

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report of

**CONSULTATIVE MEETING OF WOMEN REPRESENTATIVES
WITH CKRC, HELD AT KCCT, MBAGATHI**

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CONSTITUTION OF KENYA REVIEW COMMISSION,

PROCEEDINGS OF CONSULTATIVE MEETING OF WOMEN REPRESENTATIVES AND THE CONSTITUTION OF KENYA REVIEW COMMISSION, HELD AT KCCT, MBAGATHI ON 6TH MAY 2005

Present

1. Mrs. Abida Ali-Aroni - Chairperson
2. Prof. Idha Salim - First Vice Chairperson
3. Prof. Wanjiku Kabira - Vice Chairperson
4. Dr. Andronico Adede - Commissioner
5. Dr. Charles Maranga Bagwasi - “
6. Pastor Zablon Ayonga - “
7. Dr. Mohammed Swazuri - “
8. Mr. Abubakar Zein Abubakar - “
9. Mr. Domiziano Mtuchokera Ratanya - “
10. Mrs. Alice Yano - “
11. Ms. Kavetsa Adagala - “
12. Mr. Ibrahim Lethome Asman - “
13. Ms. Nancy Baraza - “
14. Dr. Abdirizak Nunow - “
15. Mr. Ahmed Issack Hassan - “
16. Ms. Salome Wairimu Muigai - “

Secretariat Staff in Attendance

1. Col. J.P Gichuhi - Deputy Secretary, M&O
2. Ms. Irene Masit - Deputy Secretary, CEPIC
3. John Watibini - Programme Officer, M&O
4. Maimuna Mwidau - Programme Officer, M&O
5. Irungu Ndirangu - Programme Officer, Press
6. Lillian Oduto - Secretary, M&O
7. Rose Langat - Asst. Programme Officer, M&O
8. Evans Menach - Asst. Programme Officer, R&D
9. Stephen Mukaindo - P/O, P/A to Chairperson
10. Catherine Mbai
11. Stephen Mwaniki - Asst. Programme Officer, F&A
12. Jacob Onara - Asst. Programme Officer, CEPIC
13. Richard Maranga - Asst. Programme Officer, CEPIC
14. Grace Gitu - Verbatim Recorder

Women Representatives Present

1. Asenath Nyamu - National Council of Women of Kenya (NCWK)

2. Beatrice Elachi - National Council of Women of Kenya (NCWK)
3. Amina Zuberi - Kenya Women Political Caucus
4. Rita Katamu - “ “ “
5. Catherine Nyamato - Federation of Women Group
6. Sophie Abdi - Woman Kind
7. Rose Mbithi - NARC
8. Mary Michieka - FORD PEOPLE
9. Beatrice Maitima - NARC
10. Dinnah Nyaboke - NARC
11. Damaris Maina - NARC
12. Claire M. Ondari - KANU
13. Susan Moraa - KANU
14. Dr. Monica Ayieko - Maseno University
15. Elizabeth Muli - Moi University
16. Hon. Jayne Kihara - MP
17. Prof. Margaret Kamar - East African Legislative Assembly
18. Monica Amolo - For East African Legislative Assembly
19. Cllr. Imelda Obwana - Mayor – Busia
20. Happy Gloria - NCC Women Delegate
21. Christine Ngari - “
22. Lorna Timanoi Tetu - “
23. Jane Kamwaga - “
24. Mumina Konso - “
25. Habiba Bora - WCBG
26. Beatrice Mwaringa - NCC Women Delegate
27. Irene Magut - “
28. Caroline Ruto - “
29. Grace Ogot - “
30. Mary Orwenyo Obonyo - “
31. Asli Ibrahim Ali - “
32. Susan Moss - WCBG
33. Florence Mburugu - “
34. Beatrice Kamau - “
35. Martha Rop - “
36. Rebecca Cheron - GRVDA
37. Virginia Kirumba - WCBG
38. Dr. Cherop Ruto - WCBG
39. Wanjiku Mbugua - WCBG
40. Cllr. Rhoda Maende - WCBG
41. Nancy Chepkwony - WCBG
42. Tiyah Galgalo - WCBG
43. Lydia W. Muriuki - NCC Women Delegate
44. Caroline Chemuosi - “
45. Mercy Wambui - WCBG
46. Phyllis Polong - MYWO
47. Cllr. Grace N. Nduyo - NCC Women Delegate
48. Liza Chelule - MOJCA
49. Leah Cheruiyot - NCC Women Delegate
50. Margaret Nyathogora - NCC Women Delegate
51. Zainabu Abdullahi - WCBG

52. Charity Muthaura - WCBG
53. Ruth Cheptarus - MYWO
54. Rebecca M. Kitana - WCBG

Meeting was called to order at 9.23 a.m. with Com. Mohammed Swazuri in the Chair.

Com. Mohamed Swazuri: I think we want to get started. We are almost 50 minutes behind schedule. We were here on time but participants have been coming in a bit late so we were giving them time and even now we are not satisfied with the number which is here. We have a targeted number of 150 participants but this is less than half of what we expect. We hope that they will be arriving as we start our programme.

As tradition has it, we have to get a word of Prayer from one of us. Can someone volunteer to lead us in a word of Prayer?

Yes, *Mama*, I will take *Mama*.

Prayer was said by Mrs. Grace Ogot.

(Inaudible).

Com. Mohammed Swazuri: Thank you very much, *Mama*. Welcome to this consultative meeting, it is one of the many we have had and we are going to have with stakeholders in the Review Process in order to see how this country can get a new Constitution. I am sure you have the programme before you, because of being late, we are not going to have formalities as we had expected but we shall still try. Introductions will be done only on the “High Table”, the rest of the participants will be introduced during the Plenary session that will come after two or so presentations. So, I will start with myself, I am Com. Mohammed Swazuri and I will have the pleasure of introducing the rest of the Commissioners who are here.

On my immediate right is the Chairperson of the Commission, Mrs. Abida Ali-Aroni, on her immediate right is the one of the Vice Chairs, Prof. Wanjiku Kabira, next to her is Prof. Andronico Adede, Commissioner, the last person on this line Com. Dr. Charles Maranga. Then on my left I have Com. Mrs. Alice Yano, next to her is the First Vice Chair of the Commission, Prof. Ahmed Idha Salim and then I have Com. Pastor Zablon Ayonga and then I have Com. Domiziano Mtuchokera Ratanya. Behind, maybe you need to stand, that is Com. Abubakar Zein Abubakar, thank you very much. The others are members of staff you can see them from our desks behind you and at the side there we shall introduce them as time moves by.

Now, according to our programme, we start with the Key Note Address and Official Opening by the Chairperson of the Commission, Mrs. Abida Ali-Aroni, welcome.

SESSION 1

SESSION CHAIR : Com. Mohammed Swazuri

PRESENTER : Com. Abida Ali-Aroni, Chairperson

Com. Abida Ali-Aroni: Sisters present this morning, representatives of various women organizations, former Bomas Delegates present, fellow Commissioners, Ladies and Gentlemen. I wish to begin to begin by thanking all of you in attendance this morning, this in our view as a Commission is a worthy consultative meeting between the Commission and distinguished Women Representatives from various parts of our country. To us, we believe that this meeting is important to enable you as women help other Stakeholders to move the process forward. We know that you have left your children, you have left your husbands back home, you have left your busy schedules as working mothers to be here and on behalf of the Commission, I most sincerely appreciate all your efforts towards making the Review Process a success. At this juncture, I wish to thank the GJLOS Programme as well under the auspices of the Ministry of Justice & Constitutional Affairs who have facilitated this meeting today.

The Commission will undertake a series of consultative meetings with key Stakeholders in the process and we hope that in these meetings, we will be able to highlight the gains of the Bomas Draft and that we will be able to discuss the current stalemate to enable us as Stakeholders narrow down issues that have stalled the Process. This is the second in a series of the meetings that we will undertake in the next few weeks as we recognize the struggle of the women of this country in this process. We consider you as I said before, as key Stakeholders and note that you as women as a matter of necessity must be part of the consensus building efforts that the laws as amended envisages.

You must be aware that the law as amended last year and published a few days ago, Friday the 22nd day of April, 2005 means that the clock towards the Referendum has begun to tick. It is important that you understand all the outstanding and emerging issues and get involved. You should understand the provision as the Law as amended as it has a lot of significance towards the finalization of the process. Every move is likely to patch and affect the gains as that we have made as women and indeed the gains that we have made as a country.

We have in our programme today highlights a number of activities that are expected to be undertaken as we move on towards the finalization of the Process. I will name a few of those activities.

- (i) First and foremost is Consensus Building on the outstanding or contentious issues as identified by the Parliamentary Select Committee and as approved by Parliament. Section 27(2) as the law as amended is very clear on the need for consensus building and what ought to be discussed as we build national consensus. The Section states and I read:

“In considering the Report and the Draft Bill, the National Assembly may undertake

consultations to initiate, facilitate and promote national consensus on contentious issues as recommended by Parliamentary Select Committee and approved by the National Assembly.”

It is quite clear that Parliament will have to consult with the rest of Kenyans and it is also very clear that the whole Draft is not subject of debate.

- (ii) The law as amended expects Parliament to debate and adopt the Draft Bill,
- (iii) The Attorney General will be expected to publish the proposed new Constitution in cooperating any changes that Parliament may have made.
- (iv) There will be conduct of Civic Education and Voter Education.
- (v) There will also be monitoring of the Referendum and in deed finally
- (vi) Adoption and promulgation of the new Constitution.

From Section 27(2), it is quite clear that those who intend to mutilate or rewrite the entire Draft Bill to exclude the wishes and aspirations of women of this Country and indeed all of us as Kenyans ought to be guided by the law. They should realize that **WANJIKU** and the law have no place for them.

The law as amended prescribes a time line for the activities I mentioned above. It is expected that if all goes well, the Process will last 7 months although the law has also given power to Parliament to seek for extension of time if the exigencies of the process so demands. In brief, the timeframes is as follows:-

- Parliament is required to facilitate, promote, build consensus and debate within 90 days which begun on the 22nd of April this year.
- The Attorney General has to publish the Draft within 30 days
- The Electoral Commission has to carry out the Referendum 90 days after the end of the 30 days within which the Attorney General will have published the Draft Bill. CKRC will have to undertake Civic Education within the period of 90 days awaiting the Referendum.

So you can see we do not have very long as a country to ensure that we can move towards the end of the Process.

Having said that, my argument is that despite seeing problems and despite the arguments going round as to whether the law as amended is adequate or not or as to whether the “road map” it establishes is sound or not, what we should be doing is not seeking loopholes in the law but we should concentrate on exploiting the ample opportunities of the Process because no amount of amendments or new legislation will move the Process forward unless we have goodwill of all Stakeholders including Religious, Political Leaders, Civil Society and all other key Stakeholders. The Review Law has never been from the onset flawless. No wonder the law has been amended severally, in 1998, in 2001, in 2002 and recently in 2004. No amount of litigation will move us forward unless we decide as a country that we want to give ourselves a Constitution.

Having said the above, I want us to focus on ourselves as women. You, I and all of us in this room. I want us to lead the Process and move it forward. I recall the struggle, I recall the stand of women ten years ago, five years ago. Right now, I want to believe that as women we are in the lead or are we not? You can see Prof. Wanjiku as the Vice Chair of the Commission, I am here as Chair of the Commission and for us, we simply represent you, (*clapping*), we simply sit here representing you as women of this country so my appeal to you is that you must stand up now more than ever before to liberate the struggling, the marginalized and the discriminated woman of this country. You must at all times remember that the prosperity of women anywhere in the world is closely intertwined with the prosperity of the society they live in. Women no doubt form a greater part of the citizens of this country. We have a greater stake to gain with the success of the Review Process. It is therefore important for us to realize that in order to improve and consolidate our cause, we must consistently and courageously fight on.

We as women have contributed immensely to this Process. We participated in the formative stages before the inception of the Commission and the Review Process as it is now. Women participated during Hearings as well as the National Conference. The Commission was impressed with a sense of pride, with the enthusiasm and determination that women showed us as we went round various places in this country.

In response to the issues raised by women during the collection of the views, the Commission as mandated by the law reciprocated by providing several mechanisms in the Draft Bill to improve the dignity and the lives of Kenyans and women in particular. We ensured that Kenyans reclaimed, Kenyans were protected and the rights of Kenyans and women were also protected in the Draft. I must say at this stage that the critiques of the Process should be sure that the Commission used full proof methods that can stand any scientific test in coming up with the 2002 Draft. We undertook serious and exhaustive research, we had adequate data compiled after elaborate consultations with the people of Kenya during our visits, we used known and modern scientific methods in data analysis and in the collation views. Those who care to consult and visit the Commission can access all this information.

You will kindly also allow me to take this opportunity to tell those who nurse the idea of writing the Draft afresh that it is not enough for one to sit in Nairobi and attempt to re-write the Draft Bill after consulting a few Layers and so called Experts. Kenyans spoke and told the Commission what they wanted to see in their new Constitution. The Commission followed guidelines as stated in the Review Act, the Commission studied the aspirations of Kenyans and every Chapter has a philosophy and a rationale behind it. The structure and design of the Commission follow the guiding principles, philosophy and rationale of the needs as given to us by Kenyans. We are aware as a Commission that you as women are extremely happy with your gains and other gains in the Draft, you have a reason to safeguard them as the proposals in the Draft are definitely a milestone for the Kenyan women. However, it is quite clear that the gains of women are threatened and I may enumerate a few of the threats that you need to guard against.

- (i) The current stalemate which depends by the day delays the enactment of a new Constitution which means as

women, you will have to wait longer to benefit from the provisions in the Draft.

- (ii) Some initiatives in guise of consensus building have made proposals that will definitely take away gains that women have made so far.
- (iii) That the Law requires a National Referendum and the outcome of that Referendum will determine whether this Country will have a new Constitution or not. Unless the Referendum is successful, as women we may not see or enjoy the provisions of the new Constitution. It is therefore a challenge for you as women to ensure that the Referendum is successful, you must also ensure that the document presented to the Referendum is acceptable to a great majority of the people as possible. You must also assist in mobilizing as many people as possible to participate in the Referendum.

I suggest that you must confront the threats enumerated above with sober minds, devoid of partisan politics, you must do so courageously, harmoniously and consistently until this country receives a new Constitution. We as a Commission may not have answers of strategies that can be used in order for this country to have a Constitution in the shortest time. I would be glad and indeed the whole Commission will be glad to hear proposals of this forum on the most possible ways of bridging the disagreements that we see in the country. You may wish to consider the source of the disagreements on the Draft Bill, when did they begin and how you can help solve them. You may wish to consider the gains of the Draft Bill for all of us as Kenyans, you may wish to consider the gains that are specific to you as women and you may wish to consider your role as women in protecting all the gains that are there in the Draft.

Ladies and Gentlemen, we know that the Constitutional making process has been politicized. The Constitution has been viewed and continues to be viewed as a political tool for various reasons. As a consequence, the discussions on the Process are no longer on merit but are being discussed on their political value. A few illustrations prove this point.

We have seen people shift positions regarding the Process and an analysis of the situation reveals that leaders agree on an issue today and change their minds tomorrow. The shifting of positions is a reflection that positions are not held on account of their value but for the sake of political expediency.

The Bomas Conference towards the last days is also a pointer to that fact. The Conference was politically polarized that it became impossible to discuss issues on merit. The last day of the Conference saw Five Chapters decided within a period of three hours because at that point it was politically gratifying to do so. The failure to listen to one another and to agree at the Bomas Conference has caused this country one year of waiting.

The other pointer is the fact that despite the Draft from Bomas, this country has not achieved a new Constitution. Those who are advocating for the Bomas Draft to be taken for Referendum despite an admission that there are outstanding issues are being looked at, at the moment as the Reformers. Those who are advocating for further consensus building are being

labeled as anti-Reformers. Again, the focus shifts from the quality of the Constitution this country should have to who carries the day on this debate.

Naivasha Accord is another pointer. The leaders met in Naivasha and on record time, they were able to negotiate and agree on an Accord. Two days later we saw a change of heart from our leaders.

Ladies and Gentlemen, in order for Kenyan women and for all of us in Kenya to appreciate the value of a new Constitution, it would be important that we have an understanding of how the Draft addresses the specific concerns of all of us within the larger context and this requires careful and delicate balancing of interest. It is only through this perspective that we would appreciate the skim of the Constitution as a negotiated document. As such, in discussing your gains as women, it would be important to point out that these gains must be analyzed together with the gains that are not necessarily women's specific.

In our programme, we will be considering the gains of women but due to time constraint, I will not refer to the general gains but my Paper that I hope will be distributed later will make reference to several gains that we must protect alongside the gains of women.

As I said before it is critical that you as women address how you will assist to move the Process forward and in doing so I propose that you should consider:

- (i) How players in the Constitutional Review Process will rededicate themselves to the course of a new Constitution and a new dispensation for this country devoid of political, tribal, religious, regional or sectarian interest. In other words, the question you should grapple with should be what is best for this country regardless of whether you are a Christian or not, regardless of what your political position is, regardless of whether you are from the Lake or the Mountain. This requires tolerance, understanding, foresight and togetherness. It is only a Constitution made behind this veil of extraneous considerations that can heal this country and bring it prosperity.
- (ii) You may need to consider the need to reach out to each other in national dialogue and confidence building over the new Constitution. It is very obvious from our short experience that unless there is dialogue and agreement on the issues, the Process will never move forward.
- (iii) You may also consider the need to reach out in the national dialogue and to discuss the substance of the Bomas Draft on merit. The identified contentious issues should be debated on their merits with the proponents for and the opponents against the amendment to the Bomas Draft giving a rationale for their positions. Although regards should be heard of the efforts undertaken by Parliament and other stakeholders, it would be important that the Process of Consensus Building is all inclusive.
- (iv) You may also wish to consider how the citizenry could keep the momentum of the Review Process by ensuring that key Stakeholders and all organs of Review conduct their business transparently and openly.

- (v) Those of you in the 4th Estate may wish to consider how Media can play their important role in Civic Education and in sustaining a meaningful and focused debate over the Review Process. This will require focused reporting and the provision of information in an incremental manner.
- (vi) Lastly, you may wish to consider the role that the Commission can play not only in Civic Education but in mediating and narrowing the differences.
- (vii) The Commission would achieve this by facilitating further debate, analyzing various proposals made and disseminating the same for public information. I

In conclusion, Ladies and Gentlemen, you will agree with me that our country is more divided today than when we began this Process five years ago. If this country is to achieve the well deserved Constitution, Kenyans whatever their grouping, political or religious affiliation should address themselves to the substance of the Draft having in mind the principles as set out in the Constitution of Kenya Review Act, Cap 3A of our Laws.

The differences should be put on the table and be debated openly and objectively. The interest of our Nation should be paramount. Constitution making is about negotiations. As such, I would encourage dialogue and Consensus Building on the substantive provisions because this is the only way a Constitution can be gotten. Yes, we have a Draft, but this country one year down the line has not achieved a new Constitution. Our Political leaders should now put their differences aside as Kenyans are losing hope in them.

Dear Sisters, the Kenyan woman we saw in the towns and villages is not one who waits for solutions to be peddled at her, she is one who seeks for them. As women, I challenge you once more to stand up and be counted. Mothers always have solutions! Our country is yearning for a solution at the moment. Take the lead, all your hopes and aspirations are in the document that has caused so much division in our country. You will never be liberated unless this country achieves a new Constitution.

Before I thank you for listening to me for several minutes, I know the Media has called me this morning wanting to know what the Commission thinks about the happenings in the last two days and I have a very brief message to our leaders. That it is saddening that we see divisions in Parliament when the whole country looks up to Parliament to lead us towards the last process of the Review. It saddens us that a section of Parliament has walked out, we plead to them to reconsider their stand and join back to enable this country achieve a new Constitution. Walk outs in the past have deepened the stalemate. Our leaders must of necessity unite, they must negotiate and build consensus. The law require them to build national consensus, we as Kenyans can only trust them if we see them moving in our direction. I thank you all for your patience and I now declare our forum officially opened. May God Bless you and may you have fruitful discussions for the next two days. Thank you very much. (*Clapping*).

Com. Mohammed Swazuri: Thank you, very much, Madam Chair. A lot of words of encouragement, it is really a moving speech for mothers and sisters. I was talking to my colleague here and she was almost on the brink of tears because of the message that came from that speech. It gives you a handful of ideas of what we will discuss in these two days of our consultations here.

Now, most of the documents she has referred to or some of them are contained in the file that you have been given. That file contains the Naivasha Accord, it contains the Sulumeti Consensus Building Reports, I and II, it contains the Bomas Draft, the existing Constitution and also contains the Review Act as revised in 2001 so please take time to go through them, you will find a lot of useful reference to what Madam Chair has talked about.

Now, our next speaker-- Before I introduce her I think I have an Commissioner who is behind there when I was introducing the rest, Com. Kavetsa Adagala, please stand up for the participants to see you, this is Com. Kavetsa Adagala, she is welcoming you again.

Now, the next Presenter is Com. Alice Yano, she is going to talk about the Highlights of the Commissions Report. Remember we have a Report and a Bill. We have a Report and a Bill, these two must be separated. Most of the items you find items you find in the Bill originated from what we gathered from Kenyans and that is what we put in our report. Please, Madam.

SESSION 1:

SESSION CHAIR : **Com. Mohammed Swazuri**

PRESENTER : **Com. Alice Yano**

TOPIC : **Highlights of the Commissions Report**

Com. Alice Yano: Thank you very much, Chair of the Session. I think after our Chairperson Abida Ali talked, really I do not know much we can be able to contribute and get us moving, I think that was a real moving speech and with that I think we are in a position to say today “ Oh Yeah”, let us move forward and give unto ourselves and also give Kenyans a Constitution.

Chairperson of the Commission, Distinguished Representatives of Women Organizations, Distinguished Delegates , Members of the Press, fellow Commissioners, Ladies and Gentlemen, I am pleased to be with you this hour and to present this paper and share my thoughts with you. When I was asked to deliver a paper on the Commissions Final Report, I felt greatly honoured and deeply humbled. It is with this great delight to be with you for this meeting. It is a pleasure to be amongst so many individuals and organizations who work for and behalf of the women. It is also a pleasure to be here with fellow women, whom the leadership truly reflects our commitment to bettering our country. You have kept us going on this very great journey to a better Kenya.

In presenting this paper, I will follow this road map. First I will want to look at the background to the Review Process, then secondly on the formation and mandate of the Commission, followed by the Commission's Method Work then also I would want to look at the stages of the Review Process right from the provision of Civic Education, collection of views from members of the public, collation of the same views, preparation for and writing of the Report and the Draft Constitution, dissemination of the Main Report and Draft Bill, that is the Draft Bill of 2000 and the National Constitutional Conference.

I would also want to look at the post National Constitutional Conference, followed by the stalemate and possible way forward. I would also would want to gloss over the current stalemate and then the Commission's Final Report, that is the one we have now which we have five volumes then conclusion.

On the background to the Review Process, the evolution of developments leading to Kenya's current written Constitution can be traced back to late 1880's when the British East African Association (later known as the British East Africa Company) signed an Agreement with the Sultan of Zanzibar granting a 50 year lease over the coastal strip. This, among other colonial measures paved way for foreign rule and the consequent agitation for self-rule.

Pre-independence Kenya saw lots of changes especially during the early 1900, there were so many order-in Council that were brought in to ensure to British Rule in Kenya and we have ordinances like the 1919 Legislative Counsel Ordinance where the European settler representative in LEGCO was formed. Then lead to agitation by Africans also who wanted to be recognized and be given representation in LEGCO leading to the Devonshire White Paper of 1920 wherein "it was ruled that some semblance of recognition should be done but time was not yet ripe for direct native representation."

Between 1924 and 1951, there was also so much agitation leading to establishment of local native Council that wherein Africans were nominated but this one was not successful in that the Africans turned down these nominations. The culmination of the pre-independence agitation for constitutional reform climaxed between 1952 and 1960 wherein we now see the *Mau Mau* uprising leading to Littleton Constitution of 1954 where in African representation in Parliament or African representation in the native council was increased from 8 to 24 but this also was turned down by the African leading to the Lennox Board Constitution. The same was rejected because Africans at this particular time that is Kenyans at this particular time wanted total control of Government and also they wanted common electoral laws and unrestricted universal suffrage which lead to the Lancaster talks in Lancaster House. This now culminated in the Independence Constitution under as we very much know, we know that immediately the representatives of Kenyan who had gone to Lancaster came back with the Lancaster Constitution, major Political Parties at that particular time were KANU and KADU. In this Independent Constitution it was envisaged a Parliamentary democracy and evolution. It had also two Chambers, House of Representative and the Senate. The Senate represented the Regions and was there to protect Federal System. Majimbo System was to protect the minority rights. As we all know, there were several changes immediately after that Constitution was adopted in Kenya. First and foremost, there was a major between KADU and KANU followed by the first amendment to the Constitution to allow for 65%

vote on the amendment clause to the Constitution.

I would also want to touch, under the Independence Constitution, it lead to the restoration, those changes, those amendments lead to the restoration of centrally state, also lead to rise of presidentialism and deconcentration of state power. There was removal of Majimbo and also creation of a Republic with an Executive President. There was also merging of the offices of the Head of State and Head of Government and also power to dissolve Parliament and veto Legislative Bills was given to the President. In 1968, Senate was abolished and we only remained with the National Assembly.

Rise of Presidentialism, I can just gloss over and give you examples, I know most of you still remember the famous case of Jaramogi Oginga Odinga wherein if an elected member left a party, then the same member automatically must resign and seek fresh mandate from the people. So that was amended to block out those who felt that they could come up with other Parties. Other notable amendments was that the President's power to waive the mandatory requirement that if a member fails to attend sittings of Parliament for eight consecutive times without the permission of the Speaker then that member automatically lost the sit. But if you remember very well in this case the President, late Jomo Kenyatta did this because of Mbiu Koinange.

Also Presidents had power to appoint members of Public Service, Judicial Service and finally we know very well what happened in 1986 where security of tenure of the Commission members, Attorney General, Auditor General, Judges and Judges of the Court Appeal was removed. Because of this, this lead to lots agitation for reviewing the Constitution because now Kenyans decided that whatever was left of their Independence Constitution was not catering for their needs adequately.

This agitation lead to security of Judges and Attorney General, Auditor General, Commissioners of the Public Service Commission being restored. Also one Party State system was repelled and we now had Multi-party Politics. Presidential term of office was introduced, that they should not have more than two terms of five years each. Gender equity was also recognized. As I said earlier, this was one of the major background for the Review Process.

The others which I would want to gloss over are the factors that contributed to clamour for constitutional change in Kenya. We have the global process, the fall of communism in late 1980's and emergency of an almost all embracing capital market. The new World Order demanded changed legislation to enhance democracy and preferences were heavily put on Parliamentary democracy, decentralization of power of federalism and recognition of civil and political rights.

These global process also affected the African way of looking at things. For example the Eastern block of countries and to some extent America disengaging from supporting military, economic, political survival of African countries and their domestic elites. This lead to spread of ideas on state organization and emergency of Africans second liberation. This was exerted by civil society and disenchanted political elites who engaged in demonstration, media campaigns to force ruling regimes to embrace liberal constitutional values. Kenya did not escape this. It became part of the same process and-- We have seen how the

Independence Constitution was severally amended to suit the whims of the ruling elite.

Individuals, organizations, civil society and media came together to agitate for Constitutional reforms. After stiff resistance from Government, the people resorted to people's power and went to the streets. This forced the Government to cave in and hence agreed to sit with pro-reformists and look for a way forward for Constitutional Review.

A series of meetings ensued notably among them are the Bomas and Safari Park which paved way for the enactment of the Constitution of Kenya Review Act of 1998 which has long been subjected to many amendments. However, Political Parties were unable to agree on the composition of the Review Commission and Religious Communities and Opposition Parties came up with *Ufungamano* Initiative while the Government and friendly Political Parties were sympathetic with the Government through the Parliamentary Select Committee appointed their own Commission and Commissioners. This led to a parallel Process despite the object and purpose of the Review being the same and this deeply divided Kenyans and it was not until May 2001 that the two processes were finally brought together and thus the constitution of the current 29 members of the Review Commission.

The Mandate of the Commission

The primary mandate is to ensure an comprehensive Review of the current Constitution by the people of Kenya and we see that the Act specifically mandates the Commission in reviewing the Constitution must secure the following positions;

- (a) It must guarantee peace, national unity and integrity;
- (b) It must establish a free and democratic system of Government;
- (c) Recognizing and demarcating divisions of responsibility among the various state organs;
- (d) Promoting the people's participation in governance;
- (e) Respecting ethnic and regional diversity and communal rights;
- (f) Ensuring provision of basic needs of all Kenyans;
- (g) Promoting and facilitating regional and international corporation;
- (h) Strengthening national integration and unity;
- (i) Creating conditions conducive to free exchange of ideas;
- (j) Ensuring full participation by people in managing their affairs; and
- (k) Enabling Kenyans to resolve national issues based on the consensus.

In performing the functions under the Act, the Commission and all other organs of the Review must;

- (a) Be accountable to the people of Kenya;

- (b) Must ensure the Review Process accommodates the diversity of the Kenyan people including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disabilities and the disadvantages;
- (c) Must ensure that the Review Process:
 - (i) provides the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to alter the Constitution;
 - (ii) Subject to the Act, conducted in a open manner; and
 - (iii) Is guided by the respect for universal principles of human rights, gender equity and democracy; and
- (d) Ensure that the outcome of the Review Process faithfully reflects the wishes of the people of Kenya.

In particular, the Commission is under an obligation to ensure that in reviewing the Constitution, the people of Kenya will”

- (i) Examine and recommend the composition and functions of the organs of State;
- (ii) Examine the various structures and systems of Government;
- (iii) Examine and recommend improvement in the existing Constitutional Commissions;
- (iv) Examine and recommend improvement in the Electoral System of Kenya;
- (v) Without prejudice to sub-paragraph (i), examine and make recommendations on the Judiciary;
- (vi) Examine and review the place of local Governments; and also
- (vii) Examine and review the principle property and land rights;
- (viii) Examine and review the management and views of public finances;
- (ix) Examine and review the right to citizenship;
- (x) Examine and review the socio-cultural factors that promote various forms of discrimination;
- (xi) Examine and review the rights of the child;
- (xii) Examine and review succession to office;
- (xiii) Examine and note recommendations on treaty making;
- (xiv) Examine and make recommendations on necessity of directive principle state policy;
- (xv) Establish and uphold the principle of public accountability by holders of public or political parties; and also
- (xvi) Examine and make recommendations on any other matter connected with or incidental foregoing and achieve the overall objective of the constitutional process.

The other aim is to look at the Commission’s method of work. This is also well provided for by the Act that guides the Commission. One of the method was;

- (a) To conduct and facilitate Civic Education to stimulate public discussion and awareness of constitutional issues;
- (b) Collect and collate people’s views on proposals to alter the Constitution;

- (c) The other one is Draft a Bill on (b) above, i.e. after collecting and collating the views we were also mandated to Draft a Bill and also a Report;
- (d) Carry out studies, researches and evaluation of Kenya's and other Constitutions and constitutional systems to strengthen the Drafting of the Bill and also of the Report.

To achieve number one, that is to achieve this, the Act required the Commission to:

- (a) Visit every Constituency to receive the peoples views on the Constitution;
- (b) Also to receive Memoranda, hold public or private hearings to collect and collate people's views and opinions, whether these people are residences in Kenya or not; also
- (c) To summon any public officer to appear in person before it or a Committee to produce any document, thing or information that would help in coming up with a Draft or a Constitution for this country.

We also had infrastructure, the Chair touched on that, we had also the Documentation Centres in all Administrative Districts, we had forum Committees in all the 210 Constituencies and we also used the print and electronic media for Civic Education and disseminating the Draft Constitution and the Report.

The other roadmap is hitting the road that how did we go about this.

Civic Education what did we do? Civic Education was done to stimulate public debate and to elicit recommendations. Curriculum and teaching materials were produced by the Commission and designated to all parts of the country, Commissioners traveled throughout the country to provide the same and also to monitor Civic Education provision by partners, i.e. the partners of the Commission in terms of providing Civic Education.

Later Commissioners went round in groups of threes, at times fours, at times in groups of five members to collect views and listen to the people and apart from collecting views and listen to the people, they also collected Memoranda and written submissions from individuals and organized groups then thereafter the Commission after that sat down and collated the same views and tabulated it. Thereafter, it was followed by the preparations for and the writing of the Draft Constitution.

After writing the Draft Constitution and the Report, the Commission also disseminated the same to the people of Kenya. The reason was to ensure that Kenyans understood and got to see what they had presented to the Commissioners and also enhance understanding and appreciation by Kenyans on content, implication of the Review and encourage public debate leading to the National Constitutional Conference.

Then the National Constitutional Conference. This is where now there was major debate by Delegates from all over the

country representing various organizations, representing Districts and Political Parties. This was the final stage as per that particular time, of the National Constitutional Conference, that is Bomas III saw a section of Government and Delegates allied to it walk out on the 15th March 2004, the day the Draft Constitution was finally adopted by the Conference. Among other factors, the walk out is thought to have occasioned by divergence of opinions and decisions among other issues:

1. The structure of the national executive and the proposed system of power sharing between the President and the Prime Minister;
2. Devolution of power; and
3. The transitional provisions.

This was precipitated by the fact that the Conference was polarized and divided on ethnic, Political Party interest and on religious grounds. I think most of the Delegates, I think most of the Delegates, I know we have Delegates here, most of you who were there must have seen this. This rendered consensus building initiatives futile. This issue have continued to bog down the Process and still dog consensus-building initiatives to date.

On 15th of March 2004, the National Constitutional Conference adopted the Draft Constitution of Kenya Bill 2004 in accordance to Section 27(1)(b) of the Kenya Constitution of Kenya Review Act, we have a Review Act in our folders if you could kindly look at it thereafter.

Pursuant to Section 28 of the same Act, the Commission was required to prepare and submit the Final Report and the Draft Bill to the Attorney General for presentation to the National Assembly. The Attorney General was required under Section 2(3), within seven days of receipt of the Draft Bill to publish the same in the form of a Bill to alter the Constitution.

At the expiry of a period of seven days after the publication of the Bill to alter the Constitution, Section 28(4) required the Attorney General to table the same together with the Final Report of the Commission before the National Assembly for enactment within seven days but this never so the light and so thereafter as I said earlier we had post-National Constitutional Conference problems.

This steps towards the completion of the Review Process where however--

Com. Mohammed Swazuri: Madam Speaker, can you summarize please.

Com. Alice Yano: I am almost, thank you. However thrown into disarray because of the series of Court Cases including-- Most of us – I may not even want to read through – are aware of :

- The famous Timothy Njoya Case; then
- Njuguna Michael Kung'u, Gacuru was Kareng'e Case;
- The Martin Shikuku Case; and
- Peter Mwalimu Miwa vs Attorney General.

It is of interest that I get to look at the Njoya Case because this is what for a long long time, even to date is guiding what is happening in the Review. In the Njoya Case, Orders were sought among other things that Section 28(4) of the Review Act which provides for the procedures for tabling by the Attorney General of the Draft Bill and its enactment by Parliament was unconstitutional. Parliament could not usurp the people's sovereign right to replace their Constitution and Orders were also sought that every person in Kenya had a right to review the Constitution and that these rights included the right to ratify Constitution in Referendum.

The Naivasha Talks, Abida Ali looked at it so I would skip that one, then the Commission's Final Report, we have the Commission's Final Report, it is a very huge Report, we are just waiting for it to be published. It has five major parts dealing with the following:-

- Part One consists of two introductory Chapters which records the stages of the negotiations that lead to the establishment of the Constitution of Kenya Review Commission.
- Part Two consists of four Chapters which discusses the Country's Constitutional development including the pre-independence phase, constitutional changes since independence, pressure for constitutional review, its legislative framework and the conduct of the reform process.
- Part Three forms two thirds of the Report which is on the views – I had already talked about it – from the people and the Commission's recommendation on the same.
- Part Four consists of eight Chapters and is on the National Constitutional Conference. It includes the mandate of the Commission in convening and managing the National Constitutional Conference and all that appertains thereto.
- Part Five provides a brief description of events after the National Constitutional Conference which the Commission believes to be issues of public interest and should be recorded as part of the Constitution making process.

Ladies and Gentlemen, I would encourage you to really have a look at the Report once it is out. Part of the Process also deals with the current stalemate as Abida Ali looked at and in conclusion, to make the Chairperson of the session happy, is that the Commission is pleased with the way the people responded to the chance to participate in the Review, it is grateful to them for the support they have always given to it and which has enabled the Commission to overcome several hurdles and to resist attempts to derail the Process. We believe that the Process so far has been very valuable, we have always considered that the Review is

more than merely agreeing on the terms of the new Constitution. It is about self discovery and identity, it gives voice to the people and to affirm their sovereignty and to provides and opportunity for reflection on our national and constitutional history.

The Process provides a chance for the people to audit our State and Government, the first truly popular assessment of the record of present and past administrations and permits us to discover how the ordinary the person defines what it is to be a Kenyan and to articulate their singular and multiple identities. The Review reaffirms our commitment to a united Kenya and to resolve to find a framework for the co-existence of communities and to agree on and strengthen national values and goals. The people now have the forum to find, together, the devices to realize our collective vision of a caring, humane and justice society. These aspects are particularly important when a State is trying to transform itself into a Nation. The function of a Constitution is not merely to provide a framework for society but to bring into being or consolidate society itself.

We believe that the Process for the Review has been critical to the success of these objectives. Despite uncertainties, the achievement of the Constitution itself an extraordinary achievement. It profoundly reflects the fundamental democratic values of constitutionalism, rule of law, protection of rights and citizen participation. Perhaps equally important is the way in which the Constitutional document has been developed. The Process of writing it reflected the same values, the engagement of the people at every stage of the Process has ensured a powerful legitimacy for the Draft Constitution and that helps ensure that its fundamental values will have strong society roots.

Reaching out through the Media, opening the Process to inputs from across society and going out across the lengths and breaths of the country for face to face interactions with communities, the Constitutional Review Commission reinvigorated civil society in a way that no other process or body in recent times has done. The Draft Constitution 2004 therefore represents the collective wisdom of the Kenyan people and has been arrived at in a time of peace. It has succinctly laid the foundations of your State; it is now for you to see it operationalize and passed on to posterity.

Finally, writing a Constitution is only one of the many tasks that face a democratic country. It is no guarantee, in itself, of a democratic future but it is a crucial building block for that future. Thank you very much, Chair. (*Clapping*).

Com. Mohammed Swazuri: Thank you very much. I had given her 20 minutes so she overshot by 10 minutes that is why I was getting impatient. Thank you very much, for that. Now, this Report of the Commission is in six volumes. We have printed I think four, the volume I that is being printed I think contains four parts, we have two parts which are still being finalized. One is called the Voices of the People, we have collected all the voices of the people, what people said on particular issues. We have discerned them and put them in segments, there is a report on that, it is called volume VI and then there is part two of Method of Work what she has referred to, how we undertook the Process from the beginning up to the end. One part is ready the other part will also come along with the Volume VI.

Thank you very much. Now, before Com. Adede takes us through, we have another Commissioner who has arrived, Ibrahim Lethome, please stand up so that the participants can see you. That is Ibrahim Lethome, he is also a Commissioner. Now, Prof. Adede is now going to take us through the Bomas Draft, highlights of the Bomas Draft. Where is he?

(Inaudible comments at the “High” Table).

Com. Mohammed Swazuri: Okay, there is also Salome Muigai, she is seated, one, two, three, four rows, at the edge there, also a Commissioner. Now, Prof. Adede, I have given you 15 minutes but you have said you are going to do it in 10 minutes. He did it last month when we had the District Coordinators so I am sure he will highlight in a shorter time. Thank you.

Com. Andronico Adede: Thank you, Chairman and the Chairperson of the Commission, distinguished Delegates, fellow Commissioners. Two weeks in the United States, somebody administered a question given to Chief Executives of major companies and 4th graders to test the thinking process. They are four connected questions I would like to test you this morning, the first question was how do you put a giraffe into a refrigerator. *(Laughter)*. How do you put a giraffe in a refrigerator? The question to the Chief Executives of companies and 4th graders in the country. I will give you the answer then you can take the second question yourself. You open the door of the refrigerator and you put the giraffe in, nothing complicated. Do not talk about the size of the refrigerator, how large the giraffe is, it is how do you put it in there? *(Laughter)*. The answer is open the door and put in the giraffe, that is the answer and the 4th grader did very well. *(Laughter)*.

The second question. How do you put an elephant in that refrigerator?

(Inaudible comments on the floor).

Com. Andronico Adede: Close, very close. You open the refrigerator, you take the giraffe out and then you put in the elephant. *(Laughter)*.

Third one. The Lion King has called an all night party in which he invites all the animals, the mammals and every creature to attend the whole night, all animals go, which one did not attend?

(Inaudible comments on the floor).

Com. Andronico Adede: You are now getting it. The elephant did not attend because he is still in the refrigerator! *(Laughter)*. That is why the elephant did not attend. The last one, Onyango lives in the city near a river and across they are relatives and there is a river which is full of crocodiles and he always has problems getting across because he cannot swim, if he swims the crocodile will eat him, this evening, what will Onyango do?

(Inaudible comments on the floor).

Com. Andronico Adede: He will not go across?

(Inaudible comments on the floor).

Com. Andronico Adede: I thought you are getting what--

(Inaudible comments on the floor).

Com. Andronico Adede: No, no, no. Onyango will just walk across, all the animals are in the party at the Lions house. *(Laughter)*. So, let me speak to you for 10 minutes. I would just like to speak to you for a few minutes on the highlights of the Constitution as (?)

Com. Zein Abubakar: They are recording.

Com. Charles Maranga: The Press is recording.

Com. Andronico Adede: The Press is recording?

Com. Charles Maranga: Yeah.

Com. Andronico Adede: In the exam I was told the 4th graders scored very highly, those Chief Executives became complicated and did not even answer any question correctly.

Dear colleagues, we have just heard a summary of the process under which this country went to get its Constitution at Independence, the one that we have now patched up so many times that we got tired of it and we decided that we needed a new one. The one you have in your Paper, the Draft Constitution which came out of Bomas is one that is marked different from the one that was given to us at Lancaster House written by those who are concerned with transferring power and nothing to refer to ourselves and our culture. So the first thing we did as Kenyans was to assert our rights to take part in the actual process of Drafting the Constitution to govern our life and that is what we did and has just been explained by the previous speakers.

There are a few things that distinguish the Draft in front of you with that one which we now do not even want to look at because

it did something which we do not like, namely, the Kenyans decided to have an inspiration, a Chapter that lays down the reasons why we wanted to have a new Constitution so unlike other Constitutions or unlike a few of them, we have a Preamble of the Constitution that you have before you and in this Preamble, listen to what we say, something which was missing in the other one. ***“We Kenyans, proud of our ethnic, cultural and religious diversity...”*** We refer to our culture in the Constitution. Something which we have never done before. In America, a child grows up merely knowing that mum and dad do not go to his/her room and begin rummaging through her drawers without her permission and they do not have to go to school to learn Gristle against Connecticut are Constitutional Law to your right, that is their culture, they grew up like that. What culture do we have? So the fact that you are able to refer to our culture in the Constitution is very important and way up as the Preamble but we did not just speak about refer to it, we have a whole Chapter on Culture, Chapter Five, where we suggest a lot of things including, ***“The Culture of promoting understanding, tolerance and appreciation of diversity”***, 25(2).

“The culture of promoting development of all forms of education and equal opportunity for individuals to attain highest possible standards of education and maintain an education policy that enhances culture and cultural values to enable the people to develop strong morals, ethical and spiritual foundations”. This is the culture we now want to calculate , it is in the Constitution. I am going to give you a few things which I call Little Known Facts that add to a lot so that you remember, I think it is somewhere in the Constitution, somebody told me, let me just look. We now have a culture of promoting this.

Now, another problem which we wanted to focus, we are the sovereign individual Kenyan citizens. The sovereign belongs to the people of Kenya and what do we do with that? We as sovereign determine the form of Government of our country. That is part of what we would want to determine, the Government of our country in the preamble. And what did we decide? We decided that our country is a Republic founded in principles of good governance, through multi-party democracy, participatory governance, transparency and accountability, separation and devolution of power, respect for human rights and fundamental freedoms and the rule of Law. This is what Kenya is according to the Draft Constitution, know your Constitution.

Now what do we do with this? How do we implement all these requirements of transparency, accountability, good governance and I can tell you that all Chapters and a few key Articles in this Constitution address these issues. The text is available in the internet, it has been read all over the world and people say that this is the best and most modern Constitution ever produced for Africa anywhere. They are just flabbergasted why we do not want it.

Ladies and Gentlemen, *Wanjiku* did not ask that precisely we create the position of Prime Minister, no. *Wanjiku* was merely tired of having power being concentrated in the hands of one person and that it should be distributed and that is what the Commission did with their Draft. They did not take the power from one person and give it to somebody else, no. We tried to distribute, therefore we established a form of Government that distributed the power between the Executive, the Legislature and

the Judiciary and now the Commissions as you will see.

Let me tell you, that person called the President now as called in this Constitution, he receives a Bill, he looks at it, he does not like it, he returns it to the Parliament with comments, “make changes” or if he likes it, he signs it and that Bill will suffer unless the President assents to it. That person sitting in the State House now according to this Constitution, he is the man who chairs the National Security Council that protects our country. Ministers, everybody sits there and he can call the Prime Minister anytime telling him, “myself I see a lot of complaints about this country, what is going on? The people are arguing that there cars are being towed everywhere, you are messing up the name our country.” The President is in charge of our international obligations so as to make sure that we do not have a bad name. He has the power to address the Parliament anytime of the day in good weather or bad if he so wishes. Is this a ceremonial President?

That Prime Minister who is supposed to be all powerful plus his Cabinet, he sits down, he makes decisions, do you know that the decisions of the Cabinet means nothing until the President signs them? It is there in the Constitution, look at it. Certainly, the day to day running of the Government is the Prime Minister and his Cabinet, chosen from Members of Parliament, voted by you but the Prime Minister has his work with his colleagues. There is no problem, there is no question of two centres of powers, it is the division of power, with the President doing his part and the Prime Minister doing his part.

Certainly, we had our Kenyan module not the Tanzania module, not the French module, not the American module and the difference is, what power does the President have over firing the Prime Minister? In fact the President can fire the Prime Minister for any reason, he does not like his ties, or the kind of suits he wears, or may be they are fighting over some friendship, (*laughter*) he just fires him. In our case we said, yes the President can appoint the Prime Minister but the Prime Minister can only be sacked under vote of No Confidence by his peers, his colleagues in the Parliament that is checks and balances.

Would it not be nice to have a President whom if he misbehaves or he violates the Constitution you can impeach him? Do you not like that? We have that in the Constitution. Now our President can be impeach for violating the Constitution or behaving in a grossly dishonest way. And for that, if we need the impeachment, do not run away from it, we need two Chambers. That is why we have a Senate and a House, in the process, Article 164, the House brings the case, the Senate listens and decides. Without the two Chambers, that thing you want cannot operate and that is why it operates elsewhere.

Why would Josephine a High School Teacher in (?) take a bus, come all the way to Nairobi, just to find out why her cheque is not in her bank, that ought to be done where? Locally. Is that not Devolution?

Response: Yes.

Com. Andronico Adede: Why should the people of Gichugu be told what to do instead of deciding whether they need a hot

stove, a new Police Station or a school? Is that not Devolution?

Response: Yes.

Com. Andronico Adede: The process of allowing the centre of decisions to go back very close to where you individuals can take part in making them because it touches of your life instead of being made at the centre.

Right now the President can appoint anybody at any time, his cousin, because Josephine has been doing Economics becomes the Minister of Finance. His brother-in-law who is a Lawyer can make the Attorney General, this happens, that is what Kennedy did. In our Constitution it says that now such appointments must be what? Must be vetted by the National Assembly. We need transparency, remember those things that is what we said we wanted.

We have our National Goals, another important issue that distinguishes this Constitution with the rest and in the National Goals we have a lot of interesting and important issues capturing the essence. Some of them fortify our concern with having a Government which relies on respect of human rights and fundamental freedoms.

Our Bill of Rights is easily the best, the most exhaustive and the clearest. You can claim that it is too much detailed but we needed all those. Forget about the well known Political Civil Rights, lets go to the new ones, the third generation ones which are numerated from Article 63 to 64, the Right to House, the Right to Water and all that, which are now part-- Housing, food, water, sanitation, environment, these are the Rights that are now contained in our Constitution that were never seen in the other Constitution.

I do not have to reach to you as women, the Constitution, Article 37 for example which provides that “*women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities*”. That one you know, but how do we implement that? Do we not want a chance where we have a system that we can have more specific ways of ensuring representation of women in our Government structure? Yes we do. And how did we try to do it? By creating a Second Chamber, the Senate to which the election of the women are such and such a way that we increase their capacity to be part of the decision-makers, we need the Second Chamber for also that purpose and they will represent Regions and therefore another feather in the cup of Devolution System, we need that.

And if we had a culture of promoting respect for the disadvantaged and the vulnerable members of society, those who are called marginalized. Would it not be nice if we are told who they are instead of just talking generally the marginalized group. Who are they? The Constitution tells you, look at Article 124(a), it will tell you examples or who the marginalized groups are and how they are expected to find their way into Parliament so that they take part in fashioning the law that is going to govern their life with the rest.

Land If you are interested in Land Issues, I will refer you to Article 77 which merely says that, “*Land is Kenya’s primary resource and the basis of livelihood for the people and shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable*”. Those foreigners who own land under Leases that are nine hundred and ninety nine years, are there some like that? Yes. No longer allowed, Article 83 says that, “*A person who is not a citizen may hold or use land on the basis of a leaseholds tenure only, and such a lease however granted, shall not exceed ninety-nine years.*” But before that there are those who have how many? Nine hundred and ninety nine years I am told--

A Commissioner: Nine thousand.

Com. Andronico Adede: Nine thousand, I am told. We talked about the need to have transparency and to have a Government which is accountable. The system we have produced is to have a number of Commissions that do specific tasks and if you read Article 288, you will find that the Commissions collectively must:

- (a) *protect the sovereignty of the people, we are the sovereign;*
- (b) *secure observance by all State Organs of the Democratic Principles and values; and listen to this;*
- (c) *ensure the maintenance of constitutionality, by insulating essential democratic functions from improper influences, manipulation or interference.*

We do not need a system which is easily influenced or manipulated and we have made sure that we have ceased of Constitutional Commissions that ensure in their areas of activity that this is done.

Little Known Facts that add to a lot is my message so that you can remember, it is somewhere in the Constitution, they have covered everything, either in the Bible or in the Koran, or in the Constitution, the Kenyans will now be able to say that this document which has so many hidden positive things, which we are being prevented to focus because of the debate on the Executive and the (?) of the Prime Minister and the President. By the way, when the Commission suggested this formula in its first Draft, even suggesting that the Cabinet be chosen outside of the Parliament but creating a position of a Prime Minister to deal with the day to day running of the affairs of the Government, it was not aware of who was going to be the Prime Minister! We never assigned to any particular person, it is only after that that the people, the Politicians assigned the name, we did not. And now if I stand here before you and tell you objectively that the idea was to distribute – and we tried – the Kenyan module, it is because I am supporting a position of Prime Minister and guess what? I am an OHMS.

(Inaudible comments on the floor).

Com. Andronico Adede: Not On Her Majesty’s Service, but *Onyango Hana Meno Sita!* (Laughter). I am finishing, because I think you will like it. If you come to Westlands and you find a Policeman walking and you say, “please can I take

matatu number 118 or number 119 to go to Peponi”, and he answers you, instead of somebody you run away from because you think he is going to arrest you. Our Constitution want to have the Police to perform part of their service. You can even ask him/her whether there is a store here where you can buy uniform for your children because you are new and you do not want to go into town, so we now have our Police Service and not a Police Force as we had it before. There are so many good things in which-- They are already trying to use it, you saw that there is a neighbourhood Police and all this, all those ideas are here, why do you not take the Constitution and apply it instead of piecemeal application of the document with you. Whether you like it or not Bomas was the best attended gathering containing a cross section of people of Kenya, the like. You just have to repeat to follow the footsteps but do not be fooled, it was representative, all of us were there, we saw the Process, we produced a document in which there are a lot of little things that are good for us and which we should have.

In environment, apart from generally making sure that environment is protected, now the Constitution gives you a right as a person, if you see part of the environment being damaged, you can petition the Government and take the matter to court, a right of individual to protect the environment, we never had that before. I can go on but I must stop here, these are some of the Little Known Facts about our Constitution that add to a lot. I thank you. (*Clapping*).

Com. Mohammed Swazuri: Thank you, *Onyango ambaye hana meno sita!* (*Laughter*). *Lakini huyu hana saba.* Thank you very much. He is always a teacher, he has a way of communicating his message across. I think we have now seen the highlights, you have the Draft with you so you can now go to the details of finding out where they are. Now, I will have to hand over this chairmanship to Com. Maranga for your reactions, but before I do that I have another Commissioner who has arrived, Com. Nancy Baraza, please stand up. Nancy Baraza, she is a Commissioner, thank you and I also recognize the presence of Hon. Adelina Mwau, Member of Parliament, seated just right in front of me here, please, if you can raise your hand *Mheshimiwa*, thank you very much. Dr. Maranga.

SESSION 1

SESSION CHAIR : **Com. Charles Maranga**

PRESENTER : **Com. Charles Maranga**

TOPIC : **Plenary Discussions**

Com. Charles Maranga: Thank you, Ladies and I would also like to take this opportunity to say thank you for coming but then before we start, I want to tell you that we are going to have a panelist of about three Commissioners and maybe at that time maybe other Commissioners will join in but then I think the key ones are the Chairperson of the Commission who gave us the keynote address and I think we expect responses from the audience. Let me also recognize or acknowledge the presence of Hon. Esther Keino, we have also Hon. Prof. Kamar, please, can you up you hands so that members can see you? These are Honourable Members of Parliament, Hon. Kamar, Hon. Dr. Keino. Okay, thank you.

Now, there are four issues you are going to respond to. You are going to respond to the keynote address which was given by the Chairperson of the Commission and a number of issues came out. One of it is the Review Act as amended, two, there are a number of Contentious Issues which have been identified by the Parliamentary Select Committee, then the other issue is the issue of Civic Education during the National Referendum and the other issue you need to respond to is the stalemate so I think members of the Plenary you are free to comment on those issues.

The other thing you need to respond to is the highlights of the Commission's Report, a Paper which was presented by Com. Yano, then you also need to respond to the highlights which were presented by OHMS, I think you know him, *Onyango Hana Meno Sita*, or popularly known as Dr. Andronico Adede. Thank you, my brother, I hope on a very light note, I think these are some of the issues which you will seek clarification. A number of them might not have answers from us as Commissioners but I think we also need a way forward, we need how to move forward and I think on that note, I am going to take several hands and then-- May be it will be good if you direct your question to a specific presenter then we can be able to ask them to respond and I am being reminded by the earlier Chairperson of the Session that once you are given a chance, please give us your name and at least greet us before you ask your question. I can also recognize the Chairperson of the NGO Council is here, Orie, *karibu*. Thank you, very much. Now I want to see people who want to speak and let me see the hands up and then I will be able to pin-point, thank you.

I am starting from my right hand side, then this section then I will move to this side. Okay, let me see from this side. Number 1, number 2, number 3, number 4 so can we take those four first. Thank you. Number 1 you identify yourself.

Margaret Nyathogora: My names are Margaret Nyathogora, a former District Delegate from Nyeri and mine is a kind of a homework, I am not going to direct it to any Commissioner but I want you to listen to it and think about it. We went to Bomas, mandated by the *Wanjiku, Atieno and Chebet* and we did what they wanted, but later on, things changed that I do not think that whether they are aware of what is happening, I do not think that what they wanted is going to be, it seems as if they have been denied their rights by the way we are seeing things happening. The questions I have and I want you to answer it just within yourself, do you now what is happening to Parliament? Is this division going to affect *Wanjiku*? Are you aware that our leaders, some of them do not like to hear anything like Affirmative Action, does the walking out of some Parliamentarians going to affect the women gains? What are going to do? The answer is simple, who will be blamed by *Wanjiku*? Is it our leaders? Is it the CKRC? District Women or Women Organizations? Ladies and Gentlemen, it is a high time we woke up. The Community I belong to believes that if you want to fight hard, you have to use your hands at the same time you use your back. It is high time we woke up and fought with our hands and the back so that the *Wanjiku and the Chebet* will get what they want they want. It is high time we showed these leaders that *Wanjiku* wanted something and she said. So what do we do? CKRC Commissioners, wake up, District Delegates, let us wake up, Civil Society, let us wake up. Go to the ground, let *Wanjiku* know what is happening and then she may assist us in fighting back and get what we wanted, thank you very much.

Com. Charles Maranga: Thank you, the next Speaker, number 2.

Dr. Priscilla Cherop: My name is Dr. Priscilla Cherop from Uasin Gishu District and my question is to my dear friend, the Commissioner who has just spoken now that is Adede. That the Bomas Draft or whatever was passed in Bomas, my question is that why should we just come here as women today and bring our attention to the people of this Country? We are the mothers and we are the sufferers in this country and our Excellency the President is sitting in State House forgetting that it is women who actually worked hard to bring him to State House and we kicked the former President Moi because he delayed in passing the Constitution in the right time. So my case is that we would like to say that the Bomas Draft, if it was well represented by all Kenyans, what is the use of going back to the country to have those people bring the same thing again and they are not going to consider us the people of Kenya.

If like yesterday in the News, *Mheshimiwa* for Kabete, Muite, he said that those people who had pulled out from the Committee of the Constitutional Review in Parliament were the minority, Moi became the President of this country from the minority tribe and he ruled for 24 years, we do not want to compare any of this nonsense which is happening today here. I just came here purposely to tell you the truth that we are going to follow the Bomas and the women will benefit out of that otherwise here we are being cheated (*clapping*). I Cherop have been used in this Government during Kenyatta's time, Moi's time and Kibaki today. And you said the other day-- Another man in Parliament told me, "I Cherop have been used in this Government during Kenyatta's time, Moi's time and Kibaki today. And you said the other day-- Another man in Parliament told me, "You women are useless plus Lucy Kibaki", I said, "I am not Lucy Kibaki, I am Cllr. Cherop from Kamakut Location..."--

Com. Charles Maranga: Uh, please Cherop--

Dr. Priscilla Cherop: Just a minute, do not tell me, I am a woman and if it is bad news we want to be women and we want us to be give also for 50% of the women in Parliament. Thank you.

Com. Charles Maranga: Thank you, very much honourable members. I was going to request that we become polite especially members who we are mentioning by name are not here, it becomes a problem. Please, we are asking and requesting that restrain yourselves, put the question very clearly to us, in fact, you will gain much more when you are very civil and you do not mention names, please, thank you. Now, number 3, who is number 3? Okay, number 3 is Kwomboka then number 4, you will be number 5.

Ms. Kwomboka: Thank you very much. My name is Kwomboka, I am a Human Rights Activities, I was in Bomas almost every day and I know what went on there. Now, the Process as it is now, it has reached a very critical stage. What is happening in Parliament will affect its credibility. The Commissioners of CKRC, you are wonderful, you produced a document which is very beautiful, which shocked the whole world. Your work suffers from an element of recognition, an element of

appreciation, an element of respect. Your work is beautiful, yeah, who appreciates it? I do. I give you the respect, you did a wonderful job but how do we protect the job you did in Bomas? We adopted that Constitution without having the view that we were going again to go to a Referendum, no, we did not know, we adopted it in good faith. A day before we adopted it, Karenga came to 680 Hotel, some of us ladies, we were coming from Bomas and we dropped out and Karenga parked his pick-up there and he was looking at us laughing. The motive for his going to court with Njoya, the motive it has never been known. Many people speculate, the court case was for delaying tactics, delaying. We do not know the motive in Njoya's case. As we are seated here, we did not expect to sit here again.

Before I came into the hall, I read a newspaper, the new Chairman of the Law Society said something like now Parliament is now entrenched to handle the Process, I want to ask you this question, before you Commissioners were looking for entrenchment of your work, the Commissioners work, to give you in my view independence, independence to continue the work and you give us the Constitution. The Constitutional Review Act which was passed recently, did it entrench CKRC work or it entrenched Parliament, can you please explain to us.

Com. Charles Maranga: Thank you, thank you Kwomboka. Let me say this, please members, I am only giving you one minute, please do not give us a background, ask straight questions, I have been trying to be nice but I think as mothers and ladies, be gentle, one minute maximum, now number 4 and then number 5, then the lady in green will be number 6, the first row, you will be number 6 then Orie you will be number 7 so you hold on, number 4, proceed.

Rita Katamu: Thank you, my names are Rita Katamu, District Delegate, Butere/Mumias. Now, my fears, I am sorry I will start with the fears of Section 27(2), I am worried whether the Draft that we came up with from Bomas after now that Section having being repealed, if it is the same Draft that is going to be given out on Civic Education because there might be confusion and something else might be given out on Civic Education and the Referendum might come out on what we did not expect, therefore I request the Commission to be very keen especially during Civic Education.

Com. Charles Maranga: Thank you very much.

Rita Katamu: Oh, there is something, just one, I will spend just 30 seconds. The rush on Bomas or whatever the Commissioners said, the Chairperson said that there was a last minute rush in Bomas. I do not think that can affect the Draft because the rush was not there, after all we had debated in our groups and what came out was exactly what we had agreed to do. Now on the Media, there is a fear on that Media because already information being sold around is actually pushing ahead a particular agenda, we would wish Media to be fair or we do without it. (*Clapping*).

Now lastly, probably the Commission--

Com. Charles Maranga: Wind up, wind up.

Rita Katamu: --Sir, should quicken and complete the report. I am sorry to wonder why the two Chapters have not been completed after a whole year we gave you. Can you complete the Report and disseminate the Report so that everybody is aware of the Report before the Civic Education. Thank you very much.

Com. Charles Maranga: Thank you. Let me tell you that there is no serious outstanding work. Number 5.

Prof. Kuret Suda: Thank you Mr. Chairman. My name is Prof. Kuret Suda from the University of Nairobi and also a member of the National Commission on Gender and Development. Three very quick points, one, I would like to ask Dr. Andronico Adede to tell us the moral story between the giraffe, the elephant and Onyango in relation to the highlights of the Constitution, I missed the link there and I think some of the participants also did.

The second point is the paradox, the paradox namely that the Draft Constitution has a Preamble which highlights the role of Culture and sees Culture as something that really promotes peace. Paradoxically, the whole Process is riddled with conflict. Part of the problem why this thing is held hostage and probably why we are not going anywhere is because the women have not been given their role as peace builders. (*Clapping*). They are peace builders simply because of their traditional roles and also because they hold half the sky, they are more than 50% of the national population but if you look at the (?) that has been going on, you hardly see the women negotiating so this consensus building, I do not know who is involved but whoever is involved, we are getting nowhere so please can we establish an institutional mechanism to bring women as the negotiators in consensus and peace building because that is what is going to give us a way forward. The men have been doing it, the ones who are walking out are the men, I have not seen any women walking out of this Process. (*Clapping*).

Com. Charles Maranga: Thank you very much, Professor. I think I now want to have 6 and 7 asking their questions then I can ask the panelists to respond then I will take another round.

Cecilia Nganga: Good morning. My names are Cecilia Nganga, I am with the Women's Consensus Group, now, mine is just a comment and an appeal from my fellow women from what I have observed and I am borrowing these words from the Chairperson, Abida Ali, I think time and time again I have heard her comment that we are responsible for giving ourselves the Constitution and not the President or Politicians. It is for us to reach out to these Politicians to ensure that the Process comes to an end therefore we cannot afford to point fingers at each other, hence the need to build consensus amongst ourselves as women. It is imperative that we have the right or correct spirit in carrying this Process in that case.

Com. Charles Maranga: Thank you, number 7.

Mrs. Orié Rogo: Thank you very much, Chair and members--

Com. Charles Maranga: Just a minute, I think no. 6 was the one in green, you took her chance but it is okay, take number 7 now, you are 8. Please Chairperson of NGO Council.

Amina Zuberi: I am Amina Zuberi from Mombasa representing Kenya Women Political Caucus and a District Delegate for the Review Process. Listening to all the speakers here, it is emerging to me that the most contentious issue is the enactment of the amendment Bill on contentious issues to be discussed by the Parliamentarians. I am saying this because CKRC collected views from *wananchi*, they were entrenched in the Draft Bill and what now I believe is to be done is to take the Draft Bill back to *wananchi* for them to ensure whether what they have asked for is entrenched in the Bill and then it is the *wananchi* to decide or to identify the contentious issues in the Draft Bill so that it can be enacted in the Parliament. So what I feel is that the Parliamentarians should wait for *wananchi* to identify the contentious issues and then they can enact the Bill to make it a Constitution because by doing this, it is contradiction with the Preamble as our Commissioner has said. It says that we let *wananchi* decide for themselves, now if we are going to give this chance to Parliamentarians to identify the contentious issues, what is the *mwananchi*'s role in this Constitution because we are the ones who said we want a,b,c,d. Now, if a, b, c, d is not in the Draft Bill, then it is we to say, "This thing is not there and this thing is contentious" so we feel this Process should be taken back to *wananchi* to decide and we have lost faith in the Parliamentarians, seeing the divisions which they are creating, their political ambitions have really lost faith in us so we feel we have no faith in the Parliamentarians to take this action. Thank you.

Com. Charles Maranga: Thank you very much. Orie.

Mrs. Orie Rogo-Manduli: Thank you very much, Chair of the Session. I want to thank the Chair of the Commission and her Commissioners. First of all ladies, this is our day and I do not know if you have recognized the fact that Chair of the Commission is now a woman and that in itself is something to rejoice about. (*Clapping*). I did not hear a big clap can we give her a big one? (*Clapping*). Now only is this Chair a woman but she has done very well, we are very proud of her and I think that really for us women this is the time now when we can hope that this country will be given a Constitution because we have a woman on the Chair and we know that women are always extremely directed and they do not take any nonsense. This is the time, this did not happen by accident, God arranged it and we are going to make use of this Woman Chair on the chair at the moment.

I want to remind you that during the time of Bomas, I represented a Political Party, Ford People and that actually of the nearly 50 Political Parties, we had only two women representing Political Parties and one thing that you can be sure of is that the two of us made a big difference. We did not just sit there, but we made a difference within the Political Party category and at Bomas generally we made a big difference.

Now, what I am saying is that-- And why I brought in the fact that we have a *mama* in the Chair now, this is a time when we

are going to cut out and remove the rubbish, remove the nonsense. A woman removes the nonsense if a meal is to be put on the table, it does not matter that the salt there, it does not matter there is no cooking oil, it does not matter that people are hauling outside, she puts a meal on the table. We want a Constitution, Chairlady, with your very, very wonderful Committee that has given you support. I want to thank your Committee for standing behind you and giving you the total support that they have given you, we can tell it, we can feel it, we know outside there, we monitor everything but I want them now to turn behind you and give us a Constitution, cut all off the flack.

First of all I want to ask you, how did you even allow-- All of you I look at you and you are very brilliant Commissioners, very brilliant people in your own, even in your everyday life before you became Commissioners which is why you became Commissioners. How did you allow the Parliamentary Select Committee to take control of these documents?

Response: Yes! (*Clapping*).

Mrs. Orië Rogo-Manduli: How? And with our bustling, can you take it back now! I do not even know how the Ruto's of this world who never quite know where they are, which side their bread is buttered--

Com. Charles Maranga: Umm, out of order--

Mrs. Orië Rogo-Manduli: --I know he is not here, Madam--

Com. Charles Maranga: --out of order.

Mrs. Orië Rogo-Manduli: All right, but he has heard, *amesikia*. (*Laughter*). How did that man take control? One week he says this, the next day he says that and you allow it! We are mandating you as the women of this country and they are people who suffer or who suffered from this, if you like leaky and faulty Constitution, we are mandating you to take control, yes! Take control (*clapping*), and give us the Constitution--

Com. Charles Maranga: Thank you.

Mrs. Orië Rogo-Manduli: Cut off Parliament, I am asking you even to cut off the President and the Vice President and all the Parliamentarians, we are not making this Constitution for the President, he is President today, tomorrow he will not be President, cut off all those who want to be Prime Minister (*clapping*), we do not even know eventually who will be the Prime Minister and why can't a woman or any woman out here be Prime Minister when the time comes if that position is there? (*Clapping*). What we are saying is *chukuwa*, *chukuwa* with our authority, *chukuwa* with our blessings, *chukuwa* with our backing.

You know very well that I am also a member of the Bomas Katiba Watch and that the Bomas Katiba Watch has been left to palter out, I am asking the women of this nation to take part and get themselves involved in the Bomas Katiba Watch work and let us move this thing forward, we have confidence in you, you have what it takes, do not look left, do not look right, look forward. History will judge you very harshly, these MPs are MPs today, tomorrow they are not MPs, this President is President today, tomorrow he is not President (*clapping*), but you will remain in the annals of history and in the history books of Kenya as having been the Commissioners who failed Kenyans if you do not give us the Constitution.

Com. Charles Maranga: Thank you.

Mrs. Orië Rogo-Manduli: Take charge! (*Clapping*).

Com. Charles Maranga: Thank you.

Mrs. Orië Rogo-Manduli: Give us a Constitution.

Com. Charles Maranga: Thank you, thank you.

Mrs. Orië Rogo-Manduli: Thank you very much indeed.

Com. Charles Maranga: Thank you very much. I now want to ask the panelists, led by the Chairperson of the Commission, Abida Ali-Aroni, Alice Yano a Commissioner and then Dr. Adede, popularly known as OHMS, to answer the questions of the members. Thank you. I am going to take another round. Thank you. Okay, we agreed that Adede starts, then Alice, then the Chairperson will take the rest, thank you.

Com. Andronico Adede: Thank you, Chairman. The first question which was addressed to me, I think was by the second question who did speak as I was consulting but I thought she made more of a comment than asking a specific question for me to respond to in terms of what to do with the Bomas Draft, whether we expect it to be done by anybody else except the Process that produced it, namely the Commission, the Conference and finally the Parliament right before they reject or accept in the old Law before this new development came. I suspect that the answer to whether or not there is a chance--

Com. Charles Maranga: You are been requested to move to the podium because you are a Presenter and the Chair is ordering.

(Com. Andronico Adede moves to the podium).

Com. Andronico Adede: She concluded by making observations that lead to her being called out of order because she was making very, very spirited personal observations supporting the Bomas Draft and nothing else and that no process whatsoever should deviate from the Bomas Draft. As a Commissioner, I have no mandate to discuss anything but the Bomas Draft, it is my responsibility to explain it, whoever else has something about it will be responsible for doing what? For explaining what they want. The PSC has identified according to them, what they considered the Contentious Issues that they still need to discuss, they have to find the forum for that but for me, I will restrict myself to explaining the Draft you have before you, which is the Bomas Draft. (*Clapping*).

Linking my icebreaker which is only what it was to make you awake and to joke, but also to remind you that we have to think of the consequences of our actions, if you know that all the animals are in the party, you will know that the elephant will not be able to attend and if you have a giraffe in the refrigerator, if you want to put another giraffe you have to put off, think of the consequences of your action but basically, it was a joke to make you think and to act as an icebreaker so that I could discuss with you the highlights. My sister, I did not have any hidden agenda, (*laughter*), I did not have any particular link but I just wanted to wake you up, that is all.

On the paradox of culture which I tried to elevate as an example of our attempt to give our Constitution it never had before, clearly I also said that we did not only mention it in the Preamble but we even have a whole chapter on culture and if as you say correctly that culture is supposed to bring peace because one of the important aspect of it was to promote tolerance, acceptance and appreciation of diversity but then what we see is war and conflict. What do we do? Can we find a mechanism by which culture, which is supposed to teach us to be tolerance and to accept diversity and forge a common bond is being forgotten and we go on to have individual whims and create diversity. Can there be mechanisms, is your question. I suspect we will have to look for specific provisions in the Draft Constitution where call is made time and time again to accept diversity and to give right to every Kenyan citizen to take part in the Process so that all our rights are protected and this is why I mentioned that the Constitution even now tries to give you examples of what these marginalized groups are who are always disadvantaged, who because of lack of appreciation of diversity keeps them out, now they are in.

Our culture of wishing for all of us to participate in the political process also now allows us never ever to be a member of a Political Party to become a candidate in election, part of our culture, you can now run as an independent, that is now in the Constitution and that is also tied to a mechanism in which our culture of tolerance and acceptance of diversity is also implemented, so there are sprinklers here and there that tries to promote the culture of tolerance and diversity and efficiency. Would it not be nice also that if these political parties that we like to be functional they ought to be funded so that they perform their work properly? Now, the Constitution says they are going to be funded, there is a procedure of doing that. All these are supposed to remind us that we want to encourage diversity, multi-party democracy so that those parties that are going to feed into our acceptance and recognition should also be forceful and be legitimate, they will be funded, another example of an

attempt to give teeth to the idea of culture as the basis for peace.

Com. Charles Maranga: Thank you, Dr. Adede. (*Clapping*). Now I want to ask, Alice, please give a remark, one minute or two.

Com. Alice Yano: Thank you very much, Chair, I am going to be very brief. Yes, on the point that Katamu raised on the issue of the Referendum, Njoya's case is the one that set this one rolling. I know very well since you were in Bomas and whatever was discussed in Bomas was passed by two thirds majority but when the ruling of Njoya's case came up, there was no other choice other than-- Because it set down the issue that Kenyans must be given the benefit of looking at the Draft or looking at the Bill, comment on the same and vote on the same.

On the issue of Civic Education, the fear you raised that maybe something else will be added onto the Draft or removed from the Draft, it is upon Kenyans, the value that we must uphold, it is upon Kenyans to really be vigilant, you and me, everybody else, we should be able to take charge so that by the time even we go disseminating the Draft, then ensure that we do the right thing and ensure that what we have is the proper document that came out of Bomas and not any other side show.

I will just touch on what Amina Zuberi, Amina on the issue of the most contentious issue is the enactment of the Consensus Act itself and that we would rather Parliamentarians not raise the issue of Contentious Issues but *wananchi* themselves should do that. I remember around September 2004, PSC published in the Media asking Kenyans and Organized Groups to bring to them Memoranda touching on contentious issues and the same after 14 days they collated the same and gave it to a sub-committee headed by Godana. They re-looked at the issues that were raised and they were agreeable mostly on those Contentious Issues. This sub-committee later passed the same to the PSC and this led to the birth of what we call the Naivasha Consensus talks where they concentrated on the same Contentious Issues. The same if you remember very well was taken to Parliament and in Parliament it was passed, I think that is all, Chair.

Com. Charles Maranga: Thank you. I think Members, this is not even the session to have all the answers because what we wanted is just to provoke discussions, there are a number of sessions which are going to come forward and I am hoping that a number of those people who have raised hands, you can bear with us because of time and we started late, we have not gone for tea break, we have not gone for many other things and I think I am going to appeal to the members that once the Chairperson makes her comments, we have a break for tea and then we come for the next session because you are going to have a chance to respond to a number of issues, is that agreed? Is that agreed?

Response: Yes.

Com. Charles Maranga: Is it agreed?

Response: Yes.

Com. Charles Maranga: Thank you very much and I will give the Chairperson to wind up this particular session so that she can answer questions, the other ones which have not been answered will be part of our way forward in another session. Thank you very much and God Bless you. Chairperson of the Commission.

Com. Abida Ali-Aroni: Thank you, Dr. Maranga. I want to begin by saying that I gave an example of Bomas because if we want to be truthful to ourselves, if we want to be truthful to our country, we must admit that we have a problem, we must admit that we made mistakes and that is the only way we can get solutions that will lead this Process forward.

The happenings of the last few days of Bomas and in particular the happenings of the last day of Bomas has costed this country one year plus. It is time we stopped sweeping facts under the carpet, the truth of the matter is any Constitution cannot be achieved unless political questions are answered, we failed to answer these questions in Bomas and hence the problem that our country is facing and I am asking you as distinguished women of this country, to sober up and realized that praising ourselves and our deliberations in Bomas will not take us forward. Let us admit that we have a problem in front of us, let us admit that the five Chapters that were discussed in a record five hours have dogged this country that is my point. (*Clapping*).

Having said that, I also want to say this, answering Nyathogora and Katamu that we need to negotiate the outstanding issues. They are there, yes we have a beautiful Draft and remember that the Bomas Draft is 90% the Draft of CKRC 2002, we own it together with all Kenyans but we want to admit as a Commission that they are outstanding issues and we need to think about them and we need to discuss and look for solutions and move the Process forward.

Why the Referendum? We have a law in this country and my position is that instead of punching holes to that law, let us move forward, let us educate ourselves, let us ensure there is consensus so that the document that goes out to the Referendum which we will have unless something drastic happens and the law is amended, that the document is a document that will be acceptable to the majority of Kenyans so that we have a “Yes” for the Referendum to enable us as women achieve the gains that we have struggled for, for many years.

There are other issues that have been raised, how do we protect the work of Bomas? The law as contentious as we would like to imagine it is, has protected the Bomas Draft and in Section 27(2) that I quoted earlier, only the outstanding issues will be debated. 80% of Bomas is not contentious so let us ensure that we keep reminding ourselves that our beautiful document has 80%--

Kwomboka: You said 90.

Com. Abida Ali-Aroni: You can make it 90% Kwomboka because as we move on we are narrowing the gap, let us keep remind ourselves that 80% - 90% of our document is good and let us not allow the politicians, the clergymen or any other person who attempts to re-write the Bomas Draft to begin doing that.

What do we use at the Referendum? The law is clear that the document to be discussed at the Referendum is the document that the Attorney General will publish after discussions and debate in Parliament. We have Hon. Adelina here, we have Hon. Keino, please take the message, that we would like to see consensus building and we want to be sure that eventually Parliament will be guided by the wishes and aspirations of Kenyans, that whatever you do in that Parliament, because the law allows you to debate and amend, you will comply with the guiding principles of a document that was negotiated in 1997, this is the Review Act and behind your minds, you should have the views of Kenyans as given to CKRC.

Orie wanted to know how we allowed Parliament to take over the document. Let me say this, they have not taken the document, they are simply facilitating dialogue, this is our document. This is our document as women of Kenya, this is our document as Kenyan people, they are simply facilitating and let us tell them loud and clear that whatever they do, the August House should follow our wishes and aspirations. I believe we still have the document, I still believe that *Wanjiku* is influential and that Parliamentarians will not go against the wishes of Kenyans. Thank you very much. (*Clapping*).

Com. Charles Maranga: Thank you very much. On that happy note, I want to request the members, we are going out for a break for 10 minutes then you come back because we are running behind time, thank you very much and enjoy your tea. Thank you.

Meeting adjourned for Tea Break at 11.45 a.m

Meeting reconvened after Tea Break at 12.10 p.m.

SESSION 2

SESSION CHAIR : **Com. Nancy Baraza**

PRESENTER : **Com. Wanjiku Kabira**

TOPIC : **Women's gains in the Draft Constitution of 2004**

Com. Charles Maranga: Let me now take this opportunity to invite you back and invite Com. Nancy Baraza to chair the session for another presentation. Thank you. Nancy Baraza.

Com. Nancy Baraza: Thank you, Charles. *Hamjambo?*

Response: *Hatujambo.*

Com. Nancy Baraza: Good to see you again. I think I had missed you and I am very happy to see, you always bring joy to the city. The session that I am chairing is the Women's gains in the Draft Constitution and I have the pleasure of inviting our very, very distinguished speaker on this topic and that will be Prof. Wanjiku Kabira. Wanjiku.

Com. Wanjiku Kabira: Thank you very much. I will speak from here because I think what I would want us to do is to make sure that we know exactly where the gains are in the Draft so I am going to ask you to-- You know the big document that you were given? Go to the Draft Constitution-- In that big document, there are many documents. The first document I think is something to do with the Parliamentary Committee and so on and the law and then you have the main document which is the Bomas Draft. So we look at the Bomas Draft and we will just walk through it just to make sure that we have the issues that we want to protect, the gains that we want to ensure retained in the Draft up to the last minute when the Referendum takes place. So you have the document?

Response: Yes.

Com. Wanjiku Kabira: Okay. So, in this short presentation which is really like a working session because we want to make sure that we have those gains with us, what we have done is to look at the gain first for the women, what we would call women specific and then we will talk a little about other issues that are of critical importance to women but are not named as specific issues for women and then we may want to reflect a little on ensuring that those gains are maintained in the Draft.

Before we start on the Draft, let me say this, that all of us know that this has been a very long route to where we are, there have been very many women who have been walking this route for many years and I wanted to begin by saying that the Affirmative Action Motion tabled by Phoebe Asiyo in 1997 is actually a land mark in this struggle. I think sometimes it is good for us to recognize those kind of land marks where specifically we are saying that the women went out specifically to polish the level and said that this is what we want to do. I remember that Motion by the way because many of the women came to Parliament mainly women representatives from various NGOs and women leaders. That Motion which wanted an addition of 16 people, two from each Province of course was defeated in Parliament but it was also seconded by Kiraitu Murungi during that time. Then of course the same Affirmative Action Motion was tabled by Beth Mugo twice and then it was handed over to the Commission.

I am saying this because I think as we sit here it is good that we appreciate that it has been a long route and there have been very many people who have been participating in this Process and now it is our turn to complete the race for the rest of the

women of Kenya. The formation of the Women Political Caucus was actually as a result of the defeat of the Affirmative Action Motion tabled by Hon. Phoebe Asiyo in 1997 and I think the struggle continued to Bomas I, not the Bomas with the Draft, there was an initial Bomas before Safari Park and I remember about 48 Women's Organizations, many of them also represented here; The League of Women Voters, Fida, Collaborative Centre, Federation of Women Groups, many of those organizations were actually represented at Bomas. And I remember when we went to look for the space, you know they could not put Women's Political Caucus under Political Parties because it was not a Political Party or under NGOs because it was not an NGO, so we were looking for space where it would be placed so that we could enter Bomas. I know Adelina Mwau was there actually with a placard saying, "Affirmative Action, now or never". That was I think in 1998 when the negotiations for the Act had started. Eventually we found the Women's Political Caucus was put under Community Based Organization but anyway, irrespective of where it was put, the women I think took the challenge and were able to put their case, the meeting was at the time being chaired by Attorney General, Amos Wako.

From there I think the women went to Safari Park. Safari Park I, II, III and IV. They are women who were at Safari Park who are in this room, people like Mrs. Nyamato were there, many women, Martha Karua, Martha Koome, Nancy Baraza, Abida, many of the women were there. I remember Mrs. Zipporah Kittony just saying, "The whole of Maendeleo is here, as long as when we come out of here we are also going to support Maendeleo." Women negotiated, the former Director IED, the current Ambassador in South Africa, Tabitha Seii, they were very many women at Safari Park and they negotiated for the participation of women in this Process.

In fact there was a Sub-Committee that worked on the Act where Abida, Mrs. Asiyo, Zipporah Kittony, myself, Martha Koome and Martha Karua and I think, Nancy Baraza were in that Committee, the original Sulumeti Committee and that is where we negotiated for the one third representation both in the Process and in the Draft. I think after that of course the job then was left to the Commissioners whom I believe if you look at the 2002, they did their best, they ensured that they struggled that among the three Delegates, one had to be a woman and within the CCCs, three members out of ten are women and I think you can see the gains in 2002.

We should take our hearts for the Bomas Delegates, the women Delegates at Bomas met every Tuesday and every Thursday at lunch hour specifically to share what is happening in the various Committees and to ensure that they retained their gains. As there was a lot of polarization at Bomas on various issues, there is one thing that we can say for sure, that the women never lost their goal and that whatever discussions went on, they maintained that the women's gains must be retained in the Draft and they actually improved on those gains and I think that is what we are going to go through. So I think so far the road towards women's representation and other gains in the Draft Constitution has been a long road and it has also other women who were there even before the struggle.

As I look at Mrs. Grace, I remember seeing her in 1994, can we give her a clap. (*Clapping*). Yes, when she was the

Assistant Minister for Culture and she was struggling to ensure that the Gender Policy is in place. You know that policy has been dancing around from one Ministry to another for almost 20 years now, it has been debated-- Almost ten years ago, we were told that this Policy is with the Cabinet around the time actually that Mrs. Ogot was Assistant Minister in the Ministry of Culture and Social Services. So it has been a very long struggle and sometimes when we talk about the women's gains, I like to remember the history because they are many people who will not view the gains. Think about people like Mary Gona from Mombasa, who have passed on. These are people who have contributed to this Process, they will not see the gains but I think as we move along, it is good to recognize them and realize that we are actually better now in articulating the issues because others have suffered and made sacrifices for us to be where we are.

Having said that, one of the things I believe is that safeguarding women's gains is a difficult process. I do not believe because it is in the Bomas Draft that we are safe until actually we have the new Constitution in our hands and they are still there, I think that is why we are here today. We are saying that-- We do not have the new Constitution like Abida said and because we do not have it, we must ensure that we protect those particular gains as to the last minute and sometimes it is difficult when you are talking about protecting the gains and those who are editing the document or doing whatever they are doing, they may not do it in very good faith or they may deviate or use any opportunity to remove the gains and I want to believe with people like Orio Rogo on our side and people like Kwomboka on our side and with a Chair like Abida, we will ensure that the gains are protected.

Let me just walk through, just to make sure that we are together on the gains because even if we were at Bomas, I was in Devolution myself, somebody else was in Representation, so we may not have seen the totality of the women's gains and I will do it very quickly. Because you have the Draft, just take the Draft, I will mention the Articles and we will just note them and please tick them so that all the ones you have ticked you are saying that those ones must be protected by all means possible especially peaceful means as Prof. Suda said.

If you look at Article 12 (2) (i), I will just go by Articles rather than Chapters because it is easier. Article 12(2) (i) can you see it?

Response: Where is it?

Com. Wanjiku Kabira: In page 7, it is Chapter 3, National Values-- But you know, just to look at the Articles, it will be easier for you to look at the Articles because some of the documents the pages may not be very clear. There are from Article 1 to Article three hundred and something, so you have it?

Response: Yeah.

Com. Wanjiku Kabira: Adelina, please read for us, 12(2) (i).

Hon. Adelina Mwau: *“Ensure full participation of women--“*

Com. Wanjiku Kabira: Are we together?

Hon. Adelina Mwau: Okay, are we all there?

Response: Yeah.

Com. Wanjiku Kabira: You know, we have a document called Bomas Draft, have you seen it? Bomas Draft? In my page actually it is page 7.

(Inaudible consultations on the floor).

Com. Wanjiku Kabira: Chapter 3, page 7, on the side you will see Article 12, then you will see sub-article 2, you move done the line you will see (i) and (j), can you see them now?

Response: Yes.

Com. Wanjiku Kabira: Okay, sorry, Adelina, please go on.

Hon. Adelina Mwau: *“Ensure full participation of women, persons with disability, marginalized communities and all other citizens in the political, social and economic life of the country.”*

Com. Wanjiku Kabira: Okay and (j).

Hon. Adelina Mwau: *“Implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender.”*

Com. Wanjiku Kabira: Thank you very much, Adelina. So you notice we have a main principle and one can use the same principle to challenge anybody, any appointive body, for instance Kenya Human Rights Commission and ask where is one third of the women because you are never supposed to have more than-- If you have more than two thirds of each gender, it means that you do not have one third of the women, it is most likely that more than two thirds are going to be men so you do not have one third women so it will be unconstitutional and it means you can challenge it. So those principles are important because what

is not entailed in the Draft, you can resort to those principles.

For instance, we deal with Parliament, we deal with the councils and so on, but there are very many other bodies like parastatals and so on that we do not deal with. So you can quote this Article if you are talking about a Parastatal where you have appointments and you do not have one third of the people being women.

Okay, I want to go to the area of representation, both in elective positions and in appointive positions. Because this has been the main struggle again, women have been wanting to represent themselves and to represent other women in all elective positions and therefore I am going to move to that one and that is where the principle of Affirmative Action has been clearly established. I want us to move to Article 101 (3), it is on the Chapter on Representation. Article 101, Sub-Article 3. Orie, can you read that one for us?

Mrs., Orie Rogo-Manduli: Yes I will. I will read it, Article 101, Sub-Article 3. I am here at (3), the one that says, “*Elections shall ensure...*” Is it not?

Com. Wanjiku Kabira: Yes.

Mrs. Orie Rogo-Manduli: Right. “*Elections--*”

Com. Wanjiku Kabira: Switch on your microphone for us, please.

Mrs. Orie Rogo-Manduli: Thank you. “*Elections shall ensure fair representation of women and men, persons with disabilities, workers, all the members of society, youth and other marginalized communities.*”

Com. Wanjiku Kabira: Okay, thank you. Can we go to 102 (3) (b) on the same page.

Mrs., Orie Rogo-Manduli: 102 (3) (d), will say, am I at (d)? (3) (b)?

Com. Wanjiku Kabira: I am sorry, actually it is (a) and (b).

Mrs. Orie Rogo-Manduli: (3) (b)?

Com. Wanjiku Kabira: Yes.

Mrs. Orie Rogo-Manduli: It starts with “*Eight--*” is it not?

Com. Wanjiku Kabira: Yes.

Mrs. Orie Rogo-Manduli: Okay. *“Eight and one half percent of the seats in the Senate shall be reserved for persons with disabilities, all the members of the society, workers and other minorities”.*

Com. Wanjiku Kabira: And then read the next sentence.

Mrs. Orie Rogo-Manduli: The next sentence then says, *“ So that at least one third of these seats goes to women”.* Can I repeat that? *“So that at least one third of these seats goes to women.”*

Com. Wanjiku Kabira: Exactly. Thank you very much. We are also saying-- Please read (a), I am sorry, Orie, read (a)

Mrs. Orie Rogo-Manduli: Shall I read of (a) of the same-- I did (b), now I will do (a), I go back upwards--

Com. Wanjiku Kabira: Yes

Mrs. Orie Rogo-Manduli: That it starts with 5, is it not?

Com. Wanjiku Kabira: Yes.

Mrs. Orie Rogo-Manduli: Right. Now this is what (a), it says, *“5% of the seats in the National Assembly or the Legislature of a devolved Government shall be reserved for persons with disability, the youth, the workers and other minorities.”*

Com. Wanjiku Kabira: Okay, and then read it with the last sentence.

Mrs. Orie Rogo-Manduli: Then I go back to (b).

Com. Wanjiku Kabira: No, the last sentence, *“So that...”*

Mrs. Orie Rogo-Manduli: The last sentence which is 103 (1), *“A citizen...”*? All right, I will do it again. *“5% of the seats in the National Assembly or the Legislature of a devolved Government shall be reserved for persons with disabilities, the youth, workers and other minorities so that at least one third of these seats go to women”.*

Com. Wanjiku Kabira: Yes. Exactly, thank you very much. So we are saying if you look at those two provisions, there are actually looking at the interest of the women from various categories and let nobody say that in the name of editing that you will have a provision that says one third and you leave these ones out, are we together?

Response: Yes.

Com. Wanjiku Kabira: So even as we talk about the sizes of the document, this is not a big document representing the views of all Kenyans, minorities, people with disabilities, women, men, everybody. So we are saying that that provision must be retained whatever happens.

Now, I want to go to Political Parties, Article 114, somebody from Political Parties, Article 114 (5), apart from Orié Rogo. Sub Article 5 of the same, 115. Josephine Ojiambo, are you there?

Mrs. Josephine Ojiambo: Yes I am.

Com. Wanjiku Kabira: Please read that one for us. Article 114, I am sorry, 114 Sub Article 5

Mrs. Josephine Ojiambo: All right. 114, (5) reads, *“Parliament shall by legislation prescribe the method of distribution of the balance of the money allocated to the Political Parties fund by reference to the number of votes secured by each Political Party in the previous National Assembly election and the number of women candidates and marginalized groups elected through the Party at that election.”*

Com. Wanjiku Kabira: So you notice they are tying money to women. If you want to get money as a Political Party, then it should depend on how many women you have elected through your party and knowing that they will want to have the money, then they will ensure that women are elected. So the more women you have, the more money you will have. So it is a way of enticing Political Parties to ensure women’s participation. Now, I want you to go to Article 123 (1), which is something we have debated and which was subject of debate in 1997, this is a (?) of the National Assembly, Daisy, can you read for us Article 123, composition of the National Assembly.

Ms. Daisy Amdany: 123 (1), *“The National Assembly shall consist of one member elected...”* is that the one you want me to read

Com. Wanjiku Kabira: Yes.

Ms. Daisy Amdany: All of them? (a), (b), (c) and (d)?

Com. Wanjiku Kabira: Yes.

Ms. Daisy Amdany: *“The National Assembly shall consist of:*

- a) *1 member elected from each Constituency as may be provided by the law;*
- b) *1 women woman elected from each District each of which shall comprise a single member constituency;*
- c) *14 members elected by marginalized groups and;*
- d) *speaker who shall be an ex officio member.*

Com. Wanjiku Kabira: Okay, thank you very much. So the District seats that the women have been dying for are in the Draft Constitution. In the spirit of again one third, maybe we need to recognize that as we are talking about the 74 Districts, it is a number that may change, increase or decrease. So this is an area where women have to be equipped in developing clear strategies about how to ensure that when we again retain the one third women’s representation in Parliament. If you look at this composition, you can see how different it would be from the current Parliament. 100 women in that Parliament and 14 people elected from marginalized communities and so on, it would have a different face and it would actually be more representative, much, much more representative than the current Parliament we have and therefore we think it is important we talk about protecting this particular Article.

Then let us go to the membership of the Senate on the same page, 112, maybe to move faster, Daisy, can you read it? The composition of the Senate, 122 (1).

Ms. Daisy Amdany: *“The Senate shall consist of:*

- (a) *1 member elected from each District by the District Council of that District acting as an electoral college to represent the region of which the District forms part.*
- (b) *2 women elected from each region by an electoral college consisting of all elected members of District Councils within the region.*
- (c) *Such number of marginalized groups half of whom shall be women as satisfies the requirements of Article 102 (3) elected after members have been elected under clauses 1 (a) and (b) and;*
- (d) *Speaker who shall be an ex officio member.*

Com. Wanjiku Kabira: You can see that the document consistently refers you back to one third principle. I will move a little faster because these are very critical Articles, let us go to Devolution, Article 206 (1) where we have-- We are talking about

the objects of devolution of Government as to protect and promote the interest of minorities and marginalized groups at all levels. 206 (1) where we have the object of devolution again reminding ourselves that devolution of powers actually means bringing the power closer to the people, let people participate more but even as you bring power closer to the people, you still have to think about minorities and marginalized groups at that level.

But move on to 219 where you have the elections of District Councilors which is Article 219, are you there?

Response: Yes.

Com. Wanjiku Kabira: Prof. Suda, are you there? Can you please read for us composition of the Council. 219, (1) (a) (b) and (c).

Prof. Suda: Madam Chair, I cannot see it properly.

Com. Wanjiku Kabira: Oh you cannot, somebody who is ready?

Dr. Cherop Ruto: *“Election of District Councilors. The members elected for each of such number of wards with such boundaries are prescribed by Act of Parliament, passed after taking account of the recommendations of the Electoral and Boundaries Commission;”*

Com. Wanjiku Kabira: And then you have the important provision for us. (b), can you please read it for us.

Dr. Cherop Ruto: (b) *“Such number of special seats members, all of whom are women, as are required to ensure that at least a one-third membership of the council comprises women, elected after members have been declared elected under paragraph 9a; and*

(c) Such number of members of marginalized groups, including persons with disabilities, older persons and youth, provided that at least two shall be persons with disabilities, as are prescribed by an Act of Parliament.

Com. Wanjiku Kabira: Okay, thank you. So all the councils again are going to have one third and they are going to have persons with disabilities and other marginalized groups. 224 (1) which is the locational Government and I can quickly say that one is going to have 50% of the women so at the grassroots level we have 50% at the locational level, one third at the District level, one third at the Senate and one third at the Lower House, are we happy with that?

Response: Yes.

Com. Wanjiku Kabira: So I think Bomas Delegates need to be congratulated (*clapping*) for ensuring that all bodies are in, thank you very much. I want us to quickly go to 228, 228 is another provision at-- Is Happy Gloria here? She is not here? But I know Grace Ogot is here. That provision 228 (a) which-- Hon. Grace Ogot, can you read it for us? 228(a). You have it?

Hon. Grace Ogot: *“At any time not more than two thirds of the members of any Assembly council or executive committee constituted under this Chapter are to be the same sex.”* I continue to (2)?

Com. Wanjiku Kabira: Yes, Please.

Hon. Grace Ogot: (2), *“An act of Parliament shall be enacted to ensure that community and cultural diversity in a Region, District or Locality is reflected in legislative and executive bodies exercising power in the Region, District or Locality.*

(3) *Without limiting the generality of clause 2, the legislation must prescribe means to protect minorities within the District.”* (Clapping).

Com. Wanjiku Kabira: Okay, thank you very much. I asked whether Happy Gloria was here and I remember the Hon. Grace Ogot is here and Nyathogora and I think Hellen from Turkana and they were all in Devolution and they insisted on that provision being put there because there are many other appointed bodies like the region, they are two people from each region, I think it is a small Assembly but they were not able-- The Committee was not able to say two women should be from each of the region and they insisted that this provision be there. People will say it is repetitive and if it means that we repeat in order to ensure that the women’s gains are protected, so be it. Do you not think so?

Response: Yes.

Com. Wanjiku Kabira: So we want to make sure that these provisions are retained. I will read quickly so that we give you a chance to say something. I talked about Parliamentary Service Commission, Article 149 which also takes women’s interest into consideration and also talk about all the Commissions, Article 290 where we are also talking about the one third women representation and also we are talking about the Public Service Commission whose values must ensure equal opportunities for appointments and so on and then Article 300 which is the establishment of the Gender Commission. Those who were at Bomas know the struggle with the Gender Commission, it was in there at the beginning, it was removed, it was put back and actually the final day when the Commissions were been debated it was still not there and I remember I think it was Mbarire or somebody, Cecily Mbarire insisting that actually it is true we had agreed that the Gender Commission remains and all the

women supported and I think it is very important we recognize that the Gender Commission as a constitutional body will be able to implement, to ensure implementation of all the provisions as well as advice on policy and generally promote gender equity.

Quickly, Citizenship and Rights which is Article 17, Article 17 earlier on, my Article 17 is on page 9 so we are going backwards now, I am through with Representation. Article 17(2) which says, “*Citizenship is not lost through marriage or the dissolution of marriage.*” We know that if you are a Kenyan woman, you get married to a Ugandan under the current Constitution, you become a Ugandan and you are never a Kenyan again. Now you remain a Kenyan and you become a Ugandan as well, so you have dual citizenship. (**Clapping**). So we are saying that that is a provision that must be retained, the current only allows the men to remain Kenyans if they marry and they say you can go to whichever other country if you are a woman but the new Constitution says, no, you remain a Kenyan.

Now, the Bill of Rights, the Bill of Rights has very many gains for women. We have Article 30(5) which actually says that all public officers and state organs and their employees have the responsibility to equip themselves to understand and deal with the needs of special groups within society including women, older members of society, persons with disability and so on. So the state organ, it is under responsibility, you cannot say, “I do not know I am not a woman.” It is your business to know the interest of the women and other groups.

Then we have freedom of discrimination where we have added sex and race, this is Article 36 (1) where we say, “*That the State shall not discriminate directly or indirectly...*”-- Do you have it? Article 36.

Response: Yes.

Com. Wanjiku Kabira: “*...against any person on any ground including race, sex, pregnancy..*” and you know how many women are not hired because they are pregnant as if it is going to be there forever, or they are not promoted because they have been pregnant three or four times, instead of being rewarded for building the nation by giving birth to many children, so that one is outlawed and I think it is an Article that we are saying must also be retained.

Then we have another Article, 37(1) which has women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities. So equality is actually entrenched again in our document. And it continues by the way, under gender equity. Women and men have equal rights to inherit, that one by the way we were told all over the country. Like Affirmative Action, women want to inherit the land and you can see things being done. This week I think there was something in the newspapers about the judge who said both daughters and son should be able to inherit equally. So we are saying for avoidance of doubt and because there are many other judges who never do that, let it be in the Constitution. Somebody should not say, “because one Judge did it we do not need it, no.” We need it to be there because they

are many more Judges who do not actually deal with that. I do not want to talk about this because we are talking to women who are already very familiar with the views of the Kenyans but all over the country, Affirmative Action was like a song.

Then at Bomas, Affirmative Action was like a song, you know we have to continue with the same issues as we move on to whatever stage that we are engaging in just to make sure that we protect these gains. The whole of that Article by the way talks about women and we need to protect it.

Now, you come to Article 41, family and Sub Article 4, 41(4), it says, “*Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of marriage...*” and even after death we can add. (*Laughter*). So we are entitled even when we go to Heaven, we might remind whoever will be there, including Peter as he opens the door that both women and men are entering there. So we need to ensure that we protect that.

There were issues that were raised earlier on in the morning by Com. Adede, basic needs, which by the way were again negotiated by very many civil society members.

Water, for women, it is a basic need. It is the women who carry the *mitungis* on their back and walk 7 – 8 kilometers hence it is the woman who knows which child is being taken to the hospital today and what the husband or the boyfriend or whoever takes when they have a cold and we know about AIDS by the way, that it is the women who are looking after the sick. The problem is when the woman gets sick but the woman never gets sick until she is actually dying, she is up and about looking after the children. So the basic needs of water, health, education, shelter is the business of the women to provide 90% of the time so there are women’s gains that must not be withdrawn.

And let me say this, let us not take anything for granted. Some of the documents I have seen are actually removing them, like the Ufungamano document, we must not allow because we are saying if it is not a basic need it means that you are saying that women can continue going to fetch water in the river for 10 kilometers and therefore not even being able if you are a young girl to go to school because you have to do this. So I think we must make sure that we maintain these gains, they are second-- I think Nancy talked about it better than myself, are they the Second Generation Rights? Second Generation Rights, we are saying that they must be retained in this document. And like Kwomboka said earlier, 90% of all these things we are talking about were not contentious at Bomas and they cannot be contentious for anybody else if there are not contentious for us who are the ones who have asked to have these things in the new Constitution. So I think we are saying that it is very important that nobody imagines that they are contentious, if they are not happy, let them say, “We need more men in Parliament” but not say, “Remove the women from the list”.

As we were going around in the countryside and it is the same thing by the way even with something like Kadhis courts, you were asked, “what would you want to see in the Constitution that is in your interest as an individual, as a family, as a community

and as a nation”. You were not asked, “Whom should we keep out of the Constitution.” So nobody has any business keeping anybody out of the Constitution, (*clapping*), their business was to say what they want to be in the new Constitution. Thank you.

Now, the other thing is that in terms of gender mainstreaming, I have just highlighted some of the issues but this document breaths women, it breaths minority, it breaths marginalized groups, it is a true reflection of the interest and the needs of Kenyans and I am saying that is also a gender issue. It means that we have mainstreamed gender, not only women specific issues, we have actually mainstreamed gender in this particular document beginning with the language, beginning with the focus on the rights of minorities, rights of marginalized groups and communities, again because when you have minorities, the women are more minorities within minorities, is it not?

If you have a group that is kept out of institutions of governance, the women of course will never even see the door. So we are saying that all the issues that touch on minority groups and touch on other marginalized groups, elderly people and so on, you know in this country, once you get older, you get out of civil service for instance, you are nobody. You are a peasant who has struggled until you are 65 and now the family is the one that looks after you although you are actually feeding the whole nation by producing the maize and selling it and so on. So we are saying that we have a country that does not bother with the elderly. When they look at the children as we have the rights the children, they are also looking after the women, we are saying that you want a country where both parents never have to make a choice between sending the girl child to school or the boy child. I do not believe that there is any parent that would want to make that choice. You make a choice because of poverty, you make a choice because you know you know you can sell the girl.

When I was coming from Kinangop to collect the views, I gave a lift to somebody who was telling me the problems he had, a Kikuyu by the way, I am saying a Kikuyu because he is not from a minority community and he told me that the only thing he had to sell now are his two daughters and nobody seems to want them and they are quite cheap. It was about 11 O’clock at night when I was in the car and he was telling me this story and when we reached just before Njambini when he was going to come out, I asked him what method he was using to look for the buyers of the girl (*laughter*) and he seriously told me, “It is very difficult but you know, if I was able to at least sell one of them, my son would be able to go to High School but now he cannot go to High school.” I am saying we must have a document that ensures that nobody will have to make that choice because when he is making that choice, again he is thinking that when he sells the girls they will go somewhere else, but the girls are also telling us in Nyando, sometimes you are sold to very poor families so that you move from a poor family, you are sold off to another poor family and by the age of 24 you are an old woman and your husband has gone out looking for?

Response: Another one.

Com. Wanjiku Kabira: Another one. So I believe that this document represents to a very large extent the views of the Kenyans and the honours is on us as women to ensure that we protect the gains. I have talked about all the women along the

route that have ensured that we are where we are, I think the battle now has again been handed over to the women in this hall and to the Commission because it is still in business and to Adelina Mwau, Dr. Esther Keino, Dr. Kamar and all those in Parliament to ensure that we complete the race and maintain our gains. Thank you very much. (*Clapping*).

Com. Nancy Baraza: Thank you very much, Prof. Kabira, I think that is a very, very good highlights of the gains that women have made in the Drafts and I wish to add my voice to what Professor has said. We have come a long way, I look at you and what keeps me going is we seem to rejuvenate ourselves, something comes up and we are there, we are not aging, I look at all of you, we have been in there for so long now, almost 10 – 15 years and we are still there, I believe we are going to complete the race and it is upon you to make sure, to ensure that these gains are retained in the Draft and as Prof. Kabira has rightly pointed out, everybody out there, the stakeholders coming up with their various mottos, their various versions of what they would want to be the Constitution and we looked at the *Ufungamano* version and I was so shocked, it cuts out almost everything, it is like it aims at cutting out the woman and I am like, “Whose views are you basing on? Why are you taking us backwards?” And when they come around saying the document is too bulky, I was asking myself, “Who is complaining?” The women are not complaining, the Judges who are going to interpret the Constitution have not complained. Now, who is coming around to say that this thing is too bulky?

And as you can see as the good Professor has run you through, our gains are in the detail and if we allow somebody to say, “Oh, we can only capture the principle, this is too bulky, this--” who is complaining about the bulk? Do we know the size of the American Constitution? And somebody quite learned asked me, “Nancy, I mean, you are a Lawyer, you know the size of the American Constitution, it is quite modest--” our background is not the American background--

Response: Yes.

Com. Nancy Baraza: Is it? And these days I am very bold I tell people, “Carry this bulk along, this is Kenya for you.” These are the fears of Kenyans, we isolated Kenyan women, everybody, people with disabilities, our minority people, we isolated them and so when we went around, they said, put us there, put us there, so this is us, it is our fears and we must carry that burden with us.

Now, the American Constitution, do not be cheated, the American Constitution must be this size because since it was promulgated that was 17--

Com. Wanjiku Kabira: 17 something.

Com. Nancy Baraza: Yeah, yeah, I was in school recently why am I forgetting. But if you look at the various constitutional interpretations that the Supreme Court of America has had on the Constitution through Judicial Review, through Constitutional

Interpretations, the document put together, what forms the American Constitution is not just that, it is all those interpretations recognizing the various rights, it is a very, very big document. So when somebody comes to tell us, “Oh, now--” their background is different plus their document is very big.

Now, somebody wants to tamper with the Bill of Rights in the same document saying, “Oh, we go back to the civil and political rights and we leave out the social, cultural and economic rights and the third generation rights.” Why should we? This is a modern Constitution any serious Constitutional Lawyer or Human Rights Lawyer looking at a Constitution being written in this year and you leave out the second and third generation rights will think you are mad. Now, somebody is telling us, “Oh, leave that one”. I think you must put your feet down, this is a document which is very well thought through by yourselves, by the those women in the villages, nobody should take it away from us and with those few remarks, (*clapping*) was it my understanding from the good learned Chair that I think we will not have time to go into the next session that we break--

(Protesting remarks from the floor).

Com. Nancy Baraza: You do not want to go and eat?

Response: No.

Com. Nancy Baraza: Alice, you have something, just before the Chair explains. Alice.

Alice Wahome: Thank you very much, Madam Commissioner, the Chair of the Commission and the other Commissioners, my name is Alice Wahome. I have a concern on Article 123, that is the one talking about District Representatives, this is on page 57. My concern goes to 123 (1)(b), one elected woman from each District, each of which shall comprise single member constituency. Nancy, you recall that I was a candidate in the 2002 elections and I was seeking elective position in one Constituency which had 62,000 voters. When we talk of a District Woman Representative, you are talking about maybe 3 – 4 Constituencies because my District has three Constituencies. My concern is women are very economically impoverished, they do not have the money, they have no securities to go and borrow, they do not have mentors, they do not have political sponsors.

How are women going to really be able to campaign throughout the District? That has not come out clearly and I think it is a concern that we need to address now that there are possibilities of some few amendments without getting away from the principle, there is going to be some debate and consensus throughout.

Com. Wanjiku Kabira: I think it is a good question to raise. By the way, this module is from Uganda. Let me say this, at Bomas, there was a debate on the proportional representation, Mixed Member Proportional Representation. From what I understand, I was not in the Representation Committee but I believe the Process was not supported by many of the Delegates. Women actually supported Proportional Representation for sometime until they also realized that they were also losing and

decided we have to have our seats and we take the Districts as the root. There are a number of things which are not in this document and which I think the women would need to think about. How is this woman elected? For instance, if you elect the District woman representative on the same day as the rest of the elections of the other MPs and Councilors, then you are likely not to have women elected at the Constituency level.

So there may be need to separate the two elections so that you have the regular elections that we have and then-- Like they do in Uganda 7 days or 10 tens later you have the elections for the women. So that those contesting the Constituency have an opportunity also to be elected. But if you are going to have ballot boxes, councilors, a District Woman an MP, what is most likely going to happen is that the man will voted as the MP for that area and the woman who has applied for the District, but the woman who is contesting for the Constituency will lose--

Response: Yeah.

Com. Wanjiku Kabira: --even if she is the good woman. So there are things which we need to think about so that as we protect the gains, what is the method? What are we proposing? Now, there is a second problem wit that one, some people will begin arguing, "*This is too expensive.*" So we must have an alternative. One of the alternatives could be proportional representation where you say that the Party with the biggest number of votes in a District will have the woman's seat. Which means, the women will campaign with the parties.

Let me take Districts-- I do not know where we are now, this is Kajiado or Nairobi?

Com. Nancy Baraza: I do not know.

Com. Wanjiku Kabira: Okay, let me assume this is Kajiado District, so that the votes when they are counted, the party will have to say before the elections, which woman is going to be their District Representative so there will probably be about 10 women all of them campaigning for the same seat but they will be campaigning for the parties, is it not?

Response: (Inaudible).

Com. Wanjiku Kabira: No, I am giving the second option. I think maybe we have not understood. I know we are talking about the size of the District and the question of the resources but we also need to remember that we are campaigning against other women, not men and there will only be women campaigning if it is the direct elections. If it is the proportional representation, then we will be campaigning for the party and then--

(Inaudible comments on the floor).

Com. Kavetsa Adagala: Just leave it, it is not there.

Com. Wanjiku Kabira: Let me say this, I do not think you have gotten my point, I am saying--

A Woman Representative:

(Inaudible).

Com. Wanjiku Kabira: There are options as to how to get a woman District representative. We need to think about those options as we defend the gains. If somebody sees it is too expensive to have a separate election, do you have an option? Let me not give the option, let me say these are things we need to keep thinking about. There are not in the Draft, but those issues will be raised as you are protecting that seat and therefore it is important to think about what are the various options and which ones will the MPs buy more easily instead of saying, let us not have the Districts because we cannot have two elections because it is too expensive then we will be able to say, "No, we do not need two elections, you can do it this way." Am I clear?

Response: Yeah.

Com. Wanjiku Kabira: Now, we have a problem because the Muslims have gone to pray and that is why we thought that we want a Plenary but we want it after lunch so that they are back and we are together in the debate. I think that is what Nancy wanted.

Com. Kavetsa Adagala: I wanted to say that the question she had asked was much simpler and you answered it but mixed with others. You will not be the only one campaigning in the Districts and you will be campaigning against other women. Men will also be campaigning in that District for the other two positions, there are three positions, is it not?

Com. Wanjiku Kabira: No, but men will be campaigning as other-- No, both men and women will campaign at the campaign the Constituency level.

A Woman Delegate:

(Inaudible).

Com. Kavetsa Adagala: No we are just explaining, it is okay.

Com. Nancy Baraza: May I exercise my powers as the Chair.

Com. Kavetsa Adagala: That is (?) there are many other gains which are in general provisions and I think that we need to know it is not only the distinct ones which are there. For instance, if there is education for all

children, obviously the girl child is protected. But for instance on 75, rights of persons held in custody, you can read that one and you will see that it will impact on women especially some of the things we have been hearing in custody. There are many others which you kind of need to tease out so you need to know the Draft more than just those distinct elements.

Hon. Grace Ogot: Point of order, Chair.

Com. Nancy Baraza: Thank you very much, Kavetsa. Yes, Honourable Ogot.

Hon. Grace Ogot: *(Inaudible).*

Com. Nancy Baraza: I think really this topic is the cracks of our meeting here, is it not?

Response: Yes.

Com. Nancy Baraza: And I think we will not do it much service if we entertain questions now. What we do as Wanjiku has rightly said, the next presenter is a Muslim, Abubakar Zein Abubakar, he as gone to the Mosque, we propose that we go for lunch then we come and the next session will be chaired by Com. Salome Wairimu Muigai, we combine the two and this is the crack of the women's thing so can we back-- Eat our chicken, I am hoping it is chicken, me and chicken we speak the same language, I am hoping it is ready, so exactly 2.00 p.m. we come back here. Then we combine the two topics and we have a good debate.

Response: Thank you.

Meeting adjourned for lunch at 1.00 p.m.

Meeting reconvened at 2.10 p.m.

SESSION 1

SESSION CHAIR : **Com. Salome Muigai**

PRESENTER : **Com. Abubakar Zein Abubakar**

TOPIC : **Affirmative, Gains for Sectoral, Minority and
Marginalized Groups**

Com. Abida Ali-Aroni: Good afternoon. We would like to call the meeting to order, we lost several hours in the morning and we are trying to catch up with time, we are two sessions behind, I would request that we get seated. The Chair this afternoon is Com. Salome and I understand that she will be chairing from where she is seated. Salome, please take charge.

Com. Salome Muigai: Thank you, very much, Chair of CKRC. *Hamujambo mabibi na mabibi?*

Response: *Hatujambo.*

Com. Salome Muigai: *Hamujambo mabibi na mabibi?*

Response: *Hatujambo.*

Com. Salome Muigai: *Kuna mabwana pia?*

Response: *Tuko hapa.*

Com. Salome Muigai: *Hamujambo Mabwana. (Laughter).*

Now, I think I am just starting to understand why, from the Religious background that I come from, the Maker of creation he himself or herself, had to entrench the fact that it is not good for man to be alone. Otherwise if it was not entrenched it would be very difficult to bring anybody in. So he did his work, or so we are told and then he did an evaluation for those of us who come from the NGO background, we do know how important and evaluation is, do we not?

Response: Yes.

Com. Salome Muigai: And this evaluation that he did after creating for seven days was summarized in one line and he said; "It is not good for man to be alone." And that is why we are here this afternoon to remind man that it is not good for him to be alone.

Now, man is starting to understand that he has no choice but to allow us to be women and sometimes the society including our secretariat allows somebody, not only to be a woman, but it sometimes also allows you to have a disability. But the one thing it is not going to allow you is to be a woman and have a what? A disability, it is too much for it. So you can see even us at the Commission we are still trying to implement the evening of the playing field and ensuring that if we are going to Chair, we are going to Chair from a place which is acceptable to all of us. So it is a challenge for all of us, it is continuous and you can see the reason why we need to bring the Constitution, safely backed and bathed like a baby so that we can start the longer road of

implementation, because that is where the challenge lies, but we will get there, *Inshalla*, by Grace of God.

That is why this afternoon, I have the privilege to bring in the issues and the gains and all that pertains to Affirmative Gains for Sectoral, Minority and Marginalized Groups and the person who is going to make the presentation this afternoon is Com. Abubakar Zein Abubakar. Abubakar, *karibu*. (*Clapping*).

Com. Zein Abubakar: Thank you very much, Madam Chair, of the Session, the Chair of CKRC, Honourable and distinguished leaders of the majority of our people, because that is what you are, the women. (*Clapping*). You are the leaders of the majority of our people because the last census said women consists of more than 52% of our Republic. (*Clapping*). And that is a fact that needs to be accepted, some people do not want to accept it, but it is the fact.

Allow me this afternoon, distinguished ladies and a few gentlemen, to approach this subject in a slightly different way from the sequence that had been given there, the sequence is Affirmative Gains for Sectoral Minority and Marginalized Groups. I would beg to depart from that approach for two main reasons. The first one is something which I hold dear and I keep saying this in many forums, that it is absolutely dangerous, absolutely dangerous to give the impression that the only people or groups which have gained from the Review Process and the outcome of the Review Process which is the Draft Bill and the final Report is that it is women, it is minorities and it is marginalized groups. That is a fallacy, do we agree?

Response: Yes.

Com. Zein Abubakar: Because each and every Kenyan has gained and I would like to say something which some people may find controversial. I can say without fear or doubt in my heart that there is not a single Kenyan, not a single Kenyan who can come in honesty and say, "I have not gained", not one, zero, zilch, *hakuna hata mtu mmoja*. That also applies to groups, not a single group of whatever categorization of doughtination (?), if you want to define it by ethnic parameters, if you want to define it by political considerations, if you want to define it by where people come from, if you want to define it by class, if you want to define it for interest, professional or otherwise, every group gain. (*Clapping*). Every group, everybody, every community in Kenya. We used to be told many lies about how many communities they are in Kenya, they would say 42, at the last count there were more than 120. And each one of them came to Commission and said, "This is what we want." And when we produced the Draft and we went back to the people to disseminate this Draft, we went to each and every Constituency, group and individuals and asked them, "Is this what you told us?" and they said, "Yes, this is what we told you." (*Clapping*). Each one and every one. So you may ask yourselves--

Before I go there, the second reason why I want to take this approach is because many of our previous speakers have already touched on many of the things which I was supposed to touch on and particularly *Mwalimu* Kabira, she talked not only about women and every time you hear women, you hear marginalized groups, minorities, they go together, but I want to take this

approach because also that we have become a nation of dishonest people, we have become a nation of dishonest people, (*clapping*) with the exception of women.

(Inaudible remarks on the floor). (Clapping).

Com. Zein Abubakar: And I tell you, I am not saying this so that I may gain favour from you, so you may cheer me on and say, “This is a good man,” I am saying this because it is the truth and those who were at Bomas they will tell you, women, every time there were people pulling apart, women were pulling together.

(Clapping).

Every time people were excluding others, women were bringing all women together, (*clapping*), it did not matter if you are a Muslim, it did not matter if you are a person with disability, it did not matter if you are a Hindu, it did not matter if you are a Christian, it did not matter if you are Kikuyu or if you were a worker, or if you were from North Eastern, it only mattered because you are a Kenyan and you are a woman.

Response: Yes! (*Clapping*).

Com. Zein Abubakar: And this needs to be said, and today, if you think your work is finished, your work has not even began.

Response: Yes.

Com. Zein Abubakar: Because the Nation is more divided today than it was during Bomas. (*Clapping*). And you were wise counselors at that time when you brought everybody together and you put your foot down and said, “No.” If Muslim women want the Kadhis Courts, Muslim women will get the Kadhis Courts, they said that. You said if this is good for areas which were marginalized, forgotten, deliberately, systematically throughout the history of our people from colonial time and you said they must have a place on the table of our Nation. And you said, “Yes, we will go together”.

There were times when things were difficult and two meetings in a week were not enough. Half the story was told by *Mwalimu* Kabira but not the whole story. The whole story was that you met even in evenings, you met on weekends until you felt that you have pulled people together.

Now, back to my approach of gains. I said we are a Nation of dishonest people because also it is only women who proudly say, “These are what our gains are” and close to the women are people with disability, marginalized communities and some

minorities. But others are quiet, ask yourselves why. Why are they quiet? Is it because they did not gain? No! They gained and they are quiet about their gains least somebody says, “Take it away from them.” (*Laughter*). And also, the sad part of it is that apart from being quiet, others have gone a step further, they want to be quiet about their gains but they want to reach out and take away from others.

Response: Yes! (*Clapping*).

Com. Zein Abubakar: And that is the problem, people call it Contentious Issues, people call it unfinished business, people call it whatever animal they want to call it but that is the truth and the people say, about 85% to 90% of this Constitution is okay, it is good, what about the 10%, where do you get the 10% from? Not from your community, not from your group, not from where you have gained something, the 10% always and I am telling you this is the secret you should know before you leave here, the 10% is from somebody else.

I have not come here to insult anybody but let me quickly go through the approach about gains. Gains were mandated by the law, everybody says, “gains, gains”, but they were not just gains, this was a requirement of the Law. Cap 3A demanded that this should be a value Review Process and that until those values are satisfied, we will not have said that we have distinguished and actually exercised our right to have a new Constitution for all of us, not one of us, not some of us, all of us.

Section 3 of the Cap 3A, Objects of Review, Section 5 exactly put even parameters for the organs of Review, the Commission and even Parliament and in their final analysis they said, “These Organs shall do their work, exercise their work, as long as the outcome faithfully reflects the wishes of Kenyans.” Faithfully, and the Schedules, the second Schedule and the third Schedule, these were designed to put integrity into the Review Process. Now, what were the principles that we used as far as gains were concerned? The first one, upon reflection on our mandate as a Commission, we decided to retain good ideas in the current Constitution. They were few but they were there, and then we also decided to retain all the rights that were there in this Constitution, I challenge anybody in this Republic to come up and say, “My right was taken away. I had a right in the old Constitution, it has been taken away by the Draft Bill of Bomas”, no one can say that, I challenge that. (*Clapping*).

And then, we were required to expand rights and freedoms, we were required to infuse new ideas which would come from our people, new rights, and this is another secret. Today I want to remove secrets or quiet secrets that we whisper about. Every proposal I have seen, now let me speak as Abubakar Zein, and please, please, if you must judge me harshly, judge me because I am speaking on this one. Every proposal I have seen that is supposed to improve Bomas, each and every one of them starts from the premise of removing something, taking away rights, removing freedom, shrinking freedom, each and every one of them and if you do not believe me, you will have a chance to say, “What about this proposal?” then I will show you how it reduces freedom and removes rights.

So, we have retained the good things in the current Constitution and we have added and these were not our own additions, there were additions from our people. Let me name quickly, running, some of them and some of them are philosophical, it is not necessarily that I go “Uhm-Uhm”, an individual gain, it is all of us who gained.

Sovereignty of the People and the Supremacy of the Constitution. That is always where we should start. There was a debate in our country who is sovereign. Some people said the President is sovereign when we started this Process. That is where that fallacy about the President being above the law came from. It is grounded in the fallacy of monarchy, that they were chosen by God therefore they are above law, that is their sovereign. You have heard that uh?

Response: Yes.

Com. Zein Abubakar: There are sovereign. And some people said, the President is sovereign. People went to the streets, we did what we did, we came to a conclusion that the people are sovereign. It is included here, it is a gain for each and every one of us, not Parliament, Parliament is not sovereign, the President is not sovereign, the Judiciary is not sovereign, not a single institution in our country or individual is sovereign, it is the people of Kenya in their collective nature are sovereign.

The second idea