

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

VERBATIM REPORT OF

CONSTITUENCY PUBLIC HEARINGS,

CHEPKOILEL CAMPUS, HELD AT

MOI UNIVERSITY

ON

CONSTITUENCY PUBLIC HEARINGS
MOI UNIVERSITY,
CHEPKOILEL CAMPUS
HELD ON 9TH JULY, 2002

Present

Com. Paul M. Wambua - chairing
Com. Abubakar Zein Abubakar

Secretariat in Attendance

Lilian Udoto - Programme Officer
Caroline Asst. Programme Officer
Richard Maranga

District Coordinator: Our guests who are the Commissioners of the Constitutional Review of Kenya, the Vice-Chancellor Moi University, Deputy Vice-Chancellor, Principal, Chepkoilel Campus, Chief Admin., Chief Academic, Deans here present, Heads of Departments, Guests, Ladies and Gentlemen, let me take this opportunity to welcome you to this venue, and as is tradition, in this Campus, we will begin with a word of prayer led by Mrs. Omoha. Please..

Mrs. Omoha: Let us thank God. Father we are in your presence this morning. We just want to lift you up oh Lord Jesus, for your honour God. We thank you for what you have been, for what you are being, and what you will be. We are hear, just to say, Lord we love you, and you direct us. And your word says, when we ask of you, you do it. Father, this is a moment, when we are lifting our Nation before your holy hands, thank you for the President, thank you for every Kenyan man and

woman. Thank you Lord even for now, at this time, in this hall, thank you for our visitors – the Commissioners, our Vice-Chancellor and anybody who is going to say anything in a transition, Lord, it is you, and leadership comes from you. It is our cry that you will come in, as we come before you, to ask you, to give us what you want us to be, and so that we can glorify you. May your power fill this room, may your power fill everybody who may your wisdom, your understanding, your knowledge, and spirit of discernment fall upon us. We relieve you Lord, to reign in supreme as we surrender to you. We love you. We have prayed all this, believing in Jesus' Name. Amen.

District Coordinator: Thank you very much Mrs. Omoha. I now wish to call upon the Principal of Chepkoilel Campus, Prof. Margaret Kamal, to introduce the guests who are here for this function.

Prof. Margaret Kamal: Our distinguished visitors for the day, Paul Wambua and Zein Abubakar the Commissioners of the Constitutional Review, Vice-Chancellor – Prof. Munavu, Deputy Vice-Chancellor, Chief Academic Officer, Chief Administrative Officer, Deans, Heads of Departments, Heads of Sections, staff of Moi University and students, this is a very special day for us today. We are very happy that we have been given the opportunity to participate in a very important event in this university, and mine is simply to welcome the Commissioners who have come to take their views in this campus.

We are privileged as a university, I don't know whether there is any other that has been given this opportunity, but we are very privileged as a university, that the request of the Vice-Chancellor, we were given civic education, first there was an exposure session by the Commissioners, few months ago at the main campus, and we are very happy that today, you are able to be heard to listen to our views. I think this is really a signal in the right direction. When we talk of Constitutional making, we are told that the Constitution that we are using currently is forty years old. So we believe the next one might take us another forty years, and if that is the case, then, we really feel that we are privileged as Kenyans to contribute towards that. Because, I believe it is not a small task, it is not a small thing to be ruled by something that you didn't participate in. So it is a really an opportunity to do that.

So I would really like to welcome the Commissioners who are here. I would like to introduce them individually so that you see who they are, and you can associate the names with the faces, but before I do that, I want to say, Commissioners, before you, we have the university management – the whole university actually is in this campus today. Starting with the Vice-Chancellor who is going to do presentation that we have requested should not be timed, because he is giving the views of the whole senate which is the organ that drives the university academically. But, that notwithstanding, all of us will give our views that may even be divergent to what senate may have looked at, because the senate one was a survey, so that there are generalities in there.

So, we have the whole university here, we have the Vice-Chancellor, Deputy and everybody whom we may have introduced in the other room. But maybe for your sake, I will just introduce this table so that you can see them. To my right is the Vice-Chancellor, Prof. Munavu. To my left is the Chief Administrative Officer, Dr. Sang. To the right of the Commissioner is

Prof. Karei, who is the Chief Academic Officer of Moi University. Next to him is Prof. Some who is Deputy Vice-Chancellor. Next to him is Prof. Ochula, the Dean of the Faculty of Health Science, he is running a very special faculty. That is why we are telling him to sit in front with managers, because he manages a whole college actually, it has been gazzeted , in the college of Health Science now. And, I think the other one is your member. We have one of our deans at the very end, that is the Dean of Science, Dr. Sorongey. I will not introduce the other members – we have Deans of Faculties here, Deans covering the whole university, the main campus and this campus. We have Heads of Departments and Heads of Sections, and we have students.

What I would like to mention is that, students will be coming in and out, some will be presenting and going out. It was a period in our calendar, that we would not afford to give them the whole day off. So, those who will be free will be coming in, and they will be coming out. As requested by your Co-ordinator, also, we have allowed the public to come in. Here there are some members in this neighbourhood that felt that they didn't have enough chance and we were warned of that, so we have opened our doors to the public, and so, you will be receiving also public statements in this hall. You are welcome, this is a public institution, so it belongs to all of us. It is a Kenyan institution, so, feel free and feel at home in this place.

I would therefore not like to take more time, I would like to simply introduce the members, and the two members of the Constitution of Kenya Review Commission, and allow them to take over the programme. Because, this is a really their programme not our programme. The members to the right of the Vice-Chancellor is Zein Abubakar, and please feel welcome. And the one next to him is Paul Wambua, feel welcome, and now the microphone is back to you.

With one apology, I know in the Commission, you normally say two prayers, I couldn't trace one Muslim lecturer. I would have wanted to do that. I know you normally say two prayers, and we would have liked to do that. So that is an apology, thank you.

Com. Wambua: The Vice-Chancellor, Prof. Munavu, the Principal of this campus, Prof. Kamal, the Deputy Vice-Chancellor of the university, Deans present, Heads of Departments, management team represented here, members of staff of this university, students, and the members of the public, let me start by greeting you. Good morning?

Response: Good morning.

Com. Wambua: Yaah, we have, as we you have heard, my name is Paul Musili Wambua, and I am in company of my colleague Zein Abubakar Zein. And, we have come for this special seating at this university, at the request of the university, and I want to say, very few things, before we start our routine procedure.

First and foremost, as the Principal said, this is an important and historical occasion of making a Constitution, and the policy of the Commission has been to avail every opportunity to every Kenyan to give views. And I can assure you, the Commission is

taking these views very seriously. And, we believe that the kind of views we are going to harvest in this institution, should be representative of the diversities which exist in this country. And therefore, as I was telling the Vice-Chancellor, if we came and got a uniform set of views, we would be very worried. What we encourage is diversity, because, it is from diversity, that we as a Commission will be able to analyse, collate, and come up with what we consider to be a Constitution be-fitting this country, and to serve this country for many years to come.

So, I want to quickly introduce to you the team we came with, so that you can know who is doing what. We have Lilian, this is our Programme Officer at the Commission, and we have with her Caroline, and we have Richard Maranga. Now, as you can see the set-up is such that, we are recording these proceedings verbatim, and they will go to the archives. If you really want to know what was said at Moi University, fifty years from now, you should be able to access that information.

Now, one of the ladies will be writing, I don't want to call it shorthand, but she will basically record by hand what you have said. The gentleman you see there will record and ensure that the proceedings are covered. That lady will ensure that, what you say goes to the tape, and the Commissioners will be listening. So that we trap the information in all corners, and I can assure you, even if you sneeze or cough, we will have that in the record. That is how serious we are with collecting these views.

And then we have Mr. Bor who is the District Co-ordinator, I think you are familiar with him. He is our field officer in Eldoret, and I think he has been moving up and down trying to organize this meeting.

So, I want to quickly tell you the procedure we will follow. I believe maybe you are already familiar. When you come in here, you are required to register, and the registration purpose is to ensure that we have a list of all those who attended. Not everybody who comes in here wants to present views, but we want to know how many people attended this particular sitting.

We now require you to come forward, sit there, and present your views. The procedure we use is that, we limit the time. But, this being a special seating, we may have to make special arrangements. Where we feel that they are collecting views, where there has been extensive consultations, we will definitely give extra time, and I believe there is that kind of presentation, so that, all these issues are canvassed but in a summarized form. So, we will not limit time to that kind of presentation.

But when we come to individual presentations, you have an option. Either you want to give us your views orally, in which case we will give you ten minutes to summarize and give us your proposals, or you may choose to give us a written memorandum. If you do so, we will give you five minutes to highlight what you consider to be the key proposals in your memorandum. Once you finish with that presentation, you will be required to register, and the purpose of the second registration is to know those who actually spoke, and those who presented their views.

And you have an option either to use Kiswahili, if you are familiar with Kiswahili, or maybe English, because that is the language

which is commonly used in such institutions. But if there is somebody here who has a problem communicating those two languages, I believe with proper consultation and arrangement, we can have interpretations, so that, whatever that person says can be captured. But, I don't think we will get into that situation.

The issues which we would like you to address, are the issues which were circulated by the Commission, and I think there is a booklet which must have been given out to you, and there are several issues there. Those issues have some questions, and those questions are supposed to be acting as prompts or guidelines for you to think about the issue and give us your proposals.

There is a booklet like this, which contains those issues. It would help us if the proposals touch on those issues, because, in our own view as a Commission, those are the issues which will find their way to the Constitution. But we are not saying that the issues are exhaustive. If you think there is an issue which is critical, that is not contained in that booklet, you can still address it.

Now, the second point I want to make, and maybe the last one, is that, we already know what the problem is. We are very familiar with the problem, and I can assure that we have gone round the country and visited many provinces, we know the problems. What we are interested in, is the proposals you want to give us. So really, we should be careful not to waste a lot of time, giving the history of the problem. I think in clinical science, you say the diagnosis is already done. I think what we now what, I don't know where the doctors are, I think what we are interesting in is the prescription.

So, since you have gone through that stage, let us go to prescription so that we can know the proposals on the prescriptions and we can then look at the proposals and the various prescriptions which is the most effective. So, let us not dwell on the question of the problem, please go straight to the proposals. We know what the issues are, we formulated them, we addressed the problems, and if there is a new problem you think should be addressed, you are free to do so. And that should help us in saving time.

I am told that there is a Mr. Paul Kurgat, who plays a special role as a member of the 3Cs, and he is a lecturer at this university.

So, I would like to recognize and mention his name, because I think they work closely with Mr. Bor who is the Co-ordinator.

So, let us go to the real business of the day, we have about seventeen people registered so far. And the first one is the Vice-Chancellor himself, Prof. Munavu. I believe Prof. Munavu has what I call, the collective proposals, and I believe that Professor we will give you an opportunity, you can speak from here, we will record it, and lastly, Commissioners will have a right, and we always have this right to ask for clarifications if there are issues which we are not very clear, we will ask for clarification or further explanation. So, when we come to that stage, we will alert you, that this issue Professor, we may want you to clarify or maybe you elaborate, or something to that effect. So now, the opportunity is yours Professor. You can start. I really don't know what time we will give you, but I think, let us see..... I know you are a teacher, I know you know what a summary means. Thank you.

Prof. Munavu: Thank you very much Commissioners. I would like to take this opportunity to thank you very much for according me this opportunity to share with the Commissioners, what we are calling the collective views of the university community. About a month ago, Moi University constituted a committee, the senate. It constituted a committee to carry out consultations within the university, in order to see if we can construct that collective position that we are going to be presenting.

The committee constituted of senators, the committee constituted of students as well. And the mandate of the committee was to come up with proposals to be submitted to the Constitution Review Commission of Kenya, and specifically, because we are a university, we felt that we should include issues in education, in research, in utilization of resources, human rights, and in science and technology, basically to reflect the mission and vision of Moi University. But the committee was also mandated by the senate, to come up with other proposals on any other Constitutional matters that will affect or that affect Kenyans in general.

The committee adopted the procedure of receiving written memoranda from various university organs, as well as members of the university, as well as holding hearing sessions where university staff and students were given opportunities to present their views.

Basically, the committee very quickly became alive or become sensitized rather to the emerging collective wisdom of the university community, that its views point to the need for the restructuring of government power, and as much as possible, that restructuring should lead to power-sharing, and that really captures the essence of the views that were presented.

The committee looked at the current structure of government, and I don't want to go into the detail, but basically, they concurred that the current system dividing functions of government into three organs – the Executive, the Legislature, as well as the Judiciary, is basically ideal, this is what is really known as separation of powers. But nevertheless, I think that the views that we had received, also seemed to suggest, that there has been some encroachment on each of the various branches, and I don't need to go into details about that, as has been mentioned, by Com. Wambua.

Perhaps, what I need therefore to do now, in addition incidentally, the committee also looked at the various Constitutions of the various countries – the U.S.A., UK, France, Germany, Japan and India as models, and a way forward. You can see that the document, is rather heavy and hefty. So I am just going to go directly to the actual proposals, because I think, that is what is important for now.

The committee felt and recommended to the senate, that the Constitution should have a clear Preamble, that should set out really the Nation's mission, clear statements of who we are, and clear vision of where we want to go as a country, and that Preamble should serve the object of ensuring that, sovereignty is invested in the people of Kenya, and that, that sovereignty should be jealously guarded and protected through various guarantees, such as human rights, such as economic rights, cultural

rights, and other civil rights. That we felt was extremely important, and that citizens of Kenya should be able to enjoy this schedule of rights freely, and that, as much as possible, violation of any of these rights should be handled through simple procedures in the courts.*****

With regard to the structure of government, this is what the committee recommended. Incidentally, although this is really a collective position, it doesn't mean that it is the view of every senator or every member of the university. So, we need to keep that in mind. And I am aware that there are members, already who are not necessarily supportive of some of these positions.

In order to ensure equal protection of the several Kenyan people, as constituted through currently existing boundaries, their sovereignty should be exercised at both local and national levels.

At local levels, the people should elect their representatives, in some form of assembly, and the leader of the majority party should then form government at that specific level. If that is done, therefore, the present Provincial Administration as constituted at present becomes null.

The committee of senate also noted that some provinces are huge, and therefore, as we move towards this sort of restructuring, then, some provinces, for example, they just gave an example of Rift Valley which is extremely big, should be divided into two provinces, North Rift as well as South Rift.

The committee felt that, county councils should be abolished or restructured. But municipal and city councils should be given more authority, so that, those town residents elect their Mayors directly.

Provincial assemblies should have two houses. The lower house which will be elected along the current county council boundaries or wards, and the upper house, which should preferably have a representative from every district.

The current Budgetary allocations to local authorities, together with local taxes, as well as cess and other licences, will need to be harmonized in order to generate income for the Provincial Government.

There may also be need to spell out the Executive functions of the Provincial Government, and there are specific areas in which this is necessary, for example, education, as at least basic as well as secondary levels. Public health, land resources, forests, co-operatives, agriculture, fisheries, law and order and social services.

And finally, it is expected that there would be no Judiciary or no need for a Judiciary at the provincial level.

The national government, should as much as possible, be organized along the separation of powers, doctrine or principle.

Where we will have Executive, the Legislature and Judiciary. The Executive, being of course the President. The Executive branch, the President or the Head of State rather, should be the President, and the proposal is for him to hold him or her, to hold office for a limited term of a number of years, which should be renewable or extendable only once. This term should be more than that reserved for the Prime Minister and the members of the Legislative branch, which the proposal is perhaps six years.

The President should be (inaudible) Head of State representing the Republic of Kenya in foreign fora and performing all ceremonial functions of state – the embodiment of Kenya.

He should have a limited number of civil service staff, the head of whom should be nominated by him and be as much as possible, subject to the confirmation by the upper house.

Then, there shall be a Prime Minister. The Prime Minister shall be the head of the Government, and will be the head of the party that wins a majority in Parliament, and shall be elected for a term of five years, and shall be subject to re-election for a further term of similar (inaudible).

He shall form a Cabinet, and this is important, from eligible Kenyans who would need to be Members of Parliament.

The Heads of Cabinet Minister and their Deputies shall be nominated by the Prime Minister, and must be forwarded to Parliament by the President, so as to make Cabinet Ministers servants of the state.

Any Member of Parliament who maybe nominated for a Cabinet post, shall immediately resign, if he had been elected as a Member of Parliament, his Parliamentary seat, in order to ensure separation of the Executive and Legislative branches. This maybe justified on the ground that, every elected Member of Parliament shall be equal and to have some of them appointed to Cabinet posts, would appear to give his constituents of the Cabinet appointees (inaudible) advantage or greater value for their votes, than that of the constituents whose Members of Parliament are not appointed as Ministers. In other words, there would be some constituency out there with the national flag flowing, whereas in others, there won't be.

The Cabinet appointees, styled either as Minister of Secretary, doesn't matter, shall be subject to the doctrine of collective responsibility, and shall be subject to summons from Parliament to testify as to the performance of their Cabinet departments.

The number of Ministries should be limited by the Constitution, to the core business of Government. Should be as much as possible, lean, which is to protect really the core business of the Government to protect its citizens and to ensure that their rights are guaranteed -- defence, finance, public services, etc (I think the others are listed).

The Prime Minister's office should have a Secretary of State and two deputies. Shall be Head of Civil Service as well as Secretary to the Cabinet. Basically, to co-ordinate all government offices.

The Prime Minister shall be chairman of the Cabinet, and therefore, the only member of Cabinet who shall sit in Parliament. In other words, the Cabinet has being proposed, will be different from Parliament – the Legislative arm.

And there is a statement here, that I will simply read the way it is. Coalition governments should be provided for. Incidentally, if there are any questions, Commissioners, I think the members of the committee maybe interested. So they will be able to respond.

The Legislature shall have two chambers as proposed. That is, there shall be the upper house which the proposal is calling senate, comprising of members elected from the districts. The number of representatives from the districts shall be determined by the population in each district. And the proposal seems to appear, that in some districts, with large populations, instead of having one senator, it maybe possible to have two. That is the interpretation that I see.

The Speaker of the senate shall be elected from among the party which the majority seats therein. The senate shall have some committees and sub-committees as shall be necessary to provide oversight supervision over Cabinet functions, as it shall determine.

The term for the senators shall be limited to five years, and free from limitation on the number of re-elections. My understanding here is that, once a senator, you continue to be a senator, until one becomes senile. That seem to be the recommendation.

The seats of senate shall be divided into three portions, and elections held for each portion, for every two years to provide continuity of senate businesses. The proposal therefore, here is, every two years, one-third of the senators shall subject themselves to re-election by the electorate.

To take care of the transition period, the Constitution should allow for the representation of the two-thirds and elected members by persons nominated by provincial governments of the provinces affected. Their term shall end when those provinces elect their senators.

I think let me move on to the Judiciary: the proposal is to have a Supreme Court, as the highest Constitution court in the land. And it should have both original as well as appellant jurisdiction. Should be headed by Chief Justice, and it should be managed by eight Justices of the Supreme Court. The total number therefore should be nine of the Supreme Court including the Chief Justice.

There should also be a Court of Appeal, which will sit in (inaudible) or branches corresponding to the provinces or regions or local government or groups, thereof, so as to have them sit permanently, where the current Court of Appeal sits – that is Nairobi, Nyeri, Nakuru, Kisumu, and such other places, as it may determine.

Then, we should have High Courts or Courts of original and appellant jurisdiction in the districts. They should be managed by a Judge, and administered by Deputy Registrars who should not be magistrates, as presently done. But exclusively dealing with High Court and Appeal Court administrative matters. So, basically, the committee is recommending that, do separations of powers and re-organization with respect to functions and so on.

But we are a university, and the committee felt very strongly, that the future of any nation can only be secured by the investment it makes and the commitment it undertakes in making education essential for its citizens, and ensuring that its citizens are educated, and also most important, in ensuring that an appropriate climate is fostered for research and for knowledge generation.

Therefore, as we discuss matters of natural resources and how they should be shared, the original and most important natural resource for any nation, for Kenya, is its people. That is really the basic one.

Although the Executive branch therefore will have a Ministry of Education to take care of educational needs of the nation, the issue of financing education is very important. And the committee was able to receive very eloquent views, that the Government should adequately fund education and research, and properly remunerate educationists and researchers.

The committee appreciated that there are many privately endowed educational institutions, that have sprung up in the country – pre-primary, primary, secondary, as well as tertiary levels, and also the committee noted that many Kenyans are ready to spend, whatever it takes to ensure that they secure good education for their children.

The recommendations, therefore, with respect to education, which we believe is the key element in ensuring that the nation moves forward are as follows:-

There have been various Government Commissions on education. The recent one, of course, being the Koech Commission, and these we believe have done justice to the management and financing of education. And therefore, implementation of this Commissions, through appropriate statutory instruments, will go along way, in ensuring that education is properly streamlined in Kenya.

As a Constitutional issue, however, the committee recommends, that the Government guarantees basic education to all Kenyans, and this should be funded through what the committee recommends as education levy on all working

Kenyans. All working Kenyans to pay an education levy, in order to ensure that among the most important guarantees for Kenyans, is guaranteed free and quality education at the basic level.

Secondary education should be financed as much as possible, and in needy cases, through bursaries. And this is currently being done, but it will need to be enhanced.

Tertiary education including non-university institutions, should be financed as is currently done, through loans to need students, and we believe, the committee recommends, that these needs to be enhanced. And as much as possible, a way be found to entrench these things in the Constitution.

As for research, the committee recommends that the annual Government Budget should have a specific quantum for research. And by research, the committee really means, generation of intellectual assets for the country.

And again, as we talk about natural resources, the most important and enduring resource for us as a nation, will continue in the next 20 – 30 years and beyond, to be knowledge of generation. The committee is very clear, that as we move forward, as a nation, we cannot continue to rely on imported knowledge from elsewhere. But that we should a critical role in generating that knowledge. Because, when we generate it, ourselves as Kenyans, then it becomes relevant to our needs. Knowledge is generated through research, by researchers. And therefore, we believe, that the researchers should be facilitated to be able to get funding for research.

Universities, being training institutions, should also be encouraged to inculcate in the graduates the virtues of being faithful, to their (inaudible) matters. The issue of patriotism is so important, not only to the nation as such, but we must also be seen to be patriotic to national institutions. The committee feels, you can't say that you are a patriotic Kenyan, if on the other hand, you are not patriotic and loyal to the institutions that make up the nation of Kenya, including our university. And therefore, we believe, that if graduates have that virtue, then it will be useful as a fund generating activity.

Science and technology, again, on a purely low basis, science and technology are not purely Constitutional issues. We are very clear about that. But we are also clear, that a nation can only industrialize and hence develop, if research findings and inventions are accorded the priority protection that ensures some profit to those who generate them.

The Constitution, therefore, should provide for an adequate monopoly term to the researchers, during which period they will recoup their expenses and get premium for their work. That then becomes a Constitutional matter.

The current intellectual property law on copy-right, trade-marks and patterns, should then need to be fine-tuned, in order to make them in line with those aspirations, noting to comply with current international guidelines of treaties in the respective fields.

The funding for science and technology should also be provided for, in the same lines as for education, as well as research, that has been mentioned earlier.

We are also very clear, as the committee said earlier, the senate committee, that human resource is important, and therefore, appropriate funding for science and technology education should be enhanced. And we believe that, when it is enhanced, then bright Kenyans, both men and women will be able to be attracted as students in this fields and also as teachers, as well as researchers.

Resources and resource utilization: this is a broad area, and may mean, the national budget resources or natural resources in accounting. As for resources in the national budget, the Constitution should provide for a mechanism that ensures equitable budgetary allocations to all provincial regional governments in order to enable them finance their functions in a federated system.

At the national government level, the allocations should be subject to Parliamentary approval. Not in the current case of Mayor re-reading the budget, but also in the sense that Parliament be empowered to re-adjust the specific allocations per Ministry, if it does not meet the equitable distribution criteria.

Number three, to avoid stalemates in Government functions, Parliamentary Budget Committees should allow expenditure along the presiding lines level, as the re-adjustments are being debated.

As for natural resources in the country, it may be necessary, and I think this is really a recommendation..... *(end of side A)*

..... in regional governments. This includes, natural resources including forests. The committee, for example, was informed that some of the reasons why our forests have been destroyed, is because, civil servants is one of the reasons. Civil servants posted to protect and manage them, were from outside those communities, outside the areas where the resources were situated.

And therefore, the personal attachment to the resources was lacking. They did not have that personal attachment to the resources.

The committee, however, found that the current statutes on the protection of the environment, generally were adequate, if Constitutional linkages to these statutes was necessary, then it would suffice to have a provision in the Constitution, committing the national and the local governments to the protection of the environment. In other words, the schedule of rights that eventually will have to be enshrined in the Constitution for Kenyans, should include the right to also enjoy a free and clean environment.

Human Rights: the protection over people's human, social, economic and civil as well as other liberties or rights, fosters a climate that promotes the full exploitation of the human potential. And therefore, as the Constitution really ensures that it is an organ that spells out the normative values, the ethical norms that will guide the Kenyan nation, then climate and environments must be created, in order to ensure that, every Kenyan has a right to develop into their full potential. That is extremely important, and that is one of the basis for all of us to be involved and to participate in Constitution making to ensure that the full potential of each Kenyan is exploited to the maximum.

And therefore, the committee recommends, that there should be a schedule of rights, with adequate enforcement mechanisms which must be simple, which must be fast, and which must be cheap to implement.

There should be specific provisions of protecting children, of protecting women, of protecting men, of protecting the disabled, the sick, the vulnerable, etc, and all of these should be included in the schedule of rights that should be enjoyed by all Kenyan citizens.

To secure the equal protection of every Kenyan, there is need to require all regional governments, local governments, to provide for the protection of human rights in their regions, so that no Kenyan, and this is important, that no Kenyan from any other local entity, from any other region, is treated in any way, more or less favourably than those from the region. In other words, in the schedule of rights, of Kenyan citizens, should be the right to free unhindered movement within Kenya.

The national government, therefore, would have an office that co-ordinates human rights, compliance throughout the country, with national human rights courts to adjudicate on any matters infringing on the human rights of Kenyans.

Finally, the Constitution should therefore empower Parliament, to enact such statutes to ensure protection of human rights, as it shall deem fit.

Commissioners, I have simply summarized the spirit and mode of the committee that was set by senate, the document is detailed, we will be able to submit the written document to you by Thursday, because, there are some matters that I may have mentioned that senate will also be able to look at tomorrow, and also debate. So, we will be able to submit the document by Thursday. I thank you very much. (*clapping*)

Com. Wambua: Thank you.

(Interjection) Prof. Munavu: I think I am under obligation to ensure, we normally do this in senate, to ensure that I thank the team that worked on this, and also to ensure that, I mention their names for the record. This senate committee was chaired by Prof. Adam Chepkwony, and the members, the vice-chairman was Mr. Lugulu – a lawyer, Prof. Okumu, Prof. Koskey, Dr.

Nangami, Mr. Ken Ndori, Dr. Kimengi, Prof. Mindu, Dr. Mathenge, Imeli and the secretary was Mrs. Obat, and we thank them very much. Thank you. (*clapping*)

Com. Wambua: Thank you very much Prof. Munavu for that eloquent presentation. I think it captures the key issues which are relevant to our work. And personally, I have one or two issues to clarify. I believe my colleague, also, has a few issues to clarify. So, I will first give him an opportunity to seek those clarifications, and then, I will be asking (inaudible).

Prof. Zein: Prof, a number of clarifications. Number one, where there is a general theme of limiting terms. What is the justification for not limiting the term of senators? That is the first one.

The second one, is that, towards the end you mentioned that, there should be national human rights courts. Will these be separate from the three you mentioned which should be in the Constitution, the Supreme Court and the High Court?

And then you categorically said that the Judiciary will not have a level at the local level. Why not? If you have all the other arms of government represented at the local level, why not the Judiciary?

And lastly, that, in the presentations you made proposals for what I can say is a three-tier government structure, where you have at the local level two-tiers one at the district level, the other one at the provincial level. And then at the national level, you have broken it into at least at the Legislature level, you have the senate and the Parliament two-house of representatives. Will this not be too much government? Just that.

Com. Wambua: Can I ask all of them so that you can answer?

Prof. Munavu: Yaah, yaah.

Com. Wambua: My first question is what exactly my colleague has asked on the question of courts at the provincial levels so I would be interested to know the basis of the proposal that we should not have this.

The second point is the question of Ministries. You have said that Ministries should cover the core business of Government. And I would be interested to know whether you have thought out what numbers or what number should these Ministries take, in view of the fact that, I think in your proposal, you have clearly highlighted what seems to be the core business of government. So if you have a proposal of numbers, we would be happy to receive that.

Then, one of the questions we have seeking views on, and which is stated in the issues and questions the whole question of qualification, academic qualifications, apart from moral and ethical qualifications of those who assume elective posts. Starting

with the councillors, the MPs and the President. And this being a learning institution which has placed a lot of emphasis on the human resource and on education, we would be very interested to know whether you have specific proposals on what should be the academic qualifications for those who occupy these kind of seats.

You mentioned education, and you said basic education, with regard to the right to education for Kenyans. Do we take this to mean primary school education? Because it is good to categorize it in that format which you understand. So when you talk of basic education which should be free, is it primary school education? I believe those are the few points I would want clarified and will be very happy to hear your views on that, the views of the committee.

Prof. Munavu: I think the students please, you can join us. I would like to request some members of the committee to be able to respond to some of the issues that have been raised. I see some of the members here. But I will try to respond to some, and then I will request my colleagues to do for the others.

With regard to the Ministries the number of Ministries. We were really saying that by Constitution they should be limited to the core business. Basically the core business is defence, it is education, it is labour, it is finance, and it is industry. That constitutes the core business. So, within that thinking, it is possible to have a very lean number of Ministries. And again, the committee was very clear that, this should be professionals who are appointed, and they need not necessarily be elected Members of Parliament. I think that is very important.

And even if they were Members of Parliament and they are nominated to be Ministers, or Secretaries or whatever, then they would resign from being Members of Parliament.

With regard to the issue of basic education, my understanding is that, it is primary education. But I would like the committee to clarify that one, so that primary education upto the eighth year of education would be what we are calling basic.

With regard to qualifications for elective posts for example, I think, if we devolve power, then a lot of decisions are going to be made at the local level. The committee also felt that, issues of budget and so on need to be thoroughly discussed at Parliament.

And the basic qualification, therefore, as per committee, in order to be able to render that service would have to be a university degree. I believe that is what the committee recommended.

The other question regarding senate or upper house, and the fact that the term should not be limited, it is again to open up a little bit, and give local committees power to be able to elect whoever they wish for however time they wish. So long as the person continues to render service and to represent their interests.

I think when we talked about Judiciary at the provincial level, my interpretation, but I would request the committee to answer

this is, that obviously there will be courts. But for purposes of ensuring that we have common law, a law that is applicable across the nation, then the courts will be answerable to a national Judiciary. That is my understanding, not at the national level.

The other one is human rights, and whether the human rights courts. And I think they had also proposed, I think the Supreme Court which would handle constitutional matters and so on. We are saying that should be independent of the Judiciary if I am right. Because it may also have to adjudicate where the Judiciary also is involved. May I request anybody from the committee who is here, to perhaps add anything? Lugulu, you maybe the only one who is here, so.....yes,

Mr. Lugulu: Yes, Mr. Chairman you were right in the responses you have given, which leaves me perhaps to say something on limitation of terms as regards to senate. And, I wish to say, Mr. Chairman, that the committee seemed to have had a far-sight, because if you look at the current debate that is engaging Kenyans now, we have the issue of whether Parliament should have its five-year term extended, and whether we should in fact tie the current exercise of Constitutional Review to a Parliamentary term. And the reason, Mr. Chairman, is that in the current Constitution when Parliament is dissolved, all of them actually go home and the business of government if we have to take it into the three organs, then comes with regard to Legislation debt. Because we don't have any MPs sitting the moment Parliament is dissolved.

And the committee received views that this is undesirable and it would be necessary to have a certain fraction of Parliamentarians continuing to be in office, which can only be so if their election had been at a time other than that for which everybody else was being elected. And incidentally this seems to be the position in the United States, where the modalities may perhaps be different and I am sure, the Commission has received overwhelming views on this which it could have factored into the Constitution.

The issue of human rights courts, is essentially what the Vice-Chancellor had mentioned. But, we would possibly not quite agree that this will be too much government. Because we are saying that incidentally that if the citizens of the country have a dispute, perhaps against a government organization which they think is not effectively implementing certain laws that infringe on the rights on any of them, then we need a human rights court that is independent, and is not subject to the directions of the Chief Justice.

Because, as you know the Chief Justice will be head of the Judiciary, and essentially, the Supreme Court, which seems also to tie in with the Judiciary at the provincial level. Effectively, the kind of government we are looking at is a federal government, and in a classic federation we should have all the three organs of state at the state level. That is a Parliament, a Judiciary and an Executive.

The role of Parliament at the state level will be to enact laws which ought then to be enforced by the Judiciary, at again that local state. We think that in the Kenyan situation, that may not quite be desirable, in that it will fragment Kenya with small little laws,

applying to several small parts.

And a Judiciary that has to be effective at the local level, would possibly be the current national one, where we have Magistrates courts headed by Chief Magistrates, Senior Principal Magistrate and whoever. So that the laws that would be applicable at that stage may have to be the national ones, and if any local by-laws or other local laws are made, then those national courts at the Resident Magistrate's level may be able to interpret and enforce them at that stage.

Maybe, something not quite asked. The committee also felt very strongly that the reason we got into a bit of a problem after independence, when we had our Constitution from the Lancaster House conference, was because we thought maybe wittingly, but perhaps not unwittingly, that after we get that Constitution from Lancaster House, the institutions in Kenya will somehow just enforce it.

And from the presentation of the Vice-Chancellor, there is a strong view that we should have enabling legislations, so that as the Commission completes its work, as the Commission presents a Constitution, it should have contemporaneous with that document, several Acts of Parliament that have to be enacted with the Constitution, so that they build institutions that will have been formed by the Constitution.

And Mr. Chairman, the Koech Commission on education whose secretary we are lucky he is actually with us here, the Deputy Vice Chancellor, had towards its end several Acts in reforming education that were given as part of the Commission. And that appears to be a very effective way, as a means of changing the rate and possibly the quality of implementation. Because` if we hope that institutions may form after the Constitution is given, we may then get into a problem when we don't find other institutions from it. Mr. Chairman, thank you. Unless there are some parts, I haven't covered at all.

Com. Wambua: I have listened very carefully, I think the points have been covered sufficiently. Just to inform you that one of the things the Commission will be doing is not just to write the Constitution, but it will be futile if the legislations which are already there, are not fine-tuned to accord with the new Constitution.

So what we will be doing is that we will be looking at those other legislations. That is one of our tasks, and we believe that, after we give the report, there will be an exercise whereby the Commission also would be coming up with new legislations to give effect to the Constitutional provisions which will come into force.

So, I just wanted to inform you on that, actually that is our line of operation. Just before I proceed, I would want to ask my colleague to say something just in addition.

Com. Zein: We are not also going to just, for the benefit of the person who asked the question, we are not going to limit

ourselves just legislative framework, we are going to consider other transitional procedures and institutional building mechanisms which are required to make that Constitution work.

Com. Wambua: Thank you very much Professor, and I think Prof. Lugulu and Prof. Munavu for that eloquent presentation. I would be asking, one of the things we normally do, is that, for special reasons, we give preference to those who have given us sufficient reasons to be excused, I already have a request from the DVC that we will be having a meeting with the Deans, so we will be giving them an opportunity to present their views, he has assured me that they will be very brief, because I believe it is addition to what the Vice-Chancellor has said. I believe, in order of protocol, let me be assured of this, since Prof. Kamal is second in line, we can ask her to give her presentation, and then we can go to the Deans and the DVC.

Prof. Kamal: Thank you Mr. Chairman. We shall be very brief because the Vice-Chancellor has presented a document I was part of. So, I just want to touch on a few issues, three or four, as a way of emphasis on some of the points that have been raised really.

One is what he mentioned on the type of government or structure of government. I think that out of the presentation we have talked of a decentralized government, and I just wanted to answer the question why decentralize?

Because we have lived with a centralized kind of government for a very long time, and I want to say that in my opinion, the centralized kind of government has really brought what we call the marginalized districts and marginalized communities which has come about because of skill development and skill development that we have, has really arisen, because we only have 17% of the country being productive land, and the rest being what we call pastoral – arid and semi-arid which has resulted in poor development of these other areas, so that as we emphasize the issue of decentralizing, we are talking of equal development of different regions.

The decentralized kind of government, therefore should ensure that each region whether we go for the provincial or the districts comes up equally, so that they allow the communities to develop to improve and take responsibility of their own regions. This is a system that has worked very successfully in Uganda, where they have decentralized their systems to the district level, where they have a district government, they have not even called it Majimbo, but they have quietly developed their regions, so that when you cross the border from Trans Nzoia to a district called Kapchorwa, you get people who are extremely empowered, on the other side of the border. You go to Tesoland, and you will have people who are extremely empowered compared to our side. So I was just raising the issue of what decentralized government seems to have done, looks like it has really created what we call the marginal zones in this country, which don't seem to exist elsewhere.

The other point I wanted to raise on the issue of government is that, type of government should reflect what is going on regionally, as we pass through the process of integration of East Africa as a community. I know we are going towards having a

federal state. And with that, we have to really ask ourselves how the Kenyan set-up will build Kenyans, while we are building East Africa. Because we know the laws and the rights that are going to come with the East African, federations are going to have a lot of other implications.

Opening up of borders, for example is going to ensure that every East African has the freedom and the right to move within the region, and they will have the right to settle anywhere. So that, the kind of regional government we are asking for, is not one that is going to again tell us where to settle, but should ensure that we are free first as Kenyans to settle where we want. Because East Africans are going to settle amongst us by right very soon. So those are some of the things that I think should be taken care of, I think the VC has mentioned about the core business of the government to run what is essential.

We also know that the federal government – East African government, some powers are going to be given up by the national state. We know that things like police have been proposed, like let us have a federal army, let us have a federal police, things like that. So there are some of the things that need to be born in mind.

And maybe for that, I would really support the idea that civic education is something that should be continuous. We need to learn, and we need to be appraised continuously on these issues, because we maybe fighting for localities that we know will be no localities very soon.

The the Vice-Chancellor touched on the issue of the Cabinet being composed of people with some qualifications, and in my paper, I have really gone into detail, what they should be. I think we really need a cut-off point, when it comes to entry to go to Parliament. And I have mentioned that Parliamentarians should possess, at least a Form Four certificate, having passed with Division II (*laughter*) or 'C+' (*clapping*).

I am saying this Mr. Chairman, for one reason, and I have said the Cabinet should be holders of at least of a first degree. I am saying this for some reason. Some of us who have joined delegations or Kenya government delegations on missions, UNESCO, and whatever, have realized that Kenya is a signatory to a lot of international conventions and treaties, which demand that, informed decisions are made, and sometimes, they are made within the conference set-up. So that, if you are with the wrong Minister he cannot decide and nothing moves or he signs something that is not understood. So I think qualifications are very important, and I think, we really need to enshrine it, I don't know how, the issues I am raising, Mr. Chairman, I don't know which ones are Constitutional and which ones are complains that you need to use, but I think it is very important, I am emphasizing the issue that the Vice-Chancellor has mentioned on qualifications. It is very important that we should professionalise our institutions.

The fourth point, Mr. Chairman is access to education, being a university. I think all Kenyans as it has mentioned, should access basic education. To me it has to be free basic education, which is primary and secondary education. And at the point

of the university, there has to be clear provision for a loan system, so that we really ensure that we have an educated population in this country.

There is something, Mr. Chairman, which is very worrying, about the way we set up our secondary schools. We set up our secondary schools, and we talk of national schools, provincial schools and district schools. The cut-off point in the university does not recognize that, so that we seem to prefer to favour people at the point of the secondary school, so that, there are some people who are more likely to access university than others.

I am proposing equality in education, as far as the secondary school setup is concerned, so that we scrap these things called national schools and provincial schools, and come to call them anything, district schools, but ensure that we really have equity or equal opportunities to access higher education.

The last point is the issue of gender, which maybe didn't come very clearly. The population of Kenya we know is 52% to 48% ratio of female and male, and yet we realize that, the presence of women in various sectors is very low sometimes I worry, Mr. Chairman that these young men that we have in the universities, have no choice but to marry people who have dropped out of secondary school or primary school (*laughter*) and it is very worrying, because it means we are developing our nation in a very skewed manner and that has a lot of effect in itself, because you cannot improve the standards of living by developing one line of the family and not developing the one.

One very key area is what the Dean of Health Science would call primary health-care. Primary health-care is one that is very basic, and they say prevention is better than cure in health services. And you find that in a family set-up, it is always the woman who deals with the primary health-care, so that you can come in as an MP who has married somebody who doesn't understand primary health-care and still, health issues become a problem in your household.

So we really need to focus on the issue of gender, right from education, so that we have principles of equity and equality all the way, whether they are in the institutions or wherever, but there needs to be a provision. I don't know whether that can be entrenched in the Constitution but we really need to look at the various sectors, and see if we can develop as a nation and develop together.

We know that there are cultural factors that have derailed development of women in this country. Some of them are really, deeply entrenched in culture, but we need to look for laws and rules. We always talk of women rights being human rights. What is it that we need to address. I think we need to come up with those ones.

I would really like to propose even an elimination of this thing called dowry, by way of giving girls a right of inheritance of their parent's property, so that we can eliminate some of this domestic violence, etc.

Mr. Chairman, I would like to end there. I just wanted to do an emphasis of a few points that the Vice-Chancellor had said because I am part of the document that the Vice-Chancellor has presented. Thank you very much. (*clapping*)

Com. Wambua: Thank you very much Professor. I believe I don't think we have any questions or clarifications. My colleague has a question to ask for clarification, so that we proceed.

Com. Zein: Thank Chairman. Madam, you may choose not to answer this or you can answer it. I am going to ask you to give me your perspective as you made reference to the East African Federation. And you also made reference to negotiations in international treaties and some of the obligations we enter as a country with other countries and other bodies. When it comes to East African Federation, we have been asked some Kenyans have made presentations to us saying that before we can enter into the federation, we would like to have the right to say 'yes or no' in a referendum. That is number one.

And number two, others have said that all international negotiated contracts or obligations that we enter to, as a people, must be rectified by a Parliament or we should have a domestication process which involves Kenyan institutions. What do you have to say to this?

Prof. Kamal: Thank you very much Commissioner. I want to say that as far as the federation is concerned, the issue of referendum has come up, and we actually want to get back to the people again.

At the point of the East African community coming up, we know that selected individuals, professionals actually worked on the treaty, to develop or to come to where we have reached. And I think where we have reached is not even where the first East African community had reached. The first East African community had gone very far. One currency was operating, we had common services, railways and things like that, were going on.

This time, I think, everything was supposed to move to this point, so that we can decide when and who should decide what. So it is true that the issue of referendum has come, it has even come to our attention what East African Legislative Assembly members do whenever they go to a country is to go round and talk. This time we decided to concentrate Nairobi and Mombasa when we were in Kenya, and we talked to the business community in Mombasa and all those things came up.

So this is coming a referendum is going to come up. How it will be done is a thing that is being thought about right now, and through where, because we have only used the national Parliament to make decisions this far. And even the decisions that have been made, despite through the national assemblies have not been known to the common man much. Looks like the border communities are better of than the other communities, but this is something that will be coming up.

The issue of international conventions, yes, some countries actually domesticate them. And I think in Kenya we have not been

domesticating we have been signatories and sometimes we actually append our signature immediately the thing is passed. I know in Uganda they domesticated, it has to go through their Parliament before it is done. I am not sure about how Tanzania is.

Those are some of the things we are trying to look at because we are saying even at the East African Federal state or whatever, some of these things will be ratified for the whole region. So, we have seen the differences in the approaches we have done.

This is a very dangerous thing because the Children's Rights document, for example was signed by Kenya. But if you look at that document itself, you need..... (*end of tape*) the document that had to be clean on a daily basis for twenty-one days.

So yes, I think there is need for us to ratify this thing properly through our Parliament. I think we should not just leave them loose.

And if there is anything we need to reject, we should reject at that stage because we are not the same. The people from the Muslim block have been very clear, they either reject a document, write on the table or they go back to the country and reject it. And it has been very clear that they don't accept anything. So yes, I think it is very important that we get through our Parliament. Thank you.

Com. Wambua: We now turn to the Deans, the Professors and the Doctors, so that we can give them an opportunity to attend to the meeting, and we start with Prof. Some, who is our Deputy Vice-Chancellor. He has assumed that the Professors will be very brief, because they have already contributed to the collective document. So please, let us mind time.

Prof. Some: Members of the Constitution of Kenya Review Commission, I have three issues just to add on to what the Vice-Chancellor has said. As it was said by Bwana Lugulu, I was the Joint Secretary to the Commission of Inquiry into the education – that was an Inquiry. We made a recommendation into three levels of education, and it is here that I would really like to see how it can be in-built into the Constitution.

We recognize basic education. To be that education that you will do for twelve years. Which currently could constitute primary and secondary. And we say that education basic should be compulsory by law, and that it be held on the parents and where there are no parents, like in the case of chokoras, we said it be held on the Government, so that Government will be responsible for those children who have no parents.

We also recognize the second level of education to be the tertiary level. And this is where universities and other colleges belong. And we said as nation, this is the level that nobody else will help us. We have seen World Bank, we have seen British Government come and help us on basic education, steps, pre-..... (inaudible), etc., they are all targeted at primary education.

The tertiary level of education is important for Kenya. This is where we educate brains, leaders of Kenya in the future, this is where we do research that will directly benefit our people. Those people out there don't want to help us. And this is why we want in the Constitution to do something about education. The cost, yes, it can be a loan, but it should be to every person who is able to read.

Then, we recognize the third level of education which we say continuing education. In the Commission we were told almost immediately after school, very few Kenyans do in fact continue with education.

Civic education as has been said, we think this is part of continuing education. We don't think it should just be civic, but it should be in all sectors and it should be somehow building. So that is my first point.

The second point I want to talk about is in the Armed Forces. Our experience in the African context is that countries that have had a military take-over, have no regard to Constitution. We met about two-three weeks ago, as about 16 universities in the African region and they were reading our Kenyan papers and saying you are lucky, you are doing a Constitutional Review. We come from military governments, nobody talks about Constitution. What do we do about the military? What are their views? We hear about extend Parliament, extend the Review Commission, supposing they say no. What do we do? They have the arms.

Uganda has taken a step in the Army, they have reserved seats in Parliament for the Armed Forces, they have reserved seats in the provincial and district government for the Armed Forces. They are there with the people. We talk to them, they talk to us. We get to know them.

Now, I would really like to see in the Constitution, something about the Kenyan Army. To-date, they have been good, they have not taken-over the Government, (*laughter*) but we don't know..... So, let us bring them in, let us accommodate them.

The last thing I would like to talk about is about land tenure. I know the hot issue is always who owns land. But really I think the issue should not be who owns land, it is how land should be used. (*clapping*)

We live in a district that is a farmland, and if somebody holds a 1000 acres and only farms a 100, it means there is 900 acres that is not farmed. And that person should either be surcharged for the land- if you look at the common agricultural policy for the European Union, if you own land, there is a value to that land annually. So whether you farm or not, you should be made to pay for it, or surrender it so that it can be used. So land use, should be respected as in the Land Act. Thank you very much. . (*clapping*)

Prof. Wambua: Thank you very much Professor for your excellent presentation. I just want to make a point of information

which I had noted and which my colleague also is reminding me. I want to say that we as a Commission have also been worried about the isolation of the Armed Forces, and we want to try and change that approach. We have undertaken to give them civic education, and to listen to them, to give their proposals to the Commission, so that they are part and parcel of the review process.

And I think the proposal by Professor here is quite interesting because I think it is a point of concern, and we have noted it. Can we call upon any Dean who wants to..... but I can read out the names so that, we have Prof. Lugulu – Dean, Law; Prof. Odhiambo – Dean, Agriculture; Prof. Chemtai – Dean, Public Health; Prof. Gudu – Director, Research; Dr. Torogei – Dean, Science; Prof. Shitole – Dean, Technology; Prof. Osula – Dean, Health Science; Prof. Odini – Dean Information Science; and Dr. Yaban – Dean, Environmental Science. Prof. Khaemba, is there any of those gentlemen who wants to add to what has been said? Prof. Torogei – Dean, Science. Well I am being told Professor here has written ‘Dr.’ which is which is please? He is a ‘Dr.’, thank you. Carry on Dr. Torogei.

Dr. Torogei: Thank you very much members of the Commission. Well most of what I had has been said, but I will just mention a few.

One, which touches on the natural resources. I feel that with natural resources, if we empower the local governments and the community to participate fully in management and sharing of these resources, it will really be very important.

The other point I had is on education, which has mentioned funding. Well we have talked of funding high education, and the report Prof. Munavu put is that, we also fund all colleges. I think actually the tertiary colleges also need to be included. I know resources are not enough, but let us make a levy on all production not only workers, even companies or whoever the source of production to add on to this, so that we are able to finance and give them a share part of it.

The other issue I had is on empowerment of local governments. The elections of Mayors and the Chairmen, I feel that these people should be accountable to the voters, and therefore, they should be elected by the voters themselves. In that case, since they will be responsible to the voters, I would like to say that even we are putting a cut-off point of education to MPs and the Cabinet members, I would also wish to put for them so that they have basic education plus. In other words, if they have primary as the basic or secondary as the basic, they should have some sort of additional training like diplomas in certain areas, so that they make sound management of the heavy duty that they have been given the responsibility in.

And lastly, given that the proposal on surcharging of the land, well you can have land and you farm, and then my worry is if I have a lot of maize, and cannot sell it. So we should look for a way of making sure that, we assist or empower these farmers to be able to market the produce, so that they don't just make to the production of crops and they cannot market. They will lose the spirit.

Then lastly, Mr. Chairman is on the gender. I still state that our customs have somehow curtailed our ladies in one way or the other, especially in inheritance where certain community cultures have put in so that there is no inheritance but they are part and parcel of our families. So, I think we should protect them. Thank you very much.

Com. Wambua: Thank you very much. I will request Mr. Torogei to sign the register there, to confirm that you have given your views. Is there any other member of the list I have called out I think it looks we will have to follow the list. Prof. Lugulu, you want to add something? Make it brief.

Prof. Lugulu: Mr. Chairman, thank you for this opportunity again. I have two things to say.

The first one Mr. Chairman relates to the current issue of whether we should have the Parliamentary term extended and whether in fact the Constitution Review process should be tied within the current term of Parliament.

Mr. Chairman, I take Parliament to be the place where we elect people, and that serves merely as one of the functions of Government, which is the one to legislate and enact laws.

The other talk as a result of the Executive and the Judiciary, ordinarily usually continue, notwithstanding any prolonged or dissolving of Parliament. The fact that we are holding a Constitution Review process about forty years after independence, means that this process is so very important, we shouldn't link to a transient regular activity that we always handle in this country. inaudible).

We think that the process should run its full course as scheduled, so that we have a proper document and instrument that has come out. I have always wondered Mr. Chairman, how the present Parliament thought that in fact, they should be ones to pass these laws. That maybe politics, Mr. Chairman I am not a politician.

Secondly, Mr. Chairman, I wanted to thank the Constitution of Kenya Review Commission, as a Faculty, that the Vice-Chancellor will be mentioning this after they have gone, for having been very kind to us as the Faculty of Law of Moi University and Nairobi University, when we sent you names of our students, you gladly accepted them and engaged them in some of your activities, and we think they are learning a lot in being engaged with you. Thank you very much Mr. Chairman.

(clapping)

Com. Wambua: I think thank you Prof. Lugulu. Please sign there. I want to assure you that we are all products of those faculties and there is good representation there. So that is the reason. Please sign the register to confirm. Prof. Odhiambo.

Prof. Odhiambo: Thank you Mr. Chairman of the Review Commission here assembled. I think I will just perhaps amplify what some of my colleagues have said and I think the VC has summarized some of our sentiments. But I would like to stress

that we need a Constitution that will unify Kenyans in our diversity, in our complex nation as we know it today. So that should be one of our objectives while writing the Constitution.

We also need a Constitution that we shall be proud of and able to defend and despite our differences we should be able to own to. Now our differences maybe political, maybe racial, maybe ethnic, sexual, or some other attributes that we can think of. I also would like to see a Constitution that will not be changed from time to time, unless it is something and necessary and if so, it should be by referendum and not by Parliament. This then makes the document that is sort of (inaudible).

Now the Vice-Chancellor has given the structure of the government that most people ask. But, I would like us to think, and I may not a prescription, we or myself personally, I saw the regional government when I was young and I saw it also vanish. Now by that time, I remember I am from Nyanza, and our regional President was a Kisii called Johnstone Keragori, he came to our school, and he had one person who was a primary teacher at our place, who told us, "I am now the Minister for Education in Nyanza. Should I find you coocky... during this reign of mine, you will be gone like that". We were scared but also pleased that we had a government so close to us.

I think, if we manage to maintain these institutions, maybe we would have better in terms of distribution of resources. And though they are committed the way I saw them I think it was only for one year, they never visited that school again.

Then are we going to call them provinces, regions or states as they are in other countries. I just wanted to say that regionalism gives the connotation

of some sort of discrimination for those who belong and those who don't belong. You may want to use a word that is sort of ethnic-friendly. Like they say in Canada, I think they are using the word provinces. State we have not lived to that, and calling Nyanza a state may also be too heavy for some of us.

Then we have I think the Vice-Chancellor talked about, I think we need a President that is also Executive. He should have a running mate, this did not come out, but I think maybe it is in the document, he should have a running mate, we don't want we wake up and find you don't have a Vice-President. We should have a running mate, and if he has to leave, he has to leave by certain provisions in the Constitution or in law, either Parliament removing him or some other provision as we saw in other developed democracies.

Prime Minister, I think was well defined, and the Ministers I also have no quarrel with them.

Now I would like to go to the other aspect, and that is the Legislature. I maybe too mean, because maybe I belong to. But I

think in this century we really needed an MP that is a graduate, and Form Four should be for our local government councillors. (*clapping*). We have lots of graduates now, and I think we need to be very serious about this, so that we have people who can read widely, and read also externally and see what is happening in other regions.

Then devolution of powers: Most of the development concepts now are that we really need to take power to the people. But this power simply means especially development aspects, the infrastructure, the education, the health. Now, the Central Government again, the Vice-Chancellor told you what we think is central to Central Government and I don't have much to add to that.

In the Judiciary, rather I would like to see now the current Judges can run their term. But in future, let us have Judges that have got post-graduate training and in addition to that, I would like to have a directorate or an institute within the Judiciary, that does legal research. Sometimes I see some sentences where Judges themselves disagree, and then they have to rush to see precedence. And what they call precedence are simply what happened in England in 1928 or 1914.

But we would like to have people, we should have an institute or a directorate within the Judiciary, that will be doing research, but to make them also not to run away from this duty, they should be given ranks, even upto Judges or good appointments that will make them do research in terms of criminal law, civil law and international law. I think in that way, we shall have a strong Judiciary.

Now Public Service, I think we need to give the President a leeway for certain appointments especially in the major Ministries that we said were perhaps the core business of government. But, there are certain civil service appointments which are important and maybe, to make sure that they are people committed to society's welfare, should be sort of ratified by senate or some MPs. There are certain offices that are too heavy, and very much to the welfare of the society, that should be ratified. Ratifying doesn't mean that we shall have them all to veto, I think we shall then have the right people in this places.

Now, on Science and Technology I would like to see in fact, sometimes I have asked, why do we have in America a security advisor? And when I was in Germany last week I didn't know, I have not been keeping my civics up-to-date. It was a lady talking on the TV as the security advisor to the present President of America. That was news to me. If the President of America can talk to a security advisor openly, economic advisor openly they have a scientific advisor openly, surely in Kenya we really need these offices to be created so that we have this aspect not ignored. Science is very important, and I think we need specifically somebody that is known, that is our scientific advisor, so that we know our direction with the normal status of science in the country.

Finally Mr. Chairman, I would like us to have a Constitution that takes welfare of Kenyans at heart, and some of this has been mentioned in terms of civil rights and human rights, education as a basic right, health, particularly public health. I remember

when I was young in primary school, the colonial government which actually was supposed to be our enemy, was bringing a land-rover in our school to immunize us. After that, I have never seen it and I think immunization which is something that helps us build us, young as we are until we become good citizens, should be part and parcel of human rights, so that we have our children properly immunized.

Then elections: We had single party, and now we are multi-party, but we need real civic education that we need not to punish a candidate twice. If a candidate is going to be punished by receiving no votes, we should not physically also punish him by either violence or by sort of condemning him out of certain zones. There should be no let us say KANU Zone or NDP Zone or this and that zone. You have your weapon, and this I think is civil education. We have our weapon to punish this guy, if we don't want him, and that is our vote. Let us use the vote wisely, and I think the Constitution should come out clearly on what punishment or how to deal with people who bring election violence because if this allowed to go further, then we may find that from elections we have chaos. Thank you Mr. Chairman. (*clapping*)

Com. Wambua: Professor, just one point please. Thank you for your presentation. I would like to know, these offices which you call heavy, which the President should be given leeway to to make certain appointments, but there are other appointments which you think are heavy and should be subjected to Parliamentary vetting or that kind of thing. Do you have in mind what kind of offices these are, because we would want to be very specific?

Prof. Odhiambo: Yes, in fact, maybe I can say that he should be given leeway in all his appointments that he could make, but they should be subject to ratification by senate. And I think even for those important offices that we talked about, maybe the Defence Secretary or Defence Minister, maybe Chief Justice or Judge, Permanent Secretaries, and the Judiciary I think those higher appointments.

Com. Wambua: Okay, thank you very much Professor for your presentation. I think you can sign the register there. Can we have Prof. Chemtai, Dean – Public Health? Does he have any presentation?

Prof. Alex Chemtai: Thank you Mr. Chairman. Mine is just brief. I would advocate for very strong institutions. Coming to the university, my position is, we should leave the university with some autonomy. The university governance should have to exercise some autonomy, and even when it comes to appointment of Senior Administrative Officers or Vice-Chancellors or Deputy Vice Chancellors, this should be within the university. (*clapping*) I believe that the political government should be delinked from the university governance.

The second thing Mr. Chairman, is to deal with staff welfare. I am confining myself with the university system, in the sense that most of the staff have rights, and we don't seem to have a forum or an organization that takes care of our interests. So I would advocate for instance for university staff to have University Salary Commission. The teachers have their salary commission, the public servants have their commission, but somehow the university is wabbling in-between. And, we would like to have a

University Salary Commission to take care of our interests.

Now the other issue which has been talked about is research. I believe that if we have to industrialize by the year 2015 or by 2020, you need a heavy budgetary allocation to research, as has been mentioned.

As I said, I intended to be an observer, and I think I ended up giving my views. So thank you very much. (*clapping*)

Com. Wambua: Thank you very much. Just a minute Professor. I think my colleague has a question.

Com. Zein: Prof., just a small clarification. On one hand you are proposing that, universities should have autonomy, on the other you are proposing, salary commission. Won't you foresee a situation where if you were autonomous, the university can set up, each individual university can set up its own salary structures?

Prof. Alex Chemtai: I believe that if the ultimate, that should be the ultimate intention. But gradually we would have to have these arrangements, like the University Salary Commission. But eventually depending on our own ability to generate income, we should be able to look after our own interests. That is the process.

Com. Wambua: Thank you Prof. Thank you very much, please register yourself there. Prof. Gudu – Director, Research? I think also, let me remind the presenters that, it is also necessary for you to actually mention your name. Say that I am so and so, and this is my position and then give the views. That is normally what we do, because it is important for it to come from you, so that we don't have impersonation. So, just that, and then proceed.

Prof. Samuel Gudu: Okay, thank you very much the Commissioner for giving me a chance to indicate just a little of what we want to see in the Constitution. My name is Samuel Gudu, Director of Research, for Moi University.

I don't want to add anything on what my Vice-Chancellor had said, and what Prof. Alex Chemtai has said in terms of how much money should we put in research and development. I just want to indicate that, developed countries put between 5%-20% of their GDP for research. In our situation here, we put from 0.25% to 1%. (*laughter*)

And for us to industrialize by the year 2020, the relevant organs and Ministries and the Universities, should be really given enough money for research. But my Vice-Chancellor had put very eloquently. So I would stop there, but I want to just indicate something on education.

I take note of the fact that a Commission was set before, chaired by Dr. David Koech and a number of far-reaching proposals were made, and the Secretary of that Commission is here with us and he has made his submission. My worry is the rapid changes I still see in curriculum development. It hardly passes three months before you see changes in curriculum development,

which are proposed to take effect.

And as far as I am concerned, those changes don't give us enough time to catch up with the development in curriculum. I want to see enshrined in our Constitution, a specific time period like ten years, when Kenyans are supposed to implement the specific curriculum and it is only after ten years, should somebody else come in and do the review. And I want that review to be all inclusive that even the primary school teachers, even the nursery school teachers are part and parcel of those changes. Because some of the changes we see, if you asked the teachers the ones who are directly dealing with education, "what is the problem?". They will tell you we also see in the paper. *(laughter)*

So, I believe there is not adequate consultation and with regard to curriculum because it is something which affects primary universities, I want to see a situation where there is a smooth transition from one curriculum to another.

The other thing Mr. Chairman, is in connection with information. I believe we are in the information age. The FAO and UNDP have just indicated that one major way by which we could go forward in terms of development, is if we allow and free the information, so that every person – businessman, a lecturer, anybody, can access any information on any part of the world. But I believe, it looks to me like in Kenya here, there is too much tying information. And I believe there is probably, too much monopoly in the way the information is supposed to flow.

I would like to see a Constitution which insists, that there must be competition in the information industry, so that Kenyans are allowed, whatever kind of information they can get, from whatever part of the world without restrictions.

Finally Mr. Chairman, I am a strong believer of what has been said here in terms of remunerating people according to experience. And that is why I think this presentation stresses the fact that there must be basic qualifications for different cadres of individuals.

In my own view Mr. Chairman, I believe that is not adequately happening in this country. Because, even within the same Ministry, you still see some people who are relatively low in education, but they are the ones who are still earning a little higher than even those who are two or three degrees above them. *(clapping)*

For that Mr. Chairman, I believe it brings some kind discomfort to people who feel they are not adequately remunerated. And I would want to have a free hand, the Constitution giving a free hand to either Public Service Commission or whichever Ministry, to set those salaries according to qualifications of the individuals that they appoint in specific positions. Thank you very much Chairman. *(clapping)*

Com. Wambua: Thank you very much Professor. I would want one.... You have said that the developed countries allocate

between 5%-20% of the GDP towards research. And you regretted that we are doing at 0.25%-1%. What percentage would you recommend as appropriate to be allocated to research?

Prof. Samuel Gudu: In fact personally I would want to see Kenya allocating about 10% of GDP for research and development, because there is no way we are going to industrialize, and there is no way we can even implement some of the very basic in applied research, or the basic or strategic research. Because the developed countries have got basic research, they have got strategic research, and they have applied research. And each one of those cadres is given specific proportion of the GDP. What we see here, with 0.2% or 1%, we can't do even the applied to the very end of research. We can't even do that. So I would want to see something from 5%-10% set aside for research and development.

Com. Wambua: There is a second question Professor. Thank you very much for that one.

Com. Zein: Thank you Prof., in relation to curriculums and national standards. When people are proposing devolution of power and establishment of structures at lower levels. Should we insist on national standards of curriculum?

Prof. Samuel Gudu: Well, I believe that we should insist on the national standards of curriculum, because the curriculum caters across for all Kenyans – from North to South. We should have a very strong national curriculum, but what I think should happen is that we should be able to think very carefully to set up a curriculum, and give it a time period in which we (at a national level) all look at that curriculum, implement it, and then allow it time – a ten year period for us to review and look at it and involve everybody. (*clapping*)

Com. Wambua: Thank you very much Professor for your contribution. We will call Prof. Shitote – Dean, Technology. Prof. Shitote? Please mention your name and give us your brief proposals that you have.

Prof. Shitote: Thank you Mr. Chairman. Like my colleague, Prof. Chemtai, I came in as an observer, but I will at least express my view about mobilization of the population. I think this country has experienced enormous population growth over the last 20-30 years, but more and more of the population is - you could put it idle. We have school drop-outs, we have those who don't have any opportunities, even to be called school drop-outs because they have not been to school.

What is happening is that, we have more and more of these people in the country, the new Constitution should see how to tap these resources. Those who have been to school, should be mobilized to be of service in one way or another, to see how we can minimize our problem of tarmaking. You go to say local authorities, there are a lot of services which are wanting, say even just collection of garbage, but there are also very many people.

A structure should come up, in which these people can be tapped to be of service to this country. There are those in the rural areas who are just left to vend for themselves, but through some structure they can be productive. My contribution in brief, Mr.

Chairman is that, the new Constitution should see how to mobilize, the higher percentage of the Kenyan population to be of service to this country. Thank you. (*clapping*)

Com. Wambua: Thank you very much Professor. Please register yourself there. Let us have your name registered for your presentations. I will call Prof. Osula – Dean, Health Science. Prof. Osula has chosen to be an observer. Prof. Odini – Dean, Information Science.

Prof. Odini: I am maintaining my status. (*clapping*)

Com. Wambua: Thank you very much. Thank you very much for maintaining your status. Do we have Dr. Yaban – Dean, Environmental Sciences? I believe he must be having environmental issues to address. So, welcome. Please mention your name, your position, and give us your proposals.

Dr. Yaban: Commissioners, thank you very much for allowing me to change my status from an observer to a contributor, but very brief. My name is Wilson Yaban, currently the Dean, School of Environmental Studies, Moi University. I have four brief items Mr. Chairman to present.

One, is to try and just juxtapose what has been proposed and indeed I am in support of what the Vice Chancellor presented. Something that I think has been domesticated within our system here, and will be as he said tomorrow ratified by the senate for presentation to you, and being in agreement with that, I would like to say that should we go into a federal system of government, there are things that don't respect the boundaries – whether provincial, district, or even national.

One of them, is either a clean or a polluted environment. This I believe, should really come out clear in our new Constitution, that we respect the environment and provide a clean environment for everybody – in the region, and indeed, region is confusing now. Region within the country, or provincial, and the region within the East African countries. This then calls for a body that is fairly autonomous in its implementation of an assurance of a clean environment.

We have talked autonomous bodies and organizations within the government, and I think this is one that should have representation and transcends, not only the boundaries, but also the disciplines that.....(*end of side A*) and social.

I think secondly Mr. Chairman, is the respect I think I would like to see accorded to our customary law. There is quite a bit of what would be customary law, or let me be as lay as I can be and say it is just indigenous knowledge in the management of the environment and indeed our resources. And I think these should be tapped alongside with our Legislature, So that it is reflected clearly.

The deterioration perhaps of our natural resources in this country has basically been because of trying to adopt methodologies of resource management that are not relevant to us. We may not know how to use the knowledge we are given.

Thirdly Mr. Chairman I would like to put in something else, that does not respect boundaries and that is disaster. Disaster as it is, of course to us almost immediately we may think of what we saw in 1998 in Nairobi. But there are others that are not necessarily terrorist in nature. And these are things to do with the climate like drought. Once a drought hits, it expands, it doesn't also respect boundaries. So I think we need again, a Disaster Management and Preparedness body that is fairly autonomous and transcends the boundaries.

Lastly Mr. Chairman, something that is not directly related to environment, is this body known as Public Service Commission. We have another PSC, the Parliamentary Service Commission. Often, I get lost on who really is the public servant in this country. I have always thought if there is anybody who is truly a public servant, is a Member of Parliament. Because he is elected by the public and he actually reports to the public. And then he goes out there and forms his own body to take care of his own welfare and calls it Parliamentary Service Commission.

Anybody Mr. Chairman who actually rewards himself or herself, what they think they have done very well, I think is a wrong person to lead anybody. (*clapping*) And if there is one thing that I would like to see in this new Constitution, is to have one body that takes care of the welfare of the public servants including the Members of Parliament.

And indeed if there is any way even before the next elections, of removing this Parliamentary Service Commission, I would like to see it. Thank you Mr. Chairman. (*clapping*)

Com. Wambua: Thank you very much Prof. Yaban. I have something brief to clarify with you, or maybe a question or comment, whatever you want to call it. And this is, if I heard correctly the presentation by Prof. Munavu, which I think was stating the common position, it was that you would want to see the empowered local authority taking charge of the management of the natural resources, particularly forests. And you have introduced another angle through the discussion, and that is the question of customary law. And in one of the presentations in this province, we were categorically told that, the locals would want to see the forests being managed by the communities themselves, not even the local authority. What would be your view on that aspect, particularly the question of forests?

Com. Zein: Just related to that, if I understand correctly, in relation to this indigenous knowledge which we need to establish, you are proposing independent body to enforce national standards.

Dr. Yaban: Thank you Mr. Chairman. First, I am in total agreement with what the Vice-Chancellor presented, and that is with respect to natural resources and natural resource management. I would like and this is a common notion, that we quickly

conclude when we talk of the environment. The first thing in this country we think of the forests. Environment is much more than one item of the natural resources we have. The forests, minerals, wildlife, etc, are natural resources that I think, I am in agreement with that proposed here. But when it comes a clean environment, and here I am talking about environment with respect to physical environment, biological environment which then forests falls in, and the social environment especially.

These are things that I said you can't help them. People will be moving up and down, to settle wherever they would want. They will carry with them certain (inaudible) across the borders, and this is what I mean by a body that takes care of a clean environment, not natural resources as individual (inaudible).

Now with respect to standards, yes indeed we can't help having what we think relates to everybody equally in a country like this. So yes indeed we need national standards, indeed that compete with the international standards in every way.
(clapping)

Com Wambua: Thank you very much Dr. Yaban. Please register your name there, as having presented. We will call Dr. Chepkuto, Dean- Institute of Human Resource Development. Please Daktari, just mention your name for recording, Mention your name, your position and you give us your proposals.

Dr. Paul Chepkuto: Thank you very much Mr. Chairman, my name is Paul Chepkuto, currently the Dean, Institute of Human Resource Development. I only have three points to make.

First of all, I would want to agree with what the Vice-Chancellor has mentioned in his presentation, about decentralization of powers. The reason why, we are where we are now with the current Constitution is because somebody somewhere in Nairobi sits down and decides what is good for people at the local level. There is need, and indeed time has come when we should be empowered. Let the local people decide what is their priority in the development or in their areas of development. They should have that privilege, and I think this is something which we ought to include in new Constitution. So really, devolution of powers I highly support.

What to me is crucial also, is if we are talking of a Constitution that will promote patriotism, a Constitution that will safeguard our interests as a people, then we need an all inclusive civil service. So that all communities in this country, ought to be involved in the body politics qualities of this country for Kenyans. What I am trying here is that, in this country we have disadvantaged groups. It is true, there are some communities who have had low levels of development so far as education is concerned.

Even when you look at the civil service, you know there are certain communities who are not actually represented in the civil service. And yet we expect those people to be patriotic, to call themselves Kenyans. I am proposing that there is need for us to put in the new Constitution, something like affirmative action or a quota in form of employment, in form of admissions to

colleges, schools, etc. I don't know whether I am clear in that respect. But I think this is something. If we really want us as a people, who live in this geographical expression called Kenya, to feel really that we Kenyans, we need to have all of us participate in the civil service.

Mr. Chairman, the other thing which I think has not been touched on is the funding of political parties in this country. I think there is need for, new Constitution, I don't know how you can put in this, but the Constitution should regulate the funding of parties. We know Mr. Chairman that he who pays the piper, calls the tune. So supposing we have a friend somewhere who would want to fund me to form a party, outside maybe in other countries. So I am saying that, the Constitution ought to regulate the funding, where do you really get these funds to run a party and that kind of thing. So we need to look at that. Otherwise we are going to have parties, whose agenda we do not know, but somebody somewhere in Washington or London is funding it, and therefore, all that we need to do is just to mouth slogans or phrases from London or Washington.

Com. Wambua: If you can allow me to intercept just to guide you. One of the issues we are seeking views on is on the question of political parties, is one, whether the State should fund them. Two, whether they should be involved in other activities other than mobilization of the people, for example development activities and thirdly, whether we should limit the number of political parties. So I don't know whether you have views in respect of

Dr. Paul Chepkuto: Yes, thank you very much for that. If I was to say that the Government should fund parties, that might go against what my colleagues have mentioned earlier, that we need to have freedom of expression, human rights, etc. there is that freedom for people to form associations etc. So I am trying to avoid that.

But ideally, if we are talking of the Constitution regulating the number of parties in the country, then I would say yes. The Government ought to fund parties. But what I am saying here is this, that, with the current parties that we have or that we will have in the future, the Constitution should have a role in regulating the funding and that the funds that the parties should have, should be home-grown. It should be generated internally, it should not be external. Thank you very much.

Com. Wambua: One more question Daktari.

Com. Zein: This small matter related to the last point you are making. You are saying we should limit external funding of parties. That is what you said?

Dr. Paul Chepkuto: Yes.

Com. Zein: But we can allow say an individual, one person to fund a party, can we? In a country?

Dr. Paul Chepkuto: Within the country?

Com. Zein: Yes. You are against external funding?

Dr. Paul Chepkuto: Yes.

Com. Zein: But on just the question of funding, apart from what my fellow Commissioner was asking, I am asking, when you say we limit to externals, should we also limit internal conditions? For instance a person or two people getting together and funding a party in relation the wisdom you had said of people calling the tune once they give money?

Dr. Paul Chepkuto: Okay, again that is also a very good and tricky question. But I would say that if the Constitution is to define what is the national interest, then we need to look at what is in that party, what is the objective of that party. If it is within what we would call in the constitution the national interests, then yes, we can fund that.

Com. Zein: So in a sense you are agreeing with the Commissioner, that we should also control the registration and management of our political parties?

Dr. Paul Chepkuto: Yes. (*clapping*)

Com. Wambua: Okay, thank you very much Daktari. Please register yourself there. We will call Dr. Mokithiu, acting Dean - Education. Daktari please mention your name for record, your position, and give us your proposals.

Dr. Isaac Mokithiu: My name is Isaac Mate Mokithiu. I am now running the Faculty of Education. I have a few things, I came a little late but if I mention something that has been mentioned, you forgive me.

First thing that I wanted to look at the is the way, we have always talked about bringing the government closer to the people, and I have been looking at two of our provinces, as provinces that shouldn't be the way they are. One of them is Rift Valley. I am saying that, somebody from the shores of Lake Rudolf, and another person from the slopes of Mt. Kilimanjaro, should not be meeting at one provincial headquarters, That is a bit too much. So I am proposing that we could have that one divided up into – you can call it North Rift and South Rift or whatever you can call it.

The other province that I feel is excessively big, is the Eastern Province. And I feel that we could have Eastern Province comprising of the Mount Kenya area, and then something like South Eastern Province which would comprise lower level areas like Mwingi, Makueni, Machakos, and Kitui, as a province, so that you don't have to travel so far to get to your provincial headquarters.

And I have been looking at a lot of developed countries and I keep wondering whether we really need a province to be headed by a person who is appointed. And my feeling is that we could very easily do away with provincial administration, and have elected people running provinces. What we will do is that, we can have an elected head of a province and under that person, there would be civil servants or people who are working under him might be employees of the government. But he is a person answerable to the people.

I think, provincial administration was a tool of control for colonial government. That is my feeling.

The other thing that I have an idea about, is on elections. We are talking about people going to Parliament, who in fact I think we have had chances where people would go there who can't read and write. And then they are expected to listen to debates in English and things like that. I think we should limit the education level of a person who goes to Parliament.

The same should happen to Mayors, and I propose that MPs and Mayors should be graduates. To me, in the present day, first degree is basic education. *(laughter & clapping)* So we need that.

We can say that for small councils like the ones which were elevated recently – town councils, etc, maybe a Form Four who has a pass, at least a 'C', not somebody who just did the exam like one of the Mayors who did the exam the other day, and he says he is a Form Four. *(laughter)* No, we need somebody who has actually done the exam and passed. Councillors, normal councillors, it doesn't matter to me very much.

The other thing, maybe I have a few things so you forgive me. The idea of nominated MPs. In a lot of countries, you nominate an MP for a particular interest. So I am looking at representation of nominated MPs to represent defined interests. If we want two people to represent industry, maybe several people to represent church and things like that. Not just nominated MPs.

Let me come to adult education, because I am an educator. We have a problem of something called gender-equity in education. We find that, there are certain.... Before I say that I would request everybody to see a film which is produced in this country called "the girl-child". If everybody can see that you can see what I am talking about. We have serious discrimination against girls, in certain ways. Maybe we have numbers, but what they do in schools, there is some discrimination in schools, in homes, in jobs, and in laws of inheritance. So we need to look at some of those things, in relation to the girl child. In homes the distribution of what people do. You come home my daughter, my son, I send my daughter to go and fetch water and I give my son books to go and read, and they are supposed to do the same exam. We need to start putting some kind of regulations or not regulation but laws that guide that.

In inheritance, if Africans do the way Kambas do. If you are a girl, and I am dividing my land, I don't give you a piece. I have been quarreling with people about that, and I feel that every child is a child, and is entitled to inheritance, and therefore we

should have something that guards or helps to have every child born in this country inherit from the parents.

In jobs, there is no need of training a person as a mechanic, and when you go to the job, there is discrimination, I cannot employ a girl as a mechanic. Maybe we need some regulations which, in the government jobs especially, guarantee equal qualification, equal chances of employment, equal salaries that is my feeling.

And lastly, we have the distribution of wealth, that one is known that it is not the same in this country, and that is what we are saying is we have areas that are relatively poor and areas that are relatively rich. And one of the most unifying things in the world is education. That the areas that relatively rich, are able to establish schools for their children. The ones which are relatively poor, are unable. And then when we get to university education, you can see it very clearly, if you say write down the province you come from or the area you come from. Then you find there are areas where there is nobody.

One of the ways I thought would be the easiest way of getting these people, is to put in our own or the State to put some kind of money into education, realizing the kind of proportions of people we have in different areas. And if, we cannot get the people to the universities or to the schools, we get the schools to the people. What I am trying to say is that, if you look at the distribution of universities today, you will see that, you can walk from the last university, down to the other university, down-north if you have enough time. Because from Eldoret that way, you don't get a university. From Nairobi down towards the Coast, you don't have a campus or university, to the North-Eastern, you don't even have institute of technology. What I am trying to say is that we have to find a way of distributing education, getting education to where the people are. What I am saying is establishing regional colleges and universities to get to the people, so that we have a unifying factor called education because the educated people will be able to find something to get wealth, move from central area to other areas. Thank you very much.

Com. Wambua: Thank you very much Dr. Mukithiu. I think you can register your name for your proposals. With the academic staff, we come lastly to Dr. Koech – acting Dean, Forest Resources and Wildlife Management, if he is here can he please present his proposals. Please, first mention your name and position and give us your proposals.

Dr. Eric Koech: Mr. Chairman, my name is Eric Koech, Ag. Dean, Faculty of Forest Resources, and Head of the Department of Forestry. Thank you Mr. Chairman for giving me this opportunity to air views concerning the way natural resources, particularly forests are handled in this country.

I know the Commissioners, as well as all of us do, the way the forests have been handled in this country. There has been exition, there has been deforestation, and there have been all kinds of destruction going on in the resource. We easily blame factors such as charcoal burning and other factors, yet the real issues have not been taken care of. I am thinking particularly

about three issues. The way the forests have been managed, and the weak policy and legal framework, and also the inadequate allocation of resources to the forest sector.

We are lucky Mr. Chairman that, currently we still have some forest left. We are very thankful because the current legislation is so weak. The three issues that need to be considered are:- one of them is, we have not been giving forests and forest resources the real value. During valuation, there is little value that is given to the resource, and I want to quote in the financial year 2000/2001, the Ministry of Planning and Finance, allocated 22% of the funding, whereas 78% came from the donor. In this case, this shows the little emphasis which the Government gives in terms of conservation of this important resource.

And it is saddening even to note that currently we have forestry graduates who are tarmacking, while this important resource has been left to waste. My suggestion Mr. Chairman, is that, there should be a system that should be established to ensure that all forest goods and services are accounted realistically.

And that taxation, should be instituted to those who deplete the resource. For example, operations like KenGen, Municipalities which supply water and the Ministry of Water. I am giving some few examples.

Number two, Mr. Chairman is that, there should be professionalism in handling the natural resource, particularly forest resources. There is no point having a Permanent Secretary, who is not professional, for example an expert in immunology being a Permanent Secretary, and that is an executive position. For a Minister, that can be fine, but for a PS, making policies regarding planning, management and utilization of the resource should be a professional. We have professionals trained in this university, Mr. Chairman.

Number three Mr. Chairman, that has been mentioned sometimes back by the VC and supplemented by Dr. Yaban, is about the management of the resource. There is need to devolve the management from the Central Government to the local communities. This idea of having the State, being the owner, and on the other hand having the local communities you know having that conflict, one, the community sees the Government as an enemy, the mistrust, there is punitive measures, that kind of mistrust, that kind of animosity, if there was collaborative management by the communities, this kind of resource would be managed more effectively and efficiently.

And therefore the proposal Mr. Chairman is that, there is need to empower the community-based organizations, local communities and even voluntary organizations, to participate in planning, managing and utilizing the resource. Once you give somebody a responsibility, that person becomes responsible. And we can borrow a leaf from our neighbours, even Tanzania, Uganda, Mozambique, where they have done this, we have models that are already successful.

And perhaps if we do this Mr. Chairman, our forest cover would be at least 5%. Right now, we have about 2%, and in

international standards, countries which have less than 10% of the forest cover, has an environment that is unstable. And in that case, our country here, is a criminal in that context. Thank you Mr. Chairman.

Com. Wambua: I think, I must thank you Daktari for your presentations. Please sign the register. No, there is a question, sorry.

Com. Zein: This is related to the last comment you made. We have heard presentations to this Commission, that we should make it a pro-Constitutional provision, that our country should have 10% forest cover and we should implement it as a Constitutional provision. Do you have a comment?

Dr. Eric Koech: Yes

I will buy the idea Mr. Chairman, we should have our forest cover increasing and one way we have been suggesting is even, have these trees planted outside the gazetted forests. If only Mr. Chairman

(Interjection) Com. Wambua: More specifically, I think what we heard because I was in that panel is that every land owner should ensure that 10% is contributed and utilized for afforestation. So, I think that was the specific proposal. I don't know what you

Dr. Eric Koech: Yes that would be fine, so long as our Members of Parliament support that Bill immediately, so that these things can stop.

Com. Zein: This will not be a Parliamentary legislation. It will be a Constitutional provision. In other words, whichever Parliament is elected, they will have to abide by that Constitution provision.

Com. Wambua: Thank you very much Daktari. Please register yourself there as having presented. I think we have finalized with the academic staff. We have given the priority now, if they choose to leave for the meeting they can. We will now revert to our list of presenters, and I have Prof. F. K. Sang, I don't know you came as an observer or He has individual, so we will finish with him, and then we will move to the rest of the group and we will explain how we move, so that we can cover ground because the list is still long.

Now I think it will be in order to find out, apart from the academic staff whether there are students here, who would want to present, so that we can also given them an opportunity as a way of balancing out. So, let me just find out by show of hands. Students present who have registered to present? Students present who have registered to present? About seven, eight. I think we will come to that group after Prof. Sang gives his personal views, so that we can balance out now appropriately. So, Professor please mention your name, your position and proceed.

Prof. Francis K. Sang: I thank you Mr. Chairman, my names are Francis Kiptarus arap Sang. I am here representing the Chaplaincy of Chepkoilel Campus. You gave us guidelines at the onset of this session, to the effect that we should not dwell in the history of the problem because you already know the history. What you did not tell us is whether we should not dwell on the history of the perceived cause of the problems.

My presentation is centred on the perceived cause of the problems and since there is nobody who has given us the history of the perceived causes, I am taking this opportunity to request you to give me, just a brief moment to give the history of the perceived cause and propose solutions.

Com. Wambua: We will give you that indulgence, provided that the history should not be made too long. Just let us know briefly what the perceived cause of the problem and give us... we are more interested in the prescription. So please proceed.

Prof. Francis K. Sang: Thank you very much. We have talked about solutions to the problems that exist, but we have failed to mention the causes. I believe that the person that nearly came to the causes, is the person that talked about environmental issues, and he touched on the periphery by mentioning social environment.

I wish to expound on this particular area and mention that there is an area that I feel that is responsible for the problems and this is the spiritual dimension, which touches on the morality of this nation. There is an national emblem that was meant to represent this moral aspect of our society, and this national emblem is the national flag. And I wanted to talk briefly concerning the importance of this national flag, that we were given during our independence on the 12th day, of the 12th month, at midnight, in the year of our Lord, 1963 A.D.

This flag was actually a symbol or a sign that embodied the spirit, and to drive this nation. Within this flag, we had the installation of the national court of arms. I do not know whether this is protected within the Constitution, and what I am saying is this, If it is not, it should be protected because it has got a great significance in the morality of this nation. Everyday, in all schools, every morning, as a national flag is hoisted, and the National Anthem is sung, and the Anthem is the interpretation of what the flag stands for.

The spirit of the flag, is in the content of the National Anthem. So, what I am saying is this, this flag, the colours and the chronology of the way it is, including the National Anthem, should not and must not be changed and should be entrenched in the Constitution in perpetuity. Why?

As you see the colours, it describes the chronology of the process of liberation from the colonial rule. And even the colonialism itself was not bad, it was good for us. Because it brought in that aspect of understanding of the moral aspects that we deem necessary in order to be able to go into prosperity.

But there was one mistake that happened during the process of this colonialism. In the court of Arms, we have these two lions, and two spears, and then at the bottom there is an anchor, the anchor has got a prescription, which I believe was meant to be the interpretation of the foundation and this anchor is called, “Harambee”.

It is my submission Chairman, that that word should be obliterated and retrenched from the Constitution if it is in the Constitution, and replaced by the interpretation that is within the National Anthem and the pertinent part is, “May we dwell in unity, peace and liberty”.

This is what “Harambee” should actually be replaced by that. Because what it means is that our founding fathers because of their zeal and enthusiasm, thought they would use a human arm or strength to liberate this nation. Who could afford the British with all those tanks and.... It is the Almighty God that gave us the freedom, not the (inaudible) of arm, and because of that misconception, the word “Harambee” was introduced. And I am told, that this word “Harambee” comes from two words, that represent some other foreign culture or foreign aid. “Hara”, I hear stands for an Indian deity...(inaudible)” or an “Indian God” which is not God, but an idol,

And actually what happens, in the word “mbee” means “assist us”. It was a supplication or a prayer to their God to assist them in the task at hand. So now what has happened, when we introduced the foreign God, about 39 years ago that seed begun growing and we are now beginning to see fruit. In the manifestation of the rampant corruption in this nation. We cannot solve it by writing a new Constitution. The simplest way is to remove “Harambee”, (*laughter & clapping*) and introduce..... (*end of tape*)

Com. Wambua: I want to remind you that we are recording these proceedings. So as we acclaim, we should not prolong it too much, so that it becomes a dent to our proceedings. As I said much later, the future generation would want to know what Moi University students and academic staff said. So let us not obliterate the proceedings by too much of noise.

Prof. Francis K. Sang: So the last sentence in the first stanza of the National Anthem is that, “plenty be found within our borders” on the basis of the foundation of our national court of arms and the national emblem, which signify to me, God’s covenant that intended this nation to be free and free from human dominion and spiritual dominion of foreign Gods.

But, then what happens, there are calls of sneaking in this word which represented supplication to a foreign God, we are reaping now all sorts of things that we are trying to solve, by producing a new Constitution.

What is the way out? Just to remove it Constitutionally and replace with what is already presented in the interpretation in the Anthem. And this can be done administratively by His Excellency the President. Why is that? Because, we recognize that

promotion does not come from the East, nor from the West, nor from the South. We also understand that the authorities that exist have been established by God Almighty, creator of heaven and earth. So, what we need to do is to solve this immediately.

We don't need to wait until next year.

The President should just scrap it off from our currency, and because it is inscribed in the currency, that is why we are under bondage, and the Indians because of their God, are controlling the economy of this nation. *(laughter)*

Mr. Chairman, I do not know whether the loyalty pledge has been instituted in our Constitution. If it has not, I would like to propose the following to be the pledge to our nation as that flag is raised as a symbol of our solidarity, symbol of our freedom, and symbol of God's covenant of freedom, liberty and peace in this nation. I would propose the following, as the loyalty pledge which should be recited every morning by school children, by Armed Forces officers, and even by the students in the universities as we hoist the flag every morning. And it goes like this:-

“Recognizing that promotion does not come from the East, nor from the West, nor from the South. That the authorities that exist have been established by God Almighty, creator of heaven and earth. I therefore pledge, my total loyalty to the President of the Republic of Kenya, and my duty shall be to defend the flag of our nation, which is our national standard and physical embodiment of God's everlasting covenant of love, for our Nation”

Number two, my absolute devotion, I pledge my absolute devotion to the spirit of our National Anthem. The interpretation which is the interpretation of the inherent terms of the covenant in the standard and national court of arms of our cherished Republic.

And finally, my whole life and strength to building our homeland of Kenya, the heritage of splendor, in the living spirit, implied in our motto, “unity, peace and liberty”, the anchor of our national solidarity, symbolizing the foundation of our national court of arms.

Finally Mr. Chairman, I propose that a Ministry should be established to be headed by the Minister of Spiritual Affairs and National Conscience. And this Ministry should have a hierarchy all the way upto the village level, and should be able to vet all foreign Gods that are infiltrating this nation. *(laughter)*.

That way what we are going to do, even if we produce a Constitution today, and we don't take care of the foundation which is a spiritual foundation, we are just wasting time, 40 years from now, we shall come to the same position, if we shall still be existing.

Like the children of Israel, that for 40 years they wandered in the wilderness, because they did not know the ways of the Lord

although they had know his works. Thank you very much. (*clapping*)

I have a detailed memorandum which gives the history which you need.

(Interjection) Com. Wambua: Thank you very much. Yes, we will read it, but there is one question Professor. There is just one question, we will read that memorandum very thoroughly, but just hold on for a question.

Com. Zein: Prof. Sang, this is not a question but more comment which would be designed to draw your attention to a little research you need to do. I consider myself a Swahili expert and I have this contention before that, “Harambee” as word comes from the combination of two words. In fact, the story I heard is slightly different from yours. The story is that, it is “Har” “ambee” and “ambee” is supposed to be the deity which is then we say “Har-ambee” you are praising the deity.

But, my understanding is that, “Harambee” is a corruption of a Swahili philosophy. The Swahili people like many African communities, had a philosophy when somebody is about to harvest and cannot harvest alone, calls other people to come and help them harvest or do work together. And this philosophy is contained in the word “Hal-ambee”. This is a Swahili word, if you care to look at the dictionary which was developed by Kraph which was long time ago than 39 years, you will find this word, “Hal-ambee”, it comes from the arm of peniscular in the Kenyan Coast and it defines this philosophy of calling people to pull things together.

And the corruption came because the two people who wanted to make this a national philosophy, not to cover only the Swahili people but the whole nation, one could and one could not say, “Hal-ambee”. Mzee Jomo Kenyatta had a problem with “L” and “R”, so he could not say “Hal-ambee”, and he said “Har-ambee”, and that is how this call was transformed from just Swahili, to the whole nation.

But you could do a research of your own. I know you are an eminent scholar.

Prof. Francis K. Sang: Mr. Chairman I thank you very much for that one. You know Mr. Chairman that there is power in unity, and that power is a spirit. For indeed it is recorded in one of the holy books. How beautiful it is, when brethren, dwell together in unity.

It is like an oil poured upon the head of Aaron, upon the dew of mount harmon. That oil flowing down to the beard upto the helm of his garment. For under such circumstances of unity, God will command the blessing. So which God was commanding the blessing when we say, “Hal-ambee”, let us pull together? And there were Indians that were preparing the veil, it is a God. So, I still, I submit Mr. Chairman, that why can't we stick to the interpretation given in the National Anthem, and have unity, peace because when we are in doubt, why don't we stick to the interpretation, that our founding fathers were inspired to place

as an interpretation, of our National Flag and National Anthem. Thank you Mr. Chairman.

Com. Wambua: Thank you very much Professor. Please register the register for your eloquent presentations, and give us your memorandum which we will read thoroughly. I think we need to hear from the students. I want to know whether Joash Korir is a student and he is here. You are a student? A staff? Fine. Let us have those who raised their hands. We start with this, please give your name, and tell us which year you are in, what you are taking, and give us your proposals. We need to move a little bit faster. As I said, we allocated five minutes, I know you will be very precise. If issues have been discussed or referred to, don't over-emphasize, we have already recorded that give us a new perspective. So give us your name, and what you are taking in this university, the year you are, and your proposals.

David Onduru: I am called Onduru David.

Com. Wambua: Onduru David. Proceed.

David Onduru: I am a second year student in the Faculty of Technology, taking Electrical and Communications -- Engineering. To begin with, I will start with the way in which we elect our MPs. Some of these things might have been said but, even if I repeat, take it as an emphasis.

(Interjection) Com. Wambua: Not too much David. Don't make it too long. Proceed please.

David Onduru: In the current Constitution, the provision is that an MP or anybody who wants to be an MP must be a member of a political party. But then, I strongly feel that besides this, we should also have independent candidates. That is, those who should not necessarily be members of political parties. As we have always seen what is there, there are some people who are forced to be loyal to their political parties, or it is the leaders of their political party so as to go to Parliament. But I think this one, doesn't give us the best candidates we need.

There should be a provision in the new Constitution, that apart from being a member of a political party, there should also be independent candidates who should only need to be nominated by the people in their constituencies.

Like now, somebody who wants to be a President, you need to get I think in the Constitution it is about 1000 people to approve you so for the independent candidates, if we consider the national level, and somebody who wants to be a President needs to get a 1000, let one who is an independent candidate and wants to be an MP, get around 200 from the constituency or even 500. That is one.

Secondly, as per our elections, you find that when we carry out our elections, we carry those ones of the councillors, MPs and

President together. I strongly feel, that we break this into two. That is, the election for the councillors and MPs be carried together and that of the President be carried separately.

I also propose that if we do this, then that bit which states that a Presidential candidate should get at least 25% in five provinces should be removed. Such that, if we carry out the first round, no matter the number of political parties that we have in Kenya, we should go for the second round, whereby we will only take the best two. And then once we do the second round, one simply needs to get a simple majority.

This one will help in cases whereby, some vote on tribal lines, but I believe, that if we go for the second round, chances are very high, that those who voted those other candidates might join hands for one of the candidates who will be there. It really reflects the wishes of the people, more than what we have right now.

And then secondly, on the part of Ministers I was surprised when I entered, that was the discussion that was going on. But I am sorry, let me just repeat it. Ministers, I feel that they should not necessarily be MPs. Because here is a case whereby we want professionals, you will not say that an MP, let us say from Migori, must have studied some finance to be a Finance Minister. I feel that if MPs are to be law-makers, let them make law in the Parliament. That is, let us have the distinction between the Executive and the Legislature.

Let us have Ministers, I don't know, the work of the Executive is to execute or to make the laws work, kitu kama hiyo. Let Ministers make the laws work and let those who make laws be different from Ministers. And these Ministers if we do it this way, you find that they will be very responsible, and in even answering questions in the Parliament. Otherwise, I don't have much to say, thank you very much. (*clapping*)

Com Wambua: Thank you very much David. I don't seem to see your name. I don't know whether you had registered yourself. Anyway, just register yourself there, and sign. I want to call another student before I go back to the list. I will take this gentleman here, and then I go to that corner. Please come forward. And as I said, if a matter has been mentioned, we have already picked it. So don't waste a lot of time on it, just say I want to emphasize this. That is all. If there is a new perspective, we will be very happy to have it. Proceed please, mention your name.

Duncan Maluku: My name is Duncan Maluku. I am the Director of Entertainment & Communication in Moi University, main campus, and I do Sociology.

Now I would like to touch on the Legislature, and particularly on the individuals and their role in the power structure that our Vice-Chancellor has said. Now, if you will realize in the past, the role of the voter, hence when he casts the votes after that there is nothing that he can do, say for example, his opinion. Most of the MPs, you can never really get to see them as a voter.

So I would request that in the new Constitution, there should be a provision for either the people to be electing leaders in various organizations like the churches, professional organizations, etc. The media, for example, to have leaders there, so that in case Parliament does something that is in not in the interest of the people, then, there can be some level of outcry. And in that way, the voter can have informed decisions.

Because look at for example what Parliament did the other day about their salary increment – nine times. I mean, we are talking about improving our economy and yet we are giving all the money to our MPs. We are talking about increasing the constituencies, meaning increment of the salaries. So, what role does the voter have? That is all I can say. Thank you.

Com. Wambua: Duncan, thank you very much for your views. Now that you have talked of the Legislature failing the electorate. I know there are issues we are seeking views on, is the question of the right of the electorate to recall their MPs or other elected leaders. If there is any proposal on that?

Duncan Maluku: Well,

(Interjection) Com. Wambua: Or you have not thought about it.

Duncan Maluku: Well, I have not thought about it, but I think it is a brilliant idea.

Com. Wambua: Thank you very much. Okay, just register yourself there. Let us have that gentleman as a student. I will take one more, and I will go back now to the list so that we proceed with the other members of staff and any other person who has attended. Please mention your name, what you are taking and give us your proposal.

Godwell Kathenge: Thank you Mr. Chairman. My names are Godwell Kathenge, and I am in Moi University, taking the course of Education Science.

What I have in mind is that, this time we have the way to go. In the case of education, you find that there are differences i.e. the population pressure. Many people desire to have education, but we find the time is not with us. This implies that, the old leaders you look for the way, you focus what it is in the case of the resources, you ensure there is the equal distribution to all of us in this country. This will mean that there are those home places where we come from, and enter to different areas where there cases that we would like to achieve. Maybe to all of us, we have come to this moment, and we have gotten the way. So I say to all of you, especially to the students in this college and all the people in the Republic, that the areas we have to follow and seek the way to go through, before we achieve them all, we consider our lives and see what steps to take. Thank you for the time you have given me.

Com. Wambua: Thank you very much. Please register yourself there. Register your name there. There is Mr. Benjamin K.

Rono who is the Principal Administration Officer, Moi university. Let us give you a chance so that you can go and do administration. I request you to be brief so that we proceed with the rest. Mention your name and the position, and give us your proposals.

Benjamin K. Rono: My name is Benjamin Kiptanui Rono, Principal Administrative Officer – Moi University in Academic Division.

Mr. Chairman, Commissioners, Ladies and Gentlemen, I will emphasize a few points which have already been said. I support strongly the devolution of power into a federal state. But in the devolution, I would the Constitution to take care of the distribution of power between different levels of Government. The relationship between these levels – that is the regional levels, the financing of the institutions, there is re-distribution of resources and methods of settlement of disputes, if there are disputes within the regions.

Mr. Chairman, I will also add that in these cases, there should be some structures to protect minorities within the regions. Otherwise, even though we decentralize to regional levels, some of the areas, like the social-cultural and development part might still be under oppression. So there should be some parts to protect the minorities within the regions.

I would also like to raise something on the Land Control Boards. We understand that currently, there has been a lot of abuse into grabbing of public places, schools, toilets, graveyards, etc. These Land Control Boards have not been able to actually re-distribute or control land to designated functions. So I propose that this should be restructured and have Land Trustees, and also titles should be issued on Trust Deeds, and we do away with freehold titles and leaseholds. Leaseholds should only be applicable to cities, towns and centres.

On education, I would like to emphasize that the compulsory education should be offered up to secondary level as has been said. And these street children or the chokoras should actually be under the custody of the State as has been mentioned, and rehabilitation centres should be set up to take care of that. And these people can only be left to enter into the market or development of the nation at the attainment of age 18 and over. That is when they can be set free.

On remuneration of workers, that a body should be set up to take responsibility of harmonizing, reviewing remuneration of schedules of workers, civil servants, Judiciary, teachers, medical personnel, Members of Parliament, among others.

Otherwise, if we don't have a body to regulate these people, we will find that, like what my colleague said one group will wake up one morning and start awarding themselves salaries to the tune of 10 million or 1 million to an individual. And these people, the nation will tune its resources towards paying salaries for this particular group at the expense of the nation. So there should be one body that regulates all groups so that salaries can be harmonized accordingly.

On medical services, I propose that there should be some basic provision for medical services to all the citizens. That is especially, on emergency and life-saving services. Drugs and provision of medical services in government hospitals should be subsidized and made affordable to all people. Currently you find that some people can go to hospitals in a very critical state, and they cannot afford to even pay for the services, and such people are turned away, and eventually nobody follows to know what happens.

And then I also propose that, we should have some ways of dealing with corruption. Corruption has been a disease in our society, and I propose that officers holding public offices should be vetted, there should be some vetting through Parliamentary and other regional bodies. And at the same time, they should also declare their wealth, and if somebody is found to have actually been involved in some kind of corruption, they should be some re-possession of property, in order to claim back what has already been taken.

Mr. Chairman, I feel that also in the jokes, we have a lot of graduates and school-leavers who are jobless today. And I propose that, somebody should not hold more than one job. There should one job for an individual. You find one person is appointed into ten companies as a director (*clapping*). So, such should be taken care of by the Constitution, so that it is one person to one job, or if at least, two jobs, that can take care of. The other people can be able to benefit by being given jobs that are available.

On general election, I believe that the Commissioners will complete this exercise within the scheduled time, and we can hold the general elections under the new Constitution. Thank you Mr. Chairman. (*clapping*)

Com. Wambua: For your presentation, we will call because I note there is only one lady who has spoken and that is the Principal of the Campus. We will now give an opportunity to a lady, but before I do that, let me ask Joash Korir to briefly give us his proposals. Be brief Mr. Korir, give us your name, your position and give us your proposals.

Joash Korir: Thank you Mr. Chairman. My name is Joash Korir. I represent a self-help group which we call “Sere”, and I am the chairman. We are 245 members, so these are the views of the 245 people, who elected a committee to look into the Constitution.

We looked at your red book, and we picked all the topics, we handled everything and I will give you a written memorandum so that you can go through it in more detail. But let me just highlight a few issues which I think are paramount, which maybe different from what other presenters have given.

One, is the age limit for the President. We feel that there should be an upper age limit. The Constitution now gives 35 as the

minimum age, but we feel, there should be an upper age of 70 years, because 35, somebody will have know the ways of the world, but at 70 years the same person will be tired of the ways of the world. So, there should be something like that.

And secondly we feel that the date of elections should be in the Constitution. Either we give a specific date or we say, maybe the last Tuesday of December or something. Maybe after five years. There should be something in the Constitution about that. And we feel that the elections this year, we can do them under the present Constitution because of the time. I know you Commissioners have been worried that maybe there is no time, but we can as well hold the elections with the current Constitution, then maybe come the year 2007, we have the new Constitution now to guide us in our elections.

Then lastly, we have a document here which is detailing the structure and system of government which we have proposed. But the basic difference with ours, from what people have been presenting is that we feel, that it should be devolved all the way to the district level, not province as most people are saying. The reason is, again some provinces may be too far from people. So we are just removing the bureaucracy in Nairobi and putting in Nakuru or putting in Nyeri or wherever. We feel it should come all the way to Eldoret here. That is when we should deal with our issues.

And connected to that, we also feel that the civil service should be decentralized. You find that some civil servants are in a district which is too far from where they are from. They have no obligation. They go there and wipe out all the resources, they clear all the forests, pollute all the rivers, but we feel people who are civil servants in a district, should come from that district and we should empower the district authority. If it is to employ the civil standards they require, you don't just start posting people from Nairobi to certain districts. You post people to Turkana, maybe they don't require crops officers, maybe they require fisheries officers. So we should have the districts to decide which civil servants they require.

I think I have a lot here, which I will just present to your secretary.

Com. Wambua: Bwana Korir, for that excellent summary, please hand in your memorandum, we will read it thoroughly. We now call upon the lady by the name Rachel Karei. Please give us your name again, the position you are holding if you are working in the university, and give us your proposals.

Rachel Karei: Thank you very much Mr. Chairman. My names are Rachel Karei. I am currently the Head of Home Science & Technology and a lecturer here. I came as an observer, but I felt that there are a few issues about women that have been raised and I thought I will be doing some injustice to the women if I go out without maybe bringing up a few issues.

One of them is about rape. I think we need to do something and something drastic must be done. Because there is a lot of injustice as far as women are concerned. The way they carry out rape cases and all that. For me, I feel that rapists should be treated as murderers. Because definitely they kill these people and especially those that rape young children. I know there are

situations where women are blamed for many reasons, but I think we should come up with something that will protect our women, and especially our children.

We need to do something and the Government should bring up something or should work out something to protect our children especially now. I am saying that they should be treated like murderers so that when you rape, you know the consequences are not going to be easy.

And there is also a problem, the way the policemen carry out these investigations and all that. The victim is actually mistreated and man-handled and we need to really do something about that. I cannot emphasize that more but I just feel that for me, if you are found guilty, you should either be castrated, jailed for life, or actually given a death sentence. That is for me, that is the only solution. *(laughter)*

And the policemen that take these things into their hands and actually ask questions, maybe even giving something like the victim is the cause of all these things, something should be done to them. And I think that, when these things come to court, they should also handle them in away that will protect the victim.

The other thing is.....

(Interjection) Com. Wambua: Can I say something just before you proceed, because, I presume that the punishment you are proposing out applies both ways, where the rapist is the woman.

Rachel Karei: Yes definitely. If the rapist is a woman, for sure do the same. I have..*(laughter)* The only thing is that you might have a problem in castrating a woman.

Com. Wambua: Yes that is what I wanted to know.

Rachel Karei: Definitely if she is guilty, go ahead and do the same.

Rachel Karei: Carry on, carry on please.

Rachel Karei: The other thing we have a problem with married men who become amorous, and they maybe impregnate girls in school, and they leave them suffering. I think something should come up to protect these girls. If you have an affair with a young lady and a child is a product of that affair, you should be made to take care of that. And a law should actually be brought up to take care of that, so that at least you know, if you misbehave there are consequences for that. And these girls should be protected, and maybe the salary of this man should be attached or something should be done.

The next thing I wanted to talk about is the protection of women also. We have had cases in our country where a man dies and many other people pop up, saying that I was a wife, I was a girl-friend, we had a child, there is no protection of the wife. You are left wandering, you are tossed between this and that because somebody else comes up, you never knew about this, the existence of this person or the existence of this child, and suddenly they want to share the property that you both acquired, you both worked for. I think something should be done to protect the wife in this respect. *(clapping)* So that at least you know that your in-laws are not going to come up, and also ask for something, this was my son, this was my child, this was my father, and all these years we have lived with this man for 48 or 30 or 20 or even 15, you never knew the existence of these other people. And so we need to do something to really protect the wife. And even for parents and other siblings of the man that come and now desire to have a share of these things. We should also do something to protect the ladies.

The other thing is that, I feel there should be also something that says that in the course of marriage, whatever we acquire, if it is land, it should be in both names. The name of the lady and the name of the man. And if I am a housewife, I am also contributing in one way. So the man should not just say that, I was working, I was buying, I was doing this. If it is a car, if it was one car, let us write so that in case there is a divorce or anything, we share that car even if it means cutting it in two. *(laughter)* If it is a home, we just share that home. Whatever it is, we share it equally. I think that is all for now. *(clapping)*

Com. Wambua: Thank you for... just a minute. Excuse me. Thank you for your very passionate proposals, but I think we have some queries definitely arising from what you have said. And just before I give my colleague the mic to ask the questions, I wanted to inform you that the current law on inheritance, recognizes the fact that any person who can proof to have been a dependant of the deceased, that is before the person dies she was dependent or she was dependent on him she is entitled to claim from the estate of the deceased. And I believe that category takes care of the people you are calling the late-comers. So that really, we are talking of a law which says that, since these dependants were dependent on the deceased, come the distribution of the estate, they must also share in the estate.

I don't know what your views are on that particular law, because that is the way it is now and the law actually recognizes what we are saying that is an unfair treatment to the wife. Are you proposing that law be amended? And what is your personal view on this question of the dependant himself? I mean this is a person who is an offspring of the deceased and was dependent on this and we are saying cut that person off I have nothing to do with him/her, do you want to say something about that?

Com. Zein: In addition to that, Madam, on one hand, you are suggesting that if a man makes a girl pregnant, he should be forced to take care of that child? But when he dies, that child should not be able to inherit. That is the way I understood the two principles which you were giving. But again, in other places we have been to this country, elderly people have come to us and said that we should have a right to inherit from our children, both male and female parents have said, we should come and

have a right to inherit.

But the second question for me is that, the current provisions for rape is that rape is only defined for adults, and minors it is not rape, it is defilement. In other words, some people have argued that, the way the law is written now, it promotes rapists to target young victims. So if a rapist attacked a child, you are referring to the children one should be even more severely. Currently, the way the law is written, if an adult attacks a minor, they will only – maximum is seven years. But if you rape an adult, maximum is life imprisonment.

My understanding that you are suggesting that, it should be castration, life imprisonment or capital punishment. Of these, the most severe is capital punishment, and when you say, those who attack children should be treated more severely, are you suggesting that they should lose their life?

Rachel Karei: I think the ladies here will agree with me, that that term defiling is actually loosely used, and it is not fair, it is not right. Because maybe when you rape, I don't exactly know the difference between those two. But when you rape an adult, that person maybe could protect herself but you are actually destroying a young child who cannot help herself or himself. I think that deserves even worse. For me, a person who rapes an adult, I don't know, I may not be able to forgive, but I think it is a bit forgivable. But a person who defiles or rapes a child, deserves death in my own opinion. There should not be any forgiveness. I think if you are found guilty with that, I think you should just be hanged or publicly executed. That is my own opinion.

And I think that law, whoever wrote that one was fair. He did not take into account the destruction, that this person will do to this small child. Sometimes as an adult you may actually be responsible, and you may even contribute to that rape, but a child will not even know what is happening. You are just destroying and actually killing that particular child. That is my own opinion.

The other law, I don't know the question that the chairman asked of inheritance. If my husband, and I am happy that he is not around. (*laughter*) If he made a lady pregnant and I get to know about, I think I should make sure that he takes care of that child. And for me, that child deserves a share, as long as I know. But these husbands who keep planting children all over and I don't get to know, if I am told in advance that actually I made this mistake, and he is actually humble enough to say I am sorry, I will share, because that is equally my husband's child, and we discuss it. But he is planting, all these outgrowers from all over, (*laughter*) I don't think they should have anything to do. The people I am against are these people who pop up on the day they hear that is dead. I have no prior knowledge of the existence of this person, and just suddenly when he dies, they pop up. I have another family, a son, and all that. If he informs me, that is okay, I have no problem with that, although it is subject to discussion and all these other things. (*laughter*)

Com. Zein: Related to the last statement you are making. We have received submissions in different parts of the country saying that under the current law, there are three ways of registering marriage. Through religious institutions, through the Attorney General's Chambers, that is people going to the DC, and the traditional marriage. And they are saying that, part of the problem of people not knowing that they have co-wives if you like, is that the traditional marriage does not issue certificates. And women are demanding that certificates should be issued. What would you say into that?

Rachel Karei: Okay but even with the customary marriage.....(*end of side A*) stay, that nobody knows about, but if it is the customary one, where we have all gone, and many times even first of the co-wives are informed, I have no problem with that.

Com. Wambua: Thank you very much Karei for your very passionate views. They were prompting, and we thank you for that. Please register yourself there. Is Paul Tum here? Where is he? Paul Tum is not there. We will call him when he comes back. Do we have Dr. M. E. Omutyini? Daktari, please mention your name there, your position and give us your proposals, and if possible please, be free to the issues which have not been touched on.

Dr. Omutyini: Thank you very much Mr. Chairman, the Commissioners, the VC, the Principal and the audience. I have got few points, others have been mentioned.

The first one regards respect of institutions. Ever since I have learnt that there are institutions in this country, one of these is the Presidency. It is one that people are aspiring to become but, my concern is that, most of the people who aspire to be in these institutions are the same ones who try to abuse them. So I feel that, the Constitution should ensure that the respect for these institutions is enshrined in.

Number two has been mentioned but because of the importance it deserves, I would like to reiterate here. That is land use, agriculture and food. I feel that agriculture or food for that matter is very important, and I think it is only good for any nation to give priority to food. So, my feeling and those of the others that I have talked to, is that, we should put more emphasis or top priority – on agriculture. Particularly, production of food, and this is in terms of land use, it was mentioned before. Land use is very important, not only that those people who own land should be able to be accounted, but I think, also who use land and are not able to get the benefits. Maybe we should see that those people should be considered or rewarded. How it will be done, I think it will come in details.

But also in terms of facilitation of agricultural inputs and proper pricing mechanisms. Because these are actually the incentives that will help us to use land, will help us to produce the food that we need, and therefore make us strong. The reason for that is that, this emphasis on agriculture and food, will ensure that we may feed ourselves and not to be beggars.

The other thing is the Judiciary: A lot has been mentioned about the Judiciary but it has come that even our current Constitution, there has been cases of trying to execute fairness or justice, but somehow it takes too long. So, it seems like we need a situation where cases should be dispensed within a minimum period of time.

And also, there is something about our current trend. I think the Constitution we are making should be one which really reward people who do good, and not those who do wrong.

The other thing is concerning the present Constitution, We have so many things that are happening. Most of the them are good, some are bad and that is the reason why we want change. One would wonder is the Constitution we have right now, not good enough? you have your answers. But I think that in our Constitution that we making now, we should put more emphasis on the mechanisms of implementation of this Constitution. Because if we don't do that, in however good the Constitution we come with, we may find that we will be continuing with wrong that we are doing now in regardless of whether we have a Constitution or no Constitution.

In other words, the mechanisms for implementation, and by extension is the lack of the same mechanisms that are enabling us or ensuring that we are not really reaping the benefits of what we should be including the good that we expect.

Then, the last one is, rights: This has been mentioned but I think there is something that is not coming clearly. Because we are living as a community, in this case as a nation, I think these rights really emanate from individuals. And that is to say, that your right is determined by my right. So, here I am taking about reciprocal respect of rights, so that the rights, there should be no rights of some others, and not the others, So there they should be reciprocal respect. So, if we have that one coming out clearly, in terms of human rights respect, I think it will be really helpful.

The last one, I have noticed that in terms in nations, there is this disparity where you have developed nations really trying to pull other nations. One would wonder whether we don't have a Constitution at the present, or our current Constitution is not taking care of that. I would like to see a Constitution which helps to ensure our sovereignty and dignity is respected. However this is translated through United Nations or other international bodies, but should come out clearly that, our Constitution should protect us as Kenyans, as a nation, so that you can be there, but you also have respect from other nations. Thank you very much Mr. Chairman.

Com. Wambua: Thank you very much Daktari. Please, register yourself there. Is Antony K. Matiba Ngatia here? Is he a student? Okay, I will give you an opportunity just to come forward, and mention your name, what you are taking, and give us your proposals.

Antony Matiba: Okay, thank you Mr. Chairman. My names are Antony Matiba, and my views are:-

The Executive is given so much power that it abuses the powers given to him. So, my views are that the Presidential powers or the powers given to the President should be reduced in that, the appointments of Ministers should be vetted by Parliament, so that we have Ministers who are accountable and Ministers who are transparent. Because since the Minister will serve the people, they must have the people's interest at heart, so the Ministers should be vetted by Parliament and also they should be accountable and they should declare their wealth.

On the qualifications of Ministers: A Minister should have a minimum qualification of university degree in order to be efficient and be more competent.

Secondly, the Executive or the President should not have powers to appoint parastatal chiefs. That is, they should be vetted by Parliament, the Parliament should decide whether a certain person should hold a certain office and maybe, chairman of a certain parastatal or managing director of certain parastatal, so that we ensure that the parastatal is run efficiently and made accountably.

Because we have all witnessed the fall of parastatals. The parastatals are being run down by the current leaders that we have in those parastatals.

Then the number of Ministries should be reduced. We should have a minimum number of Ministries, just about 10 number of Ministries and the same number of Ministers so that we may save our finances.

Also we would want that the President when he is in power, he should be able to be impeached. The Parliament should have the power to impeach the President.

Then any official, any public or any government official should be able to declare his or her wealth.

And also any official implicated in any scandal or any kind of corruption dealings, should not hold any public office.

Then, we should have a formation of an independent Anti-Corruption Unit. A unit that is formed by Parliament and is empowered by Parliament and it is also accountable to Parliament not to the Executive.

Then I think we should have the security of tenure of the Judges, so that they can be fair and they may do their work in a free atmosphere, free of threats, etc.

Then we should have the provision of government lawyers or advocates to poor people. You find that when a poor person has a case or is maybe accused of something, he has no that financial capability of maybe hiring a lawyer, and that is very unfair.

You find that a rich person has an upper hand in the execution of justice. And so, we should have lawyers or government lawyers who are there, primarily to cater for the needs of the poor people.

Then, I think the universities should be fully equipped, should be fully funded by the Government, so as to ensure that the universities have the necessary equipment for research and necessary equipment so that the products or the people that come out of the universities are competent and are able to compete and to perform their work in the institutions.

Then I think, before the Government decides to borrow money from international organizations or decides to make treaties, they should first pass through Parliament. The Parliament should be consulted since Parliament is the representative of the people, the Government should be able to consult the Parliament before going out there and borrowing maybe money or signing treaties of the sort.

Then access to health services should be available to all people – both poor people and .. that is, the health services should be free.

Then there should be liberalization of media or media should be open to all people. All people who want to practise that profession should be able to do so.

(Interjection) Com. Wambua: Please summarise, Antony because, the time and the period seems to be over.

Antony Matiba: Okay lastly, Parliament, in the current Constitution, there is a provision that a Parliamentarian may lose his Parliamentary seat if he misses eight consecutive sittings in Parliament. These should be shortened to five consecutive sittings, so that we make sure that Parliamentarians attend their sittings. I think that is all.

Com. Wambua: Thank you very much Antony. One small question from me. You said that Ministries and Ministers should be equal. Do you recommend a similar thing for Assistant Ministers?

Antony Matiba: Yes I recommend a similar number.

Com. Wambua: Should be ten?

Antony Matiba: Yes, should be ten.

Com. Wambua: Not thirty?

Antony Matiba: No.

Com. Wambua: Thank you very much. Please register. Before we call another lady to give her views, let me know whether Gabriel Mabuga is here? Gabriel Mabuga? He is not there? What about Wagila D.C.C.? He is coming back, not there. So, I am going to ask this lady by the name Eunice Masesi to come forward and give her views and then immediately she finishes, I will ask Mr. S. P. Njuguna, Principal Administration Officer to give his views so that he can attend to other business of the university.

Eunice Masesi: Thank you very much. My name is Eunice Masesi, I am a secretary in the university. I would like to talk on family. I would wish that, our education system would include something regarding marriage. Because I believe you agree with me that, a strong family builds a strong nation. So most of us get out of school, and enter into the marriage institution knowing nothing. And at the end of it, you find there is a lot of divorce. And I believe that, knowledge is for warning.

So if our students, especially from secondary level, would be taught something to do with marriage, would reduce divorce and then animosity on the family would also reduce venereal diseases including AIDS, and to reduce rape, because people will have been taught much on sex, especially when they are being taught about the family education.

So I would request that, there be a curriculum regarding marriage to our students and which should go down to forming offices on counseling on marriages, which I suggest should include the chief and the councillors who have also been taught on it, who can help the villagers on how to keep their marriages.

And this will help us even in terms of violence, it will go low, when the families are taught love, then love will spread, and violence will reduce. And the load on our Government will be lessened because they will have less to do as far as crime is concerned and expenditure on diseases and sicknesses.

And also, I would recommend that our traditions are sieved. We treat tradition as though laws were formed by some Gods who died long time ago. I would request that our traditional practices are sieved, so that those which are against the human rights are removed. People are educated on them and they are squeezed out, and traditions that are right and are helping the nation and the family can be stressed upon. I had only that to present. Thank you. (*clapping*)

Com. Wambua: Thank you very much Masesi. I think we will ask Mr. Njuguna to come forward and give his proposals. I hope Mr. Njuguna you will be brief.

S. P. Njuguna: Thank you very much Mr. Chairman. I intend to be very brief. But first, let me say I am a Principal

Administrative Officer, but I am also a Law student. Part of my concern has come out of my experience and the readings that I have been going through.

First, I think it is a general thing. I hope the Commission will put a Preamble in the new Constitution, and I think I would recommend at least, the Preamble should say the Constitution belongs to the people. It is a covenant between the people and the people who are governing. This is very important.

Number two, try as much as you can and put the Constitution in a simple language. As I said, I am a student of Law, but I find it also difficult. If I find it difficult, it must also be difficult for people out there. And this again goes maybe to the other legal documents. Civil procedures and things like that.

The issues that are being raised here, maybe I recommend, some of them you may have to come up with a Commission. The issue of marriage and divorce. The issue of succession. These things have been done, but maybe they were done long time ago – the 1960s. So, maybe it is time, that similar Commissions or Standing Commissions be set up to look at these things.

But more importantly I think, there is need for continuing education. Listen to the comments here, some of these things are there and they are written. But I think, a lot of our people do not know about it. Maybe, I would recommend a curriculum in some legal education in all the tertiary education. I think to go along way in educating people, particularly now, I am also in the area of Human Rights and the Rights of individuals as we move on.

But then let me move to my concern. My major concern here is the issue of whether we should be going federal or unitary. Unfortunately I was not in, when the VC gave his presentation. I beg therefore, if there is a little repetition you allow me. Now this nation, beginning of the nation-building started in 1963. And it is 40 years since then. And we started to have or to experiment a unitary state. That experiment has failed. And as (inaudible) if an experiment fails, you try another. I think it is time we started on a federal arrangement of state.

This is mainly because if you read the history, historically and politically, the Kenyans as of now, are conditioned to tribal ethnic politics. As of now, we cannot deny, a lot of people have this ethnic consciousness, it is running very deep within Kenyans and the Commission would better take effect and give expression to this aspect.

Now, I think it must be preached to people that, ethnicity can be used in a positive way, and I hope this is the way we are going to do it. Ethnicity as it is most people think it is negative, It can be used positively as I would show. You know, as of now, as we are talking here parties are formed along ethnic lines. And if you look at the last results of our elections, they show that Kenyans vote as tribes. As we are talking, people are consulting.

There are consultations between parties to form alliances, and these alliances are on ethnic lines. These are things we can't ignore and these alliances are hoped to win the former government by excluding other Kenyans. That is their hope. The NDP and KANU want to form government so as to exclude these other people. I think it is not possible now in the current group now to exclude other groups who are Kenyans in running a government. And this goes a long way, in my view to explain that we need a federal system of government, where everybody takes part and participates in government. Where everybody has a voice in the running of our government. Because however as we know, if we try to exclude some people from the Central Government, this can mean continuous instability and suspicion.

Well, at independence, it was assumed that ethnicity could be contained politically, through a unitary state. But as I have been explaining this has been the opposite. As of now, instead of recognizing individuals and their merits, we now recognize or we are conditioned to recognize conditions. This is happening everywhere, even in religious circles. People would like to know whether the Bishop is this tribe, my tribe, or it is the other tribe, it is everywhere. It is in area of employment, in the area of economics and this is detrimental to the growth of this country. And in the end, when we talk about Constitution, we are talking about the growth of this country. I think that should be the key element. And in growth we need to involve everybody.

So I wish to post that one way of solving the problem is having a federal government. Now, there is some fear of course, I think the experience we had, the one year with Majimboism has created some fears with some other people. But my reading tells me, a lot of countries, many countries are going federal.

Even as we are talking, the biggest industrial countries in Europe are assembling under the European Union and which means, a federal state means the powers – the state gives some powers to others and they retain some.

And I am sorry to say, in this country, in spite of urbanization, in spite of western education, in spite all those things, I have seen Professors, they think ethnic, and we can't ignore it. So I think it is about time we changed. And I propose, that we go federal.

Now, some of the benefits of the federal state:-

A federal government empowers various ethnic groups in decision-making at the lowest level. I am reminded of the District Focus. It was something that was started, but which was not implemented. The people who were empowered at that level, because then and that the people have a voice, and they participate in their governance is enhanced at that level. At the moment, it is top-bottom. It will not work, and we have a chance to change the position.

Now, when we are at a federal state, we create a sense of ownership of resources. Now most of the time you hear people talking about, "mali ya umma". You will find people are sent from here to the Coast, and apparently, the

system has been you are sent to the Coast so that you can employ as many people from your tribe, and when the thing collapses, you can come back and we will still accept you. That is how we have destroyed institutions in this country.

I think a federal state provides checks and balances at the lowest level, and this improves governance. The concept of “one man, one job” will be enhanced at federal level. At the moment, it appears we have a number of people who become MDs, heads of parastatals, who are anything but to recycled. If you destroy one institution, but because you belong to a particular group, you are given another one, only to destroy it. And this is how we are destroying institutions.

Under a federal arrangement, the people will not allow you to do that. You will hold one job, and if you don't do it, you will be replaced. The concept of merit has been lost within our system. It can only be brought back by a federal system. Because at the moment, people don't seem to care. It is a man from our people, from our village. The concept of merit we must bring it back and this can only be brought, through a federal arrangement.

Mr. Chairman, we shall be hiring the most competent of our sons and daughters as equal citizens. Democracy and good governance, the rule of law, is likely to be enhanced, leading to the much needed are growth in this country.

Federal arrangement will reduce the fear of domination. People are afraid that if this group comes in, they will dominate the other one. But if they are running their own affairs, that fear of domination that large tribes for example will dominate small tribes will be a thing of the past.

At the moment, and through the previous two governments, if we don't vote for the government of the day, in this case, if you don't vote for KANU, the procedure is, your area is neglected. The reason is, they say, “siasa mbaya, maisha mbaya”. (*clapping*) This is discrimination among citizens. I don't see a similar scenario happening under a federal state. We all have to develop this country.

(Interjection) Com. Wambua: Bwana Njuguna, the time we had allocated is up. But, it would appear that you have really emphasized on the question of the federal government. That point has actually sunk. So, if you could kindly summarize, if there is any other point, and then you give us that memorandum, because.....

S. P. Njuguna: Only the last one is, I think that they will be better for observance of human rights and other necessities.

I will touch on maybe two others, I have finished with it, that was my main emphasis.

Com. Wambua: Thank you very much. I think..

S. P. Njuguna: Now, Mr. Chairman, allow me the concept of reduction power of the Executive. I think, it needs to be re-emphasized, I know it has been re-emphasized. Through the various change of the Constitution, the Presidency has been given all the powers. In fact in some places, they say like the Presidency in Kenya, is like the British Prime Minister and Her Majesty the Queen all put up in one.

This, we have to dismantle if we have to move forward, and mainly I think they are saying, the power of the Executive should be separated. There should be separation of power between the Head of State and the Head of Government. And the two should have Constitutional powers to run their offices independently but in consultation. I think there is more I could have said.

(Interjection) Com. Wambua: Thank you very much Bwana Njuguna. Please give us the memorandum, we will read it thoroughly and sign the register.

S. P. Njuguna: Thank you very much.

Com. Wambua: We return to the ladies again, and we have two names here – Mercy kabethi and Leah Magut. Do we have them here? Let Mercy come first and then we will go to Leah. And at this point I would want to announce that, it is our practise that we always have limitation of terms also in the Commission. I have been chairing this meeting, and I want to hand over to my colleague – Com. Zein to chair for the remainder of the session. We only have one term, never two terms. So it is now your turn Com. Zein to continue with the session. Please Mercy proceed, tell us your name, your position and give us your proposals.

Mercy Kabethi: Thank you Mr. Chairman, I am Mercy Kabethi, the Vice-Chairperson of MUSO in main campus. I have only two views to present, so I will be brief.

And I will start by saying that, the essence of doing anything is in my understanding to preserve life. And as Kenyans, the purpose for Constitutional Review is to preserve the lives of Kenyans. So, we have put government into place to take care of the citizens. And we have a Constitution which control the government. So, if doesn't control the government well, the citizens in the end are the ones who will suffer.

So, my view concerns the Bill of Rights: it is pathetic that we have a Bill of Rights but it is not being implemented. In that connection I would say that, our Constitution to provide that no one should be subjected to inhuman treatment – that is under right of preservation of life.

So, when we look at the Kenya we are living in, there are some people who are undergoing severe in human treatment and that is, at the heart of the Government. For example we have the farmers, I feel the Government has a right or has power to control the prices. But if you look at what is happening, the farmers are working too hard and then the prices of their produce is not being controlled. At the end of it all, they don't get anything out of the work they are doing. As such, the Government fails to preserve the death, the purpose of why those farmers were working hard. They were working to preserve their lives, and if they don't have anywhere to sell their produce, then there is something the Government is failing to do.

If you look at the students, we work too hard, we study too hard, so that by the end of it all, you can get a job or you will be able to maintain yourself and control your life. Then if you graduate and you can't get a job, I feel there is some injustice or some unfairness, which is taking place and the Government should take care of the students who clear and then there is nothing they can do. In that connection, you find that most of the industries are crumbling down.

So, if we are still training like the textile engineers, we are training teachers, but then they can't get the jobs or those who are there are not being well-paid. What will happen to these people after they study for all those years, and then they don't get jobs? I strongly feel

(Interjection) Com. Zein: Therefore Mercy, what are you proposing?

Mercy Kabethi: I am proposing that the Government should - if it is like in price, should assist in control of prices. Then it should assist people to get jobs.

(Interjection) Com. Zein: In the absence, there are some Kenyans who have proposed that, they should be for those who at least who have been neglected by the Government a provision for payment of allowances, in other words, a welfare system. Do you support that?

Mercy Kabethi: Yes that is what I am supporting. Then the other point is about the girl-child. Someone had talked about it. But then, we need to look at, what is it that makes the girl? Like if you at the primary level, the number of boys and girls are the same. But when at Class Eight, when they are doing the K.C.P.E., the girls who do well as the number of boys, there is some (inaudible). Then if you look at the number of secondary schools we have around, we have equal number of ladies, we have equal number of boys. But then those who get to campus, you can bear me witness those who are students, the males are maybe three-quarters, the ladies are a third. So, there is need to look at why the girls don't complete or don't get to the higher education.

For example at secondary level, we have some forum – FAWE (Forum of African Women Educationists) who go round trying

to advise ladies on how they should improve. I can remember they were telling us how we can improve in Mathematics and Sciences. But unfortunately, they were getting to some schools. So, if it is like such a forum which is talking or trying to advise girls on how to do well in their studies, it should not be discriminatory. It should get to all schools. Because if it could get to the provincial schools, but then the girls who are in the local schools, and remember they didn't do well, so most of them ended up in local schools. They don't get this advice. By the end of it all, they don't do well. That is all I have.

Com. Zein: Thank you very much Mercy. Please sign our register to indicate that you have given views to the Constitution of Kenya Review Commission. My fellow Commissioner had called Leah Magut. Is Leah here? Leah Magut? Then, Dr. R. S. Ochieng? Please.

Dr. Raphael Sumba Ochieng: Mr. Commissioner, my name is Dr. Raphael Sumba Ochieng of zoology.

Most of what I would have said has already been said, but I would like to emphasize on the point, where one contributor talked about the Government of the university being different from the national Government, that it should be independent. I do support that one, and I would go further to say that, it is not only the Vice-Chancellors that should be elected by the university government, but since we are proposing that we have a federal system of government, I would propose that even the Chancellors be elected by the universities.

Another point that I would like to bring up is on the inheritance. There are people who have only daughters, as their offspring. What are you saying about this? Do they leave their property to their cousins or their however it is, rather than leave it to their daughters?

(Interjection) Com. Zein: Therefore Dr. Ochieng, what are you proposing?

Dr. Raphael Sumba Ochieng: What I am proposing is that, daughters should inherit.

(Interjection) Com. Zein: Have the right to inherit?

Dr. Raphael Sumba Ochieng: Have a right to inherit the property of their fathers or whoever. Otherwise, there is so much that has already been said.

Com. Zein: Thank you very much Dr. Ochieng. Please sign our register. Onkware A. O.? Onkware A. O.? You are here?

Augustine Osoro Onkware: Thank you Mr. Chairman. My names are Onkware Augustine Osoro, I am a staff at Moi

university. I came in as an observer, but there is one item that is in my mind, and has not been mentioned yet. You told us about the history that you know..... (*end of tape*) some of these changes have been affected in one afternoon. And sometimes, we have claims that some of the MPs who are bribed to vote in particular ways.

However here, today, I haven't heard anybody talk about under what circumstances then can we have alterations made to the Constitution that we are in the process of making now. I know the existing law is that we need 65% of the MPs to vote for the Constitution to be changed. I think that percentage should be increased to something like 90%. This will make it very difficult to change the Constitution to suit very tiny specific whims.

And I would also, would want to see a situation where for example, if there have been claims of bribery during voting or Constitutional change, then, perhaps that issue should be stopped and investigated thoroughly before the process of changing the Constitution goes on. Because, really if there is talk of bribery, then there is a talk of fraud and mal-practice, and if people are bound to change the Constitution, after being bribed, then it affects everybody. That is my feeling, Mr. Chairman. Thank you.

Com. Zein: Just a small question or clarity. You are suggesting that if a vote is to be taken for Constitutional amendment, which in your case you are suggesting should be 90% of the house. Somebody screams bribery it should be stopped, reviewed? How do you guard against abuse, somebody is claiming bribery when even there is no bribery?

And secondly that, we have received submissions from other Kenyans, like the ones you are making. But they have gone further and said certain aspects of the Constitution should not be changed by Parliament. For example, the Bill of Rights, that Kenya is a democratic nation. If they want to touch any section of that nature which is a fundamental aspect of the Constitution, it should be done through a referendum.

Augustine Osoro Onkware: Thank you Mr. Chairman. I think, yes, it could be good for there to be a provision that certain sections should not be changed at all. As for some spoilers coming up and claiming bribery, and then more or less like stalling the whole process, that is why I said there should be thorough investigation, and anybody who claims bribery without evidence or substantiating it, to a satisfactory degree should face the consequences of the law.

Com. Zein: Thank you. Please sign our register. Arusei M. K.? Arusei M. K.? With your indulgence, I will be calling a name twice and then go to the next one. Is that acceptable? Okay. Ndigwa K. S.? Ndigwa K. S.? Now, I would like to call Mr. Ogola Ogada who has just one point to make.

Ogola Ogada: My name is Ogola Ogada as you have heard. I have just one point to make, and it is in relation to the

post-graduate training in this country.

Now, if you look at the current Education Act, it emphasizes very little about post-graduate training in this country. And I don't know whether the Vice-Chancellor can bear me witness, is that, even the present (inaudible) which I think comes from Ministry, is based on the number of under-graduates that are in a particular university. And when it comes to post-graduate training, the Government does not give funds and this is very unfortunate.

(Interjection) Com. Zein: Therefore, what do you propose?

Ogola Ogada: What I am proposing is that the Government should allocate maybe between 5% - 10% of the GDP in training post-graduate students. Because there is no way we are going to industrialise, unless, we train people who can carry out research. Somebody mentioned something about research here, and, if we just rely on training people at lower level, then we cannot go very far.

I am sorry to say that, as a post-graduate student, I am doing my PhD in Agricultural Economics, which requires a lot of sacrifice. It is (inaudible).

Com. Wambua: You have preferred what somebody else said. That other person said that, we should get an allocation of 10% for research. You are now saying, you want 5% - 10% for post-graduate. Now what I want to know is the same research which covers what the others (inaudible). Post-graduate training will be covered in that 10%?

Ogola Ogada: I think the 5% - 10% should cater for maybe, living conditions transport, accommodation and other things are advocating for? is the while research is quite different Thank you.

Com. Zein: Thank you very much, please sign our register. Bwana J. K. Chepkwony? Mr. J. K. Chepkwony? Paul Olunga? Is Paul Olunga here? Fredrick Songa? Karibu Bwana Songa.

Fredrick Songa: Yes Chairman, my names are Mr. Fredrick Songa, I am a student at Moi University. So my views are these:-

First, I will suggest that every registered voter must, when it comes to voting, he or she should be liable to vote, and if he does not do that then there should be a charge. Of which I am suggesting to be five months imprisonment (*laughter*) or a fine.

Then secondly, I am suggesting that higher education institutions should be represented in Parliament. And this one, I am saying so, because the fate of the country is determined by the higher institutions. So if any case, if they can be represented, apart

from the help or rather the institutions by the Minister or Permanent Secretary, then I think the case maybe somehow different.

Thirdly, I am also suggesting that a Minister should be a graduate as some people had suggested. But I am stressing that, he must be a graduate on the field of study. This is if he is a Minister for Education, then I would suggest that, the Minister should be a graduate in the Faculty of Education. (*clapping*)

Then, the next is reduction of Presidential powers. This one has been stressed by some other people, but I am also stressing on it. So, the President should be liable to a charge, if in any case he commits a legal offence.

With others which are in the memorandum, I would like to present them to you. Thank you.

Com. Zein: Thank you very much Bwana Songa. I have a small clarification. You have suggested that it should be compulsory for the registered voters to vote. And if they fail to vote, they are liable to prosecution.

Fredrick Songa: Yes.

Com. Zein: Is it going to be mandatory to register as a voter?

Fredrick Songa: Yes, I am would say that if a voter is 18 years and above, then it should be mandatory to vote.

Com. Zein: Let me get this clearly. It is going to be mandatory for every Kenyan who turns 18 to become a registered voter?

Fredrick Songa: Yes.

Com. Zein: Thank you. Thank you, please sign our register and leave us with the memorandum for processing. Fred Ouma?
Fred Ouma? Ayieko Juma? Karibu Bwana.

Isaiah Juma Ayieko: Thank you Mr. Chairman for the opportunity. In fact we were discussing it collectively with Mr. Songa, but there is a point remaining. That is on the police force.

(Interjection) Com. Zein: No, no, please state your name for the record.

Isaiah Juma Ayieko: I am Isaiah Juma Ayieko. So I am stressing on the police force. I find it to be a plight, to realize the way those people punish people outside here. I don't know the extent of their limit of power, yes, but before they realize what makes commit a problem or you are convicted, you shall have been beaten until you cannot even be able to speak out anything.

So, at least, this should be reviewed and looked and the extent of their power be limited. They are really harsh on people. And then the other thing I was trying to observe, there are people failing in Kenya – K.C.S.E. They fail to achieve this grade of 68/69 now, and you will find that outside the developed countries they are being absorbed, and they join those universities, they make it. Come to Kenya, we are being rejected. Like now somebody getting 68 points, that is three-quarters percentage. He is not joining. So, my appeal is that, these people should be given a given institution then, so that they be catered for and be given loans by the Government, if possible. So, that they be catered for, while not being wasted, and we are poor. Thank you.

Com. Zein: Thank you very much Bwana Juma, please sign the register. J. S. Ochuki Nyabudha? J. S. Ochuki Nyabudha? Joseph N. Nzomoi? You are Bwana Nzomoi? Karibu Bwana.

Joseph Nzomoi: Thank you very much Mr. Chairman. My names are Joseph Nzomoi, I am a student as well as member of staff. I am doing my PhD on Agricultural Resource Economics and Management and Management in this university. I also teach Economics in the main campus. I don't wish to repeat that has been said before by the previous speakers, but I wish to emphasize one or two things.

Number one, regards the voting centres. When it comes to elections and people are voting in various parts of the country, I am proposing that these voting centres be counting centres as well. We have heard or read about situations whereby, some people gunner more votes, when it comes in the counting centre than that which is registered from a particular voting centre. So, I am proposing that voting centres to be counting centres as well, so that we only have a central point where we now bring in the results. So that, in a certain constituency, we have about 20 polling stations. We will here from point 1 we have twenty votes for so and so, or 50 for so and so. That way it will be alright.

(Interjection) Com. Zein: That is clear, sir. That is clear.

Joseph Nzomoi: Number two, I am proposing that we have heard about resignations. People being required by law to resign their positions before they go to contest in their various constituencies or civic wards. Especially those that are working in the government arms parastatals and all that. I am proposing that this should be reviewed, so that people simply take leave. People who take leave to go and contest and therefore, in the event that they don't gunner enough votes to go to Parliament or go to the civic wards, they should be able to go back to their positions. *(clapping)*

The simple reason for this, Mr. Chairman, is that we have heard people who fear that in the location where they come from, a certain political party for instance, could be popular in that area, and they may fear, kind of they may be working for the government and therefore they don't want to go and stand on opposition ticket, and therefore to preserve their daily bread, they fail to resign so that they can go and contest, because they know that if they go to contest, they will be required to stand on the

ruling party, and that party may not be popular in that particular area.

That in my opinion Mr. Chairman, it reduce, the democracy, it curtails the democracy. I would want to see a situation whereby, somebody is in a position to go and contest in any place, and therefore be able to come back. I don't want to go into the history but it is based on the fact that, those who are working in the government, could misuse public resources. If you are a PS, if you are an MD, you could misuse the public resources. But what we saying, if somebody gets leave without pay, then they should be able to go and contest without fear.

Then number three, we would like to see cases whereby, we have heard cases whereby students have the desire to go and contest, so if they could be allowed alongside any other interested party to take leave, and go and contest, and therefore come back, if they make it, they will be able to organize on their own on how they can proceed with education.

I have had cases, when I was in Nairobi university myself during my under-graduate days, we used to have cases whereby students, people got elected, and went to Parliament and yet they were students. I remember somebody was even an Assistant Minister, and they were still attending classes. So, let us this situation whereby somebody can just take leave, or whatever it is, academic leave for one year or six months, to go contest then you come back.

Then finally, I don't want to emphasize on what has been said. People talked about MPs. I want to support those who said that Members of Parliament should have a university degree.

I want to support those talked about the universities being autonomous by way of electing the senior administrators.

I would like to talk about regional distribution of the national cake. I would want to see a situation whereby it is recognized by the Constitution that, when we talk about national cake, we are talking about those that are holding positions in the public sector, that which will not allow, a private sector there will not tell their private sector organization to have their MD nominated by the Government and all that.

But we would like to see a situation whereby, the national cake is fairly distributed. By this I mean, there are situations, there are areas in this country, whereby a region – could it be a constituency or a district, whereby there is not a single person who holds a public office. I am talking about Ambassadorial appointment, I am talking about being an MD or a member of parastatal board, and all that. So that, that way people would look at the national cake as theirs, and therefore, we should not have a situation whereby we have concentrated the national cake in one area.

You look at a particular district, for instance, you may find that one constituency may have about 15 or so prominent people, while there is a constituency out there, which does not have a single being in this position of influence. That way.....

Com. Zein: Nzomoi, thank you very much. Just hold on, we have.

Com. Wambua: Bwana Nzomoi, I am just thinking about this proposal, where you say that, people should be given leave to go and contest during elections. You didn't mention whether there are certain categories of person who should be excluded from that, and I am thinking of a situation where the MoH goes on leave, the police chief goes on leave, leave, the DC goes on and basically the operations of the government are paralysed. I mean, are you thinking of isolating categories of persons who should not be covered by that general freedom to contest?

Com. Zein: In terms of holding public office, there are certain people because of the positions they are holding, they become influential in a place. Think of the DC in this area, if he was to decide to run for elections in the constituency, some people might feel intimidated, that they have to vote in that particular DC. Or a member of staff in this University wants to run, and students have registered, so think about that.

Joseph Nzomoi: I think I get the point Mr. Chairman. What I meant was that, the fact that somebody is interested in a particular political opposition. Be it ward or Parliamentary representation, this should not imply that somebody has really to quit the job. Because all we are saying is that, there should be a guarantee that this person is not being thrown into the dust-bin.

Of course you are resigning voluntarily, but what we are saying is that, the fact that you are required by law to resign, especially those that are in government, parastatals, and all that, in my opinion does not appear democratic enough. Because you might have to look at it like, because, that is a game, and you may win or lose.

So, if it became a requirement that you are not actually quitting for good, those that hold strategic positions, like the AG, the Police Commissioner, and all that, those are exceptional cases, but even then, everybody has a deputy, to whom he can hand-over office. He can leave the office to this person, then you go for whatever period of time, and then we hope- it should be anticipated that you will not use your office to intimidate others.

We have of course seen Ministers, because when Parliament is dissolved it is like they are themselves left out. They campaign when they flying their flag. That is, there is no intimidation which is bigger than that. This is because, it is like he can intimidate other candidates.

Com. Wambua: Mr. argument Bwana Nzomoi was very simple that, the moment you give that guarantee, it could be counter-productive. Once you assure somebody that, run you lose come back, all of them will go. And basically, the Government.....*(laughter)*

Com. Zein: And again, on the example of a Minister. Instead of you making submissions on how to curtail abuse of office and intimidation, you are saying, if the Ministers are doing it, others should also be allowed to do it.

Joseph Nzomoi: Well, I would look at it differently, but I don't want to talk, it will take a lot of time. But it was simply meant for those people who feel that, if this requirement was waived, and even students were even free to take academic leave for one year, so that when they come back, the university will not tell them look, you left your studies and went to campaign. Go and do what you can. They will feel free and go and try their lucky and then come back. Thank you very much.

Com. Zein: Thank you, please sign our register. I would like now to call upon Bwana C. K. A. Maina.

C. K. A. Maina: Thank you Mr. Chairman. My name is Christopher Maina. I am the Dean of Students office, in charge of blind and physically handicapped students.

My question or my suggestion is, we have about 300,000 blind people in Kenya who have no access to books. They don't have books in braille they don't have books in the library, they don't have anywhere, they just depend on the lecturer to pass their exams. So, we would like the Commission to make it is mandatory for any book printed by the printers, must be accompanied by the Braille book. To put in the library, together with the other books, so that they have access, like any other person in the library, particularly for the blind.

Again, the AIDS has been declared a national disaster. And all materials are in plenty and I am wondering. Is it for the sighted people, this message, or it is everybody or everybody in Kenya. So, that one is supposed also to be put in place so that we can have access like any other person, ordinarily Kenyan, to have (inaudible) in the country.

Let me talk about the disabled persons. There have been receiving disabled students here and there and their access to the lecture halls or access to the administration block. They are stairs which can make the disabled person to go using the lifts to reach wherever he wants to reach. So, we need to dismantle those stairs starting with our institution before we go to the towns, so that people will have access to whatever they want. Even lecture halls or even hostels we need to have those stairs dismantled. I think Mr. Chairman that is what I wanted to put across so that everybody may have access to whatever they want. Thank you.

Com. Zein: Thank you Mr. Maina. Your points are clear, please sign our register. Can I at this point just see by show by of hands, so that I have a general idea of how many people are remaining. Can I see by show of hands, those who registered, but have been called to speak yet. Okay, that is one, just keep your hands up please, one, two, three, four, five, six, seven, eight, nine. Can I request to come all forward, to come forward, those nine persons who put their hands up, and take a turn each. Because I was calling people and they are not hearing. So, those who have not spoken and want to speak, please go and take the seat and give us your name.

Can I also just inform you that those who have written memoranda and they want to submit those to the Commission without speaking, can go directly to the registration desk, give in your memorandum and once you sign the register, you will be free to go. Those who want to just submit memoranda without speaking. If you could state your name for the record please.

Daniel Simatwa: Thank you very much Commissioners. I am Daniel Simatwa, and I came self, and a friend of the university. My presentation will mainly dwell on the reforms in public service.

You see the proposal which I am giving, will be based mostly on a federal system of government, and therefore, how should the Public Service fit in this. One thing is that, if we have a federal system, then we might have to have a Public Service for federal government employees. Then we can call it a Union Public Service Commission.

And then, in the provinces, we will have Public Service Commission at the province level. And, recruitment to the Union Public Service shall be drawn from the Provincial Service Commission, and there shall be a competitive kind of recruitment based on exams and such like things. And care should be taken to ensure that the Union Public Service Commission is fully representative of the countries, entthrography.

Another thing that I would like to mention about the Public Service is that, we have heard people holding very senior positions, maybe they are Managing Directors or Chief Executive officers in public institutions. I think their time should be limited. Somebody should not be an MD in a place or a CEO for more than four years. As we can see now, in this country, we have people who have been MDs for even twenty years. So, the time should be limited. And, in order to solve that problem I propose that, it should be based on seniority. Those who are just remaining with a few years to retire can be given that promotion, from there you go home.

The other thing I would like mention is on environment, the Constitution should ban any future excisions, whereby, if an excision has to be done, maybe to build a road through the forest or what have you, it should actually involve a Constitutional amendment.

On defence and national security, the Constitution should create the various defence forces. And there should be a Military Service Commission to look into the remuneration, promotion, and any other issue dealing with defence staff.

On the political parties, I propose that it be financed and the financing should be based on the strength of each political party in Parliament. If it has got 20% votes, then it should get 20% of the funds that has been agreed. So that, somebody does not come up with a political party because it will be funded. It has to be proved that it has got representation in Parliament. It is not just existing on paper.

On structures of government, I propose that the Parliamentary system, but the PM, unlike in other Parliamentary systems,

should be elected by Parliament. So that if a government collapses because of lack of majority, maybe a coalition partners is thrown or the party in which it was sponsoring has split or something like that, we don't have to necessarily go for elections from time to time. So, it should be very mandatory that a PM should be elected on the floor of Parliament by the MPs. And then this Prime Minister should have limited term of office.

Because we know that, there can be Prime Ministers who can also manipulate and stay in office until you are very tired of them. So, they should have two terms of ten years at the maximum.

And then we have the Legislature. I am proposing that we have two-chamber Parliament. Upper house which will represent the nationalities that is the communities and maybe districts, and other interest groups like farmers, business persons, manufacturers, etc. The ethnic representatives should come from the ethnic communities and district reps from districts. And then we have a way of electing the other representatives. Of these, in both houses, the lower and the upper house, 30% or let us say a third of them must be women.

And then, on the Presidency, I am proposing that since we have a Parliamentary system, then we will have just a President who is a Head of State and shall not have executive powers.

So, the Judiciary, as I said before, should reflect a federal system. Therefore, there should be a supreme court at the union level. And then the High Court should be based at the provinces. I think that one will bring the justice closer to the people.

On Electoral laws, I propose that MPs can be recalled if a certain percentage of constituents who elected them sign a petition and forward it to the Speaker. So the Speaker should also look at the conduct of the MPs. There should be a register in Parliament that shows the attendance, and also shows the contributions. Somebody may make a technical appearance in Parliament and goes to the bar because I know there is a bar just next to the Parliament, drinks the whole day, after making a technical appearance. So there should be a register to show that you are participating, and if the people petition, and the register is seen and it is wanting, then your election is cancelled. So, I think those are the few that I wanted to mention.

Com. Zein: Thank you. There are questions.

Com. Wambua: Very quick ones. One, you said there should be limit of terms of those who hold key positions. So what I want to know is does this proposal apply to both public and private sector?

Secondly, you said that there should be a limitation of the term of the Prime Minister, and then you said, two terms of ten years.

Is it two terms totalling ten years or is it two terms of ten years each?

Daniel Simatwa: Two terms of five years, so a maximum of ten years. And then the other one,

Com. Wambua: I have not finished.

Daniel Simatwa: Ooh, you are still going on. Sorry to have cut you short.

Com. Wambua: Then the question of the electoral laws, to recall the MP, two questions. One, is it the MP who should only be recalled? Or should we recall the councillor and also the President if they all fail to perform?

And then, lastly, when you say a certain number of people to petition. How many? Can we have a specific proposal of the number of people who should petition. And if you have thought of the procedure because, you are talking of signatures. How exactly do we recall these persons? Because, there must be a mechanism of avoiding abuse, whereby, your opponent who has just lost to an election, goes round collecting signatures, or even forging some, and saying that this man should come home. How exactly have you thought of the process so that we guard against a situation where people abuse that process?

Com. Zein: A small clarification, you are suggesting for the establishment of a Military Service Commission. Does this serve only the military or does it serve all uniform officers including the police and prison officers.

Daniel Simatwa: Thank you. First of all on the proposal of limitation of jobs/places of work. Okay, you know in the private sector, unless there is a system which will be worked out to ensure that there is also accountability, there is very little. But one thing that can be done there, which I forgot to mention is to set up a commission of equal opportunities to ensure that there is fair representation of all categories of people in Kenya, in every institution, even if it is private, so that even in the private sector, you have fairness being practiced there.

And two terms, I think I had answered that one. Two terms of five years each. And if a government collapses, somewhere along the way after three years, it should be an aggregate, maybe the man may still bounce back. So it should be an aggregate of ten years.

On recalling of MPs, of course I would welcome also your proposal to include councillors and President. But I know there will be a problem on how to make this petition really genuine, because, if I lose and then I time and sign a few people, but let us make it substantial enough. Let us say one-third of all the voters in that constituency. And perhaps the Election Commission should be involved in the so signing of the signatures to make sure that they are not fake.

Com. Wambua: Let me put something to you so that you understand my thinking. You have four participants in an election. If the leader or the one who wins takes a fraction of the votes, but it happens that the other three actually have more, and just the moment this man goes to Parliament, what these other three do is just to collect the signatures and say we want this man

home. Are we going to have that problem, where actually nobody remains in Parliament? In other places, we have been told, that, he should be given some time. So that really you know, he is not performing, if it is two years, three years, so that you can then say, this man has not done what we elected him to do, so let us now initiate. Have you thought of that mechanism?

Daniel Simatwa: Yes, I thought of that. That is why I am saying, even the Speaker should be involved. So that we see his record in Parliament alone, which is fairly neutral compared to what might be happening about the signing of signatures.

Of course, in the Military Service Commission, there should be a Police Commission. Of course, if you have this federal system, the law enforcement – law and order keeping will be based at the provinces. But still there will be need for other police officers at the federal level. Such as intelligence and investigation. So they will have their own Police Service Commission.

Com. Zein: Thank you very much. Please sign our register. Kijana! mimi nita-recognize watu. Bwana huyu amekaa mbele, wacha aende. Najua wewe uko, najua ulikaa karibu makisudi. Mimi ndiye nita-recognize watu. Asante, endelea Bwana.

Kennedy Ondimu: Thank you Mr. Chairman, for giving me this opportunity to address the Constitutional Review Commission. I would like to raise a few issues.

(Interjection) Com. Zein: Please, please state your name for the record.

Kennedy Ondimu: My name is Kennedy Ondimu. I am in the Department of Tourism, Moi University.

One of the issues that I would like to address is this one of social decay. And this social decay has come about as a result of modernization or westernization. In our African societies, I think we are losing some of our cultural norms.

(Interjection) Com. Zein: That point is very clear to us.

Kennedy Ondimu: And one of them is this one of increasing cases of incest. I don't know how the Constitution can address these issues. The issue that was covered was that one or rape, but I think also cases of incest should be addressed.

(Interjection) Com. Zein: What are you proposing?

Kennedy Ondimu: I think it is quite, I am not an expert in terms of law, but I think it is an issue that the legal experts should look at.

(Interjection) Com. Zein: But the position you are taking is that, we should not allow incest?

Kennedy Ondimu: Yes it should not be allowed.

The other issue is this one of environmental management. It is a reality that we are living in an age of increasing urbanization, and urbanization is a phenomena that we cannot do without. And I would like to appeal that, we need to have a parastatal. I would like, instead of having local authorities, the experience that we have in Kenya about management of urban areas, has been that, they have not performed. Even during the time of single party state, they have failed to perform, that is why we should to have several commissions.

At the time of multi-party, they have failed to perform. And I think, the only way that we should look at this issue, is trying to look at a parastatal that could be in-charge of urban management within the country. Because if you look at Kenya for instance, if you look at the municipal boundaries of Narok County Council, it covers the whole of Bungoma District. But what is actually urban is so small. So, if you look at Machakos, Mavoko, Ruiru, Nairobi, it is a very complex system that cannot be handled by some of the local councillors who have Form Four level of education. It is some professionals from diverse backgrounds.

The other issue that I would like to raise is this one on the number of political parties that we should have in Kenya. I think we have several political parties, and I think in order to overcome the issue of ethnicity in this country, I think we should reduce the number of political parties to about three.

The other issue also on the political area, is this one of pension. At what level should a Parliamentarian start getting pension?

(Interjection) Com. Zein: What do you propose?

Kennedy Ondimu: I propose, instead of them having maybe ten terms, after two terms, I think we should have a time limit for somebody to serve as an MP. Maybe, three terms of five years, and after those three terms, is when he will be legible to get pension.

It has to be continuous for the three terms, but if somebody is voted out and then he is voted in, then he should be maybe a total of ten. So, it is possible for you to be denounced in an election, then you make a come-back. That should be at least two terms.

The other issue, I think that should be safeguarded in the Constitution, is this one of the initial Constitution that we have. I think it was focusing on poverty eradication ignorance.

I think the Constitution should be very clear about self-reliance. We should strive towards self-reliance, and that is how, we have tried to conceptualize the issue of industrialization by the year 2020. So, the relevant machinery should be put in place to ensure that the country attains self-reliance in terms of industrialization, human resource development, and also food security or self-sufficiency.

The last issue, that I would like to raise is this one on education, whereby we would like to have harmonization of training..... (*end of side A*) come up with an educational levy. Should also be all encompassing. In that, people in the Civil Service can contribute, people in the industry can contribute, among others, to that training levy so as to boost the funding for our training needs within the country. I think those are the comments I had to make.

Com. Zein: Thank you very much Bwana Kennedy. Please sign our register that you gave views to the Constitution of Kenya Review Commission. At this point, just hold on, just hold on. At this point, I would like to give a chance to the Vice-Chancellor to make brief remarks because he is required to attend to urgent business elsewhere. So I will just break, and give him a chance to make brief remarks, then we will continue with the session. Thank you. Vice-Chancellor,

Prof. Munavu: Thank you very much Commissioners. I am hoping that after I make the remarks, please don't leave, because this is really a very important process in constructing an instrument that will guide all of us, as Kenyans to a future, a future that we shall all create together. I would therefore like to take the opportunity to thank the Commissioners and to thank all of you for your patience, and for your continuing contribution in this process.

I sympathise with the Commissioners, because, I think I have heard so much, and yet we will be expecting them. But they are all capable of really collating these ideas and coming up with a suitable draft of a Constitution. The one or two things that I will take myself from here, is for example, that we are constituting or contributing to creation of an instrument that will enable all of us as Kenyans to be able individually to achieve our full potential. That to me is extremely important.

Some people will call it devolution, Some people will call it empowerment. But by the end of the day, it is we as individuals and communities to achieve our full potential. You have heard of proposals to construct a schedule of guarantees in the Constitution and rights. So, the right to education, the right to free movement, the right to life, etc. All these are extremely important.

Now as Munavu I ask myself, is it therefore not also possible. Shouldn't our Constitution also and I haven't heard this, also specify a Bill of Obligations. A schedule of obligations that all of us as Kenyans, in a sovereign state are also obligated to do to certify our citizenship. I think and I believe that is important. The closest it came, was when somebody indicated, of the right to vote, that you must vote, if you don't vote, then you are violating some obligation. I really think, that Commissioners, you

must ensure that we are very clear. When you register, by birth, and that card, that you are a Kenyan citizen, what do we expect you to do to be a Kenyan citizen.

The other thing that I think is important and I did not hear it coming out clearly is, we have talked about a Preamble to the Constitution. To me, we need to be able to specify, that Preamble should be able to indicate the values, the normative values, which we all accept as Kenyans. The rights and the wrongs, the ethics and so on, that unite us and make us one. I think, therefore, it will be necessary for us to be able to make contributions regarding those sort of normative values that and they will form the foundation for a good Constitution.

And thirdly, and most important, is Commissioners, the process that we are going through is extremely important for us as Kenyans. One of the contributors there said that the Constitution is so important, that it should not take an afternoon to just amend.

My personal view is that, this process is so important that it should not be rushed. My personal view is that, when we talk about extensions and so on, it is not extension to the Commissioners, it is to give Kenyans space, and time. We are asking for extension as Kenyans, to be able to fully participate and digest whatever will eventually guide us now and in the future. And therefore, we need to be looking at the other side of the coin because, people are saying, it is extension to the Commissioners, no. It is ourselves asking for time. Because, I would like to see, once the draft is prepared, for us to again read it, and to have an opportunity to discuss the way we are discussing. Ensure that our views have been taken into account, etc.

And finally in my view, it should not be linked to Parliamentary extensions and elections. This is an extremely important process for Kenyans, and we take it clearly in our hearts and in our souls. I thank all of you. I am very impressed with the contributions that have been made and I thank you Commissioners for your patience and I am very delighted that you are able to visit Moi University. Thank you and may God bless all of you. May I go now? Say yes. Thank you. (*clapping*)

Com. Zein: Prof. Munavu, the Vice-Chancellor sir, on behalf of the Commission, we would like to extend through your office, our sincere thanks. Not only for making today possible that we can come and harvest the views of Kenyans, eminent scholars, and students of this fine university, but for all the preparations you have made before and the close co-operation you have heard in terms of carrying out civic education in the university, and that the senate has taken a chance, I think I am not wrong to say that this is the only university which has taken that step of sitting and giving great thought to what kind of Constitution dispensation we should have in our nation and we appreciate that. We thank all those who through your office have made this work possible. Thank you very much.

Com. Wambua: Something very interesting which I should mention before the Vice-Chancellor leaves, I wouldn't have liked to say anything after my colleague has spoken that, it is important we come for this kind of special visits because, we never

thought, when we were listing the natural resources, that the human resource is so critical and in fact you can see that we have now harvested this on an extra-ordinary resource which, those who formulated issues actually did not include. So I think it was worth-while to have come here, and we take those views very seriously. Thank you.

Com:Zein The young man who was agitated to speak. You in a white shirt, no, no, don't look back, you, you are two, the gentleman at the back three, four, five the gentleman with a blue blazer. Anyone else? Hands up. Five, six, have I left anybody? Seven sir, with the blue sweater. Anybody else who has been left out? Everybody knows their number, so after he is done, I think the gentleman who went out, will automatically become eight because he was not here. And then, from there, we can close this session.

Augustine Miencha: Okay, thank you very much for this opportunity. I have a few issues I would like to raise.....

(Interjection) Com. Zein: Please state your name for the record.

Augustine Miencha: I am Augustine Miencha.

(Interjection) Com. Zein: I would like every person who is given a chance to speak, if you are supporting a position which has been taken by a previous speaker, just say, you support it and go ahead to make new points. But if you are coming to just support, either say you support it or just don't mention it.

Augustine Miencha: Okay, thank you very much. The first issue I would like to raise concerns the civil service. And in the recent past, we have witnessed cases where civil servants are usually influenced by politicians. And I would like to propose that, the civil servants are supposed to be independent, so that they cannot be influenced by politicians to move maybe from their area of work to other places.

The next issue I would like to raise also concerns our Constitution. It is very important that we, as Kenyans understand clearly what our Constitution is all about. I am very sure that, even as at now, there are very few of us who clearly understand what we are supposed to contribute towards the amendment of this Constitution. So, I would like to propose that in future, this Constitution should be made aware to all citizens and at all times, so that they can learn to know their Constitution.

The other issue concerns our Government, the three arms of the government, I think that one has been said. I support that the three arms of the government should be independent as much as possible.

The next issue, very first, concerns the representatives in Parliament. We would like to see a situation where all people are represented. And in this case I would like to propose that, if it will be possible, let us have university students also being

represented. Therefore, even a session of three years, something of that kind.

And then the next concern is about the voters, voters registration and identity cards acquiring. We would like to see a situation where, once somebody has gone to acquire an ID card, that is the time he or she should be issued with voter's card. So that we cannot waste a lot of time again coming to give these people the cards.

And then lastly, concerns also elections. We feel that, if it will be possible, let us have our elections at the end of this year as it is scheduled. And then during the time of voting or elections, we should have these voters kept until the elections are over, so that we cannot have people voting twice or thrice. Thank you very much.

Com. Zein: Thank you very much. Please sign our register. Number two please?

Samson Nyalechei: Thank you very much Mr. Chairman.

(Interjection) Com. Zein: Excuse me, just a minute. Those who are following these deliberations from outside, you are free to take the comfort of the chairs inside. There is a lot of space if you like. You could come inside and have a seat. This is an open forum. Thank you, state your name for the record please.

Samson Nyalechei: My name is Samson Nyalechei, I am a member of staff of Moi university. I don't want to dwell very much on what most people have said, but I want to support a decentralized form of government in our new Constitution.

People haven't said anything about taxation, and I believe our Government relies mainly on taxation to provide services to its citizens. I propose that, taxation be broken into two types. Some to be collected by the federal system of government, and part of it to be collected by the Central Government. What the federal state collects should be used in the federal state to provide services for that particular state. Part of it can be remitted to the Central Government, depending on the amount it collects. I propose they use 70% and 30% goes to the state. I also propose that there be a division on the type of public servants that we have. We should have public servants that belong to the state – to the Central Government, and such servants should not be the ones that are directly to undertake services to the citizens.

Like the Army, the Central Government should be in control of the Army. The Police, should be the duty of the federal state, because the lose or rather the Police for example, control the government of the federal state in most cases, or rather, they are in-charge of ensuring that there is security and that should actually be within the federal government.

People are talking of too much government in our current set-up of government. To me, I think there is also too little government in most cases. Like when we go to our localities, we find that there is no government to provide services. I believe

the locals should actually be ones responsible for deciding what kind of development they require in their regions because we have unique problems in our unique localities. So I believe, there should be a form of government that ensures that the people in a certain locality or a certain state, decide which development they want and they should prioritize. Not somebody in Nairobi to make decisions for people out there, and yet he doesn't know their actual needs.

And I believe that form of government – the decentralized form of government gives the citizens a sense of belonging to the state. So they become responsible. And I believe that way, we will make sure that the state resources are not wasted, because the people themselves will make decisions on what they want, and they will feel because it is them who decided, they ensure that it is not wasted and if properly utilized.

(Interjection) Com. Zein: The point is made sir. That is clear to us.

Samson Nyalechei: I don't have much.

Com. Zein: Thank you very much. There are no questions, please sign the register. Number three please? It is not possible to have two number threes. I was very clear, excuse me sir! I was very clear that he was number three, I kept on asking him, and I told him don't turn back. So, I don't know what number you are. You cannot be number three, he was number three, and I remember that very clearly. May be I will make you number-and-a-half, but please step back, let number three come, then we can negotiate what number you are. Who was number four? Number five? I can't have three people saying they are number five. I had asked the gentleman in the blue blazer to be number five. I am very clear in my mind who I asked to be what number. So, don't think because I have not written I can't remember. Please, don't put your hand up if you were not given a number.

Lucas Ombongi: Thank you very much for giving me such an opportunity. My names are Lucas Ombongi, I am a student in the Faculty of Science, taking Chemistry, and I would like to contribute three issues.

One, I would like to mention something to do with educational set up in this country. And, in that connection, I was suggesting that, it clearly be indicated in the Constitution that all learning institutions should be under universities in this country. Such that, even primary teachers training colleges, technical institutions and all those, be under and directly answerable to any university in this country.

Secondly, I would also comment about the military force in this country. Now that, in this country, graduates have come up, I would also like the military force to include graduates in their recruitment. And that one, should now, the present education in this country should be done up to half – a half should be graduates in any military force, be it the police force, to allow research in criminal issues.

I will also concur with one of my colleagues that, funding of parties be done, be it opposition or the ruling party, let them be funded by the state. And also, any contesting candidate should also be funded by the Government. Either Opposition or in the Ruling Party.

Lastly, I am supporting two things. The federal government and then, elections be held under the present Constitution. Thank you very much.

Com. Zein: Thank you Lucas. There are two questions here.

Com. Wambua: I would want to find out from you whether this system of colleges being answerable to the universities is at least in any country in the world you are familiar with. Or it is something which you have just thought through it.

Com. Zein: In addition to that, we have heard submissions today, that people are asking that university should be autonomous. If you apply the same principle then, other higher institutions of learning will also say, if the principle of autonomy applies to university, it should also apply to us. How do you reconcile that?

Lucas Ombongi: Okay, in this sense, what I am saying is this. Universities should be allowed to be on their own. And then, all other institutions be incorporated to the public universities, such that, if it is research being done by, let us say an agricultural institute, let the university be aware such that, it can also contribute in that line.

Com. Wambua: I have traveled a lot but I have not heard of any country where that system operates. Do you have in mind a country where you have those kind of arrangements, the universities holding all institutions being affiliated to universities. I had asked you earlier on whether you are aware of any country where that system works. A model where institutions are affiliated to universities or it is something which you are coming up with and you are saying, look into it.

Lucas Ombongi: I will say that, let us try it in Kenya here.

Com. Wambua: Thank you.

Com. Zein: Thank you very much.

Lucas Ombongi: Thank you very much.

Com. Zein: What number were you?

Lucas Ombongi: Three.

Com. Zein: What number had I given you?

Lucas Ombongi: Three.

Com. Zein: Because, there was one person here.....The one who was sitting there? Yaah, there was some person sitting, please sign our register. Number four? My brother who was also number three, just hang on, I will give you a chance to speak.

Danze Logada: Thank you very much the Commissioners, and the house at large. My names are Danze Logada and I would like to contribute my views, basically on three issues.

The first issue, is in the private sector – the employees. You find that, there are these private investors who are exploiting our fellow Kenyans in terms of payment. So, I am suggesting that the Government should at least control, should cater for, should put some percentages, as far as their production is concerned to the payment of the employees.

The second is on the issue of the scholars. You find that, here in Kenya and any other African countries or any other least developed country, the issue of the set-back is on the fact that the Government does not encourage the scholars or rather the scientists and the technologists, etc. So, I am suggesting that, there should be a welfare of scholars, who should be presented in the Parliament. They should be presented in the Parliament.

And the last one, is on the importation. The restrictions that are there on importation, I don't see them being so much implemented, because you find that our natural resources and our human resources are lying without being used to maximum. Because, we have got a lot of products from outside that are surely, which are more cheaper than ours, hence making our products not being attractive to our Kenyans and also the other states.

My support is basically on federal government, and the fact that there should be a Minister who is elected by the people. And also, the election should be done late this year, not to be extended to next year.

Com. Zein: Thank you very much. Please sign our register. Number five?

John Okwiri: Thank you very much Mr. Chairman of the Constitution Review Commission. I want to thank God for having this privilege as a Kenyan, to air my views and contribute to what is required of us today. What I am touching is a little bit

sensitive but, as a Kenyan, I believe I am privileged to do so.

(Interjection) Com. Zein: Please state your name for the record. But, also let me assure you....

John Okwiri: My names are John Okwiri, I work for this university. I am heading the section of registry.

(Interjection) Com. Zein: Please let me assure you that whatever you say here is protected under the Act which governs the Constitution Review process.

John Okwiri: Thank you. Now, what I want to talk about is on the freedom of worship in Kenya. Now, when I grew in Kenya as a young boy I used not to hear of devil worship in this country. But somewhere along the line, it is paramount, it is talked about everywhere, until it reached a time when the Head of State appointed a Commission to inquire into this act in Kenya.

Now, I was proposing that every Kenyan and we believe we as Kenyans, we worship the Almighty God. The one whose throne is in the highest heavens. I would call it the third heaven, the Muslims, the Christians, we all originated from the Almighty God. But, it looks like the Constitution, the one we are now trying to rewind up, was constituted by the colonialists and they left a loophole. I have not read what the Constitution says about the freedom of worship. But somewhere along the line, people had the advantage of luring Kenyans into worshipping the devil. And there are some churches, some sects, which are very open that they are worshipping the devil. This is very true and every Kenyan knows this.

So there could amendment on this particular part of the law, that every Kenyan should worship the living God, and try to control the registration of many sects, because like right now, it has become sort of a business. That there are so many of them that you cannot determine which is right and which is wrong. Now, you being professionals, you will know how every Kenyan can worship the holy living God.

Last but not the least, is the control of HIV/AIDS. It is something that I have really wondered because there was a time I was in the Faculty of Health Sciences, and trying to go through the graph of HIV-affected countries. And I realize that, the Islamic countries, this thing is almost zero. Meaning that, the Muslims are somehow disciplined on that part of sexual immorality.

Now that, we are all Kenyans, Muslims are also here. I don't know what their law says about it.. When I was asking a friend of mine who is a Muslim, he told me Brother Okwiri, we are not allowed as Muslims, to peddle around with the business and they are part of the law that, you will be punished and the punishment may be very severe, and in some parts, you may even die the death like one of the sisters said that you maybe castrated. I don't know.

Now, if the part of the law of the Muslims can help us stop this spread of HIV/AIDS, I think we should marry that part of the law. I don't what their law says, but if it can stop this, because it is very clear, you know it and I know it, that most of the Muslims are not perishing like the other sides – let me say it very openly, Christians, they are really perishing. So, my proposal is, if there is any part of the Muslim law which can stop this, or say, if a man is met committing an adultery outside the marriage, if he would have to die the death, I think that is the kind of death one should die than one dying of AIDS. So, with these few remarks Mr. Chairman, I would ask my fellow Muslims who are here, to help us because the situation is getting out of hand. Thank you very much.

Com. Zein: Thank you Bwana Okwiri. There is a question for you.

John Okwiri: Yes please.

Com. Wambua: The Chairman of the session is a Muslim. I wanted to ask you, you said that there should be a provision that Kenyans should worship the Living God. What is your proposal with regard to atheists. Do we make it unlawful for someone to be an atheist?

John Okwiri: To me, I would say, we make it illegal for atheists to exist because there is a Living God. (*laughter*)

Com. Zein: Thank you Bwana Okwiri. Please sign our register. Nilimuita mzee, sasa kijana ameenda mwenyewe bila kuitwa. Haya, asante Bwana. Taja jina lako.

Dominic Mumbu: My names are Dominic Mumbu, a student's leader, a third-year forestry student, here in Moi University. Let me take this opportunity and give out my proposal concerning the future our country Kenya.

My argument is touching some of the social evils which are with us here, and this has been touched by Mr. Okwiri, Prof. Sang, and it is concerning the corruption, HIV/AIDS, divorce. So I tend to think the best way out to solve these problems, is to recognize the role which is played by our church groups here in our country. And there is a need to create another new Ministry, and this Ministry can be called Ministry of Spiritual Affairs, whereby we can recognize the roles which are played by these organizations, or the bodies in upbringing of the well-developed individuals.

And to continue with this, I think it is also good for the Government to give some allocations to this Ministry of Spiritual Affairs, whereby people can be taught to childhood on how the best morals to live by and from there, we shall not have these other problems of corruption and HIV/AIDS. For example, right now, we will not have the cure for the AIDS, but through the good morals, we can eliminate this disease.

Now, here I have a case study whereby, like the European countries....

(Interjection) Com. Zein: My brother, we have said that we don't want to go into case studies, histories or examples. You have made the point that, you are proposing that, one, there should be recognition for the role of religious organizations, and be incorporated in the Government. Two, the establishment of the Ministry of Religious Affairs.

Dominic Mumbu: Yes.

Com. Zein: And that, that Ministry should be in-charge of setting out moral standards for Kenyans. And that you feel by that we will curb the things you are calling evils. Now, what is your next point?

Dominic Mumbu: Okay, the other point is, now that he has seen that we are supposed to have education for all, whereby the parents are supposed to take care of their children, but for the orphans and other children who maybe from the poor families, their education can be catered for by this Ministry through the allocations from the Government.

Com. Zein: Thank you very much, please sign our register. Number six. You are number six? Number seven, can I see? Number eight? Number eight has not come, he went with the Vice-Chancellor. I have seen your hand. Yes, I have.

Enock Moturi: Thank you Mr. Chairman. My names are Enock Moturi, I am a student in Moi University. I want to be brief.

One, I would rather like a Constitution that emphasizes or gives or can actually prevent the State from impoverishing its people. If we can see, the informal sector has been impoverished by the State, due to the fact that maybe when there is a development going on, to become a city or something else, the State tries to interfere with the people at the..... So my proposal is, we have a Constitution that can protect its people from state interference.

Secondly, I would like a Constitution that emphasizes on a Minister taking action individually on a Ministerial post.

Thirdly, I would like the Constitution that gives people autonomy to dismiss MPs who fail to offer them services that they are required to render them.

And, I would also like a Constitution that emphasizes on economic growth, so that we can have transparency and accountability so as to curb this vice – the so called corruption.

Another one is to have Attorneys or Lawyers appointed for those people who cannot be able to pay them, so that they

represent them when they have cases.

And another one is, we have a Constitution that emphasizes on Parliament, dissolving the Government and not the Government dissolving Parliament.

And lastly, the Prime Minister or the Executives in the Government should be liable to Supreme Court. So, I am for the federal government. Should be liable to Supreme Court, in any case, they fail to offer or protect the citizens. Thank you.

Com. Zein: Thank you very much. Please sign our register. Number seven? (*end of tape*) Songea karibu tafadhali. Wewe ndugu yangu, hutaki tena kusema? You wanted to speak? So, you come next, and please come forward. You are after him, and then she is going to follow you.

Felix Orech: Thanks a lot Mr. Chairman for giving me this chance. I am Felix Orech, in this University taking Education Science, and a principal to be. I would like to give some few suggestions.

One concerns is the issue of unemployment. I think this is an issue which we shall never deal with because we training more people. Because of that, I strongly feel that the Constitution should state that the Government comes up with a body to be in-charge of employment, such that it can be given some of these responsibilities.

One, it should be allowed to go out for research and look for employment opportunities elsewhere outside the country where we can get our people.

Two, it should ensure that the projects started by the Government are sustained, such that we cannot have people who are unemployed.

The last one, it should also ensure that people who are working, they are trained. Because there are some other people who can be employed as per the community where they come from, but untrained. Under such cases, that body should be out for that.

The second thing, we have been talking things concerning elections. And I strongly feel that we have been seeing elsewhere, where election is followed by violence. I strongly feel that the Constitution should state that any candidate who is behind any violence during elections, should be imprisoned for five years as long as there is prove. (*laughter*)

And the next thing maybe the last one, concerns what we call discipline in schools. I am strongly against the barring of caning of students. Because, most of us were caned and that is the reason why we are here. Those are young people who have not

known the importance of going to school. If we leave them as per my own research that I have done privately, I have seen that teachers have become more reluctant because they know, students know their rights. If these small students can make me lose my job, what can I do? I teach, if they want to take in, they take or if they don't want I leave, under such cases, we are heading nowhere.

So, I strongly feel that if there is anything to be done, the Government should come up with a method of teaching students while training them, they teach them different methods of disciplining students, how to discipline, and to what extent and under what circumstance.

(Interjection) Com. Zein: Point made. You have made your point. You have another point?

Felix Orech: Maybe the last one, I would like to add is that, the Government instead of allocating cash to education, it should at times give in material equipment, like now laboratory equipment. Because if I come from a poor school, and I am trained theoretically, under such cases what I am going to teach other students elsewhere? Thanks a lot.

Com. Zein: Just hold on!

Com. Wambua: You are talking of a body to deal with employment. Since independence, we have had a Ministry of Labour with a Commissioner for Labour. I don't know whether you are aware of that? Are you thinking of a body which should perform functions different from what that Ministry is performing?

Felix Orech: Under such cases, that body can be under that Ministry, but, those duties should be upon it. More especially when it comes to research, where we have employment elsewhere. Like now the East African Co-operation, you can take people to Tanzania to be teachers there and such cases.

Com. Zein: Thank you. My brother.

Eric Ochieng: Thank you very much Mr. Chairman, the Commissioners, Ladies and Gentlemen. I am glad to be given this opportunity to also present my views as far as the Constitution Review Commission is concerned. My names are Ochieng Eric, I am in the Faculty of Forest and Wildlife Management, in the Department of Forestry. I am a student.

I have got two points to put across. The first one, is on the election of the MPs. We find that in many cases, when MPs are elected, immediately after elections they disappear, only to come back after four years, to lure the constituents to give them another opportunity to also go to the Parliament, while they have delivered nothing completely.

So what I would suggest or my proposal is this, the Government should come up with a Constitution that will commit each and

every MP to his constituency, thereby, if in any case the MP does not deliver so well in the constituency, then he or she can be demoted. And also, the constituents also should be guaranteed an opportunity to re-elect an MP if at all he or she is not delivering so well as far as their expectations are concerned.

Secondly, I would suggest that each and every President who is elected should have a one five-year term, not more than one.

And before any general election, we as Kenyans should be told, each and every party should nominate one person who is going to represent them in the general elections, so that the people can know who is going to represent them and therefore they can weigh the potentiality of that person. And this can be done one year or two years before the general election. This will enable us as Kenyans to elect people who are responsible and who are honest, who are going to deliver so well as far as we expect of them. Those are the points that I have. Thank you.

Com. Zein: Thank you very much Bwana Ochieng. Tafadhali u-sign register yetu kwamba umetoa maoni kwa Tume ya Kurekebisha Katiba. Yes,

Nelly Sambu: My names are Nelly Sambu. My contribution is basically on education. My emphasis on the girl-child education bills have been passed about the girl-child's rights to education. But this concept should be incorporated in the syllabus so from Standard Four the child is being educated on his/her rights. So that in case the child comes from a community which is still backward or they are not informed, the child is able to stand on his principles.

Concerning civic education: The exercise of the Review Commission we are undergoing now is a very important part of nation building. So it is very important that from the primary level, each student, each pupil who is a Kenyan citizen is being educated on the laws of Kenya, so that they will be able to know their rights, to know their obligations to the country and to respect the dignity of the country.

Concerning social-ethics: In most cases we have heard the cases of corruption in our country. This is due to lack of the eradication of African culture, eradication of the Christian culture, so the society is left without a basis of moral balance. So there is need of social ethics, so that the Kenyan citizens are educated on their social norms, their social responsibilities, that wherever they will be put, in whichever firm or company they will be put, they are responsible for the development of that company.

Concerning sex education: AIDS has become a disaster in our country. It is very important for each Kenyan citizen to be educated concerning sex as part of human dignity. We have to preserve sex. It is a very important tool in our society.

Concerning family and marriage, still under the sex education: It is very important for the students to know how a family

should be conducted and how it should be managed, so that they will not rush into irresponsible sex behaviour and end up into broken families. We want a family, a strong family which will build a strong nation for the later generation.

Com. Zein: Thank you very much Nelly. I will just ask for the record, has there been anybody who has registered and has not heard their name called? Who has registered? Did you register? And you have not been called? And when I asked those who want to speak to put their hands, why didn't you put your hand up? And did I give you a number? Okay, since you had the misfortune of sharing a number with someone, you will be last speaker today. Only mention what has not been mentioned. Just go and have a seat. The young man, yes, you have your hand up. Do you have something which you feel has not been mentioned at all, and you would like to mention it? It is completely new? Okay, just come forward. Come forward. Go ahead, mention your name for the record.

Stephen Apel: Thank you Commissioners. I am Stephen.....

I didn't ask you. I asked that..... yes, yes you now. This other young man has just cropped up and what is your problem? *(laughter)* No, I am talking to you? Just hold on a minute? Yaah, completely new? If you speak, you tell us something which we have already heard from today, I will stop on your trucks. Come and sit here.

Stephen Apel: Yes, I am Stephen Apel. I have the following for the contribution of today. I have had a chance maybe to pass through the introduction of the current Constitution. But it doesn't give the objective of what Kenya means. Even the word Kenya, we were just given by the colonialists. We didn't have anything to bind us by that. So, we want in our new Constitution to have a new name for the country. *(laughter)*

(Interjection) Com. Zein: Do you have a proposal to make of the new name?

Stephen Apel: The proposal I would say, we want a name that entails everybody even if.....

(Interjection) Com. Zein: Do you have a name in mind?

Stephen Apel: Yes, I have this in mind. Some initials to the word Kenya, so that we have something like "the Democratic Republic of Kenya".

Com. Zein: Sawa.

Stephen Apel: Yes Secondly I will propose this system of government – a coalition government in which the President must have 65% of the total votes, 30% of each of the 8 provinces. The Vice-President must also be a member of one political

party, so that he must be the first runners-up with at least 40% and 20% in each province.

In the Cabinet, this should also be shared in the ratio of the total votes that each party, or whatever the number of parties in Kenya will be. If for example they are ten political parties, and we have 100 voters, we will share that one into that ratio.

In the Judiciary, I will just emphasize that the Judiciary should be elected by the Members of Parliament.

Public institutions, more so, those ones dealing with funds, the auditors or those people managing those institutions must be registered Certified Public Accountants, so that they are accountable because they have realized that, those are organizations that are more transparent.

In the land laws, it doesn't matter how much you have but rather the use. So I will suggest that an individual should not have more than 500 acres of piece of land, Unless the entire piece of land is under use. For example, agriculture, industrial or an institution is set that place.

Under unemployment, one-man-one-job. If you have to get the second one...

(Interjection) Com. Zein: That has already been made. You are supporting it?

Stephen Apel: I just want to emphasize. If you have to get the second job, then you have to do it for free. Thank you.
(clapping)

Com. Zein: Thank you very much. Please sign our register. Yes, you said you have completely something new we have not heard throughout the day.

Mwasame Titus: I want to thank Mr. Chairman for giving me this chance.

Com. Zein: You are using your time badly. You thank me, your minute is gone. State your name for the record and tell us what it is you wanted to say.

Mwasame Titus: My names are Mwasame Titus, and I am taking EDS. I want to suggest that the Kenyan Constitution to be taught in schools as a subject, so that....

(Interjection) Com. Zein: That has been said, that civic education should be in schools and the Constitution should be taught in school, done.

Mwasame Titus: Another thing is that our education system should be made in such a way that it prepares Kenyans to be able to use their own resources available to develop, not anything from outside.

(Interjection) Com. Zein: That point has been made, that education should inculcate a sense of self-reliance.

Mwasame Titus: The third point I have is that, the Constitution of Kenya should allow teachers to form a body which will be responsible for their employment and in whatever case, when they have a problem or that body particular should be able to punish and counsel the teachers.

(Interjection) Com. Zein: At this time, there is Teachers Service Commission. You feel that the Teachers Service Commission does not play that role adequately?

Mwasame Titus: The Teachers Service Commission is being used by the Government as a.....

(Interjection) Com. Zein: So you want an independent Teachers Service Commission?

Mwasame Titus: Yes. Because, the TSC....

(Interjection) Com. Zein: Point made.

Mwasame Titus: Now, another thing is that the Kenyan President should not be given the powers to appoint the Vice-President.

(Interjection) Com. Zein: That has been indicated. They want a person who is standing for Presidency to have a running-mate and both of them are elected.

Mwasame Titus: Okay, another thing is that we want to register a party that is for university students in Kenya. *(laughter)*

(Interjection) Com. Zein: That is a new one. You should have started with that one. All the others have been made. Please state your name and

Edwin Kiria: I am Edwin Kiria. My point concerns about the young writers. I would like the new Constitution to include a law whereby, the upcoming writers are protected. And let us have not a case whereby, the upcoming writers are fearing to come up with new information because they are fearing that there might be interference with their messages. Because currently,

there is no body

Now, I propose that there should be a body that is there to look at the literature which is being written by the writers, that before the literature is published it has already passed through that body to prevent the cases whereby after writing the information, we have somebody being filed in court because he has written faulty information. And this brings about the discouragement of another writer who was proposing or thinking to write about something else. So, I propose that, then, there should be a body which is purposely for the writers, that they should know themselves and exploit their rights. Although what is there currently is not.....

(Interjection) Com. Zein: Are you suggesting, because we have had submissions today, in relation to intellectual property. And currently, there is the Association of Writers of Kenya – Kenya Writers Association. You feel that is not adequate.

Edwin Kiria: I feel that what is there currently is not so much adequate to protect the rights of writers.

Com. Zein: Fine. That was all? Thank you very much. Please sign our register. That was the last speaker for today's session.

Allow me to take this opportunity to thank again, the administration of Moi University. I thanked the Vice-Chancellor and I had asked him to extend our sincere thanks through his office to the administration of the university.

But also, allow me to thank all the students and the leaders and the students who have made submissions to the Constitution of Kenya Review Commission. We have had a very fruitful day, we have harvested very interesting views, that is what the law allows me. I can't say they were good or bad, but very interesting views. And I would like to assure you that those views would be taken into consideration and given the same weight as other views which have been submitted to us by other Kenyans.

We are also very happy to be able to hold a special hearing, for those who are coming late, this was a special hearing for Moi University. But we are also happy that Moi University opened its doors for members of the public to be able to come and present their views.

Allow to also say to you that we have collected views in all provinces except the one we are collecting views from now, which is Rift Valley. And then we will finish with Western Kenya. We have been going alphabetically. So, we will finish with Western Kenya as the last province. This will be completed on the 30th of this month.

Immediately after that, the Commission will sit down and start the process of collating the views of Kenyans. We have

collecting, so we will be collating views of Kenyans. And once that is done, we will write a report, constituency by constituency, and that this report will form the basis of writing the national report which will form the basis of designing a draft Constitution. All these three documents will be availed to Kenyans through our infrastructure and other distribution lines. So that, Kenyans can then verify that the information that is contained in the constituency report, in the national report and as a consequence, the proposals we are giving for a new Constitution dispensation, are based on the views that you yourselves gave us. This is how the law is written and what the law requires of us to do.

After that point, we will constitute the national conference which will bring together about 600 delegates from all over the public including three delegates who will be elected at the district level to represent the district, to come and debate, and scrutinize, and interrogate those reports as well as the draft Constitution. And refine it in terms of the discussions that they will have.

If we have consensus at the national conference, then we will take the document directly to Parliament. But if there is no consensus at the national conference, then we will have to organize a national referendum. And the people of Kenya including yourselves, will also have a chance if that happens to take part in a national referendum to make the final determination, then this document will be taken to Parliament for ratification. Those are the stages that are remaining for the review. And we have said like many other people have heard before, that we as a Commission have made a technical presentation to Parliament to extend our term, and there is a lot of confusion about that.

Because, people think that when we ask for the extension of the review process, we are automatically then asking for the extension of Parliament. And those two things are not linked. We are qualified and competent to only ask, under the law, for the extension of the Commission and not any other institution in the country.

Madam Principal before you came in, I was just saying that we are very grateful for the opportunity to come and interact and harvest views from the students and we had asked the Vice-Chancellor to communicate our thanks to you and the other administrators in the Commission.

With those remarks, I will ask my fellow Commissioner if he has something to say.

Com. Wambua: I will say just like they say in court when Judges are delivering rulings, that I have nothing useful to add to what you have already said. I fully concur with it, and I wish to thank the community of Moi University for facilitating this sitting and hearing. Thank you very much.

Com. Zein: Thank you very much. I would like now to formally say that this session has come to an end, the sitting of the Constitution of Kenya Review Commission and I would like to go back to the Principal if she has something to say and then possibly like morning, Madam, if you can call someone to lead us in prayers.

Prof. Kamal: Thank you very much, the Commissioner. I think mine is really to thank you very much for giving Moi University the opportunity to express themselves. You have heard the full management today, you have heard our students both post-graduate and under-graduate students, our lecturers, so we really feel privileged as a university, that we are given an opportunity to express ourselves as far as this Constitution making is concerned.

I really want to mention what I heard you mention as we were coming in. The issue of Constitution, to some of us is very important and we really feel that you as Commissioners should take the liberty to spend enough time, to pay attention to every detail of what we have said, some of our views may be completely different from what you heard from the other members of the public. But we really feel that a lot of importance should be paid to what Kenyans are saying, more than whether we extend Parliament or we extend your period.

We also think that the Commission should not be hurried itself in this process. Because it is a process that has come after forty years, and as I mentioned in the morning, maybe this will have to lead us for another forty years. I should really think it is important and fair, that all the views are brought together and are collated properly, analysed properly, as a member of a university, academic team, I know that it takes time to analyse issues. But we know that you have a very competent team that is doing the analysis, so that you can be able to do things concurrently. But still, the last view must be considered because that could be the turning point for this nation.

So, really what I am saying is that it is very important, that as Commissioners you are able to really give us something out of what we as Kenyans have given you, and we really think time limit should really come from you yourselves. To say that you are satisfied, you have had enough time. And it should not be pushed from anywhere else. After all, where is Kenya running to? there is nowhere we are going to, we really need to get a document that should be there.

So I just wanted to mention that because it is something that all of us have wondering about, whether Parliament should be extended or not, minimum reforms should be given or not, but we want is a comprehensive document, a comprehensive Constitution that will take care of us for another generation.

We really want to thank you for the patience that you have had with us. I think all of us have had our chances to express what we wanted to express and we really must thank you very much for that. Some of us have given own written documents and we are glad that you have assured us that you are going to read everything that has been presented, and really want to just thank you for that and to wish you well, as you go about your business in this country. You must have now learnt that the country is big, now that you have had to criss-cross it, We know that it is a very taxing thing, and we really want to appreciate the fact that this is a very honourable task that you are doing for the people of Kenya. It is beyond salary, it is beyond what you are paid to do. I think the sacrifice that you are giving is something worth thanking you as individuals for.

With those remarks, I want to say thank you very much, God bless you as you travel back and I would like to ask Mrs. Yego to close with a word of prayer. Thank you.

Mrs. Yego: Let us pray. Almighty Father, we come before you this afternoon to thank you for your guidance throughout this day. Father we begun with you in the morning, and we thank you for the strength and the courage you have given to each and every person who was able to present their views today. Lord, may those views be the knowledge that comes from you, to build us and to build this country for generations to come. We thank you for everyone who was able to participate today, and we thank you for the patience that you gave to our Commissioners to listen to the views, to the smallest detail. Lord, as we break away from here now, we ask you to be with us, even for those who are leaving and travelling by all modes of transport, we ask you to guide them and be with them until they reach their final destination. We thank you and glorify your holy name, in the name of Jesus we pray. Amen.

It is alright. If I didn't introduce Mrs. Yego, Mrs. Yego is our College Administrator. She is the Principal Administrative Officer within this Campus. Thank you.

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