all the organisations represented here to make their views known on the report of the Drafting Committee. What I hear is that the Drafting Committee did an excellent job. I just want to remind you what the Chairman of the Drafting Committee said. That they were able to agree by consensus on every aspect of their report. What I hear is that, that every aspect of the report is also endorsed by an overwhelming majority here. The only aspect that they were not able to agree on was the aspect of the Commission itself, number of Commissioners and the modalities of appointment of that Commission. As the Chairman said this morning, that was really one issue that they were bringing to you to decide. I am



**[The Attorney-General]**

pleased from what I have been hearing that even with that item we have now gone a long way and apart from one or two representatives; FORD-people and FORD-Asili, the rest of the persons who have contributed here have fully endorsed the views of the chairman of the Drafting Committee when himself said that he was in support of the third proposal(C) of 25 persons. And everybody who has spoken here has agreed on 25 persons and, even if possible less. But at least that figure of 25 persons has been agreed. When we resume this afternoon, I think we should proceed on that basis. That is the figure we are talking about.

Therefore, the discussions of this afternoon should narrowly be focused on how to appoint the 25 or less members of the Commission. The Drafting Committee agreed by consensus and we have all here agreed by consensus. So, we just focus on how do we appoint the 25 or less members of the Commission. We have heard, of course, some views on that. We have proposals that the alternative A should provide a guideline in the views proportionately, the figure from 77 to 25 members whom everybody thinks should be a technical profession commission. That is one idea that has come up.

Another idea that we should use in reducing the figure is alternative B according to proposals. But then we had also had very good suggestions from various organisations who have gone in some details on the breakdown of the 25 Commissioners. I have in mind the suggestion from the youth. They have come up with that suggestion. I believe also Shirikisho party has come up with that suggestion and other people. So, let us use this lunch break to focus on that. When we resume, we shall be doing nothing but focusing on that.

On the District Forums, suggestions have been made that the role of the elected leaders must be made more precise and mentioned clearly in the draft. And also the disabled persons have made passionate plea that they should not be forgotten at that level.

There were ideas about financial position. The Minister for Finance has now told us his own concerned opinion on what the current law is. And obviously, whatever proposals we make, we must ensure that they are in accordance with the existing Constitution and the law of this country. So, with those few remarks. I suggest that we can adjourn now at 3.00 p.m. and we resume at 4.00 p.m. I understand that there is a lunch coupon which was part of the document given at the registration. You are asked kindly to have that coupon as you proceed for lunch. But during this lunch, we can carry out, like before, with informal consultations and so on, so that we can really agree in general terms or details on how the 25 members should be appointed. I can see us finalising this Consultative Forum very soon and quickly.

*(The Forum adjourned for Lunch at 3.05 p.m.)*

*(The Forum resumed at 4.35 p.m.)*

**The Master of Ceremony (Mr. Imanyara):** The afternoon session is now called to order. The Hansard Recorders have requested that when you stand to speak and you take the

**[The Master of Ceremony]**

microphone, say your name and your identification because the proceedings are being recorded verbatim. So, please when you get the microphone to speak, start with your name and your affiliation.

**The Forum Chairman (Mr. Wako):** Thank you, very much. I think the afternoon session has now began. When we adjourned, I said that there was only one issue for determination, and that is the appointment of the Commission. We had agreed on the number. I mentioned that you should use the lunch hour to consult and to dialogue. I am aware, of course, that as we are sitting here, a number of groups are in different places dialoguing. It may very well be that, those groups will be coming here with some firm proposals to make. But that does not stop any contribution, but only on that topic; the Appointment of the Commission. The number is 25, but now we are here discussing the methodology of that appointment.

This afternoon, Rt.Rev. P. Sulumeti will continue to be the Chairman of the session this afternoon, and will be assisted as and when necessary by Dr. Wanjiku Kabira and Abida Ali. So, those two ladies I have just mentioned, if you are here, you can come and sit up here. So, the Chairman of this session will be Rt. Rev. P. Sulumeti assisted by those two eminent, distinguished ladies.

I also suggest that you be concise, precise and to the point in your contribution. I think the ladies are not here, they may be again be part of the group still dialoguing. But I think we can start. Thank you.

**The Chairman (Bishop Sulumeti):** No, I see one there.

**The Forum Chairman (Mr. Wako):** Oh, Abida Ali is there. Very good, please come.

**The Chairman (Bishop Sulumeti):** But where is the other one? Those who want to contribute, please put up your hands. Please can someone write down the names?

**The Forum Chairman (Mr. Wako):** Sometimes it is useful if you can put down your name on a piece of paper and bring it here. As you realise, it is sometimes difficult for the Chairman to recognise you from here. So, write your name on a piece of paper and hand it over to the Master of Ceremonies who is going round.

**Mr. Kathangu:** Bwana Mwenyekiti, kwa minajili ya kujua ni njia gani ambayo itafuatwa ndio tupate wale 25; na kwasababu kuna fikira mbali mbali ambazo ziko hapa, mini nilikuwa ninataka kuwaambia wote ambao wako kwa jumba hili kuwa asubuhi ya leo kila mmoja alisema kwamba wale 12 ambao walihusika na maandishi ambayo tumekuwa tunasoma hapa, kwamba wamefanya kazi nzuri. Na sababu ninajua kwamba ni mazungumzo mengi sana yatakuweco kutafuta wale 25, ilikuwa fikira yangu kwamba ikiwa tunaweza kufuata Schedule (A) ya maswala ambayo tunazungumzia, wale 12 tuwapatie jukumu waende waketi chini kati ya kesho na labda kesho kutwa, wataweza kuja na wale 25 bila kusema ni majina gani. Sisi ambao tunahusika tupewe hiyo njia ya kuwatafuta wale 25, halafu tutawaandikia tuwaambie wetu ni akina fulani. Hayo ndiyo ninaona kama

**[Mr. Kathangu]**

yatatuwezesha kuleta wale 25.

Bw. Mwenyekiti, ya mwisho ni kwamba wakati tulikuwa tunazungumza nje, kuna wale ambao walikuwa wanafikiria, labda, ndio tuwe na fikira kubwa katika kamati hii ya 25, labda tunatakiwa tuongezee masomo, badala ya kusema ni wale wamehitimu 'O' Level, labda, tunaweza kusema either wawe ni Mawakili ama kama sivyo, watu ambao wamefikisha kiwango fulani, juu kidogo ya 'O' Level.

Hayo ndiyo ningetaka kusema kwa niaba ya Chama ya FORD (Asili). Ninashukuru.

**Mr. W. Mwebi:** Thank you, Mr. Chairman. I will be very brief. We, and on behalf of the youth of Kenya, without going into further deliberations, and to try to build some consensus around what other people have agreed on, we agreed to have a technical committee of 25 people that will form the Commission. In this, we adopt first Schedule, Proposal (C). As long as all members are distinguished participants of this Forum, I shall be ready to compromise its representation as much as possible, so that we can have a real technical committee in good faith. But, however, I must record my observation on the way this has been going on; that, the word "affirmative actions" has become synonymous to women presentation, and no other groups are being considered in the "affirmative action". To share the same concern as hon. Anyona shared when he stood here that when you talk about "affirmative action", we mean incorporating the youth, the disadvantaged, the disabled and everybody else who is not well represented. Therefore, as the youth of Kenya, our understanding, expectation, wish and our hope is that the review process must be able to accommodate the youth fully, both as participants and as partners in this process. Therefore, we youth who are here, as ambassadors of the youth of Kenya at large, we are being looked upon by the Kenyan youth to argue their case out and meet their variety of interests.

Mr. Chairman, we are not here as propagators of political interests, leaders' interests, tribal interests, or otherwise, but as people who form 62 per cent of the Kenyan people. We are seeking an opportunity to actively and freely participate in the generating and debating of proposals towards the Constitution of Kenya.

Without going into further details, let me endorse fully, the proposal made by my youth colleague who was here earlier on; that we are precisely requesting that KANU be given 5 positions, DP, 2 positions, NDPK, SDP, FORD(K), Safina, one position each. The FORD(P), Kenya Social Congress, FORD(A) and Shirikisho Party to be given one position; and that makes it 12 positions for Parliamentary political parties. The non-Parliamentary political parties shall caucus and give one person. Civil society will give 12 people, and that includes; the Catholic Church - 1 person, Protestants - 1 person, Muslims and Hindu - 1 person, NGOs Council - 1 person, NCKK - 1 person, Women Organisations - 2 people, Youth and Students - 2 people, Professionals - 1, Labour - 1 and Disabled - 1. That is our position.

I am calling upon all political party leaders, civil society, religious and any other leaders and the entire forum at large to support the youth, the way the political parties have always

[Mr. W. Mwebi]

urged the youths of Kenya to support them during elections and during any other events. Please, support the youth during this crucial period. If the youth of Kenya out there hear that the Constitution they have been fighting for is now being overtaken by an outgoing generation, I can assure you they are going to refuse.

With those few words, I beg to leave.

**The Minister for Information and Broadcasting** (Mr. J. Nyagah): Mr. Chairman, I fully agree with the sentiments expressed by the representative of the youth.

**Mr. Omar:** On a point of order, Mr. Chairman. Are you sure you are not going to repeat yourselves?

**The Minister for Information and Broadcasting** (Mr. J. Nyagah): Mr. Chairman, having agreed with the representative of the youth, I would like to make a few suggestions. I think what makes sense is that the group of 12 has done a first class job. We have all congratulated them the whole morning. It makes sense for them to go back, consult and tell us the best possible way of doing it. I propose that they go, sit and produce 25 people, taking into account all the things and criteria that you people want; the youth, the old, young and the women. When you come to the women, you should take into account that there are women from rural areas and from towns. I am happy as long as they look after my mother in the village.

Mr. Chairman, let me comment on one other point. Since parastals are supposed to make money these days, when you are looking for money, donations and from other sources, if you can find a way of funding and find some money, we will be very happy if you could assist us. But we would also encourage non-Kenya Broadcasting Corporation (KBC), other private stations also to help us in order to get the message to as many people as possible, so that it is not only left to KBC. I assure you KBC will play its part, but we will also ask even other people and private stations, to also contribute in terms of this.

When it comes to civic education, we need to be clear to avoid the confusion that we have had in the past. I am assuming all the money that will be found will go to a central pool under the Commission, so that they can educate our people and give civic education. If there are too many people trying to be civic educators, I suspect there will be confusion, and we will start fighting on the ground again, when we have come to a point where we are becoming one.

Mr. Chairman, finally, on page 23, KBC must agree on the amount of time we give the vernacular services. May I propose that the Commission and KBC should agree. I do not want them to be forced to agree, because if they are forced, and they have very little time for the vernacular service, we could have problems. As I said before, the KBC is willing to participate and to help. But you will employ your own Public Relations Officer, who will come with the programmes to us and we will be prepared to air it. But because we have very little time for the vernacular service, if there is a way, instead of forcing us--- You have forced us on page 23; you can change the word to "agree" as opposed to "being

**[The Minister for Information and Broadcasting]**

forced to do it", and it would help everybody.

With those few words, I fully support the concept of the people who have done a first class job and that, they should go back and bring us people who are qualified. If necessary, you can advertise the posts because there are many qualified Kenyans who are prepared to do this job.

Thank you, Sir.

**The Chairman** (Bishop Sulumeti): Nancy Barasa, please, come forward.

**Ms Barasa:** Thank you, Mr. Chairman. I believe all of us have agreed on one thing. That this is a technical team which is going to do a very, very technical job and my suggestion is that I am in agreement with the number of 25 and these should be people with reasonable education, at least, a minimum of a university degree. It should be a team of experts and professionals and I would not hesitate to say that they should be lawyers and that this criterion should apply to all of them, whether they are men or women, youth or religious people. This is a team of experts and we should adhere to very, very, high standards.

Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Next is Hilda Orimba.

**Ms Orimba:** Thank you, Mr. Chairman, and my fellow delegates. I have been following the proceedings since morning and we have been talking of so many constituents. I am so pleased that the Chairman of this session, who I do not know was Rev. Musyimi or who--- However, if you look at the Bible, the best religion is to cater for widows and orphans. That is the disadvantaged of this country. You talked of the disabled and of the other people but you are forgetting even yesterday how many orphans and how many widows we have been left with. I am just kindly requesting you that, if you are going to appoint 25 commissioners even at district level, please, allow these disadvantaged to air their views so that they can also be heard. I do not have any objection, but I am only disagreeing with my fellow Nancy that we have to select only those people with degrees. Is it the degree which can deliver? We have to look for the people who are capable of delivering.

Thank you.

**The Chairman** (Bishop Sulumeti): Next is hon. Tabitha Seei.

**Mrs. Seii:** Thank you, Mr. Chairman. I want to appreciate the goodwill towards gender parity during this time of our discussion here. However, I have one point to make. As we look at the representations, of the 25 people, I am thinking mainly that the representatives although they are technocrats, they should be able to represent us as much as possible in areas where perhaps, the Commission may not have the opportunity to translate the customary issues in those areas. Also, I do not know whether this is belated but whether the Commission using the district perhaps, you will be able to co-opt people who can assist, particularly in the remote areas where there may not be representation.

[Mrs. Seii]

Secondly, I would like to say that perhaps for groups like women, they can meet on their own and chose their own representations of the 25. Even if they are going to be exposed to an interview to get the technocrats, I think the women should have the opportunity of choosing themselves to get the representations in that committee.

Thank you.

**The Chairman** (Bishop Sulumeti): Next is hon. Zipporah Kittony.

**Mrs. Kittony:** Thank you, Mr. Chairman. I maybe will not opt to say anything because somebody has already said what I wanted to say and that was on the number of 25 representatives. However, what I want to say only is that we have started very well and I would like to appeal that we should not be bogged down when it comes to the proportion of who should be sitting on the Commission because we can sit as we have done in the past in a mature manner and also in the unified manner which has prevailed and come up with the proper people who are the technocrats and also people of integrity who should be able to implement this.

**The Chairman** (Bishop Sulumeti): Next is Prof. Zablon Ndunderi Nthamburi.

**Prof. Nthamburi:** Thank you, Mr. Chairman. I was going to reiterate what somebody else has said that, as we keep the number of 25, we ask that our Draft Committee go and work out the modalities. However, we have to give them guidelines. I was saying that the political caucus gets 13 and other civic and religious bodies get 12 making 25. As to modalities, I think that the Committee can sit down and work it out because it might be difficult for us all to work it out here although there will be suggestions coming from the floor. However, I was thinking that 13 and 12 is a good number and it adds to the number of 25.

As for the qualifications, I was thinking that we should put much more effort in and put in experience in public life, as an overriding factor, although we still need a minimal qualification. The other area which I have not heard being mentioned but which probably can be picked later, as we go on, and which I think has been missed out completely, and I am very interested in it, is the whole issue of referendum. There may be contentious issues that might be resolved in a referendum and I would like us to address ourselves to that at some point.

Thank you.

**The Chairman** (Bishop Sulumeti): Next is Bishop John Njenga.

**Bishop Njenga:** Mr. Chairman, first of all, I would like to take this opportunity to congratulate you and your team for the work that you have done. I think it is only fair that we repeat this. However, at this stage, we have started very well this morning and we have had such a positive way of looking at things but, in this exercise here, we should break it into groups and come out with the numbers according to number 25. However, 25 is not

**[Bishop Njenga]**

a secret number. We can have 26, 27, 24 and around there. That is, we play around there so that all the people are represented. I tried to work out myself and I am not sure how it will work, but, I will just give you my idea as it came, that if we have the proportions, then we could have the following, as a suggestion and, of course, if I have omitted anybody or we have forgotten somebody, that is why we are here.

I would say that we get KANU which has 17 members but now have 5; DP, 2; NDP, 1; Ford (K), 1; SDP;1 and other parliamentary parties 1 and those who are not parliamentarians get 1 and then the disabled 1; pastors 1; NCEC 1; NGO 1; professional bodies get 1; labour movements get 1; the youth get 1; women, 2; Muslims 1; Catholics get 1; Protestants get 1 and other religions get 1 and that brings us to 26 instead of getting to 25. However, I would suggest humbly that if we could break into groups perhaps to criticise this or add, we would save a lot of time because this is really a question of exercise and proportions and to make sure that people, although when they are members of the commission, they do not represent their groups. They represent the Kenyans and nonetheless all of us would like to hear that there is a Muslim there, a Catholic there and there is somebody there. So, I think this would have been so positive. Let us just get into groups and get these numbers and add them amongst ourselves and as you can see, they are already doing it here. So, I think we should get down to work and get going home.

Thank you very much.

**The Chairman** (Bishop Sulumeti): Hon. Nicholas Biwott or maybe Prof. Saitoti can speak. If you are not ready, then I will give the floor to hon. K. arap Ng'eny.

**Mr. arap Ng'eny:** Mr. Chairman, I just wanted to make one comment and that is to say that today, I think, like everybody who has been here, I have been extremely very, very happy and I would like to join Prof. Kibwana by thanking His Excellency for a wonderful advice that he gave to this forum this afternoon. I think we are "born again" and I hope from now on, we, as Kenyans, will work and will remember those old days when we used to talk and laugh everywhere that we met.

Thank you very much.

**The Chairman** (Bishop Sulumeti): Next Mr. Kitonga.

**Mr. Kitonga:** Thank you very much, Mr. Chairman. Firstly, let me take you to Section 8 of the proposed Amendment Bill. I was saying that, in view of the fact that, we are now thinking of a smaller and technical Commission, we revise the criteria under Section 8, so that we remove "O" Level and substitute it with a university degree and professional qualifications as well; and that, this particular proviso should be able to include, not only lawyers, but people from various disciplines, say, economists, accountants, the medical profession and all other various disciplines in the country.

Now, having done that, Mr. Chairman, I would then go to the Schedules and I would suggest that we merge Schedules B and C, so that we reduce the Commission to 25

[Mr. Kitonga]

members; that we reduce the number of representatives allotted to each political party and stakeholders. That would mean, in my submission, that we have 14 representatives from political parties and 11 from both the religious and civil society. I would suggest that eight (8) out of the 25 be women, and four out of the 25 be youths. In this arrangement, I would suggest that KANU gets 6 positions; DP gets 2; NPD, FORD(K), SDP and SAFINA get one each. Then, FORD (P), Shirikisho Party, Kenya Social Congress and FORD(A) should get one, and non-Parliamentary political parties should get one. I would then move to the Catholics, NCKK, the Muslims and Hindus, one each. I would suggest that professionals, be allotted one each. The Law Society of Kenya, Disabled, Labour, National Executive Committee, NGO Council and Pastoralists one each. Now, how do we force these groups to represent the youth and women? I would say that, if KANU has six positions allotted to it; the first formula would be to say that three of them be women, or two of them be women and one a youth. By "youth", I mean people between 18 and 35 years of age and not age 1 to 35. And then, if DP has two positions allotted to it I would suggest that it be forced to ensure that one position is taken by a woman. That is one mode of ensuring that we cater for gender interests. The other mode would be, say, the Catholics, the NCKK, the Muslims and the Hindus have four seats collectively. If they have four seat collectively, they should go into a college to ensure that they select four persons, all right but it is worked out in such way that two of them are men, one a woman and one a youth. Those are my suggestions on the way forward with regard to the Commission.

**Mr. Muite:** Mr. Chairman, I would second the proposal made by the Chairman of the Law Society; and, therefore, I do not want to add anything to what he has said. I would suggest that if it is the consensus here, we can adopt that as a formula. I have got certain fears with regard to Clause 13 on page 24, where the Commission is required to finish its work within a period of 13 months. What happens if, indeed, despite the best endeavour, the Commission is unable to complete its work within those 13 months? Is there not a loophole, a lacuna; would we have to go back and amend this Act of Parliament in order to extend time? I think we are being over ambitious in saying that they must complete the work within 13 months. I would recommend that we re-examine that, to retain some flexibility in case they are not able to complete the work within 13 months.

Mr. Chairman, we have talked about the need of confidence building, and I have two proposals that would go a long way towards that confidence building. The first proposal is that the Kenya Broadcasting Corporation can begin, from tonight, being impartial. That would go a very long way towards reassuring us that there is confidence and that they mean business. The second proposal is that, in order to promote confidence, those who have not signed the peace accord should be encouraged to do so, KANU included.

On page three, where we are dealing with the objects of this, Mr. Chairman, I would like to see a very specific provision relating to the basic needs; it is F, on page three. I would suggest that when we are ensuring the provision of basic needs of all Kenyans, can we be specific and say those specific needs include the right to food, water, shelter, work and access to health care? These are even more important to Kenyans than the freedom of association.



**[Mr. Muite]**

Mr. Chairman, I would suggest that on page 43, we bring out specifically--- I think that when we were discussing, last time, the code of conduct here, I would suggest that we guard against the possibility of any of these Commissioners using their position on the Commission to advance any partisan political sort of ambitions sorbefacient. So, I would say that we provide a disqualification for any Commissioner who is going to serve on this Commission, like we do for Electoral Commission, to run for political office for a period of a number of years to be agreed upon. Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Actually, Members, that little bit of hon. Muite, my group had provided for it. But you know, with the going off the bomb blast, I think everything was upset, even the computer. So, we can add it. Thank you.

**Mr. Munuve:** Thank you, Mr. Chairman. I would like, first, to endorse the proposal tabled Nzamba Kitonga, the Chairman of Law Society, and only add that, given that this process is going to start with the people at the district level, I think it is just fair that a provision be made so that Kenyans have a way of seeing the new Constitution and assenting to it through a referendum before it is accepted or before it becomes law. This is to avoid a situation where, once it disappears to Parliament, some of the provisions and things that would have come from the grassroots getting basically removed by Parliamentarians and the Kenyan public having no opportunity whatsoever, to say: "What we said is not reflected in this new Constitution". A lot of you know that our Parliaments have a long history of shooting down progressive things.

I would also like to add that, in getting the 25 Commissioners, there are qualities that we should look at; at least, people that we should make sure that they do not come anywhere near being Commissioners. These are people who have been associated with warlike activities; people known to have rigged elections and--- Yes, because people who have promoted warlike activities and have been known to be associated with the rigging of elections are likely to rig our new Constitution. Thank you very, Mr. Chairman.

**Ms. Karua:** Mr. Chairman, what I wanted to say is that, once we have agreed as we have, that we reduce the number from a large number to a small technical committee, we have to agree that the numbers allotted to each group in the original 77 will have to go down lower. Other people may have to be grouped together to nominate a commissioner. I, therefore, was going to propose, like Bishop Njenga, that we do not have to have 25; it could be 24 or 26, but not very far from where we have already agreed. I was going to suggest that the principle of affirmative action, which we had all embraced in the morning, should not be forgotten while doing this. And, I would agree with the proposal that KANU gets five, two positions going to women; DP two, one going to a woman; SDP, NDP, FORD(K); one each. Other Parliamentary parties together, one; non-Parliamentary parties, one. As regards Labour, if you look at Schedule A, we had COTU and KNUT. I would now group them together and give them one. Professional societies, that would include LSK, one. NGOs, which would include NCEC; one. Women, five. That would now add up to eight together with the three sourced from the political parties. NCKK, Muslims, Catholics, other religious faiths together, youths, and the disabled, one each. And I was saying that, since we have accepted the three-tier structure, where we have representatives

[Ms. Karua]

from the districts and again at the National Forum, I had the feeling that, pastoralists are adequately catered for. But if the plenary feels they are not, then we add another extra number to the commissioners and give it to them. I thought the district would give more than the one being given by the Commission.

**The Minister of East African and Regional Co-operation** (Mr. Biwott): Thank you, Mr. Chairman. I would also like to add my voice to those who have congratulated the Drafting Committee under the guidance of the Attorney-General and Justice Ringera, for the excellent work they have done. I will not labour on what we have already agreed. We met just now and agreed on a formula which is not very far from what Ms. Martha Karua has said. I believe that, that distributive list will be read now. It will be more or less a product of marrying A and B for the purposes of producing C. Therefore, in that marriage, there will be a product of a positive and affirmative figure representing the interests of women; the gender. The figure 8 was agreed upon, and I would suggest that, that positive element of gender be distributed equitably throughout the country. In other words, they should come from all the provinces, so that, at least, each province has a woman.

In addition, Mr. Chairman, I would like to suggest that on page 2, Paragraph 5 or Section 5, 2A(b); because this is the definition of objects and purposes of the amendment; we insert another principle guiding the spirit of the Constitution; that is, the freedom from domination, whether it is by religion, ethnicity, minority or whatever it is. This is because we have seen in other areas, for example, Bosnia or, at the moment, we see what is happening in Kosovo, where the minority serbs are dominating the majority Albanians. Or in the case of Rwanda, where we had domination of the minority over the majority. In some cases, we also have religious considerations dominating the others. So, I think that principle ought to be incorporated in the declaration of the interests of the Constitution so that everybody is equalised. Also, we should make it very clear or mandatory, maybe on page 3, further on the same 2A(e), that nobody should hinder the administration of any of the provisions that we have made in this particular document.

Finally, I would like to add that we mandate the Attorney-General with the help of the Drafting Committee, to receive the proposals as guidelines and to perfect it in the way they have already perfected the existing document, especially in the allocation or distribution of the electoral positions, so that we get an equitable distribution that everybody has confidence in. Because we have confidence already in the existing Drafting Committee, the Attorney-General and his staff, and Justice Ringera in particular, I would suggest that we all have faith in this Committee and ask them to continue with the good work to polish the marriage of A and B for the purposes of C, so that they can have a document that is workable.

Thank you, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Let us hear Rev. Mutava Musyimi.

**Rev. Musyimi:** Thank you very much, Mr. Chairman. As you can tell, I have been weaving my way on this carpet all afternoon, begging and trying to make sure that we can

[Rev. Musyimi]

all, at least, find some kind of consensus. We did meet in a group that was very representative. It had everybody really, and I would like to say that the position I am going to present on behalf of this group is not perfect. I doubt that you will find a position that is perfect. I think that would be my preamble sort of comment. If we are looking for a perfect position, we shall be here all the year. So, you will find loopholes within any form of amalgamation that you wish to consider. But, having said that, we did meet, and the following is the suggestion that is being made for your consideration, Mr. Chairman. Out of the 25 Commissioners we have agreed upon, 14 persons come from political parliamentary parties, four of who must be women. Religious community produces three persons, one of whom must be a woman. Women organisations, and I know that this will be pretty thorny, please, bear with me, produce one woman. Youth and students organisations should produce one person. Labour movement, one person. Professional bodies, one person. Persons with disabilities, one person. NGOs, one person. NCEC, one person, and Pastoralists, one person. Now, from the youth organisations, all the way down to the pastoralists, we are asking that they meet and ballot it out, and give us two women. In other words, we shall end up with eight women, which is one-third, four from the political parliamentary parties, one from the religious groups, one from women organisations themselves, and two from the balloting process that will have been conducted by the remaining organisations that I have mentioned this afternoon. There are some guidelines also that were also suggested. One is that no province shall have less than two Commissioners. I think we are all trying to go around this; we cannot afford to be very blunt, but I think you all know what we are trying to say. We do not want this thing dominated, or marginalising any particular community. That, really, is the idea behind this, but we are putting it in very diplomatic language. No Province shall have less than two Commissioners. It is also a way of trying to take into account option two, that was given quite a fair amount of support, as I remember, by hon. Kamotho.

Then, Mr. Chairman, we are also saying that these groups that we have mentioned today need to meet under the Chairmanship of the Attorney-General, that is the Chairman of this Forum, and do the needful amongst themselves, so that they can end up with the numbers that have been suggested. I hope those of you who are in this small group, will have noticed that I have left out the suggestion made that out of the eight provinces, at least, one of the eight women should come from each province. The women are saying that if you are not tethering the men to the provinces, why should you tether the women. I think they have a fair point, and so, I have dropped that particular point. I must have some powers also, as the Secretary. So, that is the suggestion that I wish to bring to you. As I said, quite frankly, you can be here all day, and until the cows come home, but you will not find a perfect formula. Any of them will have its own problems. So, really, what we are asking for is the attitude of accommodation and trust, so that we can move on from where we are now. I was not able to hear a lot of the suggestions that were made earlier. So, I would like to propose this suggestion to this Forum for possible secondment and, discussion and, preferably, approval. Thank you, Mr. Chairman. If we can have somebody to second it, it can be the property of the Floor and then we can discuss it and we will take it from there.

**The Assistant Minister, Office of the President** (Mr. Angwenyi): On point of order, Mr. Chairman. We are the representatives of the people! This means that we have to put our proposals first, and then we can decide which ones of those to discuss!

**The Chairman** (Bishop Sulumeti) : I thought so also.

**The Assistant Minister, Office of the President** (Mr. Angwenyi): So, let us give our proposals for discussion!

**Rev. Musyimi:** I think that is also fair.

**The Chairman** (Bishop Sulumeti): Yes, it is fair.

**Rev. Musyimi:** Can the Chair help me here? I put it as a proposal. Do I withdraw it or---

**The Master of Ceremony** (Mr. Imanyara): It has been seconded! Prof. Saitoti has seconded it.

**The Chairman** (Bishop Sulumeti): Now, ladies and gentlemen, let us follow the ordinary rules of debate. A proposal has been made and it has been seconded.

**Delegates:** By who!

**The Chairman** (Bishop Sulumeti): By Prof. Saitoti. We shall ask for more proposals.

**The Assistant Minister, Office of the President** (Mr. Angwenyi): We are the representatives of the people!

**A delegate:** But you are an observer here!

**The Chairman** (Bishop Sulumeti): Order, please. Rev. Njoya.

**Rev. Njoya:** Mr. Chairman, let me first of all, pre-empt the cause for disorder. It is because the hon. speaker before me wanted to be seconded before all people have tendered their proposals. If he waits and becomes a bit patient, we will second him later. I think that is good in order to have proper order. As the Chairman has agreed, we should give all our opinions and the people will make proposals for secondment later. Now, mine is to express gratitude for the orderly way in which the meeting has proceeded, and the acceptance of all shades of opinions. I am very, very happy because I have lived to be here. I also do support the issue of affirmative action on the following basis, especially for women. That, while I agree that political parties give four women, I also say that there should be four core-women not chosen by any group, but chosen by women themselves; the

*(Applause)*

reason being that my church chooses women who are our men's women, and not women's women. Even though in the church we agree we could choose a woman, she will be

[Rev. Njoya]

representing the organisation of the church, not the women. So, I am supporting affirmative action in saying that women be given, before you allocate to various categories, four core-women in number, and then, the last four should come from political parties. That will relieve the churches, youths, pastoralists and the others from choosing a woman. The other thing is that I support hon. Biwott's suggestion that the eight women come from the eight Provinces. I do not mind whether those women are in Nairobi, but they should come from the eight provinces. In order to marry--- I am a Minister and I marry things. In order to marry A and B, that we follow A in proportion and B in representation. The other thing that I want to support is the proposal by Mr. Munuve that in case there is a dispute on an issue of a major concern for the nation, like on a constitutional matter, that there should be a provision for redress. In a constitutional process, there must be a place for recourse. Supposing a minority wants to secede from the majority, like is the case in Canada; there ought to be a constitutional recourse for any group which will differ with the Consultative Committee. We should allow the whole Republic to do a referendum to decide on that issue, so that the group knows that it is the will of the whole nation, and not simply, the will of the Consultative Committee. So, I do support the idea of a referendum. On those two issues, I feel very strongly; that is, on the issue of the referendum, and marrying A and B, especially on the cases of women, so that we do not have women appearing to represent only women gender, without representing the provinces. I am not talking for women only, but this covers every other category. Even though we choose by political parties, there should be no province with less than two representatives. No Province shall have less than two representatives out of the 25 representatives. Thank you very much, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): I will call upon hon. Prof. George Saitoti.

**The Minister for Planning and National Development** (Prof. Saitoti): Thank you, Mr. Chairman. I just want to say one thing basically on a matter of procedure. I thought that Reverend Musyimi made a proposal and in my understanding, I did second him. So, what I do not know is whether we are discussing that proposal or several proposals because it would be better if we discussed one proposal at a time. We can then zero on it, amend it or throw it. The proposal which actually has been presented by Reverend Musyimi is one which is worth looking into and I say so because we have already agreed on the number 25 as the number of Commissioners. I believe that is what was agreed on before we broke. The real issue which arises here from a very mathematical point of view is: How do you divide the number 25 to cover all the groups? I want to say that it is extremely difficult. I was part of that small committee that looked into this matter. The line had to be drawn between the political parties and the non-political parties. We could only work with this figure of 25 and I, therefore, want to support the proposal strongly that out of this 25 members, you have got 14 members who are going to be from the Parliamentary political parties. The other remaining 11 members are distributed in the manner which was read out here by Reverend Musyimi. The issue of being gender-sensitive is the one which has been entrenched in the whole of the debate. So, the formula that has also been read out by Reverend Musyimi showing how we arrive at the figure of eight women, which comes up to a third of the commissioners, I think is one that is worth looking into. Although Reverend Musyimi did not emphasise this in the form of a proposal, I think we should then accept a broad understanding here that women should make every attempt to ensure that

**[The Minister for Planning and National Development]**

there is as much national distribution of women as possible. I do not want to step on an area of women when I am not in a position to talk on their behalf, but it would be terribly unfair if the women--- Suppose all of them came from Nairobi, we will be in a lot of trouble.

The other thing which I think is important is that of Commissioners. If we agree that there are only 25 Commissioners and if you divide that number with the eight districts, it means that if you were to work on the basis of equal distribution, there will be three Commissioners per province. Okay, people might say that there are variations in terms of population, but I think these are things that have to be looked into. But what is most important here is to make a rider that every province should have at least two Commissioners. I have spoken in this meeting because I want to commend this proposal and hope that we can actually look at it, throw away the pieces that we do not want, improve on those pieces that we want and we can even ask the Attorney-General along with the Drafting Committee to see how they can improve on them. Thank you, Mr. Chairman.

**The Assistant Minister, Office of the President** (Mr. Angwenyi): Mr. Chairman, first. I want to thank you for a good job done to produce the Paper that you gave us this morning. Secondly, I want to express my regret that this Forum has been hijacked by people who are not representatives of the people of Kenya. We, the MPs of this country, have been given a very raw deal. If you count the number of people you have given the floor today, the MPs cannot constitute 20 per cent, which I do not think is very fair.

I will now come to the problem at hand. We have agreed that the Commissioners will be 25. We have agreed on a three tier fora; the Commissioners, the national forum and the district forum. We have said that in the national forum nearly every shade of opinion of this country will be represented in that forum. We have also said that the grassroots shade of opinion will be presented in the district forum. So, the Commission is going to liaise with people who are technically qualified to draft for us a Constitution. As you have said in your Paper, the Constitution will be presented to the national forum to be discussed before it is sent to Parliament. So, I will not haggle over presentations in the Commission. All we need to do is to say that for anybody to be eligible to be a Commissioner he must have adequate education, preferably a degree in law, Political Science or Government and they must be appointed three each from the eight provinces of this country. We can also put a rider there that each province must produce at least one woman to present the women interests because I know that men may want to take over from every province. I am echoing hon. Anyona's sentiments. I am saying that 24 members must be appointed, three from each province plus a chairman who will be appointed by the 24 Commissioners. Once that is done, then we are set to go. The idea of putting this on political basis, political parties, NGOs, NCEC - I do not even know whether NCEC is a political party or an NGO - should not be followed. We do not want to go into that. We want to appoint people who are technically qualified to draft for us a Constitution. Thank you.

**The Chairman** (Bishop Sulumeti): We will give the floor to the Mr. Maina Kiai.

**Mr. Kiai:** Mr. Chairman, I think this is going a bit back and forward. I would like to make a proposition that anybody who has a proposal in terms of the numbers to write it

[Mr. Kiai]

down and hand it over to the Drafting Committee to come back with something that we can marry. One would have thought that when I suggested this small committee of 21 experts, it would be a simple thing. I think what we need much more are guiding principles that will help us to determine which people we need and that is what I think is more important. Even if you are nominating people, it is not necessary for you, whether you are a party or an NCEC, to nominate your chairman. It is much more important to look at what we are trying to achieve. So, if Mr. Anyona has to nominate somebody, he needs not nominate somebody from his party. He can nominate a Judge of the High Court because those are experts. And that is what we should be thinking about now as we professionalise this Commission to work. So, we need to get principles rather than numbers. If we are committed to making the political processes at the Forums, then let us make this technical committee a non-political exercise. And I think the best way is to hand it back to your committee, Mr. Chairman, to go back with all these proposals in written form and then you come up with something that we can all agree on and then we can move on.

That said, I have also some other things that I would like to raise. One of them is that I am happy that you clarified that barring of people who serve on the Commission and key roles in the Forums for five years in political office will appear in the Bill. I think that is a very important issue. That is what the Chairman said. I think it is very important for us to stress that Safari Park I and II came to a consensus that anybody who is a Commissioner or anybody who has a key role in the national or district forums shall be barred for a period of five years from contesting elections, that is, political office so that they do not carry their personal political interests into the Commission and into the constitutional making process. Let us hope that, that comes back as it was there.

The second thing that was omitted from Safari Park I and II is the question of openness. One of the things that was suggested was that the meetings of the Commission are open forums for people to attend and listen. The deliberations of the sessions are open to the media to report on a daily basis so that we can know if Bishop Sulumeti is giving a view which is different from the other people. That way, we can know who is going wrong. On that same score, the issue is to make KBC give a frequency to this process entirely so that even people in the rural areas can listen to the deliberations. Whether they are in Siaya or Mombasa, they can know what the Commission was doing out there. That way, we can all have an additional check on the deliberations of the Commission. Then we will not have so much fear. If we know that there is control, we will not have so much fear about representations and numbers because we can listen and know. We can have a moral check on the operations of the Commission.

Finally, is the question of referendum. I think it is going to be clear that when we get to the point of the national forum, there might be disagreement on various issues. So, there must be a clause that gives the option of a referendum where difficult issues arise and we can raise the level of approval so that it is not dominated by one particular group. Thank you very much, Mr. Chairman.

**The Chairman** (Bishop Sulumeti): Ladies and gentlemen, if there is anything that I hate in life, it is giving a ruling from the Chair. I am not used to it, but you seem to be driving

**[The Chairman]**

me to that. One thing should be clear here. When we came back here, we were all going to address one issue namely; we agreed on 25 Commissioners. We wanted to know how we should arrive at this figure, but some of us are already talking about referendum, barring people, and so on. I just do not know what we are doing. Are we slaughtering an elephant or a rabbit? In other words, we should go back to one point. We agreed on the number 25 or something near 25. How do we arrive at that number?

**Prof. Kibwana:** On a point of order, Mr. Chairman. I think we are making some progress and one really wants to appeal to all of us to jump this final stage which is an uneasy stage. If, for example, it was possible for the proposals that people are raising to be written down and then the Drafting Committee is given like half-an-hour to marry them while we have some tea, a proposal can then be presented for us to debate. That will make us move faster.

CLOSING REMARKS

**The Attorney-General (Mr. Wako):** Thank you very much, Mr. Chairman, for giving me this opportunity. We began very well and we have continued very well. It is just one issue that we are discussing; the issue of the appointment of the Commission. When I listened to Rev. Musyimi, he said something which was very true, that however long we sit here we may not be able to come to the finer details of the 25 members. That is a fact. A number of very good proposals have been made. If you examine them you will find that they are giving the political parties either 13 or 14 members and the rest to the other interest groups. Now, within those other interest groups, you will find refinements but basically it is either 13 or 14 to Parliamentary political parties and the rest to the interest groups. I have been going through all the proposals fairly carefully. All the proposals are ascertaining affirmative action of the 25 members where eight must be women and the rest representatives; the youth, the disabled and others. We may sit here and argue, but not reach a consensus. I think once we agree with that general framework, particularly the proposal by Rev. Mutava Musyimi, the Law Society of Kenya and so on, you will find that there is so much agreement there which the Drafting Committee can refine and move ahead taking into account the affirmative action which we are all agreed in this particular Forum. The other general principles that appear to have been agreed to is that whatever mechanism that is used, the end result must be at least two representatives from the province. You may sit here, shout and do all sorts of things, but the Drafting Committee has done a very good job. I am asking you dear participants, let us entrust the Drafting Committee to take its time and refine its proposals based on the proposals that you have brought here, taking into account each and everything. The same Drafting Committee, in addition to doing that, can also go into other refinements which are consequential upon our agreeing that this will be a technical committee. For example, under the current draft, we said that the Commissioners must have attained an O-Level grade. Now, they will have to come up with higher standards which will have to be put into the amendments to the Act so that any person nominating any person must be sure that both qualifications which are there in the Act are being complied with, with an end result of having a technical committee. It will also go into the other issues that have been raised here.

It will also go into the other issues that have been raised here as to what happens and so



**[The Attorney-General]**

on. But these are some of the finer details. I really believe that the Drafting Committee in which all of us have confidence - of course we are all represented in this committee, in one way or the other - can sit down, refine and together with the Attorney-General, push that Bill to Parliament. What I am saying is that, let the Drafting Committee continue with its work until this Bill that has been agreed upon is passed in Parliament. That is my proposal.

**Mr. Sirma:** Mr. Chairman, we want to appreciate the work which has been done by the Drafting Committee. We trust them because they have produced a good document. However, regarding this representation, when you talk about representatives from political parties, we cannot agree to this. Is the distribution of political parties equal in the whole country? Can we now go into each and every province? Each province is represented by the people who are there. We cannot go by the political parties. For example, in Central Province, there are about four or five political parties while in Rift Valley, there is only one. How can we go by that? Thank you.

**Mr. Orengo:** Thank you very much, Mr. Chairman. Actually, what I have to say is very brief. On the question of representation in the Commission, I plead with you--- This document is attractive but I plead with you that when it comes to the representation of those who will be commissioners, do not spell it out in the schedule. Spell it out in the substantive Act itself. For example, with regard to the issue of gender, if you decide that eight of the commissioners will be women, please, do not put it in the schedule. If you put it in the schedule, it looks like an afterthought. You remember, in the IPPG process, we had agreed that 50 per cent of the nominated Members of Parliament should be women. However, the manner in which it was formulated brought a lot of problems. So, I plead with you that the question of gender should not be left to a schedule. I also plead with you that when we walk out of this place, majority of the people out there are women. So, if we decide that we are sensitive to the issue of gender, do not qualify it. Just say we are going to have eight women. Please, give the women a little bit of democracy in the way they will organize themselves.

The second issue I wanted to raise with the Attorney-General is this: I plead with you; this document is very attractive. But when you look at it from the position of a lawyer, whether it is enforceable or not, I plead with you that we should come back at a later stage and go through it stage by stage. I find that I am in agreement with a lot of things in this Bill. However, as hon. Muite mentioned, in case there is breach of any of these sections, how do you find redress? For example, if you end up with less than eight women, how do you redress that? The Commission has got very little time in which to carry out its duties. I think we need to find out whether what we are saying is enforceable or not.

If you look at page 2, under the Objects and Purpose, I do not know whether those objects and the purpose are directory or mandatory. That needs to be established. Are we giving the Commission a discretion? Can they do what they want or they must abide by these aims and objects? This is important if you look at it again in terms of pages 4, 5 and 14. There are guidelines. So, you need to spell out what are directions to the Commission and what are guidelines to the commission. It may not look important now but when the

**[Mr. Orengo]**

Commission begins its work, it must be determined whether they are directives or guidelines given to the Commission. On that basis, I am pleading with the Attorney-General that we should have another session to look at the document which is very attractive as it is at the moment.

Finally, the preamble reads: "An Act of Parliament to facilitate the comprehensive review of the Constitution by the people of Kenya". That is repeated on page 5. Sub-section (c) on page 5 reads: "---- ensure that the final outcome of the review process faithfully reflects the wishes of the people of Kenya". As I read that, the substance of it is that at some point, whether or before the Act is legislated by Parliament, the people of Kenya must approve and ratify the Constitution. So, in the body of this Bill, the idea of a referendum is already included; we cannot run away from it.

Thank you very much.

**The Chairman** (Bishop Sulumeti): Brothers and sisters, my watch tells me that it is 6.00 p.m. I will just confess to you the law of nature: I am tired. I do not know how you feel, but I am tired.

First of all, I would like to assure hon. James Orengo that he has made very good contributions and the Drafting Committee has taken note of those points he has raised. Brothers and sisters, please, let us end our day now. This is enough for today.

However, before we close, I would like to observe that the suggestions you have made here on how to arrive at the number of 25 have been noted by the Drafting Committee together with the Attorney-General and our secretary, Justice Ringera. I pledge that the Drafting Committee is prepared to carry on that task and finalize that little bit. So, with that promise, do we really need to carry on the debate until the small hours of the night? The unfinished business is very small. We know the number of commissioners is 25. The only problem is how we will arrive at that number. Very many suggestions have been brought up here. However, all of us here cannot finalize that small technical number. So, if you agree with me, I would like to request that Rev. Timothy Njoya closes the meeting with a prayer, and then the Drafting Committee will remain behind with me for a minute.

**Several Participants:** Are we coming back or not? When are we coming back?

**The Chairman** (Bishop Sulumeti): Now, whether you are coming back or not, that is a question for the Attorney-General to answer. If you have got a proposal or a paper which has not been presented on the Floor, the best thing would be for you to submit that proposal to the Drafting Committee. There are two secretaries for the Committee: hon. Ms. Martha Karua, and Dr. Wanjiku Kabira. You can submit your proposals to them.

**Mr. Farah:** Mr. Chairman, Sir, some of us who were in last Parliament saw, and even before that, the folly of trying to rush things through. If you remember very well, the Act that abolished multiparty and made Kenya a single party State was carried through all stages in Parliament in one day. There was the IPPG reforms. Many of us thought that

**[Mr. Farah]**

was an excellent document. It went through Parliament with a lot of goodwill in a very short time. However, the same people who were in the IPPG are telling us that they made a mistake. We have read some of the articles by hon. Murungi who was one of the architects of the IPPG reforms who says that there was problem with those reforms. We do not want to get into a problem again. We have seen the document and it is a fine document. There have been very good contributions today. Let us take this document, give ourselves time to go through the fine print of it, internalise and crystallise the issue of the representation and the number of Commissioners. We have waited for more than eight years to reach where we are. Let us come back together and maintain goodwill. There is a lot of goodwill now, but if you rush through these things, then there will be a lot of suspicions and people will begin to read between the lines. Let us take more time on this. Thank you.

**The Attorney-General (Mr. Wako):** First of all, as I said, a number of proposals have been made by Rev. Mutava Musyimi, Law Society of Kenya, Ms. Karua and so on. If you examine them in details, basically, the same bold principles are there. What is required is just a finer detail, taking into account the general principles of affirmative action and other issues like that. That is one issue that actually remained unresolved. As the Chairman said this morning, all other issues had been agreed by consensus in the Drafting Committee part from the one issue. In the course of debate here, a number of matters that were left out have come out clearly. I would expect the Drafting Committee also to look into those very aspects of the matter. I would also expect the Drafting Committee, since it has everybody, if in its wisdom, it thinks that we call another meeting for another clarification on a major issue, then the meeting will be called. Like this one today, it was organised by them. But if they think that they have dealt with the issue and they are all agreed on this one issue and on everything else, then the issue of speed becomes very important. When Parliament resumes we want to finalise these things so that the process can really start.

I must say that I have been very much touched the whole of today by the spirit in which we have dealt with this matter. In fact, I have no words to express what my innermost feelings are on this very occasion. We have come to this stage where we have really agreed on the way forward. To me, it is a matter on which we, as Kenyans, can all be proud of.

The Drafting Committee, I am sure, will meet as soon as possible. Proposals of refinement that some members may feel very keen about, they should go to the Secretary of the Drafting Committee. Ms Karua and Mr. Adida are there. If you want me to use my office to unfold that business there, I will do it.

I would really want at this stage to call upon Rev. Mutava Musyimi.

**Rt. Rev. Musyimi:** Mr. Chairman, I do think that if you really want to stand behind the Drafting Committee - it is our committee. You are our chairman, you really do have to call us here again. I do not think you have any choice on the matter. I wish you did, but I do not think you do. So, call us here again. We will give you about two weeks or thereabout.

**[Rt. Rev. Musyimi]**

Secondly, I would like strongly to suggest that in the next meeting you bring out the entire Act plus the amendments that we have been discussing today and the amendments that are going to go into the final document so that we have one tidy, clean document that we can read from A to Z and then adopt it. So, I would like to suggest that we meet again here. We give the Drafting Committee opportunity to work as we have made suggestions. Once we adopt it, I am sure will be able to carry the country with us. Thank you very much, Mr. Chairman.

**Mr. Munyao:** Mr. Chairman, Sir, you called us here because the Drafting Committee which we trust so much could not go beyond that point. Now that the amount of work remaining is too little, can we agree by the time we leave this place that on Monday you will call us because it will take only four hours to finalise that and then we agree on the date for next meeting?

**The Attorney-General (Mr. Wako):** I think we can leave that to the Drafting Committee to decide when to call us, if necessary. Honestly, I would rather leave everything to the wisdom of the Drafting Committee. They are all here.

**Prof. Kibwana:** Mr. Chairman, in terms of what is insisted by everybody on the floor, it is in order that given the things that have been said today, they will be taken into consideration in terms of drafting. After that is done, then we will come back. The Drafting Committee knows that it is mandatory that we shall come back.

Secondly, my only problem so far is that we did not discuss the other things apart from the Commission. There were comments that people wanted to make on other areas. So, I do not know the way to handle that: whether it will be merely to tell people to bring their written views, or some slightly more time would be required for that, so that people do not say that they had points that were not articulated and, therefore, they did not become part of the drafting to be done. Therefore, we are asked again to go back. So, I think we need to get a good modality for, how do we accommodate the views of the people outside the Commission? At least, if it is bringing them to the Drafting Committee or saving them here for another hour or so. And then when the drafting committee is through, we come back here and say we agree with them or not.

**Mr. N.M. Nyagah:** Mr. Chairman, I appreciate to having been made to "eat a pie". We have been observers until now. Let me make the following requests: That when we come for the next meeting, let us come as delegates and not as observers so that we can make our input. Let us not open up a Pandora's box here. We have agreed as to this document on Schedule C which calls for a maximum of 25 Commissioners. We have a lot of faith in that Drafting Committee. We would not want any abuse at all by increasing the number of Commissioners. Certain proposals have been made to this Forum which calls for 25 Commissioners. So, let us go by that number of Commissioners. I hope we are not going to be ambushed with documents here without, first, reading through them. Let us, as delegates or those who have been nominated to attend as observers, get the document in advance so that we can come here and meaningfully untie it. That is important, Mr. Chairman.

[Mr. N. M. Nyagah]

Lastly, while supporting Rev. Musyimi's presentation, I feel that this document had a cross-section of very many people who put their input into it. For the purpose of records, I would like to read their names. I am trying to show the various input by various political parties and it is necessary that I read them. There was hon. Prof. Saitoti, hon. Ms Karua, hon. Murungi, hon. Biwott, hon. Sunkuli, Rev. Musyimi, Rev. Njoya, hon. Raila, Mrs. Rose Waruhiu, Dr. Kabila, hon. Ekirapa, hon. Michuki, Prof. Kibwana and hon. Norman Nyagah. Thank you.

**The Ministry of Planning and National Development** (Mr. Saitoti): Mr. Chairman, I just want to make one clarification. Today in the morning before we broke for lunch we had gone through the entire draft Bill. I believe by that time we had actually agreed on everything save for the mode of appointment of the Commissioners. As you recall, we then had agreed that we would come back here to zero in on that one issue and that is what we have been discussing. If we are going to meet again, and I believe that it is important, can we then agree that we shall only zero in on the mode of the appointment of the Commissioners and may be on a few things which may have been brought here? But if then we come here and say that we are going to discuss the entire document again, I can tell you, Mr. Chairman, that we will spend a lot of time debating and this will become endless. So, let us zero in on the specifics which we have brought here.

**Dr. Mutunga:** Mr. Chairman, I have a very brief proposal. We must meet after two weeks. In between, those people who have the opinion regarding the entire Act should write to the Drafting Committee. They should be centralised as the committee and the committee can then bring that when we meet. That will be the easy way. We have done it in the NCEC and it actually worked very quickly.

Thank you.

**The Attorney-General** (Mr. Wako): On the basis of gender, I will recognise Dr. Kabira.

**Dr. Kabira:** I think, I wanted to agree with Dr. Willy Mutunga on meeting after two weeks, but I would concur with Prof. Saitoti's suggestion that we have dealt with the Act, and that, if we go back to square one to give proposals on the entire Act, we can actually go back to the beginning of the process. So, I think, we have already adopted the Act with an exception of this particular area and minor amendments in the various areas like the ones which were mentioned in the morning.

**The Attorney-General** (Mr. Wako): Let me say this, I think any person who has any suggestions to make as I said earlier, is perfectly at liberty to make those suggestions directly to the Drafting Committee. Now, Prof. Saitoti has made a good suggestion, that when we meet again, the only agenda on the item will be the issue of the Commission and other consequential amendments arising there from. And that, therefore, the Drafting Committee will prepare whatever they have drafted on that issue and any other amendments arising there from. I will mind things like basic qualifications and the rest. So, I am ruling that the Drafting Committee is mandated to receive any suggestions; is mandated now to refine the issue of appointments in accordance with the proposals and sentiments which

**[The Attorney-General]**

have been expressed here, together with any other consequential amendments, also touch on some issues that may have been left out; to give us documents relating to those issues and to announce when we shall meet. We must meet in good time, so that the whole thing is finalised before Parliament resumes on 7th October. I think, that is now what we are doing and what we have agreed upon. I now call upon Rev. Njoya to make a closing prayer.

*(Prayer)*

**Rev. Njoya:** Let us stand and say our prayers please. Let us pray. Our gracious Father, we are very, very grateful because we are the children of those who fought for Independence. Some of us here do have the experience of that struggle. Because, we were party to it and some of us we have been told, experienced the struggle, both physically, mentally and spiritually. Some even went to Lancaster House in the process of finalising that chapter. Now, Lord, we are in another chapter where we are engaged in something similar. A struggle where we have not taken up guns to fight one another, but where Lord, you have called us to reason together. This seems to be part of the reasoning together. Though imperfect, God in obedience to your calling, that you even reason with sinners. Because, God, before you judge anybody, you let them know what is wrong and you make them understand, and even you provide an advocate for them; your son Jesus, so that they may know and may defend themselves. God, there are many people here who are going home, dissatisfied that they have not spoken, but they have heard. But God, all of us here, came because we were representatives. So, let us accept also to be represented by those who have spoken and be satisfied that even though in imperfect manner, they have aired our views, next time, we shall air our views and maybe they will be the ones not to have the opportunity to speak. God prepare that they too shall be contended and satisfied that fellow Kenyans and fellow human beings have spoken. We pray for the integrity of this country that we saw that you preserved when we were attacked by the cowardly act of terrorism. We thank you that in our diversity and our differences, and our many backgrounds, God, we acted as one. We thank you for the spirit of service and also oneness which has been exhibited by this forum; this group here. The patience of every member, especially even when we went without food half of the afternoon and the whole morning. Bless all the organizations that were represented here; all areas whether of gender, of people who seem marginalised, everyone here, churches and Parliamentarians. We thank you for who we represent. Because Lord, we are not here on our own, we are here as representatives of 32 or 33 million Kenyans. We also thank you very much because of this facility that we have used the third time, and where we have made our imprint. Let this not only be a place located in Nairobi, but a symbol of the whole Republic that the Republic is together and united and can work together without any animosity, with forbearance and forgiveness. Oh God, we recognise that humanity is imperfect and that everyone needs forgiveness and forbearing from the other. Especially, we forebear any imperfections that may have come from the Drafting Committee and thank you for it. Perfect it and let it prepare a better draft from all our ideas and aspirations, for the next time when we come here. Give us your travelling mercy as we go home. As we go to face the people and as we talk to them, let us assure them, that at least we have found light at the end of the tunnel.

**[Rev. Njoya]**

For all this we pray in Jesus' name. Amen.

**The Attorney-General** (Mr. Wako): Thank you very much, Rev. Njoya.

*(The Forum ended at 6.25 p.m.)*

APPENDIX

**THE HANSARD TEAM**

**THE EDITOR:**

Mr. J.M. Machanje

**THE DEPUTY EDITOR:**

Mr. J.M. Mwaniah

**ASSISTANT EDITORS:**

Messrs F.N. Wanjohi

J.N. Kathuri, J.K. Kiema and M.K. Mwenda

**REPORTERS:**

Miss G.K. Ingoyi, Miss A.W. Njoroge, Messrs J.N. Mbiuva,  
G.K. Wanyoko, S.K. Mutungi, G.C. Ondigi, T.O. Ongalo,  
S.M. Chesire, G.L. Mwebi, G.W. Wafula, Mrs. P.A. Oyugi,  
Miss E.W. Karega, and Miss M.S. Wanjiru

**EDITORIAL SECRETARIES**

Mrs.M.N. Kahenya and Mrs. P.A. Odhiambo



