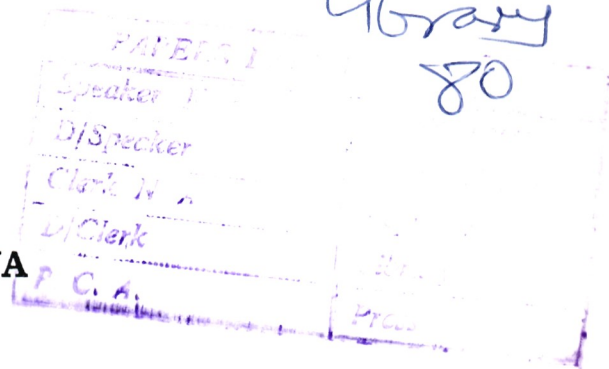
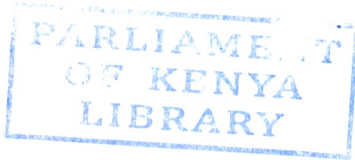




REPUBLIC OF KENYA



NATIONAL ASSEMBLY



EIGHTH PARLIAMENT – SIXTH SESSION

**REPORT OF THE PARLIAMENTARY
SELECT COMMITTEE**

ON THE DRAFT CONSTITUTION OF KENYA, 2002

PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2002

Mr. Speaker Sir,

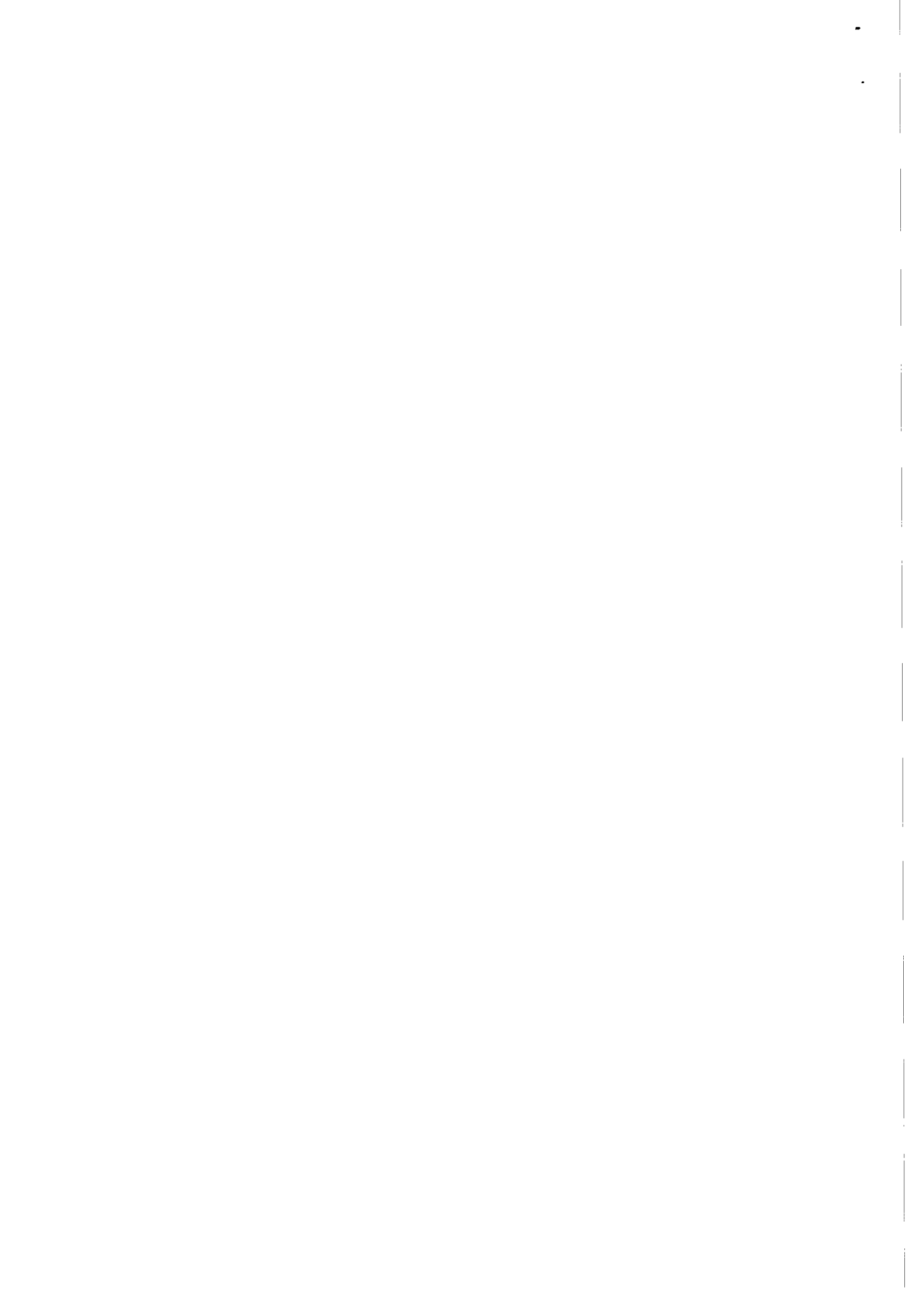
**REPORT OF SELECT COMMITTEE OF THE CONSTITUTION
REVIEW ON THE DRAFT CONSTITUTION OF KENYA, 2002**

1.0. INTRODUCTION

On Monday, September 30, 2002, Prof. Yash Pal Ghai, Chairman of the Constitution of Kenya Review Commission (CKRC) presented the Draft Constitution of the Republic of Kenya, 2002 and a Report on the Review process to the Parliamentary Select Committee on the Constitution Review. Upon receiving the report the Committee resolved to retreat to the Coast for two days together with a few Members of the CKRC to discuss the Draft Constitution and the report in preparation for the National Constitution Conference (NCC).

From 7th to 8th October 2002, the Committee and the Commission held extensive discussions at the Whitesands Hotel in the North Coast and isolated several articles in the Draft Constitution that require further review during the National Constitutional Conference Forum which is expected to start on Monday, October 28, 2002 at the Bomas of Kenya.

The list of members who participated is on appendix I.



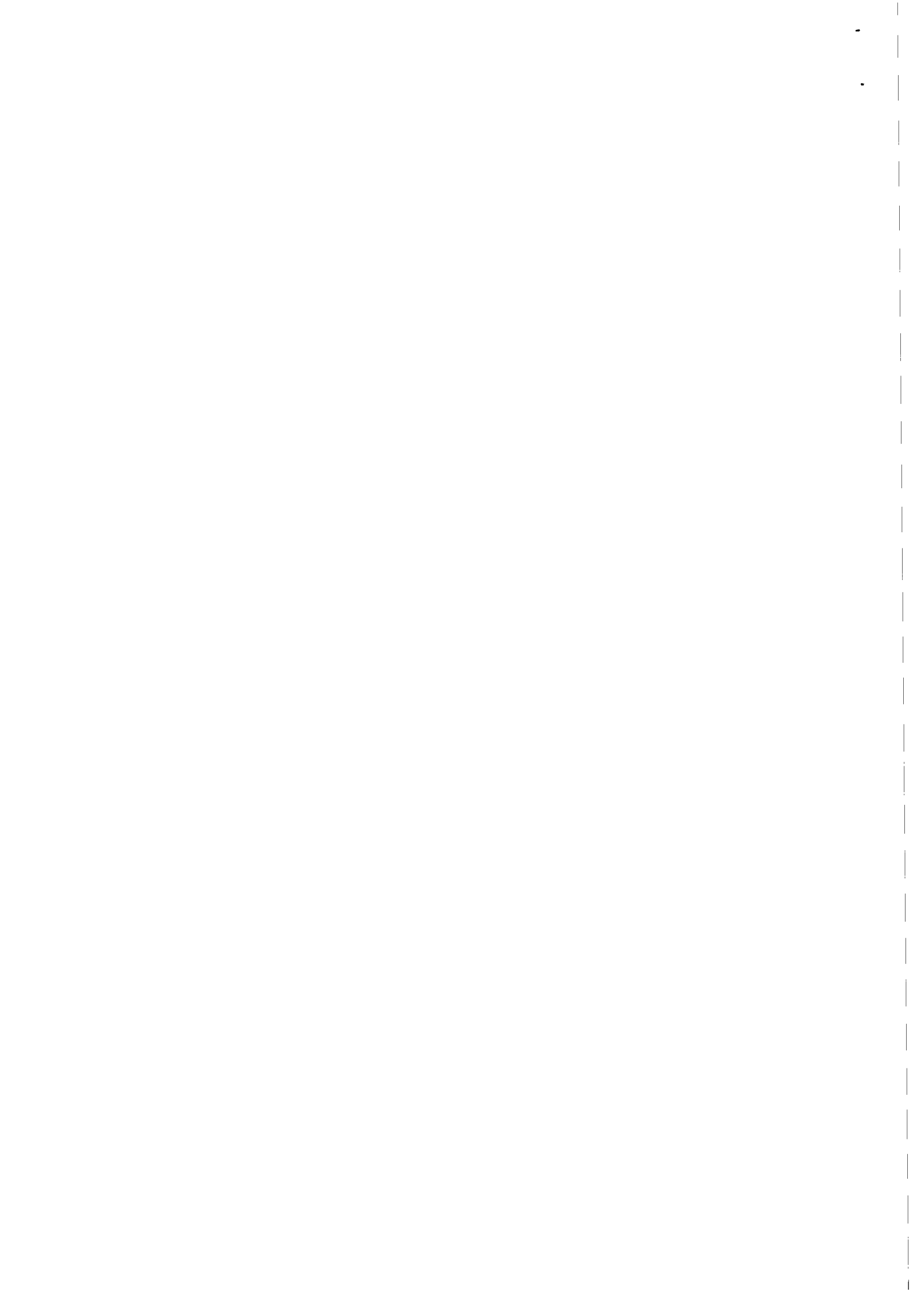
2.0. OPENING STATEMENTS

2.1. ADDRESS BY HON. RAILA A. ODINGA, M.P., CHAIRMAN OF THE SELECT COMMITTEE ON THE CONSTITUTION REVIEW

The Chairman of the Select Committee informed the meeting that the Constitution Review Process has reached a very critical stage, and on behalf of all the Members, commended the CKRC for producing the report and the Draft Constitution in time. The Chairman further informed the meeting that he was satisfied with the preparations for the National Constitutional Conference, and public debate on the draft constitution which is going on in all constituencies. The biggest challenge, the Chairman observed, was whether the Review Process would be concluded in time for elections by the end of the year.

2.2 ADDRESS BY PROF. YASH PAL GHAI, CHAIRMAN OF THE CONSTITUTION OF KENYA REVIEW COMMISSION

The Chairman informed the meeting that the recommendations in the report and the proposals in the Draft Constitution are based on the peoples views. He

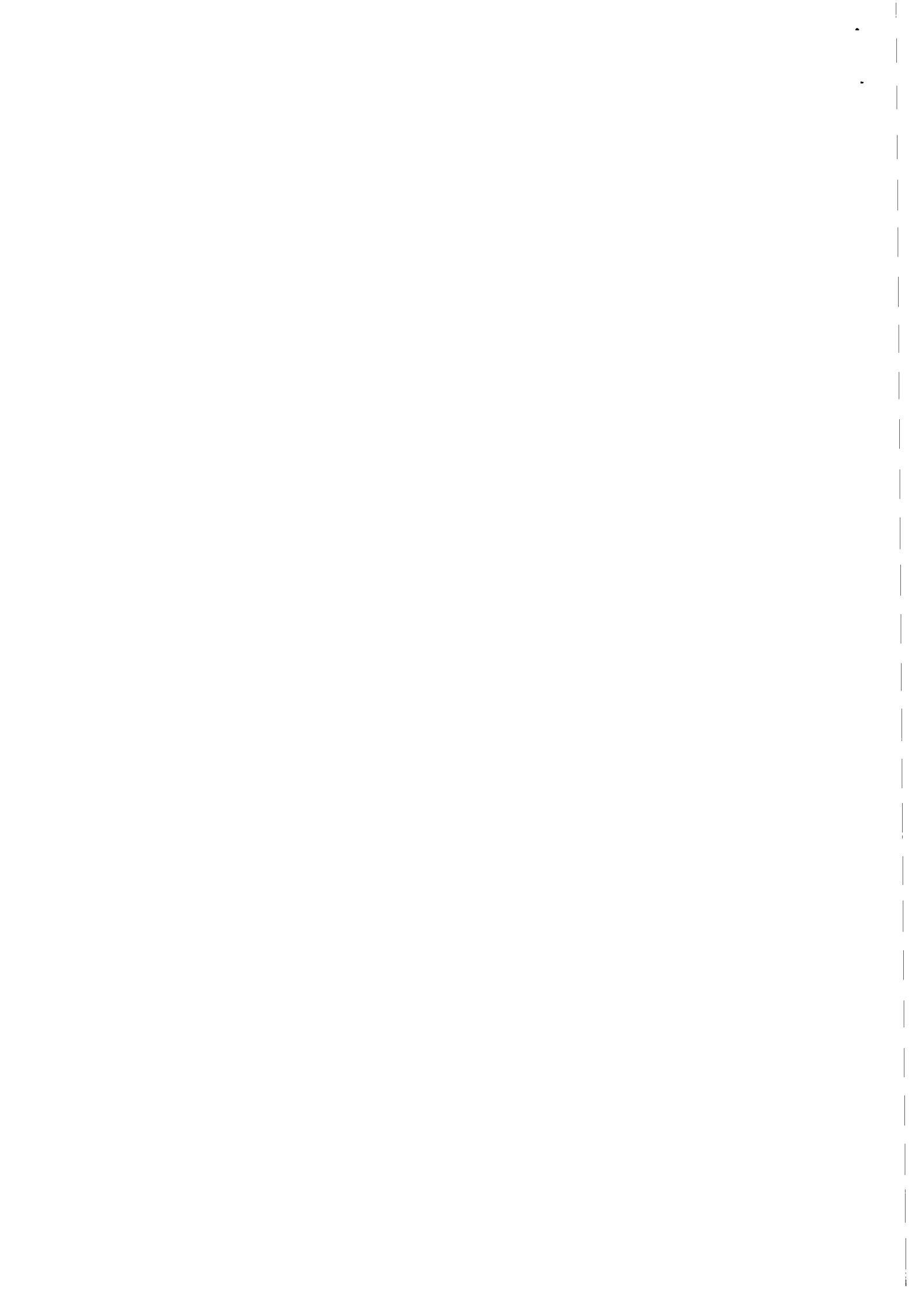


further informed Members that the report is a compromise document, and invited members to study the two documents objectively and make their judgements. He reported that preparations for the National Constitutional Conference were at an advanced stage and that by 15th October 2002 the names of delegates to the conference would be published. He observed that the CKRC was worried about the National Assembly being dissolved before the exercise was over because this would scuttle the process but reported that he was pursuing the Review process as required by the Act.

2.3. ADDRESS BY HON. AMOS S. WAKO, M.P., THE ATTORNEY GENERAL

The Attorney General congratulated the CKRC for the good work in preparing the Draft Constitution and report for debate during the Conference. He said he had read the two documents and was satisfied they were well done and should be discussed soberly.

The Attorney General advised the Committee that if elections are to be held under the new constitution, then elections cannot be held before the end of the year because there will be no time to enact some of the laws that will be introduced by the new Constitution. He



proposed that elections should be held about March 2003 to enable the National Constitutional Conference to finalize their discussion on the constitution. If this be the case the Attorney General further advised that the Committee should be ready for a constitution amendment to extend the life of Parliament so that the review process is not scuttled. Failing this, the constitution review process should be completed after the General Elections.

The Attorney General further informed the Committee that he was pursuing an amicable and expeditious settlement of the case filed by the two Judges against the Review Commission.

2.4. REMARKS BY HON. MWAI KIBAKI, LEADER OF THE OFFICIAL OPPOSITION PARTY

The Hon. Kibaki, M.P. congratulated the Commission for preparing a comprehensive Draft Constitution, and for operating on schedule. The Hon. Kibaki observed that elections should be held under the new constitution and on schedule. He emphasized that Kenyans know elections are held in December every year and it should be the case this year.

3.0. ISSUES ISOLATED FOR DETAILED DEBATE DURING THE NATIONAL CONSTITUTIONAL CONFERENCE

3.1.1. PREAMBLE

The Committee was of the view that the preamble should expressly indicate reasons why Kenyans want their constitution reviewed.

3.1.2. Article 105 - Structure of Parliament

The proposal to establish a second chamber was discussed. The view that it would be too costly to manage and the fact that the Kenyan society does not present any special characteristics to require another chamber was also considered.

The Committee agreed to continue debate on this matter before the Conference.

3.1.3 Article 106 - Representation by Women in the National Assembly

The Committee discussed the matter of a higher representation of women in Parliament, and the view that

in Fixed Constituencies, there should be no Special Quota for women was widely supported.

On the positions to be filled through the party lists the view that their should be shared positions for people with disability and women was supported.

On youth, Members agreed they should be allowed to compete for all elective positions.

3.1.4. Article 112 - Recall of a Member

The Committee did not agree on this article because there are no specific terms of reference for a Member of Parliament through which one should be assessed. However, some Members were of the view that a Member who commits certain offences against national unity or breaches against the Constitution or is accused of economic crimes should be investigated by a tribunal which should report their findings to Parliament.

3.1.5. Article 181 – Permanent Secretaries

Members were concerned that some Permanent Secretaries were too powerful and operated without due regard for the Minister. To ensure that Permanent

Secretaries were answerable and report to the Minister,
Article 181(3) should be re-written to read as follows:

**“Each Government Ministry shall be under
the supervision of a Permanent Secretary
subject to (1)”**

3.1.6. Article 174 - Dismissal of Prime Minister

The vote of no confidence should be constructive so that when one is voted out, the replacement is also voted in to avoid instability in the Government.

3.1.7. New Article Proposed

Article 213 - Other Professions

The requirements for legal professionals is found in Article 212. The Committee recommends that a new article should be added to guide the operations of other professions:- Engineers, Architects, Accountants, Surveyors, Doctors etc.

3.1.8. CHAPTER TEN - DEVOLUTION OF POWERS

The Committee discussed this matter at length, and as in 3.1.2, several views were expressed with regard to the cost of implementation, and whether there was peculiarity in the character of the Kenyan Provinces to warrant devolution.

The Committee resolved to discuss the matter further.

3.1.9. Article 238 - Definition of "Land"

The definition to include that minerals and water are a natural resource and do not belong to an individual.

3.2.0 Article 256(4) - Accounts and Audit

The Article implies that Parliament would only monitor expenditure of public funds.

Article 256(4) should be amended to read:-

"Parliament shall monitor all revenue and expenditure of public funds".

3.2.1. Article 287 - Constitution Office Holders

Constitution office holders should work for 10 years continuous non-renewable contract and should retire at 65 years. This reduces the possibility of constitution office holders not misusing the security of tenure by not putting in enough work because it is not easy to remove them. It also reduces the possibility of having senile officers.

3.2.2. Article 293 - Constitutional Offices

The Judiciary was left out. It should be included.

4.0 CONCLUSIONS

The Committee agreed to hold a workshop for all Members of Parliament in preparation for the National Constitutional Conference.


Members having been satisfied with the work of the Commission finally expressed their desire that the

General Elections should be held on schedule under the new Constitution.

5.0 RECOMMENDATIONS:

5.1. The Committee therefore recommends to the House that appropriate measures be taken to ensure that the Constitution Review process is concluded within the stipulated time and elections be held on time under the new Constitution.

5.2 The Committee further recommends that in order to ensure continuity in the Review process, term of the Constitution Review Commission be extended up to the date of commencement of the 9th Parliament.

SIGNED :-----

HON. RAILA A.ODINGA, M.P.

CHAIRMAN OF THE SELECT COMMITTEE

ON THE CONSTITUTION REVIEW

DATE :-----17th October 2002-----

ATTENDANCE LIST

The Hon. Raila A. Odinga, M.P. **(Chairman)**
The Hon. Mathias Keah, M.P.
The Hon. Fred Gumo, M.P.
The Hon. (Mrs.) Charity K. Ngilu, M.P.
The Hon. Joseph Mkalla, M.P.
The Hon. Mwai Kibaki, M.P.
The Hon. Norman Nyagah, M.P.
The Hon. Martha Karua, M.P.
The Hon. Njehu Gatabaki, M.P.
The Hon. Otieno Kajwang, M.P.
The Hon. Ochilo Ayacko, M.P.
The Hon. Joe Donde, M.P.
The Hon. Dr. Mukhisa Kituyi, M.P.
The Hon. Karisa Maitha, M.P.

IN ATTENDANCE: NATIONAL ASSEMBLY

Mr. J.N. Bundi - Principal Clerk Assistant
Mr. David K. Ziah - Clerk Assistant
Mr. J.G. Wanyoike - Clerk Assistant

ATTORNEY GENERAL'S CHAMBERS

The Hon. Amos Wako, M.P. - Attorney General

CONSTITUTION OF KENYA REVIEW COMMISSION

Prof. Yash Pal Ghai - Chairman
Prof. H.W.O. Okoth-Ogendo - Commissioner
Mr. P.L.O. Lumumba - Secretary

LAW SOCIETY OF KENYA

Ms. Raychelle Omamo - Chairperson

PRESS STATEMENT

The Parliamentary Select Committee on the Constitution of Kenya Review has just concluded a two-day retreat at the whitesands Hotel in the North Coast.

The meeting was organized to discuss the progress of the ongoing constitutional review process and to flag out issues in the draft constitution in preparation for the National Constitutional Conference.

The Chairman of the Constitution of Kenya Review Commission, Prof. Yash Pal Ghai, Commissioner Prof. H.W.O. Okoth-Ogendo and the Secretary to the Commission P.L.O. Lumumba, attended the meeting. The Chairperson of the Law Society of Kenya, Ms. Raychelle Omamo, also attended.

The Attorney General, Hon. Amos Wako, M.P., who was in attendance, advised that if the forthcoming General Elections are to be held under a new Constitution, then for the avoidance of doubt, the term of the President, National Assembly and Civil Authorities may have to be extended.

The Attorney General further informed the Committee that he was pursuing an amicable and expeditious settlement of the

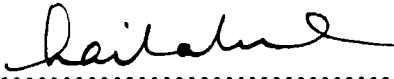
case filed by two Judges against the Review Commission. As a friend of the Court, he had undertaken to present the Judges views at the National Constitutional Conference.

The Commission was invited to respond to issues raised by Members on the report and draft Constitution.

After exhaustive deliberations, the Committee resolved to report to Parliament the following developments:-

- (i) That, the Select Committee is satisfied with the progress hitherto made by the Commission and extend its gratitude to the Commission Chairman and Commissioners for producing its Report and the Draft Constitution on schedule;
- (ii) That, the Committee noted with satisfaction the progress on the ongoing National Debate on the Commission's Report and Draft Bill;
- (iii) That, taking cognizance of the suit filed by two Judges, the Committee resolved to recommend to Parliament that a Motion of Censure be file and moved against them for attempting to scuttle the Review Process;

- (iv) That, noting with dismay that a number of Commissioners acting contrary to their oath of office had consistently tried to scuttle the Review Process, the Committee will recommend to Parliament that those Commissioners be censured;
- (v) That, the Committee further noted with appreciation the arrangements for the National Constitutional Conference scheduled to commence on Monday the 28th day of October 2002;
- (vi) That, the Committee being satisfied with the progress hitherto made by the Commission on all aspects of its mandate resolved to report to Parliament its desire that the forthcoming General Elections be held on schedule under a new Constitution.

SIGNED: 
HON. RAILA A. ODINGA, M.P.
CHAIRMAN OF THE SELECT COMMITTEE
ON THE CONSTITUTION OF KENYA REVIEW

DATE: 8th October 2002