

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

**NATIONAL CONSTITUTIONAL CONFERENCE
(NCC)**

Verbatim Report of

**PLENARY PROCEEDINGS, RULES AND PROCEDURES FOR
CONSIDERATION STAGE, HELD AT THE PLENARY HALL,
BOMAS OF KENYA.**

ON

09.02.2004

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The meeting started at 9.05 a.m. with Honourable Delegate Joyce Umbima in the chair.

Session started with a Kikuyu Circumcision song presented by dancers from Bomas of Kenya, followed by a Kipsigis dance – danced by heroes after they have come from war.

Hon. Delegate Joyce Umbima: Good morning everybody.

Hon. Delegates: Good morning to you.

Hon. Delegate Joyce Umbima: May I call the meeting to order?

Hon. Delegates: Yes.

Hon. Delegate Joyce Umbima: Thank you. For the purpose of this meeting, I shall be chairing the meeting. My name is Joyce Umbima, Delegate 466, representing NGOs. We shall be co-chairing with my colleague here Mr. Mirimo Wandati, Delegate number 547. May we start by a word of prayer, and I would like to call on Honourable Rihal to give us a word of prayer, followed by Honourable Yego and then Honourable Badawy. Thank you, in that order. Let us stand up for a word of prayer. Thank you.

Hon. Delegate Baldip Rihal: *(In hindu)* Oh Supreme God, absolute yet all pervading, the eternal, the Creator of the Universe, the cause of causes, without enmity, without hate, both eminent in Your creation and beyond it. You are not the God of one nation, but the God of praise. Oh, merciful God, the Delegates to the National Constitutional Conference are gathered at the Bomas of Kenya and are continuing with their Plenary Meetings. Oh God, other Delegates are in Mombasa, harmonizing the Draft Chapters of the proposed Constitution, while other

Delegates are busy in consensus building so that we all Delegates can get together and write a new Constitution for this Nation. Oh merciful God, please bless all Delegates in their work. Oh Supreme God, we also pray for Your mercy and blessings on all people of this Nation. *(In Hindu).*

Hon. Delegate Abdulrahman Badawy: *Bismillahi Rahmani Rahim*, in the name of God, the beneficent, the merciful, praise be to Allah, Lord of the Lords. The beneficent and the merciful, You alone we worship and You alone we ask for help. *Ewe Mora, mwenye neema na rehema nyingi, ni huruma kubwa kwa woja Wako, Mwenye jinzi ya sifa balibali, Wewe peke Yako tunakuambudu and Wewe peke Yako tunataka msaada. Ewe Mora msaada Wako na rehema Yako, kwa woja Wako, waliokusanyika hapa wakiwakirisha watu na wananchi wa nchi hii nzima, wateremshie baraka Yako na neema Yako, na mafanikio, ili waweze kuikamiliza kazi kama hii, kazi ambayo kwamba imesimamisha garama nyingi na mambo mengi na wakati mwingi kupotea. Wakati wote huo usipotee bure lakini ikamilike kazi ambayo kwamba imewajumsha hapa, wapeleke kazi hiyo kwa wananchi wote waone matunda ya wakati huu wote ulipotea hapa. Hakuna anayoweza kuitimiza hilo na kulipitiza, na kuwaepusha wale wambaya na waofu ambao kwamba wanataka hii kazi isimame ila ni Wewe. Tuko mbele yako sote hapa kwa niamba ya ndugu zetu kukuomba Wewe utimize jambo kama hili. Amen.*

Hon. Delegate Helen Yego: Almighty God in Jesus name, we come before You this morning Lord God, thanking You from our hearts, giving gladness and adoration Lord God because You are almighty King. Thank You for bringing us this far, thank You for this new week that we have just started, and Lord God we want to commit ourselves into Your hands that You got before us in a very special way. Grant wisdom and knowledge to our colleagues in Mombasa and those that are in AFC Conference Centre, Jehovah God, go before them in a very special way and that Lord God, that which You have purposed, that we are going to produce from this Conference, Lord let Thy will be done. Thank You because you have before us, even with the detractors that are trying to oppose the process, Lord we see Your mighty hand and so this morning Lord God, we pray that you lift up the countenance of Your power upon us. In Jesus' name I pray. Amen.

Hon. Delegate Joyce Umbima: You all may be seated.

(National Anthem).

Hon. Delegate Joyce Umbima: Thank you. This morning, we are expecting three speakers who will help us to go over the rules and procedure for consideration stage. While we are waiting for them, we would like to have a feedback from the last session we held on Consensus Building, we would like to see how you were able to practice your skills in your tents, and if there are any areas that you feel strongly that we need to go over or things that we need to clarify.

We shall also be expecting a communication from the Chair who is not yet in but as soon as he is in, he will be able to give his communication as well as administer the oath for those who have not yet taken that oath. And with this, I would like to ask Honourable Delegate Wandati to help us just go over what we did last week, a feedback from the floor on areas we need to improve on and how we proceed on this week until our colleagues who are in Mombasa come back with the document. Thank you.

Hon. Delegate Abdulrahman Wandati: Good Morning? My names are Abdulrahman, I am Delegate number 547, I have been privileged to seat here and keep my sister here company. We will try to identify together, for example, if there are any gaps or if there is a necessity of introducing anything new towards understanding Consensus Building. This activity will go on until when we shall break for tea, after which we shall come back to continue with the other part of the programme that involves rules and procedures for consideration stage.

The assumption behind Consensus Building is that different people coming together with different interests, attempts to trade one part and reach a goal perhaps which would be beneficial mutually to all of them and I think that is what we are doing here. We represent different interests of our Country. We will have a duty to come up with a Draft Constitution that incorporates the wishes or at least that purports to protect all the different peoples of our Country. Each of us is endowed with a different way of prosecuting our own cases and our own interests, others could be more aggressive than the others, others could be quiet, but we do know that each of us, either individually or as groups do represent or wish to see certain positions; but

because the task ahead of us must be done by all the 629 of us here, we must agree on certain issues together.

Consensus Building gives us the opportunity to listen to each other, ask questions of each others' positions and finally agree that perhaps this is the route forward and I thought this is what we were exposed to last week and the purpose for this session is to get some comments from the Delegates seated around this hall so that then the organizers may determine whether any of the elements that were presented before us requires strengthening or whether the methodology need to be changed. So I will open the floor and will do the normal thing of raising up the number and once the Chair notices you, you will be allowed to make your comments. The floor is open. Thank you.

586, you will tell us your name and proceed to make your comments.

Hon. Delegate George Mwaura: Thank you very much. My name is George Mwaura Mburu, from the Political Party Sector. I was very, very much impressed last week as I listened very carefully to whatever was happening here in the Plenary on the issue of Consensus Building but at this particular juncture, it is also important that I raise a particular issue on Consensus Building because to me Consensus Building does not mean going to a certain kind of a Consensus Building when issues that we need to liaise to, Building Consensus are not openly tabled at the Conference or informally to the Delegates and I come to the question of the mediation process that is in place, set up by the Steering Committee.

To me, that is not Consensus Building because you cannot have a situation whereby, if someone highlights a single individual, an issue in the newspapers, it becomes the headline and then that transforms to a contentious issue for the Plenary and for the Conference. That is why at this particular juncture, I will recommend the disbanding of the mediation team, whoever is really doing it; to allow the Conference to come in, to allow the deliberations of the Technical Committees because it is at the consideration stage when we shall really know which are the contentious issues. *(Clapping)*.

To me, here at the National Constitutional Conference, we are reconstituting the Kenyan State. What does that mean? It means all the institutions of State are being reconstituted, Parliament being one of the institutions that are being reconstituted and for them to go on a strike, for them to intimidate the Conference so that it can bend to the concept of recall which is not set only for Parliamentarians but for every elected leader. That is totally wrong. *(Clapping)*. So, my observation is to request the Steering Committee of the Conference, once they meet tomorrow in the morning, they recall all the people who are doing the mediation, they wait for the right time to mediate. What are they mediating now? Just imaginative contentious issues. *(Clapping)*. And that is why we are not going to allow whoever, however up there, in our society, to dictate what the Conference is supposed to deliberate.

Finally, let it be known to everyone, we started this process long time ago and even for the institution of Parliament itself, we are not going to allow it to dictate to us, we are going to give birth to baby and then they go and kill. Thank you.

Hon. Delegate Abdulrahman Wandati: Thank you, Delegate 586. I would urge the other Delegates to try and speak slightly away from the microphone so that they can be heard clearly. The closer you are to the microphone, the more the chances that you will not be heard clearly. Thank you. Next, Delegate number 111.

Hon. Delegate John Nyakundi: *Asante sana. Number sio yangu, yangu ni 611. (Laughter). Tafadhali, kwa majina ni John Peter Nyakundi, kutoka Vyama vya Kisiasa. Mimi mwenyewe pengine sitakubaliana na hii Consensus Building lakini nitatoa sababu za kutokubaliana na ni kwa sababu haijatolewa kutoka hapa ndani.*

Chairman angekuja hapa dani wakati Steering Committee imepitisha atwambie tujadiliane halafu tuchague, ama tumupatie njia ile ambayo wataenda kufuata pale nje. Sasa unajua kutengeneza Katiba mpya ya nchi, inalindwa na international law na sisi tunalindwa na international law. Kitu chochote kinafanyika nje, hiyo ni kinyume cha kila kitu. Mimi jana nilisoma international law inasema, MPs wako hapa kuamend ni hapa dani, hakuna kitu wataengeneza kwa Bunge, ni hapa hapa dani. Mambo in mawili ikienda Bunge, waikatae ama

waichukue. Kwa hivyo wenzangu, naomba muangalie sana, ile vitu ambao wanataka kutengeneza pale nje ni watu wachache ambao wanatengeneza wana nia ya kutupoteza.

Nikifuata, Mwalimu Nyerere alisema, kuna ng'ombe ziliimbiwa siku moja, halafu wenyewe waliokuwa wanafuata ng'ombe wakakuta wengine wanawaambia twende njia hii, ndio wawapoteze, sisi tunapotezwa. Katiba ni hapa hapa na sheria za ulimwengu zinalinda wananchi wa Kenya watengeneze Katiba yao. Ni hapa hapa dani, hakuna kitu kingine kitatengenezewa nje. Bunge hata Speaker mwenyewe anajua inatengenezewa hapa dani, ikienda pale ni kukataa au waikumbali. Wakiikataa wanajinyonga wenyewe. Msikumbaliane kitu, hata kuitwa, kama mimi nimechaguliwa kama Mjumbe, watu wangu wakiniita, mimi sitakataa. Mimi naenda pale kwa sababu pengine nimenunua, mimi nimekuja kujicompensate hapa, wakiniita saa ingine nitakataa. Kwa hivyo vitu vyote vinakuja hapa dani, mkikataa, mimi mwenyewe ninaprepere minority report. Mimi nataka kama hiyo ya recall iwe na referendum kama wanataka.

Kitu kingine, tafadhali, President na Prime Minister, sio mtu mmoja, msiangalie wale wako mkasema ni hao. Prime Minister, pengine tukienda kwa kura watauliza watu watano wanataka UPrime Minister, Uresident wanataka watu watano. Sasa yule atachaguliwa Uresident na yule atachaguliwa Uprime Minister hatujui ni nani. Kwa sababu hiyo kitu haitakua rahisi, kila kitu itakua ngumu. Kutafuta President mtaona vile atakimbia kwa Wakenya wote akatafute Uresident na anajua mpaka yake ni hapa, na yule atatafuta Prime Minister haitakua kazi rahisi kwa sababu inatakikana awe na viti mingi, tukiwa pengine watu watano, tunataka Uprime Minister, mmoja yule atapata ni bahati yake, ndiye atachaguliwa Prime Minister--

Hon. Delegatae Joyce Umbima: Thank you.

Hon. Delegate John Nyakundi: Sio mtu anapewa vile wengine wanasema, hati President akimbie atafute kule halafu anaenda kupatia Prime Minister kwa urahisi. Sio hivyo ndugu zangu, mnataka muelewe ama saa ingine msome sheria za kimataifa muelewe. Kwa hivyo mimi nawaambia, kuna vitu ambavyo vinatakikana muangalie hapa dani; hawa Wajube hawaji hapa, hata mimi natataka tukiwa hapa tuongee mambo ya Wajumbe, tunakata kama kazi ni mingi wafanye kuanzia Jumatatu mpaka Ijumaa hata ikiwezekana pengine hata Jumamosi. Wakimaliza wanaenda kupumzika--

Hon. Delegate Joyce Umbima: Thank you Honourable Delegate.

Hon. Delegate John Nyakundi: Lakini siku hizi wanafanya sixteen hours, na wanakubali. Kwa hayo machache mimi nimepinga hii ya Consensus. Asante sana.

Hon. Delegate Joyce Umbima: Thank you Honourable Delegates. Let us go back to our task, our task is to identify gaps, in last week's presentation on Consensus Building – I am aware that there are many issues that are still hanging over our heads. The so called contentious issues are still at the back of our minds but I think this session is really to look at the presentations, identify gaps, and if we need to bring back the speakers who spoke to us last week, this is the only way that we will be able to tell whether what we did last week was useful to anybody or we still need a little bit of information given to us and I am looking for a lady Delegate. Delegate number 594.

Hon. Delegate Orio Rogo Manduli: Thank you very much Chairlady. Thank you Honorable Delegates and good morning? I am pleased to note today that we have quite a number of Members of Parliament with us. I take note first of all of those from my own political party – Ford People and I am seeing Honourable Maduku here, Dr. Manduku, welcome. *(Clapping)*. I am also seeing Honourable Onyancha, *baminto!* Welcome. *Nimeona tena Mjumbe Bwana Gideon Moi is around. Gideon Moi, Cogratulations, (Clapping). Karibu sana. Na ninaona Mjumbe pia hapa Delegate number 146-- Ni General? General pia yuko hapa? Karibu sana. (Clapping).* In short, we do not have to worry about people like Honourable Githae, *(Laughter)*. With these ones here with us, we do not have to worry about Githae, because Githae yesterday called anonymous Delegates. Didn't he? *Ati we are anonymous? I do not anybody who is more anonymous than Githae, (Clapping),* because before he became Member of Parliament for Ndia, is it Ndia or where? Ndia? Me I have never heard of Honourable Githae before. *(Laughter)*. Now, for him who is involved in this Consensus Building, and for him who is in this Ministry which is so crucial to the Constitution making, he is an Assistant Minister for Constitutional Affairs, he is the owner, if you like, he is the Nanny *ama* the ayah as they call it, *yeye ndiye baba mdogo wa huyu mtoto, sababu baba mkubwa ni Kiraitu Mirungi. (Laughter). Sasa yeye ndugu ya baba, na ndiye anakanyakanyanga, kanyakanyanga hii maneno, anaituita anonymous!*

Now, Honourable Githae is an Honourable Delegate like all of us, equal to us, no more no less. No bigger no smaller, no shorter no taller, no fatter, no thinner than us and he has to stop calling us anonymous Delegates with immediate effect. That is communication from here, from the Plenary! Are you together with me?

Hon. Delegates: Yes.

Hon. Delegate Orio Rogo Manduli: *Tuko pamoja?*

Hon. Delegates: *Ndiyo.*

Hon. Delegate Orio Rogo Manduli: He is not allowed to call us anonymous again because we have access to Parliament, and if he calls us anonymous again we will go to Parliament and deal with him right from inside.

Sasa, talking of Consensus Building, we are back; you do not build Consensus when baba mdogo wa mtoto ndiye anachunachuna mtoto, anagongagonga mtoto. This section 47, that they keep yapping over because they think they are lawyers and we are not lawyers, Constitution making is not for lawyers, Constitution making is for all Kenyans of all walks wherever they come from. Mnakumbali na mimi hapo?

Hon. Delegates: *Ndiyo.*

Hon. Delegate Orio Rogo Manduli: I am getting sick and tired of lawyers. *Hii ni Constitution ni ya "Wanjiku". Sivyoo? "Wanjiku" does not need to be a lawyer; "Wanjiku" has to be "Wanjiku" and we are "Wanjikus"! Ukweli urongo?*

Hon. Delegates: *Ukweli.*

Hon. Delegate Orio Rogo Manduli: *Na tuko hapa, and nobody is going to look down on us, or talk down on us. Anybody who wants to Consensus Build must talk with us, not at us. Note the difference, talk with us, not at us. Na mimi nimesema, last week we had very nice presentations*

on Consensus Building. Consensus Building means that groups must calm down. *Watu wawe wanyenyekvu. Ukweli Urongo?*

Hon. Delegates: *Ukweli.*

Hon. Delegate Orio ogo Manduli: All of them must calm down and lower their temperatures. They must calm down and lower their voices, they must calm down and sit round the table and agree to talk, and talk we will do because all Kenyans are looking at us to deliver this baby and we are just about to deliver the baby. Those of us who are women, you know that we have exactly one month and one week to deliver this baby, that is, five weeks before the baby is delivered and usually five weeks before the baby is delivered, there is a lot of pain, there is a lot of discomfort. *Kwa hivyo msiwe discouraged na discomfort from people like Honourable Githae, msiwe discouraged na discomfort kwa watu wanaosemasema maneno shauli tuko* no five weeks and we deliver this baby to Kenyans, and we agree to put up with all the discomfort from them because we want to deliver the baby safely to Kenyans; but one thing I want you to know and you do not have to worry about that thing, section 47 which they keep *yapping* about the so called Lawyers. I want to tell you today, *siri ni hii*, it does not stop us from changing the Constitution. And if they want to sort out Section 47, we the Delegates are here, the representative of Kenyans are here, tell them that they can wait when we deliver the document to them--

Hon. Delegate Joyce Umbima: Thank you.

Hon. Delegate Orio Rogo Manduli: Then they can change it.

Hon. Delegate Joyce Umbima: Thank you.

Hon. Delegate Orio Rogo Manduli: One thing at a time, they cannot wait while in the middle of delivering this baby is when now they want to run around and sort out other issues, *tukisha tengeneza* Constitution to deliver the document--

Hon. Delegate Joyce Umbima: Thank you, Honourable Delegate.

Hon. Delegate Orié Rogo Manduli: And they need to change what is happening, then they can go back and change Section 47 and that is my message to Honourable Gitari. Thank you, very much. (*Clapping*).

Hon. Delegate Joyce Umbima: Delegate 446.

Hon. Delegate Francis Wangara: Thank you, Madam Chair. My name is Francis Wangara, Delegate number 446 from Trade Unions.

First I want to thank the presenters who gave us a bit of lectures on consensus building. I also advise my fellow Delegates that the process and where we have reached, it was very timely for us to have such a lecture which will help us decide on how best we are going to finalize our document.

It has been echoed loudly that there are certain factors which were overlooked probably the Constitution of the Consensus Building Team, the facts that were laid before them to look at, they were chosen by a few.

What we can do now is, first let us not go into the issues of discrediting whatever they are doing. We should look at the facts they have and if there is anything omitted, let us put it to them that it is for due consideration also.

Another issue I also want to look at is, we want transparency. In consensus building, we cannot have facts laid by a certain category of people and to be more specific with Members of Parliament and at the same time, they are struggling to make sure that when this document goes to Parliament, they will be given room to alter anything. They should be very clear and be very ready to discuss and negotiate what has been put on the table. If they believe that points that have been laid out by our Rapporteur General is not exhausting, let them come up with some other facts which they think should be considered.

Then after that consideration and also after the discussion are exhaustive, let it be brought to us so that we either agree or disagree. And if we disagree, then we will vote for or against.

Now, what I want to ask my colleagues is, let us also build confidence in our people who are representing us there, because it is a process that has already taken off and it will be very meaningless for us to re-drive that and start a fresh. Let us build confidence in them and then the Parliamentarians also to build confidence in their team, so that what comes out is agreeable.

Another thing I want to mention is, the issue of the Parliamentarians believing that this was a creation of Parliament and therefore they have the mandate of us is long gone, because it is too late, some of them are talking because the Parliament that enacted this process is not what is on now and they believe that they will have another chance of doing what they want.

Let it be clear that all Kenyans of all lives have lost confidence in anything called the Parliamentarians. Why? When we started this process, it was quite clear that the Constitution we had during the independence was very good, it was messed up in Parliament. (*Clapping*).

A process which we are going through now, the Kenyans have a lot fear for the Parliamentarians to be given room to make any amendment to it, may it be this Parliament or the Parliament to come, we have no confidence in it at all. And therefore, it should be clear that what we finish here, let them bring what they want here, the contentious issues they believe should be discussed here, let it be finalized here so that the document that comes out of here, is by everybody's agreement that involved in this process.

I believe that the Parliamentarians were brought in this process for one purpose, so that every issue that they believed has to be addressed, has to come to this floor. Once it is concluded from the floor, there is no reason of going back to say, we forgot this, there was a full stop that was omitted, there was a coma and what have you. No, we are not going to agree to that. Let them go to that Committee that has been appointed to air out their views and let it be agreed upon or rejected. That is my position. Thank you very much. (*Clapping*).

Hon. Delegate Joyce Umbima: Thank you for the contribution. We are back on this side, 311.

Hon. Delegate Joachim Gitonga: Thank you, Madam Chairlady. My name is Father Gitonga, Delegate number 311 from Muranga. I agree that we can discuss about the consensus, but there

are some items, we cannot agree to put them on table and discuss them, especially things concerning the natural human right.

Natural human right are God given, they are not given by the Government or by the people and we cannot sit here and discuss how to destroy them. There are people who are coming and telling us that life starts at birth not at conception, so that we can discuss how to destroy children from their mother's womb. This we shall not agree, because it is killing and it is murder. When we kill children who are in their mother's womb.

I do not see how we have consensus on this item which are destroying and not respecting the natural human right. I say human natural rights because there are some other human right which are acquired by human beings when they are born, they buy or possess property, this we can discuss. We can discuss about the division of our national cake, but not how to destroy human rights which are God given. We are told that there are about three hundred thousand abortions in a year. If we agree to have abortion in this country, that figure would double and treble as we have seen in other countries where abortion were allowed, people continue killing children from their mother's womb. So, I say that such items I do not see how we can have consensus if we are using our conscience. Thank you, Mr. Chairman.

Hon. Delegate Joyce Umbima: Next on this side. 220, we will come back on this side after that.

Hon. Delegate Simeon Shitemi: Thank you, Madam Chairlady, for giving me the floor. My name is Simeon Shitemi. The word "consensus" is pregnant with a lot of meaning. Last week we were helped to have a glimpse of what it means to arrive at a consensus. Fellow Delegates, let me share my own personal experience with the word consensus, there is one Church in this country that has been practicing consensus for over a hundred years and the main root of the Church, the society of friends the *quackers* have been practicing it for over three hundred years and every time they have arrived at decisions that make sense, the decisions that reconcile the parties, the decision that gives respect to all parties because of one major factor that, all we are created in the image of God.

Therefore, there is every element of God in every one of us, if I differ with my sister, I want to understand her why she is stealing the way she is stealing and not insult her. If I differ with my brother, even violently, I still want to know why he is that violent, the concept of turning the other cheek. Last week, one of the Delegates Rose Olende, a former colleague of mine at the UN in New York gave what I regarded as a brilliant explanation of the process of negotiations leading to consensus, she is very well practiced as a lawyer, a sister of the late Dr. Oki Ombaka. I salute Rose, she gave the best of what this Plenary has not had.

What are the experience of the *quackers* consensus building, we had one occasion when we assembled at an International Conference in Sydney. I attended that meeting and the item of Agenda was throwing a way one of us who had disgraced us, the former President Richard Nixon he was a member of the Society of Friends and it took the whole day debating it. The debate was postponed until the following day. We entered into a period of worship to reconcile all the opposing areas until we arrived at a consensus. We said, "Richard Nixon will stay among us".

Fellow Delegates, we are at the time when, according to our people, the boat is about to arrive from the river to the house. If we do not handle it with care, it will break and spill over the water. We are at a stage where we need to be very, very accommodating and very understanding. Most of the Luhya people here of my age, would know that no decision among the Luhya was arrived at without consensus. We would argue, we would fight, but eventually the elders packed and arrived a consensus, if even if it took one whole week. So, we are on something very, very fundamental and I would like to urge my fellow Delegates, to look carefully at that other Kenyan who is shouting to destroy our deliberations here, look at him carefully and if you can for goodness sake, learn to love him, learn to forgive him. Moshe Dayan, the former Israeli General was faced with a situation where he was asked to negotiate for peace and he agreed to go ahead and negotiate for peace with his enemies. And he said, "you do not make peace with your friends, you make peace with you enemies?"

So, Madam Chairlady, I urge fellow Delegates to be open hearted, to be large hearted and extend a hand of reconciliation and accommodation to those other people who have been keen to destroy our efforts here. The strength, the authority particularly the moral authority is on our

side, it is on our side and on this basis, it is very important that in our unity over essential things, we show and continue to show unity. In those areas that are non-essential, we show mercy and magnanimity. Thank you very much for hearing me. Thank you. (*Clapping*).

(Inaudible consultation at the “high” table).

Hon. Delegate Wandati Mirimo: Thank you very much. So, far the Delegates who have spoken have ventilated their position. A Delegate felt that while pursuing consensus, we should not dwell on imaginary contentious issues, another one felt that perhaps if necessary, we need to be preparing ourselves to adopt the new Constitution within this very Hall and another Delegate focused on the presentation of last week. Thanks to the presenters, that reminded us that consensus building is only possible if we identify three things:

One, the team that is doing that. Two, the facts and then the other issue was the commitment to the process. Then we were also asked to maintain confidence in the people we have sent to try and get consensus for us.

A Delegate felt strongly that while we are negotiating, we should negotiate a way of anybody’s human rights and then the Speaker who has just spoken has reminded us that the word “consensus building” has a lot of meanings, but he picked out important words such as respect for each other, reconciliation and learning to love your enemy because you cannot make peace with a friend, you have to make it with an enemy.

Now, while all these is coming out quite well, I have just been reminded that usually we break for tea at 10.00 a.m. but we were allowed to continue this session up to 10.30 a.m. so we only have four minutes left, it is up to the Delegates to see whether we can identify four people and have each of them in a minute if that is possible or there is one Delegate we must listen to, to whom we must give the four minutes. I do not know how you want us to do that.

(Inaudible murmurs).

Hon. Delegate Wandati Mirimo: One Delegate to speak for four minutes. Who is that Delegate?

(Inaudible consultation on the floor).

Hon. Delegate Wandati Mirimo: Do we agree that I let my co-chair to identify that Delegate?

(Inaudible murmurs on the floor).

Hon. Delegate Joyce Umbima: Thank you very much. Let us have some order.

(Inaudible murmurs on the floor).

Hon. Delegate Joyce Umbima: I have listened, I have listened a lot and I am looking for, one a Member of Parliament, two a woman to speak and then we close over. So, I am looking for a Member of Parliament and a woman to speak.

(Inaudible murmurs on the floor).

Hon. Delegate Joyce Umbima: One Member of Parliament from where? 271, is that a Member of Parliament? No,--

Hon. Delegate Wandati Mirimo: That is a Member of Parliament.

Hon. Delegate Joyce Umbima: That is a Member of Parliament. Thank you very much. Give him time to speak.

Hon. Delegate Hezron Manduku: I am sorry I raised--

Hon. Delegate Joyce Umbima: Are you a Member of Parliament?

Hon. Delegate Hezron Manduku: Yes, Honourable Manduku.

Hon. Delegate Joyce Umbima: Thank you.

Hon. Delegate Hezron Manduku: Honourable Manduku, my number is 092, I raised a different number because I had forgotten my number. Thank you. Madam Chairlady, we have really been here since morning. Finding also that we are all Delegates, Members of Parliament are one third of the Delegates in this Conference.

The impression we are creating in this Conference is that we have grown into two teams, that we have got a team of Members of Parliament and a team of the rest of the Delegates. I do not seem to see that we have got the kind of situation. I like what our last speaker said, Shitemi, that being people of the same understanding, we may differ in opinion and if we differ in opinion, we should call each other and see if we can talk.

If some two or three Members of Parliament have gone out because most of them have got limelight in newspapers, they have put their own statements, wherever they have put it, they have not spoken on behalf of all Members of Parliament. (*Clapping*).

Some of us are so dedicated in this Conference that if I was not there last week, I had been in a function in Kisii, we had the Minister for Roads coming there to inaugurate some roads and I had to be there, that is why maybe I was not there. I was not here because I went out to gang up some Members of Parliament to fight against this delegations. (*Clapping*). These Delegates are paramount, if we are going to get any Constitution, we are not going to get it any way out side this Bomas. So, you should be rest assured that if there are two or three a few Members of Parliament who are not in support of this, majority of Members of Parliament are having support of this Delegates Conference.

Please understand it that whatever the case maybe, wherever people are talking no matter how many they are, they may not all of them hundred percent agree, some will disagree that is why we are now building some consensus. We are persuading them to agreed with us, we become majority, we vote and if we vote, we win. So, why should we worry about a few individuals. (*Clapping*). We are educated, we are here, we must produce – that our lady Delegate of Ford

People said that they have got five weeks to deliver the baby, let us be ready to deliver the baby.
Thank you, Mr. Chairman, thank you.

Hon. Delegate Joyce Umbima: Thank you. We want to hear one last presentation from Women's Organization Delegates.

(Inaudible murmurs).

Hon. Delegate Wandati Mirimo: There is a woman there 602.

Hon. Delegate Joyce Umbima: Where?

Hon. Delegate Wandati Mirimo: 602.

Hon. Delegate Joyce Umbima: 602.

(Inaudible murmurs).

Hon. Delegate Katini Maloba: Thank you, Chair. My name is Katini Maloba, Delegate number 498. I am sorry I also used somebody else's card because mine is not ready yet. My position in terms of the consensus building, has to do with the fact that people in this country like any other country will have different views on different issues.

There are those who speak louder than others, and therefore those who speak their position like the Member of Parliament who was referred here, Githae, he has a right as a Kenyan to express his views, but the majority of Kenyans who decide, they will decide what is right and I believe that is what the consensus building is all about. It is about trying to persuade the Member of Parliament or any other Delegate about issues we believe in and we also have to sharpen our tools in terms of negotiating and convincing other members.

I think it is not very important to be a rage when somebody furthers an argument that you do not agree with, you try as much as you can to use your skills to convince that other party because we

are all Kenyans. And so we are hoping that issues that are contentious are going to be discussed with a view that we want everybody to be on one side, but if we do not get there, the majority will take the day of course we are not saying that we must go the route of voting all the time. Consensus building, is about avoiding voting, it is about convincing the other side to see your side of the story. And that is what we should fight to get to as Kenyans. Thank you. *(Clapping)*.

Hon. Delegate Joyce Umbima: Let us hear the last word from Wandati and then we break up for tea and immediately after tea we will come back for the main presentation for the day.

Hon. Delegate Wandati Mirimo: Okay, as we break out, the last Speaker who just spoke reminded me of a story I thought I would share with you as we leave. This is story is told of an American Professor working with an oil company in Saudi Arabia. He is driving within the desert, in a very, very expensive vehicle which gets on the way and stalls. The Professor comes out, he does not know what to do, he is alone in the desert, then he Bedouin riding on a donkey, he does not know Arabic, he thinks the Bedouin does not know English, so he uses signs to call the Bedouin. So the Bedouin gets there and somehow they managed to coin a communication format where the professor explains his predicament, explains to the Bedouin that his car cannot start. So, the Bedouin comes to the car, opens the bonnet looks at it and look inside the car and then goes back to his donkey which was carrying two baskets and produces a mallet, a big hammer, then he comes and asked the Professor to move a side, so he opens the bonnet and hits a certain part of the engine six times. The he tells the Professor to get in and start, so the Professor gets into his car and starts and the car starts. So, he comes out and tells him, okay you have done some work for me and I want to pay you, what should I pay you? The Bedouin says, “one hundred dollars”. So, the Professor says, just out of curiosity, “what should I record it as and bring a hundred dollars for what”? So, The Bedouin says, one dollar for hitting six times, ninety-nine dollars is for knowing where to hit. So, in consensus building, even as you negotiate, I think it is very, very important to know where to hit, not just to hit six times. Thank you. Let us go for tea. *(Clapping)*.

Hon. Delegate Joyce Umbima: Break up for tea.

The meeting was adjourned at 10.30 a.m. for tea break

AFTER TEA BREAK

The meeting reconvened at

Hon. Delegate Abdulrahaman Mirimo Wandati: Those who are outside I hope will join us as soon as they are able. My Co. Chair, has just informed me that she has successfully negotiated for a little bit more time, for Delegates to continue making comments, regarding Negotiations and consensus building. Perhaps we will get maybe 15 to 20 more minutes, before the main speakers for the day, join us. So, I am hoping that those who are standing outside, sheltering from the rain, may start coming in, as we agree on how to spend the 15 to 20 minutes allocated to us, to continue making comments.

Ladies and Gentlemen, good morning. Welcome back. We will go along the same procedure that we established before tea. The Co-Chairs here will recognize, Delegates who raise up their numbers. I think given the fact that quite a number of Delegates have not carried their numbers with them, we will understand, if you borrow a number and use it to catch our attention. We are hoping that the Speakers will be as brief as possible and to the point, so that as many of the Delegates as possible in this hall are able to make their comments, as we wait for the main Speakers of the day. So the floor is open once more. Okay Delegate number 596, the floor is yours.

Hon. Delegate Hezron Nyerere: *Mimi ni* Delegate number 596, *naitwa Nyerere Hezron. Mimi nataka ku-contribute kwa Conference kuhusu consensus. And I will relate to the Bible a little bit. Wakati waisiraeli walikuwa wakiteseka wakati wa miaka ya kale. Mungu alimtuma mwanawe Yesu, kwenda kuwaokoa hao Waisiraeli. Na wakati Yesu alitumwa kuwaokoa Waisiraeli, kulikuwa na wachache ambao hawakupenda Yesu awaokoe, na baadae walimsaliti Yesu. Wakati huu, kutokana na huo usaliti, ulimwengu mzima unalipa the heaviest price because of Jesus Christ being condemned by a few group of Israelites who are against his teachings.*

Wakati huu hapa kwenye hii Conference, Wakenya wame-suffer for a long time. Miaka arubaini Wakenya wamepata shida kubwa kupitia kwa mikono ya dictators, monsters and destroyers, wakililia kama kungekuwa na changes of a new Constitution, ambayo ingewatengenezea their Human Rights violations. Na wakati huo walifanya hata demonstrations on the streets, kumwaga damu na mambo mengi, mpaka serikali ikakubali kwamba kutakuwa na Katiba mpya. Na kupitia mashirika tofauti tofauti, Makanisa, Waisilamu, wananchi, akina mama na mashirika mengi yakaundwa na tukachaguliwa tuje hapa, ili kutengenezea Wakenya Katiba mpya, kupitia kwa Draft Bill. Na ndiyo kazi tunafanya hapa kutoka 2002, 2003 and 2004, sisi Delegates tuko hapa, tukiwa na nia moja ya kutengenezea Wakenya Katiba mpya. Na ni wachache tu ambao wanatuharibia sifa huko nje. Ingawa sisi tukiwa hapa Delegates, tukiwa na roho moja na nia moja na upendo kama vile tulivyo tumwa na Wakenya kuwatengenezea Katiba. Kwa yale tu nitasema tu the Chair ni hivi. Tutamaliza hii Katiba, na tutapelekea Wabunge. Sisi tutakuwa tumemaliza kazi yetu. Wakiwafanyia vizuri Wakenya, Delegates wote mia sita na ishirini na tisa, tutakuwa tumemaliza Wakenya kazi ile waliotutuma tuwafanyie. Na Wabunge wakiitoa namba kidogo waiharibu basi Wabunge watalipa the price. Sisi tutakuwa tumetoa lawama yetu hapo. Kwa hivyo tuwe na consensus, ambayo itatuletea sisi wote tuwe pamoja, tusipigane vita, ndiyo tulettee Wakenya Katiba, tukiwa na mikono yote tukiungana hata na Wabunge, tukiungana na Delegates wengine. Na tusitusiane, tusitusi wale Wabunge ama Wabunge watutusi. Sisi wote ni wana Kenya, na sisi wote ni Honourable Delegates.

Kwangu mimi nasema, tuwe pamoja hapa na tutengeneze Katiba. Ikitoka Mombasa tuungane, consensus itatoka hapa, na tutatengenezea Wakenya Katiba mpya ambayo itawasaidia miaka na miaka. Na hatutengenezi katiba Katiba ya mtu, tunatengeneza Katiba ya Wakenya ambayo italinda Wakenya miaka ya sasa mpaka miaka ijao. Italinda hata ulimwengu. Hayo ndiyo yangu asanteni.

Hon. Delegate Abdulrahman Mirimo Wandati: Okay. Delegate 379.

Hon. Delegate Levi Wangula Ahindikha: Thank you Madam Chair. My number is 379, my name is Levi Ahindikha, a District Delegate from Kakamega District. Mr. Chairman, we appreciate the efforts being made by the Committee which is to bring together the differences in ideas. And I want to comment on two or three things. Mr. Chairman, we have discussed issues

in Committees and I can see the same issues are being repeated in the Consensus Building Committees. We must be very careful about this. One issue I am seeing being repeated, is the issue of Dual Citizenship. Madam Chair, the issue of the Dual Citizenship, if we are not careful can bring problems to this country. For example, people will be involved in criminal acts either in this country, they will run to another country to hide there on the pretext of Dual Citizenship. The same people will do criminal acts in other countries and will come to hide here. And therefore I am of the opinion that the issue of Dual Citizenship should be discouraged.

Madam Chair, the other issue is the issue of marriage of same sex to be legalized. I think it is a taboo to the African society to marry the same sex. If this is legalized, we shall be going against the African way of doing things.

Finally Madam Chair, the issue of section 47. Our Parliamentarians appear not to have read this section properly. Why has it taken a good three years, to think that this section is flawed? I think our Parliamentarians are trying to confuse the people. This section is very clear, the Chairman of the whole house has talked about this, and he told us exactly there is no problem. So, I am trying to tell the Parliamentarians, to read this section very clearly. We shall do our work here and we shall take it to them. if they want to spoil it, it is upon them and the *wananchi* will blame them.

Hon. Delegate Abdulrahaman Wandati: Thank you Delegate. Can I once more remind ourselves of what we had agreed on? I know we do have a lot of views, a lot of feelings and even after the Committee that is engaged in consensus building finishes, some of the things they will agree upon will still have to come back to us in our Committees before it comes here. So, really we would appreciate if during your comments also say something that we ought to be doing that can enhance consensus building amongst us around here. We would really appreciate if after you have made any comments you want to make, also tell us, that I think for us the way forward towards consensus here, we should do 1,2,3,4,5. 228.

Hon. Delegate Raphael Livu: Thank you Chair, my name is Raphael Livu, Delegate number 228. Mr. Chairman, my submission is that the Committee that was formed to deliberate on the contentious issues was formed prematurely. Mr. Chairman, it was formed prematurely, on the

basis that we split up to go into respective Committees to recommend to Plenary on our deliberations in those Committees. So that that Plenary can now take the recommendations of various Committees for discussion. Mr. Chairman as of now, this Conference does not have any contentious issues because those recommendations have not been tabled here. When you talk of then having the contentious issues or having them discussed, you are being premature in that discussion. I think we are jumping the bridge before we get there. I think it would have been appropriate to let the Committee, the members who writing the reports from Mombasa, to table those recommendations to this Conference. It is from those recommendations at Plenary when we shall identify, what issues are really contentious. Then on the basis of that we can get down to address the problem if it is there. But I think at this moment in time it will be wrong, it will be misleading for us to assume that we have any contentious issues or discussion. Thank you Chair.

Hon. Delegate Abdulrahaman Wandati: Thank you very much.

Hon. Delegate Joyce Umbima: 411. Delegate 411.

Hon. Delegate Teresa Usunga: Yes I am Delegate 411 Mary Teresa Usunga. Actually, what I can say is that we need to be very, very careful because all of us are delivering a baby and when we look at delivery, when is it hardest to delivery? Is it when you are carrying the baby or when you are delivering it? Can you answer me this question?

(Inaudible comments from the floor)

Hon. Delegate Teresa Usunga: Even the men know. Do not joke. It is when you are delivering that it is the hardest to do it, we need the good midwifery as much as possible. So, in this case the way forward is, that all of us should agree, to agree. So, that where you have disagreed just try to agree because if you are not careful, you might either give birth to a dead child, or you might die while giving birth or other things may happen, so it is not really good for us to say things which will not help us. Let us say things which will help us.

The other point is concerned with the contentious issues that I get in this place.

One, they are negotiable and nonnegotiable issues. For example, right now, I am very sure that the Government needs to have checks and balances. How to share the power is the question. Premiership should not be a contentious issue. We should just see how to fix it in, that is all. Then when it come to recall, it is very natural that I will like to be told that I am doing wrong, and in that case, please, Parliamentarians, I have really had a lot of faith in you. And I would even want to greet most of you by hand, because I do not see, but please, please, even if you are recalled, just try to at least ask for forgiveness, the people will see what to do actually. *So, hii kukosolewa*

Then there is also this idea of concentrating power in the hands of one individual or some individuals, which we were talking about and the people talked about it. It can either be found in Devolution, or it can also be found in inequitable distribution of resources and it can also be found in a one House Chamber instead of a Bi-cameral House Chamber. So, where we have a Bi-cameral House Chamber, we are aware that one House will be correcting one another. Isn't it? *Kwa dunia hii hakuna njia isio na kona, lazima Mercedes Benz yetu ikate kona, ikisafiri. Kwa hivyo, we really need to be corrected and being corrected does not have to be bringing grudges. Let us just accept to be corrected and you see God is watching us. Thank you.*

Hon. Delegate Joyce Umbima: We are back on this side Rihal I do not know your number. I cannot see it from here.

Hon. Delegate Rihal Singh: Thank you Madam Chair, this is Rihal Delegate number 487 from the Professional Organizations.

I think the debate we are having this morning is very interesting. A lot of the Honourable Delegates have expressed the fears, that the consensus group might arrive at certain consensus and reach agreements without us knowing anything. I think that will not happen. We are sure that whatever consensus building is going on, the team will report back to the respective Technical Committees to revisit some of the areas that might turn out to be contentious. We do not know exactly which issues are contentious, but the two sides who are meeting outside the Bomas, but it is a part of the Bomas forum that is meeting outside. Once they have identified the areas, they will bring back the issues to the respective Technical Committees to revisit. And then

when we finally meet here, at the Plenary, all those issues will have to be rectified by the whole house as a full Committee of the Plenary. I think members and Delegates should not have unnecessary fears, that things will be decided without their full participation and knowledge.

Madam Chair, or Mr. Chairman, as to Article 47 or section 47 of the existing Constitution, which deals with the alteration of the Constitution, with due respect many Members of Parliament, those who are arguing that there is a defect in that and also defects in The C.K.R.C Act, are not reading the whole Article 47. Because under Article 47 (6) part (b), it talks of references to alteration of this Constitution are references to amendment, modification or reenactment, with or without amendment or modification of any provision of this Constitution, the suspension or repeal of that provision, making of a different provision in the place of that provision. When you read all these words in their entirety, section 47, gives this Conference the freedom to prepare a new Bill. Once that Bill is prepared and approved from this floor, it will be handed over to the Attorney General. It will then become the Attorney General's Bill for presentation in Parliament and Constitutional Bill cannot be altered by Parliament, they can only debate it and they can either reject the whole thing or they pass it in its entirety.

So, we hope when this presentation takes place here in the Bomas of Kenya, in front of all the Delegates, including Members of Parliament, media and the public. The country will know what Bill we have presented to the Attorney General. He has a specific time frame under The C.K.R.C Act to follow. And he has a week in which to publish the Bill and another week for presentation to Parliament. Once it goes before Parliament, Parliament will then debate and enact that Bill as normal Constitutional Bill. So, whichever Members of Parliament are trying to paint the picture that there are defects in the Acts, I think with due respect, they are leading us on the wrong path, because they have not come here to participate, because they have failed to represent the views of the Kenyans as the elected leaders, now they are trying to backtrack and find defects in the laws, which do not exist there. So, would strongly like to urge the Delegates, that let us concentrate on our co-work and which is to complete the exercise and we come out with a Bill that will be approved by the whole Conference here and we present it to the Attorney General as laid down in the law. Thank you Mr. Chairman.

Hon. Delegate Abdulrahman Wandati: Thank you very much 361.

Hon. Delegate William Ole Yialle: 361 Ole Yialle is my name. Mr. Chairman, I am not against consensus building and whatever. But you see there are two ways, to make concessions. One easy way is when you surrender. And when you surrender, you will have to live with the consequences of surrender, which means you will not have anything, you will not have any rights. And then of course the second option is when you do the negotiations. Negotiations does not mean that you give all your rights, and this is why I feel, that the entire process of consensus building is being hijacked from this House, or from this Constitution making process. The Constitution of Kenya should be written here by these Delegates, and whatever concessions that are going to be made must be made here. And I think that is why we are here.

Number two, the interpretation of section 47, I am a hundred percent in agreement with what the Honourable Delegate who has just sat has said. Parliament, and including my learned friend the Speaker, my fellow Maasai, I think we should not agree, and I disagree with the position Parliament is taking, because it is misleading Kenyans. We were elected and appointed, including other corporate bodies and all the Constituencies, including Parliament which is represented here in totality. And I think, Parliament and the whatever forces that are behind it, should really think on the graveness of the situation they are trying to introduce into this country. I completely disagree with that position. We must write the Constitution here.

Now, section 47, allows and empowers us to rewrite, to reenact, to alter and give Kenyans what they want most, a new Constitution. That is our responsibility. The 1963 Constitution could have been called a very good document, but we all know here, and history bears record that it was --

Hon. Delegate Abdulrahman Wandati:

(Inaudible)

Hon. Delegate William Ole Yialle: - - yes I am cutting short. It was castrated by Parliament. We cannot allow Parliament to again do what they did to the previous Constitution. We cannot give them the power to go and re-edit. So, the way forward is, all the consensus issues must be brought here to the Committees and every Committee will discuss, accept what they find they will accept without compromising what the Kenyans want, and bring it here again at the Plenary session, and from the Plenary we shall forward a Bill to the Attorney General. And then, the people of Kenya, let Parliament reject it or approve and give an explanation to the people of

Kenya, because that is what the law says. Let them go and do whatever they would like to do there, but we must give the people of Kenya a good Constitution and let the Parliament go and reject if that is what they want. Although I am not recommending them to go and reject. I am telling them to go and do what they are supposed-- Let them do what they find good, but it is our responsibility. They will also know that they will be judged by history and Kenyans are awake. Kenyans will also ask questions, we shall publish our Bill like it is and then we shall give the people of Kenya, to write their own verdict. Thank you very much Mr. Chairman.

Hon. Delegate Abdulrahaman Wandati: Thank you very much. The guests we were waiting for have arrived. I know there were certain members I had promised that I would give time to speak, I am asking them to forgive me, because our key speakers have arrived and it become difficult for me to keep them waiting whilst they are here. So, I am going to ask--

An. Hon. Delegate: Point of Order.

Hon. Delegate Abdulrahaman Wandati: --My Co-Chair – Point of Order 007, what is your point?

Hon. Delegate Daniel Khamasi: Thank you Chair. My name is Khamasi, Delegate number 053. Mr Chairman, I think it is unfair for you to let the statements which are being made to go uncorrected. I want to speak on my own behalf from Parliament. I am a Parliamentarian and I think it is wrong to “wholesale” condemn Parliamentarians. Some of us have spent a lot of time here, (*Clapping*) coming to share and produce what we came to do here. So one thing I want first of all mention is that, the people who have gone to look at what you call the so contentious issues are not angels, they are people like us, they will not come and force things down our throats. They will come and discuss these things in various Committees. (*Clapping*). Mr. Chairman, if people go out there, people who have been elected and they are in Parliament and they speak their own things, those things should not be construed to mean that all Parliamentarians speak the same. (*Clapping*). We were sent here by Kenyans and we are all here in our own right, and we will do what it takes, in this particular Conference(*Clapping*). So it is unfair for you Mr Chairman, for people to leave here thinking that Parliament is taking a different route from what we were sent here by the people of Kenya to do (*Clapping*).

Hon. Delegate Abdulrahaman Wandati: Thank you very much. I would beg the Delegates to associate themselves with the views that have just been expressed, I think we are all equal here, I think we can start by trusting each other, knowing that we all took an oath to serve this country, but since we also have guests before us, I think we should give them the opportunity to speak to us first then we can come back and continue talking among ourselves. So I would like to ask my Co-Chair to take over and introduce the next speakers to us. Thank you.

Hon. Delegate Joyce Umbima: Thank you, Honourable Delegates. I am pleased to announce that our two speakers for this morning have arrived. Our speakers this morning will speak on the rules and procedures for consideration stage, and none other than people who have worked in Parliament – the National Assembly, they are familiar with rules and they are here to equip us with the skills that will make it possible for us to proceed on in our sessions next week. Our first speaker will be Samuel Ndindiri who is currently the Clerk to the National Assembly. Our second speaker is Harrison Gicheru who is actually a legislative Draftsperson with CKRC, he has also been a Deputy Clerk to the National Assembly. We are pleased that we have people who have the experience and who will be able to take in a lot of your questions and issues that you want them to clarify, so that when we go to next week's consideration stage, we will be as familiar as our Members of Parliament. Thank you very much, and welcome to give us your presentation.

Mr. Samuel Ndindiri (Appointed Clerk): Thank you very much, Madam Chairman, Honourable Delegates. I do not feel very new here, because we have in one way or another been serving this Conference, our staff from the National Assembly has been serving the Technical Committees as Secretaries. So we are not absolutely new. We indeed have taken some of the members here through the rules in the past, especially the Convenors and Rapporteurs. So, a number of you may at least be familiar with some of the rules, but nevertheless since you will be coming back to Plenary pretty soon, this is a good opportunity to go through the rules again and see how we operate during the Plenary sessions.

We cannot exhaust everything at one sitting because as you know rules are usually – for many people very tedious – not very enjoyable, reading the rules and going through them, more so the rules of this nature, of putting questions and of proposing amendments, they are usually very

tedious for most people. And therefore, we will take it at a time. I will take one part and Mr Gicheru will take the other, there is a proposal after that; this afternoon to break into groups, convenient groups and I have been told it will be two groups and therefore we can go into the rules more particularly and more thoroughly in those areas. But I will start with - we will deal with the general principles and the way they operate.

A document has been circulated and I hope all the Delegates have got the document which would be our reference point as we start. I hope all the Delegates have got this document now, do they? It is entitled “Chairpersons’/Delegates’ guidelines”.

(Consultation on the “high” table).

Mr. Samuel Ndindiri (Appointed Clerk): Well, I am told they are being circulated now, so they will very soon come to you and I think for convenience those who have, could for the time being share with the Delegate next to you please.

So let us start. As I said in my opening remarks, rules are usually - most of us want to see the big picture, you are not very bothered about how we get there. But it is recognized, it is very necessary to have rules in order to get somewhere. You have to have rules, rules which you will obey and which make it very easy for everybody. Sometimes as I say they can be very entrapping, difficult, but if you do not have rules, if you do not have rules or procedures of going about a task, then your task will be quite fairly difficult, and you may be entangled, and you may never arrive at a decision. So, you must first of all have rules and that is what distinguishes us from everybody else, from the animal kingdom, we have rules and we make rules in order to obey them.

Now, in our discussions here, to get us to the end of our – this whole exercise and business of Constitution making, we must observe these principles of the rules and first of all we must gauge the opinion of the majority and that does not mean that we do not listen to the minority. The majority carries the rule, the day, but we must record the minority and the minority in their place also try to influence the majority by persuading (them that is the majority) to come to their side.

So, there is that listening to each other, the majority having their say, their way, but the minority also having their say.

Delegates, in our deliberations here, have all the same rights whatever their views are, the same rights, the same privileges and the same responsibilities, and they may be limited only in respect of a Delegate or a group of Delegates in accordance with the law and the common good. So, these rights, privileges and responsibilities must be exercised with responsibility as well.

The decision making of a gathering like this must be informed by the spirit of consensus. You have talked about consensus for a long time. The word consensus has come about a million times during the deliberations of this Conference. So, that should be the spirit, the spirit of consensus must come through. So, there must be consultation, persuasion and compromise in this whole process even as we come to vote taking, because eventually we will come to vote taking. If this is given, that there is consensus, compromise and persuasion, then in the whole process you save time and then you end up with goodwill in arriving at decisions. When we look at the rules or procedures, we say that Delegates, and any Delegate must be allowed to express their views and they have a right to have those views and there should be no victimization for the holding or indeed expounding those views. So, we are here then talking about freedom of discussion, which is an integral part to this basic principles I have tried to discuss.

When we come to the process of debate which is the relevant – our manner of operation here, we deal with issues by way of Motions and how you go about this, and you have seen it is that, a Motion is proposed, usually a Motion is moved by a Delegate and the Delegate, before he proposes the Motion, will have given the notice of that Motion to the Chair. In most cases the Motion will have a seconder. The Motion will have gone through the processes of looking at the wording and so on. If the Motion is right according to the rules for introduction for debate, then the Chairperson proposes the question of the Motion. That Motion is seconded by another Delegate and once the Delegate Moves the Motion, that is the first step, that he or she moves the Motion, the Motion is seconded by another Delegate then the Chairperson proposes the question of that Motion. By proposing that question, it means the debate on that Motion is open and therefore other Delegates can come in with their comments, with their views. Usually this – in order to keep within the time, the debates are limited. The time allocated to each Delegate is

limited, say to five minutes or to ten minutes. You have seen this in the Bomas I, we did a lot of this, that the Delegate was given specific time, I think it was five minutes. Then at the end of the debate, depending on the duration; a Motion can be ten minutes, can be half an hour, can be five days, can be twenty days, but at the end the Mover of that Motion will have a right of response to the points made by the Delegates, they may not be necessarily all the points that were raised by the Delegates, but he may highlight and respond to these, and at the end of his remarks, the question will be put by the Chair. The question as you have heard it in many occasions is that, the Chairperson reads the entire Motion, puts a question in such words as , “I beg to put the question”, “I will put the question”, I will give an example and it is there on page 3. Let me take the second example, actually the fourth sentence of page 3 and that is a sample of a Motion that “the National Constitutional Conference records its thanks to his Excellency the President for the lucid and inspiring exposition of our Government policy on the ongoing Constitution review process” that is an example of the Motion, and assuming we have been debating that Motion, the Chairman will put the question in the entire terms of the Motion that I have read and then the way of arriving at a decision is to say, “as many as are of that opinion say, “**AYE**” the “**AYES**” will have their voice vote, “as many as are of the contrary opinion say, “**NAY**”--

Hon. Delegates: “**NAY**”.

Mr. Samuel Ndindiri (Appointed Clerk): --and now the “**NAYS**” have it. (**Laughter**) That is the decision of the Plenary.

So, we will go then on to the next Motion and so on until we come to the end. In the process of debate, if we were debating that Motion for instance, there may come a situation where a Delegate may want to introduce another Motion and there are three types of Motions.

1) Again I refer to page 3 of the document. There is the Auxiliary Motion which may be made in connection with an order of the day. All of you are familiar with the order paper, it has Motions. On a normal day, you will find Motions on the order paper or order of taking items of order on the day. An Auxiliary Motion may be something to do with the order of the day, and an example of such a Motion is like has been given that, this Conference adopts the report and Draft Bill of the Constitution Kenya Review. That is an Auxiliary Motion. It is

not going into the details of the document and it is usually disposed of fairly quickly. That might interrupt the normal course of events and as I said, it has to be disposed of quickly.

- 2) Another form of Motion is called a Superceding or Dilatory Motion, which wants to deviate from what is going on and that might require for instance, if we are in the middle of the original Motion which we voted on just a few minutes ago, and there is a feeling that the Conference would want to adjourn for consultations or to amend a word here, to agree on a word here for instance the word “Lucid” you want to discuss on that and agree whether you want to change the wording or to change the principle, you may, I beg your pardon.

(Consultation at the “high” table).

Mr. Samuel Ndindiri (Appointed Clerk): I have been asked what document we are referring to, and it is at the top entitled Bomas III, 2004 – Training for Technical Working Groups/Committees of the whole Conference. You do not have it?

An Hon. Delegate: We do not have it.

Mr Samuel Ndindiri (Appointed Clerk): That is the document that is going round now.

(Consultation at the “high” table).

Mr Samuel Ndindiri (Appointed Clerk): Yes, it is one of the Sub-Headings is Chairperson’s/Delegate’s guidelines.

An Honourable Delegate: It is not there.

Mr Samuel Ndindiri (Appointed Clerk): It is not there? We will soon find out what is happening, but copies were being made and we had - and I think some Delegates also have the document, but it is going round. I am assured that copies are being made.

(Consultation at the “high” table).

Mr Samuel Ndindiri (Appointed Clerk): I will try to be as comprehensive as possible then perhaps read the document as they circulate it, but it is coming around, a hundred copies had already been made and given out. I will be very slow and reserve a question, if you have a question, we will be able to answer it at the end.

So I was saying the Auxiliary Motion has something to do with the order of the day. A Superceding Motion which is also called a Dilatory Motion has to do with interrupting the debate on a substantive Motion, and it may call for adjournment of the debate of what is going on. That is called a Superceding or Dilatory Motion. If it comes in between, and there is need to adjourn, a Motion is moved that the Conference be adjourned and because the reasons will be explained, usually there is not much debate because the purpose for the adjournment is known and the question again is put, “as many as are of the opinion say, “**AYE**” and “as many as are of the contrary opinion say, “**NAY**” thereupon the Conference adjourns for a specific time and comes back. It means that the Conference will start on the Motion, the Substantive Motion from where you left off.

Again on the Substantive Motion, during the debate you may find a need, a Delegate may want to bring an amendment to the Motion and I read the Motion that, “the National Constitutional Conference records it thanks to his Excellency the President for the lucid and inspiring exposition of the Government policy on the ongoing Constitutional Review process”. So, a Delegate may want to amend, to delete the word “lucid” and the Delegate, any Delegate, will stand up and say, we have sent a notice of amendment to the Chairperson that he or she intends to have the word deleted and therefore we will deal with the amendment that the word be deleted which is “lucid” be deleted. The debate will be on that, that we either delete or do not delete the word “lucid”. That is an amendment Motion. At the end of the debate, the Chairperson will put the question that the word to be deleted which in our case “lucid” be deleted and again the same format; as many as are of the opinion say “**AYE**”, as many as are of the contrary opinion say “**NAY**”. If the “Ayes” have it the word “lucid” goes from the main Motion. If the Motion is defeated the word “lucid” is retained in the main Motion. So, again we go back to the original Motion at the end of the debate, then the question of the original Motion, or the Motion as amended will be put to the vote and that brings us to the end of that debate. And then we will go to the next Motion. I have covered generally how the question of the Motion is disposed of and

indeed I have covered the aspect of the amendment. If for instance in the course of the decision by the Conference, there arises a question, a doubt as to whether the “**NAYS**” were more or the “**AYES**” were more and the Chairman has a doubt, he will repeat the question; “as many as are of that opinion say “**AYE**”, “as many as are of the contrary opinion say “**NAY**”. If the voices are equal, or if a Delegate rises to claim a division, say Delegate number 625, rises, – calls for – shouts “division”! Then the Chair has an obligation to listen to that Delegate and he or she will ask the Delegate 625, “do you have the necessary support?” In our case here the necessary support for a Delegate to call for a division is thirty, I think it is thirty, the number. If there is the support of thirty Delegates, then the Chairperson calls for a division. It means then the Delegate will be counted by the Delegate and therefore, we have to record the vote. The Delegates, will go into the Lobbies, the “**AYES**” lobby which is to the – I think it is to the right, as you go up, next to the entrance, from where I am, it is to your right. That is the “**AYES**” and you better note this Delegates, because this might actually happen when we come to the Conference itself. The “**AYES**” will go to the right and the “**NAYS**” will go to the left, my left, that is to the right of the entrance. There your names will be ticked. And who will do this? This will be done by the tellers who will be appointed from both sides; from the “**NAYS**” and from the “**AYES**”. There will be two tellers from each of the two sides who will tick off your vote and then you come back through the stairs back into the Chamber. At the end of that exercise, the tellers, all of four of them, will formally come. We will decide through where and I believe it should be from that point. All of them, the four of them, will come forward and give the results to the Chair but they do announce as the document says. The tellers choose their spokesperson who will come forward and say ‘Madam Chairperson or Mr. Chairperson, I beg to report the results of the division which are as follows. The “**AYES**”, 570, that is a big majority, the “**NAYS**” 25 and that result will be given to the Chairperson and the Chairperson will announce the results as follows: the “**AYES**” 570, the “**NAYS**” 25, and therefore the “**AYES**” have it. So the “**AYES**” carry the day.

Where there is a fixed majority, of course the Chair will explain that a fixed majority is required for the vote to be carried and the same procedure of voting will follow. I think we have gone through the issue of amendment which is carried in that document. So, I will not repeat it but I may say that we will go through this again later in our working groups. We will go through it in more detail so that if there are questions, we can handle them at that point and I think at this

point I will hand over to Mr. Gicheru to go through to the next part of our discussion. Thank you.
(Clapping).

Mr. Harrison Gicheru (Draftsperson): Honourable Delegates, I assume you have copies of this chart. There is a chart indicating the different stages of the review process. Single sheets. They are single sheets.

(Noise from the floor).

Mr. Harrison Gicheru (Draftsperson): About 150 copies were produced in the morning and most of you must be having them. Because it is important for them to be in front of you so that you can follow the explanations.

Hon. Delegate Joyce Umbima: How many people have the copies? Can you carry them up so that at least we can take--

An Hon. Delegate: Point of Order?

Hon. Delegate Joyce Umbima: Point of Order, okay 382?

Hon. Delegate Sammy Aswani: Thank you very much Honourable Chairperson. My point of Order is, when we are told-- My names are Aswani Sammy Delegate 382. When we are being told that we have a few copies and it was a well known fact that this issue will be addressed today, what has happened to the other copies and yet we are supposed to be 629? Does it mean that a few selected ones are the ones who will be able to be provided with the copies? Is it really in order?

Hon. Delegate Joyce Umbima: Shall we take another Point of Order before we proceed? 379, then we will respond to that Point of Order.

Hon. Delegate Levi Ahindikha: Thank you Madam Chair. My number is 379 and my name is Levi Ahindikha. Madam Chair, I will just support my colleague here, 382. Madam Chair, I

think it is not in order for the Chair to keep on telling us what is happening when we don't have the reference materials. Madam Chair, I propose that we should not continue until we get these materials Madam Chair. Thank you.

Hon. Delegate Joyce Umbima: Thank you. I want to apologize that for those who have not yet received their copies, I do believe that they were circulated but we don't know what has happened to the copies that were circulated outside there. We are making frantic efforts to make sure that everybody has a copy. I would like to ask your opinion, what would you like us to do at this particular moment? Wait for the copies or continue?

(Noise on the floor).

Hon. Delegate Joyce Umbima: What time is it?

(Consultations at the "high" table).

Hon. Delegate Joyce Umbima: How many are for-- For those who would like us to adjourn until we get the copies, could you say "AYE".

Hon. Delegates: "AYE".

Hon. Delegate Joyce Umbima: For those against say "NAY".

Hon. Delegates: "NAY".

Hon. Delegate Joyce Umbima: The rule says as we have been told the "AYES" have it.

(Noise from the floor).

Hon. Delegate Joyce Umbima: So, we adjourn for a few minutes, half an hour and then we get the copies.

(Consultations at the “high” table).

Hon. Delegate Joyce Umbima: I understand it is about lunch time, we go for lunch and then we reassemble at 12 o’clock exactly. Is that okay?

Hon. Delegates:

(Inaudible).

Hon. Delegate Joyce Umbima: We reassemble at 2 o’clock and you will have the copies before you. Thank you.

Hon. Delegate Abdulrahaman Wandati: Honourable Delegates, good afternoon. Welcome back, we wish to call this afternoon sitting to order. We are hoping that by now each Delegate in the auditorium has received the documents that we expected to receive, and that our speaker Mr. Gicheru who had started his presentation before we adjourned will now be able to start and that we will all be able to follow him. So, let us take our seats and let us lend our speaker our ears. Thank you. As I did in the morning, I will hand you over to my Co-chair, Joyce Umbima who will do the necessary.

Hon. Delegate Joyce Umbima: Thank you. I think we are all ready. The two documents that will be considered this afternoon is one page document. The first one is the National Constitutional Conference Bomas III and is just one leaf. I hope you have it with you. The second one is Bomas III year 2004 National Constitutional Conference Consideration Reporting and Adoption. It is about 9 pages. So, please put the two documents before you. Thank you very much. Shall I now invite our speaker to lead us through the two documents? Please you should pick them, if you don’t have the documents, there is somebody right at the back there. He still distributing to those who do not have them. Raise your hand and you will get one. Thank you. Anybody without a document? Okay, I think the persons distributing are right behind you. They are coming. I think we are now ready to go. Welcome Mr. Gicheru, lead us through the two documents.

Harrison Gicheru (Draftsperson): Honourable Delegates, first apologies for the inconvenience caused before lunch. There was an administrative hitch somewhere because these

documents were ready a month ago. So, it was a matter of getting them photocopied in the required numbers. That was not done in time. Otherwise, they were prepared sometime back and it is important that they should be in front of you so that you can follow this very technical subject. I say technical and I think Members of Parliament who happen to be here can testify that it takes time to master Parliamentary procedure. It is a dry subject but it is not unintelligible. If you are patient, if you concentrate, then all will be well. Now, as we go through we shall be using these two documents, the first one you have the chart, which is a one page document, then you have a nine page document entitled- well the smaller title which is more relevant is "Consideration, Reporting and Adoption". The two documents go together.

Before lunch you were taken through another document which refreshed your memories concerning procedure in Technical Working Groups because you have already been in the Technical Groups, you have an idea of what the procedure that was being explained is all about. Now, we propose at this stage to take you through the review process, the remaining stages so that you are aware of what is ahead of you and what you are expected to do. Now, if you look at the chart, just hold it in front of you. You will see that from the right hand side, you have the first stage which was the General Debate. The General Debate was held in Plenary of the Conference; that is all Delegates assemble together, not in Committee but in Plenary. The Debate commenced on or about 8th May in Bomas I and was concluded on June the 6th. Then, next to the General Debate, you will see that there is a Consideration stage which is divided into two. There is sub-stage 1, which involves consideration in Committees, in Technical Working Groups. That is the stage at which we are now and which we are about to conclude, which we are likely conclude this week. The next stage is sub-stage 2 that is still part of the Consideration Stage. The word Consideration is different from the General Debate. In General Debate you can talk about anything, it is a General debate but when you go to Consideration Stage, you discuss the details of the report and Draft Bill. So, we are about to complete the first sub-stage, (one of the Consideration stage as you see it in front of you) and then next week probably before mid next week, we embark on sub-stage II which will be-- It is the Plenary sitting as a Committee, that is the whole Conference as a Committee, Committee of the whole Conference. This might remind some of you what happens in Parliament.

In Parliament, we have what we call Committee of the whole House and that is the stage where a Bill having been read a second time, having been subjected to a General Debate during the second reading, at the end of that Debate stands committed to a Committee of the whole House. That is the same House, now sitting as a Committee in order to discuss the details. So, this is a comparable stage, that is Consideration Stage.

Well, it might be of interest to you to know how this formal procedures started. In British Parliament, the debates originally used to take place in the whole House, in the House sitting as a Plenary, then it was decided-- At that time the Speaker used to be a nominee of the king and most of the time he was a spy. He used to spy on the proceedings and then report to the king what certain members were saying and also to report about their attitudes etc and many members were victimized. So, there was no freedom of debate. So, they decided to invent a method where the king's spy would be out of the Chamber, completely physically out of the Chamber. They invented this method of converting themselves into a Committee of the whole being presided by a person of their own choice and in the absence of the Speaker who was that time as I said a nominee of the king and a spy for the king. So, they invented this method but now as far as we are concerned in our National Assembly and in other common parliaments, that stage is found to be suitable despite its historical origins. It has been retained because of its practical utility; that it is a stage where the House as a whole can examine the details of the nature before it. It is the Stage where you can make amendments because during the Plenary, you can only have a General Debate. So, this is a convenient stage for Delegates to look at the details of the Draft Bill and the reports.

Having moved from the Technical Working Groups, it is important that the whole group, all the Delegates now sitting as a Committee go through the same document in the same way that the Technical Working Groups went through the document. This means that during the Consideration Stage, you will go through the Chapters, the reports of the Technical Working Groups, Article by Article. You can amend the document, you can change what the Technical Group recommended because you are also a Committee and it's a higher Committee, a Committee of all the Delegates and so a more powerful and more authoritative Committee to make final decisions on the particular Articles. So, that will be sub-stage two. Now, before we go to that stage, there will be, by the end of this week, reports which will be compiled by the

various Technical Working Groups. What happens is that the report which will have been compiled by the Working Group will be adopted first by the Working Group concerned and formally adopted. Then, after that, there will be a Motion by the Technical Group to report its Consideration of the report and Draft Bill to the Committee of the whole House. So, there will be that reporting preparational report at the Technical Group level and then that report will be adopted by that Committee and then it will be forwarded to the Committee of the whole Conference. Then- well I have talked about the Committee of the whole.

After the Committee of the whole, there will be the other stage where that Committee of the whole Conference will convert itself again into Plenary to receive the report of the Committee of the whole Conference to formally receive the-- That would be the adoption stage. So, after the Committee of the whole House, there will be a Plenary. There is something – you just follow, I was using page 1 and page 2 of that document, this 9 page document. On page 2, you will find there is the adoption stage in which the Plenary of Conference will sit and search as a Plenary to receive debate and adopt the report and the Draft Bill as emanating from the Committee of the whole Conference. Then, there is another stage which is a stage within a stage, that is called Reconsideration. This means that if for instance, the Committee of the whole Conference thinks that a certain matter needs to be referred back to the Technical Working Group which dealt with that subject, that can be done through this type of procedure; that is the whole report of that Committee can be referred back to it in respect of a particular Article or particular provision.

Now, reconsideration can occur at two stages; first, the Committee of the whole Conference can refer a matter back to a Technical Working Group. The second form of reconsideration, is where, after the Committee of the whole Conference has submitted the reports to the Plenary for adoption, it decided that a particular area, a particular Article needs to be considered again. So, the Plenary can refer the matter back to the Committee of the whole. Now, if you don't understand at this stage, still we are going to repeat this, because those were the general comments.

Now, I will go to (b). You can see (b), on page 2 and this one I will read out and explain, it will be clearer that way. That is reporting by the Technical Working Groups. It is taking place, you are aware of this, you know what is happening in the Technical Working Groups. That the

Rapporteurs assisted by the Clerk of the Technical Group and Programme Officers prepare the report of the Technical Working Group unless that context otherwise requires-- When I say Technical Group, I mean Committee. I am using the two terms interchangeably. Now, after the Report is compiled and adopted by the Committee that is Technical Group, a member will move a Motion in that Committee that the Committee do report to the Committee of the whole Conference, its consideration of – now here you can mention the Chapter that you have been discussing etc, Chapter or Chapters of the reports and Draft Bill and its approval thereof with or without amendment. So, the Motion will take that form, that is in the tent. Now, if the Motion is adopted, the report is forwarded to the Rapporteur General for consolidation with reports from the other Committees and onward transmission to the Steering Committee. So, the reports you were compiling, once you adopt them and you forward them to the Rapporteur General, the Rapporteur General will put them together and then they will be transmitted according to the regulation, that is what they say, to the Steering Committee. The Steering Committee will determine the time the consolidated text will be presented to the Committee of the whole Conference and the order in which the component report of the Committees will be considered. It may seem convenient to consider the report in the alphabetical order that is A to M. We have Committees A to M but it may be more logical to consider them thematically. For example, the Chapters on Devolution and the system of Government which underlie several other Chapters may be considered first. You are aware of this; that certain Committees have deferred certain Articles pending the decisions made by the Devolution Committee, for instance, the Devolution Committee is very important and it may be decided that we take the Devolution Chapter, we can take the Preamble and Human Rights etc, and then go to Devolution because other Chapters will have a bearing, sometimes a very big bearing on the decisions arrived at in the Devolution Committee or the contents of the Devolution Chapter. So, it will depend on what the Steering Committee thinks is the best way to go about it.

Now, the Rapporteur General will present a consolidated report to the Committee of the Whole Conference and maybe make a speech. The presentation may be preceded by general comments by the Chairperson of the Conference, However, it should be noted here that the Chairman/Chairperson of the Committee of the Whole House may not be the Chairperson of the Conference, it could be decided somebody else should do it but if the Chairperson wants, he can chair the Committee or may be have somebody else appointed because after that, the Committee

of the Whole Conference will report to the Plenary and the Plenary will be Chaired by the Chairperson himself. So, instead of having the Chairperson report to himself when the Committee of the Whole converts itself into a Plenary, it may be advisable to have somebody else, but that will be determined by the Steering Committee.

At that stage depending on the order in which it has been decided to take the reports, the Chairperson of the Committee of the Whole Conference, that is number 6, “will invite the Convenor/Rapporteur/other member of the particular Technical group whose report is set down for consideration to move the following Motion: That the report of the, say Technical Working Group F, be approved”.

At that point, “the Secretary or the Chairperson himself as may be convenient, calls out in their numerical order, the Articles in the Chapter under review”. For instance, well, I have been working with the Technical Working Group Committee F, on Legislature, so in this case the first Article will be Article 101, so if we are taking Technical Working Group Committee F’s report, the Secretary would call out Article 101, either read it; the Whole of it or just read the number and the short title and then, after that, any body wishing to propose an Amendment on that Article or to that Article, would take the opportunity to do so. So I said, “the procedure followed in consideration stage of Articles in Committees, (that is in technical Working groups, which you are familiar with) is then repeated in respect of each Article during the Committee of the Whole”.

Now, here we say you are referred to the document which was used in the morning, for if you want more information on how to go about Amendments, etc and maybe by now you have copies. The one entitled, “Chairpersons/Delegates Guidelines”. If you do not have it, you can always get it because they are still being produced.

Number 8, “as pointed out earlier, notwithstanding that the Committee of the Whole Conference, just like a Technical Working Group, may consider a provision of the Report and Draft Bill in any degree of detail, the Committee may still deem it expedient to have the provision recommitted to the concerned Technical Working Group for reconsideration”. This what I called reconsideration, where you think this matter to be discussed again by a smaller group because the

Committee of the Whole House might be too unwielded to discuss that particular point thoroughly, that matter can be referred back to the Technical Working Group. “In that case, a member moves an amendment to the Motion. (The Motion we have seen is that the report of the Working Group be approved). So, it will involve amending that Motion before the Committee of the whole of the House, that is the Motion to adopt the report of that Committee and add those words, the words in bold on page 4, “subject to the recommittal of the report to the Technical Working Group in respect of say, Article 112 of the Draft Bill”. So the Motion can be amended and the matter referred back to the, say, this Committee F, subject to the recommittal of the Technical Group in respect of Article 112 of the Draft Bill. [As a matter of interest, the relates to recall of Members of Parliament by the electorate]”.

Now, something can happen like that, the particular Article can be referred back to the particular Committee.

Then look at number 9, “The procedure during the reconsideration by a Technical Working Group is the same as that applicable when the Technical Working group first considered the Report and Draft Bill”. So when the matter is referred back to the Technical group, it will just follow the same procedure it has been following. If there are two Articles, it will follow the numerical order. It will consider the particular Article and if by changing that Article, the other Articles have to be changed, then it can make consequential amendments. Amendments that are necessary to give meaning to the particular Article which was referred to it. In this particular case, for instance, Article 112.

Now, “when the reconsideration say, of Article 112 has a foresaid is completed, a Member moves: That the Committee do report to the Committee of the Whole Conference the reconsideration of its report in respect of Articles 112 of the Draft Bill and its approval thereof [with or without amendment (s)]”. So, the Committee, after reconsideration, reconsidering the matter referred to it by the Whole Conference, will report back to the Whole Conference.

If that is done, then “the Motion which was before the Committee of the Whole Conference, that is the, “That the report of the Technical Working Group be approved”, is resumed”. The debate

is resumed after the report on the particular Article which was contentious is completed and a report has been submitted then the debate on the whole report is resumed. That is 11.

12, “If there are amendments to the report of the technical Working by the Committee of the Whole Conference, the final Question of the Motion to be put shall be “That the report of the technical Working Group F be approved with amendment (s)”

So, having gone through all the Articles, the Committee of the whole Conference will adopt. Will adopt the whole report by adopting the Motion before it and the Motion before is that, the report (it could be a, b or c) be approved, so that it can be adopted and if there are amendments, it will be adopted with amendments, if not, it will just be adopted as introduced.

Now, we go C; that is, “Reporting by the Committee of the Whole Conference”.

“After the whole Conference has gone through all the reports, one by one that the report from the Technical Working groups, then a member will move: That the Committee of the Whole Conference do report to the Conference its consideration of the Report and Draft Bill and its approval thereof [with or without amendment (s)]--” Etc etc. So, there will be that Motion for adoption by the Committee of the Whole Conference after considering every Report, every Article in the Draft Bill, mainly and the Draft Report, that is the report of the Commission.

“If the Motion is carried, then the Rapporteur General will revise the consolidated text--” because you remember he is the one who introduced the consolidated text of reports from Technical working Groups.

Now that the Committee of the whole conference has gone through those reports and may be made amendments, it is now his duty to prepare a composite text - a consolidated text – that is a text of all what has happened to all those technical Committee reports.

Then after that, “The Drafting Team ensures that all provisions of the Draft Bill are consistent with one another and that the legislative language is uniform, consistent and conforms to the best

drafting standards and for this purpose the Drafting Team will need sufficient time that is provided for on the regulations”.

We do not want to have a shoddy Draft at the end. We should try to make sure that there is conformity with the best drafting standards.

After that, “Copies of the Rapporteur General’s Report, after he has put the text, all this text together into a composite (whole), then the Report will be circulated – distributed to all Delegates”. So, now we have finished, for the time being with the Committee of the Whole House.

Let us go to the next stage that is:

D, “Adoption”.

“The chairperson, in consultation with the Steering Committee, will appoint a time for the Plenary to sit, debate and adopt the Report and the Draft Bill”.

We have finished with the consideration stage and we have now gone to the Plenary. That is now the whole Conference sitting properly - not in Committee but in Plenary - to adopt the Report.

“At appointed time, that is according to what the Steering Committee has decided, the Chairperson will invite a member to move that: The National Constitutional Conference adopts the Constitution of Kenya Report and Draft Bill--”. That is in Plenary, so there will be a Motion to adopt the report.

“Since the Motion is in Plenary, as opposed to consideration stage, it needs a seconder--”. I should have said, “During the consideration stage, a Motion does not have a seconder”. Now that we have gone to the Plenary, the Motion will need a seconder. “--Once it is seconded, the Chairperson proposes the Question of the Motion”. And of course proposing means repeating the terms of Motion, You will say, “I propose the question”, not “I put the question”. To open

debate, you propose and then debate follows. So, he will propose, - “propose” underlined, – the question that the National Constitutional Conference adopts the Constitution of Kenya Report and Draft Bill, 2004.

“At the conclusion of the general comments...” and the general comments will not be the type of debate we had when we started, when there was a general debate, since the document has been gone through, points have been made, the debate has already taken place. We can say maybe there will be comments of a general nature, “... rather than a full-fledged debate” but it will be a debate, nevertheless.

“At the conclusion of the general comments the Question of the Motion is put and if agreed to, the Report and Draft Bill are deemed to have been adopted by the National Constitutional Conference”.

Let us revisit this reconsideration because there is something which is likely to occur at that stage or which might occur at that stage.

Now:

E, “Reconsideration”.

“A member cannot seek to amend directly any provision of the Report and Draft Bill unlike during the consideration stage”. That is during the adoption stage, you cannot stand up and say, “I wish to amend such and such Article. That cannot happen because the Plenary is for general debate; amendments can only be made during the consideration stage. “However, a member who feels strongly about a provision in either instrument, that is in either the report of the Commission Draft Bill, may seek to amend the main Motion before the Conference (as reproduced above)--” – We are talking about the Motion and the Motion is: “That the National Constitutional Conference adopts the Constitution of Kenya Report and Draft Bill...” that is the main Motion before the Plenary, somebody can move a Motion, an amendment to that Motion and add those words, the words, I talked about earlier, “--subject to the recommittal of the Report and Draft Bill to the Committee of the Whole Conference in respect of some specified part”.

So, in Plenary, if you want an amendment to be made, it can only be made in Committee of the Whole Conference, which means that particular-- The whole report has to be referred back to the Committee of the Whole Conference in respect of some specified Articles. So, again you have a chance to revisit a matter you think was not properly decided during the consideration. You can refer the matter back to the consideration stage, in this case to the Committee of the Whole Conference. Of course the question arises as to whether the Committee of Whole Conference, after having the report referred back to it, can refer the particular item to the Technical Group.

If that is desired, then it would mean that when the Plenary is referring the matter back to the Committee of the Whole House, there should be a provision within that Motion, that, that particular Committee is revived because, the rules of procedure say that, the Technical Groups die naturally upon receipt and presumably the adoption of their report by the Whole Conference. Then the Technical groups cease to exist but they can be revived.

Now, “the procedure during the reconsideration by the Committee of the Whole House is the same as that applicable when Committee first considered the Report and Draft Bill”. So, when the matter is referred back, you follow the same procedure, when it comes to amendments etc, it is the same procedure.

“Accordingly, a member moves: That the Committee of the whole Conference--” So after the Committee of the whole Conference has considered the matter which has been referred back to it, then a member will move that the Committee should now report back to the Plenary.

Let us go to 4, “whether the Motion in number 3 is adopted or rejected, the Committee of the Whole Conference resolves itself into a whole Conference which resumes debate--” Well if, during the Plenary a matter is referred back to the Committee of the whole Conference, it means - because it is the whole report which has been referred back to them – that, it is that the Plenary will convert itself into a Committee of the Whole in order to discuss that matter which has been referred to the Committee of the Whole Conference. Now, after that consideration is completed, then that Committee of the whole, will convert itself again into the Plenary and continue with the main Motion and the Motion is as we saw that: “The national Constitutional Conference adopts the Constitution of Kenya Report and Draft Bill 2004”.

“When the debate on the Motion is concluded, the Question of the Motion is put and if agreed to, it means that the Constitution of Kenya Report and Draft Bill are adopted by the National Constitutional Conference”. After the Motion has been debated, the question is proposed and the debate has taken place and now the matter has been concluded, we talk about “putting the question”. So, the Chairperson will put the question and if it is adopted, it means that the Draft Report and the Draft Bill have been adopted.

Now, Let us go to F, on page 8. This is the question of the **“Referendum”**.

This is a matter which may occur during the Committee of the Whole Conference. That is why this Committee is very important; it is really the one which will make crucial decisions and almost final decisions and that is where such matters as referendum may arise. So, it is important that we understand this procedure. Now, let me read;

“In the foregoing paragraphs reference has been made to the issue of referendum”.

“Section 27(5) of the Constitution of Kenya review Act provides that all questions before the National Constitutional Conference shall be determined by consensus--” You got a lecture on consensus, it is very, very important; I wish just to underline the importance of the consensus. It is the consensus which will make sure that the majority does not impose their will or the minority and which will also ensure that the minority does not obstruct the business of the Review process. “--But in the absence of consensus such decision shall be determined by a simple majority of the members present and voting”.

So, first consensus and whereas you may find some issues being controversial etc, since this is a Constitutional process which is mainly a political process, You should not be put off by that. I have had occasions at the United Nations to get involved in very long and time-consuming processes. For instance you take the Law of the Sea process, it took many years but finally a compromise was reached. So, however much time it takes to hammer out a compromise, make sure you do not give up. It is worth having it. Consensus is very important.

“It further provides that any question concerning a proposal for inclusion in the Draft Constitution shall be determined by at least two-thirds of the members present and voting”. Just note that phrase, “members present and voting”. That is important. Before 2002, I think it was August, 2002, what was required was a majority of all members of the Conference who were entitled to vote. That is all Delegates excluding Commissioners, but in year 2000, just before the dissolution, an amendment was made to include those ones present and voting, so it is two-thirds of the Delegates who were entitled to vote, who were present and not only present, (*microphone failure*) vote.

So, in order to get two-thirds, there must be a vote. That is only time you can know who is voting. There will be those who will say, “**AYE**”, there will be those who will say, “**NAY**”. So to get the total number of those voting, of course you add the two together; the votes for “**AYES**” and the vote for “**NAYS**”. Then you check whether, the votes for “**AYES**” constitute to two-thirds of the total number of those who voted. So that is the arithmetic.

If the proposal-- The further provision is that on any question concerning the proposal for-- “If the proposal is not supported by a two-thirds vote” – as I have explained but is not opposed by one-third of the members present and voting. For instance if those who vote “**NAY**” are not one-third or more, then there is provision for a further vote. There is a chance for another vote. Again, if on taking further that other vote, if the proposal is not determined, then the National Conference may by resolution, supported by at least two-thirds of members present and voting determine that the question be submitted to people for determination through a Referendum. So, a Motion can be moved to have that matter referred to a referendum that can be done at that stage.

So, you can see that process. First, you have the vote then if the provision is not opposed by one-third or more, then there is rule for further vote. If the further vote does not decided the matter, and then there is room for a Referendum. So, that is the procedure. Of course after that, when Bomas has completed its process, then the document will be polished up according to the procedure. To the Act, it will be forwarded to the Attorney General and the Attorney General is supposed to forward it to the National Assembly for enactment. If the National Assembly cannot amend because this Bill will be taken there as a Constitutional Amendment Bill, that is a bill

amending the present Constitution which means the provisions of Section 47 of the Constitution apply. It will be a fundamental amendment but still it is an Amendment because the Review Act itself in its long title, talks about “reviewing the Constitution in a fundamental way”.

So, when it goes there, it will be treated like any other Constitutional Amendment Bill, at least that is what it is envisaged in the Review Act and since it has to be passed according to the provision of Section 46 and 47, it will need a two-thirds majority in the second reading so, it must be made sure that this majority obtained in the second reading stage again in the third reading stage, there will be need for two-thirds majority. The third impediment, which can be there, is that the Act itself says that it has to be passed within seven days. This means that if the necessary majority is not raised within seven days, the Bill lapses.

I think, Chairperson, I have covered the main points concerning the procedure. It was not the intention to go into the minute detail. That can be done during those working groups which were supposed to sit this afternoon and if there is no time, they might sit tomorrow. The details can be gone into at that stage so, thank you very much for your attention. *(Clapping)*.

Hon. Delegate Abdulrahman Wandati: I wish to thank both our Speakers, Mr. Ndindiri and Mr. Gicheru who has just spoken. I think they deserve another round of applause. I think this has been very, very, illuminating *(Clapping)*. I am tempted not to go into any recap of what I have said. I think I have not seen this hall as attentive as it was today and if I can use my own position right now as a barometer, I think I have been enlightened and I am able to undertake the next stages of the task before us even much better and I think this is the same way that the rest of us feel.

Now, my Co-Chair, has proposed that we do what we did in the morning. We open up the floor for questions and answers and I would really like to urge all those who will get the opportunity, to address themselves to what has been presented right now to try to be as brief as they can so that as many of us as possible, are able to have our doubts clarified and our questions answered by the two Honourable guests that we have here with us this afternoon. I will hand over the mic to my Co-Chair who will give us the programme as it looks like between today and Wednesday and then open the floor for questions and answers which will be answered by our two Speakers. Thank you very much.

Hon. Delegate Joyce Umbima: Thank you. As you will recall – sorry, about the water – We were going to break up in groups this afternoon and we had told facilitators to go over exactly to the presentation we had in the morning and this afternoon. Unfortunately, we may not have enough time so, I would like to give this opportunity to questions from the floor and maybe clarification from our presenters. Tomorrow, which is the specific day, we had put aside time to have a media event and I can see they already have a programme for tomorrow and we may not be able to meet tomorrow to continue on with the discussions but I am informed on Wednesday is reserved for groups to continue on with an overview again of the procedures to be followed until the end of the Conference and our two presenters will be with us in two groups and we can go over the details and the gaps and obstacles that we foresee in terms of coming to the end of this Conference and conclusion.

If this is acceptable, then I would like to allow the remaining time for today for questions from the floor and clarification, if any.

(Consultation at the 'high' table).

Hon. Delegate Joyce Umbima: There is the first card to go up was the one with white which I cannot read the number on – is that 2--

(Consultation at the "high" table).

Hon. Delegate William Ole Yiaile: Point of Order.

Hon. Delegate Joyce Umbima: Is this a Point of Order? 361. Can we take the two-- Was it before the Point of Order?

(Consultation at the "high" table).

Hon. Delegate Joyce Umbima: Can we give the first person to speak before the Point of Order?

Hon. Delegate William Ole Yiaile: But you got to answer the order first. My point of Order is this one.

Hon. Delegate Joyce Umbima: Okay, go ahead.

Hon. Delegate William Ole Yiaile: We have been given a programme that indicated that Wednesday would be the day to visit Magadi Soda Company to see the problems the communities have there. Now, you have just told us that the programme has been put off and Wednesday has been changed with something else. Is it really in order when the communities are waiting for us there and this Honourable congregation is actually denied the right to go and see the problems that the community around Magadi has been seeing for the last 100 years?

Hon. Delegate Joyce Umbima: I think that is a matter which will be taken back to the Steering Committee. I am not in a position to respond to that. I had given 277. Yes.

Hon. Delegate Leslie Mwachiro: Thank you Chair. My number is 599, Leslie Betawa Mwachiro. I am sorry you couldn't read my number but that is what it reads. Chair, I would like to refer you to Page 8 of this short document; the one with 9 pages, *Consideration, Reporting and Adoption*. I think (f) there reads, "Referendum" but in the actual fact it is voting. It is not Referendum. I wonder whether I would be in order to correct that Referendum to read, "voting". While discussing (f) because I think Referendum should be (g) and it should be on page 9. The last two paragraphs are basically discussing Referendum.

Now, coming to the voting which I am trying to put in as (f), Chair, you have not talked about the issue of quorum. When you simply say, "Members present shall vote", supposing the members present do not constitute a quorum, do we still continue to take the vote? This is because even when we are doing presentations, the issue of quorum was very paramount and there was no quorum, the whole Plenary was actually adjourning but when we come to taking very crucial votes, the issue of quorum has actually been left out. So, I wanted to beg the indulgence of the presenters to tell us about the voting procedures. Whether the issue of quorum is paramount or not. Chair, I have a very substantive contribution to make after getting this clarification.

Hon. Delegate Joyce Umbima: Thank you. I would like to take a few more presentation before the presenters can answer to that. Shall I go, just above then I will come back to you. 376.

Hon. Delegate Chesmei Mafunga: Thank you, Chairman. I would like to make one point from Bomas I & II which has been very much talked about and that is the recall of non-performing MPs. Now, this has been said simply because the people did not have the understanding as to why that point was made. I now want to clarify here to the whole Plenary so that everybody knows why this matter came up. In the old Constitution, fairly enough, it did not say anything and therefore, the MPs once they came here in Parliament, they only thought of themselves and eventually forgot to do to the *Wananchi* promises they made to them at home while they were looking for votes.

These issues almost start from one point. Who is who among us all? Between the MPs and the *Wananchi*, who employs whom? If the answer is that *Wananchi* are the ones who employ the MPs - and I find that the MPs are employed by *Wananchi* who have no powers over them because they have not met any terms and conditions of their service. These people, do not even recognize their voters. That is why this recall came about because during the normal working days, we used to agree that when an MP goes to Parliament, he would assist these *Wananchi* to accomplish this and that. But the moment he went there, he never even looked back and he never even had a chance to report back as to where they have reached with their task of what they promised to do.

Therefore, I feel that while this section has been so much talked about that, “ Oh, it is not worthy of it” or “In the new Constitution, it won’t affect us”, I still insist that this point is still valid because even when we elect new MPs going to the devolved Governments, we will still require MPs to go and solicit for funds for development and come back and report to *Wananchi*. Those of whom we have elected on the ground and in the devolved Government, will also have to be reporting to *Wananchi* as to what they are doing towards what the *Wananchi* wanted; if it was developing schools, dips and so on.

So, I am suggesting that instead of this section just being thrown out as I had heard my friends uttering that we turn it into a section whereby we will set up terms and conditions of service--

Hon. Delegate Joyce Umbima: Thank you.

Hon. Delegate Chesmei Mafunga: --of all elected representatives of *Wananchi*.

Hon. Delegate Joyce Umbima: Thank you, Honourable Delegate. Can we all restrict our questions and comments to the presentation for today?

Hon. Delegate Chesmei Mafunga: Anyway, thank you very much because I have been listened to. I agree now.

Hon. Delegate Joyce Umbima: Thank you. The next row is this one here in the middle. Nobody. I think you spoke in the morning. 386.

Hon. Delegate Edward Ohare: Thank you, Chairlady. My names are Edward Charles Ohare. The presenter towards the end of his presentation, did say that when the Draft will be ready and submitted to the Attorney General, the Attorney General after five days of Gazzettement of the Draft, will send it to the Parliament which again within seven days, should be able to handle the Draft. I wonder if the process goes, say, to the Attorney General, gazzettement and then to Parliament and at that time the Parliament is in recess, what will be the position? Chairlady, that should be clarified.

Hon. Delegate Joyce Umbima: Thank you, clarification. The next row? Any person who would like to speak in the next row? Nobody. We move on to the next one. We have 316.

Hon. Delegate Gitu wa Kahengeri: *Bibi Chairlady, jina langu ni Gitu wa Kahengeri, 316, Delegate from Thika. Mimi nataka kutoa shukrani kubwa kwa wale waliotoa mazungumzo ya leo juu ya mambo ambayo tunaendelea nayo. Nimefahamu wazi wazi ya kwamba kazi tuliyonayo hapa ni kazi ngumu ambayo inahitaji sisi kujitolea muhanga kuitimiza. Nimesikia pia tukimaliza kazi yetu hapa na tukiipeleka kwa Attorney General, itakwenda kwa Bunge na Bunge imeulizwa na sheria kupitisha Mswada kwa muda wa siku saba. Vile vile, nimesikia muda wa siku saba ukiisha, bila ya kupitisha Mswada huo, unakufa Mswada huo; it lapses. Hii maana yake ni kuonyesha ya kwamba ikiwa Wabunge hawatakuwa na imani na Draft hiyo, itakuwa ni shida*

kuwapata katika Bunge kwa siku saba na kupitisha Mswada huo. Mswada huo ukifa basi sisi watu wa Kenya; viongozi walioko hapa, itakuwa ni kazi bure tumefanya katika nchi yetu kwa wakati wote ambao tumekuwa katika Bomas of Kenya.

Katika mazungumzo mengi yaliyofanywa na watu wa Kenya kuanzia miaka mingi iliyopita juu ya Katiba hii, mimi nitasema hivi: Wale walioko hapa, mimi sitaki kuzungumza juu ya mtu yupi ama kumlaumu yeyote lakini mimi nataka kusema kwa walioko hapa sasa na wataokuwa katika Bunge wakati huo, wajue ni Wananchi wa Kenya ambao wametumwa na watu wa Kenya, wanaotaka kuiona Katibaa mpya haraka iwezekanavyo. Kwa hivyo, ikiwa kuna matatizo Wabunge wanayaona katika Katiba tunayozungumza hapa, wasingoje kuikosoa katika Bunge. Hii ni kwa sababu katika sheria tunayofanya kazi nayo inasema tuwe nao pamoja. Kwa hivyo mimi nawauliza mahali popote waliko wanapozungumza, wanapokaa, wajue kazi hii tumeaminiwa nayo na Wananchi wa Kenya na isianguke katika mikono yao. Nitamalizia hayo hapo.

Yangu ile ya mwisho, nitasema ya kwamba asubuhi ya leo nilijaribu kupata lakini lazima niseme kitu kidogo juu ya maneno hayo tuliyokuwa nayo. Kwa sababu sisi tukiwa tumetumwa na watu wa Kenya na tukiweka Katiba ambayo inatakiwa na watu wa Kenya, sijui kama mnafikiria jina letu litakuwa mbaya au tutainuliwa na Wananchi kwa kiwango kikubwa sana tukiwatolea Katiba mpya. Kwa hivyo Delegates wenzangu, tuwache maneno ya kulaumiana na Wabunge wajue wakiwa na uwezo zaidi wa kusaidia nchi hii – na nafikiri hii ndio sababu yake – wengi wao tuliwatuma kusoma. Hatukutuma hawa kusoma halafu kuona sisi kama siafu. Tuliwatuma wakijua kitu katika university case halafu wakirudi, waonyeshe wananchi wa Kenya walisoma na masomo yao ya juu ni ya faida kwa watu wa Kenya. Shukrani.

(Clapping).

Hon. Delegate Joyce Umbima: I am attempted to go on this row here, 381.

Hon. Delegate Rita Katamu: Thank you very much, Honourable Chair. My names are Rita Katamu, Delegate 381 from Butere-Mumias. I want to thank the presenter very much for the work he has done. Actually, we are now enlightened. My question here, Madam, is that we have

the Consensus Building Group. I wonder where they will come in our progress here because I was feeling probably if there is any consensus to be reached at, then it would be probably after the Committees have presented and then we would have come up with issues that actually need us to sit down. So, could you please tell us where the Consensus Group will now come in the progress of our meeting? Thank you.

Hon. Delegate Joyce Umbima: Thank you. The next row is this one over here. The one I see is 389. I will come back to you. 379.

Hon. Delegate Levi Ahindikha: Thank you, Madam Chair. I am 379, Levi Ahindikha, District representative from Kakamega. Madam Chair, I will be very brief. For example, I just want to find out the Committee has done its work, it has presented the report to the Plenary and maybe to being the form of a Motion for that report to be considered. I am wondering whether the same will be Seconded because during the presentation, I did not hear the presenter talk about the Seconding.

Secondly, Madam Chair, honorable Delegate 316 has just talked about the Bill being taken to the Parliament then seven days lapses. What does our *Sheria* say when the seven days lapses and nothing has been done? What does the law say? Thank you, Madam Chair.

Hon. Delegate Joyce Umbima: Thank you for that question. I would like to take two more questions. One from this side. 010.

Hon. Delegate Ruth Oniang'o: Thank you madam Chair. I am Honourable 221, I have lost my Card, Madam Chair. Let me say this: I have two worries in thanking the two presenters. I have two very serious worries at this stage. One is that apparently, the Kenyans do not even know what a new Constitution portends for them. I continue to hear people talk and send in letters to the editor complaining about what we are doing here. Really, we need to make Kenyans know that a reviewed Constitution will be a life-saving Constitution for them. It will give us a chance to repossess our country, to re-own our country and to feel a sense of belonging in our own Kenya. I feel we need a media hear to really help us. What a new Constitution would really mean for the ordinary Kenyans (*Clapping*).

Secondly, I continue to have worries about the role of Parliament. I think Parliamentarians do not recognize the very lofty responsibility they have with this Constitution. We can finish what we are doing here and at the end of the day I can assure you, there is no guarantee that we are going to have a new Constitution I would just like to have *Mzee* Gitu wa Kahengeri's wisdom and others like him, to go as a delegation to Parliamentarians. We are meeting tomorrow as a "*Kamukunji*" and I do not think anybody would walk away from this *Mzee* and others of his like to appeal to Parliament to tell them, "You have not been at Bomas the way you should have been but let us describe to you what your responsibilities are from the time the document leaves Bomas." I think it is not fair also that we are all lumped together.

Some of us have been here diligently and very committedly and I think we should now start tracking (*Clapping*) everybody individually. I took an oath me, as Ruth Oniang'o, not as a Parliamentarian with everybody else and we have to be tracked individually until that document is delivered. And at the end of the day, we shall say, this is what each one of the 629 Delegates did. I do not want to be lumped with everybody else, Madam Chair. So, I would just like those worries actually to be addressed. But finally, when we talk of two thirds in Parliament and I know my Clerk of the National Assembly is over there. Are talking of two thirds of the quorum of thirty? Or are we talking of two thirds of the two hundred and twenty two? Thank you. (*Clapping*).

Hon. Delegate Joyce Umbima: Thank you for those comments. About the media event, I have just said tomorrow we will have a media event and most of the issues to do with the media will be addressed tomorrow. Next row, I would like to have maybe one more round and then our presenters can respond to this. The only person I can see in the next row is 361.

Hon. Delegate William Ole Yiaile: 361, Ole Yiaile is my name. First I want to thank the presenters for their enlightening and professional presentations. Like one of us said, we are now more enlightened on how to handle the debates, and the manner in which we shall conduct it.

But then I have a question, what is going to happen if a consensus is not reached and a referendum has taken place but finally Parliament rejects it? A referendum has been held and

Parliament rejects because finally everything will end up in Parliament, what is really going to happen? Can we be enlightened on what the law says there. Thank you very much.

Hon. Delegate Joyce Umbima: Thank you for being brief. The next row is the one immediate, no card is up, so I will take the row with the card up. 375.

Hon. Delegate Jane Kauka: Thank you, Madam Chair. My name is Jane Kauka from Lugari District. I would like to say that, in my understanding, this Consensus Building Committee said here was just between the Honourable Delegates and our Members of Parliament.

I would like to appeal to our Members of Parliament who are our brothers and sisters that we all came here because of Kenyans. We came here to make a Constitution for all Kenyans, let them not see us as if we are animals the way they called us. We are all people created by God and we have the same thoughts which can make a Constitution. Let us all come together and make one group so that we come out with one Constitution.

Let us deliver this child to the *wananchi* so that when it goes to Parliament and then they kill it, the *wananchi* would know that the child has died in Parliament and God will have to condemn them, it will not be our fault then. Let us come together with them, let us work together here and deliver the Constitution to our people who sent us here. Thank you. (*Clapping*).

Hon. Delegate Joyce Umbima: Thank you. I am moving to the next row, which is the middle row here, I see nobody on that row so I will jump on to the next one, 396.

Hon. Delegate Happy Gloria: Thank you, Madam Chair. I am Delegate number 396, Happy Gloria Wabwire. Madam Chair, I only want to second what has just been said by Delegate number 010, though she said that was not her number, that is Delegate Ruth Oniang'o.

I think she has suggested something about a "*Kamukunji*" of the Parliamentarians tomorrow. Madam Chair, I am taking it very seriously, because out of this "*Kamukunjis*" a lot of things take place that make us as Delegates here think that maybe the Parliamentarians are out to scuttle this process. Therefore, I am standing here to second what she has said that we may even

nominate some few Delegates here and I am proposing under the leadership or under the wisdom of Honourable Delegate Kahengeri tomorrow we meet the Parliamentarians in their “*Kamukunji*”. They are not going with the package of contentious issues, but they are going to talk to the Parliamentarians to tell them or to remind them of their duty here as Honourable Delegates to this National Constitutional Conference and to tell them that, you know, they should be playing their role here and that they will be judged as individuals the way Honourable Delegate Oniang’o has put it, but not as a group and that we need them here. I am seconding that, Madam Chairlady. (*Clapping*).

Hon. Delegate Joyce Umbima: Thank you. I am time pressed, one of our presenters has to leave at 4.15 p.m. and perhaps you could benefit more if we had a response from them and then we could take another round of questions. So, let us give our presenters time to benefit, I know where I have stopped and I will come back to you. I am seeing you and I am hearing you, I will come back. Thank you.

Hon. Delegate Samuel Ndindiri: Thank you, Madam Chairlady. You will agree with me that quite a good number of the points raised are--

Hon. Delegate Sammy Amunga: Point of Order.

Hon. Delegate Samuel Ndindiri: There is a Point of Order.

Hon. Delegate Sammy Amunga: Point of Order.

Hon. Delegate Joyce Umbima: Yes, what is your Point of Order?

Hon. Delegate Sammy Amunga: Madam Chairperson, I am number 382, Aswani Sammy Amunga. My Point of Order is, you had said the presenters are almost leaving, but we have contentious issues which we wanted to raise with them and they give us an answer before they go. But now if you are cutting us short, it will mean that we are not going to be satisfied with all the questions we wanted to raise before they leave. Madam Chairperson--.

Hon. Delegate Joyce Umbima: I said just one of our presenters will have to leave a little early, not both of them. So, I wanted maybe to benefit from the one who must leave early, he is leaving to Mombasa to join the team which is working on the Draft and I am sorry that the Kenya Airways might not wait for him longer than scheduled to take off, but we shall have one of them with us and we will take the second round of questions.

Hon. Delegate Samuel Ndindiri: Thank you, Madam Chairlady. In deed as we said from the very beginning, we will have a session, we will break out at some stage before we finish this whole process either tomorrow or the day after tomorrow as we find convenient here.

So, all is not lost yet, we still are together . I was saying most of the points raised, Madam Chair, you will agree that they appear to be of concern by Delegates of a political nature of consensus building, in fact the word keeps on coming in. Nevertheless, we do not operate in a vacuum and the rules do not operate in a vacuum. So, these efforts to bring consensus are good, they are good and we would request Delegates, Members of Parliament to keep on working at them because I think there is a commitment, from the very beginning this whole exercise is to have a good Constitution.

I will take a few points and then Mr. Gicheru before he leaves for Mombasa take the rest. There was a question raised by Honourable Gitu Kahengeri, the seven days, what happens *kama Bunge halikutani, kama Bunge liko likizoni, tutafanyaje?* Who will present the Draft or to whom whom will it be presented?

The law states, it is seven, sitting days when the House is actually sitting. *Kama Bunge liko likizoni, Draft yenyewe itasubiri mpaka Bunge likutane.* The President has talked about this process being completed, so the presentation must be within the sitting and the Parliament must address the Draft Bill within those seven sitting days.

There is the issue of two thirds that was raised by Honourable Ruth Oniang'o and she asked whether it is two thirds of parties or two thirds of members present. The current Constitution states, it is 65% or call it two thirds of all the Members of Parliament. In other words it is two

thirds of two twenty two members and that excludes the Attorney General and the Speaker who are ex-officio. The Speaker can vote if there is a tie (?) but it is exclusive for this exercise.

There was a mention by Delegate 396 of the Speaker's "*Kamukunji*". Let me reveal to you here that I sit in the "*Kamukunji*" because I am a Secretary to Parliament essentially and part of my duty is to attend those meetings. The Speaker's "*Kamukunji*" is not a new meeting. Those meetings started last year soon after the new Parliament and they address virtually everything and are held almost every week. These are in-house meetings that members need to discuss issues of concerns, they do not only relate to Constitutional Review, they have dealt with their own affairs, they have dealt with the way they are going to go about house keeping matters and so, you can see it is part of the progression.

The issue of Bomas has featured twice and during the last meeting, it was discussed, the issue of the legal hurdles that might come in the process of passing the Constitution. At no point did the members talk about scuttling this process and in deed in the two meetings the Speaker has asked them that we have to agree that this discussion we are having has nothing to do with the scuttling of Bomas. So, I would want to assure the Delegates here that the Speaker has not at any time chaired a meeting where scuttling of Bomas in entirety has been discussed, that must be disparaged and that is the true position.

Any other reports you have heard, I am not aware of and as I told you, I sat throughout all those discussions. I think I will give the rest to Mr. Gicheru to respond before he goes. Thank you very much.

Mr. Harrison Gicheru (Legislative Draftsperson): Thank you. I think the main points have already been covered. Maybe I could just add a comment or two on a few of them.

There was the question of referendum, somebody asked about the referendum. If there is to be a referendum, it must take place before the Bill goes to Parliament and according to the present provisions of the Act, it must be a referendum on specific issues which have been referred to the referendum by this very Conference. So, if there is a referendum of course that will mean delay, a referendum is not likely to take less than three months. In anticipation of a possible

referendum, the Commission has a duty to make sure that the procedures, the regulations are laid out. So, we have attempted to do that in consultation with the Electoral Commission and according to the Electoral Commission you will need about at least three months because it will be like conducting a general election like the one you had in December 2002. So, it is quite a mammoth exercise. Now, this has to be done before the Bill is finally prepared by the Commission and sent to the Attorney General for onward transmission to Parliament, so the referendum has to come at that stage.

Concerning the role of Parliament, a point was raised but the problem here is that in the Act itself, we have the organs of this process. We have the Commission, the Constituency Constitutional forum, the National Constitutional Conference then the referendum if any and the National Assembly. That is section (4) of the Act, so the process is laid out there. Here the difference between our approach, the Kenyan approach and the Ugandan approach and approach in other countries is that the matter will not end here. In Uganda they had a Constituent Assembly which had power to enact and that did not involve Parliament. The Constituent Assembly formulated the Bill and enacted that Bill and it became law without reference to other bodies.

Now, in our case the National Assembly has to be there and it is the final stage of the process and this Conference is the third in the process so that the approach which was adopted was of course for better or worse. In our unique situation you remember the wrangles which were there, there has been a lot of intransigence from the very beginning, so the Act was a compromised document and that was the product of negotiations and that was the compromise reached in the end.

There was the question of the quorum that was in the connection with National Assembly, yeah?

Hon. Delegate Joyce Umbima: Yeah.

Mr. Harrison Gicheru (Legislation Draftsperson): Okay, that has been covered. If I could just say something small about consensus. Consensus is an on-going process, even when you are in those Tents, you are supposed to kind of build consensus on the contentious provisions. For

instance, the time to be taken by the Committees of the whole Conference will be to a large extent depend on the quality of what comes out of the Technical Working Groups. If there is no consensus at that stage, you should expect those people who are not happy, the Honourable Delegates who are not happy at that stage to pursue the matter further when it comes to the floor of the whole Conference. So try to build this Conference at every stage, make sure that you work towards compromise, otherwise if you postpone problems, they will still be with you until the process is finished. So, consensus is at every stage.

There was a question about seconding a Motion to adopt a Technical Working Group. As I said there is no requirement for secondment or for seconding a Motion in the consideration stage. The Committee of the whole Conference as I explained earlier, is sub-stage two of the consideration stage. So, it will still be in the consideration stage and no Secunder will be required.

Mr. Ndindiri has mentioned the question of whether Parliament will be in recess, of course it will be expected to be in session and it all depend on the goodwill, but it is hoped that since it will be known that the process has been concluded here and the matter is going to the National Assembly, the National Assembly should be expected to make itself available to handle the Bill.

The question of recall Clause, those were just general statements and there was no question of procedure raised. I think I have covered those remaining points.

Hon. Delegate Joyce Umbima: Thank you for covering those many questions and clarifications that you have made. And we wish you good luck and journey mercies to Mombasa and let you go. I would like to introduce my Co-Chair for the last part of the session, Honourable Leslie Mwachiro who is sitting with me here, Delegate 599 who also belongs to the category of Political Parties and I want to welcome him to Chair the last part of this session by taking the Delegates starting from this side and directing the meeting.

Hon. Delegate Leslie Mwachiro: Thank you, Co-Chair. As the presenter is leaving, I would like to take it over from what Honourable Gitu Kahengeri, what Honourable Ruth Oniang'o and what the Clerk Mr. Ndindiri said that the Speaker at no time has Chaired "*Kamukunji*" for the

ulterior motive of scuttling the process. I think we welcome that statement and we want it to be so. But all the same, let the Speaker come in person on Wednesday and set the record straight, after all he is one of the Delegates, he is number 223, so he should come here and basically set the record straight the way the Clerk has said it and if we agree as Plenary here we can ask Honourable Ruth Oniang'o that when she goes for the "Kamukunji" tomorrow, she should invite the Speaker that he is wanted to appear at Bomas in person and set the records straight. *(Clapping)*.

So with those few remarks, I want to begin my session of chairing the final stage of today's session. I have basically noticed number 382.

Hon. Delegate Sammy Amunga: Thank you very much Honourable Chairperson. My names are Aswani Sammy Amunga, Delegate number 392. Mr. Chairman, I do appreciate the presentation which have been given by the presenters. The only worry I am having and I believe if we are serious as Kenyans and particularly 629 Delegates who are at Bomas here, we can be able to overcome the issue of referendum.

I do not see why we should be cheating the world that we can be able to reconcile Sudan, we can be able to reconcile Somalia and we are here and we cannot be able to agree amongst ourselves. It would be very bad, it would be shameful for us as Kenyans if we cannot be able to address the issues that the people of Kenya have mandated us to do and we fail to produce a document in a form of a Constitution. But there is an issue Mr. Chairman, which is really disturbing me, we have talked of Parliament and its role, we have the Constitution here with us, the only problem I am seeing, what about, maybe the Parliamentarians may not be able to scuttle the whole thing, and we agree that the document should go to Parliament.

Here we have Delegate number 1, he has not told us his input from Chapter 1 to Chapter 20 and the Constitution is very clear, even if the Parliamentarians would finish the business, that document will go to Delegate number 1 to assent. What about if it reaches there, those groups that we are hearing of now, may prevail upon him to refer the document back to Parliament according to Constitution which will now open discussion in Parliament. We would need to have at least the input of Delegate number 1, so that when this document goes to Parliament, if it

is agreed upon, it will not be referred back to Parliament to open discussions. That was the burning issue, Mr. Chairman.

Hon. Delegate Leslie Mwachiro: Thank you for those comments. The last column here, I can notice 384.

Hon. Delegate Evelia Rebecca: My names are Evelia Rebecca, 384. Madam Chair, it has been long. We have come a very long way with this document. We have gone through civic education, when we came here, the 629 of us took an oath We have been discussing though some of our brothers and sisters have not been coming here frequently. Some of them have not come, some of them have been going to different places for different meetings of which some of us have not been attending, as a result we just read in papers. Madam Chair, I thank the presenters of the day, their discussion has been helpful to my progress. In my understanding, referendum is the last part. Madam Chair, my question is, since the 629 of us signed when we were taking the Oath, we signed for those documents. When we finish discussing this or when our Bill will be now ready before it is taken to the Attorney General, shall we have anywhere to sign? Shall we sign all of us, 629? If that is the case, I do not see any reason our Parliamentarians can give. Because once we are sailing in the same boat and then you fall into waters before reaching the place you are going, then it is you who is going to perish in water when I still continue the journey by my boat. *Maziwa yakimwagika hayazoeleki. Asanti.*

Hon. Delegate Betawa Mwachiro: Thank you, Madam. We must come to a close. So I am going to pick almost the last people. I am not saying how many – I will go to 435.

Hon. Delegate John Katumanga: Thank you, Mr. Chairman for being gracious to me, I find it extremely incredible.

Hon. Delegate Betawa Mwachiro: Your name.

Hon. Delegate John Katumanga: My name is John Katumanga, Delegate 435. I find it extremely incredible that the Act whether negotiated or not, we are working on here came from Parliament and Members of Parliament were there and we came here and swore like everybody

says and all of a sudden people are doing very funny games. I find it very incredible. Personally, I am not worried what happens. Whether the Parliament will scuttle this or not, Kenyans are aware of what we are doing here and I want to say, do not underrate those people in the countryside, they know exactly what is happening here. Whether some people think they are wiser than others, I want to plead with the Delegates that we do our work. Let us complete our work, let us present the way it should be presented and let the blame go to someone else.

Chairman, I do not share the fact that we select some people to go and see Members of Parliament. I do not. We are equal and we are supposed to be here and if people do not want to be here, it does not matter whether you go to their houses, you will not change their opinions. We have even opened the door for them to go and negotiate with some of us reluctantly. This Conference has allowed that to happen reluctantly. The question of going to Parliament in a meeting which is not ours, I think it is not proper. I do not think it is proper, it won't succeed, the members know what is going on.

I have just come here about fifteen minutes late, Mr. Chairman. You will be interested to know that I have met a Member of Parliament who has been opposed to this Conference and when I asked him, he said, I am just simply frightened that Delegates are going to embarrass me. Then I said, there must be something wrong with you, either your English or your appearance that you feel that Delegates are going to embarrass you. Why don't you come because there are many Members of Parliament who have been here. There are even some Ministers who come here although they are very busy. We see them. There are those we share with, nobody has harassed them. What I know has happened here is when people talk in a manner to suggest that they do not want this Conference to continue. Those are the people who get the wrath of the Delegates. But anybody who says we go ahead, I have not seen that problem. Mr. Chairman, I think the President has repeated two or three times saying, this thing must be over by June. I hope he means that and I do hope that his Ministers and those who are against it understand English that he wants this thing to be done and completed.

I find it also very difficult to understand that the same members of the same Government can go out of this place and issue contradictory statements to the wish of His Excellency the President and yet they are supposed to be loyal to him. Mr. Chairman, I want to end up with a story of a

book I read called the “Animal Farm,” where the animals decided to kill the owner and they said when the owner is gone, we shall be equal and nobody is going to be bigger than the other. I understand in that story that the leader of those animals also became a dictator. We are making this Constitution not for ourselves but for all the Kenyans. It is not for a particular tribe or a particular personality or religion. It is for all of us and I want us to remember, we shall all go but Kenya will remain and we shall be judged according to our performance here. I want to say, if it was my power, I would even put a record of who has attended how many times so that Kenyans can know whether we have been joking here or working and who has been cheating who. Thank you, Mr. Chairman. (*Clapping*).

Hon. Delegate Betawa Mwachiro: Thank you very much for your good remarks, almost to the last one, 277.

Hon. Delegate Godfrey Mbuba: I am 277, Godfrey Mbuba M’Thigaa, a District Delegate. Mr. Chairman, I am worried. Where I come from, there are two animals, both mammals. One is a mole rat, the other one is a ground squirrel. They all dig holes especially in the sweet potatoes plantations. One digs a single hole and if you want to kill it, it is very easy. You just follow that hole, if you are tired you get a *mtungi* of water and pour in, the mole comes out and you kill it easily. There is also another one, a ground squirrel. It has to dig at least one hole with very many outlets. So, when the danger comes, when you are digging it will run out through the other outlet and gone to another garden, causing chaos. So I can see a situation where we are being misused because of course someone is aware that after we leave here, we are never to come here again. It indicates that this Act was made specifically with people having their outlets, in case things do not go according to their wishes, they will have their outlets to run away through them. That is one.

The other thing Mr. Chairman, I am also worried because we are speaking of a referendum. When the referendum is being held, where will be the Delegates? Shall we ever come here again? Supposing the one who is dealing with the computer is compromised? This has happened. One can be compromised either by the authorities or by a group. What will happen? The other thing, Mr. Chairman, it is very unfortunate that some people are empowered to go and challenge others outside Bomas while others are still at Bomas doing the right thing. My worry

is, after this if clearly MPs will keep on challenging us even before they pass the Bill, what should we do? Shall we go and keep quiet and hear them say, “Speaker, we were celebrating on sausages and eggs” and the way we were interested in our allowances. Yet last week on Thursday, when a few of them went to Nanyuki, Mt. Kenya Safari club, in about 1-½ hours there was a bill of Ksh. 200,000. Supposing that continued for a week, how much would that be? And nobody questions that one. But here Delegates are being humiliated, are being challenged outside and yet we are still appealing to all those doing that to come and we share with them. They tell us where we are going wrong. If we have wronged them, we apologize. If they have wronged us, we apologize so that we may go on as one Kenya. Thank you.

Hon. Delegate Betawa Mwachiro: Thank you very much. Honourable Delegate just not to be accused that we have been anti- MP’s here, there is one MP I would like to give a chance and then that will be our last Delegate to speak for tonight. Delegate number 3, please.

Hon. Delegate Ali Hassan: Thank you very much Bwana, Chair. My name is Honourable Abdirahman Ali Hassan, the Member of Parliament for Wajir South constituency and Delegate number 3 as you have already said. I am not very happy by the despair shown by the Delegates. I am a Delegate too. I just want to point out that not all members belong to those people who went to the Mt. Kenya Safari club. Members of Parliament are across the divide from various parties, from various regions. We are not pleased by the manner in which Members of Parliament are portrayed. We know of recent times, there have been problems between some Delegates and MPs and I thought we should be able to resolve some of those – I will personally describe them as minor. I will personally describe those problems as minor between the Delegates and the Members of Parliament. After all the Members of Parliament are also Delegates. My appeal to the Delegates in particular, not the Delegates, of course we are all Delegates but each of us comes from interest groups. Some of us come from Political Parties we all know, some from Religious Organizations, some from the National Assembly. But we have like this circular kind of an object here. We have one thing that is binding us together.

The only thing is, we want to work on a workable Constitution for Kenyans. I thought over time, we had a number of initiatives that have come up to be able to resolve some of these ill-conceived kind of thinking, not only with the MPs but even with some of the Delegates. I think

we have lost trust in each other. When we do not trust each other, we will not be able to help the larger population of Kenyans both in urban areas and in the rural areas which we all represent. Are we able to narrow our gaps? The difference between the ordinary Delegates and the Members of Parliament seem to be increasing day after the other. My dear brothers and sisters, why is that happening? Is that real? Or it is only perceived. Recently we were told that there are groups that have started making some dialogue. Dialogues to be able to resolve some of the contentious issues. Why are we scared? We know we are just coming to the Plenary. What are we talking about? Allow me to speak, kindly. Why are we worried of a future that is yet to happen? ‘*Kamukunji*’ should not scare you, ‘*Kamukunji*’ is an informal meeting for Members of Parliament to understand each other first. If we do not understand each other, how do we join you? We are trying to resolve and ensure that Kenyans go the same direction. Personal opinions are different from the general consensus which Members of Parliament and the general Delegates will be able to build on to help Kenyans.

My appeal to the Delegates will be able to contain probably the one from the MPs, but can we contain the isolated thoughts, the isolated kind of reactions from Delegates? We need to bridge the gap ourselves and patience pays. Our interest is to see that Kenyans get a new Constitution as they got it. There are many MPs who are honest about it. The Government says it is committed, let us look ahead. But the fact that we talk about the MPs in a very bad way may not help us all. We need to agree on the way forward. We are not supporting any individual party ourselves. We are not supporting any individual group and we are Members of Parliament, we want a Constitution for Kenyans and we will see that it is done. Delegates must also narrow the gaps on their side. Thank you very much. (*Clapping*).

Hon. Delegate Betawa Mwachiro: Thank you very much Honourable MP. As you know this is ‘*Wanjiku*’ driven and I want to believe that the Members of Parliament are ‘*Wanjiku*’ too. That was the last speaker. I am sure if I apply the rules we have just learnt today and I put the question that those of us who would like us to continue, I am sure the “AYES” will have it. But since I am limited by time. I am going to invite Honourable Ndindiri to please give us the final comments of what has been said. Honourable Ndindiri. What is your point of order, Honourable Mwenje.

Hon. Delegate David Mwenje: My point of order is actually provoked, Mr. Chairman by the fact that I feel a bit uncomfortable when all Members of Parliament are attacked as if all of us belong to the same boat. Mr. Chairman, quite a number of them do support Bomas. It is very important to get it noted that quite a number of them do support Bomas and it is important that we conclude our deliberations here. The Act is very clear. I do not believe – there are those who complained, Mr. Chairman, that there has been noise against them but I have been here throughout, nobody has ever made noise against me. *(Clapping)*. I finished my Committee on Security and we have been waiting for the other Committees to complete so that we get together. But this notion of somebody or even you, those in Bomas thinking that they are being sabotaged, why are we feeling as if this will not reach the end? Let us complete our job here. After we have completed, it will go to Parliament. It is very clear. The law is very clear that Parliament will not amend but it can reject the whole of what is going to happen. I do not know why we are feeling a bit inferior. You should not feel inferior in any sense at all. You are here on behalf of Kenyans. So complete your job, send it to us. The only thing Mr. Chairman, when we met at Parliament we were agreeing on the transition from the old Constitution to the new Constitution. There can never be a vacuum because the moment you put the new Constitution which we are trying to make here on the transition to the new one, Mr. Chairman you know there will be a vacuum. If that vacuum is allowed, then it means Parliament will have to be dissolved, it will not be there. All institutions will not be there. So the reason for meeting in our *Kamukunji* was to look for the way of transition from this Constitution to the existing Constitution.

So, I do not know why some of our people are suffering from some complex of some nature. Please be assured, we are together, we are in Bomas, we shall work together and we will assist you when we get there because we believe you have been doing a good job. Forget those who have been meeting in hotels. You can never refuse Members of Parliament to meet in hotels or even to talk what they want to talk in their own caucus meetings. But at the end of the day, it is known the results of Bomas will have to be taken into account as the serious one. If in some areas you think it cannot work, then the law provides the way to deal with that kind of situation. Otherwise, I wanted to stand here and say, as a Member of Parliament who has the highest number of votes in the Republic of Kenya I support Bomas and I believe we should move on and come to a conclusion. *(Clapping)*. If we find that it is not workable, fine, even you will agree with us. If it is not workable, we must look for something which is workable. But we should not

fight. Members of Parliament and you Delegates, we are all Delegates at the end of the day and we should work together. Thank you very much. (*Clapping*).

Hon. Delegate Betawa Mwachiro: Thank you very much Honourable Mwenje, that was more than a point of order and I think it was a good sermon to us. We believe what you have said and please when you go for the ‘*Kamukunji*’ tomorrow, please tell the other Members of Parliament what you have just told us and they should be seen here the way we are seeing you. With those final remarks from Honourable Mwenje, I invite Honourable Ndindiri to give us his final comments.

Mr. Samuel Ndindiri: (Appointed Clerk): Mr. Chairman, if you were to observe the rules, Honourable Mwenje was not on a point of order. But he was debating, nevertheless it has brought us, woken us a bit. Thank you Honourable Mwenje. I am not going to respond basically, because the points that were raised were not, as I said, procedural issues. Definitely, they relate to an issue of principle of procedure and if you look at the document we circulated earlier, the fourth principle of procedure on page 2 says, “Decision making should be informed by the spirit of consensus.” So, consensus, consensus, consensus, this is a word that has been running through. The principle encourages consultation, persuasion and compromise and dispenses with vote taking except where the Chair desires to take a voice vote to ascertain the consensus or where the law requires that a vote be taken. So, the issue is encourage consultation, persuasion and compromise. Those are the words I will end with this afternoon Mr. Chairman. Thank you very much.

Hon. Delegate Betawa Mwachiro: Thank you very much. Shall we give Honourable Ndindiri a big applause, please. (*Clapping*).

Hon. Delegate Betawa Mwachiro: Finally, I would like to give you the message, which has been brought here that we read it from the chair. Tomorrow is the Media day. The Media day is on tomorrow and we are all requested to carry with us the green handbook which contains the Rules and Regulations. The programme has been concluded and we will begin at 9.15 by introduction and Objectives of the meeting which will be done by Honourable Delegate Rose Lukalo and the Chair will be Sylvester Wafula. It will go on until 4 p.m. Tomorrow we will

