

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report of**

**DISSEMINATION OF REPORT AND DRAFT BILL,**

**LANGATA CONSTITUENCY, HELD AT JOSEPH KANGETHE SOCIAL  
HALL**

**ON**

**9<sup>TH</sup> OCTOBER 2002**

**DISSEMINATION OF REPORT AND DRAFT BILL, LANGATA CONSTITUENCY, HELD AT JOSEPH  
KANGETHE SOCIAL HALL, ON 9<sup>TH</sup> OCTOBER 2002**

**Present**

1. Esther Walya - District Coordinator
2. Liz Kingi - Programme Officer
3. Janen Wangu - Asst. Programme Coordinator

**Secretariat Staff in Attendance**

1. Regina Mwachi - Verbatim Recorder

The meeting started at 10.30 am.

**Esther Walya:** The Commissioner will join us along the way we cannot keep waiting and anybody else who is coming for the forum for discussion will also ask their questions as we go on and as we go on they will be able to fit in from where we will be. Please make sure you have a copy of the programme at once so that you can know what we are talking about today but I would like somebody to start us off with a word of prayer. Anyone.

Why don't we move a little closer so that we don't have to raise our voices that far because the public address may not work. Is there any volunteer or do I nominate any of you to pray, you know prayers are supposed to be voluntary. Can somebody

pray for us?

**Prayer:**

**Samuel Masita:** Our Father in Heaven we have congregated here to thank you sincerely for having given us this chance to be together as your children we who are brothers and sisters in this important occasion of reviewing the Constitution of our country Kenya. Father Almighty bless us and guide us in this meeting and with these in Jesus Name we pray. Amen.

**Esther Walya:** Now, I take this opportunity to introduce the team that I have or rather I would like the team from the Review Commission to introduce themselves. Ideally, we are supposed to be joined by Mr. Lumumba who is also in another forum at Ufungamano right now. Him and Professor Ghai are the only two Commissioners that we have in Nairobi the rest have gone out on the same programme in other parts of the country but they have engagements in other forums and they might join us later in the day. My name is Esther Walya I am the District Coordinator for Langatta and Dagoretti. Most of you we have interacted either through the civic education programme or probably in the office in one way or another but those who do not know me, that is the part I play at the Commission. I will ask the ladies on my left from the Commission to introduce themselves.

**Liz Kingi:** My name is Liz Kingi I am a Programme Officer at the Constitution of Kenya Review Commission.

**Janet Wangu:** My name is Janet Wangu I am an Assistant Programme Officer at the Commission.

**Regina Mwachi:** My name is Regina Mwachi I am a Verbatim Recorder at the Constitution of Kenya Review Commission.

**Esther Walya:** Remember that the way the Review Commission is organized or the review process was supposed to be done, the Constituency forum was part of the organs of the Review Commission and the constituency forum in Dagoretti came up with a team. The 3C's members and on my right I have two of them, probably when the rest join we will introduce but that is team that has been behind a lot of mobilization activities in the Constituency. I will ask them to introduce themselves.

**Medina Ibrahim:** My name is Medina Ibrahim, Langatta 3C's.

**Joseph Nyali:** My name is Joseph Nyali, Langata 3C's.

**Esther Walya:** I would also ask each one of you to introduce themselves and probably which organization you belong to. Do not worry if you are not in any particular organization that you want to identify yourself with, if you have come here as a Kenyan to pursue the perfection of the draft bill then you are fine. We only need to know your name, you are an individual who has

come here to join us in the debate so just give us your name if you are not from any organization.

**Osman Hamid:** My name is Osman Peruz Hamid, I am from Kibira here.

**Yahya Sebi:** My name is Yahya Sebi from KLC, Kibira.

**Mohamed Adam:** I am Mohammed Ahmed Adam from Nubian Constitutional consultative Review Forum.

**George Omindi:** I am George Omindi, I am a Kenyan.

**Maurice Achila:** I am Maurice Amolo Achila.

**Joseph Muturi:** My name is Joseph Muturi I am from Toy Market.

**Amorati Aguok:** My name is Amorati Aguok, I am working at Toy Market.

**Abas:** I am ...Abass

**Mathews Otieno:** I am Mathews Otieno form Jamhuru Estate, ECK.

**Thomas Odiaga:** I am Thomas Odiaga from Langata ECK.

**Jotham Okidhi:** I am Jotham Okidhi, LAPSCO.

**James Odhiambo:** I am James Odhiambo, Civic Education Provider, Langata Constituency.

**Ngare Zachary:** I am Ngare Zachary from WY Programmes and I was one of the CEPS.

**Fredrick Odera:** I am Fredrick Odera, Edward's Motor Services.

**Samuel Masita:** I am Samuel Masita from Masita and Company Certified Public Accountants.

**Sememia Onguru:** I am Sememia Onguru from Unilever Kenya.

**Watai:** My name is Watai I am a resident of this area.

**Maina Stephen:** My name is Maina Stephen from Kibera.

**Charles Sumba:** My names are Charles Sumba from Markpoint Investments.

**Ibrahim Abdulahi:** I am Ibrahim Abdulahi from Youth in Action, Kibera.

**Fadhili Sherman:** I am Fadhili Sherman Chairman, Youth in Action, Kibera.

**Idris Arun:** Idris Arun, Youth In action, Kibera.

**Nobert Omondi:** I am Nobert Omondi from Matter Hospital

**Ali Mohammed:** I am Ali Mohammed from Youth in Action, Kibera

**Phoebe Abeya:** I am Phoebe Abeya, Staff NCC.

**Okiche:** I am Okiche, Staff N.C.C

**Esther Walya:** Thank you very much. Now by way of introduction let me let you know that this is yet another important stage of the Review Process and why we are actually here today is because we want to look at the draft bill together. This is what the Commission has come up depending on the views that were given countrywide but you might be interested to note that the Commission also prepared what is called the Constituency summaries. There is a booklet of all the views that were collected in Langata specifically. If you gave views in Langata then you would want to check whether those views that you gave are here and when you look at those views in this booklet you may want to go to the actual draft bill and check whether the views are actually in the draft bill. Whether it is in the form that they were given here or not, you may find that the issues are still dealt with in the draft bill.

I will give you announcements later of where you can access this information for purposes of comparison. This is going to be a month's long time to debate this document, what we are saying is that we are here to make any proposals to the draft bill. We are here to actually give you the content in a very summarized way, we will go chapter by chapter just to let you know what is in that draft bill and after we have given to you what is in, some of you have read it. I am sure you are not seeing here for the first time. You have very burning issues that you may want to contribute to this draft bill and depending on your questions we will give answers depending on what we can answer. There are cases where there will seem to be proposals and all of them will be taken to the Commission for purposes of being tabled at the National Constitutional Conference and just as we talk about

the National Constitutional Conference most of you are away that is yet another organ of the Commission and it has a composition of 629 members. I a bit disappointed with some of the civic education providers because I did not see their applications to be delegates I thought they would be some of the people who would want to represent us in Nairobi but Nairobi had only 3 slots and I will ask you to probably get copies of these.

Those are the three representations of Nairobi at the National Constitutional Conference and they are the ones who are going to debate the draft bill on our behalf, the 3 Million people in Nairobi. Those are the ones who are going to represent them and I have given their contacts there that incase you have any other issue that we do not discuss today or along the way you realize you need to have it tabled at the National Constitutional Conference you can call them and give them your proposals. If you can't then you can also bring those proposals to the Commission before the National Constitutional Conference commences.

Remember that the report that we have here, the draft bill is based on the goals that were set out to be achieved in the review act and I am sure most of you have read the act that put the Commission into place. It also went into analysis of the present Constitution, looking at both the positive aspects and the negative aspects and finally it was based largely on the views that Kenyans gave. Just to make you understand how the Commission finally came up with this document, remember there is a small booklet that most of you saw also in our pullout version, the questions and issues. This was used a major tool or rather it was designed as a tool and it has about 21 themes that runs through it. You will look at it, it has issues to do with the preamble, whether we will have a preamble in the Constitution, the direct principles of State policies and so on. Using this tool, pilot charring that were there and Langata was one of the places that was lucky to have an extra hearing in March when this was tested. We found that wananchi were actually contributing along these themes but 21 more were added when they started writing the actual draft depending on what the public had said or what views they had.

The data was collected, the data collected were the views of the people and that data was developed along accordingly, so that we are saying if so many people said a lot about the executive, a lot about the judiciary their views were coded together to see how often these appeared across the constituencies. Remember that despite that fact that there are issues that never got so much attention, never got so much prominence in the hearings, there are such importance issues that they were not left out at all so the draft does not simple come up because of the frequency of the issues raised. There are other important issues that may not have been articulated but the Commission was mandated to look at the Constitution across it, to improve it, it had that mandate as stated in the Act. The Commission also worked along Thematic Groups, they divided themselves into 6 Thematic Task Forces that were to deal with the six major issues and you will notice that those six themes run across the whole draft. Just for your information these were the Constitutional Process issues which was headed by Dr. Githu Muigai, then we had the state of Political systems, ideologies and Political Parties which was headed by Commissioner Kangu. Then we had the Organs and Levels of Government which was headed by Dr. Maranga. We the Fundamental Rights and Duties which was headed by Nancy Baraza and we had National Resources which had to do with issues of Finance and Environment among others which was headed by Dr. Nunow, then we had the Management of Constitutional Commissions and Transition which was headed by

Professor Kabira.

So, as you look at the bill just know that it is organized along those themes and remember that I have already mentioned to you that today we are actually here to make sure that we kind of debate the draft bill after knowing what is in it. But remember that no changes can be made on the draft bill until the National Constitutional Conference sits. They are the only ones who can vote out or vote in any issues that we are going to raise today, so we are not saying that when you tell us you want the Upper House or the Lower House to be eliminated from the current draft, that that will be taken in. It will only be taken in depending on the voting at the National Constitution Conference, so they are the ones who are going to be mandated to make decisions on our behalf. But we are saying that you can give in your proposals so that the delegates go along with them, so that the Commission goes along with them, so that they are issues that will be discussed at that level.

I will ask us to be a bit patient unless you have any question on the introductory remarks, I would like us to actually go to the draft bill itself. My colleagues and I will take you through the chapters in a very summarized way. If you are getting very tired just be patient with us because all we want to make sure of is that you know what we are about to discuss. Most of you may have only read chapters that you are interested in but unless you have any questions based on the introductory remarks, not the draft bill itself I we would proceed to the actual draft bill.

**Speaker:** ...(Inaudible)

**Esther Walya:** Don't worry about it I sent somebody from the office to bring us more copies but I realize some people picked copies and did not stay for the forum otherwise it was intended for the people we have, we had enough but we are getting more from the office. You will constantly need to refer but meanwhile please sit in a place where you can access it so that if we refer to a certain chapter you are able to at least go through it.

**Speaker:** ...(Inaudible)

**Esther Walya:** I don't have enough copies of this but at a later time I will tell you how you can access this document and at a place where you actually sit and compare it viz a vi the draft. If you find that views that were here were left out then you may want to find out why and if they are represented there you may have to find out in what form but I do not have enough copies for everybody.

Assuming there is no question right now, I will invite Liz Kingi to take you the preamble and the first few chapters of the draft. She is going to give it to you in a very summarized form do not expect her to read for you word for word but in case she refers to any part of the draft bill please get on to the pages so that we get to understand it a little faster. The most important part of this exercise is actually to get feedback from you so we are not going to dwell so much on what you can read later and we are

going to have another forum on Friday at Charter Hall for those who will read now and will have questions later. You can still bring those questions to the forum where Professor Ghai will attend on Friday at Charter Hall, so if you do not have your question now do not worry but right now we would like to get some feedback. At the end of the presentation of all chapters we would like to hear what you have to say. Thank you.

**Liz Kingi:** Thank you very much Madam Chairlady. I will be taking you through the first five chapters. For those who have just come in my name is Liz Kingi and I am Programme Officer at the Commission.

Straight to page two of your draft bill and I may emphasize that it is a draft it is not the new Constitution, it is just the draft. On page two, we have a preamble there in a shaded box. It says that we the people of Kenya aware of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible nation are committed to various things and recognize various things and that they are exercising their sovereign and inalienable rights to determine the form of governance in this country. In this preamble we are just introducing the draft and we are saying that we as the people of Kenya we are adopting and enacting it to govern us.

Chapter one, that is page 4, this chapter deals with the sovereignty of the people and the supremacy of the Constitution. It says that the sovereign authority in Kenya belongs to the people of Kenya and it is exercised in accordance with the Constitution, the people can exercise their sovereignty either directly or through their democratically elected representatives. The sovereign authority is allocated along three different avenues, this is the Legislature, Executive, the Judiciary and other Constitutional Commissions. On the supremacy of the Constitution still on page 4, we are saying that the Constitution is the supreme law of this country and it is binding upon all authorities, State organs and persons within the republic. We are also saying that the validity and the legality of the enactment of this Constitution is not open or subject to any challenge before any court or organ or agency of State. Under supremacy we are also saying that any law that is inconsistent in the Constitution is void to the extent of its inconsistency.

On the interpretation of the Constitution, we are saying that any interpretation should be done in a manner that promotes the values of good governance, advances human rights and fundamental freedoms and that avoid any technicalities that would defeat the purposes of this Constitution. On the enforcement of the Constitution, still on page 4, we are saying that anybody is entitled to bring an action in the court on the grounds that any enactments or any act that has been done is inconsistent with the Constitution and if anybody does that he can get a declaration to that effect or any other appropriate order. On the defense of the Constitution, still on page 4, we are saying that it is unlawful to establish a system of government that is contrary to this Constitution or to perform any act that would be prejudicial to the sovereignty of the Kenya. Parliament will go further and will enact other laws that will give effect to the defense of the Constitution.

On the laws of Kenya still on page, article 5, we are saying that the laws of Kenya will be as follows: They will be the

Constitution, the Act of Parliament, African Customary Law, Islamic and Hindu Personal Law. The Common Law and the Doctrine of equity as they relate to the circumstances in Kenya, the East African Community Law, Customary International Law Agreements that are applicable to Kenya. Those are the main sources of law in Kenya. We are also saying that Parliament will within two years of the coming into force of this Constitution make any amendments to the existing laws that we have such that it will be in conformity with the Constitution.

Chapter 2, still on page 4 we are discussing the republic. The republic, we are saying that Kenya is a sovereign republic founded on republican principles of good governance, multi party democracy, participatory governance, transparency, accountability, separation of power, respect for human rights and the rule of law. Those are the principles upon which our republic is founded. On the issue of territory we are saying that Kenya is comprised of the area described in the first schedule, if you go to the back of your draft you will find some schedules at the back. The first schedule clearly define the boundaries of Kenya in terms of coordinate at length, if you go there you will find it. We are also saying that under territory Kenya is divided into districts and provinces and these districts and provinces are outlined in the second schedule at the back of the draft. Just after the first schedule you will find the second schedule there listing all the districts and provinces. We are saying that every citizen has the right and the duty to defend the republic against any person who threatens its political independence, territorial integrity or constitutional order by any unconstitutional mean.

In the issue of the capital, we are saying that the capital of Kenya shall be Nairobi and we are also saying that it is the policy of the State to decentralize the headquarters of national government departments and national public institutions, so they will be decentralized even if the capital will still be at Nairobi. On the issue of language, still on page 4, we are saying that the official languages in Kenya shall be English and Swahili and the national language shall be Kiswahili. The State shall also respect and promote the diversity of the vernacular languages in Kenya and it shall promote its development and the their uses as well as sign language and Braille.

On State and religion we are saying that the State and the religion shall be separate, there shall be no State religion and that all religions are treated equally. The national symbols that we have are the National Flag, National Anthem, Coat of Arms and the Public Seal of Kenya. I presume we are together on page 4, are we? On the National Oaths and Affirmations, we are saying that they are prescribed in the fourth schedule. This Constitution is creating a number of constitutional offices positions and we are saying that before one enters into those offices they should take oath of office. The issue of national days we have proposed three, 1<sup>st</sup> of June, Madaraka Day, 12<sup>th</sup> December, Jamhuri Day and the date of the enactment of the Constitution, whatever date that will be will be called now the Katiba Day.

Chapter three, the national goals, values and principles. These are goals and values and all of them apply to the Executive, the Parliament and the Judiciary, the Local Authorities and other State organs, citizens and private bodies and they are outlined, the goals that we are seeking to have attained in the Constitution. They constitute main underlying themes that have been used in

coming up with this Constitution. Our goals that promote national unity and a spirit of nationhood, to recognize the diversity of the people and to promote a culture. To promote the principle of democracy, to have an open and transparent government, accountability and accountability of public officers, to take effective measures to eradicate all forms of corruption, to ensure access to independent, impartial and competent institutions of justice. To require political parties to observe internal democracy and to avoid violence and bribery. To promote the role of civil society in governance, to promote and respect human rights and enhance the dignity of individuals, to ensure the fullest participation of women, disabled, the marginalized communities and to ensure that a third of the members of all elective and appointing bodies are women. To ensure that children material and moral well being is provided for.

The republic is also committed to social justice and through appropriate policies and measures provide Kenyans with their basic needs of food, shelter, clean water, sanitation, education, health, clean environment facilities. At least once every year the President is required to report to Parliament and the nation all the measures taken and the progresses achieved in the realization of the national goals, values and principles. I will invite you to read, they are more than the ones that I have highlighted I would like you to read through chapter three.

Chapter three also talks about the duties of a citizen, I am now on page 5. We are saying that the duties of a citizen shall be to know the provisions of the coming Constitution. You acquaint yourself with it, you uphold and defend it, to vote and be involved in other forms of political participation, to engage in work including homemaking for the support and welfare and the common good of all. To develop ones ability to the greatest extent possible through the acquisition of knowledge, to contribute to the welfare and advancement of the community, to strive and to foster national unity and harmony. To promote family life and act responsibly in the context of the family, to protect and safeguard public property, to protect the environment and conserve natural resources and to be desist from acts of corruption. Those are the duties of a citizen.

I am now on chapter four, page 5. This concerns citizenship, we are saying that citizens will be equally entitled to Kenyan Passport and to any other documents of identification issued by the State to its citizens. We are also saying that every person who is a citizen under the current Constitution shall continue to be a citizen even upon the enactment of the new Constitution. This chapter also deals with the acquisition of citizenship, we are saying citizenship can be acquired in three ways, by birth, marriage and naturalization. By birth, every person who is born after the coming into force of the Constitution shall be a citizen of Kenya if at the time of his birth either of his parents was a Kenyan citizen. One cannot be deprived of his or her citizenship if it was obtained by birth. On acquisition by marriage, we are saying a person married to a citizen of Kenya for a period not less than 3 years is entitled on application to be registered as a citizen of Kenya. Such citizenship is not lost if one gets divorced thereafter. Naturalization, we are saying a person who has been lawfully resident for a continuous period of not less than seven years. If you have been staying in Kenya for a period of not less than seven years and you have satisfied the conditions that will be laid out by an act of Parliament then one may be naturalized a Kenyan citizen.

Children who are below the age of 8 years and are found in Kenya whose parents are not known that child will be presumed to be a citizen of Kenya. We are also proposing that dual citizenship shall be permitted and anyone who had lost their Kenyan citizenship by virtue of the current Constitution shall be entitled on application to be re-registered as a Kenyan citizen. If you had lost it by virtue of getting citizenship of another country. We are also saying that a person can be deprived of his citizenship if it was acquired through fraud, misrepresentation, concealment or other unlawful means. We are saying that Parliament will also enact legislation that will provide for a permanent residence citizenship status. We are also constituting a Citizenship Registration Board that will be created to deal with citizenship, it will comprise of five to nine members appointed by the President and approved by Parliament.

Chapter five, we are now on the bill of rights, that is page 6. The purposes of the bill of rights is to recognize and protect the human rights and preserve the dignity of individuals and communities. Its purpose is also to promote social justice and to enable one to fulfill one's full potential. These rights belong to each and every individual and they also have some limitations. I will invite you to read those limitations. It is the duty of the State to promote rights and freedoms and it is supposed to observe and respect the human rights whenever they are enacting any law, whenever implementing any policy or any legislation or performing their functions, they are supposed to have regard to the provisions of these bill of rights. The State is also under a duty to take any reasonable measures and to enact some legislation, policy and other measures that will achieve the progressive realization of these bill of rights and to promote it specifically the social security right, health, education, housing, food, water and sanitation rights.

Straight on to the bill of rights themselves, I am still on page 6, the right to life. Everybody has the right to life and death penalty has been abolished, we are also saying on the issue of equality that every person is equal before the law and is entitled to the full enjoyment of those rights. On the issue of freedom from discrimination, we are saying that every person should be free from being discriminated on the grounds of race, sex, pregnancy, marital status, ethnic and social origins, colour, age, disability, religion, conscience and belief. On the issue of women, we are saying that the women have the right to equal citizenship with men including the right to equal opportunities in political, economic and social activities. Women and men have equal rights to inherit and have access to and control property. Any law, custom or tradition that undermines the dignity, welfare or interest status of women is prohibited.

On the older members of the society, we are saying that they are entitled to enjoy all the rights that have been prescribed there under the bill of rights, they also have other sub rights which I will invite you to read. They are supposed to be free from all forms of discrimination and exploitation, they are supposed to live with dignity and respect and to retain their autonomy. They are supposed to be entitled to reasonable care and assistance of their family in the State. The older members have a duty to plan for their retirement, to share their knowledge and skills with others and to remain active in the society.

On children's rights, that is page seven, we are saying that the children have right to name and nationality, right to parental care,

free basic education, a right to be protected from discrimination, exploitation, neglect and abuse. A right to be protected from child labour and any other hazardous or adverse activity. They have the right to be free from corporal punishment, violence, cruel and inhuman treatment. They have a right to adequate nutrition, shelter, basic healthcare and social services. They have a right also not to take part in hostility and any armed conflicts.

On the issue of the family, still on page seven. We are saying that the family is entitled to the respect and protection of the State and every person who is at least 18 years of age has a right to marry based on the free consent of the party and the right to form a family as well. Parties in marriage are entitled to equal rights during the marriage and even upon dissolution of that marriage, they have equal rights. Parliament shall enact some laws to recognize the marriages concluded under any traditional system or any system of religion or any other personal. May I just mention that the Constitution cannot contain everything it will just give the skeleton, the main issues that are there and Parliament will go ahead and enact certain laws and fill in the details.

On the issue of persons with disabilities, we are saying that these people with disabilities have a right to be treated with respect and they are supposed to have all places of public transport, communication having regard to their needs. They are supposed to participate in matters of decision making, there are a number of other rights which I will invite you to read on the issue of persons with disabilities, they are all there on page 7. Please you can refer to those.

On the issue of human dignity, we are saying everyone has an inherent dignity and has a right to have that dignity respected. Freedom and security of the person, these are large rights which is constituted among other rights. The right not to be deprived of ones freedom arbitrary of without just course except during a state of emergency. We are also saying that one should not be tortured either physically or psychologically or be cheated or punished in an inhuman, cruel or degrading manner. On the issues of slavery, servitude and forced labour still on page seven, we are saying no person may be held in slavery or servitude and no persons still may be required to perform any forced labour.

Privacy, this is where we are saying that everyone has a right to privacy, a right not to have their personal homes searched and not to have the information relating to their private affairs divulged unnecessarily. Freedom of religion, we are saying that everybody has a right to freedom of conscience, religion, belief and opinion and to practice that religion with others. If you belong to a religion you have a right to practice that religion otherwise you have a right even to establish and run places of education and do all that you need to perfect your religion.

Under freedom of expression, that is page eight. We are saying that every person has the right to freedom of expression and that right also extends to the media but does not extend to freedom of expression on matters of war like activities or propaganda or anything that would propagate hatred based on discrimination. One has a freedom to pass ideas and artistic creativity, academic freedom and freedom of scientific research. Parliament will also enact more laws on that issue.

On the issue of access to information, we are saying that every citizen has the right to access information held by the State and every person has the right to demand the correction or deletion of any untrue or misleading information concerning him or her. If something has been reported and it is wrong you have a right to have it corrected. Parliament shall also enact more legislation on that issue.

Freedom of association, still on page eight. Every person has a right and include the right to form, operated organization. A person may not be compelled to join any association of any kind and the State shall through legislation and policies promote civil society participation in decision making.

Freedom of assembly, we are saying that everybody has a right feasibly and unarmed without the requirement of permission to assemble and to demonstrate and even to pick at and present petitions to public authorities.

Political rights, we are saying the political right to form and participate in activities of a political party have been retained, the right to participate in a political party. Every citizen also a right to vote under secrete ballot and to stand for public office.

Freedom of movement and residence, we are saying that every person has a right to leave the republic and to enter into or remain in it or reside anywhere in the republic.

Refugees and asylum, is in the right of asylum is recognized such that any person who has sought refuge in Kenya has a right not to be returned to that country if that person has a well founded fear of persecution in that country, that person will be a refugee in Kenya. Parliament shall enact more legislation on that.

There is freedom of trade, occupation and profession. You are allowed to practice your trade, occupation and profession truly and that will also be subject to regulation by law.

Property, every person has a right to acquire and own property and Parliament shall not enact a law that permits the State of any person to arbitrary deprive a person of property of any description or deprive a person of any interest or right over such property. The State may not deprive a person of property of any description unless that deprivation result from an acquisition of land or an interest in land in accordance with the provisions of some other chapters. You will read the issue on property, I will invite you to read.

On labour relations, we are saying that everybody has a right to fair labour practices. We mean that one has a right to fair remuneration, reasonable working conditions, a right to participated in the activities of a trade union and alike, srike.

On the issue of social security, I am on page nine. Every person has a right to social security including if they are unable to

support themselves and their dependants appropriate social security assistance by the State.

On the issue of health, every person has a right to health. This includes a right to reproductive health care and no person may be denied emergency medical treatment.

On education, we are saying every person has a right to free basic education and the government shall institute a programme to ensure that every child gets free and compulsory basic primary education.

On the issue of housing, every person has the right to adequate housing. I still on page nine and a person may not be evicted from their homes or have their houses demolished without an order of the court which will be made after having had all the circumstance.

Food, everybody has a right to food and has a right to be free from hunger. That food should be in adequate quantity and be of adequate quality.

Water, everyone has the right water in adequate quantity and of satisfactory quality.

Sanitation, everyone has the right to a reasonable standard of sanitation including the ability to be dispose dead bodies.

Environment, everybody has the right to an environment that is safe for life and health and to have the environment protected for the present and the future generation.

On language and culture, everyone has the right to use a language and participate in the cultural life of their choice and when doing so you should not contravene the chapters in this bill of rights. We also have the consumer rights there, consumers have the right to goods and services of appropriate quality and compensation for defects if those goods have cost them any loss of injury.

On the issue of fair administration, we are saying every person has a right to administrative ...they are many, you will have to go through them. They include the right to remain silent, right to be presumed innocent until proven guilty, a right not to be compelled to make any confession or admission unless you want to make a confession you make it before a Magistrate. You have right to be brought before the court as soon as it is reasonably possibly but not later than 48 hours, so within 48 hours you should be taken to court. Under the right to fair trial there are a number of many sub rights that come under it, I will invite you to read, as this is also very important. You need to be informed of the charge with sufficient details, you need to have adequate time and facility to prepare your defense. You need to be present when you are being tried to choose and to be represented by an advocate. You may even choose to remain silent during the proceeding. You have a right to an interpreter if you don't understand the language. Please read those provisions, I am on page 10.

If you are held in custody, you have also some rights and these are mainly the right to be treated in a way that will respect your human dignity and not be subject to any discrimination on the basis of any prohibited grounds. I had gone through the provisions of discrimination. You have a right not to be exploited, abused by the staff or fellow prisoners and you have a right to accommodation and facilities that satisfy that the standard of decent clothing, housing, food, health and sanitation. You have a right to observe your religion and to communicate with your lawyers and other close members of your family. To have fair consideration during paroles and to complain to the prison authorities and the Commission on Human Rights and Administrative Justice if any of your rights have been infringed. I will invite you to read again the provisions on page 10.

I am now on page 11. There are some institutions that have been created to uphold the bill of rights, we have the courts and a commission on Human Rights and Administrative Justice. Any person who feels that their rights have been infringed or threatened or they have been violated or denied has a right to complain to the commission on Human Rights and Administrative Justice. The issue of locus standi has also been extended to a number of other people there. If you read article 73 you will see that a person acting in their own interest can bring a complaint, a person acting on behalf of another person who cannot act in their own name can also bring a complaint. A person acting as a member or interest of a group or class of persons, a person acting in the public interest or an association, all those have rights to complain. Upon receiving the complaint the commission on Human Rights and Administrative Justice shall investigate that complaints and provide appropriate redress where those human rights have been violated.

We are also saying that the courts is also an avenue for upholding the bill of rights. High Court has original jurisdiction to listen to any of those actions that have arisen as a result of that violation. Parliament will also be required to enact legislation that will give original jurisdiction as well to the lower courts. The Chief Justice is obligated under this new Constitution through to propagate certain rules that govern the procedure of bringing a course of action. With that I would like to mention that the High Court has powers to grant any appropriate relief including a declaration of your rights, a declaration that your rights have been infringed. He can also order compensation against the State or any person responsible and he can even give orders of judicial view. With that I think I have summed up the first five chapters of the draft bill that we are proposing to enact as a new Constitution and I hope you have benefited.

**Esther Walya:** I would like to thank Liz for a clear presentation. Please note that as a matter of policy we are not antagonizing you with any difficult language, we are trying to be as simple as possible, no language is supposed to deter you from understanding the draft bill. One think I would like to mention to you is that remember in the beginning I said, we put a tool into test, the issues and questions and you already notice that from what Liz is doing is that we have our proposed preamble which was one of the themes here. We have something that we had discussed on citizenship, we have something on the bill of rights that covers basic rights and rights of the minority. So as we continue discussing the draft bill just remember our introduction and see the themes that run through the draft bill itself. I realize that some of you now do not have a copy of the draft bill and I am

not going to antagonize you probably by referring to pages if you do not have it. I am going to take you through chapter six to ten but in a very summarize form and to help me do the summary I have two charts there that summarize the new legal system and the new structure of government. If you have that probably, we will take less time to go through that.

Probably right now the charts are not of our immediate concern because we go to the representation of the people, chapter six and you will notice that it touches on the electoral system which was discussed by very many Kenyans. Many views were given on the electoral system. The Electoral Commission is also discussed in the same chapter and political parties are also discussed under the same chapter. Note that it begins by saying that every Kenyan has a right to vote and to stand for election and the mode of election is given as secrete ballot, that it should free, fair and have fair representation of people, in particular women, the disabled and the minorities. Parliament has also been put in charge in article 77. I do not know what page that is on because my page 62 is your page 11.

You realize that Parliament has been put in charge of enacting various laws and there are qualifications that have been given to us, the qualifications that every Kenyan must have in order to be able to vote. Please go through them but I would like you to note the interesting features of this chapter. You will notice that you cannot register, there is one of the disqualifications for voting that give examples of unsound mind and you do not qualify and the guidelines given and then the procedure of election is also given, the whole part of election is also given. I will ask you to read thereafter the details of these I am simply doing the highlight. Notice that the composition of the Electoral Commission has been given there, how many Commissioners will be there, who qualifies to head that kind of Commission.

Under article 84, you have been given some of those and note that unlike what we have now the voter exercise is proposed as going to be continuous, you can register as a voter throughout the year, that is and addition to the current Constitution. You will notice, another interest right now is the role of the Electoral Commission in supervising the political parties and the political parties fund and note that political parties fund has its details outlined if you look at article 90. Notice that all the political parties, their finances must be audited, something that is not in the current Constitution and the funds that are allocated to these political parties are on merit. What I call merit is in terms of popularity based on the votes that it shall have gotten as a political party. So much about the electoral system.

I will go to chapter 7 that deals with the legislature. Look at Parliament specifically you are given the role and the criteria for establishing Parliament and note that among those is the mandate that the public or the citizen has been given in removing parliamentarians from office. That is also not in the current Constitution, you notice that you can recall your Member of Parliament if you are not happy with their performance, if you decide that they have deserted you as constituents you have that mandate to recall them from Parliament and their seats will be declared vacant depending on how valid your allegation would be. Note that those are some of the clauses that you should read very carefully, remember I told you at the beginning that the National Constitutional Conference has all the Members of Parliament but they are only 222, the rest of the delegates are 400

and over which is where we are all represented although Members of Parliament also represent us. All these issues that Parliament is closely looking at chapter seven to see what they will change and what they will propose so I am saying you better read and know what is in it. If you would like some of those issues to be highlighted by your delegates for purposes of making sure that you don't just give the Members of Parliament an advantage to vote in or vote out what they do not like about that chapter, it is good for you to read it in details.

If you look article 106 and 107, I don't know what page it is on your booklet, on page 14 of those who have the newspaper pullout. Notice that it gives the different qualifications in terms of ages, we have two sessions we have the National Council and the National Assembly. What people would call the Upper House and the Lower House, that is the proposal that we have made there. You can already see there are already debates on whether those houses are necessary but note that the current draft proposes the National Council which has representation from the district level and there is a National Assembly, those are the Members of Parliament that we elect at the constituency level. Their qualifications in terms of age are defined and not age only there are more details. The National Council you have to have a minimum age of 35 years while for the National Assembly you minimum age qualification only 21 years, so, note the proposal of the Upper and the Lower Houses and their different qualifications and their different roles. A lot has already been said about the overlapping roles of these two house but I will invite you to read and get the details so that you see whether that is necessary in the Constitution that we intend to have.

Look at the tenure of office of both members of the National Council and the National Assembly, notice that if an MP misses eight sittings, that is interesting now. If an MP misses eight sittings members of the public can declare that seat vacant and then note that if a Member of Parliament leaves one party and joins another party he seat is also supposed to be declared vacant, something that you know is not the case today. Then as I mentioned earlier the electorates have the power to recall their MP if they think that he has deserted them or he has misbehaved, what the draft bill calls misconduct. There is a full laid out procedure for that, there is also a proposal of presiding officers and other functions in each house, so note the different functions of each house. The in terms of transacting business in both houses there are also details on how business should be conducted in both houses and who heads each house. You will notice that the leader of the minority party is what we call currently the official leader of the opposition, so note that. There are terms that you may see and think they have been ignored in the current system but what is referred to as the leader of minority party is our current official leader of the opposition.

A lot has been debated about the current remuneration of the Members of Parliament where they sat down and decided their own terms, you will realize that the draft bill proposed that their salaries be determined by the Salaries and Remuneration Commission. One of the Commissions that is going to be proposed in the later chapters of this draft bill, that would seat to decide on salaries right from the President, Prime Minister to the Ministers and to all other public officers. There is also a calendar which does not exist right now in the current Constitution, Parliament is supposed to operate on its own calendar so that they would know when Parliament adjourns and when it reconvenes without being dissolved when they are not aware.

As a matter of summary in your last article of chapter, seven you will find that there are provisions that are made for the privileges and immunities of the Members of Parliament. Remember to read those independently there are those that refer to the National Council and those that refer to the National Assembly.

Chapter eight deals with the Executive, I will refer you to the outlines that I have just given you. If you look at the new structure of government according to the chart that you have with you, ...

**(Interjection)**

**Speaker:** ....(Inaudible)

**Esther Walya:** Okay, thanks. I am actually assuming that you will go and read this document and we would like to make the presentation as brief as possible because our major aim is to get some feedback from you but if I miss out something like he has mentioned something on the proportions. If you have read about the National Council and National Assembly, the number of members. How many falls in each category, you will go into those details later. The citizens are going to elect twice, we are electing at constituency level to form the National Assembly, we are also electing at provincial levels and district levels where we form the National Council. He says that is new, I agree it is new that is why I said whatever is new is the introduction of a National Council and the retaining of the National Assembly at the same time, that is the major difference, the rest now falls under that.

**Phares Kamis:** ...but then there is this other system, proportional representation, a citizen is supposed to voter twice, when you go to the polls you elect your Member of Parliament as well as voting for a political party and that the vote you cast for political party later on be distributed proportionally to these 90 seats introduced. I think that is an important point.

**Esther Walya:** Are we together? Lets look at the new structure of government. In an austral you will notice that will actually give you a summary on the executive and even part of the devolution of power which is chapter nine. Now to devolve simple means to give powers at a lower level, so we are saying that now power belongs to the people. The people are going to be responsible for their own, they are going to be given power to govern themselves but on the executive you can see that we have the President at the top there. That is the bit that touches on chapter eight. The executive is supposed to serve the people, he is not supposed to ideally rule us, he is supposed to serve the people and he should be consistent with the whole Constitution.

Under duties of the citizen, ...

**(Interjection)**

**James Odhiambo:** I would like you to be very clear here. I am requesting you to be very clear on the way people are going

to elect their MPs, the President, the Prime Minister and how the two houses are going to operate because if we look at the diagram here I can see that people are going to elect the President, the Vice President. There is also there is something confusing, we don't know whether the Prime Minister is going to be elected or to be proposed by the President or it is the Parliament to elect a Prime Minister. I also don't understand how the two houses are going to operate, the Lower House and the Upper House. As I can see the diagram here, I don't understand it, can you explain it briefly. My name is James Odhiambo.

**Esther Walya:** Okay, I will refer you. Somebody will tell me the page according to your draft. Lets go to article 105 on your page 14. On page 14, article 105 we have an Upper House and the Lower House, the Upper House is what I referred to as the National Council, the Lower House is what we know that exists now as the National Assembly. Article 106 gives you the composition of the members of the National Council and you are told that there will be 70 members, 30 seat for women candidates on a multi member constituencies representing provinces and Nairobi. Four women will represent each province and two in Nairobi and then we are looking at the composition of the members of the National Assembly in article 107 and we have the composition there. If you go on to article 108 and 109, it gives you the qualifications.

Now, move on to article 109, that discusses the representation of women but of more importance is 110 and look at the election of Members of Parliament. When you think of Members of Parliament in the National Assembly think of the Lower House, now you will go to an election of members of the National Council shall be held at least 45 days before the expiration of their term. Then it says an election of members of the National Assembly shall be held at least 45 days before the expiration of terms of the assembly. When we talk about Members of Parliament we are referring to both the Upper and the Lower Houses and understand them as the National Council and the National Assembly.

Look at the tenure of office of Members of Parliament on article 111, it gives you various situations where any of these offices can fall vacant whether the member resigns or if circumstances that if the member was not a Member of Parliament will cause that member to be disqualified and so on. We will not read all those one by one. Then we go to article 111 that touches on when you can recall a Member of Parliament then we go to part (iii) of this chapter that touches on the Speaker and the Deputy Speaker of the National Council. Notice what he has raised on how the two houses will operate. You will notice that the National Councils has a Speaker and a Deputy Speaker and if you go to the presiding in the National Council, you will see the procedure in which the National Council is supposed to operate. So notice that they are two in terms of running the two houses, they have their own Presiding Officers, we have the Clerk of the National Council, we have the Speaker in the National Council and then we have the Speaker and the Deputy Speaker in the National Assembly which refers to the other house.

So, notice that these two are independent in terms of their functions, in terms of who does the day today administration of the two houses. Read them as separate houses, when you read National Assembly you will realize that it has its own Speaker and a Deputy Speaker, the National Council also has its own and you look at that in terms of their tenure of office and all that.

When it refers to the Members of Parliament it refers to both, when it is specific, it mentions it as the National Assembly or as the National Council. If there are any clarifications, I can proceed that I proposed and we can make those towards the end.

**Speaker:** We have 210 constituencies and 90 party list members, you see that, how do you get this 90 party member list?

**Esther Walya:** I am trying to get the actual report but you will notice that we are also voting parties, when you vote for your Member of Parliament you will also vote for a party. If today I got to the ballot box in Langata and I say that I would like Honourable Raila to get my vote as Member of Parliament I vote for him but I say that DP is my favourite party then I cast a vote for DP independent from the Member of Parliament, that is how we come up with the party vote along which those seats will be allocated. I don't know who can trace for me from the table.

**Speaker:** ...(Inaudible)

**Esther Walya:** Okay, let me take you back to article 107. Elections to the National Assembly shall be based on mixed member proportional sitting, are we there. Note that in which 210 members shall be elected on the basis of single member constituencies and the 90 members shall be elected on the basis of list of candidates submitted by political parties contesting the election. Notice that it further says that the constituency members shall be elected on the basis of popularity of votes. The distribution of seats on the party list shall be made in such a way to achieve the highest degree of proportionality among the party depending on votes cast for parties.

**Speaker:** ...(Inaudible) will be running concurrently in the case of Kenya because this proportional representation election currently is in South Africa, it applies there as a system by itself. It is working there, whereas in Kenya we are at constituency kind of election, we elect our members from constituency level but in the draft, these two systems are going to operate at the same time and this is likely to generate a lot of debate. That is why we would like you to note this very clearly in our deliberation here.

**Esther Walya:** I will end up putting a form of proposal because we have had two forums where already people feel that this is going to be very confusing and it should be made more clearer that it is so that there is no overlap and there is no confusion for somebody casting his or her vote. You may not know exactly when casting your vote to a party and then cast for a Member of Parliament who is from a different party, there are implications of that but it has already been proposed that this be made a bit more clear because it is confusing. That is why we are holding this forum to make this draft bill as clear as possible and as suitable to ourselves as possible but I am glad that I am dealing with people who have read and if you have these kind of sentiments then it means, we are at the same level and at least we are going to make some improvements to this draft bill at the end of the day.

**Speaker:** ...(Inaudible)

**Esther Walya:** I would like us to hold our clarifications and our questions until the end of the presentation if we can and if you would like to make a comment later when we are asking questions, I will ask you to move closer to the Verbatim Recorder because we are going to use all these to capture your sentiments. Remember we are here to improve the draft bill, we want everything to be clear to us as possible because it is our Constitution that we are making.

**Speaker:** Excuse me. Mine were two aspects to be clarified. Both the ...(Inaudible)

The second one is the Prime Minister, here appointment of the Prime Minister officer shall be referred to the National Assembly for approval before they are made. So, is the Prime Minister also going to be appointed by the President and perhaps he can be appointed by the President and when the approval is taken back to the Parliament then something can happen.

**Esther Walya:** I will not give a feedback on any question right now but we will discuss that towards the end. Let me refer to chapter 10 and still refer you to the new structure of government. Chapter 10 deals with devolution of power and you will notice that as I was saying earlier that it means we are passing on power to the people and you are giving the people power with the intention of upholding national unity. A lot has been said about abolishing PC's, DC's and so on but I would like you to understand this chapter in that line. It gives you a breakdown there where you have the Provincial Councils all the way to the Village Councils, which probably you would refer to currently as Sub Location head by the Chief. This is supposed to ensure democracy and accountability and give people the power to be governed right from where they live to where the President is.

If you look at the same chapter that deals with devolution of power it also gives you proposals that have been made on sharing natural resources and ensuring essential services which again goes back to the bill of rights which Liz had already highlighted. The communities essentially are supposed to police law and orders, you are supposed to take care of yourselves and the people who are managing you right from the village to the province. You have a mandate to make sure that there are people whom you have chosen and people who are acceptable in the communities and I believe this is the proposal we have made in order to check details to which level, details of administration in the country up to which level, where we go to the lowest as the village. Notice that there is the commission of the local government finance, which handles finances at all these levels and that you consider as an addition. Later in the other chapters, you notice that there are certain other commissions that have been put into place so that they check most of these proposals that have been made on Village Councils, Locational Councils and District Councils.

Notice that as you go through article 215 to 222, all the officials who hold any office at all these levels are supposed or must be directly elected by the people. That is where we say that people asked for participatory governance and the whole chapter actually gives governance to the people. You may want to go into details of devolution of power by going through the chapter

but that is much I have said about the chapters that cover the Electoral process, the Executive, the Legislature and devolution of power. I will ask Janet to proceed with the chapters 11 to 15, she will take you through some very important issues especially land and property which was a major issue in Langata Constituency. Probably we asked the constituents here when there was a problem in Kibera regarding property but I believe that that is an issue which was also raised in other places especially where they have been clashes and people have been driven out of their land. So she will take you through a brief summary of those chapters.

**Janet Wangu:** Chapter 11 on land and property and we are talking about ....(Inaudible). So the chapter deals with a number of issues, first about ownership of land. Under article 233 the draft states that the land will be owned collectively by the community or by individuals. The results of further details is that citizens only may own land, so you may want read the chapter in details to see exactly will own land but it provides that foreigner will own land but only on leasehold, so they can only own for a term or years. Then land has been classified as public, private or community land and under article 234 what is public land is stated in a couple of subsections there, we have land it is described under the government land act. All rivers, lakes, water bodies, territorial strips and all these are public land. The sub section three states what is community land and this refers to land that has been held under the trust land act. All land that is registered in the name of a group and the land group is stated in the act. There is land held to a specific community by way of any process of alienation, transmission or conversion.

Then it also talks about the last way of owning land, that is private ownership under sub section four. Private land refers to land held under registration of titles act, the land title act and land that is subject of a lease hold or grant whether or not the lease is in respect of public, community so long as the lease remains in force. So you may want to read that in details.

It also gives Parliament a duty to enact relevant legislation to give effect to these provisions on land. What the Parliament will be required to do will be to consolidate these laws, as you have seen when we were talking we were mentioning very many laws, we have things like the land group representative act, the registered titles act. So Parliament will have a role to enact legislation to harmonize all these laws, to make them more clearer. This chapter also proposes the establishment of a National Land Commission in which it will have the title to all public land, you may want to read this part together with what is public land and what is presented in the National Land Commission.

We may move over to chapter 12, from article 239 on page 29 on your draft. This chapter talks about the environment and natural resources and it begins by saying that every person in Kenya has a duty to safeguard and enhance the environment, that is a duty of every Kenyan. It also establishes the National Environment management Commission which shall have under article 240, various duties and some of them include, exercising general supervision on matters relating to the environment, promoting integration of environmental consideration into development policies, advising the government on legislative and other measures for management of the environment. Then it also give the Parliament a further duty to enact legislation to give effect to all these provisions. We may also add that this is a new concept, it is not there in the old Constitution but it recognizes the importance

of safeguarding the environment.

We may move over to chapter 13, which talks about public finance and revenue management. Some of the issues the chapter deals with includes the imposition of tax and under article 244, it states that no tax may be imposed except under authority of an act of Parliament, so Parliament must approve all tax impositions by legislation. It also talks about the consolidated fund, under article 245 the consolidated fund holds all revenues raised or received for the purposes of and on behalf or in trust for the government. It also deals with how withdrawals from this consolidated fund may be made. You can read further in more details, there are quite a couple of provisions there. Another important aspect is under article 249, the power of the government to borrow, here we realize that Parliament role has been strengthened here in that it has to approve all government borrowings.

Then we move further under Central Bank, that is also another important thing under public finance. Article 251 establishes the Central Bank of Kenya, it talks about the members of the board of the Central Bank who shall be appointed by the President and here also the National Assembly will have a role. So it will also check on such appointments of the Governor of Central Bank then he shall hold office for a term of five years but can be re-appointed for one further term only. Therefore, the Central Bank of Kenya Governor can only serve for a maximum of 10 years if re-appointed. It also talks about how he can be removed under sub section six of article 251. He can only be removed for inability to perform the functions of his office due to infirmity of body or mind, for misbehaviour or misconduct or incompetence. You can also read about the functions of the Central Bank there are a couple of them there. Another important highlight is the office of the Controller of Budget, previously the functions of the Controller of Budget were exercised by the Auditor General but now this is a separate office established separately, we have his qualifications stated under article 253 (ii). He will need to be an account expert or a finance expert of not less than 15 years and be a person of high moral character and proven integrity. His functions have been stated under sub section three which includes ensuring that money is spent as Parliament intended, providing accounts as proposed to budgeted expenditure, providing technical advice to Parliamentary Finance Committee and working closely with the Treasury Department and Ministries. His independence is also safeguarded in that under subsection six, it is stated that in performing his or her functions the Controller of Budget shall not be under the direction or control of any person or authority so that will safeguard its independence in away.

The Auditor General is an important aspect you may highlight, under article 254, he shall be appointed by the President with the approval of the National Assembly and his office is an constitutional office, it is established under this Constitution. The qualifications are also stated, he should be an accountant of not less than 15 years, be a person of high moral character and of proven integrity. His functions have been stated there which includes auditing the accounts of governments then reporting once every year audit and report on public accounts of the government of Kenya, accounts of all Courts, accounts of every Commission, accounts of the Clerk of National Assembly and the National Council. You may also highlight that he shall report directly to Parliament under sub section (iii), the later part. His independence has been safeguarded in that it is stated that he

shall not be under the direction or control of any person or authority. Article 265 talks about his removal from office. He can only be removed by the President for inability to perform the functions of his or her office due to the impurity of body or mind, misconduct or incompetence.

We may move over to chapter 14 where we have the public service, that is page 32 on your draft. Part one of this chapter deals with public administration and here we may highlight the Public Service Commission. The Constitution of the Public Service Commission is stated under article 259, it shall consist of a chairperson, deputy and seven other members appointed by the President with the approval of the National Council. You may remember the National Council is part of the legislature so it will have a say on who is appointed as the chairperson to the Commission. The tenure of office of these members is stated, a member of the Commission shall hold office for a term of 5 years and can be re-appointed for one further term. The powers and functions of the Commission are stated under article 260, they include promoting the values and principles set out in article 14 through out the public service, proposing measures to ensure efficient and effective performance, monitor and investigate appearance to applicable procedures in the public service. There are quite a number of functions you can read in details more.

The Public Service Commission is mandated, has the power to constitute offices for the republic and the power to abolish any such offices, so the Public Service Commission shall have the power to create offices within the republic. The appointment of public officers under article 262, any public officer below the rank of the PS will be appointed by the Public Service Commission. Part two, deals with the Kenya Police Service under article 264. The primary object of the Kenya Police Service is stated and this include among others protection of rights and freedoms, the security of the people, prevention and protection of crime and protection of property.

We may look at the appointment of the Commissioner of the Kenya Police Service is something we may highlight. Under article 266, the Commissioner shall be appointed by the President with the approval of Parliament for one term of 10 years. So we have the qualifications for the Commissioner of Police under sub section (iii) of the same, article 266. He shall have a degree from a recognized University, have served in the Police Service for at least 10 years. Then we also have under sub section (vi) how he may be removed from office. He may be removed by the President for good cause with the approval of Parliament, so we can also see the role of Parliament in this.

Part three talks about Kenya Correctional Services and the principles and objectives of this Kenya Correctional Services will be to protect the well being of Kenya and to rehabilitate persons convicted of crime and facilitate the return of those persons to useful livelihood of communities. The Kenya Correctional Services is also required to be professional and disciplined under article 268. Then under article 269 the Kenyan Correctional Services will be headed by a director then the director will be appointed by the President on advice of the Prime Minister and with approval of Parliament. So we can see Parliament has a further role in this.

We may move over to chapter 15 which is about the defense forces and national security. The first article of that chapter, article 271 states the primary object of defense forces and security systems as to safeguard the well being of the people of Kenya, peace, national unity and integrity of the republic. Under subsection (iv) the defense forces will be required not to act in a partisan manner or further the interest of a political party. Then we also have the establishment of the National Security Council which under article 272 we can see the members of that National Security Councils are outlined there, they include among others the President, Vice President, Army Commander, Attorney General and many others you can familiarize yourself with that. The functions of the National Security Council are stated in article 273 and include among others ensuring the integration of domestic foreign and military policies relating to the national security in order to enable department and agencies to cooperate effectively in matters of national security. Under sub section three we can highlight that where a state of emergency is declared by the President the council shall be the authority responsible subject to the Constitution to implement measures that are reasonably justifiable for dealing with the situation that had arisen. So You can see the role of the National Security Council during a state of emergency.

Under article 274, it talks about defense forces and it states that all defense forces of military or paramilitary organizations have to be established under authority of an act of Parliament. It establishes a Defense Forces Council which shall consist of a couple of members there under sub section two of article 274. They are among others the President, the Vice President, Prime Minister, Army Commander and Air force Commander.

We can also talk about the Chief of General Staff under article 275. He shall be appointed by the President in consultation with the National Security Council and he shall be responsible for the operational use and the general administration of the defense forces. The President in accordance with the recommendations of the Defense Forces Council shall appoint the Army Commander, the Naval Commander and the Air Force Commander whom each shall have administration of separate forces. You can familiarize yourself more with that. I think I will stop there but I will invite you to read more in details since I have just pointed out what I thought were highlights.

**Esther Walya:** I am sure that the thing that Kenyans are happy with is that, we realize the President has to consult a lot, he does not have to make decisions on his own and I hope you will give us a few of your proposals on how we can tighten governance by ourselves. Now, it is been brought to my attention that we did not touch on the controversial chapter nine, that was not deliberated, it was actually an oversight. I have given you a small chart there on the new legal system and I believe that is what the judicial and the legal system is about on chapter nine but note that it is very clear. It was even very clear in that the new system that is proposed is very new in that, we have the Supreme Court that supervises all the other courts and the Court of Appeal and the High Court are both headed by a President.

Note that that term is no longer the reserve of the head of State and then we have the lower court and tribunals but along that you will realize that there are other parallel courts, the Kadhi Court of Appeal, the Provincial Kadhis Court and the District

Kadhi Courts. You may want to note that the Muslims came out strongly with this proposals of the parallel courts that actually deals with the Muslims. That is not a creation parse of the Commission it depends largely on the views that were given by Kenyans but that is quite new, if you look at the legal system it is very different from what we have now but in it there are details of the roles of the various officers in the judicial system. We have the qualifications that they must have, their tenure of office and if you have read that chapter, if you have any additions or any criticism to make on that chapter then we will hear them at the end.

Lets move on to chapter 16, that deals with leadership and integrity. You will notice that later I think under chapter 20 or 19, which gives the interpretations, the terms that have been used in the draft bill. We have a definition of public officers so when we say that this is the chapter that gives us guidelines on the manner in which all public officers are going to conduct themselves. This actually targets them, right from the President to the most junior public officer that we shall think of holding any public office. We are saying that there must be no conflict of interests where those officers hold offices and there should be no compromise to their leadership and the question of integrity is also being addressed. In terms of integrity I would like you to combine that with the chapter that puts into place various Commissions and think of the Ethics and Integrity Commission which probably is the equivalent of our KACA now. So looking at leadership and integrity and the people who hold office they should also be guided by guidelines given by the Integrity Commission.

Note that it may not be there in black and white in our current Constitution but these leadership and integrity code which is outlined on the fifth schedule, the fifth schedule is towards the back of your draft bill. There is a code there that must guide them and this extends to their families and then note also the definition that is given of a public officers. Look at article 270, it gives it a definition in context and different to the draft bill. Note that the leadership and integrity chapter deals with these officers both in their public and their private life. It is a brief chapter and that is all I have to say about it.

We will move on to chapter 17 and it deals mainly with the Constitutional Commissions. Remember earlier one you heard about the Electoral Commission. In this chapter, we are actually talking of any other Commission that has been set up besides what already exists in the draft bill. Among the ones that are highlighted on this chapter we have the Human Rights and Administrative Justice Commission, the Ethics and Integrity Commission, the Salaries and Remuneration Commission which I think was in charge of determining salaries right from the President to all other public officers. Then we have the Teachers Service Commission and the Constitution Commission. Under each of those categories there are guidelines on the membership of the Commission, the numbers, but you will note that they are all between three and 10 members or three and ten Commissioners. All these serve a five-year term, they must be less than 65 years. Those are interesting to note and they must not hold any other public office. What are the roles of these Commissions? Now given that all of them will have specific issues to deal with they are supposed to be independent first and foremost and there should be no interference either from an individual or from the public. What they are supposed to do is that, they are supposed to be impartial, they are supposed to offer free services.

They are also supposed to have a provincial and district network depending on their specific functions. They are supposed to educate on their roles. Currently for example we have the Commission for Higher Education, not most of us know exactly what they do, they are not there at the district level in a way that you can confront them to know what they sit at Development House doing. This new Commissions are supposed to educate us on what their role is and in cases where they need to have civic education to wananchi so that they know what they do then that should be case. They are also supposed to have their funds audited like any other body and they are supposed to give reports to the President and to the Parliament, continuous reports to make sure that we know what they are doing. These will be largely on their performance, activities and depending on financial audit.

Looking at chapter 18, it deals with the amendment of the Constitution. Is a very brief but important chapter those of you who read with an extra eye will notice that it will save us a lot of trouble if we have this particular chapter in the draft bill, enacted in our new Constitution. I will tell you for example the American Constitution is over 200 years has had only 20 amendments. How old is our Constitution now? It is just barely 30 years and over and we have had over 30 amendments of the same Constitution. Remember if you make a very good Constitution it may not require so many amendments within such a limited time. If you actually have so many amendments there are two things that must be wrong, it means that the Constitution is either so rigid or it has too many loopholes which can be misinterpreted. So this chapter is actually protects the draft bill which we hope would be enacted into a new Constitution from unnecessary amendments. It says that if Parliament has to make any amendments they must seek ratification from the people so that we know all those things that concern us must be brought to us first for debate before they can be changed. It is necessary to put checks into amendments of the Constitution.

Chapter 19 are also consider very brief, it simply gives you an outline of what I would call the definitions. Definitions in that these are the terms that have been used throughout the draft bill and you need to understand them in context. If you read public officer, read it according to the definition that is given on chapter 19. If you read teaching, not what we are doing now, read it in context of the explanation that is given on chapter 19. The reason for having a chapter that guard on those terms, we are saying that we are supposed to safeguard or to avoid any misinterpretation or any misuse of any word that appears in that draft bill.

Lets go to chapter 20 that deals with transitional provision for this draft bill. We are saying that we are changing from the old to the new but if we have this Constitution enacted today by Parliament, does that literally mean that tomorrow we put away the President and his cabinet and start having a Prime Minister within 24 hours? That is not what we are saying, we are saying that it is a time for change but it must be very consistent. Yesterday we had a forum in Dagoretti where a Chief approached us and said I hear you have come to put an end to my office and he was genuinely worried because for him the implication is that if the new Constitution comes into force and state that there will be no office of the Chief tomorrow he will not exist. He was thinking of it as very immediate. This chapter gives us an insight into the fact that we are going to have a time for transition, a time to

change. Please refer to your sixth schedule if you have the draft, read along, consider chapter 20 along with the sixth schedule and what the sixth schedule.

What the sixth schedule is that it gives you an outline of certain things that will be adopted or might be adopted into the new Constitution. For example, I will pick on something like citizenship, it gives it not limit of when Parliament can enact that but if you go further in the schedule you find something like the issue of refugees and asylum seekers should be sorted out within one year. There is a duration within which it has been assigned. Note that we are not saying that we will have the new Constitution and put it into place the next day after it is enacted in Parliament there must be time for reconstructing the republic. Remember that what this draft bill is, it is simply a road map, we have chances of improving it so that we know exactly we are going to adopt a new Constitution which must not interfere with the administration of this country as it is now.

Obvious observations in the draft bill is that the entire system, the Executive, Legislature and the Judicial system have all been reorganized and you cannot effect those changes immediately. That is why I insist that if you look at the transitional provision, it is so important to understand that as much as Kenyans were pushing and saying we want elections under a new Constitution, not everything can be adopted the next day, immediately after we have the new Constitution. We are saying that we even have a legal system right now, which predates Constitution. We are saying that we will give this time to conform to the draft bill which we hope to enact into a new Constitution. We are also saying that

we have had different aspects that deal with the bill of rights, chapter five and I say that any Kenyan who is not reading the bill of rights which touches on us individually is doing themselves a big disservice. We need to associate with it and know what is it that does not exist in the current Constitution that we would like to see taken up immediately under the bill of rights.

You may also notice that the process of transition will involve a lot of overlap in terms roles. That, I may give as a reason why we have that kind of chapter that allows us to take time in order to get to the new Constitution, so that we have some kind of continuity in order to adopt the change. I will consider that you have heard in a very short time the content of the draft bill. We are not saying that we are experts of Constitution making, what we are saying is that this is what we have been doing for the last one year trying to put a new Constitution together for Kenyan. Relying on the guidelines given by the review Act, relying on the views that the people gave and relying on the current Constitution in terms of taking the positive in it and removing the negative in it. We know that you have read and you have your proposals to make and it is at this point that I would like to invite those proposals.

Remember that this draft bill is not going to give an answer to all the questions and we cannot have a lengthy document of over 900 pages calling it a Constitution just so that we include every clause. You may realize as we went through it that, you will say that you never heard where it is said that your landlord should not harass you or he must not increase rent without notice and so on. However, you will be referred back to certain specific sections in the bill of rights that will give you guidelines on how that specific issue can be handled. So, lets not expect that in the draft bill we have all the details when say that we have basic

education. Who gives it and the inner details may be missing in the draft bill, but it is important to note that most of them have been dealt with in some of the chapters. You will notice that all the values that we went through in chapter one and two that gives us power as the people or the owners of this republic. All those values have been reflected through the other chapters whether they cover the judicial system, the executive and powers bestowed to public offices. You will notice that all the six themes that we highlighted earlier run through the draft but take care of the values highlighted at the beginning of the draft.

Now, I will ask you to ask your questions, probably if you lift up your hand I will count numbers up to ten. We will take the first ten questions and try to respond to them but they don't have to be questions, they can be proposals that you are making because you want to give this document a lot of strength. If you feel you have not read enough and you cannot make your contribution now, there are many other forums that are organized this month and you can start by attending the one on Friday at Charter Hall where Professor Ghai I believe will be there to discuss the same draft bill with you. We are trying to have as many forums as possible so that we perfect the draft bill. This is a chance in a lifetime and this is the only opportunity we have to streamline it.

Let me take the first ten questions. One, two, three, four, five, six, seven, eight, we will take those eight. They can be questions or proposals, please don't limit yourself and any comments you have, be it a compliment or a criticism. Please take a seat next to the Verbatim Recorder because we would like to tape them.

**Jotham Okidi:** First, I would like to thank you but I would have more than one question. My names are Jotham Okidi.

**Esther Walya:** But I would like you to confine yourself at least to three minutes I know the audience may be very tired but make the points a bit brief.

**Jotham Okidi:** That's right. What I would like to ask first of all is that in the recent past it has been know that there violation of the Constitution of Kenya, what are the new penalties of whoever shall violate this Constitution. My second question is that, who is to represent the custodian of this important document in the republic of Kenya. Then when we move to chapter five on page 10, the fair trial, what about if the citizens of Kenya who are not able to hire the services of a counsel. Is there a provision that these citizens can be give legal representation in a court of law and their crimes be interpreted by the legal officers.

Then when we move to chapter 11, we talk about the Commission, who shall form these public Commissions that is the Land Commission and Environmental Commission. How about if these Commissions act recklessly as the TSC is now doing to jeopardize the future of the children in this country. Who shall be responsible to tame this errand Commissions in Kenya here?

Then when we move ahead to chapter 13, section 255, the question is, how about if the President decided to retain a person who is having interest. When we talk about the Central Bank of Kenya Governor, how shall those officers be tamed because I

don't think the draft is addressing the issue. I would appoint one of my own people to serve my interest at some level as the President. As we move on, during the election as we are approaching now, who will hold the important office of the President and the Prime Minister or who shall hold the management of the republic of Kenya? I am also saying that according to the structure that we are having here, we have go the devolved government through provincial councils. There has been a creation of the local authorities, is it a replacement of the local authority and what could be functions of this devolved government. Thank you very much.

**James Odhiambo:** My names are James Odhiambo. I will not ask so many questions, I will only ask one question that is a question which has been coming out in the streets, newspapers, along the roads and everywhere. The present government is composed of Parliament and Provincial Administration and the one the draft bill is concerned with is in this diagram here. I hope everybody has that diagram and I would like to ask you to explain this diagram in details because I can see the people electing the President and Vice President. It seems as if the Prime Minister will come him from Parliament, two Deputy Prime Ministers also from the Parliament, National Assembly and we have 90 party list MPs. I have been hearing that these are nominated MPs who are they, where do they come from, how are they nominated. Make that point clear.

Still on the diagram as you come down you look at the Provincial Council I don't know how they will work. I can see the District Councils, Local Councils and the Village Councils and you can also see the arrow going up to the National Council, one person from each district plus 30 others. Who are these 30 people, how are they qualified for those posts, how are they elected. These are my questions. Thank you very much.

**Samuel Masita:** Thank you very much. My name is Samuel Masita and I have comments. I am not going to refer to the article number but it is on the revocation of the death sentence but you know how notorious the Policemen have been when see that they are twisted around and such like things. Even if you are walking around you find that you are being shot and being called for an excuse of the criminal and say that you are one of them. So, there is no mention about that and how the police shoot and kill, that one should be mentioned as well.

Then the idea of the devolution of power, good and bad but it would very much depend on how it is handled and how wananchi see it. Now, from my own experience we have audited books of societies and farmers registered companies like the tea factories and of late there was the idea of saying that they want to give powers back to the farmers and so on. It is very good really if it things were taken very seriously according to the law but because of ignorance and I am sorry to say this. Because of ignorance some people hijack these good ideas but if it is used it can backfire. Can you imagine for example when there is some village wrangling and so on, somebody turns around and say I can teach the Chairman of the factory a lesson and he says he looked a round for some hecklers and so on and he says make sure that this Chairman today is not allowed to chair the meeting. If the Chairman according to the law, no change has been made and they make sure that they disrupt the meeting.

So here, what I am driving at really is and that is why we are talking about the transition period and so on. It is not the question of ringing the bell and say, this rule starts operating immediately. Wananchi should be prepared for this, there must be education and you know that even our government has not been very keen on educating the youth to make sure they destroy ignorance and if they dish around a few shillings and so on, we vote for them. I believe the solution is mainly proper education and implementing these laws very carefully if it is a proper transition.

The question of the Auditor General I am talking about what I know. Auditor General is also what we call Auditor General Corporations is a separate position. This one is not mentioned actually it should be merged with the Auditor General and I am very glad that I proposed that we split Auditor General from the Auditor and Controllers, they are two different positions and I am very glad that it was actually taken in. I am happy that that was done. You will never have enough so the problem is control, that is why I am very happy that at least we can have the position of somebody who is called Controller, I call him Controller of Expenditure but the Controller of Budget is the same, what is in a name after all.

Commissions of inquiry, you have heard about this, you live in this country called Kenya. Commissions of inquiry and other commissions and it costs a lot of money, then you are told that report is confidential it cannot be released. Now I am proposing that these Commissions of inquiry should be set up by Parliament and those Commissions must report back to Parliament so that Parliament can approve those Commissions and the information will be readily available to everybody from the Government Printer.

Farmers the despised people and that is where we eat from. If there is need to give them subsidy especially now we have gone down and said we have devolved our power of governance, we should give them subsidies. You should know what the Americans do and the European Union, they give those farmers a lot of subsidies but when they come here they say no just be open for competition and so on. It should be seriously considered if there is need to give farmers subsidies now, it doesn't matter whether it is a farmer of maize or cattle and so on. They should be given subsidies which can be sustained and good prizes of their products.

Lastly, to cut myself short I have again following up what I subscribed in the proposals I gave and having gone through the draft you have come up with, I also have this in writing which I can give to you. Even my cell phone number is all here Madam I can be reached and I have signed, I am not a coward. (*Applause*)

**Mathews Otieno:** Good morning everybody?

**Audience:** Good morning.

**Mathews Otieno:** My names are Mathews Otieno. I would like to comment on this chapter dealing with the Electoral

Commission of Kenya, the electoral process on chapter six. One of the functions, If they change it is talking about is that voter registration to be a continuous exercise. According to my understanding sometimes back I think it is a month ago, the bill that was take to Parliament they were talking about the ECK to make sure that the Electoral Register is up to date within a period of about six months. Here you are also talking about that the wananchi, constituents will have the powers to move a motion of no confidence against their representatives. How will this be because at the same time you are talking about continuous registration which will be affecting a by election?

**Robert Abwire:** My names are Abwire Robert. I have a problem with chapter 20 to 22 on the second schedule on provinces and districts. The draft is talking about the same provinces, we have 8 which is not a big problem and districts, the draft is also talking about the same districts we have. I feel this is what you like in Kenyans, I had talked it when I was contributing my views but I still have to insist on this. I still see district like Nandi District, Kisii District, Tesso District and Mbeere District. I feel we have neutral names, which can still not look tribal because what is killing the country is tribalism. When we still have Suba District, Kuria District then I feel there should be a neutral name like Kehancha, we can still have Kapsabet instead of Nandi and I feel the draft should focus on these very much so that at least we change the names from tribal names to acceptable names in each society. If you go to Meru you will find that there is an acceptable name which can be used. Thank you.

**Samuel Makonde:** Mine is just a question and very brief. I wanted to ask...

**(Interjection)**

**Speaker:** Your name.

**Samuel Makonde:** My name is Samuel Makonde. My question here is very short. People are given powers to vote directly for the President and Member of Parliament and the Provincial Council. Is this election going to be held or are they going to be voted at the same time and at the same place or the elections are going to be carried out differently in different occasions and who are going to vote in those who are in the National Council? Are they going to be voted directly or they are going to be nominated in the Councils. That is my first question.

Secondly, I have a proposal. Personally I would wish that the outgoing government or the leaders of the outgoing team, those who have messed up the government starting from the President and his cabinet should be taken to court to answer charges so that it becomes a lesson to the rest, the people be given the mandate to govern the country in future. Apart from that, I would only thank the Constitution of Kenya Review Commission for the work they have done. Thank you.

**Ngowi Odera:** Good afternoon. My name is Gowi Odera and I have just brief couple of comments here. I would like to draw your attention to chapter 9 on the legal system. We talked about added a new tear of the Supreme Court, my question is have you considered the cost of litigation for these additional tear in the judicial system. The cost of taking anything for a

common mwananchi is already high, this addition of the Supreme Court I would like that as we consider adopting this draft that those other considerations taken. I do understand the merits of having a Supreme Court however this needs to be addressed. I applaud what the draft contains on the role of a Public Defender it should also address the issues of costs but I would like to be taken into consideration.

On the issue of Constitutional Commissions, we do not have any Commission that oversees trade and commerce, we have on human rights, we have on other things that we do not have on trade and commerce. Trade and Commerce is an active integral part of the life of a Kenyan, so if we would have a Commission that oversees the breaking down of monopolies, checking how these institutions are established.

Article 294, specifically about amending the Constitution. My proposal is that we should make amending the Constitution difficult for any individual or individuals or special interest. Article 294, section three only gives amendments to the Constitution to give the people the right to go to a referenda if they are amending the bill of rights. I propose that the prerequisite for amending any part of the Constitution shall also require ratification by the people through a referendum before the bill makes a provision for such an amendment if presented to the President. That ends my comments. Thank you.

**Morris Amolo:** My name is Morris Amolo. I do believe that the current Kenya Constitution has given the incumbent that is the President a lot of executive powers to such an extent that he has been manipulating the whole system and that is why we have gone astray, the corruption has eaten Kenya economically it has been jumbled and the appointments have been incompetent. If we believe that, we going to the general elections with the new Constitution then I do believe that whoever will be occupying the position of the President will be somebody adhering to the Constitution and not manipulate the whole thing. My question is, if we are going to the general elections in the current Constitution or the new Constitution then why should we give the Present power to have a well implemented Prime minister, his .....(Inaudible)

Well, it has not been clear on this drafted Constitution when we come to this, I have never seen where the PC, DC and the Chiefs are. So does this draft Constitution have these District Councils and Locational Councils and then make various perspectives that those who are going to come are going to genuinely indigenous people who have been staying with them, know their participations in the society and commitments and their transparency.

**Osman Ferus Khamis:** My name is Osman Ferus Khamis; I would like to thank the Commission for this good draft they have done, which I sure will go along way in making Kenya a good place for all of us. I would like to talk about the dual system of election that is the constituency election and the proportional representation. In the present Constitution, we have this direct constituency elections, these in my opinion gives a lot of advantage to tribes with the large number of people at the expense of the minority tribes. So, I feel the addition of the proportional representation will address this inequality. My request is for the political parties to put more emphasis in their distribution to the minority tribes and the marginalized groups to specify clearly out

of their share of the 90 seats. It should be specified clearly what percentage should go to the minority tribes so that their voices can also be heard in the deliberations at the National Assembly.

I am talking from experience as a citizen of the Nubian tribe. Our experience in the past in Langata Constituency we find that tribes with large number of people like the Luos and the Kikuyus tended to have dominated many of the Members of Parliament in the past in our area here and they use the seats mostly to promote the interest of their tribesmen. I believe in this proportional representation the minorities like the Nubians can also have a share out of the 90 seats so that their voices can also be heard in our National Assembly. Thank you very much.

**Esther Walya:** I am very grateful that we are dealing with an audience that has actually read and I will tell you that most of the comments that you have made are proposals. Even what you thought was a question is something that we cannot answer but something that we simple would have to go back to the Commission with as our submissions and say that they make clarifications. I will go through a few of the comments where I have an answer and I am sure my colleagues will also touch on a few other issues. There is one question that I had been asked earlier whether the electorates are going to elect a President and then elect a Vice President. The President is supposed to have a running mate whom he will automatically appoint as Vice President so that ECK does not get involved in another election where we have to elect a Vice President. So whoever the winning President is the running mate automatically becomes the Vice President.

Note that the Vice President is the principle assistant to the President and that the Prime Minister will be proposed by the President. If you look at article 171, he will be the leader of government but the President will have to propose him to the Speaker and he could be the leader of the minority political party there are three allocations given there on the proposals that can be made in regard to the Prime Minister. Please get acquainted with that but note that we are not going into elections for President and Vice President. Then we are asking, what are the penalties for violating the Constitution and who is the real custodian of this Constitution. I will take you back to the duties of the citizen, notice that as part of your duties now, you are supposed to uphold and safeguard the Constitution. Notice that the role of the members of the National Assembly or the Members of Parliament rather to include both the National Council and National Assembly. Note their role in safeguarding the Constitution and note that the President does not have absolute power this time. He is supposed to conduct the affairs of this country as per this Constitution but probably whoever made that proposal was saying that we should have clear cuts instruction in the draft bill that guide us on how to defend this Constitution. In regard to that, I will touch on what Ngugi mentioned regarding the amendment of the Constitution. He proposes that we have to be consulted as Kenyans on any amendments, I propose that we shall also present to the Commission.

There is a gentleman I don't remember his name but he raised the issue of district and tribal names. I wonder whether you gave that view or you ever presented a view but it would actually also be of my concern if I came from a district called Kamba district or Kikuyu but I will take you back to the preamble that appreciates that we have our ethnic and cultural differences.

Probably the naming the districts is not supposed to promote that kind of ethnicity but I would like to refer you to the preamble that appreciates that we are different and there is nothing we can do about having so many different tribes in Kenya but it is a proposal that we have also taken up.

In relation to the killings of people who are not probably criminals, I will take you to the roles of the Human Rights Commission and some of its roles you will notice that, that will be handled under the Human Rights Commission. If you look at the composition of the Commission and what if the commissions are reckless. Remember what we said about the leadership and integrity chapter and the leadership and integrity code that is supposed to be a guideline for all the public officers and when I say all the public offices I mean from the President to the leader of the Village Councils. So just remember to connect, some of these things may not be there in black and white appearing as you would like them to look but some of them have been taken care of.

I think that is all I have for now in terms of comments, I would like my colleagues to also react to some of the things that they have note but note that we said that the draft bill does not have the answers to all our questions and that is why we are here. We want to improve it and I can assure you that we have taken all the proposals whether in question form of otherwise today so that we can have a better draft bill which would be enact in a Constitution at the end of the National Constitutional Conference.

**Liz Kingi:** There was a question that was raised concerning provisions for those who cannot afford legal services. If you go to section 210, subsection (vi) you will find that the Public Defender who has been created there shall provide legal service and representation to persons who are unable to afford legal services. That has been catered for. On the issue of the Vice President, how is he going to be elected that is under article 165. Under article 165 you note that the office of the Vice President has been created and each presidential candidate is required to nominate a person, it is like the policy of a running mate. He is required to nominate a person who is qualified also to be a President to run with him but it is not like we would be electing a Vice President, you will be electing the President and if the President wins that Vice President shall be declared elected by the Electoral Commission as the Vice President. I think that is clear.

On the issue of how the local government work, I don't have a complete answer to this but if you look at the seventh schedule in the draft you will find there are areas where the Councils have been allocated. I don't have a complete answer to that.

Some of these were comments. On the issue of the Supreme Court have we considered the cost of creating legislation at that level? Under the bill of rights we have said that the Chief Justice is supposed to make some rules and on that basis if you are enforcing a matter under the bill of rights no fee should be charged. So, I believe even if we are taking it to the Supreme Court level no fee will be charged at that level and when he is making whatever rules he will be making he is to have the policy of making the cost affordable. So he should not put a fee which would be way out of reach of the ordinary Kenyans.

On amending the Constitution, that should be section 294, there are certain areas which Kenyans have felt so fundamental and they have said that these areas will need ratifications by the people in a referendum before the bill making such a provision is passed. I am referring to section 294, sub section (iii). If I may just read with your permission. An amendment that seeks to make a change in the territory of Kenya as set out in article seven and described in the first stage of the Constitution be the sovereignty of the people, the principles and values of the republic. (b) The bill of rights, the structure, values and principles of devolution as set out in chapter 10 of the Constitution. Citizenship and provisions of these articles, yaani the amendments shall also require ratification by the people. Ordinarily amendment is supposed to be done by the two houses they are supposed to get a two third majority in both houses if they want to amend but in these areas which we just highlighted in addition to getting the two third majority they will also require the ratification of the people in a referendum. I think that is all I have.

I have something small. Someone was asking about elections of the President, the National Assembly, the National Council and the devolved authority whether they are going to be held together. If I can tell you looking separately about the President, the legislature and the devolved Council which states when the elections will be held but the bottom line is they are pre-standard. They will be held on separate occasions. I think that is all I have.

**Esther Walya:** Do we have any other prepassed and in relation to this I would you to remember, on the issue of finance have we considered the financial implications. Of course someone was saying much earlier that we are deemed to be doubling the citizens in the name of bringing new things into the draft bill but remember that is why we have that transitional period. But what we are saying is that, now that we have the draft bill we do not want anything to be rejected or accepted at the National Constitutional Conference out of ignorance. So, what we are going right now is that we are brainstorming, we are asking what are the implications, we might be very excited by having a village Council and we may be very excited about having a Prime Minister but what are the implications. So, what we are saying is that, we would rather brainstorm now so that at the end of NCC nothing will pass into the new Constitution just because we were ignorant.

**James Odhiambo:** According to the new coming government it seems as if we are not going to have Chiefs as you have mentioned a certain Chief approached you somewhere and what have you and may be Provincial Administration is not going to be there. Can you explain how the structure to the new government is going to work starting from the grass root?

**Speaker:** Your name.

**James Odhiambo:** My name is James Odhiambo.

**Samuel Masita:** Thank you for allowing me to come back, actually the issue I have is in my response I have given to the draft but I feel it is so important that I should mention it here so that you people can be thinking about it also and broadcasting it as

you go around. Now, in Kenya there is a problem of disparity of income, what we mean by that really is that if you look at the lowest paid worker and the highest paid in Kenya we are trouble and of course, we have been seeing in newspapers. Even when it comes to indicators of economic growth or I don't know whether to call it un-growth. Kenya is doing very well when it comes to bad indicators and this is one of them.

I was in Europe where I was a student in the mid sixties and I was in Switzerland, and I visited one hospital and I was greeting a labourer, the hand shows that this man is well, it was hard, so when I tried to find out later what the problem was I was told hey, that is a cleaner and the fellow was driving, he had his own car. This inspired me to find out how these people live and the kind of research I did I have never forgotten. In that country you cannot get somebody who is earning 20 times more than the cleaner, no way. I have proposed it here but I was a bit unhappy, most of the proposals I have given actually I felt like it is as if they took what I wanted but this one I am sorry it is dealt with in several articles here and there but it is rather vague. I don't know why the Commission was feeling afraid of bringing it out openly. There should be no way anybody can earn even 200 times more than the lowest paid, I mean it doesn't need to be the same in all organizations but there should be some kind of rules that there is nobody who is going to earn 500 times than the other. How can somebody earn 1 Million shillings per month and another worker in that same organization is earning Kshs. 2,000/= . That is the point I thought I should mention.

**Regina Mwachi:** Your name please?

**Samuel Masita:** My name is Samuel Masita.

**Osman Khamis:** My name is Osman Ferus Khamis. In the proposals there are two houses, there is the National Council and the National Assembly. Presently in a country like the United States of America there is a time when the Head of State would like to give an address on the state of the union of the nation, the two Assemblies come together to be addressed by the Head of State. In our proposal here I have not seen, may be there is but I have not seen a situation where a Head of State address both houses of assembly on a matter of national concern.

Secondly, I would like to talk about land policy. I think in this country at the moment we do not have land policy. I think there is need for land policy to avoid also a situation where by you find the majority of the people do not have any piece of land at all and you find may be a very small minority controlling or owning over a thousand acres of land, some of which he is not using at all. Whereas there is somebody who would like to have even an acre or two to do productive work in it and does not have that opportunity. Thank you very much

**Liz Kingi:** Is there anybody else who would like to comment. How many by a show of hands? One, two, three.

**Morris Amolo:** My name is Morris Amolo. Well I am really thankful that a lot of energy, perseverance and from all of you

for Kenyans but I believe missions like the Njonjo Commission. Those had been initiated in Kenya but eventually we don't know where the outcome is. In the case of this draft Constitution that we now have, I do believe that it is going to take at least some duration before the Presidential ascent and that will take too long. So probably, as time goes and perhaps elections are nearing, are we going to the elections with the new Constitution or the older one?

**Mathews Otieno:** My name again is Mathews Otieno. I had a question about these delegates. Nairobi is a region with many people with different conscience and the population is very high, almost above 3 Million. I don't know how you can reassure me that only these three people will cater for the Nairobi District bethrough my concern that a lot of Commissions of inquiries, investigations and other comcause it is not like where I can go to somewhere like Ugenya and find a Mzee. When you go to places like Ugenya or Kisumu you find people with almost the culture but here in Nairobi where we have three people whom I am supposed to have confidence with that they are going to cater for us. Although I can see you have given their contacts and I am supposed to meet them and exchange ideas before the National Conference, I don't know how the review will undertake any issues

**Esther Walya:** I will answer the question of the delegates in Nairobi. I gave you the different categories of the delegates that are going to be there at the National Constitutional Conference, I have gone on record saying that because I was the Returning Officer at the elections where those three representatives were elected. I have gone on record saying that Nairobi was treated as a District alongside other districts without considering its population. Why, because the Act that puts this Commission into place take the definition of Nairobi as it is in the current definition in Parliament and therefore was going to take only three representatives. We argued in Nairobi even as a Coordinator I argued that I deal with a population that is several times more than my colleague in Ijara yet I am going to be give the same number of delegates. But that cannot be flex because it is an act of Parliament and we were going by the definition that they used when they put this Commission into place.

However, I would like to draw you attention to other bodies like the religious organizations, the professional bodies, the women organizations, trade unions, NGO's and even Members of Parliament. All those people have brought delegates who actually ideally live in Nairobi and would come from Nairobi. Looking at the list that came from religions organizations, I noted that out of their 35 lot already over 10 people from those live in Nairobi so what we were saying to console ourselves about Nairobi is that we have other people in Nairobi who are not necessarily under the district representative category but who actually come from Nairobi. But it would take Parliament to amend that number 3 to any other figure but I hope we are satisfied even if it is not changed, we are satisfied that Nairobi will be represented by many other people from the other categories so I am sure that we would not suffer as a Province.

Are we going to elections under the new Constitution? I will tell you that if you look at the Act, this Commission does not speak on behalf of the government, it cannot speak on behalf of the Electoral Commission either. So, I would not answer that, it is not part of our objectives, we as a Commission really are very independent from the government and independent from the

Electoral process in terms of the objectives that we are set out to achieve. So I would live that question just as it is but if you would like to hear another view, if you would like to get a different answer please make sure that you attend the Friday forum. I was hoping that the Member of Parliament would come by because he is also the Chairman of the Parliamentary Select Committee and probably would tell us the outcome of the seminars they have been having with Commissioners from CKRC but we cannot get that answer from this table.

**Speaker:** I have a question, how can we get access to our representatives.

**Esther Walya:** In terms of physically.

**Speaker:** Contacts to the public.

**Esther Walya:** I have given their cell phone numbers only. I have given a list that has their cell phone numbers, if you don't have the list probably you can get one from here on your way out. Notice that these allocation of representatives per district, each district was told that they must have a woman delegate and they were told that the others may be a Councillor or anybody else, not necessarily a Councillor. So you will note that is why we have Nancy because she was fitted into the slot of women. Rev. Mushuga Macharia and Salim Nyambu represented what we named as category B.

**Liz Kingi:** Just to add on to that question whether elections will be held this new Constitution, in the draft if you go to the eighth schedule there is a column there about elections.

**Speaker:** What schedule.

**Liz Kingi:** The eighth schedule. It says that in the event that the first election subsequent to the 1997 elections are held after the coming into force of this Constitution, such elections shall be held within 60 days of the coming into force of this Constitution, that is what we have proposed. If it so happens that, this Constitution is enacted before we hold elections then we will hold elections under the new Constitution 60 days after the enactment but we really don't have any control as to whether elections this year can be held under this Constitution. That is a matter that is in the hands of the President, he is acting under the current Constitution, as we are speaking there is still a Constitution that is in place at the moment and if he decides to dissolve Parliament and call elections he will be asking legally even under the current Constitution. So what we are saying is that, we do hope that the President will not dissolve Parliament before we enact this Constitution. We do hope that the President will listen to what the Kenyans want about holding elections under the current Constitution but we really do not have any control over that. I hope that answers your question.

**Nabwire Nobert:** I have a question. Why is it that the Commission feels that it is only this Parliament which can enact this

Constitution what about if the new Parliament comes in, can it not do a better job than this one we are having? I heard the Chairman commenting that elections should be postponed, commenting on KBC recently during a programme on Sunday but I am still questioning. Is it only this Parliament which can really do a better job to enact this, can't we go for elections because I feel that when we read this new Constitution it is not comprehensive, it needs a lot of interpretation and understanding.

**Esther Walya:** .....draft in the current Parliament but you will also agree with me that those sentiments are not necessarily from the Commission. You have put the Commission together with politicians that is why I would like us to understand the Commission independent from even views of Kenyans. There are Kenyans who believe that this is not the only Parliament that can do a good job and there are Kenyans who feel that we should get a new Constitution in place in a hurry. I will not react to that because I believe does not entirely carry that kind of sentiments but it will be good if you will be there on Friday and probably ask it as a question to Professor Ghai but I believe that we cannot take blame for all the rumour about the Constitutional Review Process and elections for now. Let us keep ourselves or let's get focused on the contents of the draft bill other than the political move.

I will assume that for now we have exhausted our debate and that probably you will be available for other forums where you would even get different panelists from the Commission. If we have no other business, I will ask you to access all the materials that we have here today especially what has to do with Langata Constituency Summary and extra copies of the draft. We have arranged for the office that was used for the registration of voters at the DO's place so that people in Langata can access their material from there. The other alternative was to go all the way to the documentation centre at Waithaka which was felt to be too far away from you. Somebody will man a room there that will have several copies of these and copies of the draft and if you have any sentiments, any proposals to make before the National Constitutional Conference is convened then you will deliver them there.

Can somebody pray for us so that we close the meeting?

**Speaker:** ...(Inaudible)

**Esther Walya:** Yes you can get some copies of the draft from the main office if you are close to town but probably what you might get is something that is not in the newspaper form unless we have more copies, you may get something that is more bulky.

Since the audience has nobody who can pray I believe at least Regina is willing to pray for us and leave you with some blessings as we leave for the office.

**Prayer:**

