

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**VERBATIM REPORT OF**

**CONSTITUENCY PUBLIC HEARINGS,**

**TETU CONSTITUENCY HELD AT THE TETU MISSION HALL**

**ON**

**SATURDAY, APRIL 20<sup>TH</sup> 2002**

**CONSTITUENCY PUBLIC HEARINGS, TETU CONSTITUENCY, HELD AT TETU MISSION HALL ON**  
**SATURDAY 20<sup>TH</sup> APRIL 2002**

**Present:**

Com. Phoebe Asiyu  
Com. Ahmed I. Hassan  
Com. Abdirizak A. Nunow

**Secretariat in attendance:**

Programme Officer	-	Jeremiah Nyegenye
Asst. Programme Officer	-	Mary Kanyiha
Verbatim Recorder	-	Regina Obara
Sign. Lang. Interpreter	-	Millicent Musyoka

The meeting started at 9.30 a.m with Commissioner Asiyu in the Chair.

**Com. Asiyu:** Mabibi na Mabwana, tumeshukuru sana kwamba, mumeweza kufika mapema ili tuanze kusikiliza maoni ya watu wa Tetu, na kwa niaba ya Commission na Kamati ya hapa na wale wote ambao wamefika, ningependa kuuliza mzee mmoja atufanyie maombi kabla hatujaanza kusikiliza maoni ya watu wa hapa. Bwana Mugo unaweza kuangalia kama kuna mtu anatupatia maombi? Tunaweza kusimama.

**Mzee :** Christian Prayer : (*Kikuyu dialect*)

Na ritwa ria ithe na ria mwana na ria muoyo mutheru. Mwathani Ngai nitwagucokeria ngatho ni undu wa uguo wa turehe, Ngai

itikira gututongoria tukibanga maundu maria magateitheriria bururi uyu witu mahinda maria meguka, ihinda riri ni twagucokeria ngatho niundu uria utumite aria marathikiriria maundu maya magutotongoria, na ni twakuhoya ona magicoka kuria moimire macoke ukorwo uri hamwe nao, Ngai tuma muraika waku atutongorie na nigetha tuhote kuheana mawoni maria mega, na nigetha ututeithiririe bururi uyu witu ume ndumaini uthie utherini na ni twakuhoya na macio ona mari manyinyi niundu wa wega Jesu Kristo Mwathani utuigwe.

Na ritwa ria ithe na ria mwana na ria roho mutheru.

**Com. Asiyu:** Ladies and Gentlemen, I now declare a formal sitting of the Commission's hearing here at the Tetu Mission Hall, and the very first, we will be asking Christopher to make the first statement but before we do so I would like to introduce everybody else who is here at the high table: Mohamed Izak is a Commissioner and was chairing our meeting the whole of yesterday, he has been here longer than some of us and on my right is Commissioner Nunow, Dr. Nunow is also here to have the views of the people of this area. The Gentleman sitting at that corner is Mr. Nyekenye and he is an Advocate of the High Court but for our purposes today he is a Programme Officer, then of course we have the ladies who are going to do the actual hard work of recording whatever you will be telling us, so that is everybody. Then Mr. Mugo, perhaps you know him, he is our Co-ordinator in the District, he has been with us ever since we started and we will continue with him again this morning. We have agreed that Mr. Mugo will translate for those who do not wish to speak in English or Kiswahili, Mr. Mugo will translate to us in English. Kwa hivyo unaweza kujiweka tayari ili tuanze kusikiliza maoni ya wale ambao wamefika, ili kwamba tuwapatie nafasi wale ambao watakuwa wakifika pia wapeane maoni yao. Nataka kuwauliza, tafadhali mkipeana maoni mpeane mapendekezo vile mngeweza kuona Katiba Mmpia ikisema, juu ya mambo yale ambayo mumelezwa hapo mbeleni au yale ambao ninyi wenyewe mnajua inawakabili, ili tupate mawaidha kutoka kwenu vile mnapotaka Katiba iandikwe. Kwa vile mkitueleza tu vile mambo yalivyo bila kutueleza mapendekezo ni vigumu basi kujua mtapendekeza kitu gani. Kwa hivyo Bwana Mugo kama tunaweza kuuliza Christopher wa Rutumo kutoka Kihatha Catholic Church, Bwana Christopher kama unaweza kufika hapa.. Kama umeandika utasema tu kidogo.

**Christopher Muchiri:** Now my point No.1 is Electoral Commission to be independent from Executive. Point No.2 each of the following should be independent of each other that is the Executive, the Judiciary and Parliament. Point No.3 Constituencies should be balanced according to their population. Constituencies should not have too many people and too few than the other, an example, now we have got Embakasi Constituency with 240,000 people and it has one Member of Parliament. We have got another Constituency somewhere in Turkana which has got only 5,000 and it is represented by one Member. This is what I mean by balancing of voters. Point No.4 Members of the Cabinet should be appointed from outside elected Parliament. And their appointment should be based on individual ability, integrity and experience.

What I mean to say here is that we should not have any Member of Cabinet from Parliament, they should be appointed from outside Parliament. Point No.5 Constitution should be primable and should not be interfered with, it should have index, an example here is that we have got the American Constitution which is 250 years of age and it has been amended only for a few

times. Our Constitution is 35 years of age and it has been amended for 33 times. Point No.6 - Military Foreign Policy should be reviewed such that the Executive should not send any troops to fight in a foreign country without the approval of Parliament. Here what I mean to say is that sometimes our President would have differences with Uganda President, for example and he may decide to send troops to fight that country, I mean to say that it should have approval of Parliament before any troops is sent to fight any foreign country. Point No.7 Co-operative Act should be reviewed to minimize deductions which are unnecessary so that the farmer gets maximum benefits from his labour. Point No.8 – Land Policy, land ownership: nobody should own more than 50 acres of land and all unutilized land to be confiscated and allocated to the landless. Land transfers should be consented to by the whole family. Point No. 9 Communications – Roads should be developed according to the economic production of the area itself. What I mean to say here is that you may go to places where there is no production and all the roads are tarmacked and the roads in the area where there is production there are no tarmacked roads. We require one Central Government with one President and one Prime Minister and Vice President as opposed to the Federal Government. Point No.11 – Education; primary education should be free and compulsory. Point No.12 ; Provincial Administration, the lowest grade should be that of a chief and the work of assistant chiefs should be done by Village Elders. Campaign expenses should be limited to KShs.100,000 per candidate to minimize bribing of voters.

Medical care, that is point No.14, should be provided free of charge. If there is any medical scheme it should cater for medical and surgical treatment which should include doctors' fees irrespective of any kind of disease and should provide for out-patient.

Contributor should pay for accommodation and food. Point No.15 – Votes to be counted where voting is taking place to minimize rigging of votes. That is all I have.

**Com. Asiyo:** Tumeshukuru sand, you give that paper to our Programme Officer so that we have it on record. Also please sign the register. David Ndung'u Kirithi. David you have a written document, so we don't expect you to read the whole thing, just take a few and highlight on your paper.

**David Ndung'u Kirithi** – This is the memorandum. David Ndung'u Kirithi. Views on the New Constitution of Kenya from Tetu Catholic Parish, Archdiocese of Nyeri, P O Box 129, Nyeri.

Preamble – Our New Constitution must have a Preamble. This Preamble should state that the Constitution is made by the people of Kenya. The people of Kenya are sovereign. No law or authority including even the Constitution is above the people.

Kenyans are committed to democratic values of constitutionalism, equality and rule of law. Kenyans are committed to the future of Kenya as a united and indivisible country and composed of people of diverse cultures whose rights are invaluable.

The Preamble should also state our common history as a people who were colonized for many years and who joined hands to struggle for their freedom, that is, that it is this hard earned freedom that we are out to safeguard with our New Constitution.

Directive Principles of State Policy: The following directive principles should be included in our Constitution. Our national philosophy and guiding principles, Gender equality, and Protection of the rights of the minority, are elements of a just society.

No. 2 – All geographical regions of the country are entitled to equal development. Children, young people and elderly and other vulnerable groups should be protected. All power and authority is derived from the people of Kenya and the people shall be governed through their will and consent. Traditional customs may guide life in the society provided they do not harm any sector of the society and of particular importance would be the formation of Village Council of Elders.

Democratic principles – power belongs to the people and is exercised on their behalf through representatives, sensitive and accountable institutions of governance. Constitutionalism and the rule of law must be adhered to. All human beings are equally entitled to civil, political, economic, social, cultural and development rights. Natural resources belong to all the citizens. The natural environment must be protected. Citizens have the right to associate without any hindrance. The people reserve to themselves all power and authority, which they do not expressly delegate to the State and its organs. The people can at any time withdraw authority delegated to the State and its organs. All State and civil societies shall be run according to the democratic principles and human rights. Without compromising quality, the composition of State organs and Government shall be reflective of the country's national diversity.

Constitutional Supremacy – on the Constitutional change, the Constitution must indicate that in the event of overhauling the Constitution, all Kenyans shall be involved. In the event of amendments these shall be subjected to a referendum before they are enacted by Parliament.

These will keep Kenyans abreast with any new development in their Constitution.

Citizenship – those who should be regarded as automatic citizens of Kenya are: All people born in Kenya of parents who are both Kenyan citizens, all children born outside Kenya of parents who are both Kenyan citizens, all children born of one Kenyan parent regardless of parent's gender, spouses of Kenyan citizens regardless of gender must be entitled to automatic citizenship even when they are citizens of their own countries. The Constitution should open room for dual citizenship.

Structures and Systems of Government: Kenya should adopt a Parliamentary system of government in which a Prime Minister is appointed from the majority party in Parliament. The Prime Minister should be in charge of the daily running of the Government affairs and should be directly accountable to Parliament. Kenya should have a Ceremonial President who should be above party politics, should be elected by all Kenyans with a majority vote. While it is important to retain Central Government, Local Governments should be given lee-way to implement development projects in their regions with a percentage of the taxes collected in the region.

The Legislature: Parliament should vet the appointments of Ministers and Assistant Ministers to make the ministries more professional and accountable, Court Judges through a Parliamentary Judicial Committee, and Public Service Commission Officers. The powers of Parliament should be expanded to, empower it to impeach the President in the event of grave misconduct. Debate and approve Government expenditures.

Debate and approve acquisition of external or internal loans by the Government which should be passed through a 2/3 majority vote. Powers to constitute Commission to look into matters of public interest. The President will do the appointment and the gazette of the names of the Commissioners. Parliament should have unlimited powers to control its own procedures through standing orders. Being a Member of Parliament should be subjected to 2 terms of 5 years each. On the age of the President, we propose that the minimum age should be 45 years and the upper limit should be 70 years. There should be moral and ethical qualifications for presidential and Parliamentary candidates: these should include one who is able to declare his wealth, upright in morals, and should not have been convicted of a criminal offence. Constituencies must be empowered by the Constitution to recall their MPs in the event that they are not satisfied with his or her performance. This should be done through 2/3 of those people who elected him. The New Constitution should require that MPs spend at least half of their time consulting the Constituencies and parties so as to promote the democratic ideal of representation.

We should retain the concept of nominated MPs, however the criteria should be that no one who loses in elections should be nominated whatsoever. We therefore, recommend that nominations be made from special interest groups like the minority, disabled, farmers, civil societies, women and the youth. Our Constitution should amend by law the formation of a Coalition Government as opposed to the present system. The multi-party system of Government should be spread even in the Executive, this will enforce the system of checks and balances. It is an anomaly to have a multi-party Parliament which makes laws and a single party Executive which implements those laws. To further strengthen the principles of checks and balances we shall adopt the system of a two Chamber Parliament. This will avoid a quick cut and paste system of law making. The Parliamentarians will sit in the Lower House while the Upper House will be composed of District Representatives, Special interest group representatives, and Civil society representatives. The President should have the power to veto Legislation passed by Parliament when such legislation is not in the interest of Kenya as a nation. The President should not have the power to dissolve Parliament, instead Parliament should have a clear plan of calendar events which should be fixed. The Executive: the Constitution should specify the qualifications of a presidential candidate such as one who is an automatic Kenyan citizen, between 45 and 70 years of age, able to declare his wealth at the time of election and from time to time while in office, one of good morals, one who has not been convicted of a criminal offence and finally at least a graduate. The president of Kenya should be pegged to 2 terms of 5 years each.

The President should be above party politics, should not belong to any political party, and thus should not be a Member of Parliament. To play the dual role, it is difficult to distinguish when the President represents the interest of Kenyans and when he represents the interest of his Constituency. Our Constitution should strike off Provincial Administration and the Local

Government takes over. The two structures are not economical but rather a duplication. The democratic rule of representation by election should be upheld, so that the people are only governed by their own elected leaders and not imposed leaders. Also for good governance at the village level, the Constitution should recognize grassroots autonomous organizations like Village Elders to deal with some administrative issues in the villages. Judiciary: as per the current office of the Attorney General which is under the Executive with a dual role of being the Government Legal Advisor and the Public Prosecutor, we propose that this office falls under the Judiciary. At the same time the two roles be made into two offices since in practice it is difficult for one person to play the two roles without being biased. In the past, Kenyans have witnessed wrong doers in this country go scot-free either because they are well connected, or simply because they are politically correct criminals. This has seriously undermined the rule of law. Our new Constitution must establish an independent prosecutor's office that is constitutionally protected.

The new Constitution should establish a Constitutional Court. The Judicial officers should be appointed through an established Judicial Service Commission. On the tenure of the Judicial Officers, these should be employees of the Public Service Commission and should retire at the age of 70 years. The Constitution should ensure that citizens have a right to legal aid. This is in the event that the citizens are not able to engage a private service. There should be a judicial review of laws made by the Legislature, this is to make sure that before any law is put in practice it is well thought out and that it will not contradict the supreme law of the land. Local Government:

**Com. Asiyu:** You know we are going to enter this in our computer. You are just repeating what is very obvious. If you could just highlight and then let us have that document to prove that it will be read.

**David Ndung'u Kirithi:** Instead of reading the whole contents?

**Com. Asiyu:** Ya, wherever we go we give people 5 minutes. You don't have to read word for word.

**David Ndung'u Kirithi :** Okay, we don't need to read?

**Com. Asiyu :** No!

**David Nding'u Kirithi :** Local Government; mayors should be elected by the people and this should be done through the normal election. These people can be got rid off by a collection of at least 500 signatures.

Electoral System; the process – The simple majority rule that has been used in Kenya has always been that some people get into power even when the minority elect them, that is the majority will prevail in any election. The Constitution should state that any legally elected person should garner at least 51% of the votes cast. While we should retain the rule of 25% representation

in 5 out of 8 provinces for the purpose of a national outlook, then elections should be free of rigging. I think I have completed my paper.

**Com. Asiyu:** Thank you very much Mr. Nderitu. If you can sign now, and present that document to the, and sign the register.

**David Ndung'u Kirithi:** There are some people who are helping me, because I have not completed the paper. There are some people who are helping me to continue.

**Com. Asiyu:** Okay so is it that Stephen, I see, so is it that Stephen will follow from where you have left?

**David Ndung'u Kirithi :** Yes, and there is another person who will follow.

**Com. Asiyu :** Ya, but we shall give you only 5 minutes Stephen, so just highlight the most important areas.. Is there anybody who is not comfortable with the language we are using? Tumesikilizana kwamba tuongee kwa Lugha ya Kizungu, tuko sawa? Kama kuna mzee ambaye angefurahia kusema Kiswahili, tutafanya hivyo.

**Interjection :** (inaudible)

**Com. Asiyu :** Kile ninachosema ni kwamba sisi ndio tunataka kusikiliza unasema mambo gani, na tunataka kuwaeleza kwamba mtu anaweza kuongea kwa lugha yeyote, Kikuyu, Kiswahili au Kizungu kwa maana tuko na Mr. Mugo hapa ambaye anaweza kutafsiri. Okay unaweza kuendelea.

I am **Stephen Macharia Ndung'u:** continuing with the presentation from Tetu Parish. Election; the election date should be specified by the Constitution to avoid it being a secret weapon of whatever ruling party. The elections should be free and fair. The Constitution must provide for a very independent Electoral Commission and this Commission should be appointed by parties represented in Parliament. Still on election, Presidential Candidates – the presidential candidates must not contest Parliamentary seats and this will avoid people wishing to be elected for Parliament cheating people that they want to be elected President. The presidential candidates must name their running mates such that the Vice President shall not be a secret weapon or shall not be a price to be presented to any community. On Presidential Candidate losers: a person who contests for presidency and loses for three consecutive times should not be allowed to contest for the fourth time. Basic rights and rights of vulnerable groups: while I appreciate that our present Constitution caters for our right, this should also be added, it should be noted that human rights are inherent, inviolable and God given and are not granted by State or any person.

On Civic Education: all citizens must have a right to civic education and hence civic education should be a subject to be taught in schools. On capital punishment – capital punishment should be outlawed in our New Constitution. No-one should be



sentenced to death. The Constitution should provide for a free and compulsory primary education and the idea of cost-sharing in primary school should be scrapped off. The Constitution should guarantee citizens right to access information in the position of State or any other agency or organ of the State. While we, as Christians appreciate that our current constitution guarantees freedom of worship, we are worried that our Constitution does not state who should be worshipped and therefore our opinion is that the freedom of worship should be to worship only the true God and not Satan.

Land and Property rights – The Government should have the power to compulsorily acquire private land for purpose of development of social amenities like roads, hospitals and schools or for extraction of minerals for the purpose of the country development. While this is done, the landowners must be compensated adequately and in good time.

The Constitution should put a ceiling on land owned by individuals and this ceiling should be 20 acres. However, anyone who is able to own more than that land should be allowed to do so, but he should pay a heavy tax for every acre above 20, and this will help reduce having idle land which does not help anyone and our country having so many people living as squatters and refugees in their own country. Men and women should have equal access of land. On family land ownership, the Title Deed should bear the names of the two spouses. Kenyans should have a constitutional right to own land.

Ethnic and Regional diversity and Communal right – Our new Constitution must protect Kenyan traditions and customs that promote equality and fairness which do not discriminate against, women, youth and other sections of the society. The Constitution should also promote formation of Village Council Elders who will deal on land issues.

As I conclude I would like to note that in the past there have been many commissions, which have been set up in this country and after the Commissioners doing a lot of hectic work, their findings have ended in the dustbins. So it is our hope that the hard work that you are doing, you Commissioners will not be put into dustbin, because wasting them is wasting the resources of Kenyans and wasting the time of Kenyans and wasting your work as Commissioners. We know you have got a lot of work to do besides the Commission and therefore wasting your work is undermining even your ability to serve Kenyans. Thank you.

**Com. Asiyu:** Let me assure you that we in this Commission know that our work will not end up in the dust bin because we were not appointed under the Act, that the President usually appoints the commissions. We were appointed by Parliament and we will report back to Parliament so that there is no way that our work can end up in the dust bin, and with that assurance, I would now like to call upon Purity. Purity is gone. I you could try not to read, just highlight the important areas. Are you Bernard? You are not here, you have not registered. You want to continue from where Stephen left? Are you the last person in that group? Simon Mwangi, okay Simon you can go ahead.

**Simon Mwangi:** Thank you, so I continue with the presentation.

My names are **Simon Mwangi Njuguna** and I wish to continue with the presentation from Catholic Parish, Tetu. I am dealing with the topic: Management and use of Natural Resources: We have the Controller and Auditor General office which should be completely independent and have the security of tenure. The Controller and Auditor General who should be appointed by the ceremonial President and vetted by the Parliament should enable the Government to give the public in simple and clear terms quarterly reports on money collected and expenditures.

The Constitution should stipulate the Code of Conduct for holders of public office.

And as I continue I deal with the topic: Environment and Natural Resources: here I want to say that the new Constitution must address in a very fundamental way the environmental protection of such issues like the catchment areas, the forests, the water resources, the minerals, wildlife, air, and land, and to manage and protect such resources, the Parliament should by law institute a permanent commission on environmental protection and development. Public awareness and participation in environmental protection and reservation should be facilitated and encouraged by making information on environmental readiness, readily available to the population and promoting environmental education is good.

And then I touch on - Participatory governance, Non Governmental Organizations and organized groups should have a role in governance, and the new Constitution should also protect the rights of civil societies and constitutionally allowed to organize the citizens to stand up against the Government that over-steps the rights of the people.

Finally, the Constitutionalism – if the Constitution is made for the Kenyans and belong to them, then they should know it and understand it. And for them to know it and understand it, then it should be written in a clear and straightforward language as opposed to the legal language. It is good that it should be translated into local languages. It should be made a part of the school curriculum, so that Kenyans grow with their Constitution. And the Constitution must commit the Government in power to continuously offer civic education to the citizens, the State should ensure that new document of Constitution is easily accessible to the Kenyans. Thank you.

**Com. Asiyu:** Thank you very much Simon. Is there any other person from that group? Now we can go back to Purity.

**Purity Kimbui:** Mimi ndio ambaye ninaitwa Purity naweza kuongea lugha ya Kiswahili lakini hata Kingereza kidogo, lakini nataka kuwa na mutiririko unaoeleweka vilivyp. Hata nami nataka views, kwa hivyo nitaongea kwa lugha ya Kikuyu na itafsiriwe:

**Purity Kimbui :** Njitagwo Purity

**Translator:** My names are Purity Kivoi.

**Purity Kimbui :** Kiria giatuma njuke giikaro ini giki.

**Translator:** My purpose for being here today,

**Purity Kimbui :** Ni uhoru wa kihiko kana marriage.

**Translator:** I would like to talk about marriages.

**Purity Kimbui :** Thiini wa bururi witu wa Kenya,

**Translator:** In our country today Kenya,

**Purity Kimbui :** Kihiko ndirona gikarite toria kiagiriirwo,

**Translator:** marriages are no longer stable.

**Purity Kimbui :** Na tondu tukite niundu wa guthondeka thirikari kana muikarire wa githutha, nikio ona nii ndiraigua ni kwenda kwaria haria ndiraigua hahinyiriirie.

**Translator:** Because we are here to discuss about our future and our state, I would like to work to this.

**Purity Kimbui :** Kwoguo ndina ihoya mbere ini ya Ngai ona mbereini ya thirikari,

**Translator:** It is my prayer before God and the country,

**Purity Kimbui :** Kihiki gikorwo kiri kia ihinda

**Translator:** that we should have contracts for marriage.

**Purity Kibui :** Gitumi kiria giatuma njuge uguo,

**Translator:** And my purpose for saying this,

**Purity Kibui :** Andu mathiaga thiini wa nyumba ya Ngai na makehita,

**Translator:** Instead of going to places of worship and in church.

**Purity Kibui :** Makehitanira ati nimahikania,

**Translator:** They take hope that they have gotten married,

**Purity Kibui:** Na makoiga ati nimahikania, muthuri akoiga ndari nongi niucio, mutumia nake akoiga taguo,

**Translator:** and during the vows the husband feels that he has no other, and the wife feels she has no other,

**Purity Kibui :** No thutha wa ihinda, undu ucio ukaga kuhinga,

**Translator:** and after a short time the vows are broken.

**Purity Kibui :** Ni tondo kwihita kuo kwihititwo, kwahoteka kuri mundu wihitite ari na uHINGA Atari sincere.

**Translator:** Because during the vows one of the spouses may have been insincere,

**Purity Kibui :** Riu kwoguo, onanginya twana turia magucoka magie natuo, tugakorwo turi thina-ini, hari uria ugukorwo ari

sincere na atangienda kuhitia mhitwa yake mbereini ya Ngai, agatura na muturire muritu muno, niundu wa ucio ungi gukorwo Atari sincere.

**Translator:** and thereafter, after the marriage is broken one of the partners shoulders a big burden particularly the children and it is usually the sincere partner.

**Purity Kibui:** Kwoguo kiria giatuma uhoro wa gu-suffer, andu acio matigwo mutumia akorwo niwe unyitite mucii wake na ari na ruo mbere-ini ya Ngai ni mhitwa iria ihitire, akenda kumenyerera ciana ciake, kwoguo ari na mawira maingi kundu kuu, kwahoteka ona irio cia kuria gutiri,

**Translator:** I am saying that the spouse that is left with the children shoulders a very heavy burden to provide for the children in terms of food and other requirements.

**Purity Kibui :** Kwoguo ringi niundu wa ciana guthinika kwagia ng'aragu, na ringi hibi ucio uguka, okaga ringi anyuite, makaharwo gukagia mathina maingi, ciana ikora nikio iretwe Chokora imwe.

**Translator:** I think one of the reasons why we have street children is because of this child abuse and wife abuse so that if this man comes home drunk and then beats up everybody and messes everybody, children may run away from home.

**Purity Kibui:** Aria angi nao makagia na mirimu ya depression kwoguo nikuri na kuguruka, nikuri na kurwara mirimu ringi itarahoneka, ni undu wa kuhinyiririka, ona ng'aragu.

**Translator:** Others suffer depression due to these problems and there is a lot of suffering.

**Purity Kibui :** Ona nginya gukua magakua, ni aingi makuite na magathikwo

**Translator:** Many have even died because of these problems.

**Purity Kibui :** Kwoguo ihoya riria nyuma nario, hari inyui mugitwara uhoro, ni ati solution iria ingigia marriage yatuika ni contract, angorwo ringi ni miaka ta ikumi maigua ni meguikarania, nimekweruhia.

**Translator:** So my proposal here is that during the writing of the Constitution, we propose that people enter a contract during marriage say for a certain period, they could contract for ten years and may be renew the contract if need be.

**Purity Kibui :** Maigua matiguikarania, ciana cioywo ni thirikari ni getha itige guthinika tondo ticio imwe iretwe chokora, mapipa, ni ciana njugi muno, iria ikoragwo iki-realize ni atia kurathi na mbere, kwoguo igathinika na angi magatwika, andu ruined, andu mangikorwo mari a bata muno bururuini mahinda ma thutha.

**Translator:** If after the contract they feel they don't want to renew the contract, then I propose that the government should take over the children and take care of them, so that we can avoid this problem where children go out into the streets, leave school and may become street children.

**Purity Kibui :** Ona angi aitu matiri na hinya wa guthomithio, kwoguo magikinyita mathina maingi.

**Translator:** Most of them drop out of school because of lack of resources.

**Purity Kibui :** Riu norio ihoya riria nyuma nario.

**Translator:** That was my request.

**Com. Asiyu:** Asante sana Purity kwa maoni hayo. Sasa tunamuita Bwana Bernard Mugambi, tafadhali ufike hapa karibu na sisi ili Bwana Mugo anaweza kutafusiri kwa Kizungu yale ambayo unasema kwa Commission. Asante sana Bwana Mugambi sasa unaweza kukaa na alafu ukiongea Bwana Mugo atatafusiri kwa Kizungu.

**Bernard Mugambi :** Kiugo kia mbere ngumuria muukite gwika atia guku?Njitagwo Bernard Mugambi.

**Translator:** My name is Bernard Mugambi.

**Bernard Mugambi :** Muukite guku niundu wa Ki?

**Translator:** I am wondering why you have come here. Matigucokia thii na mbere.

**Bernard Mugambi :** Nii thomete ngerwo ati andu a gatiba guthondeka gatiba mehaha, aria meguka kwaria na andu, no ningi ndagiuka, ndiu gatiba ni ndui.

**Translator:** I was informed that the Constitution Review Commission is coming but I don't know what a Constitution is.

**Bernard Mugambi :** Ni undu ucio njukire nigetha hote kumenya.

**Translator:** I came so that I may learn and the other issue is

**Bernard Mugambi :** Undu uria ungi ni atiriri, Kirindi giki giothe tondu kiri guku nigikire ati tondu ageni ni megukari? Niki gigituma kwario uhoro wothe na kiengeretha.

**Translator:** I am wondering why we are using English language when we have all this congregation.

**Bernard Mugambi :** Niki gikugiria mwarie githwairi na andu aingi ao ni athweri?

**Translator:** Why are we not using Swahili?

**Com. Asiyu :** Mzee tuko tayari kutumia Kiswahili kama watu wale ambao wanatoa maoni yao, wanataka kuongea na Kiswahili, lakini wako na huru pia kutumia lugha yeyote ambayo wangependa kutumia, lakini hatuwezi kuwalazimisha. Vile tumekupa nafasi ya kuongea kwa lugha ya Kikuyu.

**Bernard Mugambi** (laughs)

**Translator:** Anasikia, he used to be a former teacher. He is a retired teacher.

**Bernard Mugambi :** Mimi ningeweza kuongea lugha ya Kiswahili.

**Translator:** Basi ongea kwa Kiswahili

**Bernard Mugambi :** Watu wengi wanataka kujua ya kwamba Katiba ni nini? Watu wamekuja kufanya nini hapa? Wamekuja kutujulisha au kujua maoni ya watu?

**Com. Asiyu :** Kama ni swali lile nitakujibu ya kwamba tumekuja kusikiliza maoni ya watu juu ya Katiba mpya. Vile umesikiliza wale wengine wakiongea ndio hivyo tunafanya leo asubuhi kusikiliza maoni ya wale watu ambao wanataka kutuongelesha juu ya Katiba mpya

**Bernard Mugambi:** Naomba tuelezwe wale ambao hatujui ni nini Katiba. Nini hii? Ni kama kusema nini hii Katiba.

**Com. Ahmed Hassan :** Although we have not made this day to conduct civic education. There were civic education providers who we instructed to do that work. The Commissioners also were going round trying to give civic education about the Constitutional Review process. So we hope that he had attended one of these meetings where these issues were discussed. But if he wants to know what a Constitution is. It is a long thing for us to talk about now, but I can just tell you briefly. A Constitution is an agreement between people on how they will live together. Basically it is an agreement between those who are going to rule and those who are to be ruled, how they are going to share power, how those who are going to be given the power by the people how they are going to exercise that power. It is basically a foundation from which the nation is built.

**Translator to Bernard Mugambi:** Ngwiciria niwataririo wega, werwo atiriri, githomo giki tuturaga tuthomithagia makanithaini, kuri andu mathomithagia, na toguo woria gatiba niki ri? Ni kirikaniro kia andu, ni gethe merane uria mariathanaga, uria mariathagwo, uria mekwenda bururi uikari, na meturire yao, riu nikio waigua andu guku makiheana mawoni kuringana na uria mekwenda, ringi Rais athanage, nimekwenda ithurano ithiage na mbere, na mutumia ni waigua nginya uhoro wa kugurana, maundu ta macio. Riu ni ukuheana umuthi kana hindi ingi?

**Com. Asiyu :** Tunaona sasa umefahamu mzee. Sasa Fredrick Wachira naona ujaandika chochote. Njoo utuongeshe kwa ile lugha unataka kuongea. Kwa sababu mzee anasema...

Yes, My name is **Fredrick Wachira:** and my submission to this Commission is on how our Constitution should entail the Government to be of the People, by the People and for the People, but just before I start submitting I would request that I have just drafted something here and I be allowed to go through very fast so that I can highlight some of the points that ..

**Com. Asiyio :** You can just highlight, we are going to put that in the computer, you don't have to read. Just go through and highlight.

**Fredrick Wachira:** My main theme is on how Government is not of what I have said there. Yes it is important that we know very well that we inherited our Constitution from our colonizers. And according to the colonizer's government, they only aimed at exploiting Africans. Subsequently, when it just came to get this Constitution from them, we inherited everything that these people were just amending and worst according to our Constitution, in Section 14 of the Constitution the current Constitution we have, there is a provision in law Section 15 Cap 170 which is definitely very clarified in itself that it is inconsistent with Constitution, and due to that inconsistency we having emulated what had been left to us we have given all the powers to the President and the people whom we elect after every 5 years, theirs is only to go to Parliament and they be driven by the President because, if you come to have a constitution functions and we come to Section 16 of it, it is the President who appoints Ministers.

**Com. Asiyio :** So what is is your recommendation?

**Fredrick Wachira:** My recommendations are; we have the ceremonial President, and there be a Prime Minister and the Prime Minister be responsible for appointing Ministers.

When we come to the appointment of Assistant Ministers, there is a provision in our current Constitution Section 25 of Section 2, that members of National Assembly are not barred from appointing people in other posts, that is stipulated in our current Constitution we have. So our Members of National Assembly have power of appointing Assistant Ministers in conformity with areas of individual's specialization without bias or any favour. On both the powers given to the President for example in Section 612 on appointment of Judges, 106 Section 2 appoint members of Public Service Commission, appointment of Commissioner of Police, appointment of the Attorney General, and appointment of Controller of Auditor General, makes it that the Government does not belong to the people. So our members of the National Assembly whom we have elected are only there to be told.

**Com. Asiyoi:** So what are your proposals?

**Fredrick Wachira:** Yaani, my proposal is when we come for example to the appointment of Judicial Officers, this be done by the Chief Justice, in collaboration with Law Society of Kenya. For the appointment of Puisne Judges, this be done by Chief

Justice together with Law Society of Kenya, including the Attorney General and before that is done, those to be appointed be people of clean record. It also goes to the areas of specialization. In that we have some Judges who are good in civil, others are good in criminal and others are good in Torts. Once a Judge is appointed, he is appointed as a Judge and can handle everything, and I think through this facility justice can be seen done. And when it comes to the appointment of officers in subordinate courts, that is in lower court, which is mainly the root cause of the present system of corruption that we have within our places this be done by Judicial Service Commission in coalition with Chief Justice with their Chairman and they be vetted very seriously and should any one of them be found to have contravened any section of the Code of Conduct of Judicial Officers, disciplinary action be taken immediately rather than wait, and the common man doesn't have any, and if becomes difficult for anyone to have this urgency.

And should it happen that these officers in subordinate courts occasion miscarriage of justice, there be inserted a section in Constitution that, they would be offended, have got a right to go to the next court without at least having those problems that we have to go through the Attorney General, and when you come to the criminal side, there is City Council who actually depending on which books one is in within those offices, wonders if one does get any justice because they would be the prosecutor, if the case has been done this or that. He tries to appeal within the stipulated time so litigants or the offended be given an allowance of having an access either from lower court to high court immediately especially in criminal matters.

When we come to the freedom of individuals, it is written clearly under Section 7 and Section 83 there are provisions, which stipulate very clearly what the fundamental rights mean. But currently according to how it is, this fundamental rights are very much infringed, especially in our courts, as if those officers in court do not know the Constitution so I would here propose that when judges and magistrates are adjudicating cases they put in consideration the provisions or in the Constitution as under that they will not any time be able to contravene Section 82 (1) of the Constitution. Because in that one it is very well stipulated that no law shall have any different effect or discriminate itself but if that is what is happening in our country today, those officers be following Constitution beside the laws that follow together with the Constitution.

Then on Land matters – which are very sensitive we have provisions in law that should be followed when adjudicating this matters, but when it comes, let us say for example to the present state, we have for example Act No.18 Section No. 18 recently implemented in the Country which give tribunals power to adjudicate matters pertaining to land. We also have on the 45 in the Civil Procedure rules which also gives this. But what it has come today is that the land may be yours but those who are hearing your matter are not considering the justice but they only think on who is who. So I would here propose as stipulated in Section 3 sub-section 2 of Cap 8 that in the Adjudicature Act that case is solely dealt with by courts rather than to those people who currently do not have knowledge of law.

By this, I think that matters in court shall cease to be there. So I would here suggest that Presidential powers be minimized otherwise if it so remains today, it shall mean that, our Government shall be President Government and not People's



Government. Finally I would here suggest that Section 13 of our current Constitution be repealed. That is 13 (1) remains but 13 (2, 3, 4, and 5) be repealed. Because according to how it is and as recently as it was done in 1992 it shall be that the President who will be in the office in that particular time, will have problems because if we shall be paying the President in the office and the ex-President all the facilities similar to the one in the office, It shall then be that the President who will be in power that time will have problems.

Finally it shall work that Kenya shall be from the public coffer, that is consolidated fund, be paid present President and ex-president. Those sections stipulate that Vice President be given facilities of office, which is not stipulated how it shall be. He shall have all other facilities, security, travel allowances and everything so I propose that Section 1 remains 13 (1) remains but these others should be repealed otherwise it shall be difficult for our Government to be stable in that particular time if present President will be there at that particular time. Because they will be having all those and the sufferers will be the majority in the country. And I think I will end there, I will--

**Com. Asiyu:** Thank you Mr. Wachira. When you started addressing us that this country should have a ceremonial president, and as you wound up, you also came back to recommending that the Presidential power should be minimized, so which is which?

**Fredrick Wachira:** The Prime Minister should be given powers for appointing Ministers, who shall be responsible.

**Com. Asiyu:** That point, we have noted.

**Fredrick Wachira:** Pardon?

**Fredrick Wachira:** You have noted that one. So the President shall be presiding over our ceremony. And the Prime Minister shall appoint the Ministers under whom they will owe all their allegiance to, unlike now that everybody, every office, from the lowest, from Assistant chief to Permanent Secretary, they owe their allegiance to President.

**Com. Asiyu:** Thank you.

**Fredrick Wachira:** Thanks.

**Com. Asiyu:** You want to hand over your written document?

**Fredrick Wachira:** I would request that I should be allowed to type it, then hand it to Mr. Mugo.

**Com. Asiyu:** Just hand it over to Mr. Mugo who will send it to Nairobi.

**Fredrick Wachira :** Yes I also felt just before I move back to my seat, Mr. Mugo is currently situated in Ruiru, which is very far from the town. Could there be a way that Mr. Mugo could be situated in town so that people can have access?

**Com. Asiyu:** But you will have to go there and sign the register please. Who is the next person, can we have another list? Okay we have 4 other people who have registered. And we shall have Joseph Ndumia, does he have the written memorandum as I can see he has brought up. Your name is Joseph Ndumia?

**Joseph Ndumia :** Oh, yes.

My name is **Rev. Joseph Ndumia Wang'ombe** I have come here wishing to give my views according to how you have arranged amendment of the Constitution. Some of the parts that I have seen that we should be helped, we are the citizens of this country. I come to the Government: for example the Government according to my view is that it should be clearly separated from the politics because normally the politicians seem as if they high-jack what should be done by the Government and then they do it according to the politics and most of the times the Kenyans suffer because their country, encounter lies that are used by those politicians. Most of the work that should be done by the Government is sometimes changed and it seems that it is being done by the politicians which is a lie, so the Government does not work properly. So according to, this should be separated from the politics e.g. the Ministers for example should not dictate what should be done in their ministries since even some of them are not even qualified to head those ministries. For example, since they are appointed politically and not by qualification. And if at all the elite ministers must be appointed, then that Minister should be, at least have relevant Ministry's work, for example, if the Minister is for Education, he should be an educationist and not for example a lawyer because, these things seem to have been mixed up. And the life of the Parliament for example, should be well organized such that it is not a secret.

It should not be kept as a political weapon, by, for example the President, such that the people, even the people who elected those people do not know exactly what is going on, they just wait in the darkness, even the loss of peace most of the times they just stay there in darkness, they don't know what is really going on. This should be done this way: the line should be well dotted, it will start at this time, it will end at that time, and not, it should not be treated as somebody's property.

Another part which should be amended is the Police force. For example is misused both by the Government, of course, and the politicians. The police force should be used to help the citizens and not to harass them. It should not be used for example, those who use the police that way, should face the law. Nobody should be above the law, all the people should, face the law when accused and answer some questions, such that the police is not used to harass the common man whom they were supposed to protect. Another thing is that in the Police force, for example is not recruited according to the size of the body that they are recruited according to the capability of somebody and their intelligence. I think the might be able to change and stay with the people properly, such that they will be helping the people, and they will also be helped to curb the crimes. The current Police force that we have for example, is the one that probably was being used by the colonialists to oppress the Kenyans. They are still continuing that kind of work. And after all those years of Uhuru, they should have stopped, so I think the training of the police should be changed completely, such that they trained to be citizens-friendly instead of being enemies to the citizens. And for that matter, will be able to do the correct type of job in this country and we shall have the progress.

We shall also be able to help them to erase the crimes that are too much in this country. I think those were just a few of my ah....

**Com. Asiyu:** Thank you very much Reverend Joseph, if you can now go and sign the register. Andrew Maina - the youth and we are happy that the youth is here to give us views. I think you don't have any written document?

**Andrew Maina :** No.

My names are as mentioned **Andrew Maina Ndirangu:** and I have the following views. In the new Constitution should cater for the less fortunate people of society and should be considered in elective posts if they have ability, when we come to the Parliamentary level and civic seats.

My next point is Voting, when it comes to voting I think we should have enough duration so that everybody should be given an opportunity to vote, and voting should be made strict because some people choose not to vote some choose not to take a voter's card. Some even sell their votes. So voting should be made strict and failure to vote should be punishable.

Also when we come to the President he has a lot of powers e.g. the appointment of Judges and I think that is unfair because when the President appoints Judges, the Judges owe their allegiance to the President and not to their State. And that will hinder the Judges from doing their work effectively. I propose that we should, Judges should be appointed by Judicial Service Commission, also police should stop harassing people and also torturing them to death. Police should be People-friendly and should also help people in terms of administration.

Mayors; I think it is unfair for Mayor's to be elected by the Council. I think people should be given the right to choose the Mayors they want and councilors should not choose the Mayors.

Finally when it comes to the children. I think children should also be protected by the new Constitution. When it come to any form of abuse, children should be protected against exploitation such as sexual abuse and child labour. They should be given their right to continue with their education. Thank you.

**Com. Asiyu:** Thank you very much Andrew, please step up there and sign the register. Now I have Joseph Maina Kariuki , okay Moses Kagoki Gitonga. Unaweza kuendelea sasa.

Okay, thank you very much, I am **Moses Gitonga Kagoki**, and I have the following views to present:

Parliament should have a calendar showing when to go on recess or when the elections should be held. Electoral Commission should set a date, which will not be seen to be a secret weapon by any party. The Chief Justice and the Commissioner of

Police should be vetted by Parliament so that they can be impartial to enable them execute their duties without fear, favour or owing any allegiance to anybody.

In business, manufacturers or industries should not be allowed to do retailing. There should be a law prohibiting them doing the retailing and manufacturing at the same time because this is killing small business people. There should be a law prohibiting them from doing that.

The President should have 51% of all the votes cast in the country. So that at least he attains the majority of the votes, if none gets the above percentage, there should be a run-off for number one and two. And this should be done within 21 days. During the elections the Speaker or the Chief Justice should Chair or should head the country during that time to avoid manipulation by any source. I think that is all I heard.

**Com. Asiyu:** Thank you very much Bwana Kagogi can we have the next. Could we have few more people who want to make their statement Bwana Waiyaki, Mr. Muchiri kabla ya Bwana Waiyaki kufika. Why don't you just come, anybody who wants to talk. You should register before you go and sit down so that you are on the list. And please register your name there so that we serve those who come first. First come first served. Bwana Muchiri unaweza kuongea kwa lugha ile unapenda.

**Josephat Muchiri :** Vile naona mambo yalivyo naonelea kama ni afadhali viama vingi viendelee. Yaani Multi-party iendelee.

Pili President na Vice President wawe wakichaguliwa na watu. Na wakati anapochaguliwa, awe akichaguliwa mbele ya MPs kuchaguliwa na Vice President.

Tatu kila mtu akitaka kuwa ni citizen wa hapa nchini Kenya iwe babu yake awe ni wa hapa nchini Kenya, awe amezaliwa hapa nchini Kenya.

Number 4 DO, DC, Subchief and Assistant Chief awe akichaguliwa na watu na awe wa huko huko ametoka. Local Authority iwe ikisimamiwa na watu.

Uchaguzi wa MP na Vice President uwe ukifanywa baada ya President kuchaguliwa. Watu wale wote ambao huchaguliwa na President wawe na kamati ya kuchunguza hawa watu. Kuwe na kamati ya kuchunguza watu wale wote ambao wanataka kuwa wakaaji wa Kenya tuwe na watu wa kuwachunguza.

Tuseme upande wa mashamba watu wote wawe na mashamba yamelinganishwa. Mtu asiwe na shamba kubwa kuliko mwingine. Kuwe na watu wakusimamia, tuseme kama msitu ile iko karibu na wao. Na wawe wanaangalia kuuliwa na maji madogo madogo kama kisima hivi. Wawe na uwezo wa kusimamia. Hiyo ingine ni Katiba iwe ikisomesha shuleni. Naona

nifikishe hapo.

**Com. Asiyu :** Asante sana Bwana Muchiri. Unaweza kwenda pale alafu una...

**Com. Nunow :** Question: Ulisema mashamba yawe, watu wote wawe na mashamba ambayo yanakaribiana, unaonaje, ungesema ni saisi gani ya shamba ambayo itatosha watu, ungesema ni acre ngapi kila mtu awe nayo, kwasababu ulisema wengine wasiwe na nyingi na wengine bila. Utajibu baada ya kuletewa tape.

**Josephat Muchiri:** Hapo inafwatana na uwezo wa Serikali vile iko na safi na kila kitu inaweza kupima na kuangalia hayo mashamba na kuona vile watu wanaweza kuwekwa. Vile mashamba ya nalingana na acre za nchi na kule mashamba yani ni mazuri kwa kulima, ili tusiwe na watu ambao wako mbele ya wengine.

**Com. Asiyu:** Mheshimiwa, do you have any other, Jina lako ni? Please give us that thing where you have the memo after Kithendu. Okay now Mr.Kithendu you can go ahead now.

**Samuel Githendu :** I don't have much, my names are Samuel Githendu Mau : I am the local councilor Tetu Location, Tetu Division, and I normally go to Nyeri County Council, I don't have so much to add because I was there yesterday in Nyeri Municipality and my appeal is that the Constitutional Review process as the body,

**Com. Asiyu:** Excuse me Councillor you say you had given your views yesterday.

**Samuel Githendu :** A bit of it.

**Com. Nunow :** In Nyeri?

**Samuel Githendu :** Yes, yah.

**Com. Asiyu :** And you are this area's local councilor

**Samuel Kithendu Mau:** The Constitutional Review Process body not to be disbanded before the issues that have been given to them are put as a law and the Government to be much answerable to this body, that is the Constitutional Review Process, that is the continuity of the Review process, and much of that this Constitutional process not be seen as tied to the election.

The land law, some areas in Kenya for we have the local authority but do not have land related to the Council. Within my area of jurisdiction, that is Nyeri District, areas that the Council say is their land is the emergency villages and there is the

Government land and those areas that is, the emergency villages are the areas where we normally get village squatters. There is a conflict between the local authority as per unit and the inhabitants, that is the village squatters and we would like at least to check if we can settle those people there. At the beginning the area was meant for development. We would like it to have a process or a land law whereby we can know who really owns that area.

The level of Education as per a councilor must be at least “O” level. And since we would like to have the local authority as per unit, to have an Autonomous and the Councilor is meant to be a policy maker, we would like to have somebody learned and the revenue collected within that area of jurisdiction to be fully audited by a private auditor, within the local authority and then have a common body in the national level which will co-ordinate the local authorities because most of the areas do not have resources that can make that local authority to continue.

The Electoral Commission, at this level, we would like to know if it’s the overall or it’s the Constitutional Review Process which will be trying to, who will be answerable to the other? Is it the Electoral Commission at this time because now this process of the Review Commission, we would like to see it at the end trying to come up with the issue and being given to the Electoral Commission, who will disband the other? Is it the Electoral Commission or is it the Review Process which will be answerable to the Electoral Commission, we would like to know that one.

**Com. Asiyo :** It is the recommendations from Kenyans about the Electoral Commission that will determine which way that should go. You are speaking to a much higher Commission than the Electoral Commission, so your recommendations about the Electoral Commission will be taken by us and we shall include it into the new...

**Samuel Kithendu:** So mine is the Constitutional Review will be above the others, thank you.

**Com. Asiyo :** Thank you councilor. Can we now have John Karanja

My name is **John Wambugu Karanja:** My comment first is on equality. Equality should not be observed at the nation level. By this I mean it should be checked as per tribe because in Kenya we have got different tribes and different behaviours and this is bringing corruption up to the kitchen level. For example as Kikuyus, we don’t believe on women to command the family and this has brought equality from the national level as women are campaigning now is coming up to breaking marriages. The Other point

**Com. Nunow:** And what are you recommending?

**John Wambugu Karanja:** The Commission Review to take this message that it should not be recorded at national level but be somehow, can be a by-law which will be ruled at tribal level. That is what I want to drive at.

**Com. Nunow:** What is the difference?

**John Wambugu Karanja:** Not to be commanded at National level. You know that some cases especially we call it in family level you go to Kimasai, Kikuyu others do not behave the same, but today as the women are campaigning, they have just gone up to kitchen level, we get killed, break marriages and this is becoming a burden to the whole nation

**Com. Hassan:** You are talking of being murdered?

**John Wambugu Karanja:** Yah. Another point is fairness on Elections. In most cases, we have read cases that election commanded by individuals. It should be very fair and free and the voter should be secured while electing.

**Com. Nunow:** You mean the voter?

**John Wambugu Karanja:** Yes, voter. The other point is the wealth of the country. It should be distributed equally to citizens and not what is happening today in Kenya. We get millionaires and very poor people and both are getting this from whatever our country has Wealth should be distributed equally.

Natural resources in Kenya – It has been very unfair in the past because it is commanded by a few persons. I would suggest the Government itself to form a body which will control the Natural Resources in Kenya so that, me as an individual from this area, will enjoy them.

Land in Kenya – in fact people are crying to be landless while others have got thousands of acres. This should be checked and possibly there be made a law to control the maximum that one should own. Particularly candidate in Civic, or Councilors I mean. An MP, at least should be a man with a degree so that he can for the coming generation will not waste their time forming, running all the way around him to follow him. A learned person can control his area, can understand the Constitution, will be ready to follow the Government academically but for the past, we have been burdened by illiterate MPs. All the Civic candidates should be at least ‘O’ level I would request.

The other point I would say – Powers in the Police Force. They should be reduced because these days we are being harassed by policemen, no security no one to question, their powers should be reduced or controlled.

There is a point I would support here – Marriage; marriage in Kenya has been abused. We get people going to Church, they vow the other time, the next minute divorce, the following day the same woman marries again, the same man marries again. Marriage to be controlled constitutionally, and be made a condition nationalized that this should be respected as noble. From

what the Bible says, you marry one wife, one woman but today, it is not controlled it is a joke.

**Com. Hassan:** So what are you recommending?

**John Wambugu Karanja:** Their powers be controlled nationally by Constitution so that it will not be taken as a joke.

Divorce – divorce should be strictly rejected, otherwise these days, people divorce today the next day you marry again meaning that the Land Constitution is supporting divorce, it should be checked before it is signed. Be checked why? And What brought up the separation or breaking of that marriage?

My last point, I would only say, let me comment on Wakulima – Farmers are suffering, especially from coffee, milk and others. Go to Western Miwa or sugarcane, sugar. Farmers should be given a body to cater for them so that it will not be a process of pressing them so that they will enjoy their work, especially small scale farmers we are suffering so much that you work hard, you use your energy your time everything, only to end up without getting a cent. And no one to complain to. That is all.

**Com. Asiyu:** Thank you very much John, ah, if you register your name there, Ah Samuel Murithi, if you are there.

I am **Samuel Murithi** : I would like the Government to be of unity so that all the parties form one Government and not a single party. Second, Election Commissioner to be independent not to be controlled by the Executive. And Judiciary also to be independent. Also on the side of Power and Lighting Company, I would like this transformers which are installed to be installed by the Company instead of individuals and by doing that many people will be consumers. Currently when you apply for supply of electricity you are told to meet all the costs of transformer and when you install it other people come and tap there, so the first one who installed that suffers and is not refunded that money. Farmers' coffee must be improved because now farmers are not getting any proceeds from coffee and the Government is there, allowing them to fight among themselves and the Government cannot stop that. Finally, corruption is too much and must be discouraged. Thank you.

**Com. Asiyu:** Thank you very much Mr. Samuel, I see that Fr. Daniel is going to have a wedding soon so, we will give him that opportunity to talk to us before he goes. Fr. Daniel Kariuki.

**Fr. Daniel Kariuki** : So I will try to summarise because my memorandum is a bit long, but I will try to add to what the others had said in the morning.

First I will begin with the Preamble. Oh, my names are Fr. Daniel Kariuki – in charge of this Parish. I will begin with the Preamble in our Constitution. The Preamble for New Constitution must reflect some of the following ideas; it should capture the spirit of the whole Constitution. In the Preamble, I propose the Constitution must recognize God as the Supreme Law Giver



and commend the entire Constitution to God. It should be centred to the people and the people of Kenya are the ones who are giving the Constitution and they should determine the destiny of their country. Then in the Preamble we should not forget to mention the Kenya's history and not forgetting that we fought for the freedom of this country and at the same time, while fighting for the freedom, it's in this country many people lost their lives. So the Preamble of the Constitution should mention that. About the Directive Principles of the State – we should also remember those who are ruling this country. They should remember that life is God given, sacred and treated as such. All people at the same time are equal in the eyes of the law regardless of the colour race, sex, religion, and position in the society. At the same time we should not forget there are good traditional and culture values, that should not just be done away with if they cause no harm to society. Then, the family – it is natural and the basic unit of the society and it should be protected and upheld by the society and the State.

Then on the Constitutional supremacy. Parliament should amend only some of the Constitution with 75% majority as opposed to the 65%. Parliament powers to amend the Constitution should be limited particularly in the following areas; In the Preamble, the citizenship, land and property, directive principles, Presidential powers, and then the basic human right. If this is to be done, I recommend that citizens of Kenya should be involved.

Then it comes to the Structure and the System of the Government. I propose we should have a Federal System of Government. Provinces may be made into States under the leadership of elected Governance. We require a Prime Minister and a President. The two be of elective position where even the Prime Minister is elected.

Then the issue of Legislature: The Parliament should vote the following appointment: They should vote for the Attorney General, they should vote for the Chief Justice, Auditors and the Controller General, Head of the Civil Service, Members of Electoral Commission, Military Heads, Head of the Central Bank and all Cabinets. Then I propose the criteria for vetting for the appointments be written down.

Parliament should have unlimited powers to control its own procedures, through the Standing Orders. It should not be subjected to dissolution or promulgation by the President. It should have its own powers. We should adopt a two Chamber Parliament. In the Upper House the Senate, and the Lower House, House of Representatives.

Then the Judiciary – Beside the current Judiciary Structure, the Constitution should recognize alternative dispute resolution system e.g. The Village Council of Elders. The Judiciary should be Constitutionally established free of preference from the Executive. The Attorney General should not be a member of the Executive. The Chief Justice should be vetted by the Parliament with security of tenure and only be removed on bad conduct or behaviour.

Then on the Electoral Process – Electoral Commission Chairman should be elected by the Parliament and Commissioners be accorded security. Commissioners should be people with integrity, qualified and competent in the job. The work of the

Commission will be to supervise the election, and to review the boundaries. This is to ensure the Electoral rights of one man one vote per power. Then I propose the ballot boxes should be transparent to allow any person to see the contents inside. After the polling is done, counting should be done on the spot under the supervision of the party agents and their interested parties. The Constitution must strike off winning of election through a simple majority. All those seeking elective posts must win with 65% of the total votes cast. Civil, Parliament and Presidential election must be held on different days, the election dates must be known publicly so that they are not used as secret weapons to win elections. Presidential elections to be done directly.

Finally I will talk about the basic rights – The Constitution must clearly define the freedom. It must be that which does not disturb other people. The Constitution must establish a body which sensors the registration of the new denomination or sect. The Constitution must also define places of worship. The Constitution must guarantee right to freedom of education for all, a right of free medical service, a right to basic kind of food, shelter and clothing, a right to employment and decent life. Our Constitution must write off capital punishment and retain the right to life without exception. Thank you very much.

**Com. Asiyu :** Thank you very much Reverend Fr. Daniel Kariuki, please leave your memorandum with the Programme Officer and also sign the register. And now James Ndiritu, if he is not there, Daniel Kimamo, are you James Ndiritu. Okay, where is James?

**James Ndiritu :** Yes, I am James

Jina langu ni **James Ndiritu:** Niko katika muundo wa Serikali katika kitabu cha Kiswahili number 8. Mimi ningetaka kusema katika kuendelea, kwa serikali, mimi ningetaka tuendelea na Serikali na muundo huo huo tuliyo nayo. Na tukiendelea namna hiyo kwa upande wangu sioni taabu yeyote. Lakini kukiwezekana Serikali iwe hiyo yenyewe inabeba mambo yote. Na mambo hayo yakifikishwa kwa Serikali, yakiwa mazito yapewe Bunge. Kuajili Bunge wametoka kila pahali wametoka kila kona, hawa ndio wanaweza kuwa wanajua maneno ya kila mahali wametoka na kuwajibia wengine wale hawajui huko walitoka.

Tena number ya pili kwa upande yangu tufwate muundo wa Majimbo hapo mamlaka ya nchi. Serikali ya Majimbo tukiangalia vizuri sana, itasumbua wale wanao iendesha. Kwa ajili itambidi kila wakati mambo iwe ikigawanywa kwa upande kwa jupande, kwa upande. Lakini tukikamata Serikali moja na tukamate nchi moja tutapata kurudisha mambo yetu pahali pamoja na kuyasungumzia na kuyaweka bila kuvurutana.

Mwisho, mimi sisemi mengi. Tukiendelea na election, wakati tunaelekea kwa election tuwe na uhuru wa kina mama akina dada wote sisi waume kwa vijana kwa waume wote wawe wako huru kupigania viti na kiti kile mtu anakamata kiwe ni huru kwake kwa kufanya na kwa kusema. Mimi hayo ndio yangu.

**Com. Asiyu:** Asante sana Mzee Ndiritu unaweza kwenda pale ukaweka sahihi yako kwa register. Kwa wakati huu Bwana Daniel Kimamo.

Majina yangu ni **Daniel Kimamo** na hii ni memorandum, the national referendum Daniel Kariuki. Nilijukua ile mambo mingi nilikuwa nataka kuzungumza hiyo imechukuwa saidi ya yote.

Lakini ningependa kwamba sisi kama, tuseme upande wa wakulima, Serikali ikitoka, sisi tutaumia, kwa hivyo wakulima wataumia, na ni vizuri kama Serikali haitajiondoa kutoka kwa njia ya wakulima. Hebu niseme kwa Kahawa, kwa majani ya Chai, kuangalia yako namna gani.

Hali ya ufisadi, na sheria ya kujua vile watu wabaya wanaiba, yaani wafisadi wanaharibu hiyo mali. Ni vizuri watengenezewe sheria zao, watakuwa wakifanya namna gani, ikiwa ni kwa Maziwa, Kahawa na kwa Chai. Iko private sector ya Kahawa, inakupaliwa wajenge machine yao ya kusiaka halafu wanakuwa kama wanasiasa, hapo sheria mzuri itengenezwe. Tutakuwa namna gani wasije wakatufanya kama vile tulikuwa tunapigana hapa awali bure yaani kupigana juu ya Kahawa na kufanya namna hii. Tutakuwa na njia nzuri ya kuuza na kufanya kila kitu ndio tupate pesa ya kutuendesha.

Ile ingine ni ya kwamba ikiwa ni upande wa Serikali kiongozi awe na nguvu, tuseme kama za Rais. Ni vizuri hii kasi Kugawanywa, madaraka yake yawe sio juu ya Sheria. Hiyo ndio inaweza kuwa sawa, ndiko tusiwe na yeyote juu ya Sheria. Hii mambo yote ni kugawanywa, ili kila mtu awe na kazi yake. Ufisadi kwa Serikali nao iwe na sheria na hao wafisadi watafanywa namna gani, na watafanyiwa nini, lakini sio kuwajiliwa tu. Kwa hayo machache, asante sana.

**Com. Asiyu:** Asante sana Bwana Daniel Kimamo, tafadhali nenda pale kwa meza uweke sahihi yako. Ninaweza kufwata list hii mpya, ya wale hawajaongea? Bwana Joseph Ndumia. Nyuma ya Joseph nataka mjitarishe wale ambao mumejiandikisha. Joseph akimaliza nitakuwa na Justin Kabuta.

Majina yangu ni **Joseph Ndumia Gatimu**: I come from Tetu Constituency.

The issue I wanted to talk about to the Commission is about this matter of extension of Parliament. I think according to me, the issue of extending the current Parliament should not arise because we the people I think, are not interested in that kind of thing, we want the current Parliament to end as per the set time, 5 years. Then we can have the elections going on as per the current Constitution, then after the elections, I think the Commission should be given enough time to look at the Constitution because the problem here comes in when we have the election and the Constitution Review tied together. I am saying that there is a problem, if the election is tied to the Review, and handling Constitution that, we undertook the last election with the current Constitution, that issue of Inter-Parliamentary group which had looked at the clauses concerning the election, everybody had

accepted that the plying ground was level as at that time so I think we should have Commission going on with its work then have the election as per the current Constitution. Ya, that is what we are thinking that the Constitutional Review should be given time to complete its work and elections should go on as per schedule. I think that is all I had about this issue, they should not have any extension of Parliament as at this time.

**Com. Asiyu:** Nimeshukuru, we now have Justus Kabuta. Go ahead

**Justus Kabuta:** First I will look in the office of the President

**Com. Asiyu:** Have you got a written Agenda?

**Justus Kabuta:** Yes

**Com. Asiyu:** You don't read it, just highlight; we are going to read everything that you have written.

**Justus Kabuta:** The President of Kenya should be elected, he should be a Member of Parliament, he should garner 50% of all votes cast. We should have Prime Minister who will be in charge of the Government and the President should not be the appointing Organ. The appointing of Ministers and nominated MPs should be done through the Parliament.

We should also have an independent Judiciary.

Every Kenyan should have access to free medical services. Free and compulsory primary education.

On Electoral Commission, the Chairman of the Electoral Commission should be appointed through the Parliament. The rules of Electoral Commission should be followed. Voter registration should be continuous.

The Land Act should be reviewed.

The Nurses and Doctors who are employed in Government institutions should stop working in private clinics nor should they have pharmacies.

The Local Government Act should be reviewed: The Mayors, County Council Chairmen should all be elected by the electorate.

**Com. Asiyu:** Thank you very much, you can give your memo there, sign our register. Mr. Anthony Gichuki, okay go ahead.

**Anthony Gichuki:** I thought it was necessary to come to attend this ceremony so that I can make my contribution and my objection so that in future I will be in a position to achieve something on that objection that I have already contributed.

First I found it was necessary for President's power to be limited in that, there should be separation of power.

Land issues also should be observed in that. Revolution and independent Judiciary – Okay other issues include unemployment.

This has been as a result of lack of specialization. Also tribalism and nepotism and this can only be eliminated by putting a fixed jurisdiction to the civil servant whereby after having reached a certain age he or she should go on retirement so that other Kenyans are given an opportunity to prove ..... Their responsibility.

Something else is In-security; this has been as the failure of the Government to arrest all law breakers because of the problem of condoning bribery making people to look for an alternative that is why they look for an alternative of mob justice, and in co-operation of the thieves and the police at night.

Children rights – There should be no children labour, mistreating them because they are not yours.

Lastly is poor return from Agriculture – Farmers are using a lot of money to prepare cash crop yet payments are very low – this is as a result of mismanaging the Government funds. Those people who have been given the responsibility are mismanaging the Government fund instead of paying farmers according to what they have taken to the companies. That is all that I have.

**Com. Asiyu:** Thank you Anthony. Your name is

**Samuel King'ori :** First there should be no extension of Parliament term. The Commission should complete its work later, after all the elections are done, then the Commission completes its work later. The Electoral Commission should be independent that is the President should not interfere with the Electoral Commission. The term for Mayors should be extended to 5 years. The next one is the Government should look at the problems farmers are facing. That is all.

**Com. Asiyu:** Thank you Samuel, you are through?

**Samuel King'ori:** Yes

**Com: Asiyu:** Umemaliza?

**Samuel King'ori:** Ndio

**Com: Asiyio :** Basi enda hapo uweke sahihi, okay we will have first Mzee Wachira, then Mr. Githingi, Ndung'u Ndirangu and Samuel Mbuthia.

My names are **Essau Wachira:** I will start with Land ownership- The land ownership should be vested in the person who is owning that land, with no interference from the State or the Local Government. Also the Constitution should identify the beneficiaries of the trustee land.

Next I will go to the form of Government – I would propose that we have a Parliamentary system of Government whereby you have a premier seat. The Prime Minister should be the head of the Government and the President will be the head of the State more or less a ceremonial President. Such powers as of the Chancellors of University should be removed from the President and be given to one of the Vice-Chancellors of State University.

I will go to Education - thereby it should have free and compulsory primary education and the Secondary education to be subsidized for those who don't have the ability to educate their children.

The other one is about the Electoral Commission – The Electoral Commission should be independent thereby the Chairman of the Electoral Commission should be elected by Parliament and also the other Commissioners.

The other one is the Judiciary – the Judiciary should also be independent thereby the Chief Justice should be elected by Parliament and his tenure should be unlimited. Should be impeached in cases of discipline such as corruption.

The other one is about the Local Authority – The Mayor should be elected directly by the electorate, the voters and his term should be extended to 5 years to avoid unnecessary elections.

The other one is the Parliament – The Parliament should be independent from the President thereby it should control the whole of its calendar and should also participate in budget preparation. Thank you.

**Com: Asiyio:** Thank you very much Essau, Can we have Mr. Githinji

My name is **Andrew Githinji Muiruri:** I am the Chairman of Municipality Constituency in the Review exercise, but I would like to present my views here I am presenting my views on behalf of Federation of Coffee Co-operative Societies of Kenya, and I would like to highlight some points here which I would request the Commissioners to entrench. into the Constitution to guard the rights of the farmers.

One the Constitution should be, or create a room whereby the separation of powers from the Executive should be guaranteed. The Executive should have a ceremonial President with some powers, which are limited to his office. There should be a Prime Minister in the Government who would be an administrator of the Government, at the same time should have free Judicial Department which is free from an outside interference. We should have an office of the Auditor General, which should be free from political interference. The Constitution should give a room to attend to independent General Prosecutor and independent Commissioner of Police. At the same time the Administration Act of selecting Chiefs and subchiefs should be abolished. The members of the society be given the mandate to elect their own so that they can be answerable to the members of the society.

Land Act should be clear to avert loopholes and short cut which are used by the racketeers to steal public and government land. A lot of big chunks of land have illegally been allocated to some people under Presidential forged signatures. All plots allocated after 1990 should be scrapped to clear the Government from bad books. Here Commissioners I would like to quote some few people who have already grabbed over 5 acres in the Municipality here in Nyeri. Somebody an individual he has been allocated 5 acres of land with Government quarters and he is former Mayor, so we should request the Government to intervene and see how did this man acquire 5 acres in the town. At the same time we have village plots, which were created during the emergency time. We should request the Constitution to remove those village plots from being under the County Councils because they are illegally being allocated to individual councillors and Village Committees being elected. Village Committees to take care of their own village plots. On the side of the Farmers Commissioner, there should be a Development Fund which should be created from the Budget tax to cater for the compensation of the farmer in case of bad weather and drought and it should be allocated during the country Budget Day. Local Authority at the same time should have their own autonomy. The scheduled tax 80% of the total collection of their member at least 20% to the Central Government.

Commissioners in this country have six working days in a week, I would propose that because of the present technology on the side of the work the present condition of 6 working days should be abolished and 5 days given to the members so that the workers should have one day rest, because currently we are having 6 days in a week and you find most of the people don't get ample time to travel to their areas. I think the overriding total of work which was to be done by those people has been reduced to the present technology of work. For example currently you have seen the retrenchment of workers from different kinds of industry whereby the same profit which those companies have been making by the time when they had 100% total workers are still making the same profit and yet they have retrenched their workers and remained with a total of 25%, so a way forward should be observed to see if at all the profit you are making should be contributed in a way of tax provided that the Government meet its day to day work.

Lastly Commissioners an office of ombudsman should be created in every district whereby members of the society should take their complaint in case they are offended but this is favoured for example if a member of the society has been insulted by a Police officer or a civil servant, we are supposed to go and report this matter to the police, so we don't expect an investigator to investigate himself. So an office should be created somewhere which should be free and fair where members of the public

should take their complaints. With that I think I have finished.

**Com. Asiyo:** Thank you, take that document there and also sign the register.

**Andrew Githinji:** I think I am going to prepare it in the normal manner, then I will hand it over.

**Com. Asiyo:** Mr. Ndung'u Ndirangu, then Samuel.

**Ndung'u Ndirangu :** Review Commissioners, ningetaka ku--. Majina yangu yote ni Ndung'u Ndirangu – Wakati huu nimekuja kutoa maoni yangu pekee yangu, kama vile naona inaweza kuwa mzuri Katiba.

Nitaanza na Executive Office ambayo ndio msingi wetu sisi wanakenya. Kitu ambacho ningetaka kusema juu ya President ambao tutakuwa tukichagua, ni awe ceremonial President, ambaye wakati huu uwezo kama wa majeshi yetu hautakuwa mikononi mwake uwe katika mikononi mwa CGS.

Jambo lingine ni juu ya vyuo vikuu ambavyo tunazo za State, tuwe na Chancellors ambao sio Head of State.

Na kwa upande huu wa Elimu ningetaka kuweka mkazo Katiba ambao tutaunda wakati huu itatusimamia kwa upande wa Elimu ya bure ya msingi.

Sasa nitaenda kwa upande wa Afya, upande wa afya tuwe tukipata matibabu ambayo hayana malipo ya hali ya juu kabisa.

Sasa ninakuja kwa upande wa utawala wa Local Government – tuwe tunapewa uwezo na Katiba kuchagua Mayors na Chairmen wa County Councils. Na wawe na muda kama ule wa Bunge kukuwa kama Councillors au Chairmen. Nafikiri nitafika kikomo wakati huu Commissioners. Asante.

**Com. Asiyo :**Asante sana Bwana Ndung'u, sasa nitamuita Bwana Samuel Ndubi

Thank you Commissioner, I am **Samuel Ndubi Gitahi** and I would like to talk at least 4 points which are touching my mind.

**Com. Asiyo:** Yes, go ahead.

**Samuel Ndubi Gitahi:** The first one is Presidential powers should be reduced. One, appointing of Executives should be given to ministerial status, that is the Ministry concerned. Secondly, the Cabinet, after being appointed the President, should be approved by the MP or the Members of Parliament. And the third point concerning the Presidential powers, he should not be



the Commander of the Armed Forces that one should be given to the Defence.

Number 2, the Chiefs should be elected and not appointed by the DC or consulate; it should come right away from the people concerned. And after being elected should do the work of the sub-chiefs, that is to reduce the Government money.

And the third point is that the Press should be given freedom of expression, it should not have a limit or should not wait for anybody to go and find out whatever should be said over the radio or anything like that, whatever has happened should be reported directly for the community to understand what is going on.

And the fourth point I have, the curate, or advocates or the interpreters of the law should be neutral should not have a limit where they should judge or go about with the case to avoid the cases being in court for a long time.

And the last one the Executive should have a guarantee and the terms of service should be improved when they are at work, not a matter of hearing that they have been thrown out of their offices by retrenchment and they don't have anywhere to go. That is the end.

**Com. Asiyo:** Thank you very much Samuel. And now we have Bernard Mwangi to speak.

My names are **Bernard Mwangi:** To start with is the Presidential powers should be trimmed and next one, the President should attain at least 60% of the majority of the voters. Also the Electoral Commission should set a date for the elections. Concerning the Elections, that is the Civic, Parliamentary and the Presidential election, I think we should start with the Presidential elections and then a gap, may be of about 6 months should be created whereby the Civic and the Parliamentary elections to be held simultaneously.

Concerning the number of political parties, I think constitutionally, we are supposed to have at least 3 political parties, that is, first one being the ruling party and two being opposition.

Concerning the local Government, Mayors and Council Chairmen should be elected directly by the people. Councilors should have a minimum education qualifications of 'O' level.

Concerning the electoral system and process, candidates to face nomination in one party should not be allowed to seek nomination from another party. And this shows that the candidate is only after power greed. Constitutionally secret balloting should be allowed as a way of choosing a candidate. In any party election. Acclamation method should be banned.

Concerning the basic rights, that are education, health care should be provided free by the Constitution.

Land and property rights there should be restrictions concerning the ownership of the land. The Constitution is supposed to ensure that nobody should have more than 30 acres of farming or grazing land to prevent the issue of land grabbing. That is all.

**Com. Asiyó :** Thank you very much Bernard. Mr. Peter Gichohi

**Peter Gichohi:** How much time do I have?

**Com. Asiyó:** Do you have a written memo?

**Peter Gichohi:** Not right now.

**Com. Asiyó :** Okay go ahead.

**Peter Gichohi:** May be later. Thank you very much Madam Chairman, my name is Peter Gichohi and I come from around here. I am a local person. The views I am going to present are my views not group views, and I would like to start, I think at the most critical issue regarding the Constitution.

And that is the Presidency – I think history from 1963 has shown that Presidential powers have been abused and misused for whatever reasons. Very often by people who want to benefit politically. So, I would prefer a situation where the powers are shared between a President and the Prime Minister. Where the President would be non partisan, does not belong to any party, he is elected by all Kenyans and he would be or she would be the Head of State while the Prime Minister would be the Head of Government. So the Executive powers would be shared between the President and the Prime Minister. At the same time the President or rather the President should meet certain qualifications. One his age: In my view I don't think we need a leader who is beyond 70 years of age, so anybody who qualifies to be President should be between 45 and 70. A situation where old men or old women stick to power unnecessarily for too long, I think it is dangerous so anybody below the age of 70 should have the right qualifications, the right experience and the right background to be the President of this country, when it comes to the appointment of people in different positions the President should only appoint on advice from various organizations and Parliament vetting those appointed to those positions. I am referring in particular to posts like the Permanent Secretaries, Heads of the Parastatals, and various other organs so that anybody who is appointed must be vetted by Parliament, in order to qualify for appointment. Now if one is vetted and is for some reason not acceptable to Parliament, then that person should not qualify to hold the position he is supposed to hold. Now the other issue is the term of the President. I am sure we must bear in mind as I said, the maximum age is 70 so the President should only rule for a maximum of 2 terms of 5 years each. Now if within the two terms, he attains the age of 70 before the expiry of the two terms, he should be required to resign office.

Now, the other issue is on the Legislature. Before I talk about the Legislature, what kind of qualifications do we need for a President? I think it is high time that Kenyans recognized the value of education and therefore for one to become President he ought to be a university graduate, minimum so as to avoid a situation where we have an illiterate or semi illiterate President who

doesn't understand the matters of State. So the minimum qualification should be a university graduate and must have experience either in politics or in public service. Now coming to the Legislature, now the Legislature is a very very critical organ of the Government, because this is where laws are made. In terms of checks and balances there ought to be a Second House call it whatever you will call it Senate or call it Chama Cha Wazee, so that the Senate can check on what is happening in Parliament, so that if a bill is passed in Parliament, it goes through the Senate before it goes to the President, for Assent. If the Senate reject that bill for whatever reasons then it is returned to Parliament for further debate. After which the bill can then follow the normal path and receive Presidential Assent for any bill should be done within 14 days. There is no reason why it should take longer than 14 days if all matters have been clearly agreed upon and all what remains is a simple signature, so that that signature should not take more than 14 days. Now the other issued is on the legislature. One time we had an MP who was semi literate and for the 5 years he stayed in Parliament he never uttered a word, a situation like this should be avoided. So that anybody who aspires to become an MP, a Member of Parliament should have a minimum of university education or equivalent for that matter. The matters of State are very complex and lesser education I think would compromise the understanding of an MP who does not have that level of education. So there should be that requirement, minimum university education, some people will argue that education is not important in politics but I disagree, and state that minimum level of education should be a requirement. That kind of person will be fluent in English, will be able to read documents on his own and understand, he will be able to understand Kiswahili and he will be able to understand even when it goes to negotiating for things like loans and grants and so on he will be able to understand the language that is used in those documents, similarly in terms of age, what is the minimum age of someone to become a member of Parliament? I think we need to consider experience we need to consider background, so that anybody who is less than 30 may not have the necessary qualifications and in particular experience to become an MP. We don't want small boys and small girls going to Parliament. We want people who are mature, people who have certain level of experience, people who have certain level of understanding and that is only when one goes beyond 30 of course there are exceptions.

There are people who are below that age but very mature and intelligent. My view is that, 30 should be the minimum age that should be accepted. Parliament should determine its own calendar, without interference from the President or any other powers. They should determine when to adjourn, when to do whatever they want. In which case if Parliament determines its own calendar of events when to start sessions, when to end sessions, when to debate, what motions. Now the roles of the President perhaps at this point would be ceremonial just to come and open the first session of Parliament after which his role is over. Something I should have mentioned. The President should not be an MP. Because an MP means you identify yourself with a particular political party and I said President should be non-partisan. We don't want a President who campaigns all the times, throughout the Country on his behalf or his party rather than addressing the issues of State, I think matters of State are more important than political parties. And the other thing is that if an MP defects and we have seen defections very often especially from 1992 with the beginning of the multi-party system. If an MP defects he should be barred from standing for election and should pay 50% of the cost of the bi-election, this will prevent MPs defecting all the times defecting sometimes even three times, with the hope that in the bi-election, with the support of sponsoring party, they will be voted back into

Parliament.

I think this kind of abuse should be avoided in future, so any defection should be allowed but on those conditions, no standing for election in the bi-election and the MP to pay 50% of the cost of the election.

As far as nomination of MPs is concerned let MPs be nominated but on a given criteria: One they must be nominated from very specific groups, one to represent women interest. Two to represent the disabled, the whole spectrum of the disabled. And three to represent the Youth because the youth need to be trained in order to take over power after sometimes. So only nominations based on those three criteria should be nominated, otherwise, nominations based on political affiliations or what you might call political Sycophancy should be avoided at all costs. Now very frequently we have been disappointed at the performance of Members of Parliament and we have no recourse to remove them from Parliament and when someone becomes an MP, he is guaranteed of being in Parliament for 5 years until the next election. I think this very unfair to the electorate so there has to be a mechanism that removes non performing Members of Parliament. And political parties should create this mechanism. If the electorate complain about their MP, because their MP does not perform, because their MP has been caught on TV camera sleeping when the budget debate is going on and we have seen them. Such an MP should be removed by withdrawing sponsorship by the political party that had sponsored him. Because MP must perform because they are there on behalf of the electorate. And those MPs who don't perform have no right to be in Parliament for any reason. So that way we can be able to recall our MPs when he becomes a non performer, when he is not an effective performer. Perhaps we should not judge the performance of the MPs by the number of Harambees or the amount of money contributed in Harambees, there will be a lot of criteria that can determine when an MP can be recalled from Parliament by his electorate, by the people he represents in that August House.

Now let me come to the Judiciary – and I just want to mention one or two things about the Judiciary, that we all have rights to access the courts as citizens of this country, the right of citizen to gain access to the courts, and present their grievances, if you may call them so, to the courts if they have been offended. For example if I am offended by the Government I should have recourse to go to court and seek redress, a very good example is sometimes last year or last year but one, there was this road between Marua and Nyeri blowing dust all the time, people get sick, people get dirty, agricultural activities are seriously affected, such people should be able to seek redress from the Government by using the Judicial system. What I am trying to say is that if I am offended by an Arm of Government or an individual in Government, I should be able to have the matter dealt with in a court of law and proper compensation given by the State, but most importantly, we need a supreme court that will act as the final court of appeal and also act as a Constitutional court. So that it can interpret matters of the Constitution properly for the citizens. Now details about the number of judges and so on I don't think belong to this forum, because those will be details.

At the same time I think the Judicial system should be expanded, there is no reason why someone should spend 10 years in remand before he appears in court.

Perhaps this can be attributed to negligence by the Judiciary because such cases should never be allowed. People have suffered in remand because their cases cannot be heard in court either because the documents are missing or they are simply forgotten, I think it is high time that we expanded the judiciary in terms of Magistrates' Courts and in terms of the number of judges so that they can deal with cases more efficiently and more effectively so that you don't have to wait for 10 years for a case to be finished in a court of law. Now there have been claims about corruption in the Judiciary

**Com. Asiyu:** Perhaps you should summarise so that the others can have a chance.

**Peter Gichohi:** That is why I asked at the beginning how much time I have and you never gave an answer. Oh, I wasn't aware of that. Let me leave that for a moment let me come to a very sensitive issue.

Land – Who owns land in this country? It is very difficult to say particularly as it refers to public land. We have a Commissioner of Land with no commission, it is a commission of one man who can, it has come to a point where he can even allocate your own land to Private Developers, so why can't we have a Land Commission entrusted with all matters related to public land, whether the land is owned by the State or owned by the Council as a trustee. So there should be a Land Commission and the Commissioner of Lands should be answerable to that Commission. I don't think I want to go any further than that. Except to make one final point on the amendments of the Constitution. Any amendments to the Constitution should be carried out by not less than 75% of the members, yes in Parliament. Before the amendment is done it is taken to Parliament, there ought to be a referendum. I think citizens have a right to know what is being amended and for what reasons it is being amended and therefore they should give their views after which Parliament then debates and the passing of the amendment should be not less than 75% of the members of Parliament. So the referendum and 75% together should go towards making any amendments to the Constitution. I think the Constitution is a very important document to mess around with all the times, amended every 3 or 6 or 9 months. Should be sacrosanct and it is a document we should avoid playing around with. Notwithstanding the fact that it is also dynamic because things change, politics is changing, population is changing, there are a lot of changes that are coming so that Amendments should be done when it is absolutely necessary. Thank Madam Chairman for giving me that opportunity. I would have to say more but time is not on my side.

**Com. Hassan:** Are you going to give us that document? We need that one

**Peter Gichohi:** This is not a memorandum, it is my reference document

**Com. Asiyu:** Let us have the next, Simon Ndung'u. Okay Mzee Ndung'u tuko tayari kukusikiliza.

**Simon Ndung'u :** Ndio, yangu si mengi sana, na bado kuandika. Mimi naitwa Simon Ndung'u. Mimi yangu ni pale inasemekana ati wanawake na wanaume wako sawa kurithi mali ya Baba yao, yaani mtoto wa kiume na mtoto wa kike

aliolewa. Sasa mimi nimeshaposa msichana wangu, nimeshakula mali, na hiyo mali yote mimi kwisha tumia na yeye ameolewa na tajiri, labda mimi ni maskini. Niko na sehemu ya shamba ambayo nitawachia watoto wangu wale vijana na wale wasiolewa, sasa huyu tajiri anaona wale wengine ni wadhaifu yaani hawana mali, ndio wakati mimi nikitoka hapa duniani yeye anaweza kushtaki wengine agawiwe shamba. Hii inawezekana namna gani na imeshapitishwa na Serikali ya kisasa? Sasa maoni yangu ni kwamba yule aliyeolewa na yeye amekwisha kwenda kwake shambani au mahali popote wanakwenda na Bwana yake awe amekaa huko asirudi kwangu kurithi mali yangu. Sababu mimi nimekwisha kula mali yake na nimemaliza kila kitu na yeye, sasa yuko kwa Bwana wake. Sasa mimi nafikiri yangu ni hiyo kidogo tu.

**Com. Asiyu:** Asante Mzee Ndung'u.

**Com. Hassan:** Mzee nataka kukuuliza swali moja kama unasema ati hawezi kurithi, akienda kwa Bwana wake, bwanake pia hawezi kumrithi ama pia unasema awe amurithi bwanake pia akikufa kwasababu kwa wakati mwingi bwana akikufa wale madungu zake na wazazi wanajaribu tena kumsukuma huyo bibi asimrithi, sasa itakuwa huyu bibi huko baba yake pia amemfukuza hawezi kupata kitu bwana pia hawezi kumpatia kitu sasa atakua akikaa namna gani?

**Simon Ndung'u:** Kama yeye ameshaolewa ameshakwenda kwa familia ya Fulani, hiyo familia ya Fulani ndio wenye wale watoto na ndio wenye yule bibi. Hakuna ruhusa ya kuwarudisha kwangu ati bwana yake amesha kufa, arithi upande ili ingine.

**Com. Nunow :** Swali ingine Mzee, umetaja, msichana aliyeolewa, je kijana yako ambaye pia ameo mahali ingine atakurithi ama hatakurithi? Ambaye anajifanyia kazi ameo bibi mahali ingine na anaishi mahili ingine haishi kwa boma yako?

**Simon Ndung'u :** Atanirithi, yaani yeye ni mtoto yangu na nimitoto yangu ya upande yangu.

**Com. Nunow :** Inaonekana unafanya ubaguzi.

**Simon Ndung'u :** Hakuna ubaguzi hapo. Wewe umechukua msichana kwanini? Amekwenda kwako, huyo ni wako. Mimi nimebaki na kijana yangu na amechukua msichana kule kwako huyo ni wangu.

**Com. Nunow :** Thank you.

**Com. Asiyu :** Asante Mzee Ndung'u . Enda hapo uhandikishe jina lako. Paul Kimamo, haya, Paul endelea.

My names are **Paul Kimamo Kathi** – I come from Tetu – I have three points which I think should be considered by the Reform Commission.

One is about land, there are still many living in villages and villages are meant for social and economic amenities. I would like the Commissioners to think of ways and means of how to settle them may be in Government land or where the land owners have made the land to remain idle for so long without producing anything.

And the second point is about education, there are families with believes that they did not have four children as the family planning was educating and they went beyond 4 or 5. I would like the Commission to think about these families to be given priority in education, may be, to be relieved from paying fees for primary and secondary education.

The third point is about Insecurity. Here in the reserves people have been troubled by people who come to steal at night and there is no security, I would like the Reforms to consider giving the vigilante groups some powers to be dealing with these people because to get police officers or the Administration police is another problem.

Also I would like the Commission to include provisions in the Constitution in regard to the bus or matatu stages because passengers have been molested and the touts don't regard passengers as human. I would also like the Commission to see to traffic laws so that passengers can feel secure and at their home country, where there are rule and regulations. As at that I end my points.

**Com.Asiyo:** Thank you very much Mzee Kimamo. Next John Waweru.

**John Waweru:** Thank you very much Madam, I am very glad, I feel that I should appreciate this chance to make my contribution to the Constitution of Kenya Review Commission.

**Com. Asiyó :** Did you have a written statement?

**John Waweru:** It is a written statement but I want to give my recommendations: I am John Waweru : Before I commence on my suggestions, permit me first to say some pertinent issues regarding this noble task of Constitutional Review Process, it is true that we are all gathered here to participate in a very significant milestone in the shaping of our Nation's Destiny. We should use all ways and means possible to get rid of anything that may be the quest of a new Constitution. I regret that if it possible for the KANU Government to manipulate the elections of its own office bearers and impose their preferred choices how sure are we Kenyans that there is an already drafted Constitution and collecting of views by the CKRC isn't a mere public relations gimmick? Nevertheless if the exercise is for real, we shouldn't focus only on the views and suggestions of the might and learned Kenyans, the recommendation of the common Mwananchi should be taken seriously no matter how light they may seem to be. Though it is rather sad that Kenyans are more interested on what a person is driving and what is driving him or her. On to my suggestions.

My first suggestion is that a Kenyan Constitution should be written or translated in all Kenyan ethnic languages so as to make many Kenyans understand it. We note that the majority of Kenyans don't understand the current Constitution because it is written in English which is a colonial language.

Writing the Constitution, translating the Constitution with the local languages will also promote our African culture and heritage and also make us create a sense of belonging. The next suggestion is that Section 1 of the current Constitution should be checked and thus read as follows: The Republic of Kenya should be a partly democratic state, all political parties should be scrapped off because they promote tribalism. And if at all they can't be scrapped off let us have a limited number of political parties which are manageable or which can easily be financed by the Government. The nomination of a candidate of president should be varied until, unless it is supported in such manner as many as may be perceivable, or under an Act of Parliament, by not less than one million persons registered as voters in the General Election. Instead of the current 1000 proposers, who can be easily corrupted to propose one as a candidate? Presidential candidates should also have running mates. The minimum age of presidential candidate should be lowered from the current 35 years to around 30 years, this because life expectance in Kenya as lowered drastically. From around 80 years at independence to around 62 years now.

Ex-president should be stripped off all retirement pack or benefits if he opts to stay in active domestic politics as in the Republic of Zambia. Any person holding a public office should declare his or her wealth showing when and how he or she acquired it. This will help fight corruption in Kenya. Note that individuals of high integrity with corruption free records, law abiding persons with no criminal convictions should be given first priority. The following people should be appointed, vetted, promoted, demoted or dismissed on merit by members of the National Assembly.

These are: Permanent Secretaries, Chief Justice, Attorney General, Military Heads, Head of Central Bank of Kenya, Public University Chancellors, Members of Electoral Commission, Ambassadors and High Commissioners as opposed to the current Institution whereby they are appointees of the President thus working under his patronage.

Impeachment – criminal proceedings should be instituted against the President for any wrong doing while he holds office, if found guilty, the President should cease to hold any public office immediately. While office of President becomes vacant by reason of death, resignation, incapacitation or by any other reason that may prevent him or her to hold office. The functions of the office should be exercised by the Speaker of the National Assembly for 90 days before the elections are called, unlike the current situation whereby the Vice-President is responsible, who is usually the appointee of the President.

Constituency or the electorate within the Constituency should be given power to remove or sack a sitting member of the National Assembly from office, for any misbehaviour that is if he or she is rendered inefficient.

For a long time, Kenya privately owned learned institutions and farms have been found to be the best managed vis-à-vis to



those owned by the Government, I therefore suggest that we introduce privately run land Military force prime agencies at a cost. This will enhance efficiency and help fight corruption in Kenya. It will also bring about competition for better services and fair trial in courts.

And my last suggestion – All the landless people located in that particular area and thereafter given Title Deeds. No Kenyan citizen should be a squatter in his own land. Thank you.

**Com. Hassan:** I don't know if I heard you correctly, you are saying we should privatize the Military, are you aware of the consequences of that for example National security?

**John Waweru :** You are saying whether I am aware that, I don't see any problem because I am saying this to get rid of corruption and for service delivery. May be, to be controlled by the international body like the U.N.

**Com. Asiyo:** Who will be the owners of those private armies? The Warlords?

**John Waweru :** Not Warlords but

**Com. Asiyo :** Who will control them?

**John Waweru :** May be owned or be controlled by the international bodies, like UN.

**Com. Asiyo :** Please give your memo to..Yes, Bwana Joseph, give us your full name.

I am **Joseph Matara**.

**Com. Asiyo:** You have a written statement I see,

**Joseph Matara:** I have one.

**Com: Asiyo:** So please don't read to us they are going to go into the computer the whole of it. Just highlight some of the issues.

**Joseph Matara :** Thank you very much, my memo is very short because in the first place I read in a paper sometimes 2001 November that our Constitution did not have an introduction, that is the Preamble. I was suggesting that in our New Constitution. We should have one and I gave an example that :

We the people of Kenya in God's Name and in order to form a democratic Nation, and promote general welfare and secure the blessing of liberty to ourselves and to our prosperity to ordain and establish this Constitution of Kenya.

The second one was in most case, business men from Nairobi usually go to Constituencies and they are inhabitants of those Constituencies and they are elected. In my second point I was suggesting that an MP must be an inhabitant of the Constituency he takes to represent in Parliament. He should not be a visitor.

The Presidency, I was suggesting we uplift the age from 35 to 40 years and the holder of that post should be a university graduate. He should not be above the law and the Parliament should have powers of impeachment. I was proposing that when the President appoints officers in high positions, there should be another body to vet his appointments.

I was proposing that the Arms of the Government namely: the Judiciary, the Legislature and the Executive, should be independent. And I was proposing that there should be checks and balances in place at all levels. I was also proposing that the Bills of rights as they are in our Constitution, they are not followed to the letter they are just there in paper, so I was proposing that they should be followed to the letter.

I was also suggesting the time frame of the Constitution writing should be ready by 15<sup>th</sup> December so that we can use the new Constitution by the beginning of the year 2003. That is all I had.

**Com. Asiyu:** Thank you very much Joseph, can we have Charles Ndei, please come forward.

I am **Charles Ndei Mugambi**, I am the last person to come here saa hii hii. Hapa tuna swali, Lakini tunataka kujua..

**Com: Asiyu.** Bwana Ndei, hapa Commission inasikiliza maoni ya watu wa hapa. Next, Kuna mtu ambaye anataka kuongea? Kama hakuna nitafunga alafu kama kuna watu baadaye ambao wanataka kuleta maoni yao kwa Commission, watampatia Bwana Mugo, lakini waandike vizuri na waweke signature yao na address vizuri kabisa alafu Bwana Mugo anajua vile atafanya ili maoni hayo yawekwe kwa computer yetu huko Nairobi. Na office ya Bwana Mugo iko pale kwa, pengine unaweza kuwaeleza mwenyewe Mr. Mugo.

**Bwana Mugo :** Explains how they can get to him or to CKRC office Nairobi.

**Com. Asiyu:** Bwana Mugo ningependa kama unaweza kuuliza wale wanakamati wafike hapa mbele ili tuwajue na watu wengine walio hapa wawafahamu kwa maana wamefanya kazi nzuri. Na sivizuri kwenda kama hawa bado kujulikana. Wanaweza kutueleza majina yao, kila mtu awafahamu.

Jina langu ni **Esther Muthee** - Member of CCC

**Andrew Githinji** - Member of CCC

Mimi kwa jina yangu ni **Councilor Mwalimu Charles Kahiga** – Member of CCC and Councilor kutoka station hii na ni mmoja wa Members Committee na tulikuwa na ninyi jana katika kazi yenu na mumefanya vizuri sana kwa leo tumekuwa tukiendelea kama tulifanya kule na sasa pia asante sana, mukienda mungu awabariki.

**Com. Asiyu:** Kwa wale ambao, kwa kuwa kuna watu ambao wako mbali na office ya Bwana Mugo, kama uko karibu na mmoja wa hawa watu ambao ni wanakamati na uwezi kufika kwa Bwana Mugo, unaweza ukawapelekea maoni yako ili wafikishe kwa Committee, kwa maana kuna watu ambao wanakaa mbali na hawawezi kufika kwa office ya Bwana Mugo, kwa uharisi. Naona kuna swali hapo nyuma, hebu tafadhali uliza.

**Fredrick Wachira:** Ningetaka kusema, we have severally heard that the so-called Civic education but unless it be that there are some radios where this might be. I have never seen any, so it will be better for those Committee members to enlighten the few who are here or otherwise, could it have been that the people examining you what was intended for complain, I think you could have had more people than this.

**Com. Asiyu:** Kwa maana hatujafunga kupata maoni itakuwa rahisi kwa wale watu ambao wanataka kutoa maoni yao kuendelea kufanya hivyo wakipita kwa office ya Bwana Mugo.

**Bwana Wanduka :** What is this Constitution? Are we making a New Constitution or are we amending the New Constitution?

**Com. Asiyu:** Yes, Wanduka this is why I am saying that you still have time to make the presentation you like and forward them to us through Mr. Mugo. You are right, they already have received, Bwana Mugo have they received them? In Mukuruweini? Just make sure that they are received because really what he is saying is true and it is not fair. They should have received it.

**Com. Nunow:** But you can still sit down and write written issues on those questions, you still have your time because we are not closing until July.

**Com. Asiyu:** No, we don't have to come back, you will have the time to write, pass them through Mr. Mugo and they will still go into the computer, if you feel that there is something you left out when you made your presentation.

**Bwana Wanduka :** Okay.

