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Time for Harvest

Mukabi Kabira

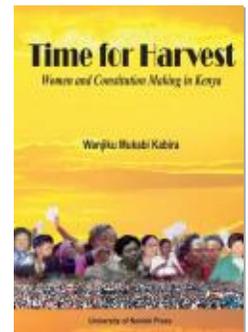
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Negotiating for Space in the Constitutional Review Process

The struggle for a people driven process had been going on since the amendment of Section 2 A of the constitution. In 1992, Kenyans hoped that a comprehensive review of the constitution would have taken place before the 1997 general elections. Instead, we got the Inter Party Parliamentary Group (IPPG) package which was seen as a compromise between the opposition and government. It was the same year (1997), that Phoebe Asiyo's motion, discussed earlier, was tabled in parliament and defeated; the same year when the Women's Political Caucus, and a strong political Women's Movement, was born. This chapter captures participation of women in negotiating legislative framework for the constitution review process.

The Collaborative Centre for Gender and Development (CCGD) organised the first meeting on women and constitution making. This meeting took place in January 1998 at the Silver Springs Hotel, Nairobi. The aim of the meeting was to understand issues related to constitution and constitutionalism and how women could participate. The meeting was addressed by two well known constitutional lawyers, the late Prof. Okoth Ogendo and Mr. Wachira Maina. Prof. Ogendo was a very broad-minded scholar who made very complex things very simple for non-lawyers. This is what Prof. Ogendo did for women at that meeting: he let them understand, in the simplest way possible, what a constitution is, how it is made and by who and women's role in the process. In my view, Prof. Okoth Ogendo was a unique scholar.

At this meeting, Prof. Ogendo made women realise the need to equip themselves with relevant knowledge in the process of Reviewing the Constitution. Women had already identified the need to have both technical and lobbying teams within the Women's Movement to spearhead mainstreaming women and women's experiences and perspectives in the process. They negotiated with the team of experienced individual women who would work as door and window openers. They decided to organise themselves to negotiate to be part of the process. They, like the rest of Kenyans, hungered for more democratic institutions, for development of a constitution that would promote better social, economic and political order with less powers centred

around the executive and where resources were going to be distributed fairly. Primarily, however, women saw the opportunity to ensure that their issues, for which they had struggled for a long time, were entrenched in the New Constitution. Hence, the discussion to negotiate a double covenant for them.

After the first meeting on women and constitution making, women were ready to begin the long, political journey of preparing the field for planting.

Women at the negotiation process

After the 1997 elections, the debate on the nature and process of coming up with a comprehensive review of the constitution was started. Parliament debate the issue and in 1998, appointed a 25 member Inter-Party Committee headed by Attorney General Amos Wako to seek the views of individuals and organisations on the amendment of the constitution. This culminated in a national meeting at Bomas organised by the Attorney General (AG) in May 11th 1998. Women were there to make their case. They did the same in Safari Park Consultation Sessions I, II, III and IV. It was at these consultations that women negotiated under the leadership of Women's Political Caucus for both their participation in the process and also the structures that would facilitate the review of the constitution. Credit goes to women for coming up with the District Strategy and Constituency Level Structures in order to ensure maximum participation of the people in the constitutional review process. The following list indicates the names of some of the women who were intensively involved in this process:

Hon. Phoebe Asiyo	Mrs. Hilda Orimba
Hon. Zipporah Kittony	Mrs. Abida Ali Aroni
Hon. Catherine Nyamato	Ms. Nancy Baraza
Mrs. Jael Mbogo	Hon. Adelina Mwau
Hon. Martha Karua	Ms. Tabitha Seei
Mrs. Martha Koome	Hon. Julia Ojiambo
Mrs. Jane Kiano	Ms. Jane Ogowapit
Prof. Jackline Oduor	Ms. Jane Ogot
Prof. Wanjiku Mukabi Kabira	

These women, among many others, moved into the process with all the energy and expertise that they could marshal.

Constitutional review stakeholders consultation at Bomas (May 11th 1998)

In 1998, when the Attorney General called for the meeting of stakeholders, the Women's Political Caucus held a meeting at the Silver Springs Hotel to discuss its representation at this stakeholders' meeting, which was meant to set the pace for the review process. Women agreed that they would not go as Women's Political Caucus because that meant having two representatives only

at the stakeholders' meeting. Instead, they talked to the AG and made him understand that the Caucus was not an NGO but a network of women's NGO's and therefore we needed to get more seats for women's organisations. Women had begun to adopt strategies that would increase the numbers in all negotiation meetings. The AG gave women a slot for chairing one of the sessions and requested me to chair it. Therefore, I chaired the session for Religious Groups assisted by Adelina Mwau, a great gender activist whose work goes back to the 70s. We presented women's position. At the end of this meeting, women were recognised as stakeholders, same as faith-led organisations, political parties, professional societies, etc. We must therefore recognise the role of the AG, Amos Wako in this process because he consistently stood by the women.

Women's participation at this initial Bomas meeting was not without its comic side. When women reached the venue, they could not find their registration desk. The officers in charge did not know where an NGO entitled "Women's Political Caucus" could be placed. The Caucus was neither listed in the Civil Societies' nor the Political Parties' stand. Eventually, they found the Caucus label tag among Community-Based Organisations (CBOs). Apparently, no one among the organisers could recognise this animal called "Women's Political Caucus". Women's organisations were known to focus on *maendeleo* (on development), kitchen gardening, and rural development, but not on political caucusing. Supposedly, women should be busy with community level work and looking after children.

Another comical incident was when women were asked to present their position on the Review Process at the same meeting. As mentioned earlier, Adelina Mwau and I presented women's position papers. As Mwau and I sat on the high table and I was making the presentation, Mwau held a placard reading, "We want Affirmative Action," until from where the women were sitting, Prof. Jackline Oduor, one of the Caucus members, pointed at the placard. Mwau and I consulted and agreed that we did not need the placard because we had been given the official platform to make our presentation.

Sometimes, we women are like the slaves who, after having been in slavery all their lives, did not know where to go or what to do once they were freed after emancipation. We laughed about it afterwards, recognizing that we had been so busy struggling on all fronts that even when the door was open, we continued knocking at it.

This consultation of stakeholders was critical in setting the pace and putting women at the centre of the review process; but it was not without a lot of effort from the women. They had held meetings before, educated themselves and strategised at all stages. At the consultation, Women's Political Caucus was

very well prepared. It was a meeting which had many disagreements and walk-outs.

Lucy Oriang, a journalist noted:

“Unlike in the past, women will contribute to defining the vision of Kenya and together with men lay down the basic principles upon which Kenyans want to be governed” (*Daily Nation*, May 11th 1998).

Thus, women had started to operate from the centre and even the media had moved women’s issues to the front page and they had started appearing in the editorial pages too. Women had made themselves players in the Constitutional Review Process. They had begun the process of operating from the centre.

Women and the Constitution Review Law 1998/1999

As noted earlier, the consultations of stakeholders at Bomas were followed by four stakeholders consultations at Safari Park consultations. During these consultations, women, together with political parties, religious groups, civil society organisations, among others, continued to negotiate for their space in the review process. Having been accepted at the consultations of stakeholders at Bomas, women had the opportunity to negotiate for their inclusion into the Drafting of Review Bill at Safari Park. It was clear that women needed various stakeholders to work with. Eventually, they negotiated with all stakeholders and ended up with five out of twelve slots that constituted the Draft Team. This was no mean achievement. The five women were:

Hon. Martha Karua	Mrs. Abida Ali Aroni (lawyer)
Hon. Phoebe Asiyo	Mrs Martha Koome (lawyer)
Hon. Zipporah Kittony	Prof. Wanjiku Mukabi Kabira

Thus, women had successfully negotiated for space at the drafting table. With women like the five listed here and with support from the male members of the committee, it was not surprising that the Bill to review the then existing constitution was the most gender sensitive instrument/law that Kenya could have. The male members of the Review Bill Draft Team were:

Hon. Julius Sunkuli – KANU	Mr. Erastus Wamugo – Youth
Hon. Joseph Kamotho – KANU	Hon. Gitobu Imanyara – Opposition
Hon. Bonaya Godana – Opposition	Hon. George Anyona – Opposition
Prof. Kivutha Kibwana – Civil society	Bishop Philip Sulumeti – Faith-based organisations (Chair)

The team started the process of developing the law to review the constitution under the Chairmanship of Bishop Sulumeti. Women attended these sessions religiously and strategised at every stage. At the drafting stage to develop the law, women representatives ensured:

- a) That women supported a structure that ensured consultations with Kenyans starting from constituency to the district and to national levels;
- b) The Affirmative Action for women's representation at all levels was entrenched;
- c) Women's organisations as nominating bodies were entrenched in the law;
- d) That 30 per cent of the 25 per cent of civil society representation went to women;
- e) That 30 per cent of the commissioners would be women;
- f) That 30 per cent district representations at the National Conference were women, that is, at least 1 out of 3 district representatives were women.

I should emphasise that these gains by women at the Safari Park negotiations should never be taken for granted. They formed the basis for women's negotiations throughout the process. They are the reason for the gains in the various constitution drafts and the final constitution which is women friendly.

The gains ensured that women were in the review process, in the Constitution of Kenya Review Commission (CKRC), the National Constitutional Conference at Bomas, district representatives at constitutional constituency committees, and as chairs of committees at the conference and other review structures. It was also because the law insisted on women being in the commission that the Affirmative Action of 30 per cent women's representation in the Constituency Constitution Committees (3Cs) was implemented by the CKRC.

Thus, in the Bill to review the constitution, negotiated through the process which began at Bomas in May 1998, through Safari Park I-IV and drafted by the Sulumeti Committee with the participation of five women out of the twelve members; Affirmative Action was entrenched. The AG was hopeful that the Bill would be passed by parliament and then the appointment of the proposed twenty five commissioners would be done. The Bill proposed that thirteen of the commissioners be nominated by parliamentary political parties; women's organisations would nominate five commissioners, all protestant churches would nominate one, Muslim Consultative Council and the Kenya Episcopal Conference would nominate one each. Four others would be nominated by civil society organisations.

Although at the Bill's implementation level the percentage for women was not what women expected, the negotiations at Safari Park had formally entrenched the principle of Affirmative Action in the proposed law. For women who had always negotiated from the side, this was a milestone. Women's organisations that were to nominate the five commissioners and who were in the review were:-

- The Women's Political Caucus;
- The League of Kenyan Women Voters;
- Federation of Women Lawyers–Kenya;
- Collaborative Centre for Gender and Development;
- Maendeleo ya Wanawake;
- Widows and Orphans Welfare Society of Kenya;
- National Council of Women of Kenya; and
- Muslim Consultative Council Sisters Network.

Women had learnt to use their networks when they wanted to push their issues from a united front and to separate when they wanted greater representation. The women at Safari Park worked together for a common goal. They negotiated with a purpose. They became a power that not even Kenya African National Union (KANU), the then ruling Party, could ignore. Political parties tried to negotiate with women for different positions. At one time, women were amused that the then KANU stalwarts like Hon. Kalonzo Musyoka and Hon. Joseph Kamotho would come to negotiate with the women, promising to support women position if women supported theirs. Women had truly emerged from the shadows and were demanding their space on the negotiating table.

As has been mentioned earlier, the AG was a great supporter of women's cause. He understood the issues at hand and supported women both at the stakeholders consultations at Bomas (1998) and in Safari Park stakeholders consultations I-IV. At the close of the day after the consultations, the AG would efficiently summarise the various agreements. Women kept ensuring that the AG knew what the proposals by women were. If an issue was raised and nobody argued about it, he would put it down as agreed upon. By the time of summaries, those impatient would have gone, others would be tired but most women would wait up to the end.

In October 1998, the AG published the Constitution of Kenya Review Bill. He wanted the review to begin by December 1998. Women were celebrating their success in negotiating for their inclusion in the process. They had demonstrated their power to negotiate with other stakeholders and the law was being tabled in parliament, a law that the stakeholders had negotiated for.

Kenya women must forever appreciate the struggle that women at Safari Park meetings went through. They coordinated themselves on a daily basis, prepared their positions, met before the meeting to agree on positions they would take, and agreed on who should lobby who. Often, the team would have senior women political leaders like Hon. Phoebe Asiyo, Mrs. Jael Mbogo, and Hon. Charity Ngilu, among others. They would lobby KANU ministers and other senior political leaders.

The battle for control of the selection of women commissioners

The law negotiated at the Safari Park consultations was finally in place. Women were at the centre of the structures but the law did not go down well with KANU party in particular. KANU wanted the provision that made the Kenya Women's Political Caucus (KWPC) the coordinating body for nomination of women commissioners to be amended to replace KWPC with Maendeleo Ya Wanawake Organisation (MYWO), although Maendeleo was a member of the Caucus and was not complaining. KANU argued that the Caucus was not a registered body and could therefore not articulate women's views.

The following reflects the issues debated in parliament in relation to the organisation that could represent women:

November 24th 1998 second reading of the Constitution of Kenya Review Commission (amendment) Bill. During the debate, Hon. Amukoa Anangwe, the then Minister for Cooperative Development said:

“Sir, I can see that they have created space for women's organisations in the review process which is fine. But many of women's organisation represented in this bill are all urban based. They speak one language. They all reside in urban areas and yet the bulk of Kenyan women reside in rural areas. All I am trying to say is that, as we restructure representation of the various actors and interest groups like Kenyan Women's Political Caucus, League of Kenya Women voters, Collaborative Centre for Gender and Development, Federation of Women Lawyers and the National Council of Women of Kenya should be represented by one person. The other four places should go to Maendeleo ya Wanawake which has grassroots support. Therefore, they have no right to take the places which should really be due to groups which are in the rural areas” (*Parliamentary Hansard, November 24th 1998*).

As evidenced here by Hon. Anangwe, men have always spoken on behalf of women. Public knowledge of women has always been articulated by men. Men claim knowledge about and on women without any regard to what the same women think or feel.

However, other men have risen to the challenge of looking at the world in a different way. For example, Hon. Mukhisa Kituyi, in support of women, said:

“I wish to inform my eloquent colleague that Maendeleo ya Wanawake is a member of the Kenya Women's Political Caucus and its chairlady voluntarily and freely declared support to the position that they should mobilise the numbers through the Kenya Women's Political Caucus. If they are not complaining, what is the problem with the male honourable members who are complaining on their behalf” (*Parliamentary Hansard, November 24th 1998*).

Hon. Martha Karua explained to parliament that when the Constitution Review process began, women were not there; that women lobbied to get space for themselves; that the emergence of self proclaimed advocates of rural women were by then nowhere to be heard; and that women rejected those divide and rule tactics. Karua pointed out that the Women's Political Caucus, of which she was a member, was the largest umbrella organisation. Such organisation included Maendeleo ya Wanawake, Muslim Sisters Network, Federation of Women Lawyers and League of Kenya Women Voters. She informed members that the KWPC had already sent letters to all women's organisations all over the country including those at the grass roots level; and that those women did not need to be directed and divided by dictators.

Karua drew the attention of members to the definition of the Caucus in section 2 of the Bill and how the definition referred to those organisations in Part C of the first schedule which included:-

- Kenya Women's Political Caucus;
- Maendeleo ya Wanawake;
- League of Kenya Women Voters;
- Collaborative Centre for Gender and Development;
- Widows and Orphans Welfare Society of Kenya (WOWESOK);
- Federation of Women Lawyers, Kenya Chapter;
- National Council of Women of Kenya;
- Muslim Consultative Council Sisters Network.

She said the list was not exhaustive; and so:

“Let no woman fear and let no person instil fear in women that they are going to be left out.”

In addition, Karua stated:

“Let political parties give us one-third of the 13 slots they have ... to show that they are committed to the principle of Affirmative Action.”

There was dead silence. That is when we learnt it pays to have an articulate, courageous woman like Karua to be at the table when negotiations are being made. Clearly, her sharp mind often quietened those whose arguments towards removing women's powerful representation were based on prejudice and stereotypical thinking.

As the rest of the women sat in the gallery, it was clear that they could not be more ably represented in that house than they were through Hon. Martha Karua. They felt proud to be women.

Hon. Joseph Kiangoi, the then Assistant Minister for Research and Technology, was not satisfied with Hon. Karua's explanation and used a lot of time trying to tell the house that the definition of Kenya Women's Political Caucus was not clear. He was of the view that this was not an organisation

which would take the responsibility of having women representatives nominated through them. He proposed that the nominating body be Maendeleo Ya Wanawake because it was found “in every village”. He wanted the House to amend the law and remove the Caucus.

Hon. Beth Mugo on her part noted that women were tired of being told which organisation would lead them. She reminded parliament that:

- a) Organisations listed in the Bill were national organisations;
- b) Those called “Elite Women” had a lot of grass roots support;
- c) That the Caucus was not an organisation but a network of national women’s organisations grouped together in order to lead the women in the review process;
- d) That it was a fallacy to say that the Women’s Political Caucus was controlled by a few women.

Women sitting at the gallery were elated listening to women parliamentarians fight the battle for women’s right to choose who would take the responsibility of nominating women commissioners to the review process. Women MPs were the only ones who could articulate these views with such knowledge, experience and gusto in parliament.

The motion to remove Women’s Political Caucus as the nominating body and replace it with Maendeleo ya Wanawake was defeated. However, the battle for women’s representation was far from over.

Women’s nominations of the five women commissioners (1999)

Under the leadership of Women’s Political Caucus, women held a meeting to deliberate on the nomination process. A technical team came up with a criterion for nomination of commissioners, their terms of reference, the methodology and process of nominating them.

Having agreed on the terms of reference for the commissioners, a meeting of women’s organisations was held and the criteria debated, amended and validated. The criteria included:

- Candidate’s demonstrated commitment to the women’s agenda;
- Leadership within women’s organisations;
- Experience in gender training and gender analysis, among other skills;
- Candidates understanding of the critical issues related to women and reform process;
- The team had to include politicians, lawyers, those with experience in social affairs, among other criteria.
- In addition, candidates had to be proposed to the Credential Committee by recognised national women organisations.

The meeting then went ahead and nominated the vetting committee. The following were nominated as members of the vetting committee:

- Hon. Martha Karua – MP and Chair of the Committee;
- Hon. Charity Ngilu – MP ;
- Hon. Zipporah Kittony – Former nominated MP and Chair, Maendeleo ya Wanawake;
- Hon. Catherine Nyamato – Former nominated MP;
- Mrs. Jane Kiano – Former Chair, Maendeleo ya Wanawake;
- Hon. Rose Waruhiu – Former nominated MP and Assistant Secretary General of Democratic Party of Kenya;
- Mrs. Martha Koome – Chair of FIDA.

This was a strong team of women who brought different expertise to the Credentials Committee. It was clear women had a powerful committee that could weather the political battles ahead. What women did not know was that the battle that had started with the effort by KANU to replace the Women's Political Caucus with Maendeleo ya Wanawake in the Review Act was only the beginning of efforts to control the nomination of the women commissioners.

The Credentials and Vetting Committee sat and developed their own terms of reference. The Committee went ahead and interviewed women whose names had been submitted by women's organisations. A total of 46 CVs had been submitted by women's organisations. Among those organisations that submitted the names were:

- The League of Kenya Women Voters;
- The Collaborative Centre for Gender and Development (CCGD);
- The Federation of Women Lawyers;
- Maendeleo ya Wanawake;
- The National Council of Women of Kenya;
- Widows and Orphans;
- Kenya Professional and Business Women;
- Muslim Consultative Council Sisters Network;
- The Women's Political Caucus.

The team, chaired by Hon. Martha Karua, held a series of meetings and did the short listing, agreed on the criteria for nominations and then carried out the interviews. After the interviews, they released the names of the successful candidates on the January 8th 1999. The proposed CKRC women commissioners were:

- Hon. Phoebe Asiyo;
- Prof. Wanjiku Mukabi Kabira;
- Ms. Nancy Baraza;
- Ms. Abida Ali Aroni;

- Ms. Salome Muigai.

The names were released to the media and the battle from KANU politicians was fast and furious. Having failed to prevent the Women's Political Caucus from being the vehicle for nominating women commissioners, KANU Parliamentarians declared the nominees unacceptable. They said those women were urban elite women and did not understand rural women, among other accusations.

At a meeting of the Caucus at Silver Springs Hotel on Friday, January 23rd 1999, 32 women's organisations endorsed the above five nominees who were picked under the auspices of Women's Political Caucus, there were disputes and walk-outs. Dr. Julia Ojiambo was chairing the meeting. Coast, Rift Valley and Eastern provinces said they were not represented. Hon. Ngilu tried to tell delegates that the eight provinces could not all be represented but she was booed. Hon. Adelina Mwau from Eastern province pleaded with women saying, "*We have a lot to do for this country and we cannot be divided.*" Women opposed to the Caucus nominees would not hear of it and later called a Press conference at Maendeleo ya Wanawake offices at which they expressed their disappointment. Those who addressed the conference were Orié Rogo Manduli and Lilian Mwaura of National Council of Women of Kenya, Rukia Subow, Margaret Kamar and Rahab Muiya of Maendeleo ya Wanawake. Luckily, these women were later to come to the fold and push the agenda forward with the rest of the Caucus.

Mrs Zipporah Kittony's troubles with KANU

The KANU government did not accept nominees from the Caucus. KANU's unease with the nominations was compounded by their view that Women's Political Caucus was an amorphous body which the political parties did not understand; so they wanted to remove it from the law. This had failed. Secondly, the Caucus had elected the women that KANU would not have wanted. Notably, none of the other stakeholders were questioned on their nominees though most of them had no criteria as clear as that of the women. Ironically, even Maendeleo ya Wanawake was in the nominating body but a lot of pressure was put on Hon. Zipporah Kittony, the Chair of Maendeleo ya Wanawake, to denounce the women's nominees. She was asked by KANU, "What were you doing in that Committee? Why were you outwitted?" Kittony later confided that she had to leave Nairobi and go to her home in Kitale to keep away from the pressure to denounce the women nominees. But hats off to Kittony — she stuck to her guns. In the same way she stood by women during the debate on the motion to remove the Caucus from the Review and replace it with the Maendeleo ya Wanawake representatives, she stood by the women amidst a very hostile environment. Those women sitting at the speakers' gallery during the debate to amend the Review Law to replace the Caucus with

Maendeleo ya Wanawake saw the pressure that Kittony, Mwewa and Ndetei, former nominated MPs, were under. They, however, stood their ground and rejected calls to support the motion to reject the Caucus. This was the second time Kittony and other women did us proud and decided “woman” was their party.

Women’s day in court over the nomination of women commissioners

On January 25th 1999, the High Court granted seven women leaders court orders restraining the Attorney General from registering the five Caucus nominees. Justice Mary Angawa, however, granted the women orders for only four days within which to file a substantive application. She wanted the women, namely: Orié Rogo Manduli, Rukia Subow, Margaret Jepkoech Kamar, Rahab Muia, Lilian Wakiiya Mwaura, Mercy Mwamburi, Tabitha Seii, and their lawyer, Stephen Musalia Mwenesi, to understand that the court intended to expedite the matter so as not to interfere with the Review Process. These women had argued that the Caucus nomination process was flawed, that it did not cater for all the women in the country. They further argued that those nominated did not represent women in total and that the Caucus was neither registered as a society nor did it exist by an act of parliament,” (*The People Daily*, January 27th 1999). President Moi also criticised the nomination of women commissioners by the Caucus saying that they could not represent the rural women.

The case was heard by Justice Aganyanya. The Caucus’ defence lawyers were a team of competent women lawyers led by Rachael Omamo supported by Martha Koome and Abida Ali. The lawyer hired by Maendeleo Ya Wanawake and the National Council of Women of Kenya was Steve Mwenesi. The judge had a hard time distinguishing between women groups, community based organisations, women’s organisations, etc. The lawyer for the Maendeleo ya Wanawake had the same problem. It was interesting to sit on those hard benches and listen to presentations from both sides. The accusation was that the nomination of the five commissioners, namely; Phoebe Asiyó, Nancy Baraza, Abida Ali Aroni, Salome Muigai and myself was not proper. That the nominations should be revoked and the process started again. For the judge and Steve Mwenesi, this was a different world. They did not, as they normally do, have precedence. They hardly understood the complex relationships of women’s organisations. Conversely, the defence lawyers were at their best. This was their world, a different world from that of Steve Mwenesi and Justice Aganyanya. Mwenesi referred to a precedence related to some cricket match, somewhere in Latin America. Those Caucus members who were not lawyers could not figure out what a cricket match had to do with them. Fortunately, the judge did not seem to be impressed either. The media was having a field day. Even the then president of Kenya, Mr. Daniel Arap Moi, talked about the issue

in public. The judge was not amused. He castigated those who were discussing the matter in public while it was in court. The women lawyers supported by FIDA did a commendable job. The Judge ruled that the women Commissioners were properly nominated and subsequently upheld their nominations of Phoebe Asiyo, Nancy Baraza, Abida Ali Aroni, Salome Muigai, and Wanjiku Mukabi Kabira (myself).

Women's shuttle diplomacy and the stalled review process

Having won the court battle, the Women's Political Caucus had to resume engagement with the rest of the stakeholders. However, the process stalled soon after (1999). Political parties could not agree on how to distribute their 13 seats. Again, women organised themselves to see how they could re-start the stalled process. They did not just wait for it to be started by others. They formed a women's negotiating team that had both technical expertise and lobbying skills. The role of the team was to identify critical stakeholders in the review process and consult with them to ensure that the review process was back on course for Kenyans to realise the new constitutional dispensation they had yearned for, for so long.

Those who formed the negotiating team to re-start the stalled Review Process were:

- Hon. Julia Ojiambo – former Member of Parliament and Assistant Minister;
- Hon. Phoebe Asiyo – former Member of Parliament and Chair of Women's Political Caucus;
- Prof. Wanjiku Mukabi Kabira – Convenor of women's negotiating team;
- Ms. Martha Koome – Lawyer and the then chair, FIDA;
- Hon. Martha Karua – Member of Parliament;
- Hon. Catherine Nyamato – Former Member of Parliament;
- Ms Nancy Baraza – Lawyer;
- Mrs Abida Ali Aroni – Lawyer and Chair, Muslim Sisters Network;
- Prof. Jackline Oduor – Lecturer, University of Nairobi;
- Hon. Charity Ngilu – Member of Parliament;

Most of the meetings organised by this team were coordinated by Ms. Jane Ogot, the then Coordinator of Women's Political Caucus. The following section focuses on some of these consultations.

Women's consultations with political party leaders

The negotiating team held high level consultations with political party leaders, religious leaders and other stakeholders. Some of the individuals they held meetings with include:-

- Hon. Mwai Kibaki – Then leader of the official opposition and Chair of the Democratic Party;
- Hon. Norman Nyaga – The then whip of the opposition;
- Hon. Raila Odinga – Then in the KANU government.
- Hon. Prof. George Saitoti – Then Vice President in the KANU government;
- Many other political leaders.

The meeting with political party leaders was to try and persuade them to agree on the distribution of the 13 seats allocated to them by the Safari Park consultative forum. Both Hon. Mwai Kibaki and Hon. Raila Odinga agreed that this was necessary and asked us to talk to the other party leaders.

At the meeting with Prof. George Saitoti where the team was led by Hon. Phoebe Asiyo and accompanied by Hon. Julia Ojiambo, Prof. Jackline Oduor, Hon. Catherine Nyamato and myself, the then Vice President explained the willingness of KANU to continue with the process. We enquired what it would take for KANU to move ahead with the Review process and he informed us that discussions were going on. He appreciated our visit and noted that we could help the Government in the area of gender mainstreaming because, as he said, “they did not have technical expertise but they were committed to the Constitutional making process.” We also informed him about our consultation with the leader of the official opposition, Hon. Mwai Kibaki who had told us in his office in parliament building that official opposition was ready for discussion in order to re-start the process.

Having done the targeted consultations and with the support of the Women’s Political Caucus, the negotiating team organised a meeting of Political Parties at the Silver Springs Hotel attended by all political parties. We had also requested the religious leaders to attend. Mutava Musyimi, the then Secretary of NCKK chaired the meeting. We considered this a big success because we had called all political leaders to come and negotiate and they had actually come!

Women continued to work closely together and often when the process would not move, they would quietly begin negotiating with the various stakeholders.

Women’s consultations with religious leaders

The Women’s Negotiating Team held many consultations with religious leaders. Among those we consulted were:

- Bishop David Gitari – The Anglican Bishop;
- Bishop Ndingi Mwana Nzeki – The Catholic Archbishop of Nairobi;
- Bishop Zablon Nthamburi – Methodist Church of Kenya;
- Rev. Mutava Musyimi – Secretary General, NCKK;

The women team, in which I was a member, went to consult Bishop Gitari, at his own home in Kirinyaga District. We found that Gitari had just arrived from Australia. In the team to visit Gitari were Hon. Charity Ngilu, Adelina Mwau, Martha Koome, Martha Karua and myself. The Bishop was shocked to see us and wondered what the message was. After a cup of tea, we explained our mission. Hon. Charity Ngilu told him about our concern with the Constitutional Review Process and parliament's determination to take control of the process. We explained the urgent need for a people driven process. Bishop Gitari trusted us and decided what we were saying was making sense. He felt it was urgent that he put his weight behind the people driven process. He brought pen and paper and said, "Prepare a press statement; because I have been away, it is you who know what has been happening."

We prepared a press statement and faxed it to the media. Our press release made the headlines the next day. In it, Rev. Gitari accused parliament of being a house of wolves to whom one could not send a sheep (the constitution). The wolves would just devour it. This statement was supported by other stakeholders. The message was that the constitution had to be negotiated, and that we had to remain true to the people driven process.

At one of the consultations in his office at the Holy Family Basilica in 1999, which Dr. Eddah Gachukia attended, the team being led by Hon. Phoebe Asiyo, we had heart to heart discussions with Bishop Ndingi Mwana Nzeki about the frustrations of the review process but as always, he would say, "*We shall pray and pray. Nothing is impossible with God.*"

We met Rev. Mutava Musyimi in his office in Church House. We had very good consultations in which Rev. Musyimi encouraged us to keep dialogue going and assured us that religious leaders would work closely with women.

Women's consultations went on all the time. Consultations is part of the invisible work that women have continued to do to sustain this nation.

But the KANU Government was not about to give in to the rest of Kenyans and was determined to ensure the people driven process was killed and the parliamentary process was introduced. Consequently, the process stalled. The Civil Society and Religious leaders regrouped under the Ufungamano Initiative to revive the process and ensure a people driven process.

Women and the people driven process

Women, like many other civil society organisations, and indeed Kenyans as a whole, were of the view that not many Kenyans had participated in the making of the Lancaster House Independence Constitution and so the need to seize the opportunity that had been availed by the making of a new one. Hence, the reason for the name "People's Commission of Kenya (PCK)" which was

established after the negotiations at the Safari Park meeting failed to take off and after parliament began its own process which the rest of Kenyans called “a parliamentary driven constitutional process.” Religious leaders, civil society organisations and women’s organisations stuck to the people driven concept. Actually, the constitution became “Wanjiku’s constitution”; a constitution for ordinary Kenyans who had become victims of dictatorship, of inequalities, of violence, of economic and social ills, among other ills.

Women saw people’s participation as ensuring free participation of Kenyans in their communities’ activities, enjoying the benefits of their labour and making decisions in all matters that affected them. It meant participating in the process of Constitution Review as well as in the final product. We felt it was important for people to participate and enjoy the right to influence the formulation and implementation of all public policies and in negotiating their co-existence.

Women felt that they had a right to be represented by women of their choice in the same way that persons with disabilities had a right to be represented by those in their category who would understand them better. Similarly, minorities had a right to be represented by minorities. We argued that including minorities and women in the process provided diversity and therefore enriched the wider society by challenging the dominant ideas and values and by giving various categories an opportunity to bring their experiences and knowledge to the Review Process. Only in this way could society be opened up to new ideas, promote debate and protect it from narrow mindedness. That is why women had negotiated with other stakeholders to ensure they participated at all levels.

This, we argued, would be people driven if all categories of society were to participate and bring their experiences on board. We were not interested in the parliamentary driven process that the Parliament had proposed. The faith-led organisations, civil society, opposition political parties and women’s organisation started the People’s Commission of Kenya. This was led by the Ufungamano Initiative.

Ufungamano and the People’s Commission 1999/2000

The Ufungamano Initiative, led by religious leaders swore in office the commissioners of the People’s Commission of Kenya. Commitment to the People’s Commission was demonstrated in word and deed by the people. It was the perseverance of people’s commissioners and the Ufungamano initiative for 18 months that showed parliament that the people-driven constitution was going to continue with or without the government or parliament. Of course, the debate on its legitimacy was always raised but we always argued that the people of Kenya gave legitimacy to the process and indeed their support was a clear indication that it was their process. In addition,

we argued further, parliament was given legitimacy by the people and the people had a right to withhold their support if need be.

In Ufungamano, “The People’s Commission”, as it was popularly known, was led by Oki Ooko Ombaka, a man of great courage, commitment and diligence. The PCK Commissioners were:

- Oki Ombaka – Chair;
- Abida Ali Aroni – Vice chair;
- Nancy Baraza – Women’s organisations;
- Wanjiku Mukabi Kabira – Women’s organisations;
- Salome Muigai – Women’s organisations;
- Charles Maranga – National Democratic Party nominee;
- Joyce Umbima – From Kenya Alliance for the Rights of Children;
- Adelina Mwau – National Alliance Party of Kenya;
- Amina Abdalla – Democratic Party;
- Said Athman – Muslim Consultative Council;
- Ibrahim Lethome – Muslim Consultative Council;
- Zein Abubakar – Safina Party nominee;
- Juma Kiplenge – Lawyer from Nakuru;
- Riunga Rainji – Catholic Church Representative;
- Sheikh Baricha – Ford Kenya Representative for North Eastern Province.

The People’s Commission was not funded—it was a people’s process. Support came from all corners of the country. Religious organisations, which were led by Rev. Mutava Musyimi, the then Secretary General of the National Council of Churches of Kenya, gave great support to the commission. Rev. Mutava Musyimi led the Coalition of Muslim Consultative Council; Episcopal Conference of Kenya; and the Seventh Day Adventists, among other religious organisations. He ensured that the commissioners had a meeting room at Ufungamano. The only thing we never missed in all our meetings at Ufungamano House was tea and *mandazi*. We walked closely and steadily without financial resources.

We went out to all the eight provinces to collect views. But for some reason some people were not happy with the People’s Commission. In one incident, a petrol bomb was put just next to Oki Ombaka who was visually impaired at the time. When it exploded, it was Hon. James Orengo’s body guard, who God had endowed with size and strength, that picked up Ombaka and took him to safety. Ombaka would later die of natural causes in August, 2001 before he could celebrate the birth of the new constitution.

In many parts of the country, we travelled in run down *matatus* for we could not afford to hire vehicles. It was the church and other religious leaders, civil

society organisations, opposition parties, among others, who organised, cooked for us and mobilised the meetings of the communities and presentations of their views. In places like Embu, the stadium was full and the citizens presented their views until six in the evening.

One of the key principles leading the People's Commission and later CKRC was the concept of people driven Kenyan Review Process. It was called the 'Wanjiku Constitution', she of the villages, slums and pastoral areas. She who was poor, non-literate and whose 'God' guided the process. She whom the dictatorial KANU government had reduced to abject poverty, who suffered the results of a corrupt, inhuman and violent system. 'Wanjiku' came to represent the common *mwananchi* of both gender.

Women commissioners in PCK and consultations with KANU

As commissioners in People's Commission, women continued to negotiate with others in order to move the process forward. They consulted often. At one time when Parliament and Ufungamano were negotiating on the number of commissioners to be nominated, there was a stalemate. Abida Ali Aroni, Nancy Baraza and myself decided to engage the parliamentary group in consultations. We invited the great Moi supporters of the time, namely; Uhuru Kenyatta, William Ruto and Gitobu Imanyara for a drink at Pan Afric Hotel. We put our cards on the table and tried to convince them that it was in the interest of the nation to agree on the total number of commissioners to be nominated and the number the Ufungamano Initiative would nominate. William Ruto asked us, "What do you think will make religious leaders come on board with us? What kind of number do you think will be acceptable to them? Would nine (9) do?" Nancy Baraza responded immediately and said nine commissioners were not acceptable. She then went ahead to suggest that no less than 12 out of the 25 would please the religious leaders of Ufungamano. The gentlemen then consulted among themselves after which they came back to us and said they would report our proposal to their group. This was good progress for us. We followed up on the same with other leaders of the Parliamentary Group. Later, a deal was made between the parliamentary group and the Ufungamano group. Prof. Yash Pal Ghai was identified as the Chair. Ufungamano Initiative produced nine commissioners from PCK namely:

- Oki Ombaka – Vice Chair
- Nancy Baraza
- Abida Ali Aroni
- Wanjiku Mukabi Kabira
- Salome Muigai
- Riunga Raunji
- Ibrahim Lethome
- Zein Abubakar
- Charles Muraya

An additional two were appointed. These were Arale Nunor and Musonik arap-Korir. The team joined the parliamentary group in 2000. Those identified by parliament were:

- Yash Pal Ghai
- Okoth Ogendo
- Idha Salim
- Paul Musili Wambua
- Keriako Tobiko
- Isaac Lenaola
- Bernard Njoroge
- Alice Yano
- Phoebe Asiyo
- Githu Muigai
- Z. Ayonga
- Kavetsa Adagala
- Mutakha Kangu
- Issack Hassan
- Domiziano Ratanya

The women commissioners and CKRC 2000-2005

As indicated earlier, four of us women commissioners, that is, Abida Ali Aroni, Nancy Baraza, Salome Muigai and myself came from the Ufungamano process to join the Constitution of Kenya Review Commission (CKRC) which came to be known as the Ghai Commission. The said four women and the other three who were appointed by the parliamentary group, namely: Hon. Phoebe Asiyo, Alice Yano and Kavetsa Adagala, never forgot that they went there to represent the women of Kenya. At every stage, they ensured women's agenda was taken on board. Whether it was discussion on the formation of committees of the commission, leadership in the commission, structures of the commission, civic education programme, analysis of the views, collection of the views or the compilation of data, women's issues had always to be taken on board.

I need to emphasise that it is not by coincidence that we ended up with very gender aware constitutional review drafts, that is, the CKRC Draft 2002, the Bomas Draft 2004, the Wako Draft 2005, the Harmonised Draft 2009, and the final constitution 2010. The unrelenting efforts of women are reflected in the process and the content of the drafts. The women in the commission worked hand in hand at all stages. Like women's organisations and women leaders during the negotiation of the law to review the constitution, women in the commission consulted on all issues relating to women. Indeed, women's organisations and women leaders continued to safeguard these gains at all stages.

In the CKRC, we were lucky that we had leaders like Oki Ombaka and Prof. Okoth Ogendo who did not need convincing about the need to take women's issues on board. Oki Ombaka and Prof. Okoth Ogendo, both brilliant lawyers and well informed in matters of gender, were great assets. They stood by women all the time. They actually led from the front at every stage. I do not remember any time in the five years I worked with Oki Ombaka and Prof.

Okoth Ogendo when they did not support the quest for women's agenda. We were also fortunate to have women with technical expertise, lawyers and social scientists who were well equipped to represent women in the CKRC.

During the Bomas Conference when discussions had become very political and were, in all practical purposes about to collapse, Aroni, Baraza and myself sought an appointment with Uhuru, then the Chair of KANU. We arrived at his office in Chancery Towers on Valley Road and were led to the boardroom. On opening the door, we were met by none other than William Ruto. I was in front and jokingly greeted him, "*How are you Uhuru?*"

He laughed and said, "When I heard that the three of you were coming to meet my Chairman, I decided it cannot be a small matter and I need to know what these three women are scheming."

Aroni responded, "This is not scheming, we have an official appointment with your Chairman."

We sat down and had discussions about what was going on at Bomas—the fight on various issues. We emphasised the need to reach a compromise and give Kenyans a new constitution. This was at a time when some groups were planning to walk away from Bomas to force the Attorney General to sign the Bomas Constitution draft. Ruto's answer was that President Kibaki had to come down and negotiate with the group that had been mobilised by them at Bomas. He said that for them, the fight was a contest between the Opposition and the Government.

Many times, the three of us had consulted with the Attorney General Amos Wako. Aroni, Baraza and myself would go to his home to find out what needed to be done to either initiate talks, remove hurdles that were blocking the process or just to learn the legal implications of some decisions that were being made. It had always been pleasant consulting with Wako. He always allayed fears and made us believe that the process would move forward.

We also had consultations with Hon. Raila Odinga. One of the consultations that we had with him was at Serena Hotel during the stalled process. Aroni, Baraza and I consulted with him, particularly on women's agenda, but also on the whole process. It was also a pleasure to consult with Raila. He was accessible and always ready to discuss with us. If we could not get him, we called Ida, his wife who would arrange a meeting for us.

We had many consultations with Hon. Simeon Nyachae also in his office on Riverside Drive. Often, it was in order to ask him to show us the way anytime the process was derailed. We also consulted on issues that were very controversial. Hon. Simeon Nyachae was always there for consultations. Also, we had meetings with Hon. Kiraitu Murungi the then Minister for

Constitutional Affairs and in whose docket the review was after the 2002 elections.

Women in the CKRC commission had the technical skills as well as lobbying skills. As indicated earlier, some of them had been involved in negotiating the law. This shows that it is advisable and important for women to have technical skills and knowledge when in a process as important as constitution making. Normally, such important political processes exclude women, either intentionally or by default. Exclusion of women has its consequences as exemplified in the following 2007 Court of Appeal case:

Civil appeal No. 75 of 2001 between Peter Mburu, Icharia and Priscilla Njeri Icharia. There were five male judges of the court, namely, Tunoi, Okubasu, Githinji, Waki & Deverell J. J. A. The five learned friends are reported to have overturned a judgment of a lower court by Judge Shields J. of 1993 which had given Priscilla Icharia 50 per cent of Twiga Hill Farm in Tigoni Limuru L.R No.6893 and 50 per cent to Icharia. The five gentlemen used outdated laws of 1882 Married Women Property Act which indicates that “Marriage or a marriage has no effect on the spouses’ property right.” They concluded that “The lower court trial judge erred in assuming that a special law of property exists and applied in spouses when they have property disputes.”

Dr. Kamau Kuria was the lawyer for the appellant, Mr. Icharia. Kuria asked the court to depart from the case in *Kivuitu vs Kivuitu*, which in a similar situation had given the spouse 50 per cent. He went ahead to review section 17 of 1882 Act and had many arguments why the wife should not get the 50 per cent. The judges, on February 2nd 2007, ruled that Priscilla Njeri should get 25 per cent.

If you read the arguments in this case, you would imagine that our courts live on planet Mars where they never heard of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) or any other international conventions. That is the reason I have a lot of respect for lawyers like. The late Okoth Ogendo, the late Oki Ombaka, Hassan Issack, Isaac Lenaola, and Githu Muigai, amongst some of the lawyer commissioners at the CKRC, who have stopped being intellectual slaves of the law like the lawyer in Hassan Issack’s joke, which notes that: “two men saw the following text written on the gravestone, “Here lies a lawyer and a man of integrity.” One man asked the other, “Why have they buried two men in one grave?”

The case of *Icharia vs Icharia* quoted here is important in the sense that it happened at a time when Kenyan women had been struggling for their rights to property. The judgment in this case was sent to me by Dr. Eddah Gachukia who described it as “scandalous” and noted that; the facts tabled in the arguments needed to be circulated for women to see and encourage them to remain in the line of duty and continue guarding any gains made. For a long

time, an extremely conservative court system has continued to operate in Kenya.

I believe that if two of the five judges were women exposed to a different orientation in terms of law and practice that has emerged from Women's Movement world wide, Priscilla would have been treated fairly. With the implementation of the new 2010 constitution, Kenyans hope things will henceforth be different.

The very fact that the various constitution drafts: CKRC (2002); Bomas (2004); Wako (2005); Harmonised (2009) and the final referendum draft (2010) have so many gains is due to the commendable solidarity of women at every stage. The seven women in the CKRC commission put a consolidated effort at all stages to ensure that the process of collecting views and civic education took women on board. The rules and regulations governing the process also had to take gender into consideration.

Of the seven women commissioners in CKRC, three of them, that is, Abida Ali, Nancy Baraza and Alice Yano were lawyers; Salome Muigai, Kavetsa Adagala and myself were social scientists; while Hon. Phoebe Asiyo was a seasoned politician and long time leader of women. As mentioned earlier, five of the women were directly nominated by women's organisations. They later joined the civil society and religious leaders in Ufungamano to continue with the battle for the New Constitution. Without women's presence in the commission, the draft would have been very different. They stayed in the line of battle and continued to water and nurture the seeds of liberation planted by those who went before them.

Consulting the veterans

It must be stated that the proposal for Mixed Member Proportional Representation (MMPR) in the commission draft, Affirmative Action for women in parliament and local authorities, and women's entitlements in the Bill of Rights, among other areas, are a result of women's effort in the Commission. However, this was also with the support of male commissioners. So, even as we focus on women's voices, we need to acknowledge that we were privileged to sit with great men who have sacrificed a lot for this country. These included, Achieng Oneko, who was detained at different times for 16 years, and whose grandmother was captured by the lake side and sold to slavery. Achieng Oneko struggled against the British and was one of the Kapenguria six who were detained by the colonial government in Kenya. Others were Jomo Kenyatta, Kung'u Karumba, Paul Ngei, Fred Kubai and Bildad Kagia. Later, Oneko fell out with Kenyatta and was detained between 1969 to 1977 for joining Oginga Odinga in the Kenya Peoples Union (KPU).

Oneko shared his experiences with us. As he did this, one felt really humbled and challenged by the great task before us in the review process.

We had the pleasure of listening to Denis Akumu of the Dock Workers Union, a great trade unionist who was also detained by the British and later by Kenyatta. In our discussions during the process at a meeting with the commission in Mombasa, Akumu often reminded us that Coast Province had wanted autonomy in 1963; while the Maasai and the North Eastern Province communities wanted their own independence. He felt that because of corruption, decentralisation would be good for Kenya. Dr. De Souza, a lawyer who worked closely with the Kapenguria six; and Hon. Jeremiah Nyaga, who always wanted “one Great Nation”, also shared their experiences with us.

We also had the privilege of listening to Taitta arap Towett who once opposed the Moi leadership and was subsequently sacked from government. Towett drafted the Kenya African Democratic Union (KADU) party Constitution, a party which would later dissolve itself and merge with KANU. He was also detained by the British and by the Kenyatta government and believed that Kenya needed to become a Federal State.

Hon. Julius Gikonyo Kiano, a great thinker, often shared with us his views on the review of the constitution. When we were young, we used to be told that only Kiano had a PhD “in the whole world.” I was privileged to discuss some issues with Kiano and his wife Jane at their home. Kenyans know Jane Kiano for her legacy in Maendeleo ya Wanawake. She is a great mobiliser. She built Maendeleo House, near University Way where it stands as a testimony of the strength of Women’s Movement. Kiano would narrate the history of this country from colonial days to present and put our struggle in context. He was focused on the issues of structures of government, judiciary and better egalitarian development, among other issues. He insisted that we had to use the lessons learnt from the past in coming up with the new constitution. He was passionate about the Review Process and believed that the new constitution would chart a new path for Kenya. Shortly before his death in August 8th 2003, he still wanted to know what was happening about the Review—May God rest his soul.

Martin Shikuku, the famous veteran, was another one we had the opportunity to meet. He was very keen on the Independence Constitution. He said that like other KADU members at the Lancaster negotiating table, he wanted recognition of all ethnic communities in Kenya, hence his support of the Federal (*Majimbo*) system. “The people’s Watchman”, as he was popularly known, was very involved throughout the prevailing Constitution Review process. He also chaired a committee on the executive, one which generated a lot of heat at Bomas.

Robert Matano, another veteran, reminded us that at Lancaster House, the major issue for the Coast People was land and that he went to Zanzibar with the Kaya elders and negotiated with the Sultan of Zanzibar for the ten mile strip. He noted that the Ten Miles Strip issue at the Coast had never been resolved. He also said that the Constitution had to deal with the domination aspect of the bigger tribes. In one of the meetings with the commission, he said, “Kenya belongs to all of us and our children; there must be fair play.”

John Keen, another veteran we had the opportunity to listen to, also believed that land was the most sensitive issue in Kenya. In his view, most of the small ethnic communities in Kenya were afraid of big tribes such as the Kikuyu and the Luhyas. Therefore, there was need to address these fears. He too was detained in 1967 for advocating for an East African Federation.

There was also Priscilla Obwonya, the only woman in the delegation to Lancaster House. I was privileged to meet her although at that time, she was not well. So we did not get the opportunity to hear her views because she was too old and too sickly to remember Lancaster details when we visited her. At Lancaster House, in early 1960s, she was in the periphery, she being a woman. This second time, she was on the periphery too by being old and sickly but her presence at both negotiations of the pre-Independence constitution and the 2010 constitution that ushered in the Second Republic must never be forgotten, if not for anything else, as a symbol of resistance. We honour you Priscilla for your continuous presence.

These are some of the veterans the CKRC invited and we were able to interact with them. We acknowledged the fact that they too had remained in the line of duty in the struggle. All these great men, God bless them, shared their experiences with the commissioners. We were privileged to receive the baton from them and continue the race.

Twists and turns of the review process at the CKRC

The constitution making process was not devoid of drama and intrigues as the CKRC went about its work. For example, in 2002 when we were still collecting views from the people and soon after we had buried Oki Ombaka, we came back to the Commission from the field to be confronted by the media on the issue of a draft constitution. I was going to a meeting at Serena where Prof. Ghai was meeting “Friends of the Commission.” At the entrance, a journalist cornered me and asked me, “Is it true that you have completed writing the constitution?”

“We have not even completed collection of views from the people. How then can we have a draft? It is not true,” I said to him and literally dismissed him.

I then proceeded to the meeting to join Commissioner Ibrahim Lethome and Prof. Ghai. We were meeting Ambassador Bethuel Kiplagat and other “friends of the commission.” The next day, we all gathered for an emergency meeting at the CKRC boardroom. I sat next to Commissioner Isaac Lenaola, now justice Lenaola, and told him about the incident with the journalist. Isaac took his briefcase and took out a document entitled the “draft constitution.” “That is why we are here,” he whispered to me. “What?” I asked in disbelief. “Wait, Wanjiku, there will be fire works, just wait.”

A foreign and dubious “draft” constitution was tabled. The meeting was being chaired by Prof. Ghai. Many of us could hardly believe what we were hearing. We were dumbfounded. “It couldn’t be true,” we thought. The tension was however diffused by Prof. Okoth Ogendo, who was the chair of the drafting committee that was actually driving the process. Okoth said:

“There cannot be a draft constitution; no draft can be a draft of the Commission unless my committee, the drafting committee, has tabled it in the plenary, debated by and adopted by the same plenary. That draft would also have the seal of the Commission. End of Story.”

And with that comment, Okoth closed the matter and then added,

“When the draft Constitution of Kenya will be completed, it will be tabled here and these Commissioners will be there to decide.”

That was indeed to be the case. With those words, the fate of the “foreign draft” was sealed.

Prof. Ghai walked out of the boardroom. The rest of us were left wondering what had been going on while we were out in the field.

The issue of the “foreign draft” did not end there; there was another “draft” that emerged later at the Bomas Conference. It was once again rejected by the Commission. We had other similar experiences. For instance, Prof. Githu Muigai, who was chairing a committee on the *Constitutive Process*, prepared and approved the Preamble to the Constitution but what was circulated was another document not the one he had prepared. These incidents made the commissioners to be very careful throughout the process.

At the Leisure Lodge Hotel, where the Commission stayed for a number of weeks, Prof. Okoth Ogendo worked closely with a Ghanaian professor, Prof. Krab who was an experienced drafter. Prof. Ogendo kept strict control of the drafting exercise to ensure that only what was agreed upon would be launched. He told Nancy Baraza and myself the night before releasing the draft, “Today, I will not take a drink though I would love to. I have to keep my eyes open and focused on the document until tomorrow when we release it.” We told him that was not a bad idea.

Similar happenings were experienced at Bomas. One time, another “draft” constitution appeared and it was quickly denounced by the Commission through a press conference. The CKRC may never get the credit it deserves for being truthful to the constitutional making process, and for being accountable to the people because some of these intrigues never came out into the open but they played their part well in many cases. I was therefore not surprised when the 2010 draft constitution emerged with some words sneaked in. I had witnessed such strange intrigues before.

We keep talking about the constitution being a political process without realizing that it was not just the politicians in the ordinary sense of the word who were involved in intrigues. Being in the commission had its difficult moments too. Sometimes we would be divided along political lines, ethnic lines, ideological and gender lines. This was, however, expected. The advice we received from Raila Odinga at one point when we met at the Old Chamber with the Parliamentary Select Committee on the constitution, of which he was the chair, was, *“It is the business of the commissioners to reject the influence and stand firm on what you believe in. However, it is the business of the politicians to influence.”* There are many other examples of intrigues I could give but for now those will suffice.

The handing over of the 2002 CKRC Draft marked the end of an intense struggle by women to participate in the process and influence the decisions on proposals to the draft bill. It was a very intense period but again, the process ensured full participation of women in the structures of the review process, full involvement of women’s organisations in civic education and mobilisation of women to present at the constituency levels as well as women presentation of their views and proposals for the new constitutional dispensation. It was a process like no other. Women gave the process their all. They took the concept of “people driven constitution” literally.

Summary

This chapter has briefly captured Women’s Movement in its struggle towards defining women’s agenda, influencing the legislative framework for the review of the constitution and ensuring mainstreaming of women’s issues in both the process and the Draft constitution (2002).

Chapter three focuses on the next phase of this struggle.