

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

**VERBATIM REPORT OF**

**CONSTITUENCY PUBLIC HEARINGS**  
**KHWISERO CONSTITUENCY**  
**HELD AT KHWISERO PRIMARY SCHOOL**

**6<sup>TH</sup> AUGUST 2002**

**CONSTITUENCY PUBLIC HEARINGS, KHWISERO CONSTITUENCY, HELD AT KHWISERO**  
**PRIMARY SCHOOL 6<sup>TH</sup> AUGUST 2002**

**Commissioners Present**

Mr. Domiziano Ratanya - Commissioner  
Mrs. bida Ali Aroni: - Commissioner

### Absent with Apology

Keriako Tobiko - Commissioner

### Secretariat

Ismail Aden - Programme Officer  
Mary Mayabi - Ass. Programme Officer  
Susanne Mutile - Verbatim Recorder.

The meeting started at 10.30 a.m.

**Speaker:** Could everybody be seated nafikiri tutaongea kwa Kiswahili.

**Claude Bakhoya:** Na langu ni fupi, ni kusema ya kwamba tuanze mkutano. Tunapoanza nafikiri tuna bahati leo kuwa na Father Nyongesa ambaye anaweza kuombea huu mkutano wa leo. Father Nyongesa

**Father Nyongesa:** Tuombe. Mungu Baba mwenyezi tunakushukuru kwa siku hii ambayo umetujalia tuunganike hapa. Tunakushukuru kwa kipaji cha maisha, tunakushukuru kwa kipaji cha upendo wako. Tunapo omba utujalie roho wako mtakatifi atuongoze katika mkutano huu. Atupe hekima ya kutosha na nguvu za kutosha tuweze kujadiliana mambo kahusu Katiba yetu, kwa vile inaweza linda watu wetu waishi maisha mazuri, vile ilikuwa nia yako hapo mwanzoni ulipoumba ulimwengu na binadamu. Tunakuomba amani iwe kati yetu, na ulinzi wako kupitia kwa malaika wetu walinzi, ili tumalize huu mkutano tukiwa na afya nzuri na mawazo mazuri, na kupendana kama vile unavyo tupenda. Tunaomba hayo kwa njia ya Kristo ya Bwana wetu. Amen.

**Claude Bakhoya:** Asanteni sana. Nafikiri tutafanya jambo moja ambalo sii la kawaida. Nitaka tu tunze mkutano straight, sitafanya introduction ya wote waliokuja maanake naona mkubwa kwa mdogo sisi wote tuko sawa. Kwa hivyo kama nisipofanya introduction, musikasirike mbona hamkuonyeswa kwa umati wa watu. Tumechelewa na tuanze kazi. Tunasema kila mtu ana maana, atoe maoni yake. Pili nashukuru sana commissioners ambao wamewachukua wao ili kuja kuwa na sisi. Ni kazi kubwa ambayo Serikali imewapa na wao watakuja sema nia yao, isipokuwa wajue ya kwamba Khwisero ambayo ndio centre ya hii division inawakaribisha kwa dhati. Isionekane ya kwamba sisi hatuko watu wengi sana wakafikirie kuna jambo lolote, la, watu wako wengi na kitu cha maana kabisa ni idea, the way of presentation. Na nikiona kila mtu ako karatasi. Ni kama kusema maoni yatakuwa ya kutosha. Nikishafika hapo langu tu ni kusema ya kwamba makomishona mnakaribishwa Khwisero. Tafadhali tuanze mkutano halafu mpate kutuambia ni kitu gani au ni mambo gani tutaweza kufanya. Hapo sasa pamoja na maombi nyote mumekaribishwa. Asante sana.

**Com. Domiziano Ratanya:** Asante sana Bwana Chairman. Hamjamboni nyote wananichi wa Khwisero Constituency, Mrembe. Sasa ni wakati wetu wa kuanza mkutano wetu na ningeanza na kutangaza kwamba hiki sasa kimekuwa kikao cha Tume ya Kurekebisha Katiba ya Kenya. Na kabla hatujaendelea, ningetaka kufanya kuwajulisha watu ambao tuko noa yaani timu yetu yote kutoka Commission.

Na upande wangu wa kushoto tuna Abida Ali ambaye ni mwenyekiti mdongo wa tume yetu wa kerekebisha Katiba ya Kenya. Yeye atajisemea mwenyewe awaambie majina yake.

**Com. Abida Ali-Aroni:** Hamjambo, ninaitwe Com. Abida Ali-Aroni: na tunawakaribisha kwa hizi kikao. Na ni matumaini yetu kwamba ikifika jioni tutatoka na maoni ambayo yatatusaidia katika hii kazi ambaye ni muhimu kwetu sote kama wanainchi wa Kenya. Karibuni.

**Com. Domiziano Ratanya:** Na kutoka ofisi yetu ya Secretariat tuna Aden Ismail ambaye anabeba ofisi hapa. Na wale wanamsaidia upendo huu wangu wa kushoto kuna Mercy Mayabi ambaye kazi yake ni recording, kwa sababu kila kitu ambacho mutasema hapa kitakuwa recorded. Na tuna Sussan Mutile wao wanasaidiana, Mary Mayabi ni Assistant Programme Officer na Sussan Mutile, Mutile yuko wapi? Mutile huyo ndiye Programme recording, kila kitu mumesema tutarecord. Na mimi ambaye nitakuwa mwenyekiti wa kikao hiki cha leo, ninaitwa Com. Domiziano Ratanya Commissioner.

Sasa kupitia hapo ningetaka kuwajulisha mpango wetu ili mjue tunaendelea namna gani. Kwanza, tuna list ambayo mnaona hapa. Kila mtu anapoingia ajiandikishe katika karatasi hii, afanye registration huko inje. Na hii ni kumaanisha kwamba unakuja kupeana maoni yako, ama pengine unakuja kuketi. Kwa sababu hapa kuna mtu ambaye hataki kupeana maoni yake anaitwa observer anasema yeye ataketi tu, kusikiliza wengine na hio ni sawa sawa. Kuna mwingine angetaka kupeana maoni yake kwa njia ya written memorandum, ama awe na maandishi ameandika, kwa kiingereza, kiswahili au lugha yeyote ile anajua. Kwa hivyo atakuja na andike yeye atapeana memorandum.

Kama utapeana memorandum, na pengine hutaki kuongea kusema lolote, unakubaliwa hiyo ni sawa sawa. Unaweza kupeana memorandum na uketi usikilize wanainchi wengine bila hata kusema lolote. That's okay, that is accepted. Inginge unaweza kupeana memorandum na useme wewe ungetaka tutetea hio memorandum yako, ungesema ungetaka kusema machache kuhusu hayo maandishi yako. Kwa hivyo kulingana na vile tunaendelea na programme yetu, tumeonelea ya kwamba dakika tatu unatoa kwa memorandum, just highlight the most important points. Na hiyo memorandum inaweza kuwa kitabu kikubwa hata kama hiki, na ukisoma the whole day mpaka jioni ni watu watatu hapa tu wata sema. Na tungetaka kila mtu aseme kitu, wakati mwingine tunakuwa na watu hata 200 na kila mtu anasema kitu. Kwa hivyo tungewauliza wale wana memorandum please don't read your memorandum to us. Tunawakati wa kusoma kwa sababu kuna experts hapa ofisi, yetu itasomwa itakuwa analysed, kila kitu kitasomwa. Vile utafanya tu ni kuja na memorandum na we only highlight the most important point. Kama

una points 100, uweke mbili ama tatu ya muhimu ueleze kidogo halafu upeane memorandum yako tuweke kwa file yetu na itasomwa vizuri. So three minutes tumeona itatosha. Na ukiwa huna memorandum na ungetaka kueleze maoni yako orally, kwa hivyo hapo umekubaliwa na uwe na dakika tano. Yaani wakati huo huna memorandum na unataka tu kueleza maoni yako. Pengine umeandika points utakuwa na dakika kama tano hivi.

Kwa hivyo wanainchi hapo tusikizane, kwa sababu wakati mwingine kuna mtu anakuja na memorandum anaweka namna hii, anasoma anasoma mpaka watu wengine wanachoka na hapo hatuweze kusikiliza kila mtu. Sema yale ya muhimu na utuwachie memorandum, you register yourself, na dakika hizo tatu uzitumie kwa njia nzuri. Ingingine ni lugha, lugha ambayo tunatumia ya kawaida tunatumia Kiingereza na Kishwahili katika Kenya, lakini kama huwezi kutumia, kuongea Kiswahili ama Kiingereza, unaweza kutumia lugha yako ile unajua. Na upande huu sijui lugha yenu ni Kiluhya, I understand. Kwa hivyo unaweza kuongea Kiluhya hakuna taabu. Tutatafuta mtu wa kutafsiri, kwa hivyo hakuna tabu. Lakini tungependekeza sana kama ungeweza kusema Kiswahili kwa sababu tunachukua hio directly, badala ya kuwa na dictation nyingi nyingi, translation nyingi maneno mengine yanapotea. Kwa hivyo kama ukiweza Kiingereza, Swahili hio tutafurahi sana. Lakini hatufungi yeyote ambaye angetake kuongea kiluhya. Nanasikia area hi munaongea kiluhya na Luo. Kwa hivyo kama huwezi kabisa uongea Kiluo ni sawa sawa. Lakini nauliza ikiwezekana zungumza Kiswahili na Kiingereza.

Point nyingine, kama kuna point moja tunataka ufafanue a kind of classification kutoka kwa Commissioners, Commissioner yeyote atakuuliza swali. Kwa hivyo uwe tayari kujibu kama kuna kitu chochote tungetaka ufafanue. Kutakuwa na hio nafasi. Kuna hiki kitu kinaitwa mobile phones, hebu niangalie yangu kama nimefunga. Sikuwa nimefunga lakini naona hata nyinyi mumefunga zenu. Unajua ukiweka hii iendelee it will be recorded. Kule watu watatuuliza, “na nyinyi Commissioners mumeenda kutafuta sauti ya wanainchi ama ya cellphone phones? Kwa hivyo tuwache hio na tufunge kwa heshima.

Lingine ni kutumia hii, microphone, microphone ambayo iko hapa si ya kupasha sauti peke yake. Hii ni ya kurecord directly, yale maneno unaongea, kwa hivyo musione kama tunakusumbua tukikuambia uongee kwa hii, kwa microphone. Hata ukiwa na sauti kubwa zaidi ongea kwa hio ili mambo yako yawe recorded. Its for recording sio ya kupasha sauti peke yake. And yule ambaye atakuwa akipeana maoni yake ataketi hapa. Kwa sababu yele anaketi hapo ndio anatengeneza Katiba, ndiye anarekebisha, kwa sababu anafanya recommendation, na sasa Katiba mpya iwe namna hii, ichange namna hii, iongezwe hivi, isiongezwe hivi, ifanywe hivi. And what we like very much is your recommendation. Kuna wengine wanatupatia stories nyingi, lakini tanataka you zero down to recommendation. Useme ningependelea hiki kiingie, hiki kiingie na hapo we save a lot of time.

Na lugha nyingine ya muhimu ambayo tungekuwa nayo kama itakuwa ni lazima, ni sign language. Kama kunayo mtu ambaye hasikii, pengine tutafanya mpango tuone kama tutakuwa na mtu kusaidia hapo, na programme organizer pengine ameambiwa afanye hio mipango kama itakuwa ni lazima.

Na kwa hayo ningetaka sasa tuona kama tutaanza mkutano wetu, lakini ningetaka hata kuwakumbusha kwamba hii list hata

ingawa tutafuata, first come, first served ukiwa wakwanza utakuja kwanza na kuendelea. Kama kuna sababu yeyote ya kuruka hii, sisi tutatumia dictation yetu kama kuna sababu. Kama mama akija mgonjwa sana ama, ama mzee sana, baba ama mama, ama mtoto wa shule ambaye ametoka katika darasa na angetaka kupeana maoni yake na arudi ama mwalimu, hiyo tutatumia njia hiyo na mngelikubali tafanye hivyo. Ama hiyo sio sawa sawa? Lakini kwa kawaida tutatumia list kufuata vile imeandkwa. Thank you.

**Com. Domiziano Ratanya:** Yes tukiwa tuko karibu kuanza, kuna viongozi ambao nimeambiwa nijaribu hata mini niwajue. Kiongozi kama huyu anitwa we recognize the presence of the first one is John Liboyi Khwisero Development Organization. Okey mzee yuko hapa na tume muona, hata sisi tumemjua. Namba two ni Chief Magistrate Mr. Aggrey Muchelule, kiongozi wa watu wa Kenya na wa hapa, tumefurahi sana. Councilor Lowrance Onyango ambaye ni Chairman wa Butere Mumias County Council, asante sana bwana Chairman. Then we have Mr. Obuti Okwiri former DO and Chairman of Khwisero Aids Control Committee, asante sana Bwana Okwiri. Then kuna mwingine Rev. Farther Dennise Nyongesa and he is from Emalindi Catholic church, wapi Farther, asante sana Farther. Na kwa hayo sasa ningetaka kuenda straightaway sasa tuanze mkutano wetu. Na nitaanza na mtu wakwanza ambaya tunamwita Hillary Akula Lipesa. Lipesa ni wakati wako.

**Hillary Akula Lipesa:** The Chairman of this seating, the Cosmopolitan members of this gathering that constitute the public hearing with a view to review the constitution. I had wished to highlight a few issues that are inherent in my memorandum. In the Preamble, we propose that the Kenyan constitution should have a preamble and the understated be the national vision, that is the creation and maintenance of a multiparty democratic sovereign republic that guarantees efficient utilization of these resources, for optimum generation of wealth by and for all Kenyans; that guarantees the security of all Kenyans irrespective of the status in the society; and that guarantees the happy living of all Kenyans, in the spirit of the accountability, inclusion, participation dialogue, equality, solidarity, liberty and concern for all Kenyans.

The others you find them in the memorandum. On directive principles for state policy, we propose that the Constitution include the following democratic principles:-

1. The equality of the political parties.
2. The freedom of association.
3. The independence of the electoral commission.
4. The freedom of press.

5. The rule by the majority.
6. The freedom of making informed choices.
7. And the apolitisation of state death security of state function.

On the Constitution supremacy, we propose that the following parts should be beyond the amending power of Parliament: that is parts on the Constitutional supremacy, parts on citizenship, passed on defense and national security, parts on political parties, passed on structure and system of Government, parts on Legislature, parts on Executive, parts on Judiciary, parts on local Government, parts on electrolal system and process, parts on basic rights, parts on rights of vulnerable groups, parts on land and property, parts on management and use of national resources, parts participatory Governance, parts on Constitution Commission, instution and offices and parts on succession and tranfer of power.

On citizenship, we propose that in the addition to what is provided far in Constitution, Kenyan citizenship in our opinion, could be acquired upon approval of ones request to acquire such citizenship.

We also propose that spouse of Kenyan citizen regardless of gender should be entitled to automatic citizenship. We also propose that children born of one Kenyan parent regardless of the parent's gender should be entitled to automatic citizenship.

We also propose that the Constitution should not allow dual citizenship.

On defense and national security, we propose that the discipline force, the military, the paramilitary, Police, prison and so on, be established by the Constitution. We propose the establishment of the Armed forces code of discipline enforceable law. We propose that the President should not be the Commander in Chief of the Armed forces, but instead the minister of security.

We propose that the Constitution committee use of extra ordinary powers in emergency cases such as war, national disaster, inserection, and breakdown of public order, as long as such use of extra ordinary power is nationally, rationally justifiable.

On political parties, we propose that the political parties play roles other than political mobilization, and such should include:-

- a) Monitoring the implementation of public policy.
- b) Evaluating the implementation of public policy.

**Com. Domiziano Ratanya:** Hillary try to wind up. We shall read that memorandum.

Among others, on structure and systems of the Government: we propose a presidential system of the Government with the devolution of power at the district level.

On the Legislature: we propose that the following appointments be vetted by parliament: appointment of commissioners, Attorney general, Ministers, Chief Justice, Judges, Directors, Public officers, Controller and Auditor general, Permanent Secretaries, Ambassadors, and others.

On the Executive: we propose that in addition to the qualification for the presidential candidate, we have the following that: -

- He or she should have proved to be of good moral, and have at least basic academic degree, and have shown evidence of good management of resources.

On the Judiciary: we propose that we will have amendment as proposed in the memo. On the local government among others we propose that people should have a right to recall their councillors upon a .....(Inaudible) or resolution signed by 50% of the registered voters, and approved by the local development committee among others.

**Com. Domiziano Ratanya:** Your time is up. Paul Okute. Just register. Paul Okute you also have memorandum just highlight and give others a chance.

**Paul Okute:** My names are Paul Okute. I will just highlight a few points as per the review.

Under the Preamble, the Kenyan Constitution should have a preamble that defines to its citizens. system. Kenyans would like to stay harmoniously in order to achieve their common goals.

Kenya shall be a soverage state made up of multi-ethnic community whose cultural identities must be respected by the constitution.

Directive principles of state policy: a Constitution should state clearly that we want country of a national unity that respects our regional diversity. Kenya shall uphold the principal of democracy which guaranties that at no any given time, Kenya would not be a one party state, and that all elections shall be decided by the majority through a democratic electoral system.

Our national language which is Swahili must be respected by all those resiting in Kenya as a common binding factor.

Constitutional supremacy, the Constitution should be the supreme law of the land and all other organs of state power should uphold the Constitution, including the President. 65% majority votes of the Kenyan population should be used to amend the Constitution and not the fights of the parliamentarians.

Parliament should only be used to prevail on the amendments and give the passing of the bills through referendum.

Citizenship, automatic citizens of Kenya shall be those born of both Kenyan parents. A child born of a Kenyan citizen irrespective of the parent's gender shall be given a Kenyan citizenship upon requisition.

Kenya citizenship can be acquired through registration by those who have stayed in Kenya for a period of more than 5 years, and are willing to surrender any other citizenship they might be holding. They must be people who can take care of the in basic needs such as shelter, clothing, and food and are generally economically stable.

The Constitution should not allow dual citizenship, as those holding such citizenship do not hold the interest of Kenyans at heart.

A Kenyan citizen shall be identified by holding: -

- Birth certificates
- ID Cards
- Marriage certificates

All these documents must be provided first free of charge at the registrar of persons and must keep all records.

Defense and national security, selection of security personnel such as GSU, the police, and prison officers, should be done by the federal state, while those of the military officers should be done by the senate. We should have a separate commission that would be charged by giving direction to these security personnel. The government must form community bodies to take place of home guards, as in places with cattle rustling exercise.

Political parties, Kenya should have a 3 party political system. To identify these political parties, we should look at their national representation.

**Com. Domiziano Ratanya:** Paul you have one minute to wind up.

**Paul Okute:** For a political party to sponsor anybody to election, it must have been in existence for over 1 year. For one to acquire of any election on a political party, he must have been in that political party for a period of over 6 months.



No any political party should be allowed to seek for funding from outside the country for this would destabilise the security of the country. All political parties must get their funding from the central Government, and those funds must go for only the expenses that could be incurred during the campaign period. The electoral commission must control these expenditure.

Structure and systems of Government, we propose a structure of a Government where state powers are devided between the Executive, Judiciary and Legislature. These organs should in federal a state, where we get the representatives from the federal state forming, the same structure at the central Government.

The Executive Should be shared between the President and the Prime Minister with the President being a symbol of national unity. And the Prime Minister being in charge of all the Government policies. The appointment of PCs, DCs and Dos should be done by the federal state, taking into consideration fair distribution of these vacancies among the communities in that region. The office of the controller and Auditor general should be composed of a team of commissioners, competent in economics and accounting abilities, in order to discharge their responsibilities in a professional manner, and should be given power to sue those that have mismanaged the national resources. We propose a ...(?)

**Com. Domiziano Ratanya:** Stop it Paul, Kennedy Atullo, can you get prepared. But there is a question from the Commissioner.

**Com. Abida Ali-Aroni::** Paul before you leave, I don't know whether you have it in details in your presentation. If you do you don't have to answer my question, but you have talked about a sharing of power between the President and the Prime Minister. Could you tell us in detail what sort of power they will be sharing. Is it there? Could you just go through it and see whether you have answered the question, because we would like to know how to balance power. And you have to tell us because we have no idea. Could you just look at that area and read it out to us?

**Paul Okute:** I read: A federal state where we will get representatives from the federal state forming the same structures at the central Government. We shall have representative....

**Com. Abida Ali-Aroni::** No no no you have said to you have said to us that you propose a Government with a President and a Prime Minister who share power. So what I want to know from you is what is this power that they are sharing, because currently we have an Executive President, he has all the power with him. Yah. You are saying create another office of a Prime Minister and let them share the powers. So we want to know from you as a Kenyan what is this power you would like to see the two of them sharing, because we need to create a division of power isn't it? So if you are proposing, you know it is easy to

say let them share power, but you have to tell us what power are they sharing, that's why we are here today. So tell what is this power if you have the answer, and we are hoping you have it, because it's your recommendation. If you don't have it I think you will think about it and you will let us know before we finish this exercise. Do you have it with you? Ah you don't have it, so think because it is important to make full recommendation. Yaeh?

**Com. Domiziano Ratanya:** Hapo wananichi mnajua ya kwamba niliwaambia mwanzoni utakuwa unapeana mapendekezo yako. Hata ingawa tunajua mambo mengine mengi, tunataka maoni yako na uyaeleze ili kusaidia kurekebisha Katiba. Okey sasa tutaenda kwa Kennedy Atullo ni wakati wako bwana Kennedy. Is he around? Okey.

**Kennedy Atullo:** Asante sana. Am Kenneth Atullo and I represent Umoja Youth Group na this is the recommendation. We have 8 points to give to the Review Commission. Na sitasoma yote nitasoma tu matatu halafu nijaribu kufafanua.

All Kenyans with professional education should be given loans to enable them initiate individual projects to avoid wastage of skills. Nafikiria tuko na watu ambao wamesomea na wamesomea vitu tofauti tofauti lakini, utaweza kusoma na umalize hii miaka yote mpaka wakati utakapozeeka kabla hajatumia huo ujuzi wako. Kwa hivyo inatakikana Serikali iangalie hapo.

To make sure that every Kenyan is able to eat, at least the price of 2kg of one of the dependable foods i.e. maize, rice and wheat, should be adjusted downwards, and kept below the average daily income of the poorest man in Kenya. Kwa sababu anaposema tumeongeza mishahara kwa hivyo tutaongeza pia chakula, na kuna mtu ambaye hajawahi fanya kazi. Sasa yeye atakuwa ametoa wapi pesa ya kununua.

People who live together as woman and husband must be declared married and the couple should report to the local Chief for legalizing the marriage, kwa sababu kuna tabia ya kuweka wasichana miezi mitatu, miezi sita na bado unasema hujaoa na hapo utakuwa umemuharibu. Kwa hivyo hiyo tu ndio nilikuwa kuzungumuzia tu kwa upande wangu.

**Com. Domiziano Ratanya:** Okey asante sana tupatie hiyo memorandum bwana Kennedy nashukuru sana kwa maoni yako. Wilson Bwala. Wilson Bwala ni wakati wako.

**Wilson Bwala.** Kuna wenzetu wawili ambao hawangeweza kufika kwa sababu ambazo hawangeweza kuziepuka. Kwa hivyo waliniwachia memoranda zao ili niwa...(?)

**Com. Domiziano Ratanya:** Ni wewe unaitwa Wilson Bwala, Wilson Bwala hayuko? You were to present also his views. Okey register separately. Yours and that of Bwala. Now we go to Jackson, hata yeye upeane zote, peana separately majina yenu. Alexander Jairo. Okey Alexander Jairo sasa endelea.

**Alexander Jairo:** Kwa majina ni Alexander Jairo. Niko hapa kwa niaba ya kanisa la Seventh Day Adventist.

Nitasoma jinsi tunavyohitaji Katiba itusaidie. The Seventh Day Adventist Church recognizes that the bible affirms the role of Government as an instrument in the hand of God for the establishment of law and order within the civil setting.

The church appreciates that the Kenyan Government has allowed freedom of worship in the current Constitution. The Kenyan Government is also a signatory to the United Nations' declaration and protection of basic human rights.

Among other things, human rights include freedom from discrimination on the basis of age, religion, tribe and e.t.c. Since it is known that God created us to make our own free choices and the right to worship is one of these choices, we as members of the church propose that the Constitution should guarantee the rights to: -

- a) Profess or not profess religion
- b) Participate or not participate in any form of worship
- c) Observe a day of worship of one's choice without being forced to do any work on that day. Nafikiri kwa kufafanua kidogo unapata kwamba kanisa la Seventh Day tunapoenda kanisani siku ya Jumamosi tuna shida sana. Na hii shida imekumba hata watoto wetu, unapata kwa shule wanafukuzwa, lakini huu uhuru wa kuabudu ulitolewa na Serekali. Utapata watoto wamelazimishwa waende wasome siku ya Jumamosi. Wafanyikazi wale wanaenda kanisa la Seventh Day utapata kwamba wanafutwa kazi, wengine hawapewi kazi kwa sababu ya siku yao ya kuabudu. Kwa hivyo tulikuwa tunahitaji hilo liweze kuwekwa katika Katiba ili lihimizwe kwa ajili ya kusaidia kanisa hili.

Nafikiri kwa hayo machache, nafikiri Mungu ataweza kuwabariki.

**Com. Domiziano Ratanya:** Bwana Jairo hebu ngoja kidogo.

**Com. Abida Ali-Aroni:** Bwana Jairo, kwa wakati huu umetambua mwenyewe kwamba Katiba ya Kenya imetupa uhuru wa kuabudu, eh. Na kwa sababu iko kwa Katiba kuna nini kingine ungetaka tufanye? Kwa sababu it's there, freedom of worship, Katiba haijakuzuia kuabudu pengine binadamu ndio amekataa. Na pengine wewe ukakalia right yako, pengine hukuenda kortini ama pahali kushtaki. Sasa ungependa nini zaidi kwa sababu freedom of worship is there?

**Alexander Jairo:** Shida ambayo tunaona ni kwamba, hakika Katiba inasema kuna uhuru wa kuabudu. Lakini utapata kwamba shida ambazo tunapata kama za wanafunzi, utapata mwanafunzi analazimishwa aje shuleni siku ya Jumamosi ambayo ni siku ya kuabudu. Lakini mzazi anapoenda kutetea kwa ajili ya hilo jambo utasikia anaambiwa kwamba "kama hutaki mtoto aje

Jumamosi kwa shule afanye nini enda na mtoto wako”. Sasa jambo ambalo sisi tulikuwa tunaomba kwa sababu unajua wazazi wengine hatuna uwezo kuenda kortini ni pesa tu, ukienda wapi ni pesa. Kwa sababu hatuna uwezo huwa tunawaruhusu watoto wanavunja ile amri ya Mungu. Serikali ambayeoinaongoza Katiba hio ingeweka mkazo katika hilo jambo, hata kwa shule waandike kupitia kwa headmaster na wale ambao wanahusika.

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

**Com. Domiziano Ratanya:** Okey Asente Jairo. Johnson Opala. Naona hata Johnson ana memorandum kwa hivyo ni kusema yale machache tu. Halafu utumie hizo dakika zako tatu namna hiyo.

**Johnson Dennis Opala:** Kwa jina ni Johnson Dennis Opala. I am representing the wazee of Mishiangu Sub-location. Your honour Sir, the baraza stated that it was very costly to accuse the grave and to meet other costs in order to obtain the certification, so they said that this should be done away with or canceled if possible we should remain as before.

Your honour Sir, it was stressed that the work of “Makuru” is very ...(?) and valuable and therefore they should be encouraged through being paid salaries, given special uniforms, and be provided with employment cards. This was stressed and stressed and supported.

Sir, your honour incase of an MP failing to satisfy the electorate, the new election be announced. The Assistant Chief and Chief be transferable.

Last Sir, the idea about traditional rituals that are bad should be left out, but the good ones to be reviewed or continued e.g the pots that used to be in the court played a very important role. Please this should be enforced. Thank you, your honour Sir for the chance you have allowed to me. I am Opala Dennis from Chiangu sub-location.

**Com. Com. Abida Ali-Aroni::** repeat your last statement.

**Johnson Dennis Opala:** My last statement was the idea about bad traditional rituals which should be left out, but the good ones be reviewed e.g. the pot that use to be in our African Courts.

**Com. Com. Abida Ali-Aroni::** The pots?

*(Laughter from the audience)*

**Com. Abida Ali-Aroni::** Please can you explain to us we may be having a very valid point but we don't understand?

**Johnson Dennis Opala:** Okey these pots may be accused try to give his right information.

**Com. Abida Ali-Aroni::** Are you saying we should do away with swearing using the bible for instance and use the pots. Is that what you are saying?

**Johnson Dennis Opala:** We should include the pots,

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

**Johnson Dennis Opala:** Both.

**Com. Abida Ali-Aroni::** In Khwisero or everywhere because I have never seen the pot, and I practice in court. (*Laughter from the audience*)

**Johnson Dennis Opala:** We had it at Khwisero here, and I think the same would have been in other places.

**Com. Abida Ali-Aroni::** How does it do is it ee...

**Johnson Dennis Opala:** It is sort of an investigator. It supports the Magistrate.

**Com. Domiziano Ratanya:** What is your specific recommendation? Do you want us to do away with the bible and quran, and we endorse the traditional way? Because in your place you use the pot, may be if you go to the other society they have also their own ways. We have head all these things as we have gone round. So do you want us to have this traditional way of taking oaths? Kama ni maoni yako ni maoni yako na tutayachukua.

**Johnson Dennis Opala:** My personal feelings, we should have both even the quran and the bible should be there, but the pot should also be brought in the court.

**Com. Domiziano Ratanya:** Asante sana bwana Johnson hayo ni maoni yako na umeeleza vizuri. Asante. Nenda kwa register yetu. Hezekia Chrispo. Wanasikia ni wakati wako.

**Hezekia Chrispo:** Majina naitwe Hezekia Chrispo kutoka Mushangu sub location Muluanda location. Mimi niko hapa kwa niaba ya retired members Association.

Point yangu ya kwanza itakuja upande wa mashamba. Upande wa mashamba, watu maskini wanapata taabu kubwa sana kwa sababu tuko na watu wengi, hata hiki kitu kinaitwa tittle deed hakuna, kwa sababu pesa ni nyingi sana, na kupata pesa ni ngumu ya kufanya hiyo transfer.

Kitu cha pili, ningependa Assistant Chiefs and Chief wapewe transfer kwa sub-location zingene ama location zingine . Kwa sababu...?

Upande wa groups wazee kama wanarudi nyumbani kutoka town, kama wamewacha kazi. Wakati wa kurudi nyumbani Serikali iwapatie mkopo kidogo ya kufanya business. Kwa sababu wazee wengine wanakuja nyumbani, hakuna kitu hata cha kushikilia. Maisha yao inaisha halafu wanafariki. Hapo Serikali iangalie.

Upande mwingine “Makuru” wanafanya kazi kubwa sana. Hata upande ya mipaka ya mashamba hao ndio wanajua. Inatakikana waangaliwe na Serikali hata kama ni shilling 500/=, misharahara wapatiwe na kitu kidogo cha kuonyesha hao wanafanya kazi ya Serikali. Wanatumwa mahali kufanya kazi lakini hata kitu kidogo cha kupata ni ngumu. Naomba Serikali yetu iwaangalia kwa maneno hayo.

Upande wa shule, ningependa watoto wapate discipline kidogo kwa sababu siku hizi, watoto wanakaa namna hiyo. Zamani walikuwa wanapata viboko lakini siku hizi hata mwalimu akimwambia kitu lakini hasikii. Ningependa hayo maneno ya viboko yarudishwe shule ndio mtoto apate discipline asome kama zamani.

Na upande wa waalimu kama headmasters ama waalimu wengine, ningependa wapewe transfer, kwa sababu waalimu wengine wanazaliwa hapo tena wanaharibu shule hapo. Wanatakiwa waende pahali pengine. Kama ni Bunyore, mwalimu atoke hapa apelekwe Bunyore, ama Marama, ama kwa shule nyingine, kwa sababu mwalimu anaka kwa shule moja anaharibu, anatumia shule hiyo kama mali yake. Serikali iangalie upande wa headmasters au waalimu wengine.

Upande wa mwisho, County council zetu katika Kenya, ziko barabara zingine ndogo ndogo. Kwa hizo barabara county council itusaidie kwa kutengeneza, kwa sababu pesa inakuja lakini barabara pengine ni ndogo sana. Naomba watusaidie kwa kutengeneza barabara ili mtu akiwa na shida au ni mgonjwa gari iweze kufika kwake haraka.

Upande wa hosiptali, bei ya hosiptali iko kali sana. Watu maskini hawawezi kupata usaidizi, watu wengi wanakufa kwa sababu hakuna pesa za kupeleka mgonjwa kwa hosiptali. Kama Serikali inaweza kuangalia maneno ya hosiptali, pesa zirudi chini, ndio kila raia mdogo ajishikilie. Asante sana.

**Com. Domiziano Ratanya:** Ngoja kidogo bwana Hezekia, kuna kitu cha kufafanua kidogo. Umesema hawa watu wanaitwa Makuru, ama Liguru.

**Hezekia Chrispo:** Ni Makuru kama ni wengi Makuru.

**Com. Domiziano Ratanya:** Sasa unataka Serikali ama kuwe sheria ambayo watakuwa wakipata kitu. Sindio?

**Hezekia Chrispo:** Inatakikana kuwe na sheria wapate kitu.

**Com. Domiziano Ratanya:** Sasa hawa unataka waingie kwa idara gani ya Serikali, kwa maoni yako, tungetaka kufaidika kwa maoni yako.

**Hezekia Chrispo:** Kwa upande wangu, kwa sababu tuko na Assistant Chief na Chief. Inatakikana wakuwe upande wa kuanzia Mukuru, then Assistant Chief, na Chief kuendelea mbele.

**Com. Domiziano Ratanya:** Yaani idara hii ambayo ina Machief, provincial administration?

**Hezekia Chrispo:** Yaah.

- a) **Com. Domiziano Ratanya:** Asante sana tunashukuru. Sasa wakati huu mnajua ya kwamba mheshimiwa Harishon Kayowa Odongo ambaye ni Member of Parliament wa area hii ameingia. Mheshimiwa karibu sana, tulikuwa pamoja jana na sasa tuko hapa na tumeshukuru sana umekuja. Tuna Stanley Atito.

**Stanley Atito:** Wageni wetu wa heshima, wasimamizi wakuu wa Katiba ya Kenya. Kwa majina ni Stanley Atito, narepresent the disabled Olwanda location. Maoni yangu ni haya na nitasoma na nitafafanua kidogo.

1. Disabled people are denied attention whenever they call on Government offices. They also never get job opportunities due to their disability. They support that the new Constitution should be given prevention, where they are properly and illegally protected, recognized and accepted in the society life like any other normal person.
2. The Government should provide free education training and also provide working tools or employment to the disabled people.
3. There should be free license for those who operate business i.e. the disabled people.
4. we recommend that we should be represented in Parliament and on other important occasions. Walemavu sisi wenyewe tuwe tukichaguliwa katika Bunge.
5. Donations for the disabled should directly be given to them. Ule msaada ambao unakuja kutoka kwa Serikali, sisi wenyewe tupokee isifikie kwa yule mtu ambaye si mlemavu.

6. An honest disabled man or woman of good standing should be appointed to oversee and supervise the disabled fund. Sisi wenyewe tuchaguliwe iwe sisi wenyewe tunaorganize hiyo msaada, ikuje kwetu wenyewe)
7. Schools for disabled people should be spread in all the provinces or districts, zijengwe katika district or province or division ya walemavu. Yaani zile shule za walemavu zijengwe katika province na district na division. Asanteni

**Com. Domiziano Ratanya:** Okey asante sana bwana Stanley Atito tupatie memorandum yako. Tuna Elly Anunda.

**Elly Anunda:** Mr. Chairman my name is Elly Anunda. I am a retired Chief Probation Officer. Mr. Chairman as a retiree, I recommend that the retirement age should be reviewed from 55 years to 60 years. This will enable the current sick server to remain in the office due to increased HIV and Aids deaths, to retain the civil servants in the office for a longer time. Mr. Chairman, on Judiciary, I managed to work on the criminal justice system for over 30 years, and Mr. Chairman I want to mention that all the levels of the court are just okay from 2<sup>nd</sup> class magistrate to chief justice. That system should remain the it is, but we should have the Constitution court, that is the only court we don't have in the country. These court should be there to review all matters pertaining to the Constitution.

The Chairman I also would like to mention that the penal code and the penal procedure code be reviewed from time to time, and if possible to remove capital punishment and other punishment that are so inhuman. Other measures should be established. On election Mr. Chairman I would like to recommend that parliamentary election and civic election be done on one day. The Presidential elections be done on a separate day. Those as the present system where parliamentary civil and presidential is done on the same day.

Mr. Chairman there is culture that has emerged in this country that is very dangerous. And these culture unless is curbed this county will never elect efficient people. This culture, a culture of handouts. Mr. Chairman this culture are becoming very dangerous, we shall never get efficient elected people, and it should be curbed as much as possible. Because handouts are now a disease in the country.

Mr. Chairman, on presidency I would recommend that the presidency be rotational so that when the president was in Rift Valley next time he/she should be in Western province or any other province. I t should rotate.

Well, Mr. Chairman on county council, election I only want to mention one thing that ..

**Com. Domiziano Ratanya:** Bwana Nunda jaribu kumaliza.

**Elly Anunda:** I recommend that to nominated or to be elected to county council, they should be educated to form IV and



beyond. Mr. Chairman I would like to abolish the office of the chief. Because now we have a conflict between the chief and the councilor. Because the councilor argues that they are the literate people and are likely to represent the location. So the option of chief should be removed and we retain the office of the assistant chiefs. Otherwise Mr. Chairman I have got a written memorandum.

**Com. Domiziano Ratanya:** Okey utupatie memorandum na itasomwa sawa sawa. Lakini kuna swali bwana Nunda ngoja kidogo.

**Com.Com. Abida Ali-Aroni:** Mr. Anunda I have several question for you. You would like us to have a Constitution court; I want you to tell us what you think about having a Supreme court. That is the first question; I hope you have already ear the question. You also would like us to review the criminal procedure but you didn't tell us what is wrong with the current criminal procedure, may be you would like to tell us what you would like us to review because we can't recommend a review of the criminal procedure if there is a reason. Then the last question, you would like us to have a rotational President, what method do you want us to have so that we can know where we are going to seek for that next president. Because when you say rotational, I know whether we shall do bahati na sibu or what, I want your recommendations on that, because right now we have several candidates as we read in the papers. So how do we pick on that president, on what do we base the rotational presidency that you are talking about. Thank you.

**Com. Domiziano Ratanya:** May you start with the first question.

**Elly Anunda:** Mr. Chairman, I had mentioned that the criminal procedure code be review from time to time. I was specifically thinking about the capital punishment, because capital punishment I think is the criminal procedure code, ah there are certain offences where you will be given capital punishment. I think we have loggerheads to remove someone's life, otherwise that is why I thought that, that should be reviewed. The other question was that..

**Com. Domiziano Ratanya:** Question of the Presidency,

**Elly Anunda:** Mr. Chairman it has come to live that at the moment development in this country.

**Com.Com. Abida Ali-Aroni:** I don't want clarification I want how. First tell us what you mean by rotational. When you say rotational are you talking about the town, the city or what are you talking about, because when you say rotational for me, I cannot read your mind what you mean by rotational. Then once you tell us what rotational means, you give us the method that will arrive at that so called rotational President.

**Elly Anunda:** Rotational here I meant that, well if the president was in coast.

**Com.Com. Abida Ali-Aroni:** Please for the rest of you even though I am not chairing can we give him an opportunity to answer. Kila mtu atapata nafasi ya kuja mbele. Sasa ni wakati wake na lazima tuheshimu na msikize. Please don't answer from the background you will all have an opportunity to speak. Tafadhali utuelezee.

**Elly Anunda:** Rotational here I meant if the president was in Coast province, next time it should be in Western province. The method of doing this, I think it will come up as the candidates come. For example if the President was in Coast, as I had said, and this time we want it to go to Western, the candidates will come out.

**Com.Com. Abida Ali-Aroni:** Let us look at the current position without beating about the bush. Okey we have candidates from a lot of provinces, I can think of 4, or is it 5. Five provinces so how do we settle on Western because that is what you are trying to tell us. How do we settle on Eastern we eliminate all the others and say that we all go to Western Kenya? That is my problem or do we eliminate the ones who come from provinces that have already had Presidents, because I really don't understand what you want unless you are very clear? How do we settle on what you want?

**Elly Anunda:** I may not be clear to you, but according to me Mr. Chairman because the Constitution that next time, the presidency would be going to Western province. It will be automatic that the candidates, there will be an automatic candidate coming from Western province. So that is my position. *(Laughter from the audience)*.

**Com.Com. Abida Ali-Aroni:** What about the Supreme Courts.

**Elly Anunda:** Mr. Chairman, when I was talking about the courts, the Supreme Court did not come in my mind. I had given the level of the courts I know, and that is why I said let us have the Constitution Court which we don't have at the moment.

**Com.Com. Abida Ali-Aroni:** So you are not able to tell us about the Supreme Court?

**Elly Anunda:** Because I don't know about it, so let it be where it should be. Thank you Mr. Chairman.

**Com. Domiziano Ratanya:** Mr. Anunda there is something else you have to clarify which was not very clear. You said that we do away with death sentence. You have recommended that isn't? The capital sentence that is death, according to you we do away with that one.

**Elly Anunda:** Yes Mr. Chairman.

**Com. Domiziano Ratanya:** Now eh do you have any proposal to what should replace that one, or if you don't have or if you cannot answer just leave it.

**Com. Domiziano Ratanya:** Mr. Chairman I don't have any specific answer to give but, what I know, when courts are a warding sentence they have many options.

**Com. Domiziano Ratanya:** .....(inaudible) Mr. Anunda. The next one is Joseph Musumi.

**Joseph Musumi:** On behalf of the student fraternity, I would like to give my views that are amending our Constitution.

Starting with Preamble, am of the view that are from station should be Preamble and Preamble should cite the principles on which a nation was founded. It should also reflect historical development and it should include a separational commemorative element, and on this, I think the well-cherished element that is peace, love and unity on which Kenya as a nation has thrived. I will propose that there be amends to section 2A of our Constitution, which provides that the republic of Kenya shall be a multy party democracy. I think that, that provision is grossly inadequate. The political parties should have certain principles within which they are to operate, and they should also have certain qualifications that they are to meet before they are registered. This trend of cropping up of political parties in form .....(Inaudible) groups to terrorize wananichi is unwelcome ni Kenya as a democracy. And because they are also not well entrenched in the constitution, we get that the police force during instances of friction, it is used as a repressive regime and they haunt members of opposition parties, while their courtier part in KANU enjoy free, fair speeches, and also freedom of association.

I would propose that there be established administrative courts in our country. Our Constitution should make provision of the institution of ombudsman, the case as it is in other countries like Norway and Denmark. These courts should deal with administrative matters and in doing so; we will reduce the backlog of cases in court. That will improve efficiency in settlement of disputes, and it will also meet the irreducible perquisites of our civil service system that delivering of decisions that are final, but are also recognizable to all.

I also propose that appointment to key offices in the Government be done by the President but that should be subject to consent and approval of Parliament. For instance our Judiciary is not independent. The President appoints the judges by the advice of the Judicial Service Commission, and you get that the Judicial Service Commission is a constitution of Presidential appointees, the Attorney General, the Chief Justice. I think that the parliament should have stakes in making such appointments also.

I am also of the view that children's rights should be protected. As a necessity, it should be a Constitutional provision that every child should be accorded and afforded such measures and protection as required by the status of a minor or as part of family, society or State. This will curb the increase of our children into the streets. Because you find that some children come from well off families and because their parents are negligent, they leave them to go to the streets. If we include that and entrench that in the Constitution, it would be easy to make some follow up and let the arm of the law meet such parents.

I will also suggest that amends to the Constitution be listed from Parliament. From independence our Constitution has been subjected to piecemeal and patchwork amends. That is the reason why we have Constitutional crises. At the outside after independence with a good Constitution, but because of uninformed amends, our Constitution now is in a state of crises. I will suggest that the work of amends should be vested on the referendum, as the case is in other countries.

Again, I am of the view that...

**(Interjection) Com Com. Domiziano Ratanya:** Try to summarize, we have to complete now. We have run out of time.

**Joseph Musumi:** To sum up, I will handle the issue of citizenship. The current Constitution's provision on citizenship is discriminatory, in that it allows a child who is born of a Kenyan father and a foreign woman to gain automatic citizenship on registration, but in contrast it denies a child born of a Kenyan woman and a foreign man such citizenship. It is my suggestion that such discrimination should not be tolerated in our new Constitution, instead citizenship should be granted on the basis of whether anyone of the parents of any given child is a citizen. And I propose that such citizenship should be lifted off maybe after divorce. If you have a foreign man married to a Kenyan woman, by divorcing that woman, that man should be stripped off his citizenship. Because by doing so he is dissociating himself from associating with our country. Those are the few suggestions that I had in mind.

**Com Com. Domiziano Ratanya:** Asante sana Joseph Musumi. Now, the next person is Honourable Eshi Mlongo maybe you would like to present your views now mheshimiwa. Mheshimiwa let me remind you what I had said before you came. We are giving three minutes for somebody with a memorandum, just to highlight the most important points. And we give five minutes for a person with no memorandum but would like to give the views orally, that is five minutes. So if you have a memorandum, you will stick to three minutes but you know how to time yourself Mheshimiwa.

**Hon Mlongo:** Basi ma-commissioner wetu mmetutembelea Khwisero, mine is a memorandum I have, but I would like to say one or two things. First is the Constitution Supremacy that is my first point.

**Constitutional Supremacy:** The supremacy of the Constitution should be upheld and entrenched. It should be clearly prescribed that the Constitution is superior to all other laws that is what I mean.

The second point, Commissioners is citizenship. All persons whose parents are Kenyan citizens should be regarded as an automatic citizen of Kenya. Ningependa kufafanua kidogo hapa. Commissioners our citizenship act and the Constitution has been abused badly in this country, in that foreigners who have come here, have ended up purchasing citizenship in this country, and this must be stopped by all means.

Another point I would like to say about the Constitution is that, lets say I have two children who go out in Europe for further studies or to work, a daughter and a son. My son gets a baby with a foreign woman outside there. My daughter gets a baby with a man outside there who are not citizens of Kenya. On return my son's child is a Kenyan citizen and my daughters baby is not a Kenyan citizen. It should be a Kenyan citizen. So this Constitution is not fair to the Kenyans.

Now the issue of foreigners who come here and would want to become citizens, they seek for registration on naturalization. There must be definite procedures and these I would suggest that we must have a definite body that would look into the application of foreigners who would want to become citizens. And this is the only body that will grant citizenship to foreigners. As it is now, it's done by a department or office of the President, and anybody who wants to buy citizenship just buys it. That is all I wanted to say about citizenship.

Defense and national security, the discipline forces, military, paramilitary, prisons, police and so on should be established by the Constitution.

Political parties: the Constitution should make provision for a broad .....(Inaudible) to regulate the formation management and conduct of political parties. No political party should be financed from external sources.

Structure and system of Government, Kenya should adopt a mixed system of Government i.e presidential, parliamentary in which Executive authority is shared between the President and the Prime Minister. Functions of the President and Prime Minister to be shared may include the following :- maintain national peace and unity, and the rest.

The Legislature, the Parliament is constitutionally the supreme body of law making, and is mandated to enact laws which guides the citizens and Government in their day to day activities.

The Executive, the President is the head of state and commander in chief of the armed forces. And also a Member of Parliament. The President should be elected directly by the universal suffrage. The Prime Minister should be the head of Government and leader of Government business in Parliament.

The Judiciary, the present structure of Judiciary is adequate, but its performance leaves a lot to be desired. There has been

wide spread of the dissatisfaction with the state of the Judiciary. So the Constitution should provide for a Supreme Court as well as a Constitutional Court.

Local Government, Mayors and Council Chairman should be elected directly by the people because the current system has been grossly abused.

The Electoral System and Process, Kenya should retain and practice a representative electoral system currently in place. Retain the simple majority rule as the basis of winning an election, but for the Presidential election where there is nobody with over 50% cast votes, then there should be provision for a re-run.

Electoral Commissioners, should be people of integrity with out-standing credentials vetted by Parliament and other interested public institutions. They should be appointed by the President but vetted by Parliament.

Basic rights, the Constitutional of provision for fundamental rights are adequate, but they are not properly followed and respected.

Land and property rights, the Government should have the power to compulsorily acquire private land for any purpose. The state Government or local Government should have no power to control the use of land by the owners or occupier, but clearly state purpose to avoid abusive of power.

Cultural and regional diversity, Kenya's cultural and ethnic diversity should be protected and promoted in the Constitution. But ethnicity should not be used for distribution of resources and favours.

Management and use of natural resource, the Executive should not control these resources exclusively but instead specialized bodies should be established with the professional management where national interests are recognized.

Commissioners I think I will stop there, the rest I have put in memorandum, I will hand it over for you to go through. Thank you.

**Com. Com. Domiziano Ratanya:** Mheshimiwa kuna swali, tafadhali utangoja kidogo.

**Com.Com. Abida Ali-Aroni:** Mheshimiwa you have talked about citizenship and recommended that we should have a body that would look .....(inaudible) who is to be admitted as a citizen of this country for the foreigners. If you have it in your memorandum please don't answer we will take time to read. I wonder whether you have given us the qualifications, is it anyone

who applies or with your vast experience in this field, have you recommended what qualifications one should achieve to be admitted as a citizen of Kenya. Then.....(inaudible).

So mheshimiwa the other thing that I was wondering is you think that the Judiciary has not operated very well and what you have recommended is a Supreme Court and a Constitutional Court. I am wondering if you think we have problems in the judiciary whether that would really help. Would you like to see other types of reform, because I am not so sure whether just establishing a Constitutional court or a Supreme Court, that will solve the problem? Are there other recommendations that you see that could be put in place to resolve the problem that you have talked of. The last question is on the electoral commission. Do you think that the number we have is adequate or would like to see a larger number of commissioners or a lower, number and how should we appoint them? Because currently they appointed or nominated by political parties and appointed by the President, you are now recommending that we should go to Parliament. Do we do away with the appointments by Political Parties?

**Hon Mlongo:** Thank you. Whatever you have raised I have answered in my memorandum but I will say something about citizenship. The current Constitution has the qualifications clearly stipulated but the implementers are not sticking to the qualifications as per current Constitution.

**Com.Com. Abida Ali-Aroni:** Are you happy with those in the constitution?

**Hon. Mlongo:** I am happy.

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

**Com. Com. Domiziano Ratanya:** Mhesimiwa kuna, there is also something else Mhesimiwa about cultural heritage, that you have mentioned that in your memorandum. Maybe we are going to read your recommendation there, but if you would try at least clarify what are the values that you like us to retain or the Luyha Community would like to retain, and which are the ones that you would like us to remove completely. Because as we have been going round in the Luhya community from Lugari. Malava, we are now at Kwhisero, hear, we have added a lot of recommendations. Some say may be busaa and so forth, but what are your recommendations Mhesimiwa?

**Hon Mlongo:** I will go through the piece that I have here if your permit me. I have said Kenyans' Cultural and Ethnic Diversity should be protected, and promoted in the Constitution. But ethnicity should not be used for distribution of resources and favours. So appointments and employment in public service should be on merit. The Constitution should provide for fair distribution of Natural Resources and give equal treatment to all Kenyans. Kenya should have two national languages i.e. Kiswahili and English. The Constitution should also recognize and not necessarily promote indigenous languages. In Primary

Schools children should be taught in their vernacular but in Secondary Schools, Colleges, and in all Public offices, Kenyans should be encouraged to use Kiswahili as a unified language. Let us change people's attitude about tribal allegiance towards National Identity and restore a sense of idealism. That is what I have said about it.

**Com. Com. Domiziano Ratanya:** Mhesimiwa may be not to do with cultural values which can be retained .....(Inaudible) that is not in your memorandum.

**Hon Mlongo:** Finally I have put down Commissioner let us change peoples attitude about tribal allegiance towards national identity and restore the essence of patriotism. I have not included that in my memorandum.

**Com. Com. Domiziano Ratanya** You have not included that area. Okay thank you very much mheshimiwa. Asante sana. The next person is Stephen Okoyo.

**Stephen Okoyo:** Kwa majina ni Stephen Okoyo. Nawakilisha kijiji cha Emako. Katiba yafaa iweke masharti kwa wagombea urais. Mfano awe ni mtu amechaguliwa kwa chama chake na awe na umri wa miaka 40 au zaidi, na iwe ni mtu ambaye hajajihusisha na kashfa yeyote inchini.

Katika urais, kuwe na kipindi maalum, kisiwe kisizidi miaka mitatu. Majukumu wa Rais yafaa yaelezwe katika Katiba ili asiwe na mamlaka zaidi ya mahakama na inchi kwa jumla. Katiba iweke viwango vya uwezo wa Rais ili naye akipatikana na makosa aweze kufikishwa mahakamani.

Katiba ikubali kibali cha kuondolewa mamlakani cha Rais akipatikana na vitendo visivyofaa, mfano kama wizi, mauaji na kashfa. Kumuondoa mamlakani lazima utaratibu wa kumpleka mahakamani ufuatwe, maana ni mahakama tu inayoweza kuamua mwenye hatia.

Uhusiano wa Rais na bunge unapasa uweko wakati mswada unaopotishwa. Rais anafaa achaguliwe na wananichi na awe kwanza mbunge. Utawala wa mikoa, wafaa watawala wachaguliwe na raia, wananichi kwa njia ya kura, kama DO, DC hata na machifu.

Hayo ni yangu tu nimepanua panua.

**Com. Com. Domiziano Ratanya:** Asante sana bwana Stephen Okeyo. Tumemaliza na wewe, asante sana bwano Okoyo. Sandock Mbiji. Okey bwana Sandok.

**Shadock Mbiji:** The Chairman of today's sitting, my names are Shaddock Mbiji. I am a director of an organization known as



Neighbor in Development Services, and I am also by profession a retired industrial engineer. The organization I had focuses on the agricultural activities as practiced by peasant farmers in the two districts i.e. Butere Mumias and Kakamega. The many problems the smallholder farmers have and continue to experience are as a result we believe of ineffective and deliberate assumption of the present Constitution.

I will highlight a few points that would probably confirm this assertion. We have the tribal or ethnicity and the resource management issue.

**Com. Com. Domiziano Ratanya:** Bwana Shadock we are going to read that memorandum. So you were only told to highlight the most important points, 3 minutes only.

**Shadock Mbiji:** In this memorandum which I am going to leave with you, I have come out with what I will probably call a way forward to all that has been raised. The way forward to most of the grievances in the form of government. We find that the Luhya community in this area where you are now sitting, is a community that has serious disadvantages because of the existing Constitution which has assumed that the Baluhya interests are catered for.

I would like to mention here, whether we like it or not, there is a very strong feeling among the community here, that they feel marginalized in terms of resource identification, utilization and management.

What I am saying has an example here is that we find in the whole community, which covers the whole of Western region, the economic activities are not being owned and operated by the people themselves as a community, instead there is a distinction, there is a clear indication that what we call single foreign and ethnic group is what is in charge.

**Com. Ratanya:** Shadrack, you have run out of time we should have .....(Inaudible) (heckling and laughter)  
(My request is that what has been contained here will put in to consideration). Thank you very much.

**Com. Com. Domiziano Ratanya:** Wananichi mnajua hayo ni maoni yake na kama wakati wake umekwisha ajiandikishe pale.  
Kwa hivyo hebu mnyamaze twendelee na hiyo sauti ikiingia itakuwa recorded. The next person Aggrey Muchelule, Chief Magistrate.

**Aggrey Muchelule:** The Chairman, my views will specifically deal with the Judiciary because that is where I work, that is where I have most experience. I am proceeding on the basis that the Judiciary has been heavily criticized, and the judgment of many of Kenyans is that it is weak, inefficient and incompetent. Now so the question I am asking myself is what recommendations do I have that can strengthen this institution? Many Kenyans don't appreciate that there are only about 400 judges and magistrates that dispense justice across the borders of this country. And that in a country of 30,000,000, 400 people are not sufficient to effectively administer justice. So one of the reasons why the Judiciary is inaccessible is because of the sheer numbers. These

sheer numbers we are saying is the reason for backlog. When you have a backlog, there is the temptation to jump the cue and that is why many times it is said that in order to jump the cue you must pay your way.

And I am saying as compared to the Executive and the Legislature, the Judiciary has not been treated well in terms of resources. You can see this opulence on the part of the provincial administration: for instance you will find the PC and DC with a fleet of vehicles, and you find a magistrate even without the basic mode of transportation. The senior most magistrate in this country, for instance the Chief Magistrate, and you will be surprised that even the Chief Magistrate of Nairobi does not have any official form of transport.

Transport may not be an issue, but we are saying that if you do not empower the Judiciary with resources. The resources will include even the courtrooms, modern technology, training, manpower you will not be able to administer justice.

Now the other thing that one clearly sees is like a previous speaker said. That in terms of appointment, the Chief Justice is appointed by the President and he works under the Judicial Service Commission of which all members are appointed by the President. There is a likelihood of interference by the person who has appointed these officers. And one of the things that should very quickly come up with a new Constitution is, we should strengthen and empower the Judicial Service Commission, for it to be in charge of the affairs of the Judiciary. Instead of having all these officials appointed by the President directly like its being done, I propose that we enlarge it to have two members of the Law Society of Kenya elected at the Annual General Meeting of the LSK. If you have two law professors of law lecturers from the law faculties of the universities, and if you have two other members appointed from the civic society, people of tested integrity, and then the Chief Justice and the Attorney General: I am saying we that would able to have a stronger Judiciary. But even then, these persons must be subjected to scrutiny by Parliament, then the names will just be given to the Head of state to appoint. The reason for Parliament is that these are the representatives of the people of Kenya and they must have a say on who is being appointed in such a responsible position.

Now we have been criticized of being corrupt, and I am saying that to be able to curb corruption all Judicial offices must on appointment and annually, be able to account for their wealth. They should be able to disclose their assets and liabilities on appointment and annually. And it would be it will be imperative that their spouses and their children also disclose their wealth. And any false disclosure should amount to misconduct, which would be liable to dismissal of that judicial officer if he makes any false declaration and annually so that we continue make sure that these officers only get what is due to them because of their work as judicial officers. They should also not engage in any commercial activities while they are still in service. We should subscribe to a code of conduct and any information linking any magistrate or judge with corruption, should be directed to the Judicial Service Commission and results be investigated and thus known.

One of the reasons why we have a defective Judiciary in terms of management, it is because of having an all-powerful Chief

Justice. In many jurisdictions now, that power is shared with other other institutions within the judiciary. For instance it is shared in Uganda we have a Deputy Chief Justice, and that is a creative I want to have in the new Constitution. And then in the High Court and Court of Appeal: we should have each Court being supervised by a Chief Judge, so that the chief Justice does not directly administer these courts. There is a Judge who will be on daily basis administer those judges.

Now there is something called settlement of cost list, and the Chief Justice out of the power that has been conferred to him, either by practice or Constitution in this country, he is the one who settles the cost list in the Court of Appeal. Also in all what you call important or sensitive matters in the High Court are passedes to him to give direction, and in so doing he will decide which Judge, which Magistrate, will hear those cases. I am saying that the issue of settlement of cost lists in the Court of Appeal should be under the Judge who is presiding over that Court. But even then with modern technology (and it is used in London pretty well) the use of a computer will settle a cost list very easily without it having to be the business of a human being.

I will also be saying that there should be a registrar for the High Court, a registrar for the Court of Appeal, and a registrar to be in charge of the subordinate courts. I am not talking about deputy register I am talking about registrar; under him of course there will be deputy registrars. I will also be proposing the creation of a Supreme Court, to be the final arbiter in all the judicial matters. The reason for this proposition is that we have had conflicting decisions from the Court of Appeal. The other reason is that I am thinking about doubling or even trebling the number of magistracy and judges both at the High Court and the Supreme Court; I have already said there are only 400. Even if we were to push that number to only 800, they would create volumes of work, and the Court of Appeal would not be able to cope.

I would like commissioners to appreciate the importance of the Judiciary in all that we are doing. During the urge for multiparty, Kenyans were satisfied when they were saying that we would wanted to open up of the President, to dilute the powers of the presidency, and also to empower the Legislature. But nobody thought about the Judiciary and yet without opening up the Judiciary, even economically this country is not going to perform. The reason is, an investor sitting in London or Paris or Newyork thinking about where to invest, will among other things thinking about where there is an infrastructure. I am thinking of the Judiciary as basic infrastructure, and he will be asking himself "if I invest in Kenya and I have litigation in Kenya, how long is it going to take for me to resolve that dispute in Kenya". And if he is going to take 10 years in Kenya, and he takes 5 years in Uganda, and 1 year in Tanzania a rational investor is going to go to Tanzania, and if there is no opportunity in Tanzania its going to go to Uganda before he comes to Kenya.

I am also saying this, that it has been said and we read in the papers everyday, that Kenyans are not paying there debts, they owe money to banks, and it is the region of 260 billion shillings. One of the reasons why they owe such money and they are not paying, and they are not in a hurry to pay, is because the Judiciary is not performing. And a crafty person will go to the court and get an injunction against a bank, and will make sure that, that injunction or that suit is not heard for years on end, he is

benefiting from the fact that the Judiciary is not performing. And in the long run so much money is tied in litigation, and yet this money was going to be useful to develop this country. I am just asking for instance, Pattni's case as an example, with respect it has tied down billions of shillings and unless we unlock that case that money is kept probably in somebody's pocket. That is just an example of why it's important that we have a Judiciary that is functional.

The other proposition is that the retirement age of judges is 74 years; I am proposing that, that retirement age be reduced, so that we have 65 as voluntary retirement age for judges and 70 would be the mandatory retirement age for judges. So a judge at 65 can opt to retire and at 70 must mandatorily retire. 74 is rather on the older side and senility could easily start creeping in we have seen it many many times. (*Laughter from the audience*).

One other is that magistrates form 80% of the courts in this country, and they do nearly 85% of all judicial work. And therefore many Kenyans will interact most of the time with magistrates and not with the judges. If we are going to reform the Judiciary we will have to reform the subordinate courts, to be able to have an impact on Kenya and the consumers of justice.

About the kadhis, I propose that the kadhi courts should be manned by legally qualified lawyers who in addition have relevant training in Muslim law. The present scenario is where form VIs and utmost primary teachers who are Muslims, are appointed to the kadhis, I mean I think that is unsatisfactory. Now of course those who were appointed kadhis: should be practicing Muslims. Now the reason is we must open up an avenue for Muslims to become judges in the High Court and Court of Appeal.

Presently after Justice Shehamine retired I don't think we any Muslim judge in the high court. And the reason is we have kadhis who are not legally qualified. Kadhis should not be magistrates and also religious leaders.

My proposition is that they should remain magistrates only religious duties must be taken up by other relevant organs of the Muslim faith, because there is a tendency of conflict of interests. The Kadhis should be in the normal course of events to be answerable to the registrar of the subordinate courts. I really have not been able to find a reason for a chief kadhi in this scenario. If we are saying that appeals from kadhis should go in the High Court there is no need for the chief kadhi to sit, and in the normal they should go up to the court of appeal up to the Supreme Court when it is eventually created. The rest is in my memorandum you will be able to look at it. Thank you very much.

**Com. Com. Domiziano Ratanya:** Okey, yeah you wait for a while there is something for clarification.

**Com.Com. Abida Ali-Aroni:** I have a few clarifications. I would like you to tell us that what point do we have jurisdiction on constitutional issues, because you have not spoken about creation of a constitutional court. Do we leave it at the level of the High Court nor do we give that mandate to Supreme Court, because we need to sort out that problem. That is just one of the questions. Then the other one is on the issue of discipline for judicial officers. Right now the position is that in some jurisdictions, you cannot really tell, especially in the subordinate courts, who is really in charge of the discipline in of what

happens in the magistrate courts, although I think it goes up to the court of appeal. What do you propose we have in place that would take care of the issue of discipline for judicial officers?

Another question that worries me is about supervision because you have talked about supervision by chief magistrates. I think this will go to the High Court and Court of Appeal. What happens to the supervision? Because I am not very clear in my mind whether the chief magistrates really has adequate powers to do that as things stand at the moment. Thank you.

**Agrey Muchelule:** Thank you. In regard to .....(?) I have included the issue of the Constitutional Court. I propose that, the Supreme Court will be the highest appellate court, but that will also be the Constitutional Court. I do not think that there is sufficient need for us to have a separate Constitutional Court but I have given it not to the High Court or Court of Appeal but the Supreme Court.

Now regarding discipline and supervision of judicial officers: I have said that the supervision of the Supreme Court will be in the hands of the judge presiding. And in the Court of Appeal, the judge presiding, and in the High Court the judge presiding. So that it does not fall onto the chief justice to supervise those courts on daily basis. Also the reason is that ultimately in the event of anything, then you can go to the chief justice. But if it is the chief justice that is the one daily supervising these Courts, then you have nobody to resort in the event that there is problem even at his ends.

The subordinate courts, and infact supervision in all the courts in this country, now that's where we have greatest weakness. The reason why I have talked about a strong and empowered Judicial Service Commission, it is because that's really the employer of all judicial officers, and ultimately it must provide the machinery to supervise Judicial Officers. And I have infact said that the chief justice should not be the chairman of the Judicial Service Commission because there is a conflict of interest. If I am a magistrate in the field and I have a disciplinary problem, it's the chief justice who deals with me on daily basis. If he decides that my case goes to the Judicial Service Commission, I will find him there as the Chairman.

You will remember recent scenario where the registrar lost his job and there was no recourse. Now if I am, saying the chief justice may be a member of Judicial Service Commission, but like in Uganda the chairman of the Judicial Service Commission somebody separate. Now when he is separate and not necessarily a serving judge, then there is likelihood of better machinery of supervision and administration of the affairs of the Judiciary. And I have also said we need to two practicing lawyers in the field and other personnel who are not related to the Judiciary. Now they will bring strength, freshness in the affairs of the Judiciary. When all is said and done, there should be able to be some form of better supervision of the affairs of the Judiciary.

**Com.Com. Abida Ali-Aroni:** Just one more issue of the issue of discipline, other than supervision and regulating work, there is this general feeling and I know it is a genuine feeling, that if you have any complaint against a magistrate, any complaint against a judge, the best that you can do is probably go to the CJ. If he decides not to do anything that is the end of the day. So that

some judicial officers in a way have become powers unto themselves. So would you recommend that we have a separate body, like probably a complaint commission, where an aggrieved ordinary person would walk and be able to complain. For instance if a magistrate turns up at 10.00 o'clock adjourns at mid day, and is not seen until 4.00 o'clock, that sort of thing. Or a judge who does not seem to probably conduct himself appropriately. So that one does not have to go through the hierarchy because the feeling that the ordinary people have even of lawyers is that, if you go for instance to the complaint commission of lawyers, lawyers preside and judge themselves. So that if you go, for instance to the CJ, he may not do much against his colleague. But if we had an independent body probably they would take time to investigate and discipline a judicial officer.

**Agrey Muchelule:** You know one of the reasons why we have this kind of scenario, is that we have made the Judiciary very powerful. We have made it like it's a no go area for members of public. So that even those who have genuine concerns and genuine complains cannot approach it. But if we opened up the judiciary, first of all to criticism. Secondly, to the way we appoint judges, if we are involved as members of the public through parliament or through other institutions. Because for instance to day you get an advocate whose has failed in practice, infact their place to go in the Judiciary. An advocate who has disciplinary matters, the place to go is the Judiciary and hide there.

If we strengthen the appointing machinery and then we have a working functional code of conduct for judicial officers, and we reduce the powers of the chief justice. The reason why you go to the chief justice and nothing is being done, is because he is all-powerful. There is nothing you can do to him. But if you were to share that power with Judicial Service Commission that is strong, and they you of course marry them up with other institutions like the ombudsman, that you can go and complain to, and ..... (inaudible) human rights commissions or any other institutions that are in place, we should be able to surmount these problems that we are raising. Of course there are now, but it is because we are institutionally weak, that is why we have those problems.

**Com. Com. Domiziano Ratanya:** Mr. Chelule I think there is something else, we are sorry for taking too long. We are taking a lot of time to know a lot from the chief magistrate because we are also going to learn a lot and even the wananichi. So don't be surprised why we are taking too long. But it is actually very very important. There is one thing here Mr. Muchelule about, we are getting views about customary courts. These are traditional courts;.....(inaudible) used to be like that in the past if you remember the African Courts. Now what is your view or would you like to recommend something like that? What would you like to say about that? That is one then another one will follow.

**Agrey Muchelule:** One of the reasons why the Judiciary is alien, the courts are foreign. The reason why you, even a learned personal professor in medicine approaches the Judiciary with trepidation is because we are alien we are not Kenyan. And we are not Kenyan because the laws that we practice are alien, they were imported from India and the UK. We have not done enough like even Uganda or Tanzania to bring in those of our customary laws that are still relevant, that have served this country, have kept this country together.

So the present Constitution, I think Section 83, provides that in personal laws we can apply customary laws. But I think we should also go further and be able, when we are amending our many laws in this country be able to fuse, to bring in aspects of customary law that have served us well. There is still a place, I am saying of customary law and we still apply it in courts, but I think we need to codify, so that they are specific. You know the old sages, the old wazees and mamas who we would ask to come to court and they would tell us what it used to be. You know, when in a marriage or divorce situation, they are no longer there. Or even if they are there we have not encouraged them to come up. So we should be able to investigate what it is. Like

(?) what is it about our customary laws that we can codify, write and so that they can be read so that everybody knows. So that we do not have a customary law for each case, it should be common to a community for instance. So there is still a place for customary law.

**Com. Com. Domiziano Ratanya:** There is a last one Mheshimiwa, this is about kadhi courts. It is actually for the Muslim believers but we are also getting views, that may be in future we don't know what happened, that even Christian might like to have their own courts. Like the Catholics have the canon law, may be they would like to they would like to promote something like that. So what are your views? In the event that in future we are going to have other courts similar to kadhi courts, even the traditional courts.

**Aggrey Muchelule:** With respect commissioner sit down. I think Muslims are one religious group where you have the quoran that regulates all their way of life, unlike all these other communities. I may be a Catholic or ACK but the bible does not regulate my life, does not regulate the way I should pray, the way I should arrange my affairs. So I think the Muslim community is a special community in this respect. It is therefore imperative that you have a system that takes care. Just like the Hindus have their own way of conducting their affairs, and we have a piece of legislation called The Hindu Marriage Law and Succession Act. There is still a case for the kadhi, there is still a case for specific people trained to deal with disputes of law.

At one point I served in the Kwach Committee on the administration of justice, and we were talking to Muslims. Their complaint was, why don't we have judges and magistrates. We were asking them why don't you want to be a magistrate or a judge?. Why don't you get your persons who are qualified, and there are many lawyers who are Muslims, to accept to serve as magistrates and eventually become judges. But also they must be able to mobilize, they must be able to reach out to those authorities that appoint. We have said that there is something wrong with conversing, but if that is the present system, then they should be able to say and put a case and say, "look at the entire high court, there is nobody who is a Muslim". And if I have said that Muslims have a peculiar law, then there is need for them to be accepted and to be given recognition as such.

**Com. Com. Domiziano Ratanya:** So in that case you don't block the others who might have their own research and would like to eh.

**Agrey Muchelule:** I don't think there is a reason.

**Com. Com. Domiziano Ratanya:** Thank you Mheshimiwa asante sana Mr. Muchelule, we have learnt a lot from your experience. You will give us your memorandum and we going to read further what you have recommended. I think we will come now to the new generation, by that I mean Khwisero Primary School. I think children are going to present something. They have views, are they written? Khwisero Primary School. Khwisero Primary School okay so I will go to David Ashoya as they are preparing.

**David Ashioya:** Well thank you very much Mr. Chairman. I have a memo. My names are David Ashioya Ashua, presenting memo on behalf of Ford-Asili Khwisero division. Now I have memos here, which are drafted although the original ones Mr. Chairman we had some unpatriotic people who took it away from me. I had some thieves who took away my current....(?)

**Com. Com. Domiziano Ratanya:** You will give us what you have written, we are going to read.

**David Ashoya:** Thank you very much. Now Mr. Chairman what I have, first I would make a request to you. I would like whatever you are collecting the views, to come up in the new Constitution before we go for the current general elections. The reason why we are of this view is that in 1997 we had the meansmum administrative political and constitutional reforms which came into view. They were passed as laws but then unfortunately the people that were suppose to implement them did not do that. So we have a problem where by you find the provincial administration has a problem specifically on the chiefs act. Some of the sections where by, they were being told for example you are supposed to be impartial,. I think you took so much time or they did not get civic education, until up to recently that is when they have now known that you are not suppose to protect or canverse for for a political party.

So we would like this civic education to continue, if possible the Government to employ people who are going to give civic education to the ordinary mwanainchi. For example I would advise or have been advising that the chief is supposed to do ABCD, then you find that they are in an awkward position where by the DO orders them that I want this done. Now given that they are in that chain of command, they would rather obey what the DO says that particular time than what the act says. So we have these other problem, so our recommendation was that civic education should be continuous and people should be free, where an act says this and another officer especially to the provincial administration says otherwise, they should be taken to court.

Now Mr. Commissioner the Ford-Asili group in Khwisero after taking some trouble reading the the 1963 Constitution, "order in council", which is 300 pages. It was amended to become the current Constitution which I think is about 90 pages. Which means the origin of what the Constitution was in 1963, if you can put it in 90 pages you know you have killed a lot of things. We felt that we want the 1963 Constitution because; there it also gives devolution of power and also resources. The way things



stand know we have IMF and World Bank giving money for projects in Kenya here, and you will find that we have roads in Central and Rift Valley and yet even people from Western are paying taxes, so that these money that went to those particular areas is repaid to the world bank. So we want or a Constitution where what has been said to people of that particular are able to stand.

**Com. Com. Domiziano Ratanya:** Let us have your memorandum we are going to read all these. Thank you very much for your views, because you have run out of time. We can go to Khwisero primary school.

**Pupils reciting a poem:** Bwana shule ya msingi wa Khwisero tayari kuwakariria shairi, murder Katiba, Katiba, Katibaaaa. Lililotungwa na kuandikwa na mwalimu Asha Asus .....(?) katiba itukumbuke kwani sote tunataka.....(?) wasichana wapewe radhi kwani sote ....(inaudible) tuwape wasichana haki, kwani Katiba ni yetu sote. Katiba si mdhulumu nina yule aliye nyumbani, kwani tuwe na usawa au hisia mabavu bavu ya akina buda. Sote tuyatupilia mbali tusiwadhulumu akina mama. Kwani Katiba ni yetu soteee.

Katiba Katiba Katiba lisiwe jambo ya la kutenganisha, twataka Katiba ya kutuunganisha, kwani sisi sote twaihitaji. Tuikuze Katiba, yetu kwani umoja ni nguvu utengano ni udhaifu, kwani, Katiba ni yetu soteee. Katiba isiwe kiboko cha kumcharaza buda nyumbani, isimpe mama makali ya kumnyonyoa mwenzio. Katiba itupe usawa kwani sote tuwanadamu, kwani Katiba ni yetu soteeee.

Afya kwa taifa ni muhimu twafaa sote kuzingatia, hasa isiwe ya fedha muzu muzu ilituwe na taifa lenye nguvu. ....(inaudible) kwani Katiba ni yetu soteee. Wana wana haki ya elimu ndipo wote wawezekupevuka, tusiwatie wengine gizani kwani shairi.....(inaudible.) Katiba Katiba katiba lisiwe jambo la kutenganisha twataka Katiba ya kutuunganisha kwani sote tu wana Kenya. Shukrani.

**Com. Com. Domiziano Ratanya:** Asante sana watoto. Anayefuata ni John Liboyi. Oh you are Chule yah, of the same school. Sorry Liboyi you will just wait.

**Felesia Moli:** My names are Felesia Moli. From Khwisero Primary School. Ready to present Pupils' views on Constitution. Welcome. I have got the following points:-

1. There should be free medical services for children.
2. Principals and headteachers who inflate school fees should be punished.

3. Corporal punishment should not be shelved from schools as this will lead to more indiscipline cases.
4. Poor children should be given sponsorship and this should be channelled to be their respective school not through the provincial administration.
5. Children should have equal education in all areas.
6. All primary schools should be boarding so as to have all children learning at the same ..... (Inaudible).
7. Government should finance school to enable them to have libraries.
8. The syllabus and change of school system should be done by teachers at the grassroots especially those who are already in the system.
9. Parents who marry off their girls at an early age should be reprimanded.
10. Men and boys who impregnate schools girls should be reprimanded and stern measures taken on the girls also. As girls stop learning boys should also stop.
11. Employment of girls and boys as maids and household helps should be stopped, and the people responsible should be reprimanded.
12. School uniforms should be provided freely by the Government. (*Laughter from the audience*)
13. There should be uniform for teachers. The uniform should be decided by the teachers themselves for easy identification. (*Laughter from the audience*).
14. Lastly, Government should provide school libraries and finance them directly to school.

Thank you.

**Com. Com. Domiziano Ratanya:** Ngoja kidogo. Hukusema jina lako vizuri tunataka kusikia vizuri na class yako.

**Felesia Moli:** My names are Felesia Moi from Khwisero primary school. I am in standard eight.

**Com. Com. Domiziano Ratanya:** Asante sana tuende kwa Shikunga primary school. A represented from there. From Shikung primary school ok, eh.

**Harnnington Owate:** I am Harnnington Owate Headteacher of Shikunga primary school. I have come with pupils and they would like to .....(?)

**Interjection:** Sema jina polepole na vizuri tisikie.

**Harnnington Owate:** Harnnington Owate ndimi mwalimu mkuu wa shule ya msingi ya Shikunga. Nimekuja na wanafunzi wako na maoni yao. Kwa niaba ya wengi Daisy Bakhoya standard eight atasema. Huyu ni Daisy Bakhoya standard eight, huyu ni Vivian Lushakha standard seven, huyu ni Nelsion Indakwa standard seven. Kwa hivyo Daisy atasoma. Asante.

**Com.Com. Abida Ali-Aroni:** Introduce yourselves, we are recording. So you have to introduce yourselves and class.

**Daisy Bakhoya:** Kwa jina vile mlivyosikia ni Daisy Bakhoya kutoka kwa shule ya msingi ya Shikunga.

**Com.Com. Abida Ali-Aroni:** Class ngapi?

**Daisy Bakhoya:** Standard eight. Haya ndio maoni ya wanafunzi wa Shikunga ambayo wametoa.

- Completely free primary education.
- Re-introduction of school equipment scheme.
- Corporal punishment to continue to help correct the undisciplined cases in school and other institutions of learning.
- Co-curricular activities to be supported to help pupils develop talents in various activities.
- Pupils with special talents to be encouraged and supported by being offered the necessary resources to exploit their talents.
- Re-medial be supported by the concerned parties to assist the slow learners.
- There should be no child labour. Lastly there should be free medical services in all hospitals.

**Com. Com. Domiziano Ratanya:** Okey the next one ama hakuna mwingine? Then we have Muluanda primary school.

**Pupil:** Guests, ladies and gentlemen before you are Muluanda primary school with two items. We have a solo poem, we have a choral, then we have children's voices which is written one of the pupils will have to read some of the poems that they have.

**Com. Com. Domiziano Ratanya:** We agree that it will be at least up to at least 5 minutes not beyond that. Thank you.

**Evalyne Omukana:** Jina langu ni Evalyne Omukana niko katika darasa la tano.

**Winfred Omusosi:** Jina langu ni Winfred Omusoti niko katika darasa la tano.

**Loise Omukhavi:** Jina langu ni Loise Omukhavi niko katika darasa la tano.

**Fansi Amvia:** Jina langu ni Fansi Amvia niko katika darasa la tano.

**Diana Ingado:** Jina langu ni Diana Ingado niko katika darasa la tano.

**Teresia Osimbo:** Jina langu ni Teresia Osimbo niko katika darasa la tano.

**Peris Kaka:** Jina langu ni Peris Kaka niko katika darasa la nane.

**Mwanafunzi:** Mgeni mheshimiwa mabibi na mabwana, wanafunzi kutoka katika shule ya msingi wa Muluanda, watawakaria shairi juu ya HAKI ZA WATOTO. karibuni.

Najibwaga uwanjani, shairi kuwaigizia. Mie tayari ya kini ya watoto kuwaambia. Haki watoto wapeeni maisha kufurahia, haki watoto wapeeni.

Wewe mama maishani, mama nipe mayai nimechoka na uji, mineona njaa sikushibaa

Kwa mapema maishani, bwana wapenda kula vita nini mwapeeni isiwe kiporolala.

Kila cha mvumilivu, rudini kwa muhala, haki watoto wapeeni wawe wema maishanii.

Mtoto mpe mavazi, awe mwenye kupendeza, asiwe kama jambazi awe wa kutukuza

Apendeza wazi wazi watu wakakusifu, haki watoto wapeeni, wawe wema maishani,

Mtoto mpe elimu, kujisomea vitabu. Mpelekee mwalimu amuonyeshe adabu, soma we mtiifu

mpenziwe wa moyoni, haki watoto wapeeni, wawe wema maishani

.....(Inaudible) na mavazi ya miili, matibabu muwapeeni na viungo vikiwa vikali.

Wanenepe mashavuni, wasiwe kama tumbili, haki watoto wapeeni, wawe wema maishani.

Mwaana anapokana hivyo sema kao, urithi ukawatolewa kakazo hata dadao.

.....(inaudible) .....haki watoto wapeeni, wawe wema maishani.

Tumekubali kutunza wana, tumekubali kutunza wana, tumekubali kutunza wana hatarudi nyuma tena

.....(inaudible) na koma si karimu, yote nasema muhimu wazazi muyafikiri....(?)

Nyumba iliyo muhimu isiwe wa kutoa simu, haki watoto watoeni wawe wema maishanii.

Shukran. (*Clapping*).

**Com. Com. Domiziano Ratanya:** Sasa hiyo ni ya mwisho kutoka kwa hao watoto. Undelea.

**Peris Kanga:** Guest of honour sir, ladies and gentlemen my names are Peris Kanga. I here by come to introduce to you the voice of children. The first point:-

1. Education to all, most children's do not get enough education due to poverty. And all children should be made to attend schools.
2. Child labour, the Constitution should have protection of children against child labour. Some irresponsible parents give their children the responsibility of being breadwinners of their families. Through such duties the children are exposed to physical and sexual abuses which are destructive to them. It's the duty of parents to provide their children with care, love and protection. Children being parents' gifts from God need to be protected from harsh and cruel conditions that affects their development.
3. Care for the orphans; orphans do need love, care and protection, just like other children. Those living with them should avoid exploiting them and instead give them their rights.
4. Crude weapons for display, its true that when you spare the rod you spoil the child; many at times children have suffered under the umbrella of being corrected or rather being disciplined. Children have lost life, some have been crippled, and some have even dropped out of school, having not been advised on what is right or wrong. Children have been exposed to cruel weapons which are used to instill discipline: Parents and teachers use .....(inaudible), jembes, pangas or even to such impose discipline. Such treatment has led to death or may make a child crippled. We need a Constitution which will protect us against harsh treatment and guide teachers on how to go about discipline cases in school, so as to know what to do and what not to. Our issues as children should just be recognized in the Constitution review process to avoid .....(?) by the evils in the society. We do not want to be neglected but to be guided, directed, .....(inaudible) and be cared for in order to become responsible people in our community.
5. Children's rights: education, most children are exposed to sexually, physical and emotional abuses just because they do not want to know what's their right. Because they do not know of their rights, some people use children to exploit their innocence. This affects mostly adolescents and in this area, the first class contributed to school drop outs. Child rights education should be offered to children to be able to know what their rights are.
6. Type of education to be offered, the Government should not use children for their own experiment. We all understand

that not all of us will be employed after education. The means we should learn to be self-reliant right from the grassroots. The subjects that give practice on self-reliance should be taught and made examinable. Today examinable subjects are never taught seriously. Just like the students in secondary make their own choice let the primary one also choose to avoid overload as we cry for the review of the current system of the education. We should first identify the type of education to be offered, some of the children have had their talents direct and pinned on subjects they cannot handle.

7. More teachers for better results: in primary school we have had a teacher teaching more than one subject in a class, and having more than 36 lessons per week. Such a teacher gets exhausted and may not be affective in his duties. If so, some subjects will not be taken care of. More teachers should be employed for effective teaching. Specialization should also be extended to primary schools, this is because some teachers have either failed or they pin themselves on subjects they cannot handle effectively. This is the main course of poor results in most schools. Such teachers either under teach or leave out some important information.
8. Children's cry, children need to be heard and not ignoring their cries. They only express themselves if they know that they will be heard and understood. If shut out, children do turn to drugs to seek consolation or turn against the rules and strike. That is why we have had strikes in schools. The new Constitution should protect children for embarrassments by teachers and parents.
9. Identification, school budes should be made compulsory on school uniforms for proper identifications. School children should be served with identity cards just as it is done in some secondary schools. Many at times children have got lost or even involved in accidents and failed to be identified. May the new Constitution take care of this. Thank you.

**Com. Com. Domiziano Ratanya:** Okey tumemaliza presentations from schools. Khwisero na hiyo nyingine zimemaliza. Mnavyojua watoto hawawezi kufanya summary sana. Anasoma mpaka nimpatie wakati amalize na hiyo ni sawa sawa. But I think for the others hizo ni zile dakika tu, you have to summarize. Huwezi kusoma yote because you have that ability to summarize. We have 50 people waiting and if we continue like that we are going to leave here at 9.00 or even 10.00 at night. So we go back to our proper timing and this one starts with John Liboi. Just highlight give your memorandum, 3 minutes. This time it is 3.

**John Liboi:** Chairman commissioner Ratanya, Com. Abida Aroni Ali my name is John Nganye Liboi. I am here representing Khwisero development organization. I have a written memorandum, I will summarize it.

I will Mr. Chairman say that the constitution is the supreme organ of the state, and this supremacy should be reflected in the

very high degree of difficulty, with which it can be changed by Parliament. Such that any fundamental changes, such as .....(inaudible) rights amendments, should be effected only by referendum other amendments which were expounded by the very first speaker would be changed by a parliamentary majority of  $\frac{3}{4}$  's.

Secondly, a person who is born to the Kenyan citizen should qualify automatically to be a Kenyan citizen irrespective of their place of birth, or the gender of the non-Kenyan parent. And we also agree that dual citizenship involving a Kenyan parent should be outlawed.

Effective anti-corruption law and laws on economic crime should be enacted. We propose that this should provide for the periodic declaration of assets and as Mr. Muchelule said, liabilities on the elected official and public servants and their wives and children. We recommend that there should be no private army there should be zero tolerance on private armies under the Constitution. In addition, the President who should be the commander in chief of the armed forces should however have no exclusive powers to declare war. This should be organized through a specially constituted military council.

We recommend that only a small number, say three, of national political parties should be allowed to exist, differentiated by only their political philosophies and not religious or ethnic or race considerations. I will also concur that this number of parties should be financed out in part from the public coffers.

Now on the issue of the parliamentary candidates, we recommend that minimum qualifications for the parliamentary candidates should be a degree or certificate of obtained from recognized tertiary institutions. Civic candidates we recommend, minimum qualifications should be KCE. A special commission but not the MPs themselves should determine the compensation for the MPs, otherwise you have the conflict of interest. The MPs should be empowered with an appropriate processes, information and communication technology systems in order to discharge fully their responsibilities particularly the budget and monitoring process. Mr. Chairman Sir, this is an area I feel very strongly about and I also agree with the...

**Interjection: Com. Com. Domiziano Ratanya:** Okey now try to sum up. We have run out of time.

**John Liboi:** Now Mr. Chairman the concept of nomination should be retained however this should reserved only for special interest groups such as the disabled people. In particular, any election candidate who fails to win their voters verdict should not be nominated either as councilors or as Members of Parliament.

In respect of system of Government, we should maintain our current system of Government but we submit that the power should be devolved to the provincial administration and local authorities. And the provincial administration and local authority should be made accountable to constituency and ward based communities, who should be elected by the leaders of that constituency or ward, and should be ingrained in the tender and audit processes.

Finally Mr. Chairman sir, the current system of representation should be strengthened not just to cover the presidential election but also parliamentary and civic candidates. For example in Khwisero we seven locations, we should require that the winning candidate has won at least 25% of the votes, in at least four of the locations etc. Those are my views Mr. Chairman. Thank you very much.

**Com. Com. Domiziano Ratanya:** Thank you very much John N. Liboi go and sign our register. And also leave the memorandum with us. The next one is John S. Mbuku, Electin Amunga.

**Electin Amunga:** My names are Electin Amunga I am presenting a memorandum from Shida Women Group. I will only read a few. In Kenya every person should hold one job. The Parliament should change the Constitution at a percentage of 19% votes. The Judiciary should be appointed by the Attorney General.

All departmental heads should be involved in discussing MPs' salaries but not to be discussed in the Parliament. Administrative police should be added up to 2 years training but not the little period they are training.

Primary education should be free. University education fee should be sponsored by the Government, and later offer them employment of which they compensate on monthly basis. Health facilities in public hospitals should be free. All educated Kenyans who are not employed should be pensionable e.g. from O level and above.

The procedure of transfer of land be simplified. The land tribunal should be given the mandate to tackle the issue. We should have equal rights on land title deeds but it should include the wife and husband since every time husbands, sell land without women knowing. Concerning equitable distribution of national resources, the ministries should be distributed in all provinces according to their activities in the regions.

Since Kiswahili is our national language the budget should be read in Kiswahili and be simplified to the district level, because most of the Kenyans are semi literate.

**Interjection: Com. Com. Domiziano Ratanya:** Jaribu kamaliza. Hiyo tutasoma hiyo imebaki kwa sababu ni memorandum. Tumeshukuru sana.

**Electrin Amunga:** Thank you.

**Com. Com. Domiziano Ratanya:** We have councilor Lawrence Oyando.



**Councilor Lawrence Oyando:** The Chairman, my names are Councilor Lawrence Oyando of Kisa South .....(?)..Khwisero constituency, and also the chairman Butere Mumias county council.

Mr. Chairman I have got a memorandum of which I will hand in, and I have got only three issues to discuss or to put before you. First is the name of our country: since our independence Mr. Chairman, we became independent in 1963 and in 1964 became the republic of Kenya. And our Constitution was done in Lancaster House in London, and now that we are making this Constitution, I am of opinion that we have baptize our country a fresh, by giving the number of people's republic of Kenya. Because now people are owning this article and owning this country.

Second thing Mr. Chairman, administrative units need to be .....(?) to incorporate North Eastern, South rift and mount Kenya region, in addition to the existing provinces we have got. The current number of district which stands at 68 should remain. Mr. Chairman it has been disturbing that a Constitution is being amended in the Parliament. I feel, once we have written this Constitution Mr. Chairman, it is us again who can change an order of the Constitution. It should come back to us, the public, to amend any part of it that would be in need of such.

On the presidency, I am of opinion that we should have the President of Kenya, Deputy President, Prime Minister and Deputy Prime Minister. The current set up of .....(inaudible) system should remain that is the .....(inaudible) type of cabinet.

Mr. Chairman we have to put a ceiling of age for the contestant of both the office of the presidency, MPs and councilors. For one to qualify to vie for the office of the President, you have to be 40 years and above. An MP has to be 30 years and above, and a councilor also should be that.

On qualification Mr. Chairman, whoever has done up to form IV level of education should run for those offices. On Parliament still Mr. Chairman I would propose, we have a 2 tier house where by we shall have lower house and upper house. The lower house should have 300 members while upper house should have 25 representing the ten provinces, with one person who is disabled get the representatives, federation of Kenya .....(?) representative, and women representatives.

Mr. Chairman on local Government, I am of opinion that time has come by the electorate to elect their own chairman or mayor. Qualification should be up to form IV. Kenyans have learnt enough and we no longer need to have illiterates and semi illiterates in the Government.

Mr. Chairman, remunerations for councilors, senior staff officers should be from the consolidated funds of central Government, to avert crisis in the country, where by major resources go to paying allowances and salaries for top people in top seats in the country.

Mr. Chairman on our Judiciary, I want to propose that in each and every division in this land, let us have the court to enable citizens solve their matters at a near distance, than minor issues being taken very far and taking too long. It would be better if we had it every court every division.

Mr. Chairman the other thing that I would like to touch on is the representation of the people who cannot afford legal fee. The government must put in place how these people should be provided by legal officers from AG's chambers as they cannot afford to pay advocatess fee.

Mr. Chairman land, what I would like to highlight let everyone own land anywhere in the country. At maximum one should own .....(inaudible) hectares Mr. Chairman, to enable all Kenyans own land. There is a continuous issue of the title deeds. Title deeds have become a problem that dependants of the deceased go through vigorous processes to acquire one. My suggestion is that once the title deed is owned by one landowner should he die it should be taken to the kin directly.

**Interjection: Com. Com. Domiziano Ratanya:** I think you can give us now your memorandum and we shall read the rest. So there is one clarification. Just hold on.

**Councilor Lawrence Oyando:** I will do that.

**Com.Com. Abida Ali-Aroni:** There are actually two, you have talked of addition of provinces, could you give us a rational that is one question. The other one you have talked about the issuance of title deeds when one dies. I would like you to tell us in detail how you would like that to be simplified I didn't get you. You said it is very difficult how would you like it simplified?

**Councilor Lawrence Oyando:** The rational now of dividing our nation into 10 provincial administrations, should be on the sizes of land and the population. Currently Rift valley is too expanse and when you go to population, it's heavily populated. To enable people to reach their PC or commissioner I felt that we need to have North rift and South rift, given the increased of population and the size of the current province.

On mount Kenya I am also of opinion, also of population and distance from provincial headquarters. The current Eastern province should remain under one area, but those administrative units around Mt. Kenya like the Embus, Merus, and their brothers the Mberes and so forth, because of the population density and .....(?) Garissa, they be given that part of the province for easier and closer administration.

Coming back to title deeds, all of us will recall that if I happen to die and I am the owner of the title deed, requires my dependant to sue me while I am in the grave so that they get the title deed. I always wonder at times if I am dead where shall I

be responding to that. To me once I have died and there is all evidence that there is birth certificate, automatically that should be presented to the lands officers and transfer that bit to my son or my wife.

**Com.Com. Abida Ali-Aroni:** A further clarification, the reason why people go through the court for purposes of administration it is not to sue the deceased but to try and see that things are equitable distributed. Now if you have many sons and probably daughters if you would wish them to inherit, how do you see them dividing that land, if all they need to do is to pick a birth certificate and go to the lands office? So do you have all of them registered in that title? It may not work; they may not want to have it divided. Some of them may give their share to one of or two. That cannot be the work of a land registrar, at what point would you want that administration of your estate be done because that is definitely not an arena of the lands office. And that is why people go to court.

**Councilor Lawrence Oyando:** Why I am saying is that the best way is to have land tribunal at the grass roots. These people, the elders and the administration know very well who were the true dependants of these people and once they say okay its so and so, that land once its being divided automatically and forwarded to the land offices at that let those title deeds come out. If they are 2 or 3 sons, in the names of those 2 or 3 sons, because it's level of the tribunal, particularly, that most of the land issues can be sorted out successfully.

**Com. Com. Domiziano Ratanya:** Asante sana bwana councilor Lawrence. Mwingine sasa ni Fred Abuto Okwiri yuko karibu? Okay. Yuko karibu.

*End of tape II.*

**Fred Okwiri:** Mr. Chairman, commissioners and the audience, I am Fred Abuto Okwiri an educationist and a retired education officer, and a parliamentary aspirant for Khwisero.

I would like to submit the following: -

1. We want in the Preamble the new Constitution to have an assurance and guarantee that the Constitution will not be amended or be tempered with for a period of a minimum of 10 years.
2. We also need that the values of the society be spelled out in the Preamble, so that we don not have a Constitution that the 9<sup>th</sup> Parliament will have to alter.

These are the highlights of my presentation.

The multiparty system be retained to cater for unity in diversity in the ethnic groups. We form a Government of national unity headed by the President with powers, but we must have checks and balances to the powers given to the President. We want during the run off, during the elections, that the presidential candidates have a running mate in the name of the Vice President, who is appointed.

We want all political parties that do not have representation in the Parliament be deregistered because they are serving no purpose and they are irrelevant.

We want the national anthem, the flag, the coat of arms, and the loyalty pledge to be retained. But we would like the following amendments to be made: -

1. We would like our national currency “pesa ya Kenya” the coins to carry the head of the founder of this nation, Mzee Jomo Kenyatta. But the notes “the paper money” to have pictures of wild life and agricultural products, that generate income for this country. We do not want to associate money with personalities.
2. Ladies and gentlemen and commissioners, we want public holidays and we want to scrap Moi day and rename it Independence Heroes’ day and retain the date, and other public holidays can stay. So we may have Kenyatta day, by proposal, we rename Kenyatta day Independent Hero’s day but Moi day we scrap. We are saying that the term dates for the Parliament must be spelt out right from the beginning. We have a calendar and the only person who can dissolve, prorogue or do anything with these term dates is the Parliament not the President. Now we don’t know when we are holding elections and I am very eager to go to the Parliament.

**Interjection. Com. Com. Domiziano Ratanya:** Sasa jaribu kumaliza.

**Fred Okwiri:** Na niko mbali.

**Interjection. Com. Com. Domiziano Ratanya:** Ah no no you will finish now. All these people are waiting.

**Fred Okwiri:** Scrap the 8.4.4 system of education and replace it with 8.4.2.3 to conform with international standards. Our students are being segregated.

We are saying for one to qualify and become a presidential candidate he must have a minimum of University degree. And for one to qualify to go to Parliament, one must have minimum of University degree. This is not a time for academic dwarfs.

For one to go to the council, one must have minimum school certificate. All county councils have been run down because of illiteracy. The permanent secretaries should be appointed from serving civil servants and must be vetted by Public Service Commission. They must be people who have served continuously in the civil service for 5 years. I am running quickly through the list, I have so many.

A body be set up to cater for MPs' and councilors, allowances countrywide and draw funds from consolidated fund for uniformity.

**Interjection. Com. Com. Domiziano Ratanya:** Wacha bwana Okwiri hayo tutasoma.

**Fred Okwiri:** Lastly, poverty reduction, .....(inaudible).

**Interjection. Com. Com. Domiziano Ratanya:** Hand in your memorandum, we shall read everything and analyze on your name. (Laughter) Billy Odongo. Inaonekana Odongo hayuko. Norman Echuchi, Albert Were. Nilisema mwanzoni kwamba kama una memorandum na unataka kupeana tu, halafu uketi usikilize ama uende, unaweza kufanya hivo. You have only three minutes, and start by saying your name please.

**Abert Were:** My name is Albert Were. I have a joint memorandum with Mr. Livingstone Were Ochieng.

The Preamble: we are suggesting that the Constitution must clearly and unequivocally state that it is the Constitution of the people of Kenya regardless of race, tribe, creed, colour or status and all Kenyans are bound by it from the smallest to the highest. Consequently the power to amend the constitution must be vested in the people through a referendum. Parliament must never be allowed again to amend the Constitution in a whimsical manner to serve parochial interest.

The Legislature: we are saying Members of Parliament must be full time employees. They must attend Parliament. All the time we have lack of quorum in the house because Members of Parliament attend to issues that are not relevant yet they are paid to be in the Parliament.

Members of Parliament must be appraised, they must be able to participate, and any MP who is unable to participate in parliamentary business for three months in a row should automatically lose his seat. Parliament should establish its own calendar and they must work for 5 days a week, six hours everyday. Their calendar should only have 60 days recess every year. The Constitution must ensure that only committed and educated persons seek for parliamentary seats. To be an MP you should be between age 21 and 79 years old. You must be of good conduct and you must be able to satisfactorily declare your wealth and its source. You must have a minimum level of education of post secondary education, to achieve active participation in parliamentary business.

The electorate must have a system of recalling a non-performing MP. An MP who does not participate in Parliament should be recalled and lose his seat. Nominated MP should represent the civic interest groups and their nomination should be carried out by the specific bodies like the disabled, professional workers, and the elderly, and the youth.

The salaries and allowances of MPs should be determined by a standing committee specifically set up for this purpose. MPs must never be allowed the leeway to raise their salaries and allowances at will without reasonable cause and in total disregard of prevailing economic conditions.

Parliament should vet all constitutional appointments made by the President including ministers and their deputies, permanent secretaries, judges, ambassadors, high commissioners, attorney general, audit and controller general, commissioners of police, chairmen of chief executives of parastatals.

**Interjection Com. Abida Aroni:** Your last sentence.

**Albert Were:** From the Judiciary all members of the Judiciary should have a bachelor degree in law. Lay judges and magistrates must be faced out.

**Interjection Com. Abida Aroni:** Thank you very much please register, the next person Felicia Mayu. Felicia are you Felicia. Felicia Mayu ndio wewe? Basi huyo iso wewe. Felicia Mayu box 211. Henry Oyombero yuko.

**Henry Ogola Oyombero:** I am Henry Ogola Oyombero. I have my memo here, but I am only going to talk about only three or four areas then I stop.

First, I want to talk about the political parties. These political parties should be limited to only three. When we limit them like that, we are going to stop this idea of people or members of the country living a part for another one. They should also be financed from public funds and share the property that was acquired during the time when we had only one political party.

Under Legislature, I am proposing that the President should not have powers to dissolve the Parliament, and we should have the set dates for that.

Under Executive, the President should not be a Member of Parliament; he should be the President but not represent a particular area within the country.

Local Government: under local Government, the mayors, the chairmen should be elected directly by the people. The current

two-year term for the mayors and council chairmen is adequate, that one should be maintained.

There should be minimum education qualification for councilors at least O level. People should have also a right to recall their councilors if they become non-performing. We should not have nominated councilors because this is eroding the resources we have in the council.

Under electoral system and process, the current demarcation of constituencies and wards should be re-visited. This should be done according to the population and not the size of the ward or the constituency.

Civic, parliamentary and presidential elections should not be held simultaneously. We should have the civic then the MPs and then the President. Election dates should also be specified in the Constitution.

Lastly, the Constitution should guarantee access to land for every Kenyan. We have some other people who have very big pieces of land in Kenya; they own almost the whole location while others don't have anything. Then lastly.....

**Interjection Com. Abida Aroni:** Thank you very much, we are going to read the rest of your memorandum. Wycliff Esala.

**Wycliff Esala:** Jina langu ni Wycliff Esala. Nitaongea machache na nitatumia lugha ya Kiswahili.

Naenda moja kwa moja, tunapendekeza kwamba usimamizi wa mashule uwachiwe utaalamu wa mashule na wala usingiliwe na wanasiasa.

Kiswahili iwe lugha ya taifa na ifunzwe katika shule na mafunzo mengi yawe katika lugha hii.

Pili, umeme uletwe shuleni ili kufanikisha mafunzo kama tarakilishi, na taa za kusomea wakati wa usiku.

Elimu ya msingi iwe ni ya bure bila malipo yoyote.

Mwalimu akipatikana amefanya mapenzi na msichana wa shule, afutwe kazi haraka haraka napi aadhibiwe kali. Adhabu ambayo inapendekezwa ni miaka kumi na viboko, lakini watoto waadhibiwe viboko katika shule wala sio kupigwa kwa rungu au teke.

Mambo ya wajane, wajane ambao waume zao wana pension halafu wafe, pension hiyo irudishwe kwa mjane na aendelee kupata hiyo pension mpaka siku ya kifo chake.

Tunapinga mambo ya uridhi wa wanawake kwa sababu inachangia ugonjwa wa ukimwi. Serikali isomeshe watoto wa marehemu.

Ardhi, inapendekeza kwamba iondolowe kabisa ada au malipo kwa utolewaji wa hati ya kumiliki shamba, yaani land tittle deeds ziwe za bure.

**Interjection Com. Abida Aroni:** Ya mwisho.

**Wycliff Esala:** Nikiruka kidogo, mamlaka ya Rais, Rais achaguliwe, iendelee kuwepo kama ilivyo yaani kuchaguliwa na raia. Kisha ahudumu kipindi cha miaka mitano, lakini asiwe juu ya sheria kama ilivyo sasa. Madaraka ya Rais yapunguzwe, akipatikana na hatia yeyote aweze kushtakiwa kama watu wengine. Makamu wa Rais achaguliwe na raia. Vyama viweko viana viwili hapa nchini. Chama kimoja kinachotowala na chama kingine cha upinzani.

**Com. Abida Aroni:** Asante sana. Millicent Lubango, Robert Mayienga, Pheleshia Epiche.

**Pheleshia Epiche:** My names are Pheleshia Epiche and I am going to read the memorandum on behalf of Khwisero business women who are in Nairobi. I will pick the main points.

On traffic police in Kenya: there should be retraining every 3 or 2 years. The police force as a whole should be transferred quite often if possible annually. Where transfer does not just mean promotion from one stage to another but from one district or province to another. This will reduce crime and encourage commitment in service. It will also reduce collaborating with criminals as it has been said before. One of the reason Kenya police is unable to cope up with increasing crime is that they are not physically fit. The Government should set aside funds to have this forces undergo very heavy exercises regularly. A policeman should be the most fit being in the society.

Taxes in Kenya are very high, corruption in business is because of heavy taxes. An example is the matatu business, a small matatu should have a PSV stickers, road license, TLB and minimum insurance cover of 85,000/= a year for 3 parties, let alone the comprehensive insurance funds .....(?) The taxes are driving the average Kenyans from business and increasing the poverty. At this time the vehicle pays tax through the petrol which is already too high, and that is to assist repair the road, why again is this road license? If the vehicle is paying for the .....(?) why again should there be a PSV.

There should be provision in the Constitution such that if your vehicle is old due to the poor roads, the responsible ministry should undertake the repair of the vehicle. Kenyans are paying taxes for these roads and roads, should be repaired and maintained.



The Constitution should have provision so that all public schools sit equal standards of education irrespective of their geographical boundaries, so as to do away with quota system.

The rights of vulnerable groups: rights of women are not fully guaranteed in the current Constitution. Especially in areas where employment is concerned, there are employers who will not accept to employ an expectant mother. Some employment advertisement will even specify that you should not be expecting at the time of the interview. Presidency does not last for ever, and they should therefore look for away in which they can absorb the expectant women. How about employees who terminate women from working as soon as they learn of them getting married or expecting. This is discouraging and many women are becoming what we call career women, no children, concentrate on their career. We need future women and men; this can only happen if the production of the human race is continuous. Women need to have a say in the society, as they are sisters of this country. A woman does not have a say where she is born neither does she have any say where she is married as long as there is any man in that family.

The constitution should be clear on land ownership. A married woman does not own land it belongs to the husbands or the children. Land and property rights: with the rate of increasing population the state should own the land. They should work out the moderlity to set the poor in one area, and if the state cannot own the land then there should be conditions for those owning huge areas of farming land. They should be made to cultivate the land and produce, keep food that is affordable for every Kenyan. They should also be able to employ a good number of people who should be paid like any other employee under the labour body.

That is all and I have a memorandum to.....

**Interjection Com. Abida Aroni:** Thank you, just register them separately. Your name was called out, who are you?

**Millicent Lubanga:** I am Millicent Lubanga, I will read on behalf of Khwisero staff.

The Constitution should be made simpler and available to all Kenyans, in schools, bookshops for all Kenyans to be aware of it to avoid law breaking.

Discipline forces, the military and paramilitary police, police and other forces should be established by the Constitution through the Parliament. Incase of discipline amongst the forces an independent body should be brought in to look into that and adequate measures taken.

There should be only three political parties, which should be financed by the Government and during campaign; money should be put in a central pool to cater for transportation and other needs of the party. An independent body should step in to ensure

distribution of the money equally.

There should be a coalition Government and the Vice President should be elected from the grass roots during presidential election.

Protectiveness and accountability, chiefs should undergo training basing on their level of education i.e. they should own an O level certificate and above. They should be transferred.

Mayors, chairmen of county councils should serve for 5 years for effectiveness. Local authority seats should be given people who are enlightened, should have attained O level certificate, should also have moral qualifications in society.

There should be a commission to determine salaries for MPs, these people should be appointed by the same central Government. MPs should have offices in the constituency for them to be reached easily by their members. These offices should have clerks who can care for the people in the absence of the MP and pass information to them.

Government should allocate funds for education to allow for free education up to class eight. Utilization of funds should be monitored by the central Government. These funds should be directed to schools.

Women should be given equal rights in the Government, leadership and even employment. There should be units in schools at least in every location to cater for the children who are handicapped. This should be monitored by the Government and funds should be got from the taxes collected.

Necessary leaning materials should be provided in all schools equally. As it should be established e.g. the school equipment scheme to cater for the same. Funds from taxes can be used to cater for that. Children who need bursary should be recommended by primary school headteachers.

Anyone found defiling a minor should be sentenced to death to curb a lot of such cases.

Land should belong to an individual and if land remains fallow for so long, the Government should investigate into that. If realized that the owner is able but he has not developed it, it should be given out to those who don't have.

Public officers should declare their wealth to avoid imbalance in ownership of assets.

Pupils from class 6 to 8 should specialize in subjects to be able to lay a foundation for the future. These subjects should cater for economic needs of our people.

**Interjection Com. Abida Aroni:** Last sentence, you are through?

**Millicent Lubanga:** Yeah. Thank you.

**Com. Abida Aroni:** Thank you. Mary Malala, yuko, Paul Chiteri. Please let us have silence and order even at the registration table. We are taping and we may not get the voices clearly. Please if you must talk you can go outside and do that. The person registering please if we could have whispers from your desk. Thank you.

**Paul Chiteri:** My names are Paul Chiteri, I will represent para-legals and human rights, and have recommendations .....(?) as follows.

- The President must be a University holder possibly economics. Might not be an MP but must be nominated by a political party.
- He or she must have consents from 5,000 people from 5 provinces.
- He or she must name his vice President 3 months before election.
- President must be fired once he or she violates the Constitution.

On Parliament: MPs should possess at least form four level of education. There should be no mess in Parliament as this has largely contributed to absenteeism of MPs from Parliament. Veting of senior public post should be by 85% of MPs. MPs who fail to deliver should be voted out. MPs should have offices in their constituency. They should visit their location once in three months.

Devolution of power, we also propose the following: -

- That the resources acquired from a certain constituency or certain area, 75% of this be maintained in that area to assist them locally in the same area.
- We also propose that the ministries be distributed equitably in all areas. This will assist to develop these areas.
- We propose that any political party in power should work with all Kenyans and avoid to discriminate Kenyans for having supported an opposition.
- We also propose that the Kenya currency, I mean, should have the colours of our flag and coat of arms on the other side to avoid, having the portrait of several personalities.

On local authorities we have the following recommendations: -

- Mayors and chairpersons be elected by the people and serve for 5 years.

- Local authorities should have powers to hire and fire town clerks and treasurers for misappropriation.
- All councilors should have minimum education level of form four.

**Interjection Com. Abida Aroni:** Lastly, your last point.

**Paul Chiteri:** Lastly, we also propose that, chiefs be elected by the public. Their salaries also be reviewed after 10 years. They should go for training e.g. in public relations and security matters.

**Interjection Com. Abida Aroni:** Thank you very much please, register and hand over your memorandum. Albert Wanda.

**Albert Wanda Mukabane:** My names are Albert Wanda Mukabane. I am here with a proposal from North Kisa community based organization. And please may I make it to the people that I am not here, as the Secretary of the Kenya Red Cross because the Red Cross does not take part in this. May you allow me to begin from behind because so many people have been begin from the other side.

Okay, I want to talk about the law court: there is one thing I want to put across and that is what the Constitution should provide for a local mwananichi. If a mwanainchi is being wronged by somebody who is in the court, may I say judges or such magistrates. Therefore we should have a provision for them to have a special group of people put in place to cater for their complaints.

I want to talk about local Government, I want to propose that, the chairmen of the county council and city council or whatever should be form 4 certificate holders, and should serve for 5 years and be elected by the people. Should they brake the laws that are certified by the Constitution, they should be fired by at least a 50% vote of no confidence by the people.

I want to talk about the rights of the people: I want to say that all Kenyans should be protected by the Constitution and that in any case should anyone from anywhere breech this Constitution, and therefore violate a right of an individual they should be imprisoned for not less than 10 years.

I also want to talk about the natural resources. I want to say that if a Kenyan or a citizen of Kenya who stays in a particular place is affected in any way, by any effect of the environment or rather natural resources, say industries, mines e.t.c. the Government should be forced to compensate for any kind of damage to their lives or health.

Administration: I want to propose that the chiefs, assistant chief, the Likuru's and whatever, these should be people elected by the local people in that particular area, and they should also serve for a given time within which they shall go home and give way to others.

The parliament: I am saying that the Parliament should have the rights or rather the mandate to work with this Constitution, but then if anything in this constitution is to be amended it should be taken back to us and not the Parliament. And therefore a group of people should be put in place to cater for this and whose salaries, I don't know how it should be .....(inaudible). Please may you not ask me about that.

Somebody going to the parliament should be a form four-certificate holder, should have good conduct in the area. The MPs should also have their offices in their places and if in any case there is a misconduct, they also should be fired by the people who elected them via 50% votes.

We should have a federal Government, to enable people in any part of Kenya who are oppressed to at least enjoy the national cake. Political parties should remain to those, which are represented in Parliament to date. And formation of other parties should be discouraged.

The Preamble to this Constitution should effectively say that there should be a provision first of our rights, privileges and cultural practices in all areas. The Constitution shall also cater for all these rights in all ways and all manners by all people.

Then supremacy of the Constitution: I am saying that, may I not talk about that, may I talk about citizenship...

**Interjection Com. Abida Aroni:** Thank you. I think I have given you about 4 minutes or more. Thank you very much.

**Albert Wanda Mukabane:** Thank you.

**Com. Abida Aroni:** The next person James Henry Kutswa. Excuse me let us have some decorum please. If you must talk since you have already given us your views please go out and give the other people a chance. Tafadhali. Please go on.

**James Henry Kutswa:** My name is James Henry Kutswa from Kisa North, Undororo sub location. The first point is that there should be an elected Executive President and his Vice President.

The Government should be formed by a Prime Minister with his deputy. The post of assistant chief should be scrapped from the administrative system. Instead amaguru that is village elders should be given larger areas to administer with more powers and be salaried at least 1000/= per month.

A commission be set up to vet any person or persons appointed to public offices, to see whether this person is incompetent, clean in his life.

Land succession and land subdivision should be done freely. At the moment apiece is 470/= about there. Many people now live on pieces of land that have not been registered. Members of the tribunal land, land tribunals should be appointed or re-appointed after every 2 years.

It is obvious ladies and gentlemen that people drink busaa.

Busaa in this area is banned; it is proposed that busaa be legalized, to be drunk between 10.00 am and 8.00 p.m. Whether you like it or not, its true, whether we like it or no people drink changaa. A way should be found to legalize and license the making, possessing and drinking of changaa say from 4.00p.m to 8.00p.m. There is a drug called kuber, it is imported in this country. I appeal to the commission to find out and ban it, it's a drug.

Retirement and benefits: I feel the pensioners do not get fair service. Their pension should be increased. Presently, there are some people who get about 500/=, I propose that those who get 500/= and below be given a 200% increase. When a pensioner dies, his next of kin or her next of kin should continue getting the pension for the next 18 years.

Members of the general service unit should be rehabilitated so that they refrain from harassments, desecration and beating, that is brutality.

**Interjection Com.Abida Aroni:** Your last sentence.

**James Henry Kutswa:** Rigging elections should be punishable by a fine 50,000/=. The Constitution should allow only 3 political parties. Suspects of minor crimes should not be taken to police cells or be remanded, they should be given bonds and if found guilty, they should work out in public institutions like hospitals, chief's center, DO's centers, schools and the like.

If a person dies in jail, the Government should bring his body to the nearest health centre so that his people can collect the body groom there. The present system is that even if I die in Mandera, Kamiti my people have to work out a way of bringing me home.

**Com.Abida Aroni:** Thank you very much please register. Mr. Robert Mayanga.

**Mr. Robert Mayanga:** Submission by the chairman, Head teachers association Khwisero division for constituency Robert

.....

**Interjection Com.Abida Aroni:** Bwana Headmaster we are tapping your voice you need to use the microphone please.  
Thank you.

**Mr. Robert Mayianga:** I am Robert Mayienga Headteacher Khwisero, chairman Heads association in the constituency.

I start, to realize achievable goals in education, primary education should be compulsory to all school going age children in the country. Irresponsible parents whose children roam about in towns (those are chokora'a) must be arrested and charged in the court of law.

Maintenance of primary schools and position of learning and teaching facilities should be the responsibility of the Government.

There should be more schools for physically handicapped children to tap valuable talents from these children. Every location should be allocated a special school for these handicapped children.

Orphans whose parents never leave a responsible member of family should be given basic needs for the development of the children by the Government. Centres to take care of these children should be developed in a district at least one or more for the benefit of these children.

Headteachers of primary schools should be provided with an accounts clerk for proper control of school funds and other accountable documents in schools.

Teachers should be given unpaid leave to participate in politics to be elected and on failing to capture the seat; he or she should be allowed back to continue working. This will assist the Government to have quality leaders.

Posting of teacher from teachers colleges should be strictly left to TSC who should post following the monthly statistical returns which indicates school staffing needs. This will control corruption by DO's who merely conduct interviews orally.

Girl child education should be given a lot of emphasis and parents who force their children for early marriages should heavily face strict measures by the law, if possible an imprisonment will serve them best.

Rapists should be separated from the community for life by getting life imprisonment.

Early childhood development (ECD) teachers, those are nursery teachers should be employed by the Government immediately after their training. Given that they prepare and produce the basic concepts of a human resource for the country. This will give them a good working morale.

Corporal punishment should be re-introduced in schools to control the indisciplined children. This should be inflicted and recorded by the headteachers.

Teacher who are involved in inciting students to destroy schools should be interdicted and summarily dismissed and taken to court. If proved guilty, they should be imprisoned for a term based on the amount of destruction. Duration of cases in courts should be reduced.

The chiefs and assistant chiefs as other civil servants should be subjected to transfers.

Any elected leader or Member of Parliament or councilor who performs below expected standards, the voters should be allowed to pass a vote of no confidence, basing on more than a half number of signatures collected from just a particular area.

Finally the county council or municipal employees should be trained because they deal with the public. This will reduce mistreatment of Kenyan citizen who otherwise depend on markets for their survival.

**A compiled and submitted by Robert Ochame Mayenga**

**Headteacher Khwisero primary school.**

**Thank you very much**

**Com.Abida Aroni:** Thank you very much please hand over your memorandum and sign our register. Abdul Wanyonyi, Joseph Sande, Enos Opati, Charles Kweyu.

**Charles Kweyu Alukwe:** My name is Charles Kweyu Alukwe from Kisa South. My view is problems facing people is how to put together a Constitutional acceptable to all with protective rights to every one. But freedom is right and without it the dignity of man is violated.

The Constitution should be amended to protect land rights and improve the economy. Land belonging to the community in Western province had been taken away as the Government watched.

The Constitution should be amended to protect people.



**Interjection Com.Abida Aroni:** Who are you, tell us what you want to see, if you tell us the land was taken as the government watching, so what is next. Tell us what you want to see. Mapendekezo ile itakusaidai wewe.

**Charles Kweyu Alukwe:** Mapendekezo yangu ni kuangalia sasa kama watu wale hawana mashamba, wale hawana tittle deed kama sisi tunakaa. Baba amekufa na namba iko kwa jina la baba. Habari ya taxation ukitaka kuenda kufanya taxation ni pesa. Na hiyo pesa hatuna ya kufanya taxation ndio tupate .....

**Interjection Com.Abida Aroni:** Unataka aje?

**Charles Kweyu Alukwe:** Nataka serikali itusaidie, itusaidie kwa...

**Interjection Com.Abida Aroni:** Sasa usilalamike, uko na nafasi ya kusema vile, ukisema Serikali ikusaidie, ikusaidie na basi ufike kwa lands office ama ni nini?

**Charles Kweyu Alukwe:** Itusaidie vile tunaweza kupata hiyo land title deed...

**Interjection Com.Adida Aroni:** Basi utueleze hivyo.

**Charles Kweyu Alukwe:** Nilikuwa kwa namba inne. The Constitution should be amended to protect people from harassment or arrest. Kwa maana police officers have victimized innocent people in different parts of the country. Police brutality leading to injury of innocent wananchi. There have been also the incitement of the bribe. Kama huna bribe ukishikwa na polisi huwezi kuondoka huko. Unaenda kortini na unafungwa na huna makosa, pengine unatembea na ushikwe kwa barabara...

**Interjection Com.Abida Aroni:** Bwana Kweyu utueleze maneno yako kwa Kiswahili ndio tuelewe tafadhali, pendekeza kwa Kiswahili kwa sababu hatuelewani.

**Charles Kweyu Alukwe:** Nilikuwa nataka kusema hivyo kwa sababu tunasumbuka sana na polisi. Polisi wanashika mtu bila sababu na kumpeleka kortini. Na kama hauna pesa hauwezi kutoka huko. Unakaa huko na kama wewe ni mzee kama mimi si utakufa huko. Nataka Serikali itusaidie hapo mambo ya polisi kushika watu ovyo ovyo. Mtu ashikwe kama ana makosa, sio kushikwa bure bila sababu.

**Interjection Com.Abida Aroni:** Next ongea kwa kiswahili.

**Charles Kweyu Alukwe:** Next. Nilikuwa nataka tusaaidiane kwa sababu sheria hii inatulinda sisi sote. Nataka mambo ya culture Serikali imeanza kupiga marufuku na hiki ni kitu tulipata kama wazazi wetu wanafanya. Mambo ya makumbusho ya mazishi Serikali wasipige marufuku.

Mambo ya club, Serikali ikubali watu wafungue clubs na iwe na mataa, pombe ya busaa iwe ikitumika. Tunataka Serikali isipige marufuku. Ni hayo tu.

**Com.Abida Aroni:** Henry Omukoto. Please lets have silence. We are begging you to be quiet, but if you don't listen itatubidi tufanye inavyo faa ilituweze kusikiza wale ambao wamekuja hapa kutoa maoni yao. Tafadhali hatujapata hizi problems pahali pengine. We are seeing it for the first time here, it is very disappointing. Kama ni lazima uzungumze tafadhali toke inje halafu urudi upatie wenzako nafasi. Asanteni.

**Henry Omukoto:** My name is Henry Omukoto. First point, the President should not be above the law and should ensure good service to the public in civil service, administration and all governmental organizations.

Access to the office of the President, all Kenyans should be able to visit the President or communicate with the President directly.

Ministries: there should be a special new institution established to oversee wrongs in all ministries and react incase of illegal activities. Because there are ministers who embezzle the government's money by pretending that they are starting a project, which physically do not exist.

Parliament: parliament should not be adjourned by the President. Parliament should continue within the period of 5 years. MPs should collect views from constituents as such their difficulties, and then speak to the national assembly rather than taking their own feelings to the national assembly without knowing the problems of the public.

Judiciary: it should not be independent whatsoever. There should be a set up institution, an overseer which should challenged, discipline, sack, react, remove wrong magistrates incase of corruption. It should not be independent. Above all, in the Judiciary any complaint should file a suit without money. This is because the Government has so many resources from the public, and because if there is money charged from people who are having bitter feeling, the end result is reacting physically to fight using spears because they have no money to pursue or follow up Judicial system.

Human rights: there should be freedom of assembly, freedom of speech. Traditions should be respected and not interfered. Traditional liquor should continue to be brewed. For instance busaa in the past during circumcison there was liquor in tradition called "Olusaka" it was used by the people to ensure that people should not cry at the circumcison, they should not committed

adultery after circumcision and as such the Government should not interfere and ban busaa. This will be ruining our tradition in Luhya society.

**Interjection Com.Abida Aroni:** Thank you very much we are going to read the rest of your memorandum. Tafadhali tutasoma unaona hao watu wote wanataka kuzungumza.

**Henry Omukoto:** Okey thank you very. That is the contribution I had.

**Com.Abida Aroni:** Thank you we will definitely read your memorandum usiwe na wasiwasi. Asante. Juma Mugwanga. Dakika tatu tafadhali.

**Juma Mugwanga:** Chairman I will read the memorandum on behalf of the Kenya Union of Primary Education. My name is Juma Mugwanga District Executive Secretary (KUPE). So I will handle the area of education first and very fast.

There should be at least one school in every division with activity for special students on special cases or 3 such schools in every district. There should be no interference in the learning of secondary school or primary school by the local political leadership and the police. We want as teachers compulsory and free education from primary or basic education for Kenyans up to the age of 15 years.

The Teachers Service Commission should be the sole employer of teachers and not the Board of Governors or the PTA or the DO's office. We want our allowances for teachers and Kenyan worker not be taxed. The Government should allow teachers to import duty free facilities; at least two biological children of teachers should enjoy free education up to the age of 19 years.

The Government should honour the law by following the International Labour Organization conventions which embody regulations on teaching, labour contract our hours of labour, minimum wages. The law should have the workman's compensation legislation for teachers, which must provide indemnity for occupational diseases as well as industrial accidents.

On transport and communication, teachers feel that, the Government should own all roads in the country and not allow certain people to block roads as they fill pot holes in the road and collect toll. People in Kenya who are involved in the transport business should use roads of their choice and not pay any money to any group to give them the routes. We are proposing that the manambas or touts be holders of the D+ in KCSE, or division four and they should be trained in hospitality to at least a certificate level. Then there should be a creation of the Kenya Transport Service Commission, which should own all touts in the country and those who wants to run passenger service vehicle will get the drivers and the touts from them.

Lastly, on vulnerable groups, we want to state that children should not be employed, and anybody who employs a child less

than 18 years should be prosecuted. Children should be protected and therefore be given free medical services, and that refers to the school going children.

**Com.Abida Aroni:** Thank you very much, tutasoma mengine. Stephen Otieno, Joseph Imzombeli, Mary Okinda, Alfred Otiato, Douglas Anungo, Mary Ambale.

**Douglas Anungo:** Thank you my names are Douglas Anungo for Khwisero Counseling and Resource Centre. We have a few proposals and these include the responsibility each and every member of this society has to take, in order to be entitled to the rights and freedom of the society.

We recommend that every Kenyan be committed to public security, being patriotic and loyal to the country and promote its well-being. Engage in gainful work for the good of the citizen, the family, and the common good and to contribute to national development. To contribute to the well being of the community where citizen has been brought up.

On a leadership and governance: we recommend that the regulation being used by the electoral Commission of Kenya be strengthened so that we avoid the habit of handouts during election time. Conditions during election have to be conducive in order to attract women, youth and other disadvantaged persons into positions of leadership at all level.

Under education and information: we recommend that the Government introduce and promote universal quality education, sensitive to gender balance and individual ability, for all age groups. Adults, education programme should be re-adjusted to address the collective needs of the people: in the present circumstance, such as poverty reduction, strategies, farming techniques, HIV Aids and other related emerging issues.

The Government also has to improve in its efforts to increase the retention rate of schools in primary education. Such as the provision of milk for the primary schools and re-introduction of Kenya school equipment scheme that ensured equitable distribution of all schools equipment in schools.

The Government also has to address the needs of our children in pre-primary schools such as better nutrition, health, literacy numeracy, unlike in the present where these old responsibilities have been left to the community.

Under public property: we recommend that the Government strengthen measures to ensure that our public property such as revenue raised are properly utilized. We recommend that allowances and most of the benefits being offered to public officials be reduced to ratio on the national economy.

Under the Legislature: we recommend every Member of Parliament to have an office in his constituency where by he will be

attending to needs of its constituents at least every 2 weeks in a month. And every 3 months he has to have a public meeting to discuss what he is doing to his people.

In law making we recommend the legislature or the Parliament to have two chambers. So that laws passed in the lower chamber have to be approved by the upper chamber after it has been discussed by the public.

Under supervision of the Executive: we recommend as some of the powers that have been given to President are to be given back to the speaker of the national assembly, such as adjourning of the assembly, summoning, dissolving of the national assembly and calling for the national election. These powers should be shared between the speaker and electoral commission.

**Com.Abida Aroni:** Lastly.

**Douglas Anungo:** Lastly, we would like most of the public official to uphold to the principle of natural justice, and especially those in the judiciary areas where most laws are affected. Thank you.

**Com.Abida Aroni:** Thank you make sure you leave us with the book. Vivian Ayuma.

**Vivian Ayuma:** I am here on behalf of the Poverty in Africa, Kenya and women are a special target group for us. I will just talk about youths, which have not been talked about here. I am Vivian Ayuma, we are concerned about the highly technical legal language that is used in our Constitution. We have seen people struggling here to look very, you know kama those technical languages. We want a Constitution that any layman, any ordinary Kenyan, can understand and can discuss and know how it affects his or her life.

The constitution, we find that its language can also be taken to be insensitive to some key sectors of the society such as the women and persons with disabilities, as in section 34C of the Constitution. It can be taken to suggest that a blind person cannot read the English or Kiswahili languages, which is obviously not true.

We also have a problem with the Bill of Rights, because its allows practices that are discriminatory on the basis of sex to continue. As much as Mr. Muchelule said here that they apply customary law in some cases. We find that discriminatory when it comes to personal matters such as marriage, divorce and burials. Many women have been victims to these discriminatory practices.

The Bill of Rights does not protect persons with disabilities against discrimination. They are not included by name as part of the sector which enjoy the rights it provides. The Bill of Rights, does not provide clear protection for marginalized communities who are struggling to survive in cruel and harsh environment.

In the constitution of Kenya, it is also not supportive of women and persons with disabilities to elective positions. We have seen the trend, as we know it, leadership roles are reserved for women. Even as we in this forum we can count how many women have come forth to talk something about the Constitution. Men discourage women from participation in public and then the biased campaigns including insults and violence against women. All these things work against the women. They also lack materials and resources, so we advocate that the constitution should be more supportive of persons with disabilities, women, and marginalized communities. We strongly support the Affirmative action. We suggest that the Constitution should reserve a number of parliamentary and civic seats for women and persons with disabilities. After all they play a very significant role in society and economic production of this country.

Finally, the Bill of Rights should acknowledge basic rights, the basic need for education and especially for the girl child, shelter, food, health and water. It should not just focus on civic and political rights of the citizen.

We hope you will take us into consideration.

**Com. Abida Aroni:** Thank you very much. We noticed that some people have been here since 10.00 o'clock, there are those who have just come in now, if you want to practice much row justice, I am sorry our regulations are that we follow this list and constrain to follow this list. Infact I am surprised that this lady has quoted somebody who spoke very early this morning. So we have no choice but to follow this list. Please do not send me any requests. I think let us be fair to everyone, people have been here since 9.00 o'clock and we have not reached them. Thank you. Wilson Imbusi Teti, Mary Hamisi, Jared Atulo, Walter, Mary Otinyi, Councilor Shirumba, John Mbatia, Gilbert Sande.

**Gilbert Sande:** Thank you chairman commissioner. I am Gilbert Sande Inganga presenting a memorandum from North Kisa men elders who are 50 years and above.

On constitutional supremacy, we say the MPs including the AG and a few selected members from the LSK should actually conduct the referendum, in any case making and amending of the constitution should be entirely put on them. If we refer from the civics we have here in Kenya, the law making body is the Legislature. Lets stick to that.

On defense and national security: the Executive should not have exclusive powers to declare war. Consultation from outside and within should be done. Now the Constitution should not permit extra ordinary powers in emergency situations such as war and brake down of public order, this affects and even causes death of innocent people.

Now the top most powers commanders should have the authority to invoke these emergency powers with caution over the protection of the citizens especially children and women, and their property.

Parliament should be involved through consultation with the ministry of defense. If this is done, then Utumishi Kwa Wote would more be of a reality but not a mere slogan.

Political parties: apart from mobilization, they should be ready to correct the ruling party. They should not wait until they start ruling so as to seek for external aid. They should be development conscious; they should encourage national unity through the presidency of the time irrespective of party affiliation. The Constitution should regulate the formation, management and conduct of Political parties: we should have three strong parties determined by members through registration and through the number of votes, any first 3 for that matter, the rest can be deregistered. Political parties should be financed to through registrations and monthly contribution of members through harambee and appeal from donor countries but not from taxpayer's money sustainability should be guaranteed before any party is registered.

State and political parties should honour the national symbols that is the presidency, national anthem, the national flag; aim at national objectives of achieving poverty reduction, illiteracy reductions, health and education for all.

After election the other parties should positively work with the ruling party for the welfare of the wananchi.

For the Executive: we say that the qualification should be at least a graduate, 35 years and a maximum of 65 years, before one becomes an invalid. Presidential tenure should be fixed, 2 terms 5 years each. Then the power to recall should be vested in the electors.

We said down here that we need provincial administration, village elders, chief, DOs, up to PCs; village elders should do the work of assistant chiefs. Village elders should be paid a salary and at least have education background of class 8. Its role should be to check on security, food production, trade, infrastructure, sources of water, afforestation, education, health facilities, and services, curb corruption, land cases and maintains peace and order.

As civil servants chief should be transferable. On Judiciary we said, that Judiciary officers should be appointed on merits experience and moral records. Discipline, dismissal incase he or she is found encouraging in corruption and bending a case to favour the offender. Practicing nepotism and favoritism, infact there should be set a compliance commission to deal with such. All divisions should have law courts to reduce case duration and expensive traveling to places. There should be constitutional rights to legal aid, some citizens oppressed due to poverty and lack of belonging and are falsely involved in cases where by they are innocently imprisoned. Such people need bond, advocates and other means of state protection. Plus many others.

**Com.Abida Aroni:** Pamela Okute, Mathius Ashira.

**Mathius Achira:** Asante sana mwenyekiti. Mimi kwa majina ni Mathius Achira Onon. Maoni yangu ni ukosefu wa kazi na

umaskini. Kitu cha kumalizia na utaratibu ufuatwe kwa watu ambao wana madaraka ya juu, kama maofisa, PCs, permanent secretaries, na wengine wote wakisha retire. Tunataka warudi nyambani na pension zao na benefits. Wasichukuliwe tena kuenda kwa idara fulani au wawekwe kama mabalozi mahali fulani, au ndio wenyekiti wa mafuta, sukari na wengine wanakosa kazi, ambao wako nyuma. Watu kama hao wawe na benefits za kutosha ili wengine wapate kazi.

Watoto wakimaliza kidato cha inne baadaye University inachukua wale inaweza na wenye kubaki wanasahauliwa. Tunataka iwe hivi, wale ambao wanabaki hawana uwezo wa kwenda mbele na kusema niko hapa na nilimaliza shule sina kazi au siwezi kupata College. Tunataka ministry isaidie watoto kama hao kwa kuona vile watakwenda college yeyote ile. Ni hayo tu nimemaliza.

**Com.Abida Aroni:** Asante sana mzee, jiandikishe na uwache hiyo karatasi yako. James Aswani.

**James Aswani:** My names are James Aswani, I am a teacher by profession. I represent teachers in Khwisero, Kenya National Union of Teachers.

I would like the following to be enacted in the new Constitution. We would like to have 3 parties limited, and the parties should be financed by registration fees and contributions of well wishers. The chairman of the winning party, if he or she happens to be elected as the President of this country, should not be allowed to use the resources of the country to promote the activities or the welfare of the party.

On the Legislature, we are recommending that the constitution should allow the civil servants, teachers, and workers of the parastatals to be given a leave to come and campaign. If they lose elections, they should be allowed to resume their work, so that this would enable the country to have such representatives, rather than having someone who has retired and maybe is a spent force.

We recommend that the Constitution should abolish nominated members, instead we should have seats reserved for special groups like the youth should be reserved 5 seats in the Parliament. The women should also have some reserved seats to say 10 because they are many. The disabled should also have 10 seats so that their interests are well catered for in the Parliament. We should also have some members representing various denominations in our republic.

I want to say something about education act, because that is our area of concern. Education act should be reviewed to allow the school committees to serve for more than 3 years instead of the one year they have been given, so that they are given enough time to complete the projects they have started.

The Vice President, the Constitution should the constitution should enact that they should be elected directly by the people, not



to be appointed by the President. The chairmen and the mayors of councils should be directly be elected by people and he should serve 5 years instead of 2 years as it is the case.

On the basic rights, we recommend that the Constitution should guarantee security for all citizens of this country, health care, food, shelter and employment to all citizens. And then the parliament should ensure that the rights are enjoyed by all citizens. We are also recommending non-performing MPs should be recalled by the constituents if he is not performing his job well.

I want to say something on pension. The Constitution should also enact on pension, the spouses, the woman who has lost the husband should earn and get the pension for more than 10 years, because people are now dying at an early age, so that she can support the family that has been left behind.

On unionism, the Constitution should endeavor to give the union the power to represent the people very well.

**Com.Abida Aroni:** Thank you. Barnabas Musambai, Peris Hongo, chief Amwia Harizon, Sande, Sarah Angoje, Dicksion Katibe.

**Dicksion Katibi:** Thank you the chairman and commissioner. My name is Wilfed Dickson Katibi. I hail from Koshuku sub-location in Khwisero constituency.

The Constitution should be made in such a way that the President is a ceremonial President and his Vice President.

The winning party with the majority of members of Parliament should produce a Prime Minister who is answerable to Parliament and to the electorate.

The civil service should be delinked from the political party in power to avoid cases where you find a permanent secretary in the office of the President or secretary to the cabinet moving around with the President all the time and all over the country, thus giving the impression that the air that .....

**Interjection Com.Abida Aroni:** .....(inaudible)

**Dicksion Katibe:** I was saying that the civil service should be delinked from the ruling party or the party that is in power. To avoid the appointment of heads of parastatal bodies to be done by the ruling party.

When it comes to the chief justice, he or she must be vetted by Parliament. The registration of political parties should not come under society's act. Political parties and churches should be registered differently.

Our Constitution should ensure that the government spreads its resources to all the constituencies in terms of education health, water, and infrastructure in general. To ensure that every constituency receives funds from the Government, to look after education, for example like in this constituency of Khwisero where we are, and stick to that, after 39 years we don't have any tarmacked roads, we don't have any electricity, and we don't have any hospital after 39 years.

We should retain our cultural values especially when it comes to marriages and burials.

Election of chiefs and sub chiefs should be done by the communities.

Last but not least, sitting MPs should be paid their sitting allowances according to the contribution to the debate. Those who don't contribute anything to the debate they should not get sitting allowance. To avoid having Members of Parliament sitting there for 5 years, earning salaries, and they don't contribute anything. I am saying so knowing that I am an aspiring candidate.

Harambee funds should be audited by the auditor general, to avoid cases where we contribute a lot of money for the bursary funds and we still have children in a constituency being sent away because of school fees.

Other things have been said. Thank you very much.

**Com.Abida Aroni:** Thank you please register and leave your memorandum. Mary Ofimba, Odongo Omungala, Elphas Emali. Can we have the other registration forms please.

**Elphas Emali:** Chairmen of the Commission today, my names are Elphas Emali from the .....(?) sub location, Khwisero. I am presenting memorandum on behalf of the Esitai youth group.

Citizens: citizenship should be given to one who is born in Kenya by blood. By applying to register as automatic or permanent citizen, so long as a parent is a Kenyan citizen his or her spouses should be given automatic citizenship. A parent who is a Kenyan citizen and is willing to continue staying in the country, his or her spouse should be given citizenship automatically.

These are the rights of the citizen, the right to get a free education from basic to higher level, the right of moving and staying anywhere in Kenya the right of electing by voting your leader or being voted in the right of getting free help and proper food supplies.

Dual citizenship should not be allowed in order to reduce moving and inconveniency with .....(?) of a citizen. Identity Card and passport certificate should be carried by a Kenyan citizen.

About land, land being the most sensitive part, I propose that women should not be allowed to own land. In this case men should be the only ones left to own land, because when a man dies sometimes he had no child with his wife and she can decide and sell this land and leave the local people without anything, and this can lead to problems. Therefore I propose that women whatsoever should not be allowed to own land. This should be left to men or the local people.

**Interjection Com.Abida Aroni:** Maliza lakini kabla hujaenda, before you leave, your reason is not convincing. Do men sell land? Have you heard of a man who has sold land? No no no answer the question, have you heard a man selling land, ancestral land, does it happen?

**Elphas Emali:** If he sells he will contact the local people.

**Interjection Com.Abida Aroni:** Do they sell? The answer is either yes or no. Do they sell sometimes? They do isn't it? So tell us what we do with men who are likely to sell because not all women would sell land. So what do we do with men who are likely to sell land? What do we do with them because lazima tu balance. What do we do with them? Think about it and let us know. We want to also be fair to everybody, okay. Thank you.

**Elphas Emali:** Yes, but this one will remain my point that man should be the only one to be left to own this land....

**Interjection Com.Abida Aroni:** But you haven't given us a good reason. Why not give us a good reason that is our problem. What is the reason why we should not give women land? Your reason, is not convincing. What is the reason?

**Elphas Emali:** The reason is that women are weak mind and they can be.....

**Interjection Com.Abida Aroni:** Asante, asante tafuta kisababu kizuri. Thank you very much. Mulinda primary school, Naftali Aluko, Rhoda Wamoya, Peter Enzoberi, Pastor Osore, Jacktone Alukhee. I think there are people here who have not registered. If there is anyone who has not registered please register because we can only follow what we have. Please go on.

**Jacktone Alukwe:** Asante sana mwenyekiti, nashukuru sana kwa kuwa mumekuja hapa kuchukua maoni yetu.

Maoni yangu ya kwanza ni aya, tunataka ulinzi uondolewe kwa ofisi ya Rais kwa sababu wamechukua sheria kuwa hao ndio wenye sheria yote, kwa sababu wako kwa ofisi ya President. Wawachiwe tu vile walikuwa zamani sio vile sasa wamechukuliwa kuwekwa kwa ofisi ya Rais sasa wanatusumbua sana na kutunyanyasa kwa mambo mengi.

Tuwe na pombe yetu ya kiasili kama hii yetu tunaita busaa. Watu wawe na wakati wa kupumzika vile zamani.

Majaji wa mahakama wasiwe kwa ofisi wa Rais tena. Kwa sababu vile wanachaguliwa na Rais, wanachukua uwezo wao wote wanaweka kuumiza wananchi wadogo, kwa sababu hatuna uwezo wa pesa ya kujiwakilisha.

Tumechanganyikana hapa Kenya tuna makabila mengi, na kila watu wana mambo yao. Tunaweka mambo yetu yote sawa na kila makabila yote yalioko hapa na hatuwezi kuwa sawa. Waluhya wana mambo yao, Wajaluo wana mambo yao, Wakikuyu wana mambo yao, na sasa tumechanganyikana tumeweka mambo yetu yako sawa. Kila ikifanywa hivi Mkikuyu akiona ni mbaya, mkifanya hivi wa Maasai wanaona ni mbaya, kwa hivyo sasa tuwe na mambo ya culture yetu, kila kabila liwe na mambo yao kivyao.

Katiba nataka iwe ile ilikuwa ya sitini na tatu, ile ilichapishwa ya kwanza kwa sababu haikufanya kazi. Walisema hiyo ingekuwa na ukabila na sasa ukabila uko na sio hiyo ndio ilileta. Nataka ile katiba ilikuwa ya sitini na tatu irudishwe.

Kuna mambo mengi ambayo inatusumbua hapa Kenya kwa upande wa sheria. Ukienda mahali kuna sheria ukiwa una pesa huwezi kuyatimiza, na hao watu ni wale ambao wameajiriwa na wanakula mishahara wa Serikali ambayo inatuakilisha. Hiyo tunataka tuwe na advocate wetu wa watu ambao hawana uwezo, kwa sababu ukiwa na pesa unaajiri advocate wako.

Kwa upande wa hospitali, tumeambiwa tuwe na cost sharing kwa hospitali, na sasa hiyo imekuwa ya kuumiza wananchi wadogo. Nataka mswada ukipitishwa hospitali ziwe free kwa wananchi kwa sababu wananchi wanaumia juu ya hili jambo, kwa sababu hatuna pesa. Watu wanakufa na tunaambiwa hakuna madawa.

Sisi Wakenya tumekaa kama watu ambao ni wakimbizi. Una shamba yako na huna uwezo wa kuweza kuimiliki. Land registrar inatakikana iwe free ndipoza wale watu wako mbele wanaokaa kwa land board wasinyanyase wananchi kwa sababu pesa iko na wanakalia, na sasa wanaumiza wananchi. Asante sana mwenyekiti.

**Com.Abida Aroni:** Kabla hujaondoka, hawa unaosema security waondolewe kutoka kwa ofisi ya president, unataka wapelekwe wapi?

**Jacktone Alukwe:** Wawe vile walikuwa wakikaa zamani.

**Com.Abida Aroni:** Vipi?

**Jacktone Alukwe:** Polisi walikuwa wanakaa tu hawakuwa kwa ofisi wa Rais.

**Com.Abida Aroni:** Walikuwa wapi?

**Jacktone Alukwe:** Walikuwa ni polisi utumishi kwa wote.

**Com.Abida Aroni:** Okay Asante. Please there we still don't have your name but just come and present because I have seen you there for quite sometime. No no I think you are talking to the wrong person, the registration was right behind and I saw you register but its okay. Just go on and maybe you can register afterwards.

**Mr. & Mrs. Wepoko Inyondo:** We are here Mr. & Mrs. Wepoko Inyondo. I have got some introduction here to this particular text of mine and I think the introduction has got quite something, which we would follow up of what we have suggested here.

I start with saying that our interest in constitutional change is centered on building and strengthening institutions of democracy, where by the colonial institutions of dictatorship are gradually altered and replaced, to enable the people to take power in Government; run for the people, by the people and with the people themselves.

Whereas we members of the legislature and executive and judiciary are arrogant, I will say that we don't want them to be arrogant, but at the moment this Constitution makes them quite arrogant, the present one.

This Constitution should be made to serve the community with concern; we are therefore interested in the ideas like the separation of the powers of Government, involving policy development by legislature, responsibility and accountability in the Executive and in the independence of the Judiciary. Nevertheless, despite all the high flown rhetoric which have surrounded the craze in Kenya for changing the Constitution, we would point out in no one uncertain terms that currently we have a workable Constitution. It will be improved by the changes we suggest to be law here, but it will not work a miracle without determined commitments of the citizens of the republic of Kenya.

A Constitution is a set of rules binding all members of democracy of democratic citizens who are simple in their obligations and rights, in this case the nation of Kenya, into a co-operative body of people pursuing the same objectives in the peaceful order. Those who transgress the rules must be punished in accordance with the will of the people, with the extent of the responsibility given to them by the community.

If the people of Kenya from the highest leader to lowliest citizen combine to flaunt the constitutional rules and fail to be punished, then the new Constitution will work not better than the old one. The 50 million dollar question is, how do we enshrine in the Constitution rules, which control people's greed for personal power and gain at the expense of the rest of the community. The idea of separation of power was there in the old Constitution. A judicial service commission was established by the Constitution. An independent Auditor General was established by the old Constitution. We the people of Kenya allowed our leaders to abandon the institutions only to personal integrity established in the hearts and minds of the people, to maintain the

rules of the Constitution, the force it should be. Thank you very much. That was the brief introduction and a summary of what my wife will talk about. Thank you.

**Com.Abida Aroni:** Okay we will give her three minutes to say what she has to say, but let us have her name as well. I know she is Mrs. Wepuko but for our record purposes. We would like to have her identity also.

**Mrs. Jill Inyundo:** My name is Mrs. Jill Inyundo. The points that we have here are largely to do with the Judiciary because we believe that the independence of the Judiciary is the central thing that should be enshrined in the Constitution. It is the lack of independence of the Judiciary that has led to so much evil in our society.

I begin with the Executive however, with the ideas that much of the Executive power should be transferred into the Legislature.

The system of colonial dictatorship established the powerful Executive at the expense of a local legislative system.

We believe that local elected Government should gradually replace the local administration as people become better educated with wide view of the duties and rights in a republic of 30 million people.

We want to see the idea of the people electing chiefs, assistant chiefs, and the Ligurus, at some point enshrined in the Constitution, so that the administration comes to understand that they do not dictate but they serve the people. Initially this may take place after the district development committee has short listed candidates in terms of education, experience, and maturity of understanding, may be through written and oral exams.

Enshrined in the Constitution should be a system adopted into genuine elections of local councils, with specific roles and a specific budget and control of personnel serving locally in ministries.

We must begin to learn to handle money locally.

Also enshrined in the Constitution should be a system of complaints, discipline, suspension and dismissal of Government servants from all ministries including the President's office at all levels.

The Judiciary: we fully endorse the ideas recommended by the Advisory Panel of commonwealth Judges. In summary, (A) there must be a transparent and merit based judicial appointment system i.e. restructure the Judicial Service Commission, establish a Parliamentary Committee on Judicial affairs, the President of the Republic be required to formally consult the Parliamentary Committee on judicial affairs when making judicial appointments, etc.

(B) Removal of judges: a more transparent complaints and removal procedure should be developed through the restructured Judicial Service Commission, etc.

© A comprehensive code of conduct for judges, magistrates and judicial officers to be set up with two obligations, and then there is the detail about it.

(D) A declaration of judicial independence must be made a clause in the Constitution.

To the clauses establishing Executive power and the President, and establishing Legislative power and Parliament, must be added a clause establishing Judicial power and the Judiciary, indicating it has final authority to protect the fundamental rights of the people and judge whether any statute or Executive action has transgressed the Constitution. In other words checking on the Executive powers and on the Legislative power, with powers to cancel and impeach. Therefore a restructured and independent Judicial Service Commission must be established.

The Constitution must state explicitly that Judicial authority resides in the Judiciary. The Constitution must state explicitly that all court orders and decisions are binding and the Supreme Court be set up.

Vesting undue concentration of authority in a single judicial officer should be avoided. Share out the present powers of the Chief Justice and there are details about it.

Lastly, an effective Appeal Process should be developed. Judges must be required to explain which if error is revealed can be reversed on appeal. Secondly, a court of last resort be set up.

A Supreme Court of selected jurists of unquestionable skill, judgment and integrity including the Chief Justice and at least six judges.

Further the recommendations my husband and myself, number eight,----? Kenyan law is based on case Law Precedence, so advocates, judges, magistrates need to be continually informed on previous cases and living cases including those from special courts like those commercial courts in Nairobi. Therefore establish and distribute tonnes of case law, establish and distribute a book of precedence, it is crucial.

Change the laws of Kenya and the Appeal court rules to direct judges in all higher final courts of Appeal, to consider its use of tact as well as law in all appeals, so that mistakes of lawyers at all levels of the system are not visited on an innocent client, as is consistent with the laws of natural justice and common sense. Amen.

Train competent prosecutors by setting up a state prosecuting service, independent of the police or the law society.

Set up an inspectorate of judicial officers and advocates with powers to direct lawyers of all descriptions to attend further training or be subject to discipline.

The last point here with the Judiciary is, set up a citizen pressure group as a watchdog to the legal system at all levels and in all courts.

Lastly, the Legislature: Entrench in the Constitution the idea that when members stand for election to Parliament, whether standing as individuals or representing a party,

- A) The amount of money used for campaigning is limited to a precise amount
- B) It may not be used to bribe the electorate to vote for the candidate; kitu kidogo
- C) A clear process of punishment. In Kenya we have to learn to punish people who disobey the Constitution and all laws. We must have a process of punishment to be spelt out if the rule is flouted.

Lastly, unto the Legislature, entrench in the Constitution the idea that when an elected member decides to leave the party on whose ticket he was elected, he might not join another party without forfeiting his right to sit as an MP until elected again. Bwana Asifiwe.

**Com.Abida Aroni:** Thank you. Please register and leave us with your document. The next is Millicent Lubango, Father Dennis Nyongesa, sisi tunaona wale wako ndani, James Sande ako inje pia, Regina Sino.

**Regina Sino:** My name is Regina Sino (CBD) Khwisero health centre. Maana yake ni Family planning, waliuliza ambao hao ni akina mama wanafanya kazi huko nyumbani kwa mapoma kwa mpango wa uzazi. Ni vile wanafanya wanapata kazi ngumu kushugulika na akina mama kuwaleta kwa mipango ya uzazi na kufunga TL Hapo walisema wapewe kitu kidogo vile wanatembea hawapati chochote.

**Interjection Com.Abida Aroni:** Nana aliWandika?

**Regina Sino:** CBD ndio waliWandika.

**Interjection Com.Abida Aroni:** Kwa nini sasa unataka katiba iwalipe.

**Regina Sino:** Walisema kama wanaweza shugulikiwa kama wanaweza kupatia kitu kidogo.

Waliongea wakati wanafanya kazi ya wanaweke wanafanya (TL) na wanaume wanakaa inje. Sababu ya kufanya hivyo sheria



ya ndoa inatakikana mwanaume akizaa inje awekwe kwa sheria.

**Interjection Com.Abida Aroni:** Afanyiwe nini.

**Regina Sino:** Ashtakiwe kwa ajili amezaa inje ya ndoa na mwanamuke hakuzaa sasa analeta watoto na mwanamke amefungwa.

Waliseme watoto wanafukuzwa kwa shule, vile wasichana wadogo wanafukuzwa shule

wanaenda kurandaranda, ndio anaenda kwa “*abukoko*” wanapata hiyo mimba ya mapema na Aids. Wameomba wasifukuze watoto ambao hawana uniform au karo ya shule, kwa ajili wengi wanaenda kunywa bangi na pombe, watoto wanaharabika, wanapata huo ugonjwa wa ukimwi. Asanteni.

**Com.Abida Aroni:** Asante. Prisca Okano, Patrick, wewe ni nani? Okey.

**Father Dennis Nyongesa:** I am Father Dennis Nyongesa kutoka Emalindi Catholic church. I represent the Catholic Church here in Khwisero.

So many of the things have been said and there is no need of repeating them. But I only have few recommendations I would like to put across, especially when it comes to religion. We have the freedom of worship, but the freedom of worship does not mean disturbance and interference with the other people’s freedom of worship. What I mean is that the law has to be put in place about the distance between churches. You find different churches with different ways of worship. Some churches play loud music, others are abit quite in their manner of worship, and the distance may be too close, maybe 5 to 10 metres from one church to the other. A law has to be put in place for harmony in worship that is one thing we have observed.

And again there is an issue on marriage. We have different kinds of marriage and these include the civil marriage, customary marriage, and religious marriage. The certificates of marriage are only offered to those who have gone through civil marriage and religious marriage but we request the acknowledgment of customary marriage because some people are even etheists who do not have any religions. So if customary marriage would be acknowledged very much by this Constitution, then once the clan elders have recognized the marriage, a certificate of marriage has to be issued to the couple.

There is also an issue on the law about the Catholic Church, which I would like to present. The Muslims have the kadhi and their sheria, in catholic we have our cannon law, our own court, and we request for a place in the judicial system of this country so that we may also handle our religious affairs in our own way, according to the teachings of the church.

About the Judiciary again, our people are very poor and the poor people have suffered a lot of injustice in the sense that they cannot hire a lawyer to take care of their cases. We request this Constitution to avail a state lawyer for those people who

cannot afford to hire a lawyer, and that will make them maybe defend their rights in the Judiciary.

Also in the electoral processes, we are requesting something about the Kenyans who are not living in this country. They may be staying in foreign countries and during the time of elections they may not have time to come back here in the country to participate in the elections. A system has to be put in place in those countries where they are and in the embassies. The ballot boxes be fixed there so that they can carry out their elections since they are Kenyan citizens.

Dual citizenship has to be avoided. You find some people are Asian citizens and when they come for business in this country again they register as Kenyan citizens, they are handling double standards, that one has to be looked into. That only Kenyan citizens and born within the country with various qualifications as put in place in the already existing Constitution, should be considered.

Just something small about the legislation, Legislature that is the Parliament, the dissolving of the Parliament should be catered for by the Constitution. The powers have been vested in the President who does the way he wants. But the Constitution has to determine when the Parliament has to be dissolved.

Members of Parliament who are not effective in their place or in their constituencies the members of that constituency should be empowered by the Constitution to recall them and a by-election be held.

And lastly, I want talk about the Vice President; there is a time in this country we have gone without a vice president for a period of about 1-½ years, because the power to appoint the Vice President is within the President's mandate. The Constitution should give power to the citizens of this country in a manner that when elections are being held, presidential elections the second majority, the second man in the winning should automatically become the Vice President of the country, instead of leaving it for the President to appoint the Vice President. Thank you very much and may God bless you.

**Com.Abida Aroni:** We have a few questions Father.

**Com. Com. Domiziano Ratanya:** Father Dennis the first question is about customary marriage, you recommend that we should have a certificate for that type of marriage.

**Farther Dennis Nyongesa:** I recommend.

**Com. Com. Domiziano Ratanya:** It is okay you have recommend that one isn't?

**Farther Dennis Nyongesa:** Yah.

**Com. Com. Domiziano Ratanya:** Now if that couple decides to change their mind and then come to your church, would you recommend a second marriage certificate? Because previously they were given one traditionally, and then at one stage they decide to become Christian and come to you, do you recommend the second certificate of marriage? That is one question.

**Farther Dennis Nyongesa:** What I mean in this is that, within the marriages and certificates given are written on republic of Kenya, and when I talk about issuing a certificate to a customary marriage, I mean the same certificates we issue in the civil marriage and the religious marriage. And in case may be these two are pagans or atheists and at one time they convert and want to come back to the church, what I will do I will only make it a sacrament, the sacrament of matrimony we put it in our church. I will only make it a church function but the marriage remains and the certificate is the same. There is no difference, that this is only for customary marriage, no, it is the same certificates. So that even at one time when these people will not come to the church but the Government recognizes their marriage by the fact of the certificate that they have been given.

**Com. Com. Domiziano Ratanya:** Now the second one is about, you have mentioned mission about the canon law that you are trying to compare with the Muslim idea of kadhi courts, may be you have got an example of anywhere in the world where the canon law is in place. Just in trying to compare with kadhi court. Through this one I think it's worldwide, the kadhi courts. What about the cannon law? That is the catholic type of law I think, can you give us an example anywhere in the world?

**Farther Dennis Nyongesa:** It is not so much anywhere in the world but I can give the Vatican, the Vatican as a city handles it in that manner. So why can't we also introduce this in Kenya? Because we can have Cannon magistrate, cannon law magistrate, cannon law lawyers to handle matters pertaining to the church. Because many of the civil lawyers and civil magistrates do not have extended ideas about our cannon law, so if we had a church magistrate he would extend help very much in some cases which come from the church.

**Com. Abida Aroni:** What does it cover, the cannon law? Does it cover personal or what does it do?

**Farther Dennis Nyongesa:** It covers all aspects of human life. It is not very limited to only religious life, no, it covers the integral of human the being, the whole personality of a human being, social and physical life, everything.

**Com. Abida Aroni:** Another question on dual citizenship you gave us an example about Asians, now supposing an indigenious Kenyan travels to another country, think about the US for instance, and for good reason decides to take the citizenship of that country. Should we deny that Kenyan, the Kenyan citizenshi?. He may be doing it because there are certain facilities that are only given to citizens, should we deny a Kenyan simply because you are looking at an Asian and assuming that the Asian benefits by becoming a Kenyan citizen? Because it doesn't just cover Asians. Supposing a Kenyan leaves this country and goes to the US, will we deny that Kenyan the benefits of that country?

**Farther Dennis Nyongesa:** But what are the reasons as to why he is denying his citizenship to join...(?)

**Com.Abida Aroni:** What we are saying is that the in the US they may not have a problem with him being a Kenyan, they can say fine you can be a Kenyan but to enjoy these facilities you must obtain our citizenship. And my question is, why do you want to deny that Kenyan the right to enjoy what he would otherwise enjoy there if we did not put restriction. Because you be telling him that “fair enough you want to become a US citizen? Then you have to relinquish your Kenyan citizenship.” The reason why he is doing that is because he wants to enjoy what there is in a country where he resides, because there are many Kenyans who are working and living in foreign land.

**Father Dennis Nyongesa:** I get your question but the thing is .....(Inaudible) the Kenyans may be those who are in the US, as you are putting it, they can be free to votes as we say,.....

**Interjection Com.Abida Aroni:** Not voting, you know a citizen has many rights infact voting is not mandatory okay, there are many rights that accrue to a citizen not just in Kenya, elsewhere. My question is very simple, you are looking from your example at an Asian who comes here probably from Pakistan, and you are saying this man why should he enjoy the facilities in our country; I am saying forget about that Asian think about your brother for instance who travels to the US and there are many things, beautiful things happening in the US, but he can only enjoy if he is a citizen of that country, and in the US they have no problem of dual citizenship for instance. But your brother is unable to take up citizenship there because if he does we will strip him of his Kenyan citizenship. And I am saying look at a situation like that, what is so dear and important that we would be deny this Kenyan facilities that are being offered to him in a country of residence if he does not want to relinquish his Kenyan citizenship?

**Farther Dennis Nyongesa:** May be if we would look at the idea of temporal citizenship to enjoy that.

**Interjection Com.Abida Aroni:** I don't want to think about an Asian please. Think about the Kenyan. **(Laughter)**. Supposing there is no temporary citizenship where the Kenyan is. Think about the Kenyan, forget about the Asian. So you be telling your brother, “forget it, stay there, don't enjoy because it is very important to retain the Kenyan citizenship”.

**Farther Dennis Nyongesa:** We can take it that my brother has gone to study in the US and the study has a period, and that to survive within this period, he has to be registered as a citizen to enjoy some other favours here and there. We shall look at the period of staying in the place. Thank you.

**Com.Abida Aroni:** Patrick Oparo, Omumala Dick. Has the father registered? Okay.

**Omumala H.A. Dick:** Mr. Chairman and the commissioners, I have the following few points about four of them, which I would like them to be enacted to the forth-coming Constitution.

**Interjection Com.Abida Aroni:** Majina

**Omumala H.A. Dick:** My names Omumala H.A Dickson, I am a teacher by profession in this constituency. First the land succession, it is quite costly to acquire land of that person who has died. The process starts from the local area assistant chief, chief, court of law and then the divisional land board. So please kindly review it so that a common mwanainchi can afford.

Regarding education in primary school, the term of school management committee be extended from one year to three years before it expires. This one-year term is not enough for the committee to do the school development plan.

Sub chiefs and chiefs, once hired should be transferable to rotate throughout the country just like any other civil servant. This will reduce the accusations against the chief and their assistants of small time corruption and oppressing villagers, claiming for example that they demand, chicken, goats, as fees for settling minor disputes, results into many .....(inaudible) cases and parents are overburdened by paying heavy fees on resuming heavy learning after such a strike. Boarding school life has deprived parents of their responsibilities in moulding children. Thank you.

**Com.Abida Aroni:** Thank you jandikishe. Geoffrey Wandende, Joanes Anduso, James Ayaya, Wycliffe Opale, Jane, Stanley Ondere, Josiah Anyenda, Peter Okutayi.

**Peter Okutoyi:** My names are Peter Okutoyi a teacher in this constituency. This is a presentation to the Constitution of Kenya review commission as an individual.

The Constitution of Kenya should have the power to protect all Kenyans fairly. It should state how one who breaks the Constitution should be punished. It should not vest the power in the Attorney General to give consent to prosecute. The Attorney General is only an advocate of the Government, and so we should have the Judiciary to operate independently under the Chief Justice.

This Constitution should protect itself from unjust amendments from time time by selfish individuals. It should state infact, that this Constitution should not be amended before a period a such a number years. And also that such an amendment shall have public consent, and  $\frac{3}{4}$  of parliamentary majority.

The presidency is an institution of immense powers, but the President of Kenya must be a Kenyan citizen, therefore he should obey the Constitution, and so he is not be above the law.

Democracy is as you say, the say of the majority, and it is a decision of the people by the people for the people. The Constitution is also for the people, by the people, so it serves all Kenyans regardless of rank.

On education: the Constitution through an act Parliament should create positions of a school accountant and a messenger in primary schools, in order to protect the child from being an unpaid messenger. The accountant should be subjected to annual audits because it is wrong for an auditor to audit the headteachers who are not qualified accountants. These would ease un-employment countrywide.

The Constitution of Kenya should protect the people's traditions, in order to promote our cultural heritage. This should protect festivals of traditional nature, including the people's religion, foods, beverages, including beer, because beer is just beer whether it is brewed in the African pot or an industry.

Initiations and traditional dresses should also be protected by the Constitution.

Lastly, the Constitution should be made available to all Kenyans at no cost. It should also be available in all languages spoken in Kenya. My names are Peter Mwai Okutoyi a teacher in this constituency. Thank you.

**Com.Abida Aroni:** Thank you. Evaline Amakhobe. There is a loud speaker so you don't have to move they will hear you please just sit so that she can speak.

**Evaline Amakhobe:** My name is Eveline Amakhobe and I have a team of Lady Tosha. The memorandum will be read by my secretary.

**Rebecca Aoko:** My names are Rebecca Aoko, our memorandum is; on education side, primary education should be free, and the Government should bring back that system whereby books both exercise and textbook were being provided at school.

We need the old system of 7423 because the present system it is a waste of time and students come out of school pre-maturely.

The other system, that is old, we had mature people in the field who can manage the economy of our country and offices.

All Kenyans to benefit from bursaries given to poor pupils. The Government should make sure that all school leavers can support themselves.

On election side: a President should be a person who can manage the economy of a country. The President should rule for 2 terms only.

The Executive power to be reviewed. And being a chancellor of all Universities should be given to chancellors themselves to choose one person to lead them. If he does not attend parliamentary sittings then we should have somebody from his area to represent him in the Parliament.

Those candidates who fails to be nominated in one party should be allowed to seek for a chance from another party, under strict monitoring, on why she failed in old party. On holidays we should remain with only 4 holidays in Kenya i.e Kenyatta day, Madaraka day, Jamhuri day and Labour day. This is because .....(?) on holidays leads to less working days and wastage on Kenyans funds to perform this excessive holidays. Thanks.

**Com.Abida Aroni:** Asante mujiandikishe pale. Wilson Makonjie, Musa Ongulo.

**Musa Ongulu Shiroko:** My names are Musa Ongulu Shiroko in the .....(?) Environmental Projects. These are memoranda a presented to the CKRC.

Given that our country has only about 2% of its forest in existence, and that our rivers' water points, zone layer, and soil erosion, continue to devastate due to animals and human activities day after day, we propose the following measures to be entrenched in the new Constitution; let the public information act takes it's course to enable us access information and statistics on the devastation.

All industries and motor vehicles that produce too much smoke should be fined between 3 million shillings and ½ a million Kenyan shillings, respectively.

We should also stop cultivation at riverbanks up to 50 metres away and plant indigenous trees.

We should protect water points and samples of drinking be taken for laboratory tests at health centers, say once every 2 months, and results to be recorded in the village cards.

We should also create an environmental committee up to the sub-location level comprising of trained individuals and organizations in environmental conservation.

Civic and parliamentary aspirants, are supposed to have been in conservationists. We would also like the new Constitution to repeal the official secret act.

Unemployment, we would like a district to have at least 3 industries and revive all grounded industries and infrastructure.

School leavers are supposed to go for free service for 3 years in the public and then get employed.

We also suggest pay for village elders who are doing a taxing job.

HIV Aids orphans to replace their parents at work places.

Pensioners should be paid interest if their pension delays.

Recruitments be done at divisional level, and chiefs to give consent of residence of retriutees.

We should also consider age and experience before retrenchment. Civil servants to have their own union. Permanent employment to 3 months old casual worker. And then up a list of job opportunities on notice boards at chiefs and DO's offices.

Union members should be pensionable. Retirement age should be 50 years, however we should allow the disabled to retire at the age of 65 years because they start school late.

Corruption: traffic police who allow accidents after roadblocks should be accountable. Do not transfer such officers but sack and never accommodate again.

All those indicated on the list of shame not to be given leadership positions, and the Attorney General should not interfere with cases in court.

Anti corruption committees should be at the sub-location level. Utandawazi should never be allowed to become utandawizi.

About natural resources, these should be distributed equitable. KICC should not belong to a particular person. We also request the Constitution to revive all infrastructure like maize control board, railways, KICOMO, KMC, Kisumu molasses plant and so on.

Government should avail water to all. We should also maximize on human resources available e.g petty offenders to be used to maintain the environment.



**Interjection Com. Abida Aroni:** Your last contribution.

**Musa Ongulu Shiroko:** May be on international immigration relationship: no one person should represent Kenyans. The Legislature, Judiciary, and Executive should collaboratively be in charge in conjunction with churches and registered NGO's. We should also review international treaties after every 10 years, for example the fishing restriction of Lake Victoria which denies Kenyans fishermen to catch fish, and yet from the other side their counterparts are benefiting. Treaties are however be approved by Parliament. Thank you, there are so many more.

**Com. Abida Aroni:** Yeah we will read. Is there any person who would wish to speak and has not registered, none? Where is he? Don't call anybody from outside, is he here. Our work is not to fish for people. I am sorry he is not here. We close the meeting and the chairperson of the will close.

**Com. Abida Ratanya:** Kabla sijafunga ningetaka kusema asante sana kwa viongozi wa shule hii, headmaster na wengine, waalimu na hata kamiti ya CCC hapa kwa sababu ya kutupatia nafasi hii, kuwa na hall kama hii, na tena kufanya mipango yote mpaka sasa. Kwa hivyo ningesema asante sana kwa niaba ya commission, kwa niaba ya mimi mwenyewe, na commissioner mwenzangu tumesema asante sana. Tumefurahi kwa maoni yenu, na maoni yenu yateenda kufikiriwa pamoja na maoni ya wengine. Ningetaka kuwakumbusha sasa tuko katika constituency ya Khwisero hatujamaliza, kwa sababu tulianza upande ule mwingine ya Luanda, tukaja hapa leo na kesho tutakuwa pahali pengine. Upande ule sijui kama ni karibu na Kakamega ama ni upande huu mwingine hapa. Kwa hivyo kama hukupeana maoni yako unaweza kuja huko ama kuambia wale walichelewa.

Kufikia hapo, ningesema asante sana, ningetaka kutangaza rasmi kwamba tumefunga kikaa hiki cha tume yetu ya kurekebisha Katiba ya Kenya. Lakini mwisho kabisa tuone mtu wa kutuongoza kwa maombi ili Mungu atubariki. Any volunteer ambaye anaweza kutuombea, yah Pastor yuko hapa na atuongoze kwa maombi.

**Prayer by Hillary Akula Lipesa:** Prayer: Let's believe and pray. Gracious everlasting Lord we thank you for this sitting, we thank you because your wisdom has surpassed our understanding. We thank we for whatever you contributed, and we ask you oh Lord for the good of this nation, may it serve the interest of all Kenyans, fromwalks of life for ever more Amen.

The meeting closed at 4.00p.m.

