



**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report of**

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**CONSULTATIVE MEETING BETWEEN CKRC COMMISSIONERS AND  
KANU MP'S HELD AT THE CKRC BOARDROOM, KENCOM HOUSE,**

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28.06.05

CONSTITUTION OF KENYA REVIEW COMMISSION,

PROCEEDINGS OF CONSULTATIVE MEETING BETWEEN CKRC COMMISSIONERS AND KANU MP'S,  
HELD AT THE CKRC BOARDROOM, KENCOM HOUSE, 28.06.05

Present

1. Mrs. Abida Ali-Aroni - Chairperson
2. Prof. Wanjiku Kabira - Vice Chairperson
3. Mrs. Alice Yano - Commissioner
4. Bishop Bernard Njoroge - “
5. Ms. Nancy Baraza - “
6. Pastor Zablon Ayonga - “
7. Mr. Paul Wambua - “
8. Mr. Zein Abubakar - “
9. Ms. Kavetsa Adagala - “
10. Mr. Domiziano Ratanya - “
11. Dr. Charles Maranga - “
12. Dr. Mohammed Swazuri - “
13. Mr. Keriako Tobiko - “
14. Dr. Abdirizak Nunow - “
15. Mr. Riunga Raiji - “
16. Mr. John Kangu - “
17. Mr. Ahmed Issack Hassan - “

18. Mr. Ibrahim Lethome - “  
19. PLO Lumumba - Commission Secretary

### **Secretariat Staff in attendance**

1. Ms. Pauline Nyamweya - Deputy Secretary, R,D&TS
2. Col. J.P. Gichuhi - Deputy Secretary, M&O
3. Ms. Irene Masit - Deputy Secretary, CEPIC
4. Mr. Irungu Ndirangu - Programme Officer, Press
5. Ms. Triza Apondi - Programme Officer, Press
6. Achieng Olende - Programme Officer, R,D&TS
7. Hellen Kanyora - Asst. Programme Officer, Hansard
8. Jacob Onara - IT
9. Richard Maranga - IT
10. Brian Aguba - RD&TS
11. Stephen Mukaindo - Programme Officer/ Personal Assistant to Chairperson.

### **KANU Members of Parliament Present**

1. Hon. Uhuru Kenyatta - Chairman of the Party
2. Hon. Henry Kosgey - Member
3. Hon. Yusuf Haji - “
4. Hon. Justine B. Muturi - “
5. Hon. Marsden Madoka - “
6. Hon. Dalmas Otieno - “
7. Hon. Chris Okemo - “

**Meeting was called to order at 8.42 a.m. with Com. Abida Ali-Aroni in the Chair.**

**Com. Abida Ali-Aroni:** Good morning everyone. *Mheshimiwa*, we normally begin with prayers, I hope you are okay with that, I am sure you are fine. I will call upon Pastor Ayonga, to lead us in a word of prayer before we begin.

**Com. Zablon Ayonga:** *Hebu na tuombe. Mungu Baba wetu Uliye juu Mbinguni, tunakushukuru kwa kutupa siku hii mpya na katiza mwanzo wa siku hii kabla hatujaanza yale ambayo yametuleta hapa, tunaomba kwamba kuwepo kwako kuwe pamoja nasi. Tunakushukuru kwa serekali tuliyonayo. Tunakushukuru kwa Wajumbe wetu ambao wamefika hapa wa chama cha KANU. KANU imeongoza nchi hii kwa miaka mingi na pia imefanya taifa hili kuwa taifa. Tunaomba kwamba kuwemo kwa Wajumbe wao na Mwenyekiti wa, kiongozi wa upinzani kwamba uongozi huu, ushiriki pamoja nasi ili tuweze kupata Katiba. WanaKenya wana njaa na wanataka kuona Katiba ikiwa mikononi*

*mwao. Kwa hivyo tunawaomba viongozi wetu wote ili washirikiane pamoja, ili mwisho wa mwaka huu tuweze kuona Katiba mikononi mwa watu wetu. Bariki mkutano huu wa leo, tunaposhiriki kwa maongezi, na kwa mafikara, kwamba mafikara yetu yasiwe ya upinzani lakini mafikara yetu na maongezi yetu yawe ya masikizano. Kwani tuaomba tukiamini Jina la Yesu ambaye ni Bwana wetu, Amina.*

**Com. Abida Ali-Aroni:** Thank you, Pastor. I want to begin by welcoming the official Opposition Party and for some of you it is your first time to be here so we feel greatly honoured especially when we have the President in waiting (*laughter*), gracing our offices. We received a call on Thursday evening that you would like to consult with us, we were organizing to meet you on the 1<sup>st</sup> but we thought since we have received the call from you, we must agree to meet you at the earliest opportunity. Unfortunately we were a little busy between Friday and yesterday so we are honoured to have you here. We expect full-house on our side so I am sure more Commissioners are on the way coming but I think we can begin, we have more than quorum on our side, I can see you are almost full-house as well, the people you are waiting for are here.

Having said that, *Mheshimiwa*, I think we have no idea of today's Agenda, we do not know whether you still feel that we need to meet today and meet on Friday as we had scheduled before because we were going to set the Agenda for Friday but we expect you to set the pace this morning and probably we will pick up from there and see whether we should still have the consultation that we were expecting for Friday this week.

I do not know whether you would like us to introduce ourselves or you know everybody here so that we can save time.

**Hon. Uhuru Kenyatta:** By now we know each other.

**Com. Abida Ali-Aroni:** We know each other. (*Laughter*). Okay, I think I will hand over to Hon. Uhuru Kenyatta to inform us the Agenda for this meeting this morning and we will pick up from there. Thank you, *Mheshimiwa*.

**Hon. Uhuru Kenyatta:** Thank you very much, Chair. We as KANU are grateful for this opportunity to be with you this morning and we would like to thank you for also finding time and rearranging your schedule to fit us in at the earliest opportunity. We together with yourselves and many others have been at this Process now for two and a half years and I think the first point I would like to make is that the position we are going to give is the Party position and any other positions that may have been stated in the Press or at Political Rallies or at meetings are individual positions and we want that to be absolutely clear because likewise we would also request the Commission that if indeed you have questions or queries on KANU's position on anything, please not to react to Media reports but rather consult with us directly and we are more than ready to give you our position on various issues or whatever concern that you may have.

We plan to read a statement which we believe will clarify our position and why we are taking that position and thereafter maybe

we can open up for some discussion but we ourselves have thought about what we are about to say, we have discussed it and deliberated amongst ourselves and we believe that what we are about to say is indeed the only way we can truly get a Constitution that is both a document of consensus incorporating the will of all Kenyans and also the only way in which we are going to get a document that is beyond any legal or constitutional questions. If you allow me, let me proceed and read the statement.

## **KANU'S POSITION ON THE CONSTITUTIONAL REVIEW PROCESS**

We as KANU would like to clearly spell out our position on the Review Process in light of recent developments.

From the onset of the BOMAS meeting of the Constitutional Review Process, KANU participated fully in the Process seeking to play their role in ensuring that the people of Kenya get a good Constitution. Not long into BOMAS I did we and many Kenyans realize that the biggest obstacle in the way of the Constitutional Process being finalized was the disagreement and mistrust generated between the two factions of the ruling coalition. Indeed the remainder of the Bomas meeting would be characterized by this conflict, with each side consistently seeking to outdo the other. We did not and I repeat did not as many an opposition would in such circumstances douse oil on the fire of this conflict, confusion and subsequent delay of the Review Process. Rather we consciously decided to rise above the fray and to seek a way out of the impasse in the national interest.

We together with other interested Parties, therefore, set out to negotiate a truce and consensus between these factions. This consensus initiative saw us join hands with Ford People and form the Coalition of National Unity (CNU), principally to find a solution and broker an agreement between the two warring factions and indeed other stakeholders. This effort, despite wide public acclaim was scuttled by NARC and our widely accepted proposals on the hitherto contentious issues were shelved.

After the conclusion, albeit acrimoniously, of the BOMAS II process with the walkout of the Government side, we still insisted on the harmonious conclusion of the Process through our participation in the Parliamentary Select Committee on the Constitutional Review and to that end the Parliamentary Select Committee on the Constitutional Review appointed a Technical Sub-Committee to look into the still contentious issues and recommend the way forward. The sub-committee headed by KANU's Honourable Bonaya Godana worked out an agreement on most of the contentious issues and reported to the full PSC under the Chairmanship of KANU's Hon. William Ruto.

The initiative achieved great success with a holding of a consensus meeting in Naivasha of which the Commission also attended, chaired by KANU, where all Political Parties reached an agreement on the content of the BOMAS draft which has since been dubbed "The Naivasha Accord."

KANU has all along advocated the need for consensus given the fact that the Constitution is a negotiated document that by its

very nature must be accepted by all. This can only happen if everyone is allowed to participate in the Process and therefore take ownership of it.

The “Naivasha Accord” was an agreement reached on the various issues that were deemed contentious in the BOMAS Draft and after the Naivasha Accord, all that was left was for further expert input on the Chapter dealing with Devolution which was left to the CKRC, giving the mandate to CKRC to hold discussions with religious groups on the issue of Kadhis Courts and thereafter presenting to Parliament an amendment to the Constitution of Kenya Review Act to incorporate the agreed changes.

To our great surprise, after this amendment went through Parliament in the agreed manner, in the manner that we had agreed in Naivasha and actually before going to Naivasha, it was returned to Parliament by the President and was changed without proper consultation and it was changed to provide for a simple majority to amend the BOMAS Draft as opposed to the previously agreed two thirds which would have signified a high level of consensus. The import of this was clear, according to this amendment; the new Constitution would be adopted by Parliament by a simple majority of members as few in fact as 16 out of a quorum of 30, something which is untenable. Indeed it will be recalled that when His Excellency returned the Bill, KANU walked out in protest at that time.

This amendment has resulted in a Constitutional Court Case challenging the constitutionality of that amendment. Interestingly also, the Speaker of the National Assembly as well as the Attorney General of the Republic of Kenya, has clearly and indeed even before as we were making that amendment clearly stated to us that Section 47 of the Constitution which provides for the amendment and the alteration of the current Constitution by a specialized two-thirds majority of all members which is 222 including our 12 nominated needs to be complied with or amended to accommodate the new Constitution. In either case, the passing of the amendment will be by two-thirds majority and not a simple majority.

Notwithstanding this departure from the agreed position and questionable legal action, we, KANU, continue to participate in the Process in a bid to find a solution to the problem as we regard the will of the people to have a new Constitution of paramount importance. We were now in the process of reconstituting the Parliamentary Select Committee on Constitutional Review and the same problem that plagued BOMAS – mistrust and disagreement – reared its ugly head again this time in the House Business Committee. We as KANU patiently sat and tried to negotiate with either side of NARC for over two months as the issue of which members of the National Rainbow Coalition would sit in the committee took centre stage.

During this Process, we continued in the House Business Committee to insist that as the minority in the Committee we needed a voice and hence our demand that as a minority, we should have the Chair to compensate for the overwhelming majority members NARC had, and thereby ensure that the final document is a product of consensus. In other words, it is our view that in a scenario where the Government side has an overwhelming majority on a consensus issues, the only guarantee of a voice for the minority being heard will be the position of Chairman.

Without seeking to find consensus the ruling of Government unilaterally refused to accommodate LDP, that was their own internal problem but on top of that, they also denied us the Chair and hence by extension refused to give a voice to the minority.

The question therefore that needs to be asked is why is the Government continuing to insist that everything must be done according to their dictate? If indeed they have no hidden agenda and if indeed they plan to abide by what we have already agreed to, why do they then continue to create a scenario where they can dictate the outcome? It appears to us that, akin to what they did with the Consensus Bill which is now an Act, they plan to further mutilate the BOMAS Draft beyond what was agreed at Naivasha and hence the need for a simple majority to pass the amendments in the House in wanton violation of the Constitutional requirement of Section 47 as confirmed indeed by the authoritative legal opinion of the Attorney General who is the principle legal advisor to Government. The question we are asking ourselves, we have not been an obstacle anywhere, we have tried all along to build and to bring consensus, agreement, why then do they feel that they have to insist that things must go their way?

Hence, why we are asking the question and the reason we are not presently sitting or rather why we have presently suspended participation and the work of the Committee is because by sitting on the Committee we would be party and have no control over possible schemes and manipulations we have no idea about which basically means that if we were to sit on that Committee as a minority, anything that was passed, all they would need to do is to stand up there and say, “*KANU participated*” and we would be caught and we would have no say ourselves.

Notwithstanding this, we would be willing to assume our position in the Parliamentary Select Committee and participate if the following is agreed to and undertaken.

- (a) That the Process is as inclusive and participatory as possible, this being the only way for all Kenyans to get true ownership of the new Constitution.
- (b) That the requirement of Section 47 of the Constitution be complied with. This is mandatory if we are to ensure that after we pass a new Constitution the process of making that Constitution will not be successfully challenged tomorrow.
- (c) There is also a need to address the unconstitutionality which is again related to Section 47 of the Consensus Act and here what we are saying is that there is need for the Court Cases to be dealt with expeditiously and judiciously and lastly;
- (d) That the “Naivasha Accord” should and must be the basis of any amendment to the Draft.

Therefore, KANU, will be ready to resume its participation in the work of the Parliamentary Select Committee if the Government side shows its willingness to be both accommodative and to ensure the integrity of the Process by complying with the fundamental constitutional requirement of Section 47 of the Constitution. Therein ends the statement.

I would like to also state because there might be the question, “*Why are we raising this issue now*”. We are not raising this issue now, these are issues that we have consistently been raising with our counterparts in NARC for a very, very long time and all we have done again because we believe that ultimately we would get to a position where we could agree is not basically make this a public issue. These are issues we have raised with them in the House Business Committee, these are issues we have raised in meetings with them, these are issues we have even raised with the President when we saw him recently when we were told we had gone to *kula ugali* with my friend, Henry Kosgey. These are the issues that we have raised, so we have consistently raised them but we have now felt that enough is enough because it is like we are talking to a stone wall and equally on the other hand it looks that including yourselves seem to feel that we are being an obstacle so we have felt it is time we come out public with the issues that we have been grappling with ourselves for a long time in order for yourselves and Kenyans also to know what it is that we have been doing.

I believe from the very beginning, nowhere have we been an obstacle, nowhere have we been an impediment to the forward movement of this Process. In actual fact we participated fully from beginning to end but now we feel, how can we now continue in a Committee of 27 where we are only basically seven members, we have no voice, if we sit and participate in those Committees, all they need to do is to call out and say, “*This is what the Committee has agreed*”. In our own silence as we have maintained, they will say, “But KANU participated, we were sitting with KANU in the meetings so KANU is part and parcel of this”. What voice would we have had, we felt no, we cannot continue like this anymore and hence the reason and need to make it clear to yourselves and equally to make it clear to Kenyans what our position and what the issues that we have been grappling with are and on what terms we believe we want to move forward if indeed we all truly believe that our ultimate desire is to give Kenyans a new Constitution before the next general elections. Thank you very much, Chair, for that opportunity. (*Clapping*).

**Com. Abida Ali-Aroni:** Thank you Chairman. I will take this opportunity to welcome the Honourable members who have joined us late, Hon. Okemo and Hon. Dalmas Otieno, thank you for joining us this morning. We are happy that we have heard from the official Opposition, I think your statement *Mheshimiwa* is loaded with a lot of issues and probably you will allow us to pick up from there.

I will begin by saying that we are glad to learn that your Party is willing albeit with some conditions to get back onto the PSC Committee. Our position on all the Political Parties represented at the PSC is that the country needs all of you to be there. We fear a position where we will have a portion of Parliament deciding how to resolve the Contentious Issues and we also worry when we imagine that 16 people are likely to pass the Draft that will go out for the Referendum. Our position is that the Process needs to be all inclusive in Parliament, at the PSC and indeed we hope that as and when – and we hope it is going to soon – you join the PSC you will ensure that Parliamentary Select Committee will consult widely before coming up with a decision on the Contentious Issues.

We are at the moment are looking at the Naivasha Accord, we shied away. You will recall that when we were invited to Naivasha, the invitation was for the Commission to sit in as Observers, I will not hasten to say that we felt greatly humiliated when we sat at the back in Naivasha and were not protected by your own Hon. Ruto as the Chair of PSC when we attempted to raise technical issues. We were given some work to do in Naivasha to do in Naivasha but we realized that some of you were not honest even as you sat in Naivasha because immediately you left Naivasha as a team, a number of your colleagues disowned the Naivasha Accord. Again we shied away and were unable to consider the assignment that was given to the Commission. What we decided was to wait until PSC was put back into order and the Leaders accepted that the Naivasha Accord was what was to inform the Consensus Initiative so we are still waiting and once that is done, the Commission is ready and willing to give its technical input and hopefully that will be forthcoming soon.

In the consultative meeting that we have had with your colleagues in Parliament, we keep reminding them and we wish to remind you this morning that the National Assembly is an organ of Review and Chapter 3A has laid down guiding principles that ought to be followed by all the organs of Review. We note that all the other organs of Review did to a large extent comply with the requirements of Section 5 of the Review Law. What worries us a lot is the fact that it is quite obvious that the National Assembly may not be guided by the principles laid down in Section 5 of Cap 3A.

There are five requirements, one, that all organs of Review must be accountable to the people of Kenya. If we may speak for ourselves and the people of this country because they keep talking to us, we are not so sure whether the process that is ongoing with yourself and LDP keeping out of the Process, that Parliament is being accountable to the people of Kenya. What we see is that you have put your Political differences as the main issue here, there is more competition in Parliament than ever before and we feel that this time round the paramount issue to all Political Parties ought to be the national interest. By keeping away, are you serving the interest of this country or are you serving the interest of your Party? It is rather confusing and we are not masters of Politics, you are, you have been in at this game for a long time, maybe this is the way to go but we ask you to reconsider what is happening and be accountable to the people of this country.

Section 5 expects that the Review will accommodate the diversity of the people of Kenya, including gender, disability, religion and so on so we hope that you will ensure that this happens because at the end of this all, even as you keep away from the Parliamentary Select Committee, Kenyans are looking up to you to ensure that this happens. The other requirement is to be open and to involve the people of this country. Now, if PSC decides that the Naivasha Accord is it and they do not consult because signs are that they may not consult the stakeholders, then we get worried, because unlike all other statute that emanates from Parliament, this is a document that will at the end of the day go to the people of Kenya and we need to see what is happening around the world. We have seen it happen, was it in Malawi? It is Zimbabwe where the people of that country rejected a Constitution, we have seen it happening at the EU, good document out there with the Representatives of the EU coming out with it but the ordinary people rejected it. So you may think that Naivasha will give you a solution that you do not

need to involve the people of this country either improving Naivasha or owning Naivasha but they are waiting out there so the National Assembly really is not an end to itself.

We need to accommodate the views of stakeholders although as a Commission we are also weary of the fact that they are stakeholders who want to take us ten years back. They are stakeholders who have come with entirely new documents and our expectations is that as our leaders at the National Assembly you will ensure that their minimum is looked at in terms of the Draft that came from Bomas and that at the end of it all, whatever comes out of the National Assembly will faithfully reflect the wishes of the people of this country. And we ask ourselves, if you keep away as the Official Opposition Party, how do you check on the Government? How will you at the end of the day tell us as Kenyans that the document truthfully reflects our wishes and aspirations? We feel that you are abdicating a very heavy responsibility given to you in your capacity at the moment and we wonder how you will be able to face us as Kenyans tomorrow to assure us that you played your role effectively and adequately at the National Assembly.

The other thing that concerns us is the fact that although you have attempted to bring sense within your colleagues, you have attempted to bridge the gap, that this is not done-- How do I put it? I think you fall short of doing it effectively because it appears to us sometimes that you do it half-heartedly. Or some of you are in it and some of you are not in it and when your members speak, especially high ranking officials of your Party, then it is difficult to differentiate between what the Party means or what the Party intends and what is individual position and we are hoping that you will rise up to the occasion, to be able to bring sense into the Process, to be able to make a difference. As I was driving to the office this morning, I heard Hon. Ruth Ony'ango make a statement that your bracing yourselves to give an alternative to this country, we need to see that. We need to see your Party rise to the occasion and make a difference within the Parliamentary Select Committee because you are able, you may be seven, Honourable Chair but I think you have heavyweights in the Parliamentary Select Committee and the difference can be felt and we have seen it happen in the past. We also want to urge you to keep dialogue with the other Parties in the Parliamentary Select Committee and to seek the third alternative because that is the only way we see our country moving forward.

Mr. Chairman, having said that, I think I will respond to some of the issues that you raised in your presentation and I will begin with one which is probably not so important but yet important in the eyes of the Commission. We are happy to note that you have no particular problem with this Commission, in fact your visit here confirms your position as far as our Commission is involved. You would not be here if you had no regard for this Commission, thank you for that. But we think we need to take it a step further, when a high ranking official of your Party repeatedly insults this Commission, we cannot sit back. It is very difficult like I said, to know whether that is the Party position or that is an individual position and let me say that sometimes it is almost impossible and that is why you have seen that lately in our Commission you do not find us fighting in the Press because when I speak, it is taken that I speak for the Commission. When Wanjiku speaks even when she is speaking her own mind, people look at her as the Commission, she is the Vice Chair of the Commission, when PLO speaks as an individual, it is difficult

to know whether he is speaking for the Commission or not. So when we hear insults from high ranking officials of your Party, we cannot sit back and keep quite, we have tried but there is an end to everything. We have been called unnecessary evil in the Process by your own member who was then the Chairperson of the Parliamentary Select Committee, he sat and cheered up as we were called prostitutes, he made a very scathing act and we were simply responding. It is unfortunate that we responded but we had no otherwise, we need to ensure that we sustain the integrity of this Commission. We know that Kenyans look up to us especially now that Parliament does not seem to be moving the Process forward, they look up to this Commission and we must at all cost sustain our credibility.

Mr. Chairman, let me say this, that in the past, members of your Party have not assisted in moving the Process forward. You chaired the PSC in the last session of Parliament, I am sorry to say this, Mr. Chairman, but because we are candid to each other, we saw the stalemate deepen while you sat on the Chair of the PSC. You chaired the Naivasha Accord yet recently we have heard members of your Party disown the Naivasha Accord, yet today we understand that your Party is ready and willing to go along for as long as all other Parties honour the Naivasha Accord, I thin that needs to come out clearly from you as Chairman of KANU so that an assurance is given to the country and other players within the Review Process.

Mr. Chairman, it is also quite obvious that on this issue of Section 47, the position of your members has been shifting together with the members of the ruling coalition. It may not be the position of the Party but then in their individual capacity you see alignment with one faction or the other.

Mr. Chairman, allow me to humbly say that it is important that your Party takes a firm position on this key issues that you have raised and be able to pursue them so that you can guide where the ruling coalition seems to be divided.

Mr. Chairman, it is a sad affair that your good colleague Hon. Marsden Madoka did not make it as the Chair of the PSC, we all know his capacity, he is my friend, I talk to him once in a while just to pick his brains, but again, Mr. Chairman, I think we are over blowing the Chairmanship of the Parliamentary Select Committee, I think that should not really be the issue now, our plea to you is to forget the Chairmanship of the PSC for now and to consider the issues at hand. You can still play a major role as members of that Committee because the Chairman in a democratic process only guides the Process but is not the decision maker. It is important that you get back and assist this country determine the issues at hand.

Mr. Chairman you raised two issues. One, is that you would like to the PSC to be all inclusive. I would request you to probably expound more on that so that we understand what you understand what you mean by “all inclusive”. Supposing LDP refuses to rejoin, will you still keep away because LDP is not there, is that what you refer to an all inclusive Process? Are you not going to be swallowed into the differences between LDP and NAK? Do you think that is healthy for the Process?

Secondly Mr. Chairman, in our study of Section 47, the amendment has shifted every other year and one would like to

understand exactly what you would like to see in the new proposal for the amendment of Section 47. Having said that, Mr. Chairman, in our meeting with the Liberal Democratic Party yesterday, they did propose a meeting where all the leaders of Political Parties can sit on one table and attempt to thrush out the problem and this was because we were taken by surprise. You are the fourth Political Party that we are meeting and I can tell you this, that every Political Party pays homage to the Naivasha Accord, every Political Party blames the other for the stalemate, every Political Party tells us they would like to see the new Constitution yesterday. So who is fooling who in this Process? And what we would like to do as a Commission is to get all the leaders together on one table at the same time and put the cards on the table and we can tell you we have quite a lot, you may not believe it, we know exactly what members of your Party said yesterday and the day before and so on and so forth for all the other Political Parties. We would like to put the cards on the table and see who is fooling the other in an attempt to resolve the stalemate. If this is acceptable to you, Mr. Chairman, we would be happy to start the Process. We have not yet met the other side of the ruling coalition but I can tell you this, that I talk to them quite a bit and they tell me the same story, “We would like the Constitution tomorrow, we have no problem with Naivasha”, I have not discussed with them Section 47 but I intend to do that. So each one of you is happy with Naivasha, each one of you would like to see the Constitution but then what is this fear and suspicion that we see running through all the Political Parties? And with that Mr. Chairman, I--

**Hon. Uhuru Kenyatta:** I would like to make some comments before we open up and then--

**Com. Abida Ali-Aroni:** Yes, Mr. Chairman.

**Hon. Uhuru Kenyatta:** On your statement--

**Com. Abida Ali-Aroni:** Thank you.

**Hon. Uhuru Kenyatta:** -- and then I would also like to give opportunity for others. I would like to make some preliminary remarks if I may. (*Laughter*).

**Com. Abida Ali-Aroni:** Mr. Chairman, you know we cannot refuse, we have a vision, Bishop will tell you that and we do not want to step on your toes, thank you.

**Hon. Uhuru Kenyatta:** Thank you very much, Chair, for your comments.

1. I would like it to be very clear, first and foremost, Kenya I believe is a democracy where freedom of speech is guaranteed, correct? Nowhere and I think I made this very clear even before I begun reading my statement, I made it very, very clear that KANU's position is made after deliberation and everywhere there will be a dissenting voice on what the majority will have agreed and we can even leave here today and Hon. Kosgey can make a statement that will be contrary to the KANU

position and he is entitled by the way. But nowhere will he go and say, “That this position I have made on behalf of KANU”. All the comments that you have referred to that have been made by Honourable William Ruto have not been made and he has stood there and said, “I have made this statement on behalf of KANU”, he has made those comments and those statements in his personal capacity, his personal capacity, his personal capacity.

We would not be sitting here today as a Party if our comments had already been made public. The reason we are here is because we have come to give you what is KANU’s position so for us to consistently go back to say that because so and so said, that is KANU’s position, no. I am certain also even amongst yourselves as a Commission, they are members who have also stated issues but that does not necessarily represent the position of the Commission, the position of the Commission is aired officially by the Chairperson, am I right or wrong?

**Response:** You are right.

**Hon. Uhuru Kenyatta:** So consequently I want to make this issue quite clear and I do not want us to keep saying, “Because so and so said...” that is KANU, no. KANU also, we have just had our elections, we have divisions even within ourselves, correct? There are people who think different things but the official position is given by the official spokesperson and that is me, I believe, according to the Registrar unless she changes her mind. (*Laughter*).. So we do not want to have that two-flow anymore so we are communicating to you KANU’s position.

Two, when we talk about dishonesty on Naivasha, KANU has never wavered from the position that we agreed to and I think I underlined in my own statement that we had the Chair and we also had the Chair of that Committee. Those who changed their positions two days after we left Naivasha was one, the Hon. Kiraitu and later the Hon. Raila Odinga, they kept switching their own positions amongst themselves that is not KANU, that is the ruling coalition, that is NARC. KANU has never ever, ever gone out and said that we have abandoned the Naivasha Accord and I think it is important that we are clear on some of these issues because we had never gone against that, how can we go against and that is the position that we have even taken even internally amongst our own people? We have made it clear, how can KANU go against a position that was taken under our Chair? Kenyans would even regard us as being people who have no *musimamo*, it was under our Chair. We have always stood and maintained that that be the position.

Those of you who are in this Committee will recall that before we went to Naivasha, part of the agreement that we got out as an attempt to bring the Parties together in order for us to go to Naivasha and this was made by a statement that was delivered to the Parliamentary Select Committee by none other, than the Attorney General of the Republic of Kenya. Was that Section 47 of the Constitution would have to be amended in order to usher in and that statement I am certain even the observations of the AG and it was agreed even before we went to Naivasha that we are going to Naivasha to discuss contents now because

now we have all agreed that this is the way the Process will move forward and we said it is not KANU's interpretation and we agreed it will not be NARC or LDP's interpretation, we said it is your officer who has given us this interpretation, let us accept it and they accepted, only for Kiraitu when coming back from Naivasha, to go in front of a Media to dishonour everything that we have had agreed and all this is highlighted in the Media, let us call a spade a spade, we are saying let us be honest with one another and let us not be blamed for what we have not done, let us not be blamed for what we have not done. And it was when he came back and changed that position, we went back into the Commission, he refused to participate in that meeting, the Draft Bill was prepared in conjunction with the AG was finalized, brought to the floor of the House, passed by the House and then Kiraitu used the back door to go and convince the President not to sign that Bill and then made changes that were not agreed by the Committee that we were on, brings it and bulldozes through the House and that is why we walked out, it is on record, we do not have to-- It is on record, we are saying let us follow the record. We are saying let us follow the record and we said, "How can you, we have agreed, why are you changing? What is your problem, why are you changing what we have agreed?".

That aside, we still insisted, we have to proceed trying to say we are going to try and make sense to our colleagues, to our friends here, this is not the way to do it. And we have been holding meetings since the end of last year with our colleagues in the National Rainbow Coalition and that is why I said, were we an opposition that was intent on taking or exploiting, we would have been going round the country now instead of being busy trying to put these people together. It is not our business, our business as an opposition is to ensure that Government is as disorganized as it possibly can be! (*Laughter*). That is our role as an opposition, but specifically on this issue, we have stayed away from that kind of politics. We have chosen instead to say that, "This is not an issue that belongs to NARC, or KANU or anybody, this is a national issue, let us try and find and forge a way forward and that has been the role that we have played throughout.

We went from there, we sat down, for two months, every Tuesday in the House Business Committee we went swearing at each other, it is not our business trying to make them agree and to understand that we needed to have a way forward. They are the ones who said, "We will never agree till the end of the earth". If we were to make public some of the things that we know also, it would be embarrassing to Kenya to see a Government fighting itself in a Committee where they are supposed to be coming out with a joint agenda and programme for this country. But we stood through and through that process and that is how we lost actually even our chairmanship, we made it clear to them, "By the way, as much as you are disagreeing, we want you to know that KANU wants the Chair's position". And why were we insisting and why are we insisting? We were insisting because we have been played games with before by the same people. If we go tomorrow as the Chairperson is saying, and sit on that Parliamentary Select Committee, I promise you tomorrow they will turn around and say, "*Tumefanya hii na hii na KANU walikuwa hapa na sisi na tumepitisha.*" When we turn around tomorrow and say, "Excuse me we did not do that." Who will believe us? Who will believe us? Who will believe us? Nobody will believe us, they will say, "No KANU is being dishonest, they attended all the meetings, they were there with us when we passed these things, they have been dishonest." And why do we say that? We have had experience of that in the past! We are not saying it out of something that we are guessing or

we are assuming, we have had that experience in the past and even now, you will see that from what we have stated here, we are not saying we are demanding the Chair even, all we are saying is, we want guarantees that if we participate, they will not pay those game with us. If they can give us any other way of guaranteeing it without giving us the Chair, fine. So long as we know we are covered by just their word of mouth *ati waje waketi hapa tukubaliane*, they have, (*laughter*) they have done that to us so many times in the past I am sorry we cannot take their word for it, their word is not good enough anymore.

**Com. Abida Ali-Aroni:** What about an M.O.U?

**Hon. Uhuru Kenyatta:** The M.O.U's are also not good enough anymore. (*Laughter*). We have seen what they have done with them, so we if we can be given a guarantee, all right? Because why were we saying we want the Chair? We were saying we wanted the Chair because if we see them moving at least, if the Chairman of the Parliamentary Select Committee was to call a Press Conference and say, "Excuse me, by the way, this is way is happening, so and so is doing this", he will have a voice. But if, because under their current terms others are saying, "No member..." just as you are saying now, "No member will speak to the Media". These are some of the deals they are saying, "No individual member will speak to the Media, only the Chair will be the spokesperson, what we will agree will be communicated through the Chair", etc, etc. So, here we are as KANU sitting in this meeting, closed door meeting, tomorrow they go and announce, *tukienda kubadilika*, see we were there.

*"Tuliwambia KANU haiwezi kuaminika, ni Chama ambacho siyo cha ukweli, tulikuwa na hawa, tumeketi na hawa..."* what alternative do we have? We want you to appreciate this, we want you to understand this because these are the issues that we are saying.

Lastly, when we now talk and you yourselves have said it and made it very clear of a participatory Process, we also want a participatory Process, we want a Process where everybody can feel ownership. Like I said, it is not our business to sit in their and try and broker peace between two warring parts of the Government but we did it, we did it, and why did we do it? We did it because we believe that ultimately if we were to go out there to the people with forked tongues, with one groups saying one thing and another group saying another thing, even if we were to pass this Constitution, any individual has enough popular support out there to ensure that a large enough section of Kenya, the majority may pass but a large enough section of Kenya rejects this Constitution and say, "This is not our Constitution". And given the very composition of Kenya where ethnicity as you all know is a major factor, how can we then turn around and say that major communities have said we reject that Constitution, another community is saying we accept it because of this, that is the reason why we are saying let us all be participatory, let it be inclusive so that when we live as leaders we can speak in one voice. What Uhuru will say shall be what Raila Odinga shall say, shall be what Kiraitu shall say because it is the only way ultimately that we will get a cohesive--

**Com. Bernard Njoroge:**

(*Inaudible*).

**Hon. Uhuru Kenyatta:** Kibaki does not say anything, so we do not have to bother about that. (*Laughter*), all right? So

ultimately, that is really what we are desiring, that is what we are seeking for and I think it would be wrong for us to be called dishonest, it would be wrong for us to be called misleading because this is a position we have consistently maintained from the very beginning and up until now and even when you say that other Political Parties have actually gone out and said, “Let us go out and have a meeting of Political leaders”, when we went and I have a witness here, to see the President, we told him, “Mr. President, please take lead on this Process.” We ask him, we pleaded with him, we told him, “Why do you not call a meeting of all leaders so that we can all speak our minds here.” That was over a month ago, we have seen nothing, what more do you want us to do as a Party in order to prove that we are determined and we are committed? And this is why we are saying, a time has come for us now, let us speak publicly and openly, because we are now being taken fore-granted or assumed and we believe that that is wrong so please, Madam Chair, we have done our part, we are willing to continue to do our part and I believe that the issues that we are addressing, even when we are being asked, “What part of Section of 47--” we are saying it is not the part that KANU desires, we are saying, here is the Legal Officer of Government himself, here is the Speaker of the National Assembly, tell us that this must be addressed, you tell us how it needs to be addressed so that this is not challenged, that would be the position. You tell us that it is not necessary and we have never changed from that, we have said, “Let us follow the Law as it stands”, and who is the interpreter of Law in this Country? It is the Attorney General, he is the one who interprets law. Who is the interpreter of Constitutional Issues towards us members of Parliament? It is the Speaker, it is not Uhuru, it is not Marsden, it is not Haji, now when these Honourable Gentlemen tell us that this has to be done, we say, “Fine, let it be done, tell us how it needs to be done so that we are doing things within the Law and not unconstitutionally”. And that is why we have a Court Case out there and that is why we are saying we are also eager as 3 Million Kenyans are eager to hear what the outcome of that Court Case will be, yeah? Because, why has it been challenged? They must be a problem, they must be a problem somewhere.

So, Honourable Commissioners, do not misunderstand us and please, even as we leave here, *Mheshimiwa* Okemo will say something in a Rally tomorrow, *Mheshimiwa* Haji will say something in a Rally tomorrow, ultimately we will sit down as a Party and discuss the various issues, disagree amongst ourselves but the majority position will be the position that we will pass across and that will be the Party position not what somebody said in the hit of the moment at a-- We are Politicians, you can go and get excited in a public Rally and say whatever you may say but the position of the Party is the position that is taken after the Party sits and consults with itself, we have sat and we have consulted and what we have given you is the position of KANU as a Political Party, thank you ,Madam Chair. (*Clapping*).

**Com. Abida Ali-Aroni:** Thank you, *Mheshimiwa*, I hope my colleagues will allow me to ask our guests to add, if the Chairman does not mind or contribute to the discussions and then I will get back to the Commissioners. I think Hon. Dalmas Otieno and then I will come to Hon. Haji.

**Hon. Dalmas Otieno:** Madam Chair, all along, we have believed that you do not take to the masses, you do not take to the people what the leaders cannot agree on because if you do so, you are just going down there to divide the people and if it is the

Politicians doing so, they are going to use all sorts of other tactics to divide the country even further. As a Party we believe in the unity of Kenyans despite its diversity which we appreciate. So when we say all inclusive, when we say participatory, we mean let the leaders all be included and let them all agree first before we can pretend to take to the people a product that has any future in this country.

As a party we have confidence in this Commission, it has the brains, it has the experience, it has the diversity, but you will only help us if you also realize the time for the games are over, we have had enough of it and you act in a united manner. We know that you may not have the executive power, we know you may not have enough legal power but we are confident that it is not always the power of numbers or interest that will take Kenyans out of this mess, it will be the power of ideas and those ideas can come out of this Commission if you ask as one. We have been in it long enough and we know you have also had your problems but you appear to be performing a little better now, so our appeal to you is to cement your unity, put together the ideas and let the power of ideas help steer the country out of this Process.

Our request that we take the Chair is because we wanted the ruling coalition to convey to us, adequate good will that now they are serious to take us ahead. I do not agree with you that the Chair is nothing in a democratic system, no. The Chair can raise issues that have not been adequately addressed before that democratic Process can take the decision, the Chair can be part of a conspiracy to ignore important elements of what should be included in the course of any meeting so we do not take the Chair lightly. We need it as a expression of good will that the ruling coalition has also agreed the time for games with the Constitution is over and now we should set ourselves on the path to get Kenyans a Constitution. Not a Constitution we all know will be faulty and the next day KANU is in Government we are going to have to amend it, we should do a better job having spent so much and having involved so many people in the Process up to this time far.

It may appear to you vague when we say inclusive and participatory, actually we are asking that the PSC as currently constituted has such serious inadequacies that it is going to get us a Constitution that is only partially acceptable to Kenyans and we have an opportunity to avoid that having been over this issue for so long. If it were possible through your ideas, through your persuasion as a Commission, talking to all Parties, talking to all interest groups and other stakeholders to persuade them to reconstitute the PSC, we shall have started rightly towards a proper consensus.

As to Section 47, it is not a difficult thing. After we have agreed on what Constitution to be given to Kenyans, it will be very easy to agree on the amendments to Section 47 so that the Process thereafter to the people is constitutional. The efforts to amend Section 47 before was not honest because other parties intended to use it to railroad sections of the Bomas Draft which they knew very well was not acceptable to other Parties but Section 47 will need to be amended but amended at the right time after much of the content of the new Draft has been agreed on.

We are all Kenyans and none of us is an angle. I was in one of those Committees at Bomas, we said they are no angles in this

Republic so we should make a Constitution for human beings. Do not make a Constitution good for you today and tomorrow when you are on the opposition side you will want it changed. That is why I said the Commission can act as a neutral body, generating the ideas necessary to make the Politicians see sense and accept the fact that the time for games in this Process is over.

I believe that if the Commission is decided to act in unison and continues this dialogue, the dialogue process which you have already commenced, you will be able to read between the lines and discover which Party is fooling who and discuss with that Party where you think they are fooling the others before you bring all the Parties together. I am suggesting therefore that you adopt some of those conflict resolution mechanisms as a Commission. The Process going on were a simple majority in Parliament is going to pass a Constitution you all know is not going to be considered all inclusive. It gives back to the Commission with or without the powers but with enough ideas to consult all the stakeholders and see how you can resolve the issues that are of interest to the different stakeholders before you can bring them together possibly at a venue that would be conducive to their proper interaction and decision making.

So we came to let you know that we have confidence in you but also to convey to you that you may have and we believe you do have a challenge bigger than you are able to possibly accept and internalize within yourselves. If you accept that challenge, you have that mechanism to deal with all the Parties before anything is rushed through the PSC as it is now, please move faster, identify the issues, see if a resolution mechanism can be in place and a solution found as we go forth. Thank you.

**Com. Abida Ali-Aroni:** Thank you. Mr. Chairman, do you have time constraint or can we have a few people contribute?

**Hon. Uhuru Kenyatta:** We do have time constraint but maybe two gentlemen can say a word because we would also like to hear from your side.

**Com. Abida Ali-Aroni:** Okay, thank you.

**Hon. Yusuf Haji:** Chairperson, I will be very brief, I will not repeat what has been said by my colleagues, only to remind us sitting here the history of this country way back when there was a struggle for independence, we had different views about how this Constitution would be, there were various meetings held here and eventually Kenyans, the leaders then ended up at the Constitutional Conference in London presided over by maybe the Colonial Secretary.

You will recall there was impasse even that time and those of you who remember there was this walk out by Shikuku, KADU, when Shikuku came here and said, "*Shikuku na kuku yake*", *kuku* which was then Jogoo but eventually through patience and persistence, we came up with the current Constitution. I am equating the Commission with the Colonial Secretary then who gave us an agreed Constitution.

I think you have a responsibility that we should have a Constitution that will be accepted by majority of Kenyans and you should not in any way agree to be pushed into a Constitution by few people, I am saying this by few people because you will remember when we went to Bomas we stayed together, few people walked out, there was even some people saying the reason why they did not want the Constitution, it was to remove KANU, KANU has been removed and therefore there was no consultation before, this mentality is still there and if you will go along with the partisan Parties, definitely this Constitution will not see the light of the day, I must say this in honesty because as the Chairman said, the ruling NARC, section of the ruling NARC have walked over many of the things that we have agreed including Bomas, Section 47, even Naivasha Accord, I know even right now as I speak here, the question of the Kadhis Courts is being manipulated, there is already some change which is being made. So Chairperson, I am very happy when you say that you are going to call all the Parties together to find a solution. I think that is the way forward and that is the patience I am asking for.

There is no need to hurry a Constitution, there is no need if there is no togetherness. It is better we delay even, I do not even mind if it comes another two years or even three years, let it do so. This current Constitution has served us well, and we would like to have a Constitution which will be even much better for prosperity of this Nation in 100 years or more to come so with those few remarks, I pray the Almighty God that we shall find a solution. Thank you very much.

**Com. Abida Ali-Aroni:** Thank you. Honourable Okemo, you want to speak?

**Hon. Chris Okemo:** Thank you very much, Chair. I will be very brief, I do not want to repeat what the Chairman has said and my other colleagues. I have a number of disturbing concerns in my head. One is that we are so deeply involved in the mechanics of the Process and the legalist content of the document but my worry is that all this might come to naught if the Referendum rejects the document because to me that is the bottom line and I think what we really should be striving as Political Leaders is to agree on what to educate the masses. Because when I go out there and I rubbish the document, what it means is that it does not matter what form it takes when it is passed, when the Referendum comes, they will not vote for it and if they do not vote for it, it means all this exercise we are involved in is actually a waste of time. So as much as we are talking about Section 47, about the Parliamentary Select Committee, about the two thirds majority, at the same time I think and even more importantly we must get the masses to understand the document that we are trying to produce. Okay, it is not in its final form but I think the essential elements are there other than the contentious issues and as leaders and as Commissioners and as Members of Parliament, Commissioners, everybody, I think let us try to educate the masses to understand this document and convince the masses that this Constitution is good for them otherwise we are going to end up with a Process, the end product and then it is rejected by the masses. If it is rejected by the masses, we actually go back to square one, do we not? I mean that is my understanding, if the Referendum rejects the document, then all we have done is useless so we can go through an all inclusive process, it can be as participatory as we want it to be, we can change Section 47 and do everything legally, we can get LDP in there, you can get the Rutos to say what they are saying, you can-- And at the end of the Process if *mwananchi* votes

“NO”, then we have done nothing. So my emphasis really is, what is the reaction of the *mwanachi* to this document in the current form leave alone its refined form after we embrace the Naivasha Accord? That is just my observation, thank you.

**Com. Abida Ali-Aroni:** Thank you, *Mheshimiwa*. I will have a few of us to comment, I see how many hands? 5,6. Please be brief, I can see Honourable Kosgey looking at his watch, I will start with Bishop.

**Com. Bernard Njoroge:** Thank you very much. We are very happy that we are having this meeting and for this opposition paper and I quite concur with the Chairman that individual people can have their views and I think we as a Commission will still continue to support and stand with the views irrespective of what different members say so we want to assure you that we are not overly taking it against the Party just because of the views of an individual .

I just wanted to get back to your speech. I am a little bit that KANU may be falling into the same problem that the NARC Government fell into when we were at the Bomas of Kenya. What they actually did is they walked out of Bomas and it was too late now to put their position because already the Process was finalized. I think that is an issue really we do not want the history to repeat itself that later on you will come up with Contentious Issues when already the Process is gone. I think that is an issue you may have to think that maybe what brought this problem is because some people walked out. Now, you want to walk out when again the same Process is going on, would that not create a problem? I am just posing this question to you.

I think the second this I would like to say is that once we accept and agree on the content, I think the legal process will be very easy to go through and for me as Hon. Okemo and Hon. Dalmas Otieno have said, the thing we have to do is for all the Parties to agree on the content because the legal process is something very easy when we have agreed on the content so for me I am praying that you can persuade each other on the issue that divide you so that then you do not have to worry about the legal part of it.

I just want also to--

**Com. Abida Ali-Aroni:** Bishop, please wind up because we will lose *(Inaudible)*.

**Com. Bernard Njoroge:** Okay fine. Maybe I can give someone else.

**Com. Abida Ali-Aroni:** Thank you. Alice. Was that Alice or Kavetsa? Oh, Kavetsa.

**Com. Kavetsa Adagala:** I can be Alice also. Thank you very much, for coming, it think everybody has expressed it. I would just like to say that in the Commission it is a formidable task, thank you for the advise, thank you, Dalmas, thank you, the others also but what we would like to see which is familiar to all of you I am sure is a win-win situation but not the kind of

win-win of the M.O.U which is too quick, too superficial but kind of to deepen the discourse. Haji is right, it is better to prolong the Process and have a better product, so without going into it very much I think you now what the win-win situation is.

Right now we are involved in very serious win-lose kind of situation, we could easily reach lose-lose and that would be acrimony and war and this is what we are trying to avoid. Thank you for reminding us of our duty and the challenge that is before us, I think we can easily take it. We also had to work through it, we have had to work through it.

I would like to say that in a democratic process even as our Chair is saying, the Chairmanship is important and the majority must have their say in any given situation, not just this. When I was talking to Honourable Muturi, has he gone? Yeah, and he told me – this was last Friday – he told me, “What I resent is being talked at, not being talked to or talked with” and that is all he said and I got the message because you know you cannot have grown up responsible leaders doing things that are irresponsible for no reason. Even the changes the other Parties have made and the turncoat and the whatever, all that has a reason to it. So I would like to say that if you could, well in a non-partisan way help us work out this win-win, we would be very grateful.

Some people do not want to-- We are crossing a river, symbolically the Jordan but some people want to stay on the one side, some people want to jump half way and fall in the river and *wanachi* want to jump across because they want a new dispensation. So thank you very much for the comments I think we will be meeting again so we shall study your-- At least I will study your presentation and see.

**Com. Abida Ali-Aroni:** Thank you, Nunow.

**Com. Abdirizak Nunow:** Thank you, Chair. I will be very brief, I would like to thank the high power delegation from KANU for their exposition which I think is quite understandable because KANU comes across as a Party that is now finding itself between a wall and a hard surface. On the one hand it has to be seen to be working in the Kenyans interest, on the other it has to contend with a group that does not want to corporate with it so that is a scenario that we will not blame KANU for reacting in whichever way it does.

I would like to mention that the contentious issues *Mheshimiwa* Uhuru as agreed in Naivasha were or had some elements that were thrown back to the Commission to sort out and as our Chair said, we did not because of the immediate disowning by some members of that Committee and those still stand unresolved, the issue of the Kadhis Courts, the issue of the numbers of the Constitutional Commissions, those were never resolved and PSC now is dealing with them and probably may take the resolution as they deemed appropriate which probably will then not be, at least it will not be acceptable to a number of Kenyans and particularly those elements that were highlighted in the Kadhis Courts will be unacceptable to the Muslims and I can say without any fear or favour that it might-- Or the Muslims are actually just waiting for the PSC's recommendation to go to Parliament and see how it goes and as soon as that happens, they are just waiting to go and mobilize their followers to say

“NO” to the Referendum and KANU being one of the Parties, probably the only Party with a national institutional structure, it may not have an MP in every Province but it is certainly is probably the only Party with institutional structures in every location will have the upper hand in terms of mobilizing masses and if KANU decides to mobilize the masses against the Draft, then we may as well rest and forget about it.

So there is that significant role your Party can play and should play but I understand what requires to be done for it to play that role because whichever role KANU plays is probably the winning side, in my opinion in terms of mobilizing the masses to react in a certain way because the rural population do not know what happens in the urban centres. They will see their leaders, they know their Location Chairman, Sub-locational Chairman and all that kind of thing. So we ask you and we request you to see how best, to even get out of your way, as you said it is not your business to organize the Government, I agree with you entirely but organize the Kenyans because it is now the Kenyans future and the future governance systems that are at stake.

The risks we have in the current legal system under which the Constitutional Review Commission and the Process is working is that it only requires a 51% of those who cast their votes to pass the document. Those 51% could come from one village, that is polarizing the country and in my personal and humble view that ought not to be the case. There should be minimum threshold in different Provinces to ensure that this is a national document, even if you said 10% in every Province, I would not care but there must be certain threshold to ensure that every Region actually participated in making the new Constitution. Thank you very much.

**Com. Abida Ali-Aroni:** Zein.

**Com. Zein Abubakar:** Thank you very much, Madam Chair, I would like to join those who have thanked the delegation from the official Opposition and the Honourable members who have come, all protocol observed. Madam, I would like to confine myself to about very simple things. The first one is that I would like to comment on *Mheshimiwa* Uhuru on what he said and I think the position they find themselves in is the kind of position we have found ourselves in some ways. *Mheshimiwa* Uhuru when you started you commented that even the Commission was at Naivasha and later on you talked about we do not want to be in a situation where we are silent and we cannot comment and then later on you we are told, “You were also there.” That is what happened with the Commission. In the Naivasha Accord, the Commission which in my humble opinion and you know this, *Mheshimiwa*, is the custodian of the views and the wishes of Kenyans verbatim, we recorded, they are here in this building and we are also the people who know the design questions of this Draft. We know why an Article is there, its genesis and what it is designed to do, we are the technical arm of this Review Process and if you could not use us or pick our brains, we are not asking you to tell us, “You must take our position” but if you were meeting as the leaders of our people in Naivasha, why could you not allow us to give you technical input in some of those issues.

I can tell you, *Mheshimiwa*, that the Naivasha Accord has problems. It has problems on the content, the question of the

Kadhish Courts was raised, it makes nonsense of the Kadhish Courts it makes it irrelevant. On the question of the Senate, one of the leaders told us and I was intrigued by what we were told, “That we do not have any real reason for removing the Senate”, but then you would have allowed us to tell you why it is there. If you make the decision to still remove it, why it is there and every decision you take, we will tell you what the people said. On any issue, you could tell us and we will tell you what the people said, even if you wanted them verbatim we could isolate them verbatim, that is something to do with content.

Secondly, Mr. Chairman on the Process, we were also invited to Mombasa. A lot of people do not talk about this, they are quite about it, there is also a Mombasa Accord, there was a Mombasa Accord, building on Consensus Act on the Consensus Bill. Again in Mombasa, even after some of us in this Commission, I can tell you that, we protested and we said, “If we go to Mombasa as observers, how would we not be responsible if problems arose?” Same thing with Naivasha and there are problems with the Process, there are problems with the Law, he has talked about the threshold, they are problems with the 5 Million for example, the Superior Court in Tanzania which is a Court of persuasive jurisdiction in a situation ruled that such an amount was unconstitutional, so there are problems with the-- We are not saying that it is impossible to surmount them but we are saying, every time you ask us to be involved, let us also have the free hand to advise you on technical matters.

This brings me to a third one which has a potential of being dangerous. There is a possibility of a PSC Accord and you have talked about that yourself. Again in the PSC, at least those who have represented us because we have not had our own internal mechanism resolve that question in terms of how you want to take part in the PSC, we have continuously been reminded “you are observers here, your mandate is not to--” and yet we are supposed to give technical input and I am saying this with a lot of humbleness, Mr. Chairman, the Chairman of KANU party. That if there is a PSC Accord and we are the ones who know what the people said to us and as our Chair correctly drew the attention of being cognizance of the principles that we shall be faithful to the wishes of Kenyans and the views of Kenyans. If we are not asked that will be a problem and lastly Madam Chair, lastly, *Mheshimiwa*, in terms of the Commission and this is what Hon. Dalmas Otieno said, there is appearance that the Commission is working well, I can tell you candidly, there is a much more effort and endeavour on every Commissioner to pull together to work together but also like you, there were certain things which were important to us and there are two things which I will share with you. The first one, we took a decision very earlier on to make all our sessions recorded verbatim so that we will know who said what and history will judge them for what they have said so all our records are verbatim including this one.

Secondly, watch us, when you see all of us together, be peaceful in your hearts and in your minds that we are working for the common good of Kenyans. But if you see us de-segmented and a large chunk of this Commission is not in a place and statements are made, then know that that is partisan interest. Thank you Mr. Chairman. (*Clapping*).

**Com. Abida Ali-Aroni:** Thank you, Zein. You mentioned that you would be talking about small things, but, well, I do not know, we will judge. Kangu, one minute and Raiji one minute, we need to summarize and move on.

**Com. Mutakha Kangu:** No, you will give me a little more time, it is rare that I talk to the leaders. (*Laughter*). Mr. Chairman, I thank you very much, I was very happy to hear members of your party expressing concerns which I have personally expressed, sometimes quietly internally here, sometimes publicly when I feel I cannot continue lying to people.

Now, your concern that we might never have a Constitution is true and I want to go back to what I said in February 2000 when the first Parliamentary Select Committee was established, chaired by Raila Odinga and looking around I am not sure that any one of you was there. They decided to invite some of the people they considered local experts to speak to them. They invited me and I honestly and candidly told them that pulling in Parliament for a Constitution with other Kenyans pulling at Ufungamano for a Constitution, none of the two sides will produce a legitimate Constitution and I pleaded that we must honestly negotiate and agree on how to pull together. I was then asked how long it would take to write a Constitution and I told them, "Between three and five years." People did not believe me, I can assure you I am now about to finish five years in this Commission and I had told them, "Using this route, plan for between three and five years." The politics of the time stopped the Parliamentary Select Committee providing a law for three or five years, instead they said 24 months and then if need arises the Commission can apply for extension. The consequence has been we have been going in circles and now we are going to finish five years without a Constitution.

When Ghai came and Commission of 15 was established and I was put there and Ghai said, "We must negotiate with Ufungamano to bring them on board", I said this was my position so I will support you and honestly I will tell you, some of the members of your Party who were then in Government and you people were not there said I was bad. But I stood my ground and said what Ghai is doing is the correct thing. The people in Government today and my colleagues seated here today were at Ufungamano, they thought I was good. Today, they are in Government and they are doing the opposite, in fact they feel I am bad, but I have stood my ground, I am not going to be moved because I know they are wrong and they will have to come back to the truth. If they go the route they are going, we are not going to have a Constitution, take it from me, it is being recorded, Zein has told you, when need arises they will come and check. We will not have a Constitution if they insist on going the route they are going.

We argued, I stood with Ghai, the Commission was reconstituted and that is why I have my friend Zein here, I have the Chair here, I have Wanjiku here, I have Raiji here, Maranga is here, they were in Ufungamano. I heard the Hon. Otieno saying, "If we have to move they will just have to reconstitute the PSC." If they are honest with consensus and I said it, when the consensus started in Mombasa and Zein has referred to it, I said and quoted some statement that sounds obscene from John Garang who said, "When you sit with people who agree with you and you purport to be building consensus, you are only engaging in political masturbation, that is not consensus. Consensus is build by those who disagree sitting together to talk." Now, when you get to a situation where a Government we elected is telling us it can only work with those who are friendly to them and they call that consensus, honestly it is not.

**Hon. Uhuru Kenyatta:** What is it?

**Com. Mutakha Kangu:** It is a lie to us but we can take it. If we are talking of consensus we are agreeing they are those who are disagreeing and they should sit together, put their position on the table and decide which issues do we agree on, on which ones are we disagreeing, you narrow the issues and then you start negotiating on the issues you disagree, that is not happening. When it started in Mombasa I said and I have kept telling my colleagues here, consensus has not yet started, what is going on is hide and seek, it is tricks, people trying to outdo each other, those who have the muscles trying to use their chest to have their way, it is not going to work, they had better understand and if as a Commission and you have asked us to be honest, if as a Commission we were to be honest you can speak as politicians and be partisan, if as a Commission we chose to be honest, we can be able to objectively and in a principled manner say who is not being serious in this negotiations, we are refusing to do so.

Number three--

**Com. Abida Ali-Aroni:** Thank you.

**Com. Mutakha Kangu:** I have not finished, Madam Chair. (*Laughter*).

**Com. Abida Ali-Aroni:** You have to wind up.

**Com. Mutakha Kangu:** I will try, I will try, let me finish.

**Com. Abida Ali-Aroni:** No, please wind up, Kangu. Please.

**Com. Mutakha Kangu:** Let me wind up, Madam Chair.

**Com. Abida Ali-Aroni:** Thank you.

**Com. Mutakha Kangu:** Now, Madam Chair, the point is that on the issue of Section 47, I have again talked about it here time and again, we have done a Paper in this Commission, if you want copies the documents of the Commission are public documents, we have discussed it and the conclusion in Maasai Mara was we think we may need that but there are two ways, you could go with the Act or have amendments but let us agree to meander along, we are not being honest, let us tell the country we need an amendment to the Constitution to take this process forward, without it we will not get a legitimate Constitution.

On the Contentious Issues sorted out in Naivasha and Zein has talked about it, it is true I was in Naivasha and I left Naivasha

very depressed because the way the meeting was conducted was such that we were not so much allowed to participate and I personally have kept saying even though the Politicians are saying we have the Naivasha Accord, that Naivasha Accord in my view is a mutilation of the Bomas Draft and my argument is that there is theory and there is architecture and design. Now the way you design a Constitution, if you are not careful the design you chose may not give you what you are listing in the theory and my argument is that the Naivasha Accord introduces design changes to the Draft that will not actually give us some of the things we were looking for and one thing is what I have called Devolution with the design that does not have a Second Chamber of some kind you do not have Devolution and the reason is that if you have Devolution the levels of Government you create, whether there are two or three are said to be coordinate to each other, not subordinate to each other. The reason being that each one of them derives its authority directly from the contribution and not from the other. So if you design a Constitution in such a manner that that Constitution from which they derive the authority can be amended by just one of the levels of Government then you do not have Devolution.

**Com. Abida Ali-Aroni:** Thank you.

**Com. Mutakha Kangu:** The Government you have will be--

**Com. Abida Ali-Aroni:** Kangu, thank you.

**Com. Mutakha Kangu:** --subordinate to each other so some kind of Second Chamber a small one like the Rwandan one of 26--

**Com. Abida Ali-Aroni:** Kangu we will have time to discuss Devolution.

**Com. Mutakha Kangu:** --will do. Thank you.

**Com. Abida Ali-Aroni:** Thank you. In his other time, Kangu is a Lecturer so you will forgive him but Kangu I think we will need more time so that we can go into deeper details with our guests but today let us try and be as brief as we can, Raiji.

**Com. Riunga Raiji:** Thank you, Chair. First of all I think I want to associate with those who have genuinely congratulated the leadership of KANU for coming here and been very frank and I must say that kind of frankness is not always available whenever you consult with Politicians and perhaps it is also a way we may want to reconsider our position instead of going with highly publicized functions perhaps dialogue like this would be necessary, I personally have learnt a lot.

Having said that, I think there are a lot of red herrings that are coming in, I think the critical issue and I think *Mheshimiwa* Haji has mentioned is really to get everybody on board. We come from a history where the present Constitution was negotiated in

Lancaster and a small – in terms of population – part of the country was not satisfied with the political settlement. We all know the kind of problems 40 years later that we have had just because a small (mic failure) precisely and its aftermath and I think you were there and we are talking only a small population but occupying a large area. So I think my appeal to you and I think you have captured it is that the important thing is to recognize that we cannot really have a Constitution of Kenya unless all Kenyans or the stakeholders as we call them, meaning all communities and so forth at least are happy or at least can live with the outcome of that and there is only one known way of getting that, dialogue and consensus, dialogue and consensus. Even if you are able to bulldoze 80% *Mheshimiwa* including yourselves and NARC and others and leave even a 10%, that 10% is capable of torpedoing the outcome unless we have to bring them on board and take care of their interest and the only way you can do it is the way we as a Commission we are trying to dialogue and dialogue and dialogue.

I am one of those also who feel embarrassed I think like many people that the Process is costing a lot of money and it is taking too much time but really there can be no shortcuts in Constitution making. Until that 47, Section this, these are red herrings, the crucial issue is this, if there was genuine dialogue and we agreed on the content since Parliament which agrees on the content will take (?) is going by history to amend Section 47, I do not think Section 47, Section 10, 15 or whatever else is the real issue. The issue is that we have not really come to a dialogue, I am not even satisfied that all parties actually accept the need of a Constitution and I think *Mheshimiwa* Okemo captured it, if you can agree on the content, leave the procedures first, it will take a few minutes for your lawyers and clerk to work out the procedure of putting that within the Constitution.

Having said that, I also wanted to pick something that I think the leadership of KANU has said, I am one of those in the Commission who are not worried when we are insulted and criticized, I appreciate that that is part of democracy, I accept that within any organization where democracy prevails there will be people with different opinions who will utter them irrespective of the official position. We in the Commission have had and continue to have people who will go to the Press and tell their opinions so I am not worried and I will not think that KANU has not done that. Having said that, I think this is an appeal to my fellow Commissioners, I think sometimes we intend to behave as if we hold the title deed to the Constitution, we do not, the people who hold the title deed to the Constitution is Kenyans and I for myself would think that we in the Commission must be humble enough to accept that even Parliament may make genuine changes or recommendations and that is not mutilation, it is the contribution to the Process.

**Com. Abida Ali-Aroni:** Thank you, Raiji.

**Com. Riunga Raiji:** Chair, let me finish. (*Laughter*) And I think, Chair, the reason I am saying this is that I know in the Commission and I have been--

**An Honourable MP:** (*Inaudible*) (*Laughter*).

**Com. Riunga Raiji:** No, no.

**Com. Abida Ali-Aroni:** We are Politicians in the making.

**Com. Riunga Raiji:** I know every time we try to speak and I think even in Naivasha this was said, we were accused of being too defensive that we do not want to be criticized because of the document we make. I appreciate and I am humble enough to see that even at Bomas even at this one, there may be shortcomings that you as Politicians or even others, even clergymen and others can see which we cannot and my view is that I think you people in Parliament, this is the product that you are going to live with, let us make sure that this little opportunity, without having to mess up what we did after considerable bargain and dialogue in Bomas that if there are genuine weaknesses we must be free to point out that and that to me is not mutilation, it is an exercise of a legitimate function because we are not the only people who have a view or who can suggest improvement to the Review Process.

**Com. Abida Ali-Aroni:** Thank you.

**Com. Riunga Raiji:** Thank you.

**Com. Abida Ali-Aroni:** Maranga, one minute please.

**Com. Charles Maranga:** I think I also want to join KANU, I mean in terms of-- (*Laughter*) I am going to join KANU, I am going to join KANU (*Laughter*). I am going to join KANU!

In all fairness I am very happy with KANU because in many ways as you hear the Commissioners are talking, I have been a Secretary General of two Political Parties which have given raise to a number of Members of Parliament so I do not have a problem, including my friend Raila, Hon. Niche and all these, I have come through my Parties so I am very happy with that. But for now, I want to say that I think KANU needs to take the lead that is all I am saying. Do not go out there crying that, "Oh, there are so many problems, we are having this, we are having this." I think Hon. Uhuru Kenyatta as the Chairman of KANU and your members who are able and I see able members, I think take the lead, talk to the others, talk to the Chairman, of PSC, talk to the President the way you did, talk to Raila, talk to everybody else, I think you need to be proactive, do not put a barrier. I have been in Politics and I know that once you start, everybody grant stands, nothing moves. So even if we develop documents here, even if we develop what, I think the best thing is, let us have respect for one another, you are all Members of Parliament, move forward and in fact, I am yet to here when KANU says it is calling for a meeting of other Members in terms of consultation and then bring in the Commission as a facilitator and I think this is one thing we need to do.

I want to agree with Hon. Otieno, once you have agreed on the content, on the Draft, the issues of the Process will easily be

resolved because even the people who are in court are our own colleagues, they are our friends, you can ask them to withdraw tomorrow. The people whom you ask to go to court is us who instigate, go to court so I think let us be honest with this, KANU, Mr. Chairman, take the lead, you have been in this place for a long time and as a Commission we will support you for consensus building but the only thing we need to say is that the content of the Bomas Draft should not be altered so much, let us start-- Even as you here, Naivasha had its own problems, let us not again annoy Kenyans because when we go to the Referendum, this document can easily be rejected and that will be a serious issue so I am appealing to KANU that you take the lead and talk to everybody, let us not say it is them against us. I think let us now move on and engage Kiraitu, engage Raila, engage Nyachae, engage everybody else. Thank you.

**Com. Abida Ali-Aroni:** Thank you, Maranga. Hon. Kosgey before we wind up.

**Hon. Henry Kosgey:** Thank you, Chair. I will take just one minute, I think we are in agreement, you know I am a very optimistic person. We came here, Chair, to first of all explain our position which I think the Chairman has very, very ably expressed. We also came here to tell you that we have one spokesman and that anybody else who says something else elsewhere is personal-- (*Inaudible consultations at the "High: Table*) The Chair is not listening. That anybody else who says anything else is personal, please do not take offence to what other people say otherwise you would not really be a leader.

After explaining our position, we want you to understand our position. KANU is caught between a rock and a hard place, as much as Com. Maranga says we should take the lead, I think we also came here to tell you to take the lead. (*Laughter*). We will work with you in that leadership but since you are non-partisan technical group, please do not fear, do not fear in taking the lead, we were with you in Bomas, we did not work out, we have not even actually walked out of the PSC as such but we have taken a break. (*Laughter*). And we explained very, very clearly even to the President that even if we participate, if it will not be an all inclusive process as we would have liked it to be, then it would fail in the Referendum and we told him so, we told him it would fail and we do not want to do a futile exercise, we told him so. We even asked that that meeting of an all inclusive party thing be called, (*Inaudible consultations at the "High: Table*). You know the two Chairs are not interested in what I am saying. (*Laughter*).

**Com. Abida Ali-Aroni:** No, we are sorry, carry on.

**Hon. Henry Kosgey:** We told him, "Call an inclusive thing", we even told him, "Just blast us." He told me he would do it but he has not done it.

**Com. Abida Ali-Aroni:** Who is "He"?

**Hon. Henry Kosgey:** Because you were not listening so you are asking who it is. (*Laughter*). So anyway, to conclude, I

do not want to belabour the point. We have not come really to go into very lengthy debate, we could, but we had only budgeted ourselves one hour and something because we have something else but we came to tell you what is in our minds, what is in our hearts and what we have actually done. You might think we have not done anything but I am telling you we have been inciting in the House Business Committee for two months and as the Chairman said, they said they did not even have intentions of agreeing. (*Laughter*). Just even intention, so we can debate this thing for a long time and I hope we will debate because we want to engage in this dialogue with you and we want you to take the lead, we will be with you, there is no win-lose, we want win-win as they say and please take the lead and do not apportion blame. Madam Chair, do not apportion blame and do not even use words like “who is fooling who”, people do not like to be told “you are fooling”. You now such kind of words rebel, please try to be as humble as possible, we are almost there, almost there, but you know human beings, particularly Politicians and I see Commissioners have big egos. (*Laughter*). That is the truth, so please, we still have issues of content and process to go.

Before we even went for the Naivasha Accord, I am just going to illustrate the dishonesty. The agreement before we went to Naivasha was that we amend Section 47 before we go, it was agreed and PLO was there. Who did some Draft? It was agreed that we even publish the Bill as a condition to go into Naivasha, when the think was not published, we spent a whole day persuading LDP, let us take the word of Kiraitu, that this thing will be done. It was said that the Attorney General was in Arusha, we called the Attorney General from Arusha so that he can confirm that this thing would be done. The Bill actually went to the Government Printers, yes it did, it was withdrawn from there. We still went to Naivasha Accord on the word, word and I think we were stupid because if people have proved that they cannot even honour anything, what did we really have to go on a word? But we did and we persuaded our LDP colleagues who had said they were not going, and you know that, they said they were not going, but we still pleaded with them, “Please let us go, let us go they have given us an assurance.” It ended up being not, so anyway, let us not talk of history, or this, everybody knows the history, let us look for the way forward and the way forward is what we have come here to ask you. We have jotted a few things about the way forward, it is not exhaustive but you also know the way forward, let us actually focus our minds there, the way forward, let us not worry about what has gone behind us. Many many things, five years, Kangu can write a whole book and I think you will write one, because he is-- (*Laughter*), but let us look for a way forward and we will walk with you, we will walk that path with you. Thank you.

**Com. Abida Ali-Aroni:** Thank you, *Mheshimiwa* for the assurances. I will give an opportunity to Hon. Uhuru and I think Prof. Kabira will speak on behalf of the Commission as we wind up, the Press is waiting, maybe we should say one or two things to them, when you talk about being open, it is important for the whole country to know that we have met today. I am sure we do not want to go into details of our frank discussions but we can say one or two things, thank you.

**Hon. Uhuru Kenyatta:** Thank you, Chair. I think I just wanted to concluded by at least our own presentation by saying we chose to be frank and to be open with you about our own position. What dogs this Process is mistrust, what dogs this Process

to use the Chair's own words is dishonesty. If we want to finalize this Process, I think the first basis must be we must begin to be honest with one another.

The Commission itself must be the honest broker, because true, we are Politicians, we cannot be partisans and as my brother here mentioned that KANU takes the lead, we have tried to take the lead. On several occasions in the past and some amongst you have even participated with us in the various discussions and dialogues that we have had over the past two years with our colleagues on the other side, various meetings we have had in various hotels, moving from Bomas to other areas to continue to try and hammer out consensus. And if we are to be honest, Commissioners, we all know where the problem lies. Let us not beat around the bush, let us not try and please any constituency, be they in power, be they not be in power, be they who, let us not try and please anybody, let us be honest and if you take that honest leadership and broker and honest accord-- Fine if we have made mistakes, let us sit down and be told, "KANU on point, a, b, c, d, you are either being dishonest or you are not being completely truthful." Or for that matter we could be wrong, we could have taken a position based, as you have said correctly, on the fact that we have refused expert advise, so let us then have the expert advise and be told, "On this basis, here and here and here you are wrong." But equally, where we know truly that others are also wrong, then you should equally without fear point out to those individuals and say, "You also are wrong here." Because it is only by honest brokerage that we will get this Constitution and that burden does not reside with KANU, that burden does not reside with NARC, that burden actually resides with you as a Commission and we are ready to play our part, we are ready to participate and play our role but please, do not tell us to return to the PSC when you yourselves are acknowledging the very dangers that that presents to us because as you said, in Naivasha, we made a mistake, we acknowledge, we made a mistake by saying that we should not get that expertise, we should have listened, we made that mistake, we made that mistake but as a result, you are equally a part of Naivasha as we are, all right? (*Laughter*). So please, as much as you recognize that mistake, then do not also make us now make the same mistake by going to sit in PSC and then we say, we are now part of that decision of which really possibly we are not.

We are not saying we are demanding the Chair, we are not saying we are demanding-- Give us a way that guarantees everybody, not just KANU, everybody, that the product will be owned by all and I think even in our own concluding remarks, we have not said and we specifically said we are not going to say anything about walk outs, we are not going to say anything--

We are not mentioning boycotts, we are not talking that language, all we are saying is we have chosen temporarily to stand back, we are still willing to participate, help us, we have told you what our fears are, what our concerns are, we have tried to dialogue with our colleagues they have not seen. Could you be honest brokers and tell us maybe some of these issues you are raising are known issues and maybe they can be protected in this way, could you try and get our other colleagues to say, "Look, these are what KANU's concerns are", and maybe others have also different concerns so that we can actually get a participatory – as we have said – Process where we can all take pride and ownership and where most importantly, we can all go out to the people and speak in one voice as leaders. Be as Political leaders, be as leaders as you are in the Commission, be we religious leaders, all of us need to be able to communicate a message that will unite and not destroy this country, we are

ready, Madam Chair, the ball is in your court.

**Com. Abida Ali-Aroni:** Thank you, *Mheshimiwa*. Just briefly, we have circulated to you a brief status report of our activities, I will not take any more time to go through it but please study the same just to inform you of the activities that the Commission is undertaking, in the meantime as we broker consensus and move the Process forward. Prof. Kabira.

**Com. Wanjiku Kabira:** I will be very quick. I want to thank Uhuru and his team for this very excellent consultation. I think it is one of the best we have had, the others have been conducted in front of the Media and probably we have not been (?) and candid as it has been today.

One of the things that you have raised which I believe we should be able to pick up is the question of all inclusivity in the Process particularly within PSC and not only PSC, other stakeholders particularly in relation to the Contentious Issues and so on. I have been thinking about what guarantees can you have and I think it is a legitimate question and we need to put more salt into this Process and probably consult more among ourselves and also with Political Parties.

I think the question of reaffirmation and validation of the Naivasha Accord is important because it means we are moving one step forward towards the agreement on the content. The issues in details have not been agreed upon and probably that again becomes very, very important.

On the question of Section 47, we debated it actually in this Boardroom for about two months, I think we had a paper which had about four or five options by which we can reach a valid Constitutional Review Process including Section 47 and you also probably-- I know for instance the fear of Section 47 is if one party was able to mobilize one third to reject Section 47 and then we go back to square one where we are now without the new Constitution, what would happen and maybe these are fears that need to be addressed as well and probably if those fears were addressed we might end up with an agreement both on the Process and also on the content itself. So I believe this has been a wonderful kind of consultation but it is only a beginning, there are many, many issues which have been raised by KANU and also by members of the Commission and I think we can only say this is starting point in terms of this last leg as *Mheshimiwa* Kosgey says of the Process.

I want to say that because of the current legal status, we have a lot of emphasis on Parliament and Parliamentary Parties and there is a sense in which although the Commission may take the lead, the button towards the finalization of this race is still with Parliament and Parliamentary Parties and therefore that is why we are consulting with you and we will continue doing it because you are now operating under the new law in terms of this and talking about the Naivasha Accord and whatever amendments you want to have on the Bomas Draft. Therefore, in a sense you hold the key to the realization of the dream of the Kenyans towards the new Constitution but I want to agree with you and our colleagues here that the Commission is going to walk with you on this Process and as much as possible we will try to find ways of building as much consensus as possible both on the

Process and on the content. Thank you very much, it was I think a wonderful discussion. Thank you. (*Clapping*).

## **PRESS BRIEFING**

**Com. Abida Ali-Aroni:** Welcome, Members of the Fourth Estate and sorry that we kept you for some minutes outside there, we have been in a joint meeting with the Official Opposition Party for the last three hours, since about 8 O'clock and we wanted to be left alone for a while but we are happy to have you here and we will share with you briefly our discussions this morning.

The official Opposition Party requested to meet with the Commission this morning and we were happy to host them. As you are aware, we have had a series of consultative meetings with Political Parties and this is just but one of the consultations that we will be having with our Political leaders in a bid to move the Process forward. I am happy to report to you that this has been one of the best meetings that the Commission has had with Political Parties, we have had frank and fair discussions this morning, we have looked at the concerns of the official Opposition Party in regard to the Process, we have also shared with them the concerns that we have as a Commission especially now that the Process is in the hands of the National Assembly.

We on our part are happy to note that the stay away by KANU from the Parliamentary Select Committee is temporary and that they are willing to go back albeit with some conditions and in our view the conditions if all our political leaders sat together, they should be able to discuss them, reconsider the various positions taken and together they can help this country conclude this Process. Our guests today have indicated to us that they would like to see the Process being all inclusive, we share with them that position we would like all stakeholders involved in this last phase of the Process. They have indicated to us that they are still true to the Naivasha Accord and to the Draft that emanated from Bomas, they would like the discussions in the PSC to be based on the Naivasha Accord, that really is for them and their political colleagues to decide, on our part as a Commission we are willing to give our technical input based on the views that we received from the people of this country. We have called upon them as we have done with other political leaders to stay true to the principles as set out in Chapter 3A of the laws of Kenya. On our part all along, we have endeavoured to stay within those principles and based on those principles we are ready to give any technical input that any of the stakeholders would seek from the Commission.

We also have requested KANU to take a lead if truly they want to play their role as the official opposition in this country. On their part, they have also requested the Commission to take a lead in ensuring that we have an all inclusive product at the end of the day. We have in our consultations in the last few weeks attempted to identify the fears and suspicions amongst our political leaders and we have assured them that we will play a non-partisan role in trying to broker a solution between the Political Parties and we are inviting them to be available when we call for an all inclusive meeting of our Political leaders to try and resolve the problem that has bogged down the Process. Thank you.

**Hon. Uhuru Kenyatta:** Thank you very much, Chair, for those remarks and I think the Chairperson of CKRC has adequately summarized the discussions that we have had here this morning. We requested a meeting with CKRC, a meeting that was granted, we have had about three hours of very fruitful discussions, we as KANU have raised with the Commission the issues that are of concern to us, the fears that we have both on content as well as the Process, we have had a very frank exchange on these issues and ultimately agreed that we need to have honesty in this Process, we need to all be transparent as to the issues that continue to dog the Review Process. We have pledged our willingness, not only to continue or to resume our seats with the Parliamentary Select Committee, but also to participate in any discussions as we have done from the very beginning of this Review Process starting with Bomas I and Bomas II and ultimately through our previous participation in the PSC, at any drive aimed in building consensus and ensuring that we have a Process that is beyond legal reproach and we would still be willing to continue in that dialogue or with the hope and desire of giving Kenyans a new Constitution in the shortest possible time.

However, we must accept that we must address and deal with the issue of honesty. The game of playing hide and seek with one another needs to be shelved and we have been frank by saying if indeed it is us as KANU who are the stumbling block, then let it be said, let us be told where and why, if it is others let us put it on the table because unless we have that honesty we will not be able to deal with the problems that continue to bog us down and I think towards that end we are in agreement with the Commission and we trust that they are honest brokers and they will shepherd in an honest and fair manner the remaining part of the Process. We have agreed that this Process does not belong to Parliament, nor does it belong to the Commission, we are only organs of the Review Process. Ultimately the document or the new Constitution belongs to the people of Kenya, our responsibility as Political leaders, CKRC's responsibility as Commissioners and the technical and expert people is to interpret the will of Kenyans into a new Constitution, a Constitution that will ultimately unite Kenyans and give us the way forward for generations to come as opposed to dividing Kenyans and we have all accepted to play our role as we move forward in this particular Process. We look forward to further meetings, we will release to you our own statement that we have read to the Commission this morning and once again I would like to say that we ourselves are certain that if all players, if all stakeholders played their role in an honest and transparent fashion, there is no reason why Kenyans cannot have that Constitution that they desire. Thank you very much. *(Clapping)*. So we have copies somewhere I think which will be released to yourselves.

**Com. Abida Ali-Aroni:** Thank you, *Mheshimiwa*.

**Hon. Uhuru Kenyatta:** Thank you, Abida.

**Martin Mutua (Standard Newspapers):**

*(Inaudible)*.

**Com. Abida Ali-Aroni:** Oh, they have some clarifications. Okay, we will invite a few questions.

**Mutua (Standard Newspapers) :**

*(Inaudible).*

**Com. Abida Ali-Aroni:** Can you use the mic, we cannot here you.

**Martin Mutua (Standard Newspapers) :** My name is Martin Mutua from the Standard. I just wanted to know from Hon. Uhuru whether the same fears that you have had with regard to joining the PSC still stands because the last time what the Party said about rejoining the PSC was that unless Madoka was made the Chairman you will not go back and that is the statement that was made, are these the same fears that you still have?

**Hon. Uhuru Kenyatta:** To respond to that, I do not think we said unless Madoka was made the Chair. The issue was not about Madoka, the issue was about a voice for the minority members in the PSC and it is the same issue that once again we have raised to the Commission and what we have said if we can get guarantees other than us assuming the Chair that will ensure that the deliberations of the PSC will indeed have space and room for the voice of the minority, then let us be told but had insisted on the minority having the Chair as the only true voice that we could have in a Committee that is overwhelmingly dominated by one side, out of 27 members 19 come from the ruling coalition and of those 19, there is no dissenting voice because they have even gone a step further of saying that those who disagree with their position have also been left out so what then is our role and what guarantee of a voice do we have without the Chair? If the Commission or anybody else can device a way of ensuring that, we are happy to proceed, but we will not agree to proceed and *(mic failure)* tomorrow the Government will turn around and say this is the position of the Parliamentary Select Committee and announce positions that possibly we disagree with and then tomorrow turn around and say, “Oh, KANU has said that they disagree with the deliberations, KANU is being dishonest because they have participated from the very beginning to the end, so how can they now turn around and say that they are not party?”. These are some of the concerns, these are some of the fears that we need to be guaranteed, to be assured that these kind of scenarios will not occur so it is not a question of an individual, it is a question of that voice that is what we are more concerned about.

**Com. Abida Ali-Aroni:** Is that all?

**Lillian Odera (KTN) :** My name is Lillian Odera, I work for KTN. I would just like to ask Hon. Uhuru two questions. You are talking about the guarantees that would guarantee the voice of the minority members, does that mean that you are calling for the replacement of the current Chair of the PSC?

Secondly, Hon. Ruto very recently launched a very scathing attach on CKRC, does his views represent those of the Party?

**Hon. Uhuru Kenyatta :** One, I think we have said we believe that it is through the Chair that our voice would be heard.

What we have told the Commission today is that if indeed there is any other way that that voice would be guaranteed, we are more than welcome to listen to the options that can be given, we are more than prepared to listen to that. That is what we have said today.

Two, we have equally made it very clear today that KANU's position will continue to be made by the Chairman of the Party but equally we live in a democracy and we have accepted that individuals can make their positions and whatever Hon. Ruto said, he is entitled to his opinion and nowhere did he say he was making those remarks on behalf of KANU but we respect his right to air his opinion and we have told CKRC today and we have agreed together, that we will not be reacting to comments of individuals. If and indeed they do need to sit and talk with KANU, they can call us and we can come in here and have discussions and share with them KANU's position and equally, the comments that she herself made as Chair, in response we will also say that we will not be dialoguing with one another through the Media, we will be dialoguing with one another through meetings such as we held today. Thank you.

**Kirwa (KBC) :**

**(Inaudible).**

**Hon. Uhuru Kenyatta:** Sorry.

**Kirwa (KBC):** Am Kirwa from KBC and I would ask Hon. Uhuru, who should meet your conditions for you to go back to PSC?

**Hon. Uhuru Kenyatta:** Those conditions, one, require the Government in part, require the Judiciary in another part, require some of what I might-- What is the right word to use? Require some of the more intransigent individuals to come off their high horses and to say that we need to actually sit and dialogue but my opinion is equally as important as yours and that when you are dealing and talking about a consensus document, it is not a question of who is mightiest, but a question as one member put it, that even if 10% say no, that 10% so long as they are part of Kenya needs to be heard and their views need to be taken into consideration so it is a mixture of different parties and people.

I think if we end there it would be great and grand, thank you. \

Meeting ended at 11.14 a.m.

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