

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

DISSEMINATION OF REPORT & DRAFT BILL

NAIROBI, DAGORETTI - WAITHAKA SOCIAL HALL

ON

TUESDAY 8TH OCTOBER 2002

DISSEMINATION OF REPORT AND DRAFT BILL
NAIROBI PROVINCE, AT DAGORETTI, WATHAKA HALL

Present :

Esther Walya - District Coordinator
Liz Kingi - Programme Officer
Janet Wangu - Asst. Programme Officer
Rev. Samuel M. Muchuga - Chairman of the 3Cs
John Maingi - Member of the 3Cs

The meeting started at 10.30 a.m with Rev. Samuel Muchuga – Chairman of the CCC- in the Chair.

Rev. Samuel Muchuga : Good morning? I welcome you to this place, my name is Samuel Muchuga - I have said so many names - but I was told to at least say my name, not my names. I am the Chairman of the Constituency Constitutional Committee here. I work together with this lady here called Esther Walya. The Committee members could you stand all of you please - those who are in the Committee - as a team which has been working here helping the Commission to collect the views so that they can prepare the Constitution. I think what we are going to do now is to pray so that we can start this meeting.

Prayer :

Rev. Samuel Muchuga : Let us pray : Our gracious Father, our God who loves us so much, we come before you this beautiful morning first to thank you for what you have been to us. You have been such a wonderful God, though sometimes we don't even remember to thank you for what you are to us. We only remember those things which we miss, but what we get is more than what we miss. Forgive us God for not appreciating your hand and your graciousness. We want God this morning to

ask you to forgive us and also God to take charge of this meeting as we start it and help us as we go through this exercise to glorify thee rather than to glorify ourselves. We commit ourselves unto your hands and ask you to start with us and end with us.

We pray in the gracious name of our Lord and Saviour Jesus Christ. Amen.

Rev. Samuel Muchuga : We think it will be advisable for us before we carry on to know one another - who have arrived here and whom we represent. I think we better start from here, go round to everyone. Stand tell us who you are.

John Maingi : My names are John Maingi I am a member of the 3Cs.

Esther Walya : My names are Esther Walya, I am the District Co-ordinator, Langata and Dagoretti.

Rev. Samuel Muchuga : Once again, my name is Samuel Muchuga - Reverend - and I am a Minister of the Church, within the PCEA Church, in charge of this Parish, from Dagoretti Corner up to this area and I am also the Chairman of the 3Cs Dagoretti Constituency. Recently, I have also been elected to represent Nairobi at the National Conference of the Constitution Review - who are going to finalize this document. Thank you.

Liz kingi : My name is Liz Kingi, Programme Officer, Constitution of Kenya Review Commission.

Janet Wangu : My name is Janet Wangu, I am an Assistant Programme Officer, from the Review Commission.

Regina Mwachi : My name is Regina Mwachi, I am a Verbatim Recorder from the Review Commission.

Ngugi Njuguna : My name is John Ngugi Njuguna from Mutini location, representing Mutini residents and I am a leader in Mutini Location and one of the group leaders.

Ndwati Kruka : My names are Ndwati Karuka from Riruta Satellite and I have come to listen to the dissemination of the views of the Draft Report.

Martin Olale : My name is Martin Olale, I am representing St. Stephen's ACK Church in Waithaka Parish, I am also representing the Youth. We have a Community Based Training Centre called Practical Skills Training Institute and we have come to give our views about what we saw in the Draft Constitution.

Daniel Kamau : Jina langu ni Daniel Kamau, nawakilisha kikundi cha Waithaka Development Association na ningelipenda niunge mkono Katiba mpya ifanye kazi katika Kenya, lakini kama kuna marekebisho, tuangalie pamoja na tuyarekebishe kama vile nasikia kuna kiti kipya kimewekwa ndani ya Katiba kama Prime Minister, hiyo tungetaka tufunzwe sawa sawa, kazi yake ni

nini? Na masilahi ni nini, na President atakuwa na masilahi gani. Kwa hivyo ni vyema kama vile mumekuja, ili tufanye kitu ambacho tunajua kinafanya kazi gani.

James Nyoike : My names are James Nyoike I am a member of 3Cs, in Dagoretti Consitituency and I am the Vice Chairman of the 3Cs.

John Wambu : My names are John Wambu Kamau, I was born in Waithaka Location but currently I live in Riruta Satalite, and I am coming here to show my support for the Constitutional Review Commission for what it has done. Thank you.

Anthony Ng'ang'a : My names are Anthony Ng'ang'a Kariuki a resident of Waithaka, I have come here to actually support the Constitution and even to learn more about the Consitution. Thank you.

Tony Mwangi : My names are Tony Mwangi, I am a resident of Dagoretti Constituency and I am a private citizen who has come here to give his views on this Draft.

Wilson Mwangi: I am Wilson Mwangi a resident of Waithaka, I have faith in the new Constitution and I hope that it shall be implemented soonest possible.

Douglas Kagu : My name is Douglas Kagu, I am the Assistant to the District Co-ordinator, I am also the National Chairman of the Youth Council of the Kenya YMCA. I am happy that majority of the issues that we raised during our memorandum have been taken care of in the new Draft and hope that we will be able to get a new Constitution. Thank you.

Rachel Mangu : Rachel Mangu a member of the 3Cs in Dagoretti Constituency.

John Kamau : John Kamau Kariuki, I represent Para-legal network and a resident of (inaudible) location also a provider with CKRC.

Enoch Kije : Enoch Kije a member of the 3Cs Dagoretti Constituency Constitutional Committee and also the Youth Chairman in Dagoretti.

Rev. Samuel Muchuga : Once again Ladies and Gentlemen, I will request you to come close here, because we don't have to shout. Those who are very far come close here so that – because we are not so many. Bwana Mugorino kuja karibu hapa, songa kidogo wewe hapa. Rachel kuja karibu, tuwe pomoja.

I will want to talk about the purpose of this meeting, we are having here this morning. This meeting simply is - you can say

when you cook food in the kitchen - you have to bring that food up when it is ready to the table. And here we had some people who had been charged to make some food for all of us, and they have cooked that food and the purpose of this particular meeting is to bring that food on the table. I know we have already seen this document elsewhere and some of us have studied the document but it had not been launched officially. So the purpose of this particular meeting today, is to launch this document officially in this Constituency of Dagoretti, so that the members of this Constituency can receive it. So we as 3Cs are going to receive this document and you present, on behalf of the other members of Dagoretti Constituency. This is a very, very important day because a Constitution is not just like any other document and thinking of the journey it has taken which has not been a simple journey, we must be happy - we should be happy all of us - whatever critical issues we may raise in the Constitution.

You all know that many people have been clamouring for many years. Clamouring for another Constitution having been led down by the current Constitution, particularly concerning the amendments which has been made in that Constitution, which have made this country ungovernable. We thought we needed another Constitution which will bring about democracy, equality and also fairness in our systems in this country and we, after a long struggle - some people even went to the street - I was one of them, it was agreed that we are going to have a Constitution and also even when it was agreed, it was not also easy to form that Commission, because some sections wanted it to be formed by the Parliament others said that the civil society should be involved and so on and that is when we had Parliament forming the part of the Commission. There was also the Ufungamano Group of whom, I am a member, we formed another Commission. And both processes started - ours in fact was ahead of the Government process. And later on we discussed over a year, and merged those two groups, whereby we sent our ten Commissioners and joined the Government and they all started working together and even during the working time, it has also not been easy. There have been complains here and there even within the Commission itself. But of course, some of us particularly those who were in the Church, prayed a lot for this Constitution and we believe God has heard, and eventually now we have got a Constitution which has been prepared arising from the views which have been given by all the citizens of this country from all corners of our Nation. This is what the Commission is saying, this is what we have been told and although we may not have said things in a legal manner, they have put what we said in a legal manner. And they have covered many areas of which you are going to be taken through and then we invite your comments.

We are not saying it is an ideal Constitution, no. And that is why we are going for the National Conference of which I told you that I am a representative of Nairobi., to look at some of the areas that we think may be we may add here, we may improve here or strengthen this part. But generally, I would say that the Constitution is good from what I have seen, but still there is a bit of work to be done. But we should thank the Commission for the good work under difficult circumstances that they have been working under. And with those few words, I would want to now receive the Commission team to bring out various issues which have been covered within the Constitution so that we may also react. Thank you very much.

Esther Walya: Good morning everyone? Let me start by sending my apologies on behalf of Mr. Lumumba who should have

been here with us today but is attending another important session with the Parliamentary Select Committee on the Constitutional Review Process in Mombasa but, remember that our forum today is simply a launch. The whole of the next 30 days or so, we shall be discussing this draft. So I am sure if we find another opportunity where we can have a forum where we can invite him to come and discuss with us further, we will do so.

The purpose of disseminating this Draft is actually to raise issues that we can debate on. It is also supposed to enable us make proposals where we find that we have not been satisfied by what the Draft says. And then thirdly, I would like to make you aware that much as we would like to make proposals and make criticisms -----

Councillor Nyoike : (inaudible) I know we have people who would want to contribute but they are not able to understand what we are discussing. This is what I wanted to know whether there are people who are not able to understand the language. My name is Nyoike - Councillor Nyoike.

Rev. Samuel Muchuga : First, we must remember that English is the official language in this Country by the constitution. Kiswahili is the National language; so when we are using both, it is allowed. But of course we are human beings, that is why he is asking that. Is there anybody who is having a problem in following what she is saying? You are having a problem? The problem here is again - it must be appreciated that there are some people who are not good in Swahili. They cannot say what they want to say or express themselves in Swahili, what do we do? We are very democratic, do we allow somebody to express themselves in the language they find it easy? And even from there, we are not going to tell you to speak in English, you can speak in Kiswahili. And mind you, both languages - one is official language of Kenya the other one is the national language. I am inviting you to comment.

Daniel Kamau : Jina langu ni Daniel Kamau, nimezaliwa hapa Waithaka au Dagoretti - zamani ilikuwa Kiambu. Mwenye kiti nina furaha kuu kwenu ninyi kuja hapa kutueleza au kutujulisha tuliyoyafanya hapa kitambo ili tujue ni kazi gani mumejanya tangu tuwaachane na nyinyi hapa. Hiyo nimetoa shukurani kwenu kurudi hapa. Ya pili, nimefurahiwa sana kuonekana kwamba Kiswahili kilikuwa kimeachwa nyuma na Commission hii imekumbuka kuna watu - si watu wote ambao wanajua lugha ya Kingereza, Kiswahili ndio lugha yetu hapa kama taifa la Kenya.

Rev. Samuel Muchuga : Nataka kukukata (inaudible)

Daniel Kamau : Hebu nimalize mwenyekiti - umenipa nafasi. Asante. Ningependa kuongea kuhusu lugha zetu. Lugha zetu ni kiwango kimoja katika taifa letu ambacho ni cha maana sana na ikiwa tutatumia lugha moja, itakuwa nchi yetu ni kama ya jicho moja na mkono mmoja. Kingereza ni kizuri tuliletewa. Lakini kuna lugha zetu kama vile wenzetu wa nchi za nje wana lugha zao, wanasikia kijerumani, kifaranza, mkienda huko mnajifunza hiyo, ukienda kule Norway unajifunza lugha hiyo. Mimi ningependa-----

Interjection : Chairman : We have a copy of Kiswahili, we will give you one. English is also our language now we have adopted it. And if the majority here can follow it so much the better, we will give you a copy of the Kiswahili version. Because these people also want to go.

Daniel Kamau : Nimefurahi sana kwa kutukumbuka mkarudi hapa. Ni hayo tu ningependa kusema.

Rev. Samuel Muchuga : Kuna mwingine ana comment juu ya hiyo? Ili tuendeleo? I know - I want you to understand - I do appreciate very much and those who come from my Church know I am a die-hard for the languages of the people. I always insist that people should know their mother tongue, otherwise, you kill them. But of course, you have to understand that whenever you go to other fora you cannot take your mother tongue there. You have to look at the whole environment and see what kind of situation there is. If you have got only two people who don't follow English, you sacrifice those two and you carry on with the others, if the majority are Swahili speaking people, you sacrifice the few English speaking people.

Esther Walya : Back to what I was saying, I was saying that the Draft is open to debate but I was warning you that there are no changes that will be made on the Draft before the National Constitutional Conference is held. Because the 629 delegates who are going to be at the NCC are the only ones who can vote in or vote out a matter. But what we are saying is that Kenyans must be given an opportunity where they can give their proposals. If you compare what you said in this Constituency for example - at our documentation center, we have this document here that shows all the issues that were raised in Dagoretti Constituency. If you find that something that was raised in Dagoretti as a Constituency was left out in this draft, then you can compare that and ask why it was left out. If you still think that it should be adopted, then you should do that in written form. The Commission is going to receive any kind of proposal, any kind of input that the public have on this draft but no changes will be made except by the delegates when they meet to deliberate on this Draft. So, what we are ideally saying is that this is a road map, you don't have to follow it to the letter - you do not have to agree with everything but, there is a forum that will finally decide on behalf of all the other Kenyans, whether we will take it wholesome as it is or whether we are going to make any changes.

Now, where did this Draft come from? This Draft comes out as a piece that set to accomplish the goals that were set out in the Review Act. And this was also in addition to the collected views that was done throughout the country and then, this also comes out as part of looking at the current Constitution that we have. So note that this Draft is a combination of the three. We are setting out to achieve the goals set out in the Review Act, views that were collected from wananchi and we also look at the current Constitution. Other Constitutions also were studied in order to come up with any other consideration. If you look at the Uganda Constitution and the South African Constitutions - which are not necessarily the best but they are very current in African and they are good Constitutions, so they were also looked at in order to enable us to come up with ours.

Now, I would like to take you just very briefly through how the Commission came up with the Draft. Reverend Muchuga will take you briefly just through the Organs of the Review Process if you still are at that point where we need to go back to the Organ. But in the management of the data that was collected, we had a tool that was designed so that we are able to go to wananchi with several themes. We did not just go to field without any tool to measure what we are going to get from it.

The main tool that was used was the issue of the “Questions and Issues”, if you read the Questions and Issues, they were also presented in the newspaper pull-out and those questions and issues had 22 different themes and when the Commission came up with the draft, 21 more themes were added and the 43 themes in total were now contained in the 20 chapters of the current draft. You will note also that there were pilot hearings at the beginning of this year and Dagoretti was one of those places where the Commission visited early this year to enable us know whether it would work just to go to wananchi and get views from them. So in that light, all the data that was collected was coded and it was coded according to these themes. So you find that issues that got very prominent, or majority of views from many constituencies are actually adopted in the draft. But you will also notice that there are other views that did not get prominence in terms of people repeating the same issue but you will however, find them in the draft because of their importance.

Now notice that the current assignment - why we are here now is actually to get feedback which falls under the methodology that the Commission used to come up with the draft. So in getting a feedback, we are saying that we would like to hear what you have so far to say about the draft but this a long month session of debating this Draft. We will have many more organized forums where we are going to discuss and debate specific chapters, specific issues as soon as you have all read. We are going to try today to make a summary of each Chapter very quickly. And what we will be doing, I think is to highlight. I know most of you have read but you may have only gone to the chapter that talks about right in marriage because you only wanted to know about right in marriage, you may have gone to public administration and finance because you want to know why you pay so much tax, but what we are going to give today is just an overview of each chapter so that you know what is contained there. Thereafter, depending on how many of us have gone through the draft, we are going to allow for questions and proposals. Now remember that this draft does not give an answer to every question that you have and we are not going to pretend to answer every question to the letter. There are questions that you may just take down and tell you that we will come later to you. There are proposals that we will take down and which you can actually give your Nairobi District Representative to carry with them to the National Constitutional Conference so that when they get there they are an issue and they can be rectified.

We are not sitting here and saying that we want you to accept this Draft which is the work that we have: we are saying look at it and give it a critical analysis, you will take what you can take and if you have any proposals to make, then we will carry them with us to the Commission.

Just by way of introduction, I would like to mention a few things that we refer to, as what motivated the coming up with this report. Across the country we found out that people want to actively participate in government and you will find that issues

have been raised where wananchi say that now they would like to recall their member of Parliament who is not performing. So we are bringing the government closer to the people. Then we are saying that Parliament must be more accountable to the people. Then there should be a lot of power sharing in government and all the arms of government will be accountable to the people. The human rights must be respected and the basic needs - we are talking of water, food, education shelter. They must be satisfied by government. Then, we are saying that general public life should be guided by certain principles and I am sure Liz will take you through that when she talks about the values that we want to uphold as a republic. Then we are saying that the corruption is something that we want to be in the past. Then we are talking of responsibility in regard to managing natural resources. Generally, you can look at that as a brief way of the issues that come up in the draft.

Let us hold our questions, probably until later in the presentation. I will ask the Chairman may be to invite Liz to give us something on the Preamble something that is not in the current Constitution. But she will take you briefly through chapters one to five, merely as an overview, not to read for you what you have in front of you. She will simply do the highlights and from the highlights probably if you have any questions, just note them down and we will look at them at the end of the session.

Rev. Samuel Muchuga : Liz carry on

Liz Kingi : Thank you Mr. Chair. I am looking at page 2 of the Draft Bill. There in a box we have the Preamble. This is unique in this Draft bill because the current Constitution does not contain a Preamble, but most of the Kenyans said that they needed a Preamble. So the Preamble is recognizing that the people of Kenya are making this Constitution and they are aware of their ethnic, cultural and religious diversity. They are exercising their sovereign and inalienable right to determine the form of governance in this country. The Preamble is basically introduction and you can read it thereafter.

I am now on page 4 which is Chapter one. Chapter one deals with the sovereignty of the people and supremacy of the Constitution. The sovereignty of the people is recognized in this chapter whereby we are saying that all the sovereign authority in this country belong to the people and it will be exercised in accordance with the Constitution, that the people have created for themselves. They are saying that the people will exercise their self sovereignty directly sometimes and also through their democratically elected representatives. The sovereign authority will be allocated separately to the Legislator, the Executive and the Judiciary. So what we are saying is that the people have given certain powers to those three Arms of the Government as well as other Constitutional Commissions.

On the supremacy of the Constitution - I am still on page 4 - we are saying that the Constitution is the supreme law of this country and it is binding on all authorities and State organs and persons throughout the Republic. We are also saying that any law that is inconsistent with the Constitution will be void to the extent of its inconsistency with the Constitution. So in essence we are saying that the Constitution is supreme. In this Chapter we are also saying that the validity and the legality of the procedure of enactment of this Constitution is not going to be subject to challenge in any court..

On interpretation of the Constitution we want that whoever will be interpreting this Constitution be it the court or Legislator or anybody else, should adopt a method that promotes the values of good governance, human rights and fundamental freedom and avoids technicalities which would beseech the objectives and the spirit of the Constitution. On the enforcement of the Constitution, we are saying that anybody can bring an action in the courts on the ground that an enactment is inconsistent with the Constitution or secondly, that an Act that has been done is inconsistent with the Constitution. So anybody has a right under this new Constitution to bring an action in court - everybody has *locus standi*.

On defence of the Constitution, we are saying that it is unlawful to establish a system of government that is contrary to the Constitution. We are saying you cannot just rise up as an insurgent group and try to establish a new government in a manner that is not recognized under this Constitution. We are also saying that Parliament is going to give effect to this Article by enacting new laws. You are all aware that the Constitution cannot contain everything down to the details from A to Z, but government can fill in those details so that is what I mean. On the laws of Kenya, the Draft has proposed that we will make to certain sets of laws - I am still on page 4 - they are outlined as the Constitution, they are Acts of Parliament, African customary law, Islamic and Hindu Personal law, Common law and doctrines of equity. East African Community law, Customary International law that would be applicable to Kenya. We are saying that Parliament also has a duty to make any amendments to all the existing laws within two years in order to make the laws of this country consistent with the Constitution we are enacting.

On Chapter 2 on page 4: Chapter two deals with the Republic of Kenya. We are proposing that Kenya is a sovereign republic founded on the republican principles of good governance, multiparty democracy, transparency, accountability, separation of powers, respect for human rights and fundamental freedom. Next on the territory -----

Interjection, Samuel Muchuga (to someone on the floor who wants to ask a question): I would suggest that may be you could be taking notes so that we get time to answer questions (inaudible).

Liz Kingi : Okay, on the issue of territory we are saying that Kenya is divided into districts and provinces and the territory of Kenya has also been defined and it has been listed at length in the Constitution. If you go to the first schedule you will find the co-ordinates of Kenya well defined there.

On the Capital City we said Nairobi will be the capital of Kenya and one of the policies that we will be having is that the State is going to decentralize the headquarters of the National government down to the provinces and the districts - we are saying that there will be decentralization.

On the issue of language we are saying that the official languages will be English and Swahili - for all official documents - and the

National language is Swahili that is just to give effect to what the Chair had said earlier.

On State and Religion, we are saying that the State and the religion shall be separate and there shall be no State religion and all religions will be treated equally. We have some National symbols; these are the Flag, the National Anthem, the Coat of Arms, Public Seal of Kenya - I have been asked to move faster that is why you see I am moving fast.

We have certain offices that has been created in this Constitution - certain Constitutional offices and we are saying that before anybody takes those offices, they are supposed to swear an oath or make an affirmation.

On the National Days, we are saying that we shall have three National Days : the first will be 1st of June, Madaraka; 12th December that is Jamhuri Day and then the date of enactment of this Constitution will also become a public holiday whenever that will be.

Chapter 3, we have the National Goals, Values and Principles. These are many, I will invite you to read through them but I will just highlight that the Republic and all Organs of government that is the Executive, Parliament and Judiciary and the Constitutional Commission are supposed to have regards to this national goals and values which are to promote a national unity, the spirit of nationhood to recognize the diversity of the people of Kenya and promote their culture, to promote the principles of democracy, to promote openness and transparency in government and to take effective measures to eradicate all forms of corruption. To ensure access to independent partial and competent institutions of justice and to require that political parties observe internal democracy and to avoid violence and bribery. To promote the role of civil society in governance and to promote respect for human rights so as to enhance the dignity of individuals and community. To ensure the fullest participation of women, the disabled, the marginalized communities and to ensure that a third of the members of all elective and appointive bodies are women. To ensure that the children's material and moral well being is safeguarded and provided for, to ensure that the Republic is committed to social justices and to go ahead and make policies and measure that provide Kenyans with their basic needs. These are food, shelter water, sanitation, education, health and security. There are more but you will read the rest.

But we are here proposing – and this is something of interest - that the President shall report to Parliament and the nation all the measures taken and progresses achieved in the realization of the national goals. These are our national goals and this is what we are striving for. They are not law by themselves but they form the underlying theme of this Constitution, they will have the force of law as they go along in different chapters just to give the guidelines in this country. In other words, they are called the directive principles of State policy. I think you are familiar with that.

On the duties of the citizen, we are saying that - this is also new - we have a number of duties. We are required to know the provisions of this Constitution, you have to acquaint yourself. You are supposed to uphold and defend the Constitution and the

law, you are supposed to vote and be involved in the forms of political participation. You are supposed to engage in work including home making. You are supposed to develop your abilities to the greatest extent possible - these are the duties – and, promote family life and act responsibly in the context of the family, to protect and safeguard public property, protect environment and conserve natural resources and desist from acts of corruption.

On Chapter 4, we have some elaborate provisions there on citizenship, who is a citizen in this country is well defined there. We are saying that first and foremost that every person who immediately before the coming to force of this Constitution, was a citizen of Kenya will continue to be a citizen. So we have the saving of that position. We are saying that citizenship can also be acquired on three basis - the basis of birth, marriage and naturalization. On birth we say that every person born after the coming in force of the Constitution and at the date of that person birth one of his parents was a Kenyan, then that person is a Kenyan. That is the citizenship by birth and nobody can be deprived of that citizenship obtained by birth. On marriage, we are saying a person who is married to a citizen of Kenya, if he himself is not a Kenyan, is entitled on application, to be registered as a citizen but one needs to have been married for a period of not less than 3 years. So you can only apply after 3 years and even if there is a divorce, such citizenship should not be lost upon divorce. On naturalization we are saying a person a person who has been lawfully resident in Kenya for a continuous period of not less then 7 years and has satisfied the conditions of the Act, can apply to be naturalized. We are saying that if you have children who are below the age of 8 and found in Kenya and their parents are not known, they will be presumed to be Kenya citizens. We are saying that dual citizenship is permitted - you can hold the citizenship of two countries and if by virtue of this Current Constitution one had lost the citizenship of Kenya because he had acquired citizenship of another country, then that person is entitled to apply and to register again as a citizen of Kenya. A person may be deprived of his citizenship if he acquired his citizenship through fraud, or through false representation or concedement of material fact or through only other illegal means or unlawful means. Parliament will also give effect to this Article, it will create more laws under this issue of citizenship and it will also provide for the status of a permanent resident. Whereby you can just live in Kenya provided that you have complied with the Act. We are also proposing the creation of a Citizenship Registration Board which will deal with matters concerning citizenship. I t will be comprised of about five **(End Side A Tape 1)**

The Bill of Rights that is page 6 - I hope we are together. On the Bill of Rights we are saying, that there are certain fundamental rights and freedoms that have been recognized in this Constitution. Their main purpose is to recognize and to protect human rights and preserve the dignity of individuals and communities and promote social justice such that every individual can realize their full potential. It is also good to note that there are some limitations, these rights are not absolute - there are some limitations and the limitations are also written down in the Draft. So each of these rights belong to each and every individual and it is the duty of the state to promote rights and freedom and to observe respect, protect, promote and to fulfill these rights. The State shall also take a reasonable legislative policy and other measures to achieve the progressive realization of these rights especially the rights on the social security, health, education, housing food, water and sanitation. The state shall make progressive measures to achieve the full realization of those rights.

Parliament and the Commission on Human rights which have been created shall establish the standards for the achievement of those rights, so that you know when they have been achieved. In brief, these are rights to life - the death penalty has been abolished under that right. We are saying that everybody on the issue of equality will be equal before the law and is entitled to enjoy the rights and freedoms equally. There shall be freedom from discrimination and these are on the grounds of race, sex, pregnancy, marital status, ethnic and social origin, colour, age, disability, religion, conscience and belief.

We are saying that the children in this country have also been accorded some special status and their rights have also been recognized in the Constitution. And by way of highlighting, I will just say that they have a right to a name, nationality, right to parental care, right to free basic education, right to be free from child labour that is hard, hazardous to their welfare, they have a right to adequate nutrition, shelter, basic health care, right to be free from corporal punishment and violence and the right not to take part in hostilities and armed conflicts.

We are saying that the women also have been accorded some rights. You will read them and see that the women have the right to equal treatment with men including the right to equal opportunities in political and economic activities. We are saying that even the older members of society are also entitled to enjoy these rights under the Bill of Rights and they are also entitled to the reasonable care and assistance of their family and the State. The older members also have a duty to plan for their retirement and to share their knowledge in their fields with others and remain active in society.

On the issue of the family, we are saying that the family - the Constitution recognizes the family is entitled to respect and protection from the State. Every person who is at least 18 years of age has the right to marry based on the free consent of both parties and they will also have the right to found a family. Parties who are in marriage also have the equal right in marriage and even as the dissolution or divorce of that marriage they also have equal rights. Parliament will also make more legislation on the issue of marriages and the family.

On the issue of disability - I am not too far off - the Constitution is providing that these are people who should be treated with respect and it has also proposed that all place of public transport and communication should have regard to the needs of the disabled and the disabled also have the right to full participation in decision making. There are also a number of other rights that you can also go and read, touching on the issue of the disabled.

We are also saying that the issue of human dignity, everybody has an inherent dignity and the right to have that dignity respected. This right is not granted by the Constitution, it is inherent.

On the issue of security, we are saying that everybody should have the right not to be deprived of their freedom arbitrary and without just cause, except if there is a State of emergency. We are saying that one should not be tortured, either physically or

psychologically or be treated in an inhuman, cruel or degrading manner. On slavery we are saying that no person should be held in slavery and servitude or to be required to perform forced labour.

Privacy: everybody has the right to privacy such as one person's home or property should not be searched and information relating to private affairs should not be unnecessarily revealed.

There are also rights of freedom of expression, freedom of religion, access to information - that is page 8, are we together? Access to information, freedom of association, assembly, political right, freedom of movement, refugees and asylum. This is also new. We are saying that there will be a right of asylum recognized in the Constitution. And that if somebody has a well founded fear of persecution from the country they are running from, they will have a right not to return to those countries. There shall be freedom of paid occupation and profession so that everyone can practice either of those freely.

Property : every person has a right to acquire and own property either individually or in association with others and that person cannot be deprived of that property unless, the Parliament will make the exception. He can only be deprived if that land is required in the public interest.

There are a number of other rights that have been created in the Constitution including the social economic rights of health, education, housing, food, water, sanitation and environment. These are also new and Parliament is going to make more legislative and other policy measures to ensure that these rights are realized.

We also have some consumer rights whereby consumers have the right to goods and services of appropriate quality and compensation for defects has caused them lots of injury.

I sense that my time is over but I have not finished.

On the issue of the rights of the arrested person we have a number of rights that have been created there, if you are an arrested person you also have rights. These are: you have a right to remain silent, to be informed in a language you understand, a right not be compelled to make any confession unless it is made before a court or a magistrate, to be held separately from those who are serving a sentence and to be brought before a court as soon as reasonably possible but not later than 48 hours. So if you are arrested you should be taken to court within 48 hours. You also have a right to fair trial, there are a number of sub-rights – if I may call them so, that come under the issue of fair trial which will be good for you to note that everyone is presumed innocent until proven guilty, that you are supposed to be informed of the charge in sufficient detail, you are supposed to have adequate time to prepare your defense and adequate facilities to do so. You are supposed to be present when you are being tried and you have a right to choose an advocate and to be informed of these rights promptly and you can still remain silent even through the proceedings and you can adduce and challenge evidence, you have a right not to give self incriminating evidence and

you may have an interpreter. You have to have an interpreter if you cannot understand the proceedings in the language they are using.

If you are held in custody, there are also a number of rights there; you have the main right to be given in a way that, you know, respect your human dignity. And not to be subject to any discrimination. You are not supposed to be exploited or to be abused by some of the fellow prisoners and you also have a right to observe your religion and to communicate with your lawyers and other persons who are necessary like your religious advisers and close members of your family. You also have a right to a fair consideration in parole or remission of the sentence and to complain to the prison authorities or the Commission on Human Rights and Administrative justice if you are aggrieved.

On the issue of the state of emergency, a state of emergency can only be declared if the republic is threatened by war, in an invasion a general insurrection, a natural disaster or any other public emergency. That declaration is made to restore peace and order and it operates prospectively and it should not operate for more than 21 days from the date of the declaration. I invite you to read further on that.

We have also created the Human Rights and Administration of Justice Commission which will listen to complaints. Anybody who thinks that their rights under Bill of Rights have been abused has a right to complain to that Commission. Any other person who is acting on behalf of another person also has that right, any other person acting as a member of an interest group, a person acting in the public interest - all those people have a right to complain to the Commission. We are saying that when the Commission on the Human Rights and Administrative Justice receives such complaints, it shall investigate the complaint and provide appropriate redress where those human rights have been violated. Additionally, you can also go to a court you also have a right to go to court to complain about the infringement of your rights under the Bill of Rights and the Chief Justice is required under this Constitution, to make some regulation to give effect to the procedure of going about enforcing your right in a court of law.

I think I will stop there and I invite you to read everything, but I think that was to give you a basis of knowing what is in the first five chapters of the Draft Constitution. thank you.

Samuel Muchuga : Ladies and gentlemen, you will agree with me Liz has done a good job to go through five chapters in such a short time. She has summarized them so well it is something to be commended. So Liz, thank you so much for taking us through those five chapters. And I believe that many people will raise questions or give us a feedback whatever they may have or any other comment later.

I want to take this opportunity members of the conference, to recognize the presence of our member of parliament Hon. Beth Mugo, she just came and I just turned to my right and I saw her here. She has arrived despite the fact that you know she has

got so many commitments - in fact she is telling me here, that people are waiting for her somewhere and I know where she is going personally. But I want to tell her, we are very, very happy to see you here as we are always, we respect you, we also love you as our MP and we also know and recognize your contribution in this process which is going on in fact both in Parliament and outside Parliament. And to be with us when we are launching the Draft Constitution, we do appreciate that very much. So you are welcome, this is your constituency and in fact I wanted to give you a chance to say something to the people who have come to this launch.

Hon. Beth Mugo : Thank you Chairman, and those who have attended the presentation, leaders, ladies and gentlemen, hamjambo? Thank you, for the moment I just want to touch on very few aspects of this review which we all know is very important and it is wonderful that you have come, to see whether what you proposed has come through and not only this point of view or your view, but for the others propose. So that we can be sure that our views have been taken into consideration. I personally think the Ghai Commission has done a very good job out of a very difficult situation. As they were harassed, left, right, and center. But they really have done a very commendable job. I congratulate them and encourage them to go on and not to give up. I don't think Ghai has that word in his vocabulary from what we have seen. Our then is to enrich or just to have it by consensus and see that everything has been concluded. So I want to encourage you to please look through - that was a very good presentation, and I know it will be very enriching throughout the whole process. From that - I have a problem, I have just come from the dentist, so my mouth feels like a mountain. That is why I am having problems with pronunciation. You go through the document being guided by the presentation, also read between the lines and make sure you understand completely what it is saying.

Like I was reading, and I noticed that on women, access and control of property - we want to add ownership - access, ownership and control. To ownership control - all those There can be just one word missing sometimes and makes a whole lot of difference. So even now, women might have control such that they till the land, they have access to, but they might not be able to stop it from being sold by some members of the family. So they should be warned. The Land Board also will make sure not only that there is Mr. Kamau who says, "I am selling this land". They will also make sure Mrs. Kamau is also in. But by and all it is really a very good document. I know this, it is so politicized that a lot of time the other areas are covered by the political concern. Look at the Bill of Rights, that is your most important thing. That is your basic need. And I can see - they are here - remember our Chairman was very particular when he made his presentation here he said, the Bill of Rights, the right to water, food - nobody should die because of hunger in Kenya, nobody should miss water, clean water, nobody should go to Kenyatta and not be treated or any other hospital because they have no money. Those are basic rights. So I am hoping you will look through all that very properly so that you make us wise. Those people who will represent you at the Constitutional Conference - and we are very happy and we congratulate the Chair because he is elected or selected - whatever method they use - to represent the whole of Nairobi.

Samuel Muchuga : It was election.

Hon. Beth Mugo : Election - he was elected - can we give him a clap (clapping). The Nairobi Province, as we are being treated like a district, I don't know why, we had hoped to have more - every two constituencies would send a group, now we understand it will be one man, one woman, one youth, three and our Chairman is among those delegates. It must be because of the input he has put during the whole process and the Dagoretti group - we have the Councillor here who is part of the group. That is the input I was always being told by the Commissioners, "your people are doing very well, your people seem to know the subject of what they are talking about" and I am very proud of that. That is why, we had somebody who had been very involved in this review for a very long time. So thank you very much for putting your expertise and your experience in this. Now what are your concerns, what are still your concerns? If you tell us it is okay, we will go and say it is okay. And let us hope that Kenya from when this document becomes operational, it is going to make a difference in our lives, in the life of every Kenyan from the poorest to the richest, from the smallest to the biggest, that is what the Bill of Rights is, it is equality. That not only a few children of the rich will access good education but all children of Kenya access good education and the government will make sure that our children are in school. So, I don't want to go on further because it is not supposed to be the introduction for the Review. I just wanted to thank you for giving me the opportunity to just to tell you that our job has not finished your work has not finished. After going through it today we would like to have your feedback and I am sure our Chairman will tell us how we are going to get that . So I again thank you very much. You have to excuse me because I am going to the funeral for Mr. Karanja who was a very important Dagoretti constituent. So you will excuse me but I am completely with you in this review. (clapping).

I know you might say what is my view, do we go to the elections with the new Constitution or with the old Constitution? Unfortunately, these are some of the areas which seem to be out of our hands because as the Constitution is today, the President can dissolve Parliament and call for elections. So I don't know, it is not something that we can decide on very well. It would have been very beautiful had we gone to the elections with the new Constitution. But if there will be no time to make it operational - because that I said will depend on what the President says after the 12th - that is what he told us then we will either go with the old or the new. But the most important thing is that we come out with a document that will protect every Kenyan even after these elections. Thank you.

George Kimani Mwaura : My name is George Kimani Mwaura, I come from Uthiru. If Parliament is dissolved immediately after 12th or may be sometimes after that my understanding is that the work of the review may not be able to progress very far from this and that it will come to an end and that, we might go into election now with the old Constitution. Suppose we won't go into elections with the new Constitution and if it can be done, can we say we want to go to elections with the new Constitution and we refuse? (clapping).

Samuel Muchuga : I want to say one thing; I have been involved in this review for a long time and I decided when I went to the street, I was beaten when we were asking for a new Constitution.. Let us get this very clear. What we have here is a draft

Constitution and as we sit in here now, we do have a Constitution. This is not the Constitution; there is another Constitution. We must find a way of may be getting this Constitution to be adopted but if the President acted as we are saying, he will be acting legally because he swore under the Constitution which is there - it has not been abrogated. It has not been removed, we all like this Constitution, but there is a Constitution. Until that day when that Constitution ceases to be, we have to obey that Constitution. I think that was what you were saying - you are saying what the majority of people in the country are saying. They want this Constitution but the current President was sworn under the present Constitution and he is operating on that, nobody can tell him that he has done anything wrong if he dissolved Parliament. All that we can pray, is that he listens to the people.

Hon. Beth Mugo : If that does not involve me - that question - I would like to be excused, so that, it is not nice to walk in when I am late, in a funeral especially. Do you agree? Thank you.

Samuel Muchuga : Thank you very much, we wish you well. Now we will move forward. We will call now John Maingi to take us through Chapter 6 and on.

John Maingi : Thank you very much Mr. Chairman. When I was listening to the area Member of Parliament give us a word or two, there is something very important that she mentioned to do with ownership and as it is I must thank each one of you because you have accepted the call to own this process by your mere presence. But before I come to what we will be going through together, I would like us to think about one thing with regard to ownership because here is a situation whereby we have been talking about owning this Review Process. If all of us - those of us who are in this hall - were to take ownership of this particular hall, we will make so many improvements. We would put some grills to extend the wall and make this building stronger and more beautiful. I would like us to think about what we have in front of us the Draft Constitution as something that we own, and we try to work towards improving that document because the Constitution is the property of the people.

I am going to touch on various areas starting from Chapter 5 but before we come to that, I would like us - because we may not be able to go through each and every issue that has been proposed in this Draft Constitution, but when you go back, I would recommend that we try to look at the Review Act and try to visit the Documentation Centre, we try to look at the Commission's Report, the Constituency report and lastly we will be able to make good judgement on where and how we need to make any amendments in this Draft Constitution.

I am going to touch on - starting from Chapter 6. Chapter 6 is on page 11 Column 3 - at the end of column 3 touching on the representation of the people. I want to be very, very fast. The first issue is on the Electoral system and process and we have the general principles that are going to be guiding our Electoral system and processes once this new Constitution is finally adopted and enacted. One thing I notice that has been missing from the present Constitution that we have which is already in force is the question of actually putting it clear that the election shall be free and fair - that is Chapter 6 Section (76), Sub-section (3) elections shall be free and fair and the elections shall ensure fair representation of the people. The present

Constitution that we have - this is something that actually it has tried to expound but the situation on the ground is not always the same. But we come to a situation whereby when we come to fair representation, for instance we are going to be having one third of all elective posts and appointed posts occupied by women and I think that is a positive development. It is upon us to look into other areas where fair representation has been lacking for instance, I will just give you a very quick example of the delegates who will be representing the whole of Nairobi at the National Conference with our Chairman here as one of the representatives. We have only 3 people and yet Nairobi has got more than 3.5 million people. So when we talk about fair representation these are some of the issues that we should be trying to scrutinize and interrogate in the draft Constitution.

I want to move ahead. No. 78, the right to vote we have been having the right to vote all these very many years and sometimes there has been hue and cry about people attaining the age of 18 but they cannot vote because they have not been given National Identity card due to administrative bottlenecks that have been there. Perhaps, we may need to address ourselves to an issue like could we use birth certificates upon the attainment of voting age? Can we explicitly suggest something like having other national documents recognized while you have attained the age of voting. That is my personal opinion, you have your opinion and these are the issues we should try to look at.

I want us to look at No. 81. You will agree with me that this particular chapter is very broad, we have actually to look at random samples of critical areas.

No.81 under voting, is explicitly talking about voting procedure under the Electoral Commission. That the Electoral Commission shall ensure that the voting procedure is simple and precise and that the ballot box is transparent, the votes cast are counted, tabulated and results announced at the polling station. Perhaps these are some of the things that we have been asking for all these very many years and I think this is a positive development, but are they enough? This particular period between now and the time we go the National Conference, these are the reactions that we need to give the people who are going to be representing the rest of Kenyans at the National Conference. Luckily, we have the Chair and that kind of reaction can always be send to our documentation center here.

I want to move ahead to the functions - No. 84. Still under the same chapter. Functions of the Electoral Commission and they are clearly spelled out: for instance promotion of free and fair election. There is something that struck me about management of political parties' fund. For instance, this would be managed by the Electoral Commission but if you look at - because you have time to comprehensively look at this Draft - if you look at it, the draft does not for instance - and that is my personal opinion - does not for instance propose how some of the Commissioners will come into office. So, this is not clear. How do we ensure their transparency and impartiality in managing the political parties' fund. These are the questions we ask ourselves.

I also want to talk about number 85, for instance, it is talking about the staff of the Electoral Commission. The Public Service Commission - after consultation with the Electoral Commission - shall appoint officers and other employees of the Commission.

Within the draft we are going to have so many commissions and one of them is public service. And if, indeed we are going to have an independent Electoral Commission then in my opinion, I don't see how for instance we should have Public Service being involved with the appointment of employees of the Commission. Secondly, at the moment the Electoral Commission kity is managed by the Clerk of the National Assembly. For instance if I was to go and debate at the National Conference, I would address myself to the issue of appointing a chief officer - a chief Executive Officer or the Secretary to the Electoral Commission as an independent body who will also be managing the fund of the Electoral Commission.

I would like us to go to Part three of the same Chapter, that is number 88 the Laws and functions of Parliament and one of them if you look at what the national goals and values are in this particular draft Constitution and then you compare that with the law and functions of a political party for instance, you may find that we do not have one of the functions of the parties being to promote National Goals and values and principles that have already been defined, in the Constitution. These are some of the areas for instance we need to look at and like I said, I would like us to have an open and I am just highlighting and giving you my own ideas on how we will go about it.

I want us to go to the next Chapter 7 the issue of Legislature. One of the important laws of Parliament - that is Section 102 - Parliament shall represent cultural diversity of the people and symbolize unity of the nation and determine the policy of the Republic. As it is, we would say that we are very much ethnically polarized, but as long as Parliament - the issue of the determination of electoral boundaries remain contentious, how are we going to address some of these issues. We have a situation here whereby and I like citing Nairobi because all of us right now are in Nairobi. If you look at some of the constituencies that we have they represent a very vast geographical area without adequate representation and when you go into some other areas and you find - okay, they may be large but we might have some electoral boundaries which actually tend to promote ethnic interest. So I think we need to look critically at what role Parliament has been given and actually to satisfy ourselves that what has been defined actually suits what we would expect our Parliament to be doing. At the moment some of the roles and functions of Parliament as per the present Constitution, actually promote the well being of the people. In fact without Parliament we cannot even have the National Budget because they are the people who approve. But is it effective, that is the question.

I want us to proceed to Section 103 ---

From the floor: --- what people are discussing here at the moment because, there is a gentleman who asked a question as to how whatever we are reading or trying to be deliberating on in this document is ever going to become law because that is what the people want. The people want this to become the new law. once it has been deliberated. But how does that actually happen? If like Mr. Chairman said, the President calls elections tomorrow what he is doing is legal. That means, the next government that comes in can decide to put this on hold for the next ten years and whatever we are discussing here might be useless.

Samuel Muchuga : If you were here from the start, you could have known that this was the consensus of the people, that we go chapter by chapter until we finish and then we shall ask questions. The purpose of the questions which was asked there, was because, Beth Mugo, our member of Parliament was about to leave. And we gave her an opportunity just to say Hi, to the people. So we will follow the mode that we agreed. Thank you.

John Maingi : I was saying that we address ourselves to Section 103 and this is basically Sub Section 3, touching on appointment in respect of the following institutions as shall be referred to the National Council for approval before they are made. That is the Judicial Service Commission and various other Commissions. We have had too many commissions in this country in the past. Some reports of these commissions are yet to be made public after very many years, others are very contentious and I would like to refer the gathering to this report - the CKRC' Report which is available at the Documentation Centre, Chapter 4, precisely on page 65 which actually details the reason and circumstances under which the Review Commission felt that we needed to retain, modify or create permanent commissions in this particular Draft Constitution. And just one of them is - one is considering how quickly and fundamentally the 1963 Constitution was amended and ---

From the floor (Charles Amunga) (interjection - inaudible)

Samuel Muchuga : Can you give an example? Can you prove what you have said?

From the floor : (Charles Amunga) I am proving. The lady gave a very clear (inaudible) but this guy is ---

Samuel Muchuga : No, (inaudible). Where has he confused you?

Speaker from the floor : (Charles Amunga)(inaudible) The lady seems to have read the Draft well. But this guy instead of giving us a summary – I think that is what we came here for – he is mentioning I don't know what, what (inaudible)

Samuel Muchuga : You see my brother, we don't conduct matters on the same style. We are different and we must be courteous to everyone. The word you are using, "this guy is confused" is bad. If you were in Parliament you would be asked to withdraw (laughter). He is not confused. Some of us are following what he is saying. You may not be following. Somebody has asked, but it is not everybody who has supported you. You see, you may have a point but the way you are putting it is not courteous, you are not very courteous to him.

Anthony Mwangi : I think what we need to do is - all of us here - we want to contribute to what we want to contribute to. So I think we better set for ourselves some time frame. If it is going to take 30 minutes - people who want to contribute because I believe all of us want to contribute, we say everybody be given 10 minutes or 15 minutes. We say what we want to say then

we leave. So I think that will be easier for everybody. Because people are getting very fidgety, because it seems like, if we are going to go the way he is going through this document, I mean, I think by 4 o'clock we shall still be going through this document. So since all of us have a copy and we are going through, it may be rush through it, highlight a few important points and then we are through with it then you say what you want to say and you leave. My name is Mwangi Anthony.

Samuel Muchuga : You people have got a point but when you put your point - you know we are sensitive and the way you throw words to other people that is what makes Kenyans fight because of the words that come from our mouths. You can say - I think what you are saying is this; can we stick to our time? Those who are presenting please stick to the time frame. If it is ten minutes take ten minutes and you finish. So Maingi, I will suggest that you take another five minutes and you finish then we go to the next person. You are also blaming me indirectly, you are saying, "Mr. Chairman you are not doing your work".
(laughter)

Councillor James Kuria Nyoike : We have been taught by so many different teachers and the method of presentation has not been the same, correct? So that teacher who is presenting should be given time to present no matter how, which method he is using please. Thank you.

Samuel Muchuga : I conduct so many meetings and I have even Church Councils where there are many people like you and I always insist everybody has got a right of being listened to, even those who stammer, you must be patient with him until he stammers and until he is through. We are Kenyans and we have to live together the way we are.

Esther Walya : Excuse me. I come from the Commission and giving the views that are from the Commission. I really appreciate the fact that we cannot sit here a whole day and discuss the document. From my experience on your side when the Commissioners sit in front of us, you are sitting there and they are sitting here - when I have been going to the similar sessions, I know that we cannot go through this together in a group like this for more than three hours. We have actually a time limit and they will simply do the highlight of the Chapter. I know people get very impatient, and it is very important that we let you give us your proposals, that is the main aim of this meeting today. We need to go back with your feedback and we need to tell you where now we can access this information and probably, give you the details of all the delegates so that you are able to either take your proposals - either in written form or verbal to the Documentation Centre or to those delegates of the Commission directly. The purpose is to at least get the feedback from you. So just be patient, I hope that the presenters now that they are listening they are going to brush through so fast so that we give everyone a chance to be heard. Thank you.

John Maingi : Okay thank you the Chair. These chapters, some of them are very long that is the difference. I was at the Commission, may be we need to look at the existing commissions and whether the proposed commissions are relevant to the needs, to what we need to correct at the present situation.

I would like us to go to Chapter 104 and look at - it is Article 104 of Chapter 6.

Esther Walya : 104 is on page 14 column 2.

John Maingi : And I was talking about what has been happening. We cannot stop without referring to the present Constitution, because we have it and we are trying to review it. If you look at the role of Parliament as is today the role of Parliament in terms of the approval of expenditure - our National expenditure or the national budget is what has been proposed adequately to protect our national wealth.

I will proceed straight away to sub section 142, determination of the Parliamentary calendar. Yah, somebody just asked when Mheshimiwa was here asked about what was going to happen if Parliament was dissolved. But if we had a situation like now how it has been suggested that Parliament shall determine its own calendar, we know by 30th of November of every year as per this draft, parliamentary term will be coming to an end. So I think these are some of the issues that we need to look into so that we can make a comprehensive final draft.

Let us go to chapter 8. We are going to have an Executive that is totally different from what we have at the moment. We are going to have the President, the Prime Minister, Deputy Prime Minister, Vice President and I think, we need to address ourselves to what has been suggested. Is it what we would really like? There are some people who have been talking about for instance the issue of the Cabinet not being elected members. May be these are some of the issues that we need to qualify so as to determine whether this is the kind of Executives that we are going to have.

Esther Walya : Please return to this diagram, there is the summary - whatever I gave you the summary of the Structure of Government, then you don't have to go through all this.

From the floor : But the point he was saying is crucial here. He is saying the government that will be formed will be formed by the people from outside - not necessarily by election. One of the things, some say, should be elected people who should form the government or is it good to get people from outside with expertise - people are divided on that issue.

John Maingi : I will proceed to Judicial and Legal system. As you are all aware, they have suggested that we have a new look hierarchy of our courts. Chapter 9 Section 185 and we have another sheet whereby you can refer. Whereby, we are going to have a Supreme Court, the Court of Appeal, the High Court among other courts. We have been crying that there is no fairness in administration of justice, sometimes we don't know where to turn to after abcd has happened and may be we need to scrutinize and see if these are adequate or what we need to do so that we can form that as part of what we are going to adopt at the National Conference.

There is the issue that is going on. I am sure that is not in the draft Constitution but it is in the Commission's report that, the Judges will be retiring at the age of 65. But once the new Constitution comes into force, they will be required to retire and those who choose to stay, will be open to public scrutiny for instance to declare their source of wealth and all that. And that is why there is an impasse between the Judges and the Review Commission. But of importance is to see whether the new look hierarchy and composition of our courts is going to enhance quick administration of justice and protect us and that we have somewhere to turn, even when the Executive or Parliament or any public officer violates the Constitution. So I think this is a very important area that we need to look into and we may not be able to exhaustively go to item by item, but it is a question of actually looking around at what has been happening and coming up with comprehensive proposals on what we actually want. Do we want it that way, do we want to amend it in another way.

Let us go to the last Chapter, Chapter 10, starting from Section 213. People have been talking about devolution of power and sometimes you find we have been saying that services are sometimes far to the people. You may want to go for instance to an office somewhere people feel that they are not in daily contact with the running of their country and that is why people of various shades of opinions have been saying let us devolve power and the new look devolving of power is going to involve - if you look at the levels of government on Section 215, we are going to have Councils at the village level, Location, District and Provinces and they will be running as per the details articulated in Section 216, 217 and 218 and 219. However, you notice that there isn't an explicit mode of the elections. it was not spelled out or rather, I was not able to read out how those Village Councils are going to be elected. Their boundaries, how are they going to determine all these things.

If you look at Section 30, it touches on the legislative provision. In the past we had specific district boundaries but today we have had districts every other day and some do not have even headquarters. You know this is the case in some of the districts. I don't know, but I think this is the principles and objectives of devolving power as per this chapter Section 213 - the principles and objectives upon which this power is going to be devolved, it is in good spirit. But may be, we need to look into, because we already have government. If you look at the locations, we have sub chiefs but sometimes we find ourselves having problem accessing services. May be we need to critically look into what this Councils will be involved with. And with that I think I will sum up my presentation at that.

Samuel Muchuga : Thank you very much. When you are eating food, you may not know how much goes into the preparation of that food and you may think it is very easy cooking but if you went to the kitchen you will find out. What I am trying to say is that we are sitting here listening to these people who are presenting to us but if we are placed here also to present, we may even not be able to present so let us appreciate. Thank you very much. Now we want Janet Wangu to take us through from 11 to 15 and this will be within 10 minutes.

Janet Wangu : Chapter 11 page 29 the 1st column, we have the Chapter on Land and Property and in this Constitution, proposes to deal with a number of important issues. For example under ownership, land will be owned by the community and

individuals. The tenure of holding of land under Article 235, land can be held as public, private or common. If you read in detail under Article 235 you will see what public ownership of land means. There are a number of proposals there. Then you will also need to see what private ownership of land entails it should be held under various titles.

Then the common ownership of land, you will also see how it should be held by the common – I am proposing to go very, very fast. Then also public ownership of land is a very, very important issue and in this, ownership of public land will be by the National Land Commission which is established under Article 237 that is page 29 the 1st column.

Then the draft also outlines the functions of the Land Commission. Like I have said, if you hold the public land, you have the mandate of holding the public land - so there the functions of the Commission to achieve that office has been outlined. Then also it has been said that the Parliament will enact law to define the organization and fund of the (inaudible).

We shall proceed to Chapter 12 which deals the Environment and Natural resources. This is a new thing in the Constitution and it shows the importance that the new Constitution will hold on the environment. And I propose that as you read it together - Chapter 12, page 29 the 1st column. So on the issue of the environment and natural resources every person will have a duty to safeguard the environment and it also establishes a National management Commission mandated to look at issues to deal with the management of the environment. Then I think as you read it, read it together with the bill of rights that states expressly the rights of a human being, to a clean environment. So you read together with that part of the Bill. That is Article 63 as you read about the environment. It talks about rights to a clean environment.

I will move over to Chapter 13 which deals with Public Finance and revenue management. It starts from page 29 the third column. So on public finance the imposition on the waiver of tax will be under and Act of Parliament. So this means that any tax that has to be levied or waived has to have authority of an Act of Parliament. Then it also establishes the position of a Controller of Budgets. Move over to page 31 Article 253 - I am just giving the Highlight.

I was saying the next highlight in this Chapter 13, we look at it from page 31 under Article 253, the Controller of Budgets. This is an office that will be established and the Controller will be appointed by the President with the approval of the National Assembly.

Then, we also have his qualifications as it is stated further there and his role has also been stated.

Then look at the office of the Auditor General, it is also an important one. And a new addition to this is that qualification to the office of the Auditor General has been stated. He will need statutory Article 254. He will need to be a qualified accountant of 15 years, be a person of high moral character. Then further, it states the functions of the Auditor General - what duties he will be discharging in the office. Then it also expressly states that the Auditor General shall not be under direction or control of any

person or authority, which is important for him to maintain and perform his duties well.

It also goes ahead to state how these people can be removed from office. You can read further in detail from Article 255 downwards.

And now I will move over to Chapter 14. That is on page 32 under the Public Service. Okay under the Public Service, this Chapter has various parts so I will look at some of them because they are quite a number. I will look at the Public Service Commission which is Article 259 the second column. Under the Public Service Commission, we have - how it is going to be constituted has been expressed. It will have a chairperson, a deputy and seven other members who will be appointed by the President but with approval of National Council. The National Council is one of the components of the Legislature. Then it also says that a member of the Commission will hold office for 5 years and can be re-appointed for one further term, he can be there for a maximum of 10 years.

The powers and functions of the Commission are also stated, they are quite a number around 8 you can read under Article 260 but the major highlights here are that it will have authority to appoint persons to public office below the office of the person of the PS. So anybody holding a public office below the office of the Permanent Secretary will be appointed by the Public Service Commission. There are various other roles.

Under part 2 we have another component of the Public Service which is the Kenya Police Service. The objectives of the Kenya Police Service are stated to ensure peaceful and safe environment, prevention and detection of crime and protection of property among others.

Then we also have provision under the 4th column of the same page 32 of the establishment of the Kenya Police Service. How it will be organized and administered and it also states expressly **(end of side A of tape 2)**

It also says the Police Service shall work closely with communities to ensure security and safety. Another important highlight which I feel I should highlight is on the appointment of the Commissioner of the Kenya Police Service. He shall be appointed by the President with approval of Parliament for one term of 10 years. So the Commissioner of Kenya Police will serve for only one term of ten years.

Then we also have qualifications stated, he should have a degree, and he should have served in the Police force for at least 10 years.

The Commissioner of Police may be removed from office - page 33 the 1st column – the Commissioner of Police may be removed from office by the President for good cause with the approval of Parliament. So the President cannot remove him

without consulting Parliament.

The third part talked about correctional services and it deals with the establishment of the correctional services at Article 268 and also goes ahead to say that it should be professional and disciplined. It goes further and gives the Parliament the duty to enact legislation to establish adequate mechanism for accountability and governance of these correctional services.

Then now I shall go to Chapter 15 which is on the Defense Forces and National Security. So this chapter begins by giving in details the principles and objects of Defence and National Security. The primary objects of which is to safeguard the well being of the people of Kenya, the peace, the country and the national unity and integrity of the republic. So this Chapter establishes the National Security Council and the constituent members are given therein. On Page 33 the third column, we have the members who are going to hold the National Security Council. They are quite a number you can familiarize yourself with them at your own moment. Then the Council shall be mandated to make rules of procedure to guide the conduct of its agencies. So it is not stated expressly how it will be conducted then but given the mandate to make rules on how to organize itself.

Then the functions of the National Security Council have been stated under Article 273 which to ensure integration of domestic foreign and military forces consider policies on matters of common interest among others.

Then also under this chapter, the Prime Minister has been give a duty to inform the President of the state of the security of the Republic and deliberations of this Council. Then also if the President declares a state of emergency the Council shall have the authority subject to the Constitution to impliment measures to bring the situation that led to arise of a state of emergency to and end..

There is also talk about the defence forces and in indeed it establishes a defense forces council which constituent members are given under Article 274 Sub section 2. They comprise among others the President, the Vice President, Prime Minister, Airforce Commander and a few other people who you can read at your own time. Then this chapter also talks about commanding officers, it talks about the Chief of General Staff being appointed by the President in consultation with the National Security Council. Then it also talks about the role of the President in this defense forces council and it says that he shall appoint the Army Commander, the Navy Commander and the Airforce Commander of these forces. Then each of these officers appointed, it is stated they shall be under the control and direction of the Defense Council. Then also on page 34, it talks about the type of regulation the Defense Council is mandated to make. I propose to stop there but I encourage you to read in detail because I have just rushed through but I hope you have gotten at least the gist of the chapters.

Samuel Muchuga : Thank you Janet, you have done well. This is not an easy document that is why it has taken so long. Esther now we are with you.

Esther Walya : I will be slightly faster than Janet. Bear with me I am a teacher by profession and I talk also very fast. Let us go to chapter 15, I will not take you to task to refer to pages because what is your page 37 is my page 200 and something. Going straight on to chapter 15, is leadership and Integrity. Now that is something directed at all public officers public officers if you look by definition in your 6th schedule - later in chapter 19 - public officers has a definition there. So the Leadership and Integrity chapter is supposed to be directed at all public officers from the President to the members of parliament and any other person serving a public office. What it is saying is that there will be no compromise that officers should make in their jobs and they must have no conflict of interest as they serve wananchi. There should be no question of integrity. Your integrity should be unquestionable. And you should not use your office for personal gain and this also extends to families. If they are supposed to be clean, their families are also supposed to be clean both in public and in private life.

Please also refer to the Leadership and Integrity Code on your 5th schedule, after chapter 20, we have several schedules there. If you look at the 5th schedule it refers to the Leadership and Integrity Code. And refer to the definition of public officers, at Article 270 that is chapter 16. Chapter 17 deals with Constitutional Commission and Constitutional offices that have been created in the draft. Remember that these are proposed as Independent Commissions that could have known interference either from an individual or the government. They are supposed to be impartial and they should offer free services and they should at least try to establish offices both at provincial and district level depending on the services that they are offering. It is also proposed that they should have three to ten members who should serve a 5 year term and should not be older than 65 years and they should not hold any other public office. The role of the Commission is to educate the public on their role and their funds will be audited. Whatever they have received in terms of finance will be audited. They should also give reports to the President and Parliament on their performance and activities and their audit.

Now the new Commissions - what does not exist now - the new commissions under this, besides the existing one like the Electoral Commission include the Human Rights and Administrative Commission, the Ethics and Integrity Commission, the Salaries and Remuneration Commission, the TSC, and the Constitution Commission. Please refer to the draft again so that you get details of how many members proposed for each Commission.

Now on to Chapter 18 which deals with deals with the amendments of the Constitution. In a nutshell you notice that deals with ratification by the people to make amendments concerning them. That particular chapter gives the people power to have a decision to make whenever there is a change in the Constitution. Currently you know that MPs sitting at Parliament can change any part of the Constitution, but we are saying that in the current draft if you need to make any changes that concern the people, things that are of primary issues – education anything that touches on them basically. These must be presented to the people so that they, along with Parliament, make decisions of the amendments. And I think it is a good chapter because it puts a check on our Constitution. If you have a Constitution that we have to amend every month then something is wrong with that Constitution.

When we have a good Constitution, then we will need to make as few amendments as possible.

Now Chapter 19 deals with the terms what I would call in layman's language definition - lawyers will call it interpretation. It gives you definitions as per the current draft. The definition you know of the word sitting may not be what we are doing right now, it is a little more than that. So to understand some of the terms that are used there you need to go through Chapter 19 and get the meaning in the contents of the Draft. Now this again puts a check on mis-interpreting or misusing any words that is highlighted there.

Chapter 20 is very brief but I find it important in the case that, we are saying that we are going to change from an old to a new Constitution, it touches on the transitional and the consequential provision. We are changing from the old to the new. But if we are saying we do not want a PC, we do not want a DC or we do not want a DO, are we saying that tomorrow we are going to ask all of them to go home and somebody else to take office? No we are saying that there must be provision for some continuity. There must be time to allow change.

And looking at the definitions that we brought earlier on the fundamental rights of the people; while the primary issue is changing from the old Constitution to the new the process of transition you will find that there is overlap. At one point if we are changing from a PC to a District Council or to a Provincial Council, you will find that there will be an overlap. And we are saying that to allow for this - I will refer you to the 5th schedule. The 5th schedule, I wish you could all turn to it together so you could see that it gives you a guideline on what should change by what time. For example we say that legislation to govern provide for regulations prescribed, so there is right of access to information. It is on Article 47. We are saying that it will take 6 months to come into effect from when we take up the new Constitution.

The 5th schedule is on page 45, it is the last column, it is shaded. If you look at that it will give highlights of certain issues that have been raised and how long they would require them to go through transition. Have you understood this schedule? If you look at it, it highlights, on the 1st column, it has what issue we have there. I will pick on something like citizenship by naturalization, it is on Article 21 and it says no time limit. But you will notice something like land tenure, Article 235 it will take two years to have the new Constitution sort it out. So that is more or less as a guideline. We are saying that not everything will stop when we have the new Constitution. There must be sometime to allow for change. So notice also the entire system according to the new Draft. The Executive, the Legislature and the Judiciary has been re-organized. So if you are saying that we are going to have a Prime Minister and two Deputy Prime Ministers and assuming that we are going to elections on the current Constitution, we will only have a President and Ministers probably 30 of them not even 15. So we change them to 15 and change the whole system to two Prime Ministers. We are saying that there must be time for change. We are not going to adopt it tomorrow.

Now so much for Chapters 16 to 20. I will take the session back to the Chair. Please remember that at the beginning of the session I warned you that we might not be able to answer every question and we are not going to pretend that we can answer every question. But within our mandate, we are going to write down your proposals and any criticisms that you will come up

with in this most important session. This is the reason that actually brought us here, just to get your feedback. Thank you.

Samuel Muchuga : Thank you our Coordinator, the gentleman here is happy now, so that we can hear now from the other side. I think your views are very important because what we are being given here is more or less all of what we know, but what you get here may be is new ideas. But I want to make one point here very clear. This group here has not come here to take views please – and I hope I am right Coordinator – to go and review the Constitution, it is comments based on the current draft of the Constitution. Of course if there is something missing and we (inaudible) is very serious you can bring it up. So I will open the floor - I don't know how many people want to comment or to say something. If you can all of you raise your hands so that I can assess how much time. Only 1,2,3,4,5,6,7,8. I know later on you will see some people raising up their hands.

Now if we give those people about 5 minutes each, it is one hour. Is that fair? We give everybody 5 minutes?

Esther Walya : I will send somebody to bring you a soda so that it can be a bit pleasant.

Samuel Muchuga: Yah, I know but I am saying, you know there are people who like to talk a bit more, maximum of 5 minutes. Now who wants to start? Okay. Wait they want to record it.

Ndwaru Karega : Thank you Mr. Chairman and the Committee, my name is Ndwaru Karega and mine is just a compliment of the work that you have done. Today is just a day for disseminating the views that are contained in the draft. No new stuff that is going to come up that is going to be fixed in the draft as you envisage to go to the National Delegates Conference. I must however, thank you very much for the way that you have presented this to us. However, the general mood of the country as of now is in essence that the new Constitution was going to be ready for the coming general elections and perhaps most of us thought that this new Constitution is the one that was going to be used to carry us to the new transition and the next government that comes in, comes in under the new Constitution. However, probably some of us will feel disenfranchised if the new Constitution is not going to be ready by the time we are going to have the general election and nobody - I would even say that is the opinion of many - that nobody would say what is going to happen if we are going to hold the elections under the present Constitution. What it has done and the way it has carried us through up to now, we have seen. But I don't know how you are going to revitalize the people to be contented with the issue of going to the election with the old Constitution now that the new Constitution perhaps is not going to be ready because that has been the mood of the whole country and that is the mood of the whole public because their opinion was that we are going to go to the election with the new Constitution. What might happen, nobody would want to contemplate but I know the spirits of many will be - let me use the word “guilty” in quotes.

Samuel Muchuga : Let us not say that there is nobody who wants to use the old Constitution because we already know there are people who want to use it. So you cannot say, nobody wants. There are people who want to use it and we also want you to be part of that group which is coming with the solution, what do we do now that we are now faced with this situation? But I

will tell you something that is very import. People tend to see only their side. Whenever you are dealing with a situation deal with the situation from the position you are and also see the other people's position and also try to understand, their fears and concerns and try to see how you can bridge all these. Don't try to win alone. In negotiation we talk of give and take. You will have to give something and take something from somebody else, but you find people here in Kenya they say "this is my position, this is where I want to stand and this must be done my way". And the other guy says this is my way. You don't achieve anything but if we listen to one another, say that man is afraid of this and that, "how can I give him at least not five, I will give him only two, so that he can give me three". I think that is how we may be able to compromise. Let us talk of the issue of having an interim Constitution may be that is the only way. Thank you very much.

Charles Amunga : Good afternoon, mine is - my name is Charles Amunga and first of all, I would perhaps like to apologize, I am not a man of bad heart but I will make some points and I think most of us will agree and we have gotten what we wanted finally. So thank you Bwana Chairman.

Now my contribution to this, just to react is first and foremost, I would like to congratulate the Constitution Review Commission of Kenya for the good job that it has done. We like the document the way it is and may be it needs some final tuning so congratulations for the good job that you are doing.

Number two, again I would like to point this out the second time. We request that this new Constitution be used for the next general elections. We know that there are constraints here and there but we would like as much as possible, let it be used. I don't know if that will be acceptable but even if it is not used with the coming election then I think the last thing that we could do we could extend the term of the Constitution Review Commission, I think beyond January and then let it continue, if we are completely incapable. But let it come and be circulated, let not the resources, the time and the efforts that you have done, go to waste.

Number three, my contribution is that, I think I have looked at the draft Constitution and it says that the law of Kenya will be something to do with - they will consider things like Islamic, they will consider Hinduism, Muslim and those kind of things. And you Bwana reverend being our Chairman, you are a Christian, so the Christian issue, given that Kenyans are 70 to 80% is not there. So we as Kenyans are wondering the majority – this seems to be a Constitution of the minority and if we don't take care that is what is going to be happening. That is my third contribution.

Number four, the draft Constitution is good yes; the past Constitution has relegated the minorities so much, the special groups, children, women and what we call the marginalized groups. But the way it has come in again, it seems to be marginalizing the majority because especially if you look at - we have many, many cases that have been put forward for women, for children, but for men I don't know where men are again. So men will be marginalized. And I think if we don't take care of that men will be an extinct generation. As you can see, we have four women sitting with two men right here. So I think men should be looked

at and it seems there is some discrimination against men, against people who are able, against generally those kind of people and this is propagating the minority rule as you have heard it.

Number five, in the Parliament and the National Council and what ever group we have, we seem to have too many nominated members. We suggest that the nominated members should not exceed something like 20 or 30%, otherwise you will have the nominated members coming in and destroying the whole issue of majority and the elections that we have done. That is my number five - reduce the number of nominated members.

Number six, under the Consumers Rights, I think they have only mentioned one thing. They have only mentioned quality and under Consumers, we think there are other things that somebody can manipulate to be able to take advantage of you. Things like quantity, and you need to take into consideration things like fair or a reasonable price. The supply condition, contract and so forth. So I think under the Consumer Rights, try and include quantity, fair and reasonable price, supply conditions contract and any other thing that may be of importance.

Number seven, there is the issue of the Prime Minister. It is okay the way it is, we have a President, Vice President, and the Prime Minister and two deputies. However, I think the term of the Prime Minister should be 2 terms of 5 years each and after that, then we should have a new person. However good the person is performing I think it is always good to pass on the baton of leadership to the next generation. Give everybody a chance he is not the only good person that we have. So the Prime Minister should have two terms of 5 years each and after that I think we need a new person whatever the case.

Number eight and finally, I think we have mentioned the Police Commissioner should have a term of 10 years - 10 years once appointed in the draft Constitution. I think the way it is supposed to be, it is supposed to have two terms of 5 years if he has done well in the first term of 5 years then he shall be appointed again if not, then we get somebody else rather than just giving somebody a blank cheque for 10 ten years. I think that is an important position just like the President, we cannot have a President for 10 years or 15 years and other public position. I think we need to have the first term of 5 years if you do well then you are given the second term and after that let somebody else take over. Thank you so much for listening to me.

Samuel Muchuga : Now, can you give us that paper?

Esther Walya : I have taken down the points. Just in relation to what Charles has talked about, I appreciate the fact that you have thought out the draft. And I will tell you that most of your concerns are proposals that we shall take back, but just to react to point number two. Asking us to request the use of the new Constitution in the current elections, remember the roles and goals of this Commission. And currently you know that CKRC is meeting with the Parliamentary Select Committee on the Constitutional Review and that will be a decision entirely in other hands. So let us not look at it like it is the Commission that will really take up an issue like that. But the rest of the proposals especially the one that has to do with women being taken to

much care of, the ones to do with Muslims and the one on the term of the Prime Minister have been raised before and we are going to articulate them again to the Commission. Thanks.

Samuel Muchuga : I also wanted to comment - thank you for your contribution - but I also wanted to raise an issue about women. There has been too much emphasis on the giving women equal rights, instead of emphasizing equality to the society, we are always referring to them. But to me, it should be equality in the society whether for men or for women rather than just talk about women. Women, where is the man there? He is part of the society. So it is equality within the society.

The other thing is this question of religion. Something which has been disturbing me so much. Because you see here two parallels one for Muslims and the other one for others and Christians are lumped together which the Islam call infidel. Infidels are people who don't know God. So we are governed by these courts which govern the people who have no religion and the Christian is also there, secular people there, we are lumped there but Muslims know what they want. They know in this report, they should be covered separately. Why not have another parallel here for Christian? We have a got a Bible which tells us how we should live. So I find this, even the people who were drafting this some of them call themselves Christians, they don't care. No, it is not a question of requesting it is a question of finding out why are you catering for one section of the society, in other words it sounds to me the Christians request that. If you are really providing for one section of the society, why do you ignore the others and many of the Christians are talking but they don't see those. But Muslims are very concerned, I work with them, I deal with them, they are very concerned about what they need themselves and what should not be in breach with what they call Quran. But Christians appear not to be concerned about what is in the Bible. Okay.

Anthony Mwangi: My names are Anthony Mwangi, I wish to thank the Chairman for the conduct of this meeting. I find him quite rational in the way he is handling it in most of these issues coming up. I also wish to take this opportunity to thank the Commissioners and the Team that has come up with this draft. It is quite a good work done under difficult circumstances, but I also think now that the ball is in our court as the members of public, this Constitution is supposed to be for the people, it is not supposed to be for a few individual and we should actually fully participate in the deliberating of the contents of the issues. One of my colleague who sat here made a comment and said that the mood of the people is to go to elections with the new Constitution. However, personally I would like to differ with that view. Mostly, sometimes, there may be general mood or the view of the majority may not always the best way to follow. If you allow me to go back to a few observations in the past. For example in 1992 when multiparty was introduced, everybody thought that we have gotten freedom and democracy and the mood was we go to elections, the opposition thought they would win the election but there are only a few minority voices that were saying no, the ground is not level. Let us seek for level ground before we go into election. But those minority voices were not listened to. In 1997 IPPG came up that was supposed to smoothen or to level the playing ground. Again, the minority voices raised their concern that the IPPG was not really a genuine way, but again the majority were in the mood of the election and everybody went to the election.

Currently, everybody is saying election in the new Constitution: I think there again lies the danger. This Constitution is supposed to be for the people, it is not supposed to be for the politicians. There are certain politicians who think that with the current power sharing positions in the draft, it is going to be enable them to be able to get the seats that they want but they are not giving us the time and the leeway as the public because the Constitution is for us, it is supposed to serve our interest not the interest of a few guys who want to be Prime Minister or they want to be whatever. It is supposed to be for us to feel that our interests are properly catered for in the Constitution and that is why I feel that in my opinion, we should not accept to have this Constitution rushed or enacted so that so and so can be so assisted this and then at the end of the day, we find ourselves we are in square one again - all our rights are not there, all what we asked for has not been catered for in that new Constitution. Why, for heaven's sake? We have spent 10 years, we have struggled, people have died for this new Constitution. We have the opportunity now, we have the draft, we have a working document, why can't we take our time? Let us excessively, exhaustively debate on the issues that are here. Let us see if they really serve our interest and then slowly - let us not rush - we can wait for the next 2 years, even 3 years and we get a proper document and a document that is going to serve us for the next 100 years. All of us.

Now let me just make my - quickly if you allow me, just to go through the points that I have extracted from the draft.

On the issues of power structure, there has been proposed a President, the Vice President, Prime Minister and two Deputy Prime Ministers. I tend to feel that the purpose of this structure was to try and have a power sharing system. To remove the excessive power from the President. The idea is good, I don't quarrel about that. But we also need to look at the practicability of it, is it really practical? In this country for about 10 years we have hardly done anything. We have been just politicking. At one time, certain people said they want to move a vote of no confidence on the Vice President, may be because they want to be Vice President or they want to be this and that. Now this country is political whatever. Talking is always very fluid probably because of the ethnicity and all that. If we have this power structure in place, how assured are we that the minute we have a Prime Minister and the deputy Prime Minister that we will not have the deputy Prime Minister undermining the Prime Minister, raising the political temperature. The following day may be you have a President who is not happy with the Prime Minister wanting to remove his Prime Minister or a Vice President who wants also to remove his President. I means, what I am trying to say is simple. That we might think that we are trying to distribute power but we might create another problem of political instability. So probably we might think of a way of "ceding" the powers of the President - this excessive powers to institutions not really to individuals. Because even those individuals can as well abuse that power. The Prime Minister can abuse the power or the deputy Prime Minister. They may also be able to abuse that powers but I feel that institutions are more unlikely to abuse powers like individuals plus, there is that - we have a kind of a guarantee that we will not have that political interfering. You know politicking everyday that so and so wants so and so out. I mean I think we really need to forget this day to day politics.

On Land issues, you have talked about land issues and there is a clause that you said that the government can have access to any land even private land for whatever purpose they deem fit and you said that the owner must be compensated fully. But

again, I feel that we need to institute some detail in this draft Constitution. Because I feel that as a general kind of thing, saying “compensated fully”, compensated fully, I don’t know whether you pay somebody a hundred shillings may be regarded as fully. We need may be to put details on what methods, how are you going to assess my land is worthy this much, who is going to assess it, is it a qualified accountant, a land economist or who? You see these are issues that affect wananchi I remember like there is a controversy at the coast over the Titanium Company that is putting up a project there of mining some things and the farmers there, the land owners there have really complained, because what compensation are they being given, they don’t feel it adequate. Perhaps the new Constitutions should address that aspect. Let us not have controversy, let us not leave loopholes in the Constitution which trigger controversy. So I tend to think that it is important when we make these suggestions or clauses, let us back them with details so that there are no loopholes.

Again I want to point out the aspect of land ownership. We know the majority of us may not be able to own land. We don’t have enough resources may be to own land. Now there are people who own large chunks of land and they are not being used. Could it be possible that you recommend for example that land should be taxed, so that the owners may be compelled to have people working on it, or to develop it or to have investors, so that the economy can pick up. I think I have too many issues, I don’t if I will finish.

Then, the Constitution I tend to think that it has not really adequately addressed the issues of for example farmers. Coffee farmers for example, when coffee farmers - I understand in the old Constitution that you cannot uproot the coffee trees unless you get permission from the government. If a farmer cannot uproot coffee or tea can he not be compensated. If he is making losses during that time? I cannot grow coffee and it is not giving me money.

Samuel Muchuga : (inaudible)

Anthony Mwangi : I am not saying that I know that. I have heard that, that is a hearing.

Samuel Muchuga : This Constitution cannot put everything here, there will be Acts of Parliament to cater for a particular section, if it is coffee there will be an Act of Parliament which will take care of that. You cannot put everything even small laws.

Anthony Mwangi : Mr. Chairman if you can allow me those are serious issues to us people, to the people to the common mwananchi. Yes, me I am a farmer really, how am I protected? Again the issue of workers, I see people ---

Samuel Muchuga : Please stick to the document, don’t generalize. Unless you say section this omitted this so, please.

Anthony Mwangi: I am just citing what I have not seen. I will try and rush as fast as I can. Now you have said the electorate can vote out their MP but you have not said how we can vote out the government. Yes in the draft - I am saying in the draft - I

think we also need to devise mechanism of also the people themselves removing the entire government. If we can remove our MP then we can as well have mechanism of removing the entire government.

Corruption: corruption has been the biggest problem in this country and I tend to feel that even the current constitution is not that bad it is only that we have been unable to protect or to enforce it because of corruption. In the draft Constitution, I was expecting may be you will come up with the whole chapter addressing the issue of corruption. Because I tend to feel that corruption should be given a very prominent consideration in the new Constitution. We must stamp out corruption by all means and we really have to get all the pieces of the detail on how we can work out corruption.

The next thing is to do with attitude. We can come up with a very good Constitution but we also need to be, in that draft, probably to address how we could be able to cultivate into our people the attitude of respecting the Constitution, the attitude of for example - I am saying if it could be possible how we can you know - the Kenyan attitudes I think they need a change. For example when you come to the thing of corruption it is all to do with attitude. Our current Constitution addresses corruption but why are we still corrupt?

Samuel Muchuga : You know as a representative from Nairobi in this Conference, I am very interested in what all of you are saying. If you can give me something what you have put down. I can articulate some of those things during the Conference, so that is why I told that gentleman that I wanted a copy of what he is saying. Because you may not be there but I will be there.

Anthony Mwangi : Let me just make my final comment. My final comment will be that whether the Commission can think of a way of at least extending the public debate on the draft. I am sure there are many other people who would wish to give their contribution on what the draft contain and what they thing should be contained. Let us not worry to much about the enactment of the Constitution. Probably we should worry about the tenure of the Commissioners. If we could have their tenure at least extended for the next 5 years and then everybody all of us get a chance, because like now I can't finish, I have three pages to present. I cannot finish, many other will not be able to finish their views and they are very important as well. Why don't we have more time to discuss the draft and then once we are through we have a proper document that will govern us for the next 100 years, let us not focus on December.

Samuel Muchuga : (inaudible) And the Conference is going to decide whether to give that extension, you are now requesting for that. That Conference of over 600 people will sit down and see whether there is need for what you are suggesting. The next person.

Anthony Mwangi : (inaudible)

(end of side B tape 2)

Samuel Muchuga : --- three people represent Nairobi, myself, representing men, then a lady representing women and a young man representing the youth. So those are our contact addresses in case you want to give us any information you want us to take to the Constitutional Conference. Or if you have got a written proposal, you can bring it to our office here, in the Document Centre, you know it? you can visit it now when you go out, you can read there and even all these documents are going to be kept there. They are there for you. Next person?

John Wambu Kamau : My names are John Wambu Kamau and mine is very brief. First of all I wanted to comment on the freedom of worship and I am glad we have Reverend here. I have a problem with the, it has been stated in the Constitution that everybody is entitled to freedom of worship; that one is okay. But I was feeling it was better if we could have added something like, all the religions should be socially acceptable because there are some religions which are not socially acceptable, say for example there are so many sects and cults we have in our country. Another thing I wanted socially acceptable like for example, I might not be wrong if I say Mungiki and some others. So I was feeling we should confine ourselves - we should add something to the Constitution which says that all the religions that we are out to follow should be religions that are out to take us forward.

Another thing, when I was going through this draft constitution, I noted that may be you have clarified very clearly that Nairobi is the capital city of Kenya, that is good but I feel that I need some further clarification about the elections of the civic leaders. I was feeling, if this Constitution is geared towards the people, I was feeling the Mayors should be directly accountable to the people. Because most of the problems we are having in our city today come directly because of the conflict between the civic leaders and the Ministry of Local government.

My last contribution is on the National days. You have clarified that we need three National Days. I was feeling there is need for another day, may be we can name it heroes day, which will cater for days like Kenyatta Day, Moi Day and the rest. And it should be defined in such a way that it is not portraying one person as the only person who made the greatest contribution in the country we have, I was feeling may be the heroes day can cater for all that. Thank you.

Samuel Muchuga: Give me those document, I need them they are very important. So you can put them down and bring. Next.

Peter Mulunda : Thank you Mr. Chairman, my name is Peter Mulunda and I want to thank you for the effort you have done all along to enable even this meeting to enable us to gather here and make our feed back. I have only a few reactions to make. One is on oath. I am a Christian myself and currently, when we go to court you are asked, if you are a Christian you are asked to raise up the Bible, if you are a Muslim Quran. And according to the Bible, it tells us that if we say yes as Christians as believers it is yes. If we say no, it should be no. So the issue of raising the Bible, I think it should be removed from the

Constitution. Because we go against it when we raise up the Bible. So I feel there should be a provision in the Constitution to say that a Christian believer should not be ---

Samuel Muchuga : That is the kind of thing which made Muslims to say they want to have their own court because they don't want that kind of thing, but if you Christians are not asking for this kind of thing you will be lumped together with others. That is why you are put together with others - unbelievers.

Peter Mulunda : Yah, if need be then we can ask for Christian court but I don't think it is in the best interest of the country to start sectionalizing our courts based on religions or sects.

My second contribution is on Police Commissioner issue. I have read the draft it says 10 years term continuous. My brother has already been here, he has contributed on this and I have a few amendments or additions to make on that. My view is that instead of ten years it be reduced to 5 years one term of 5 years for Police Commissioner to be in office. Or alternatives to that, it be made that to retire at 60. That is if he is appointed at say 57 years of age then he serves for 3 years when he is 60 he goes home.

Interjection: Speaker : What I have put in my - when I was correcting this draft is that it should be 2 five year terms, 2 five year renewable terms. That means if he has done a good job for 5 years it can be renewed. Not just giving someone a job and telling him for 10 years that might not work very well.

Peter Mulunda : Currently like the Chief of General Staff of the Armed Forces, serves for only 4 years and the retirement age is 64 somewhere there. So it is whichever comes first either the 4 year complete term or age - whichever comes first effects the retirement or the removal of the CGS and I am of the same opinion that even Police Commissioner -because we have had a very bad image coming from police force - we would like to modernize this force, we would like to inject more discipline in this force and this is why I am considering the issue of 5 years only for the Police Commissioner to be in the office. Or retirement age at 60, which ever comes earlier.

Number two or part two on the same is the - actually it is number three now. It is reforms. We are told the President may dissolve Parliament at any time after 12th which is only next Saturday. My view on this is that if time allowed, if the President was human enough to the Kenyans because Kenyans are crying for reforms not dissolution of Parliament. If he would allow Kenyans a little more time just a little more time may be not to see through the whole Constitution, then I would ask for minimum reforms for the Constitution before we go to the elections. And the minimum reforms to touch ones on the elections so that we have in the Constitution the provision of President with his running mate who is his Vice President and also the provision of Prime Minister. So that when the new government comes into place, it has the President, Vice President, Prime Minister and all that go with that. That is deputy Prime Minister, deputy Ministers. And then also to put in place - to enact an

Act which will enable the Parliament to approve all constitutional appointments which would involve Chief Justice, Police Commissioner, Attorney General, Cabinet and all those to be included in the minimum reforms so that Parliament has authority to approve these people's appointment.

Lastly I want to comment on the Constitutional Conference which I am told is stated for 28th of this month up to 28th of November. I tend to think that has been pushed too far away, the way things are running very vast, I would have appreciated if the Constitutional Conference could have started even next Saturday, so that Kenyans start deliberating on that those 640 delegates start deliberating on this Constitution. Okay I know by the end of one month they will not have enacted the same, but I tend to think it has been pushed too far, it should have been brought nearer so that talks start as soon as possible to see through the Constitutional Conference and the matter be handed over to Parliament, thank you.

Samuel Muchuga : My friend, I think this time - we are conducting now what you would call "Kenya Conference". All Kenyans are doing dialogue, then you narrow this to 600 delegates and of course, I would imagine that all those going to that Conference would be listening to the people - what the people are saying. So that when they come there, they will not come with fixed minds, because we are supposed to give our own opinion but we should listen also to what the majority of the people we represent are saying. So this time is also used so that people can listen to the people they are going to represent. What they are thinking, what they are saying, we should keep our ears alert. So that we hear what everybody is concerned about. Next.

Kevin Tweni : My name is Kevin Tweni and first of all I would like to apologize coming late, I really couldn't go through the draft so I have been going through it personally. And the second thing is to thank the Commissioners and all those who have been elected to represent us for the tough job you have been doing in baking the cake for the Constitution. And moreover for some of use who have been conducting civic education since all these began, the only thing I would like to put across is that; one, in this draft, this is a draft that clearly specifies years from now like, let me say generations and generations from now. And the thing that affects me much is, in the first place when the Commissioners have collected and collated the views one thing I have seen omitted is the youth. I am clearly saying this because I have been looking at the Bill, the Bill of Rights the fundamental freedoms and rights of everybody but I have not seen the youth in this Constitution of which is very provocative because ---

Samuel Muchuga : You are men.

Kevin Tweni : Yah, we are men but you see we are looking at it as the needs of the young people are different from when we change or when transfuse from the youth to men or the youth to women and our needs are so special that we are part of the emerging issue. Because if I look at civic education, some of the emerging issues, we as the youth fall there even though we know that tomorrow we will be the men, but we will still be having the youth as the largest total percentage. We would like to urge Mr. Chairman to really look at this because even in the National Constitutional Conference, we don't have any youth represented. And personally I was addressing this to Patrick Lumumba and it was a question of querying because they were

saying that we will fall under the minorities, like the Okiek. So the only thing that I am urging here on the issue of youth, please look at it.

Point number two, is the issue of Land and Property. As I was rushing through, I have seen that there will be a Land Commission but I also feel there is the need of a Land Tribunal so that there should be a board that is looking at the issue of land and any landless people.

On the issue of Public Finance and revenue management, I would also like to put across that if you look at accessibility of Revenue Management. Let us see that public finance is distributed equally to all sectors and if you look at the equity or the equitability of the revenue management, let us see that there are certain sections that undertake this and not just on major section like the public finance commission.

On the members of the National Council I have just said that the youth are not represented so I wouldn't really go into that. But I would like to look at Insecurity that falls under the Bill of Right. We find that everyone has a right to security but there are some of these things we would like to see like the policemen, what the policemen exercise, what is their limitation of powers because, we have seen the work of policemen and all the things that the policemen are supposed to do. But we have not seen how far they have to exercise their powers and when should they use these powers. So we find that we are so insecure that at one time you hear this has happened and that has happened and so on and so forth. And also, linking the issue of insecurity to the issue of the schedule that I was looking through, some of these things that are happening in the current Constitution will take time before they are disbanded. We find that we have like the elite section of the police which has just been created by the President and such will not be disbanded immediately. So we are looking at such issues. If we have the freedom of choice of the people we want to rule as and you find that in such campaigns elections and what, we have the political violence of which we know that most of these will be caused by the elite who will be chosen. So let see like in the schedule some of these elites like the new elite police, how long are they going to be disbanded what is the time that they are going to take before they are disbanded.

Then finally, looking on the Bill of rights everyone has a right but as I am looking at it in the collation of views, there are several rights which could interfere with everybody. If you look at the right of freedom of religion and worship you will find that we have so many religions and some of these religions if you just look at it that everyone is free to religion, we have religions which allow things which are inhumane may be things like homosexuality or lesbianism. We cannot allow anybody, or just say we are going to have freedom of religion. We have to have a limited freedom of religion for we have emerging sects or some cults which are really not towards our culture or ethnicity as Kenyans. So if there is something I have omitted that I didn't go through, probably you might answer me, but if there anything that is not of question, I think I am through and I thank you. My views, I think I am going to give them personally to you because I live around and I hope what I have put across will be presented.

Samuel Muchunga : Thank you for your contribution, I am also very much concerned about the many Christian religions which are coming in this country. Because we are embracing anything that comes. And I think we should be able to confine ourselves to quality rather than quantity. Next.

Wilson Mwangi : Okay thank you Mr. Chairman. My name is Wilson Mwangi Gathuku, a resident of Waithaka. Now I am here to give my personal views concerning ---

Samuel Muchuga : Just a minute, how many more do we have? One, okay, thank you.

Wilson Mwangi : I have come here to give my personal views concerning this draft Constitution which we are so happy to have with us now. Because now we have got a working point where we can start from. Now having said that, I want to start by saying that I am happy that you are here and since you are the one who was so lucky to be chosen among many to represent Nairobi, ---

Samuel Muchunga : I am one of the unlucky ones to carry the burden.

Wilson Mwangi : Our hope is that you are going to represent us fully during that Conference. And for now I would have just liked you briefly to take us through what you are going to do there - just briefly and what we can expect to happen there during that Conference. And more so you can tell us possibly now that we have got a Conference for those chosen few, how can the other general public possibly participate through you. You can briefly tell us that.

Now let me come to the details of this proposed Constitution. Now for me as much as I like this Constitution there are some areas that I feel are a little bit going too much considering that our Kenyan economy is not a very strong one, right now everybody is crying that our economy has gone right down there at sea level, and yet according this proposal that we have, I find that the Parliament and all the structures that we used to have, have all expanded. Taking for example the issue of the Parliament. We used to have only 210 elected MPs and 12 nominated but right now we are going to have - they are proposing an additional of ninety more and even to crown everything, they are coming up with another, they are calling the National Council of 100 members and here, I wanted to ask - possibly, you can ask through me there - what was the really rationale of coming up with these two Houses, which according to my opinion, I cannot actually see clearly from this draft the difference between the two Houses. What I can only see here is that some are, we are told here that some of them, like the National Council shall be approving things for the Judicial Service Commission, when you come to the National Assembly it is approving about the Prime Minister and the list is very long and I think that here I can only see a duplication of duties. I don't see the difference between the two clearly. What is the real difference, are they not just duplicating one another? That is the National Council and the National Assembly. Like for example, there is a very big list here. The National Council shall be approving

Judicial Service Commission, Land Commission, Teachers' Service Commission and the list is long. When you come to the other one, it is approving the Deputy Prime Minister, Prime Minister, Ambassadors, why can't this work be done by one body? In the first place and why do we actually need these two Houses. Now if at all it was the issue of - there is only one area that I can agree with them particularly the National Council. It has come very clearly on how to bring in the gender disparities particularly the women and it has stated clearly that each constituency, which here means the district, shall be having 4 women and Nairobi two.

My proposal is that possibly, we can do away with the National Council and retain the old National Assembly and possibly we can only come up with this affirmative action whereby every district can have a number of women representative because normally they are the minority there. If at all we want them to be representing in Parliament, we can only have them through the District and we do away with the National Council. And in case you are going to bring in National Council, between the two Houses, which one is more superior to the other one? Because here there is a conflict of interest, which one is going to be superior than the other one? There is the National (interjection) between the two Houses in short. And if at all we are going to retain this National Council, how are they going to propose the person to be elected. Are their proposals going to come through the political parties or are they going to be independent person and how are we going to agree on that one person so that he can be elected in that particular district? That one is not coming out very clearly in this Constitution - the way that person shall be elected. Is it through independent or through political parties like the normal MP?

Now, the other thing is that, here in the Constitution it is saying that everything is like in senior positions they are being ratified by the National Council or the National Assembly. But according to the experience of the past Constitution, we have seen a President in this country who was taking advantage of the greatest loophole that was created by that Constitution. Now here we have those words. "Appointment in respect of the following offices shall be referred to the National Assembly for approval, before they are made". What do they mean by that approval? Approval can mean anything. It can mean the whole House, that is you take the whole House and then you take the popular support, that will mean over 51% of all the members. Approval can also mean the popular support of the members who are present, so long as there is a quorum there and a quorum can be a few numbers of MPs. So that approval, it should come out very clearly in the coming Constitution as to what we mean by that approval. Is it the percentage for the whole House or is it for the quorum - those who are present.

The other thing I wanted to talk about is the Judicial Service Commission. The Judicial Service Commission, I have tried to look at it critically and I have tended to think as if there could have been a small oversight. What do I mean by that? We are told that the members of the Judicial Service Commission, there shall be a Chairman or a Chairperson rather, another person is a Muslim woman representative and there is also the Attorney General and on and on. And when we are told that down here, that members of the Commission shall hold office for a term of 5 years and are eligible for re-appointment for a further final term of 5 years. But incidentally here, there are two people that have been put here: one is the Chief Kadhi and the Attorney General, yet the Chief Kadhi is a Constitutional office and that Chief Kadhi has got that if he is appointed at the age of 35 as

according to this Constitution, he might as well be in office for another 30 years. And now here we are talking about being in office for only two terms of a maximum of 10 years. Does it mean that then after that the Chief Kadhi – and it specifically is put here, the Chief Kadhi will not continue to sit in this particular Judicial Service Commission? Because he will be technically ruled out by the court that he has already served for 10 years, now he cannot go beyond that, now what is to happen?

Samuel Muchuga : But the protection is within the specified period, that he cannot be dismissed after 8 years or 7 years, but the Constitution says he can serve 10 years - that is where he is protected - not 15 years.

Wilson Mwangi : Does it mean that after that time now, there shall be no Chief Kadhi's ---

Samuel Muchuga : There will be another one.

Wilson Mwangi : Another Chief Kadhi

Samuel Muchuga : Yes.

Wilson Mwangi : I think according to my layman's – we are lay people. I think with that Mr. Chairman, if there is anything I have left out I can come to the office.

Samuel Muchuga : Next.

Daniel Njoroge : Thank you Mr. Chairman, my name is Daniel Njoroge. I have been following the work of the Commission for a long time – from December when I addressed the Chairman of the Commission. I have also read (inaudible) and I think the purpose of the draft is that the final document should represent very good final document. So we should be allowed to put our input, in some of the sections. Some of the areas are very clear, some of the areas have not been dealt with, and I am going to mention a few so that they can be taken care of later on.

One of them is the question of - I will deal with this paper first. But on the issue of the government, I may not comment on the (inaudible) I have not read. The President in my view is that other than this election, the President should have a longer period other than a Parliamentary term. So he can be elected for 7 years so that when term of Parliament ends at 5 years he shall still continue for two years, then we hold a separate election for the President.

Samuel Muchuga : You have to point out the advantage of that.

Daniel Njoroge : The advantage of that is that even when the government goes away we should still have a President holding

on legally in his term. So he can either have one term of 7 years, then he goes away and then we can elect another President. The appointment of the President should be Executive, he should be the one held responsible for the affairs of the country. So he should actually be the person appointing the Prime Minister to assist him to run the government. However, this question of nominating 90 MPs - they are actually not nominated, we have to be clear here. There are two ways of election, one is direct by constituencies and the other one is proportional representative. Here they mean that if a party has won so many votes, they are given those seats - among the 90 seats, they are given a few - proportionally according to their seats. Like last time, we had our governing party Kanu leading 30% of the votes but then they had over 100 seats. The other people won 65% but then they had fewer than 100. But if they were given representation, they would have added on to their seats. So these 90 seats are supposed to address that particular problem. And it will take care of the minority (interjection). So they are actually not nominated, they are actually elected but proportionally.

The other one is that the President should actually be above the party that is why it would work better if the winning party now elected their own (inaudible) and since the President would be above the party, it would be okay whoever comes up with the majority. But as it is now (inaudible).

Samuel Muchuga (interjection) (inaudible)

Daniel Njoroge : At the end of it, I would say that we should go to election with the next Constitution (inaudible). So here we are with the next election (inaudible) appointed by the President. The other one is the Vice President; the Vice President in this country has been almost a dormant person (inaudible). So okay the idea here is that the Vice President should at least be deputy President rather than Vice President, so that he will have the power to deputize for the President. Like when the President is away, (inaudible)

When we come to Chapter 13 which deals with Public Finance, Government Finance and all that. The section talks about government finance but we do also have other public finance where people themselves should contribute money like the political parties finances. Those are also public finances. We also have got public schools financing, this money is given by the parents – it is just like tax money. And there is also local government institutions, where the money also belong to the public, harambee finances, they are also for the public. Let us also cater for the auditing of these particular organizations and therefore we should put there than the Controller General can get the help of the ICPAK who will give --- auditors to audit this organization. Other than just concentrate on the government side, we should also think of other public organizations

Samuel Muchuga : Are you talking of private organizations who have got their own constitution to manage their own affairs?

Daniel Njoroge : What I am talking about is, people come here they organize they have harambee, and then that money is eaten by people up and down. It should be provided for that this money should also be audited, for it is also public finance – It

is either collected for schools to pay up or classrooms built but the money is never used for that.

Samuel Muchuga : I am saying, I think you are asking the government to do too much.

Daniel Njoroge : We are not asking the government to do much. No, I am saying can they now get the assistance of the private accounting officers – I am not asking the government to do that. I am saying the Constitution should recognize that.

Samuel Muchuga : These private organizations have got their own private constitution which have approved by the ----- the Constitution specifies how they are going to take care of their finances. How do you go in?

Daniel Njoroge : I am saying that the Constitution should provide for that. The other one is election when I was reading through the section on elections, they are taken to be voluntary. If somebody has taken a vote, why did he take a vote. Once one has taken a vote let that person be required by law to vote. But if he does not want to vote, let him not take a vote. It should be provided that whoever has taken a vote let him vote.

Samuel Muchuga : There is one country - I don't know which one - where voting is mandatory.

Daniel Njoroge : It is Australia and Newzealand. The other one is that in the Constitution,there is this proportional represenation. That there will be dual voting, where you vote for the party and you also vote for the candidate that will. That will be a bit confusing. Let votes be for the sponsoring party. Is it clear?

Samuel Muchuga : Note here, what they are saying is this, you may find a very good person in Rainbow but you like Kanu. So you go there and say, I know Kanu has got someone here but I am not going to vote for him. I will vote for the Rainbow candidate but I like Kanu. You put one vote for Kanu - for the party. So you will not be confused, yourself, you know what you are doing.

Danile Njoroge : Any way that is my recommendation because this will confuse a lot of our people who are going to vote- for civic, Parliamentary and then for the party.

Samuel Muchuga: You know, there was an election here where people were told to vote in “suit style”. Is that what you are suggesting?

Daniel Njoroge : What I am saying let the people make up their mind which person and which party they want to vote for.

The other one is, when I was reading from the draft, I didn't see the area of election offences - election petitions. There should

be petition, there should be election offences – may be it is in another document but I haven't seen it. Can you note the petitions?

We come to the devolvement of the power. This is where there will be councils of villages, location and the province. It has not provided for how the village government is connected with the location government and how location government will be connected with the province. Because they have not even said who is going to be the head of the village government, they have not said –

Samuel Muchuga : They have said the village will decide how they want their government to be run.

Daniel Njoroge : It is better if it is decided beforehand for the people. Because people will say our chairman should be the Reverend of the Parish and then other people will not like it. The other one will say, it should be the Kadhi or the Muslim head around there so let it be defined more properly in the Constitution.

The other one is that the man in the village - may be the head of the village government should also be able to know the administration (inaudible)

The other problem there is that these people who are at the district, they should actually have other people coming outside the district otherwise it will look like tribal configuration and we have found it for example in Kisumu where Raila had to take a Muhindi up there because those people could agree among themselves. So let us have –even if we are having a districts, let us have contribution from other areas(inaudible) Yah, that is my position. There is a provision of a question of that particular district government (inaudible) inefficient and corrupt. They have not provided for in that Draft how it can be removed and how it should be governed in the meantime. Let the Constitution be clear on how it is going to be governed because it may have (inaudible) corrupt or inefficient local authority for years and years

Samuel Muchuga: Is that local authority similar to provincial ----

Daniel Njoroge : They have not said exactly, I think the district is coming in for the local authority.

Samuel Muchuga : But there will be no chief? If somebody beat his wife, where is that wife going to report? Or the boundary problem?

Daniel Njoroge : That is why you are saying people can come together and then decide. May be they can have their local councils. Now there is a question of staffing also. They are talking about staffing; may be also it should be done nationally so that we can get the best brains nationally. Otherwise we may have the same people (inaudible)

When we are celebrating about the Constitution, people talked about Ombudsman, I have not seen it put here.

Samuel Muchuga : Public Defender, go on to the other one.

Daniel Njoroge : The other one is concerning the referendum. People of Kenya should be given an opportunity to decide very crucial issues like **(interjection)** ---- question of dissolution of Parliament (inaudible). The Parliament is dissolved before hand if you want people to approve (inaudible). Since he is not standing again , I think somebody should point out that since he is not standing again why should he dissolve Parliament before hand, he should allow the term to come to an end. If that person wants to increase his term he can go for two years and tell the people “give me another mandate” for five years. But if you are coming to the end of your term, surely you should not first dissolve Parliament before time.

Samuel Muchuga : I know what you are talking about, It is the Parliament which will set its own calendar so there is no problem there.

Daniel Njoroge: And finally concerning the holding of the elections under the new or old Constitution my view is that we should have a mixture of both so that we do it quickly and within time – Interim Constitution.

Samuel Muchunga : I think we have come to an end. Oh yah come, we don't want to shut anyone out. Carry on.

Martin OlaleMy name is Martin Olale I am representing St. Stephen's Waithaka Parish, ACK I am also representing what we call CCS – Christian Community Service. So my concern is - I have got 4 points.

One, on page 4 it says, “the laws of Kenya will comprise of”. Then it enumerate, then gives four, five other laws. So my question was, I realize that we recognizing Islamic/Hindu personal law, we are recognizing East African Community law, International law and African customary law. So my concern here was, what about the Christian common law or Christian law. I found it missing there. That is my first concern.

Then question number two, is enforcement of the Constitution. At 3.1 it says, enforcement is by any person. Now any person – we know very well in Kenya - any person

Samuel Muchuga : (with authority to do that)

Martin Olale : It says any person, and then my concern there is; you very well in Kenya, if it is me I am not any person. So can it be made clear what any person is. Is it me - I can go and enforce the Constitution as a person? I was wondering. We

need to clarify that “any person”, so can it be made clear what any person is.

So then number three, Freedom from discrimination. It talks about sex, it talks about colour and everything. What about education? Some of us are discriminated because of education - either you have it or you don't have it too much. Some are suffering because they have too much, some are suffering because they don't have it at all. So, education background is missing in that discrimination. So we need that one.

Then the last point, “the family will be based on”. Again this is taking me back to the first one because I am married under the African customary law/Christian law in the present Constitution. But then here the family now we are told, the family will be anybody above 18 and their parties. So these parties, is my father also involved in these parties or are we doing the Mzungu way where it is just me and Jane? Meeting in Cannivoire and saying we are going to do it. So there again, it is vague. What does those parties mean, it is me and my wife alone or me and my family and my relatives? So I think that one needs to be clarified. This is from the point of view of the church. What is a family? For me the family is not just me and Jane, it is me and the community around Jane and me.

Then lastly, this is just a request. Page 5 it says duties of a citizen is to acquaint themselves with the provisions of the Constitution. I was wondering because I am over 45 now and I have never seen the present Constitution. But now by good luck, we are seeing it all over. It is also possible that this Commission as part of its dissemination technique. It can put these things in videos, in CDs in DVDs in diskettes. Because my grandmother at home would like to know about it. But if she put it on a cassette, it will be better to her rather than giving her this voluminous thick thing to read. She wants to hear it in Luo. So I was wondering now - this is just a request - is it possible for you, what you have disseminated is very clear, but again it is limiting. But if you can put it in diskettes, or CDs or videos it will really now come to this duty of the citizen to acquaint themselves. And the moment we acquaint ourselves with the new Constitution, then we will know our rights.

Esther Walya : (inaudible) --- then Article 15 then you go to where we were talking about the Commissions that are supposed to come up. Each Commission has a duty to educate the public on its role and should have provincial and district network depending on its role so it is up to that Commission to make sure that it reaches out to the people. For you to get acquainted with it of course there should be a place where you can access it unlike now, if you want the current Constitution you will have to go to Government Press and buy it for 200/=. Many people had never seen the current Constitution until we began this Review Process. Even some of the employees of the Commission will tell you that they had not had that opportunity to see the original form of the current Constitution. But now that is taken care of in terms of the Commission in charge making sure that it reaches out to the public, it is its role.

Martin Olale : There is a laws of Kenya - I think on page 4 - there is Laws of Kenya which comprise, parts of the Constitution, then African customary law,

Samuel Muchuga : Your concern was what?

Martin Olale : My concern was, they recognize Islamic, they recognize –

Samuel Muchuga : I just wanted to say something here, because I am also a Christian. I think we must agree where we are weak - Christians have been weak in coming together and formulating what they would like protected regarding their religion. We are so divided but Muslims are not like that when they come together because they work together they all come together fight for their course together. And what I was saying here it may be a bit too late to have the kind of order the Muslims have put in their courts. But if there are things which we cherish as Christians, we can bring them up and highlight and tell them this one we cannot compromise. I heard somebody there speaking about the swearing in court using the Bible. If you can prove, the Bible tells me I should not be doing this - at least a few things, even if we don't have a systematic court where we can say that when we come to this point, as Christians we agreed we must be treated this way. But unless we are united and speak with one voice we are going to be discriminated against. Just go back and say why you are saying what you are saying you have got a point.

Esther Walya : One of the contributors asked something to do with the National Constitutional Conference. Probably, I will just give you a short breakdown of the composition of the National Constitutional Conference. These are the 629 delegates who are going to represent the over 30 million Kenyans. As for me I always say, it is such a privilege for them to represent us. But among them we will be having religious organizations who have a slot of 35 delegates, we have the professional bodies who have a slot of 15 delegates, women organizations have a slot of 24 delegates, trade unions have a slot of 16 delegates, NGOs have a slot for 23, other interest groups 13, district representatives that is 3 per district $3 \times 70 = 210$ delegates, then there are members of Parliament, both elected and nominated 222, political parties representatives 1 per party = 41, then the Commissioners of the Constitution of Kenya Review Commission who have no vote and they are 29. So it is organized in a way that depending on their numbers, the total number is supposed to be 628.

They will be discussing each issue chapter by chapter, they are going to meet for at least 30 days on a daily basis to discuss the whole Draft. And I see that Mr. Muchuga is interested and he tries to ask you to pinpoint the particular articles you are referring to when you give any proposal. It is because they will all sit there give their proposals, give their criticisms and they are going to remove, add or come to a compromise depending on what they agree. And they have to vote for each issue. If they do not agree on anything at the end of this all, after the 30 days, that is when you say that there will be a referendum. But as long as the majority people are agreeing on chapter by chapter, then depending on what they agree on that is what will translate into the new Constitution. I hope I have answered the question.

Samuel Muchuga : Do you have any general comments?

Speaker: (inaudible) --- is there any place you can bring a suggestion after today, if one was not adequately prepared?

Samuel Muchuga : Have you just come in?

Speaker : Yes, I have been on safari.

Samuel Muchuga : We had said that earlier. I will be representing Nairobi at the National Constitutional Conference and if you have any thing to add to the Draft Constitution or comment you can drop it, or even if you want to discuss with me you can come and we sit down, in the office.

First of all, let me thank everyone who turned up for this meeting, I will start by thanking the people from the Commission for the work they have been doing as I said earlier under very difficult circumstances. Actually this exercise was very unique, in the sense that it has not been done any other time. You know when you doing an exercise which has been done before, you have got a pattern you are going to follow. But these people were doing a job that had not been done before. And that explains why they had some difficulties. Some of the difficulties, of course we know that they were placed on their path but they overcame them so well. There was also the question of lack of adequate funds and politics of course interfered with the process, because some of the people were against good order. You must know that in this country some people take advantage of the current order which is not the ideal, they would not have liked and even today the don't want to have a good order in this country.

You did a good job all of you. She is the Coordinator, she is not only the Coordinator for Dagorretti, she is also the Coordinator for Kibera and these lady is also working in the Commission office. They work quietly without anyone recognizing what they are doing. Some of the things - you don't have to worry whether they recognize you or not, there is somebody else who recognizes. So thank you so much for the work you have done. I ask you also to forgive us where we may have appeared not to help you the way you would have liked and we still have a job. And then after that, you will come with the new Constitution. And I do believe that God has got a role for you and he will take care of you. Some of you are lucky, as I was telling Esther the other day that you have acquired such experience. You are not the same any more - not the way when you started. Thank you for you members of the conference. This is not the end because we are continuing with the debate until the end. I would like more - something written and dropped. Give me also your contacts in case I want to clarify something you have put down here. Thank you everyone.

(clapping)

The Coordinator is reminding something which is so important, that if you have a forum between now and the Conference, where you invite us, we shall come. Is that okay?

Prayer : Baba Mkuu wa mbinguni tunakurudishia shukurani tena, tukikuabudu kama Mungu wetu, tunakushukuru sana kwa kutuwezesha kama vile tulikuomba utuongoze kwa majadiliano yetu kwa hii kazi ambayo ilikuwa ikiendelea ambayo imekamilika mpaka pahali imekamilika.

Tunakushukuru sana Mungu kwa maana haya mambo yote ni wewe umeongoza Commission na wale wote ambao wamekuwa wakiwazaidia hata Wanakenya wenyewe ambao wametoa maoni yao. Hatutaki kusema ni sisi tumefanya kwa maana sisi Mungu hatuwezi kufanya chochote bila nguvu zako.

Hiyo safari ambayo imebakia Mungu, nakuambia hatutaki kwenda kama huendi nasi kwa hivyo twakuita na twakuuliza Mungu uende nazi utembee nazi, kwa maana ukitembea na sisi, mwishowe tutapata baraka zako na wewe mwenyewe Mungu utatukuzwa. Kwa hivyo tushike kwa mkono yako uende nasi mpaka kazi hii imalizike kama vile utakavyo.

Sisi sote Mungu, tunakuuliza, ambao ni wakaazi wa hapa, uendelee kutubariki Mungu kwa maana wewe ndiye uliyetupatia hii nchi, na pia ni wewe ulituleta kukaa pamoja hapa ingawa pengine wengi wetu wametoka mbali lakini hii nchi kila kona yake ni yetu sote. Tusaidie kukaa pamoja tukipendana, kusaidiana kwa maana hatuna mahali pengine pa kwenda na hakuna mmoja ambaye ni mwema mbele yako. Sote unatupenda na sisi ni watoto wako kwa hivyo sote tunajikabidhi mikononi mwako.

Zaidi ya yote ni hao wafanyi kazi wa Commission tunawakabidhi mikononi mwako uendelee kuwabariki na kuwapa riziki zao na kuwasaidia kwa hali na mali ili waendelee kufanya hii kazi.

Asante kwa siku ya leo. Twakushukuru sana. Tusamehee kama tumefanya makosa mahali popote, yale tumefanya leo na lakini uendelee kuwa nasi kwa maana twaomba kwa Jina la Yesu Kristo Mwokozi wetu. Amen.

The meeting ended at 3.00 p.m.

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