

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report of

**DISSEMINATION OF REPORT & DRAFT BILL, STAREHE
CONSTITUENCY HELD AT KARIAKOR SOCIAL HALL**

ON



9TH OCTOBER, 2002

DISSEMINATION OF REPORT & DRAFT BILL STAREHE CONSTITUENCY HELD AT KARIAKOR
SOCIAL HALL ON 9TH OCTOBER 2002

Present:

1. Prof. Yash Pal Ghai
2. Catherine Rimberia - District Coordinator. .
3. Achieng Olende - P.O.
4. Gilbert Amoke - Asst. Programme officer
5. Hellen Kanyora - Verbatim Recorder

Meeting was called to order at 10.50 a.m. with prayer and Catherine chairing.

Catherine Rimberia: I want to call the meeting to order, so if there are some of us outside please join us. Now, we will start the way we are and hope that the rest will join us, so I will call one of you to start the meeting with a word of prayer and then after that I will tell you how we are going to do. So let me have one of us leading us in a word of prayer.

Speaker: Let us pray, Father in the name of Jesus Christ, we come again this time my Father. Lord we would like to thank you and uplift your name because you are Almighty Father. My Father, God we want to thank you for the gift of life you have given unto us Father. We know it is not for granted that we are alive my Father but it has taken thy grace and thy mercies for us to be alive Lord. That's why we give you all glory and honour Father. This time oh my Father, I want to repent on behalf of each and every soul under this roof Father, Father you forgive each and every person my Father. This time oh my Father, Lord I want to present the activities of this day before you oh my Father so that you can be there to guide us Father and protect us in each and everything oh my Father. Lord, until the end of this meeting Father we shall not forget to thank you oh my God. And in the name of Jesus Christ I do pray believing and trusting. Amen.

Catherine Rimberia: Okay, so I just want to welcome you to this gathering and before we start I think we will start with the introduction so that we are together as we start. We know who is who and as we start we will be together. So first of all I would ask the staff from the Constitution of Kenya Review Commission to introduce themselves and then we will move on to the 3C members who represented Starehe and then the others will follow. So start from the CKRC please introduce yourselves.

Gilbert Amoke: Habari zenu? Majina yangu ni Gilbert Amoke

Achieng Olende: Good morning? I'm Achieng Olende.

Helen Kanyora: Habari zenu? My name is Helen Kanyora.

Catherine Rimberia: Okay. My name is Catherine Rimberia, I don't know where to introduce myself as because I'm still with the CKRC and I'm also part of you, I've been with you in the field. Now some of you have worked with me in the field, I'm the coordinator for Starehe/ Westlands and I'm sure I've really met most of you. So, I'm Catherine Rimberia, the District Coordinator for Starehe/Westlands. Now, I will ask the 3Cs members, the people that have been representing you in the constitution constituency committee to introduce themselves.

Mariam Wanjiru: Hamjambo wote? Kwa jina naitwa Mariam Wanjiru.

Collins Obonyo: Good morning. My names are Collins Obonyo, I'm the chairman of 3Cs Starehe. Asante.

Mrs. Josephine Owilo: Hamjambo wote? Mimi naitwa Mrs. Josephine Owilo, mimi nasimamia women organization. Asanteni.

Catherine Rimberia: Okay, these are not the only members, they were many but the others are still on the way coming, as they come we will introduce them. So I will ask one of your staff Dan to move the mic around so that we hear the names of the others.

Joshua Ajele: Hamjambo? Kwa jina naitwa Joshua Ajele, I'm from Westlands constituency.

Rodha Gicheru: I'm Rodha Gicheru from Starehe.

Joseph Kamau: Joseph Kamau from Starehe.

Heho Kariuki: Naitwa Heho Kariuki. Ninaishi hapa kwa Kariakor flats.

Paul Mutua: Paul Mutua, natoka Starehe, upande wa Eastleigh.

Josheph Makanda: I'm Joseph Makanda from Lang'ata constituency.

Augustine Wambua: Okay, I'm Augustine Wambua from Starehe.

Patrick Mwesi: I'm Patrick Mwesi from Starehe.

Evan Macharia: I'm Evan Macharia from Starehe.

Reuben Mutua: I'm Reuben Mutua from Kasarani.

Edwin Mutai: My name is Edwin Mutai, natoka hapa mtaa wa Huruma Starehe.

Zakayo Pius: My name is Zakayo Pius from Shauri Moyo.

Noah Singa: Good morning? I'm Noah Singa from Shauri Moyo.

Godfrey Omwacha: I'm Godfrey Omwacha from Shauri Moyo.

Bob Matolo: Naitwa Bob Matolo kutoka hapa Ziwani.

Catherine Rimberia: Okay, thank you very much for the introduction. Now because we need to walk together in this particular session, now our programme is headed Dissemination of the Reports and the Draft Bill. That is the reason why we are here, in a short while I will explain why we called you here. I know there are a lot of questions that you will have to answer and we will answer them. But first of all I want to thank you for coming for this session. I know you've been with us a number of times when we have called you in the field when we did hold our public hearings. We called you and you came and even now we thank you for coming. So do not be tired as this critical moment when we have given you a Draft Bill and we want you really to understand what is contained in that Draft Bill. So thank you very much for coming and your coming really shows the importance that you attach to the review process. So we have a programme, I can see our chairman is coming. Okay, just come, just get seated. Now Professor you have just come in when we have just finished with the introductions, we have just began the meeting and maybe before I move on I will ask you to introduce yourself so that the members of Starehe get to know you.

Professor Yash Pal Ghai: Well, I'm sorry I'm little late. I was just told that there was nobody here at ten, so I allowed some time for people to come. And I'm glad to see you here and to discuss with you the draft proposals that will help the constitution. I don't want to interfere with the programme that you have planned. I will be happy to say a few words about, our approach to the making of the constitution and some of the main recommendations we have made. So why don't you conduct the meeting as you had planned.

Catherine Rimberia: Okay, I was saying that we will tell you in a moment the purpose of us calling you here. Now we came to you and we collected views from you and you gave us views, I remember we were here in the last hearing. We also did hold hearings in Mathare Polytechnic, and also at around the end of December, early January, we did have some hearings in Charter Hall. So you've given us your views but we want to get back to you to tell you what happened to your views. So that is one of the most important reasons why we have called you here.

Now, in front of you I'm sure you have a document like this one. If you don't have there are some at the back there. You can pick. Now, your views were used to produce this document here, I'm sure Professor will be willing to talk about it some time later but for us really to understand this document, we also have a report that you will have to read together with this document. And for those of you in Starehe, you all know that our documentation centre is located at Macmillan library and that report, I've put it in the library there, so any time you come, even when my office is closed, you should ask at the reception down, I'm sure you know the structure of Macmillan library, down at the reception, ask and it will be provided to you, you have to read it there and return it unless you want to make copies then we can allow you to make copies. But the report for this for Starehe is there and if you want to read the report in order for you because there are some things you have a lot of questions on this draft bill, then for better understanding you can read that report. So we will go through today's programme as we had arranged only that I don't know where Professor you would want to talk.

Professor Yash Pal Ghai: I'm glad to see the way in which we have planned our work and produced two documents, we produced a report of the work of the Commission, where we discussed the Review Act and the goals of review which are set out in the Review Act and we discuss the meetings we had with the public including meetings with groups like yourselves and we analysed the views that had been given to us. As you know we received very large number of recommendations from the public, we had about 35 thousand memorandum, many of them were prepared by organizations with large membership, political parties, trade unions, women's groups, professional groups and many other groups presented submissions on behalf of the members, and so we can say that in this process, millions of Kenyans have spoken to us. We have taken the views expressed to us very seriously and if you read our report and if you read the draft bill I hope you will agree with me that the views that were expressed to us by the people have been reflected in our report and in our recommendations. That is why we have called our report "The People's Choice" because we have tried to reflect the views that you gave us.

Now, in order to understand our proposals you will need to read two documents, one is the report called Short Version and copies are available in English and Kiswahili. The issue that report came out when we were in Mombasa and then a week later we published the draft bill which I see you are holding in your hand, which contains the details of our recommendations and it is written in the language of a constitution so that if the national constitutional Conference adopt it with or without amendments, that is broadly how the constitution will look. This document has also been translated into Kiswahili and the Swahili version will appear in the Taifa Leo on Friday. The copies I believe are available from our offices.

Having produced this report we have 30 days from the time the draft bill was published last week in which to debate the recommendations we have made before the National Constitutional Conference will be called. The 30 days run out the 6th, we have a meeting of the Conference to start on the 28th of October. So we are fairly close to the period and we want to make the best use of this period before the Conference to provide opportunities for Kenyans to discuss and to criticize our report. We have tried to do the best we could in our report and draft bill but we believe that with your assistance and your comments, we can improve it even more. So we don't believe that you have to accept everything we have proposed, these are our suggestions that we want Kenyans to discuss and debate and if you think we have got something wrong or if you think there is a way in which what we have proposed can be improved, we shall be very glad if you tell us so. All the views that we are receiving we shall summarize and present those to the Constitutional Conference so that they would also become aware of what the people have been saying about our report.

The Constitution Conference itself we think will probably last for about 4 weeks, we will have a short period of a pre-conference meeting when we shall introduce the delegates to the rules or procedures as well as the draft constitution. Maybe three day meeting so that by the time we start our formal hearings all the delegates will be familiar with the rules or procedure and the main proposals. If we are able indeed to finish the work of the Conference in 4 weeks, we will be able to take the draft bill as a mandate to parliament and parliament can make the constitution adopted within a week or so. So therefore we hope that by the end of or before Jamhuri day or about that time the constitution can become law. And if this is

so, it will still be possible to have elections under the new constitution. The Commission does not want any extension of parliament or extension of the president but under the present constitution, elections must be held within three months of the parliament being dissolved. The parliament will continue until the 2nd or 3rd of February 2003 and we need to have elections within 3 months and the Commission has recommended that elections be held in March so that people have time to study the final constitution and to understand the laws for elections. It will be possible that we will have a new electoral system and we want the people to have time and opportunity to understand the new election rules so they can use their vote sensibly and the correct way. But we believe that if we have elections in March, it will give the public time to study, it will give the political parties time for nominations and for the election campaigns and it will give the Electoral Commission sufficient time to make the necessary arrangements.

But of course whether the elections take place in March or some other times, is not something that the Commission can determine. All we can do is make a recommendation and we have made that recommendation. That recommendation was made after consultation with political parties and religious communities and at that time everybody felt that we should have elections in March; but it may be that because of the changing political scene, we will have dissolution of parliament before February in which case elections will have to be held under the old constitution perhaps and will be held before or during December. If that were to happen, and this is the choice of the president, because the only way parliament can be dissolved before February is if the president does that and he has said as you know that he will do so. So after Kasarani II when KANU has nominated a candidate, the president might decide to dissolve. I don't know if he would but he has said that he wants elections by December and if we have to have elections in December could not in my view have it under the present constitution. It may just be possible but it will not give enough time to people to understand. So let us all hope that the president does not dissolve parliament and we have a chance to adopt the constitution and have elections under it.

Now to come to the actual draft constitution, I don't want to say very much because my colleagues had prepared notes and they will speak about that but I would like to just make a few comments, the first comment is I am repeating what I said we have examined the views that Kenyans gave us and we have tried to base our recommendations on what you have told us. We haven't followed everything of course the people told us but we found out that the views of the people in different parts of the country were quite similar. So it seems to us that Kenyans, whether they are living in Nairobi or Central or North East or Western, or Nyanza, or Rift Valley, they all seem to have very similar views as to what was wrong with the present constitution and as to what reforms should be made. These recommendations are also quite similar to the Review Act which had also set out some goals of review, the Act said that we must have a democratic constitution. People must participate in the work of government, that we must protect human rights, that we must redistribute resources and use resources in such a way that the basic needs of all Kenyans are met. So we also said the power should be given to people through devolution, that there is too much power concentrated in Nairobi and in one person the president and these powers must be shared all over the country. So we were in a good position that the views of the people coincided with the views that parliament had given us in the Review Act. And so we were able to make quite fast progress in our work because of this consensus among the people.

The second point I want to make is that we considered, after we had examined your views that we needed a completely new constitution. We considered that we could improve the present one but in the end we decided we needed a completely new constitution and that is what we have proposed. So there are many new institutions, new values, and new procedures in our draft recommendation.

Thirdly let me say something about the principle positions, but before that let me say that we have tried to write, both our report and our recommendations in simple language. Maybe it is still not simple enough, maybe there are still technical terms but what we will do over the next few days is to simplify it even more so that all Kenyans will be able to understand the constitution just by reading it and you don't need to have lawyers to explain it to you, you will be able to understand it just by reading.

We have recommended a different system of government from the present one, at the moment we have essentially a system which we can call presidential where the powers having one person and this means we have a weak parliament and we have a weak judiciary. We have provided for the powers of government to be divided between the president who will be elected by the people and the Prime Minister who will be elected by parliament. The role of the president will be to promote national unity and to encourage different communities to live in peace and harmony, to protect the security of the country. And the second main work of the president will be to protect the constitution because the constitution gives power to people, it sets up independent institutions and the government may be tempted to take away these powers. So the function of the president is to make sure that the constitution we adopt, is protected and he or she will take steps necessary to make sure the judiciary is independent, that the judiciary has enough resources, that the parliament is able to work effectively, and so on and so forth. We believe these are very important roles and we need someone to be authority of the people to be able to fulfill these functions.

But the principle powers of government will be with the Prime Minister and the cabinet. We have recommended that except for the Prime Minister and two deputy Prime Ministers, all the other ministers will come from outside parliament and we want these people to be people with suitable qualifications for the ministries that they have been given and we expect these ministers to work full time as ministers. At the moment there is a conflict between the role that the minister plays as the manager of department of government and as the constituency member and we want to ensure that ministers don't have this conflict, they can look at the national interest all the time and not the interest of the constituency. We often hear that ministers have put all development money in their constituency or their district and this has not been distributed to the country. So we want ministers who are both competent, qualified, experienced, and who have the national interest uppermost in their minds. Now some politicians will not like it and already some parties have said they think that all the ministers should also be Members of Parliament but we have given out reasons why we believe that ministers should be drawn from outside parliament but of course they will be accountable to parliament and parliament will be able to remove them if they are not doing their job properly.

So this is the system of the Executive of the government and we have said as we say in relation to other public officers, that all Members of Parliament and all ministers must accept certain conditions before they can take office. And these conditions are set out in a document we call 'The Leadership Code'. The leadership code will bind all councillors, Members of Parliament, ministers, public servants, heads of parastatals, or parastatal employees. And the purpose of the leadership code is to eliminate conflict between public responsibilities and private interests and they will all have to declare how much money they have and how they got this money, they will have to do this every year so we can keep track of how much money they are accumulating and where the money has come from. There are other requirements in the leadership code also which will make efficiency more, or people with more integrity, high moral standards, and highly education and professional qualifications.

Then for the parliament we have recommended that there should be two chambers of parliament, one for national affairs, one to represent districts, I will explain in a minute that we have provided for the devolution of power from capital and from the national government to district governments and to village governments and we want the second chamber to protect these arrangements and to represent the interests of the districts and to make sure that they receive the money they are entitled to receive and they are able to exercise the powers that are given to them.

I will speak more about devolution of the transfer of powers in a minute but let me talk about the parliament. Parliament will be elected, both the Lower House which we call the National Assembly and the Upper House which we call the National Council, MPs will have to have form four education at least, and relevant experience. MPs will be expected to work full time as MPs so they will not be allowed to have other jobs and they will have to attend parliament regularly and go back to the constituencies regularly to explain to people what is happening, what policies are being made, and to listen to their requests. We have tried to provide new authority, powers and resources for parliament so that parliament can perform its function effectively. The functions of parliament are to supervise the work of government and they will be able to pass a vote of no confidence in which case a new government will have to be formed.

Second function of the parliament is to make laws. Upto now most of the laws are proposed by government and they are passed by parliament. Parliament itself doesn't have too much role in the making of proposals for law or actually in changing the law. We want parliament to be very active in the process of law making and policy making and so we have suggested that Members of Parliament can introduce bills or committees of parliament can introduce bills, even people can write their own draft bill and go to parliament and ask that bill to be introduced. So people can also play a role in starting the process of law making.

Next function of parliament is to keep close supervision of the way in which the money is raised through taxes and the way in which the money is spent. We want to strengthen the role of parliament in determining how money should be spent and not just leave it to government. So we have changed the rules under which parliament will get and the members will get more authority

to allocate resources than at the moment. And we see a close partnership between parliament and the people. It is not enough that you vote, parliamentarians want once every five years, we believe that parliamentarians should continue to work with the people throughout the 5 years period of parliament and we have suggested various ways in which this can be done. So we see under the new constitution a much more active parliament than parliament has been so far in our country and we hope the parliament will have enough resources, enough researches to be able to do their job properly.

As for the judiciary is concerned, we have not made very many changes because we believe the present rules are not so bad. We have tried to make the system of the appointment of judges abit more open, more transparent. We have now recommended a Judicial Service Commission which makes recommendations on the appointment of judges to be really independent. At the moment the Judicial Service Commission really is appointed and controlled by the president. In our proposals the president will not be able to control the Judicial Service Commission which will be independent and which will represent different interest groups like the Law Society and even the general public and we believe this way we will get a better judiciary, a more competent judiciary and a more honest judiciary.

We have made a number of technical improvements, the system of courts and we have provided for a system whereby people will have easy access to courts and there will be an office called the office of the public defender, which will provide legal assistance to people who do not have the money to go to courts. We have also provided that people can complain to the Judicial Service Commission against judges if they find that they are not competent or they are not honest. And it will be the duty of the of the Judicial Service Commission to investigate these allegations and if they are found to be justified then they will start a procedure for the removal of judges. So we believe that this new system will help to ensure that we only have judges who are honest and who know their job.

We have made some recommendations about the present judges and we have recommended that the retirement age should be reduced from 74 to 65, in fact we have recommended 65 as the retirement age for all public officers including the judiciary. Some of the judges might well have to retire because of that age, others will be encouraged to go because they will get especially a good pension system, but if they refuse to go then allegations which have been made against the judges, with the Law Society, or the Attorney General, or the (inaudible) will be investigated. So far, many many complaints have been made but they have not been investigated. So under those proposals they will be investigated and if it is found that they have indeed received bribes then they will have to go without the benefit of pensions and so on.

And finally the new judges as well as the old judges will have to sign the leadership code declaration which will include information about their wealth and how they have obtained the wealth. And we hope that these procedures and steps will help us to get rid of the really craft and incompetent judges and we can start slowly the work of creating a truly independent and a truly honest judiciary.

Now let me talk about what we call devolution. Devolution means the transfer of powers of government from the centers, from Nairobi, to provinces and to districts. Our system of government is very centralized. All power is in Nairobi and it is in the hands of one person. We want power to be shared by people everywhere, in Nairobi, in the provinces, in the districts, in the locations, and in the villages. So we have said that the power of government should be given to mostly districts but also some power should go down to the village and people in the village should be able to elect their own committee, should be able to decide matters of concern to the village and then at the location levels there will be a council which will look at council and location matters and then we will get to districts which will have the elected council and the elected government, elected administrators. And most of the powers and the money will be transferred to districts, but there will be some slight role for the provinces on coordination, at the provincial level and to assist the district governments with training and so on.

So we think basically power will go to the districts which is not too large geographically so people can go to the district headquarters and take part in activities there. People know the system of districts and so it will be easier to introduce power at the district level. The districts will get a fair amount of powers, we want designation government only to have those powers which are essential for the public national welfare. All the powers must go to the districts and from the districts to locations and villages. And this again is some recommendation people are not always very happy about or at least civil servants and ministers are not happy about because it means taking power away from them.

And so we want lots of decisions, decisions about schools and roads and crops and coffee and so on and clinics and primary schools, secondary schools to be made by the people in the district and they decide how they want to spend the money they are getting, how much to spend on education, how much to spend on health, or agriculture, medicine, roads and so on. So we want people to take control of their own lives and their own destiny.

The other provisions which I want to maybe briefly mention one is human rights, human rights have not been respected by the two presidents that we have had and we are trying to strengthen the system for the protection of rights. We also said the people should be assisted so that they have enough food, that children have education, they have medicine when they become ill. They have reasonable shelter, they don't have to sleep on the streets, they have housing, they can sleep under cover and so we have made a number of proposals of this kind which are part of the rights of people and some people have said you probably know the name of Professor Kibwana, he has said that the Bill of Rights we have is the best in the world and he of course is a Comparative Constitutional professor and he knows of many constitutions, so this praise from him is very high praise and we are very proud of our chapters on human rights.

We also have a chapter on land, and we have not said many things on land because as you know there is a Commission on land which is chaired by Mr. Charles Njonjo and they haven't finished their work but they are going to finish their work soon and give their recommendations to the president. We believe that their recommendations should be considered seriously so we have not made many detailed recommendations on land. What we have done is to state some principles, broad principles, and

we want the land to be invested, not in the president, so that he can give it away to his friends but invested in a new body which we call the Lands Commission. It will hold the land, it will keep the land of behalf of the people and it will ensure a better management, good management of land and related resources like minerals. And this body will be independent and it will be required to look after the landless people who don't have land, of people who don't have housing, to look to a system to acquire some housing, to find proper titles for those who are squatters now, we were told in Mombasa that much of the land in Mombasa and the Coastal strip is owned by some Arabs who live in Dubai or Yemen and they have had this land for hundreds of years, they have not lived among us and they get rent every month. So people who work on the land, will live there, don't have any proper titles. And there are other parts of the country too, where people live on land where they have no titles and many of you told us that we must have a system of security, of titles, for they can be kicked out and we have recommended this Commission and Land Commission should provide ways of giving titles to people who don't have titles so the land can't be taken away from them. We have said that the president cannot give public land any more, land can only be given by the Commission. If there is a good reason, if the land has been developed and if proper money has been paid for that land. We have also said that the land Commission should investigate allegations of land grabbing that the people's land has been taken by force, they should be able to make their complaint and that complaint will be investigated by this Commission. So we want to try to give land back to people who lost it through illegal means or through force, or by threats, and we have said this Commission must be established within a year of the coming into effect of the constitution and that the necessary laws must be made by two years. So we have looked at the land issue, we have stated to have principles under which land can be held either under statutory law, English type of law, or by the community itself, or by the government. There are three different ways in which land can be held and we want to involve people.

Now, there are some other provisions too but may be, those are technical or those are not so important. We have a chapter dealing with financial regulation and we want to make sure that government money is not stolen, it is properly accounted for, it is properly spent. And then we have provisions which I had mentioned before on leadership code to ensure that only people with necessary skills and honesty are elected or appointed to public office. So we have set up a committee called the committee on ethics and integrity, it will be the work of this committee to ensure that leaders exactly follow the conditions in the leadership code and we have given it significant powers including the power to prosecute if that becomes necessary.

And lastly I would say that we have provided a number of independent institutions so that office holders of those offices be given direction by the government, they will act in their own judgement with a national interest. So we have an independent Electoral Commission, an independent Attorney General, an independent director of prosecutions, independent Commission for money and so on. So the idea is to take away from politicians some kind of powers which can be abused and we want those powers to be given to holders of public offices, so they are not aligned to any party and they can discharge functions honestly. And these are important functions to ensure we have genuinely elected government with genuinely independent judges and so on. So these Commissions play an important role, we have given enough powers and resources so they can maintain the values and the institutions of government.

And let me end by saying that what we have done is to make a number of recommendations and we believe ourselves that if these recommendations are adopted and implemented, we will have a much better system of government than we have today, that human rights will improve, that our economy will also improve and people will be in charge of their own lives again.

But we have also to remind you that the constitution is really a piece of paper as you can see what you are holding is a piece of paper and it will not by itself take life. Take as you plant a tree, you have to look out for the tree, you have to water it everyday, you have to take out the weeds, you have to protect it from animals, and you really have to nurture it. Similarly with the constitution, you have to nurture the constitution, you have to protect it, you have to fight for it if that becomes necessary.

And so ultimately whether the constitution is adopted, whether it is successful, whether it is implemented, depends on the people. You have the sovereignty in you, we have said in the constitution that the sovereignty of the republic of Kenya belongs to the people of Kenya. So your responsibility as the sovereign of the country is to work with and through the constitution to protect it from its enemies and unless people begin to take active role part in public affairs, hold meetings, discuss policies, choose good leaders, and we have given the people what you asked us to do, we have given the power to dismiss your MPs.. If you are not happy with your MP you feel that he or she no longer comes to see you, to listen to you, does not go to parliament, the offer there is no quorum in parliament, because the MPs are not there, if they are not doing the job well, not serving you, you can remove them. Again this is something that politicians won't like but you told us you wanted the power, and I think you should have the power and we have recommended it.

So whether our constitution is successful or not depends on how much part you take in the remaining part of the process and after that. And many times people tell us you must do something, or the government must do something, but they feel they cant do anything themselves but in the proposals we have made, people will have a lot of power and a lot of influence. And you have to exercise that, and you have to educate yourself about public policies, about system of voting, about the background of different candidates at elections and then use your power sensibly. And if you do that I believe you will have a good political system, a good social system, and life will improve, because if you do not exercise that power properly, you continue to vote for people who give you a few hundred shillings before the elections, but they are themselves crooks, we will not get a better system.

So ultimately it all depends on you and we as a Commission have basically fulfilled our role which was to listen to people, to promote debate, and then to make recommendations. We have done that. Now we don't have much power left, power is with you and power is with the National Constitution Conference and you must take an active part if you like these recommendations, defend them, speak out in their support, if you don't like them, suggest what changes should be made and we will send those views to the National Constitutional Conference.

Well, I'm grateful to you for listening to me, I know its very boring to listen to someone without any charts, or without any diagrams, but you have been very patient and I thank you for that and I'm sure my colleagues are much better at explaining and they will do so and if you want explanations in Kiswahili, I'm sure they will be able to do so. Thank you very much. *(Clapping)*.

Catherine Rimberia: Thank you very much Professor, I'm sure you have now the information at your fingertips, now he is willing to stay with us for a few questions. So if you have questions you can now direct them to him. Thank you. Okay, we will take a number and then he can respond to them, we can take about 5. Now, there are instructions to be followed please because we are recording the proceedings, once you have the mic say your name and then go straight on to your question.

Mutua Paul: Thank you. My names are Mutua Paul from Eastleigh and I have two questions. One is about the current constitution, the major problem is that most of the Kenyans don't know it, they don't know the contents of the current constitution. If I may ask, when we are doing the new constitution, can we put a clause that constitution should be taught from the primary level to create awareness? It should be mandatory for every Kenyan from primary level to know what constitution, what is the content such that at least you are aware of what is governing you.

Secondly it's about the Conference. Initially when we had the constitutional review act, there were good structures which represented at least people from the grassroot level but now I'm not sure whether all people will be represented directly or through proxy. I'm saying so because like now I'm in Starehe constituency, I'm not sure whether I will be represented, I will be heard maybe to ask a question, or to make a correction or clarification. Now, I would like to know what's the point as at now? How are we represented because initially we felt we were represented through the district forums, then there was the national convention, at least those according to me we were represented. Now, what is the position as at now? Are we represented directly or through proxy? Thank you very much.

Joseph Heho Kariuki: My names are Joseph Heho Kariuki. First of all Mr. Chairman, I would like to congratulate you and your Commission for a job well done although through very difficulty circumstances. In fact a lot of us here wish that they had a tenth of your patience the way you have handled this issue. Now, a few observations or questions.

1. I can see in the draft constitution the issue of devolution of power but when we come to clause 219, there is no requirement for minimum qualifications of education for the people who are going to serve in the district government. It is probably necessary Mr. Chairman that is looked into. There is the requirement of a Member of Parliament to have an O' level education and for the president to have at least a degree. I thought Mr. Chairman that the requirement of an O' level for a Member of Parliament is probably on the lower side and it could be raised to probably a degree.
2. Also on clause 164 when the office of the president has fallen vacant, an election has to be held within 30 days. Mr. Chairman I think that is probably too short a period and it could be increased to 60 days to enable the Electoral

Commission maybe organize for elections properly.

3. Then you have informed us that an election can be held in March and we will still be within the present constitution. And knowing that the term of the president expires if I'm not wrong on 4th of January then it will mean that that has to be extended or something has got to be done, the presidency itself, not the parliament because the parliament goes up to February.
4. Then there is also the issue of the human rights which you have mentioned. There was a very very disturbing news item last night where some two brothers have been held in custody for seven and a half years without their case being heard in a court of law, and surely 7 years to be in remand prison I think it is very bad. Is the constitution that we are going to have going to kind of compensate these kinds of injustices to these people Mr. Chairman? Thank you very much.

Asman Mwaura: Asante sana mwenyekiti Professor Ghai na wenzako. Mimi ni Asman Mwaura na kwanza nawashukuru kwa hii kazi mumeifanyia Wakenya kwa jumla kwa kuwaletea hii katiba mpya kwani ni jambo tulikuwa tunangoja kwa hamu sana. Mimi bila kupoteza wakati nitaingia direct katika hiki kifungo ambacho kinahusika na walemavu. Mpangilio wenyewe ni mzuri sana lakini pia kuna jambo moja ama mbili tungetaka lishughulikiwe na pia katika bill iliokuwa published tarehe nne June mwaka huu ambayo inaitwa proposed bill for disabled ambayo tunaisubiri week yoyoto ijayo. Ningependa hii Commission iweze ku-adopt mambo fulani kati ya ile sababu kama tunavyojua wakati huu ni mchache na wabunge walikuwa washughulikie hili tatizo kuanzia wiki ijayo lakini sababu ya haya mambo ya uchaguzi na nini na nini, naona wakati ni mdogo sana. Ningeliza hii kamati kama ingeweza kama haitaweza kupitishwa, katika fungu No. 39 iongezwe sehemu kadha wa kadha katika hii bill ambayo inahusika na walemavu. Asante sana.

Speaker: Thank you very much the chairman and the Commissioners and wananchi. Mr. Chairman there is only one area that I would like to be enlightened because comparing the old system, the provincial administration we have got a lot of power at location, district and at sub location level. This was mainly to create a climate whereby environment for security, but I can see here although I have not gone through seriously, there is no much mention about security at locational level when you talk about the provincial government. So I don't know whether we are going to have these people employed to take the security of the wananchi, to create an environment for production of security because in the old constitution we had this for the askaris from the police administration but comparing this here I can see there is no mention of that. So are we going go have these people employed to make sure that wananchi are going to carry on their business of productivity without fear? Thank you.

Opt Matolo: Thank you very much. My name is Opt Matolo, just from Ziwani. First I would like to congratulate the Commission and the work that you have done because it is a great job and also the patience even as my colleague has said, you have had great patience. We thank you for that. I have two main concerns.

My first concern is this: We are a nation, Kenya is one nation. As much as we have different tribes, we have different religious groupings, we have people who have different persuasions in one way or the other, we should be ruled by one law such that in

this draft constitution there is in your judicial and legal system, I'm concerned about the Kadhi's Court because it tends to isolate the Muslims to be a special group and to be given special reference. So it like puts the rest of us in a different set-up so that Muslims will be treated in a different way, that the rest of us will have to follow or will be judged by that single judicial system. We should all align to one law because we are one country and we are one people, if a Muslim breaks the law, he should be treated as a Kenyan, if a Christian or a Hindu or whoever breaks this same law, he should be treated by the same measure just as any other person in Kenya.

The other part of concern to me is in the criminal section. I haven't seen it outlined here but I would just like to make a recommendation like there are different cases and different crimes which an individual can commit within a country. I would like to classify them, they are major crimes like robbery and murder and those capital crimes. But there are very petty crimes like let's say fighting, assault, just the normal assault within a society, two people disagree and they fight and they end up disagreeing and they go to court. One is convicted, I consider this to be a very minor case, there is this petty theft like a child has stolen a mango or a neighbour's hen and they go to court and he is sentenced and he still has the same criminal records just as the person who has murdered.

Now you find that when you go to get a certificate of reference from the police, a certificate of good conduct, your history is taken back 20 or 30 years back, you fought with a classmate and you were taken to court, you cannot be recommended, you cannot get a certificate of good conduct or anything. My suggestion is this, that a track record of a person should be followed that within a period of 10 years, if this same person who did a very petty crime and he has lived a clean and spotless life and worthy of recommendation, those old records, petty records should be cleared so that this person can continue and can aspire to get recommendations and also to make greater contributions to the society rather than these simple things tie him down so that he cannot get even a recommendation to serve in other capacities. That is my other recommendation. Thank you very much.

John Otieno: Thank you Mr. Commissioner, my name is John Otieno. My question touches on two areas. One is on leadership, and the other one is on corruption. What I understand is in corruption when a country has been corrupt for quite a long time, the citizens, or the leaders, tend to have what I would term as dead conscious, I mean colacious conscious in such a way that when they handle or something to do with corruption, they don't feel that it is corruption. Let us use an analogy which I can give, something like sitting on a table is not a good thing in a public place. Let us say the standard of corruption which our country has reached, it has come to such a situation where people don't feel that they are doing a wrong thing. In what way have you come up with to revive the conscious of the people so when they do such a thing they will have some guilty conscious because the law itself only will not revive their conscious? That is one area.

And the second area is on leadership. For quite a long time we have not had time to know, our leaders have been pushing, there has been a lot of hypocrisy, you cannot know a good leader or a bad leader, what has been put forward is let us say

money. So if somebody is pouring a lot of money, that money will confuse you that this person is a generous person. Only when he goes to parliament we regret that he is not doing the things you were expecting him to do. On this I'm asking this question: In nature, there are two types of people, what I would term, a biophilia and a biophilia is somebody who is interested in nurturing life, a biophilia, and there is an ichrophilia, somebody who is just interested in deaths and destruction. So in Africa especially you will find that somebody ascends to the top seat only that people to regret that this is not the right person. What have you done so that people can know a quality leader? That this is a quality leader, so that you can put some ... let's say if somebody wants to go you can market good leaders such that a good leader is supposed to have such and such a quality because we have stayed for quite a long time without electing. We can know that a quality of a good leader should be this and this because we are just going to vote somebody because he pouring money only to regret that this is not the right person. What have you done on that area so that we can have time to elect the right person? Thank you.

Catherine Rimberia: Thank you very much, I think we will have the chairman

Professor Yash Ghai: Thank you for those questions. I will try ... The comments of them, some of your questions, are really comments and we are grateful for your comments.

First the question about teaching about the constitution in schools, I think that's an excellent idea, not many people know what the present constitution is and if you read the present constitution it is very difficult to understand that. I'm a constitutional lawyer, I wrote on a book on Kenya constitution, I've studied the present constitution for many years, but even now when I read it I find it difficult to understand it fully. So the first thing we have done is to write the constitution in simple language. As I said we will try to simplify even further before it comes law and of course we shall have a version in Swahili as well and I'm hoping that once we have the final constitution may be by the end of year if we are lucky, then we would be able to range the translation into other Kenya languages as well. So just as you can read the Bible in many languages today, you should be able to read the constitution in many languages.

We will also try at some point to provide summaries of the constitution, we already produced one document which I don't think you have, it's called the draft constitution at a glance, we should be publishing this shortly, in very simple form, it says what are the main provisions and we will translate that one to Kiswahili as well and that can be used when you start meeting yourselves and your own groups, your own friends, this might help you to understand. But I do believe that the constitution should be taught in schools, institutions, when adults, grown-ups meet, they also need to know that and religious groups can organize that and the women's groups can organize workshops. So I believe that it is very very important that people know what the constitution says, what their rights are, and how they can protect their rights. Because we are putting in the constitution many institutions and procedures which are to protect people's rights and if people don't know about the institutions they won't be able to protect their rights. For example we are suggesting a commission of human rights to which people can make complaints.

At the moment there is no mechanism whereby you can make a complaint against a civil servant or a minister or a government

agency. You either go to court and its expensive and slow and not very reliable, its not the way. So we are suggesting new institutions where people will complain, we will try to make sure that there is a branch in every district and if you have a complaint against the police, complaint against the military, complaint against the chief, complaint against the registration officer, difficulty in getting ID cards, difficulty in getting a passport, you can go to this body and make a complaint and it will be the responsibility of that body to make investigations and to protect your rights. So it's very important that people know the constitution because only in that way can they make use of these institutions. And so I entirely agree with your point and I hope that teachers and others can prepare materials that can be used in schools and other ways to understand the constitution.

Representation, now at this stage of the process while you have of course the right in meetings like this to give us your views, we may not be able to come back here but you at least live in Nairobi, you know where our headquarters are, you can always drop in your comments there, you know our district coordinators, you can approach them and they will give us your views. When the Conference itself takes place, then the representation will be what you call proxy, what I would call indirect. Every district including Nairobi has elected delegates to the Conference and I believe Nairobi has two delegates, their names will be published, and so you will have time now to come to us but once the Conference starts we will be very busy and in that case I think you should go to your own delegates to give them your views. There are delegates from districts, but there are also Members of Parliament who will be at the Conference, you can talk to your Members of Parliament, in fact I would advise you to talk to your Members of Parliament, if you like the draft constitution, tell your Members of Parliament that you like it and you want them to support it. And then there are people from civil society, church leaders, religious leaders will be there, women leaders will be there, trade unions, NGOs, business community and you can approach them and give them your views and make sure they bring them to the Conference so that that additional will be indirect but you have access to these delegates and you must make your views known. And I hope the delegates and the MPs might come to you after a week at the Conference to give you a progress report and consult with you on your views on what has been discussed.

On the question of the qualifications for members of district government, yes it is good point, we have not finalized our proposals on devolution. If you read the chapter on devolution you will find that it is at the general. We are setting a broad-based report because much of the debate about devolution had been on the basis of provincial government, majimbo type of government and we have done work on that but towards the end of the review period the opinion seemed to shift away from provinces to districts, DP and Narc group of parties had always supported districts, KANU and some others have supported the provinces but KANU changed position in favour of districts but some small functions for the province. So by the time we began to make our recommendations we realized that we had not enough information if the districts is what is going to be the basis. So we have left a check on that, level of generality very broad principles and we have now set up a task force which is going to look at the detailed positions for devolution and we hope that they can prepare our report for the public and for the National Conference in about two week's time. And that committee will take up your suggestions about educational standards and about the questions of funding and so on. There are many details yet to be resolved and we hope we can work with experts and produce a report *end of tape 1*

Tape 2

Professor Yash Ghai: It's a good point and we will consider that.

On the question of elections in March, and whether this means an extension of the office of the President, well, my answer is that it does not extend the term of the president, it is true that the presidential term comes to an end on the 3rd of January but the constitution also says that the president will continue in office until a successor has been appointed. Now there has been discussion as to what he can do during that period, between the time his term officially ends, the 5 years end and before the elections are held and the new person becomes president. This could be a period even after 3 months as you know when the president dies or resigns or whatever, elections must be held within 3 months. So the president does continue and my own view is that he continues with the normal powers of the president. This is in section 9 subsection 3 of the present constitution. So if he says that parliament will be dissolved on the 2nd or 3rd of February, and elections will be held in March, this will not mean extension of president because he can only go on for nearly 3 months. It's just that it has never happened, we've never had proper elections for the president, the president has always been re-elected, so we have not had this situation of a gap as it were. But you remember the last time too when the president's term came to end in December, that is when his term ended when parliament was dissolved but he wasn't re-elected until January or sworn in. Nevertheless he continued to be president. The same rule will apply. I know some people are unhappy about that, but that's what the present constitution says. So if we have elections in March the parliament is dissolved in February, this will not really mean any more powers for the president any longer time than he would have under the present constitution.

Now your case about two brothers, and I'm sorry to hear that, I visited two prisons during our process, I talked to prisoners and I do know and I read them reports of the standing committee on human rights about prison conditions and I know they are appalling. In our report we discussed that and in our recommendations we make some proposals for humane treatment of prisoners.

We also want justice to be speedy. We haven't given any timetable or any in time period in the draft constitution, but we have said that justice must be speedy, people should not be locked up for so many years without a trial. Maybe we should have required that every person arrested must be brought to court within 48 hours and further detention can only be done with the approval of the court. But maybe some constitutions now say that if an accused person, the trial is not finished within lets say 3 months or 6 months of arrest, that person has to be released. You cant keep a person indefinitely and maybe that is something we can consider at the Conference, putting an upper limit after which if you haven't taken a person to court, haven't tried, you just have to release that person. Some people have been When I went to the industrial estate police station, some people have been there for years without a trial and that is ridiculous, that is a denial of justice, you don't treat human beings with dignity if you can drop them like this, and they were treated very badly there, they are not treated as what you could want prisoners who are treated separately from convicted prisoners and so on. So I think we need to look into that and may be we

need to have a time limit after which they must be released.

On the dissolution of parliament I think in relation to the election, someone raised, and what this means for the process. If parliament let me say what happens if parliament is not dissolved and parliament will allow to have its 5 years, it will automatically come to an end on the 2nd of February 2003. Which also means that we will be able to hold the National Constitutional Conference starting on the 28th of October, we should be able to finish the work of that Conference by the last week of November, we can take the Bill as amended by the Conference to parliament, even the last days of November or the 1st week of December, parliament has within 7 days to adopt the constitution. So by middle of December we can have the constitution, and I explained this earlier too.

Now what will happen if parliament is dissolved? Well, it depends when parliament is dissolved. If parliament is dissolved next week after Kasarani 2, then we will not be able to call the Conference. I didn't mention earlier but I had meant to mention that we already have a complete list of the members of the National Constitution Conference. We have had election in every district and we have now 3 delegates from every district, we have identified them, we know who they are, we have their addresses, we shall be in touch with them this week, invite them for the Conference, we have the delegates from the civil society, and we know who they are, we have nominations from parties, then it is the MPs and Commissioners. So we know all the people who will be there and we are going to call the Conference on the 28th, we have booked Bomas of Kenya, we have already made all the arrangements, so everything is now ready for the Conference.

But if the president would dissolve parliament next week, we will not be able to call the Conference because one third of the members of the Conference, Members of Parliament will no longer be Members of Parliament. There will be no MP to invite and it would not be proper to have a Conference with such an important category of members not present. Now if we were to start the Conference from the 28th and the president was to dissolve parliament some time early November, again there will be a problem because we could not continue with the Conference because parliamentarians will no longer be qualified to be members of the Conference because as an MP you are only a member of the Conference if you are was still an MP; if you lose your seat or parliament is dissolved, you are no longer an MP and at this time we cannot continue with our work.

Third assumption, the president dissolves parliament after the Conference has been finished and before parliament has a chance to adopt the constitution, let us say we finish our work by the end of November and the Bill is ready to go to parliament and then he dissolves parliament. Well again this means the constitution won't be in place and when after the elections parliament meets, there will be a new crop, new set of MPs, maybe not many of them will have been at the Conference. The whole idea of where the procedure is established, is that MPs will be sitting in the Conference, they will be taking full part in the debate, they will know what their recommendations are, they will know what the new constitution is, they will be voting for it. So when it goes to parliament they will have debated it all the day for four weeks, and it can be adopted very quickly. But if we have a whole new group of MPs, they will say well, we are not bound by the Conference, we will look at it again, and so that could

take a long time.

And so the final difficulty is this: Parliament has said that the whole process must be concluded by the 3rd of January. The decision was made by a select committee which was adopted by parliament to extend the time for review but only up to 3rd of January. Now if elections are held soon, it will be impossible to complete the process within the extended time, and after 3rd of January there is no legal basis for the process, the process will just finish, will collapse and we can't move forward unless parliament makes a new law, makes a new resolution. So the answer to your question is, if parliament is dissolved what happens? Well it could mean the end of the process and the new government may not have much interest in reform. After all the present constitution is very good for the president, gives him lots of powers, and the new president may say "No, why should I give up my powers? I want to rule 5 years with this constitution" and so we may lose a chance of a new constitution.

The question of provincial administration, well that is again an issue we will need to examine more closely when we have the task force on devolution. But what I think would happen, would be that the functions that are being performed today by provincial administration will be shared between two sets of public servants. Many of the functions will pass to a district council and district administration, elected administration and they will need staff to carry out the functions of the district government, and some of them could take employment there; but they will be accountable to the district, not to the president's office. And some will be absorbed in the government as they are at the moment in the public service because some ministries will need staff and in the provinces because they will have national hospitals, and national schools and agriculture centres and they will need some people. So they will be spread between one set of officials who are working for districts and are accountable to elected people at districts and another who will be attached to different ministries, and some may be could be deployed, I don't know that will depend on the Public Service Commission perhaps. But we will think more about this when we finalize the arrangements for devolution.

Clearly we will have to provide security at local levels and this will become the responsibility, principally of district governments, we want certain powers of police to go to district governments and we want the community to play an important role in policing.

At the moment there is a lot of tension between the police and the community. We want the community and the police to work together to provide security for the people and to protect the properties and their interest. So we have a different image of the police force and we don't call it a police force any more, we don't like the word force, it's a police service because their function is to serve the people. So we will have to think seriously about how we can enhance security of people by making the police part of community not as an alien force coming from somebody else and brutalizing people; we want them to be coming from the same area, be members of the community to be working with the community. How quickly we can put that in place we don't know but we have set out the principles in the draft constitution and we hope they will be endorsed and then we will have to think on how to integrate the police in the community itself so they are not seen as outsiders but seen as members of the community.

On the question of one nation and particularly the role of Kadhi's courts and application of Muslim law. Well there is a historical background to that, you know that up to independence, Kenya consisted of two parts, there was the colony of Kenya, there was the protectorate of Kenya. The protectorate was a ten mile strip along the coast and that land belong to the Sultan of Zanzibar, at that time there was a Sultan of Zanzibar, he was overthrown after independence of Zanzibar but I'm talking of 1962 when they were just getting into independence and the Sultan agreed to hand over that land to Kenya so we would have just one country without a distinction. But in return for giving that land to Kenya, he wanted the Muslim citizens to have the protection of Islamic law and Islamic courts. So this agreement was signed by three governments: by the Madaraka government of Kenya, by the British government, and by the government of Zanzibar and that agreement still binding on us. So we have to honour that agreement and therefore we have Islamic law and we have Muslim court or Kadhi's courts for members of the Muslim community.

Now of course other communities also have their own laws, Hindus have Hindu law, and different Kenyan communities, African communities have their own customary law. So you also have your law, I have my law, Muslims have their law. So that is not discrimination or favouring one particular group. The difference is there, that there are special courts for them, there are no special courts for Hindus, there are no special courts for the indigenous Kenyans, we go to the same courts but they have separate courts and they are saying we have to follow the Quran, it's part of our religion it's not, they say with many of the people, customary law and not religious law, it is a law of the community, it can be changed, whereas Muslim law is law and Quran given to them by God and the Quran says that only Muslim judges can decide Muslim law and so for this reason they asked for Kadhi's court.

Now the Kadhi courts exist in the present constitution as well, this is not something new. What we have done is improve the system because it wasn't working very well and we had many petitions on how to reform Kadhi courts to make them courts. At the moment the Chief Kadhi is also the spiritual leader of Muslims, one day he hears the court, and next day he says Idd will be celebrated on such and such a date and he gives guidance to Muslims. We said it is important to separate the judicial function from the spiritual function, which we have done. So in a way we are trying to improve. But I can understand your point and many countries believe that if you are one nation you should have one law, one system of courts, and many people have already commented to us negatively, have commented against our proposals on Kadhi courts.

But I want you to understand that Muslims still have to go to the regular courts. The only matters on which they can go to Kadhi courts are matters on what we call personal law. Your personal status, marriage, divorce, children, family, and succession, property when a member of a family dies who gets the property or what we call succession to property. It's only these two issues which are to be determined by the Kadhi court. If a Muslim has a commercial dispute, they have dispute about land, dispute about the contract, dispute about negligence, road accident, they are as much subject as you and I are to the ordinary courts. It's only when they put apart these are Muslims and the question is one of family law, will they go to Kadhi courts. In all other ways they are subject to the same law as you and I are, laws about land, laws about contract, law about insurance, law

about employment, in all these areas, law about criminal law, are all governed by the common laws as we all have and we have not given Muslims, as some were asking the powers of all the criminal law under the Koran, or punishments under Koran, we said no, we can't have that in a country which is one country. We can't have people being stoned for adultery because our law doesn't allow that, and so they accepted that.

So the area of Islamic law is rather limited, and I don't think it denies any of us our own rights, and I don't think it seriously interferes with the idea of one law for all the people and one system of courts. It's only in these very limited cases that will apply.

The second question on different kinds of crimes, well that is true we do classify actually crimes in different categories, they are called misdemeanours or petty crimes but I think the important point is that we should be able to adjust the punishment to the crime and often our courts do not do that very well. For example for serious rape, they give 3 months sentence or suspended whereas most countries for rape will give you 4 or 5 years. For some very serious offences, for corruption cases, they give very very ... they don't really care. And so what we need is a good system of sentencing and we need to always remember that the principal purpose of punishment is not revenge, Kenyans believe in God and we leave revenge to God. So we should not use the criminal law for revenge, we should use criminal law for rehabilitation, for reform of the person. And if that is the objectives of punishment then we need to think about what kind of punishments are suitable because to send somebody to jail for 10 years for petty crime, small stealing when the person is starving, it doesn't help anybody. Doesn't help the person you put to jail, doesn't help the community. What we need is different kinds of punishments, with the focus on rehabilitation and today we have a law which gives the judges a right to instead of sending a person to jail to required community service. So you have to serve the community in some way for 5 years or 2 years or whatever, and then you are slowly integrated into the community. Because I have not made any views on that and there is still tendency to send people to jail and the result of this is that our jails are very overcrowded and we need to deal with that problem.

So what we need is and this is something we discussed in our report, but we don't say much in the constitution, maybe we should say, is what we call sentencing policy. We need guidelines from the judiciary or from the Attorney General's office as to what kind of punishments are appropriate. At the moment it depends very much which judge you come before, some judges may send you to 5 years jail and another judge on the very same offence might send you to six months. So we don't have this uniformity and if we don't have uniformity we don't have equal justice. And also we need to distinguish between the really brutal nasty crimes and other crimes and have a different sentencing policy. And so this is something I think we need to think about and we can provide some guidelines on the constitution but we will need to develop it up to the constitution in terms of directives from Attorney General, from Chief Justice, expert body to think about the purpose of why are we punishing? What do we hope to achieve by punishment? And adjust policies accordingly.

The final two questions that concern the corruption and leadership and of course they are related. How can we fight

corruption? Well, in different ways, and we have tried to meet this extended or these ways in the constitution. You can fight corruption by making the process of government open, transparent. If a ministry can give a contract to some builders quietly and in office, sign a contract, we don't know what procedure is followed to give that contract, you don't know how much money was signed away, there will be corruption. But if we have an open process whereby tenders are issued, people have a chance to apply for that contract, if the details of the contract and make public, if the signing is public, if there has to be a report to parliament, about all the contract, then you minimize the chance for corruption. Openness.

Secondly you can minimize corruption by ensuring that you have good leaders, leaders who have high moral standards, and we have tried to do that by the leadership code. If people have been convicted of certain kinds of offences, they can't stand for parliament. So we eliminate that kind of person from a chance to be elected, so the people who are elected are hopefully people who are more honest, than perhaps they have been in the past and raising standards generally.

A third way to reduce corruption is by having a good system of detection, so we had as you know an authority, the Kenya authority to fight against corruption, and that was declared by the court to be unconstitutional. We are revising that body, we are saying there should be a Commission on integrity and ethics, they should receive reports from all the public officers about their income, about their assets, they should look at their records, at their CVs at their qualifications, they should be able to investigate any allegations of corruption and so we hope to have a stronger system of detection.

And finally I guess we need to raise general consciousness among the people about the evils of corruption. Now this is something Kenyans know, we went round the country and everybody talked about corruption. So Kenyans know that corruption is bad, that corruption takes public money puts it into private pockets, that corruption means that we don't have enough revenue to pay for schools and medicine, it's because some people steal money from the people and this way we can't fulfill the other functions of government. Hospitals, schools, roads, so people know about that and yet it is so common. So we must get people to be vigilant, to use these institutions we are setting to make complaint to these bodies, at the moment really there is no body you can complain to. But there will be more than one body that you can complain to after this constitution comes into effect and you must complain and you must give enough evidence to the anticorruption bodies that they can follow up the case.

So I think corruption has to be fought at many different levels, there is no one single way to fight corruption. It consists of public education, public awareness, open procedures, honest leaders, and we need all of this in order to fight corruption because corruption is so pervaded, it's everywhere, to every level of government and we need to be vigilant, we need to report when we hear of some corrupt incident. And what is more you have to choose your leader well. Question about leadership, hypocrisy, corruption, that is all true, but ultimately you have chosen many of these people, ministers who are corrupt, you have chosen them, MPs who may be corrupt too, you have chosen them and therefore if you exercise your vote properly, you make sure you don't vote for somebody who is known to be a crook and we know many ministers are, there is enough evidence, if

you vote against them, well don't vote for them again. So they won't have an opportunity to be corrupt. So the responsibility is also on you, on people of this country to fight corruption by eliminating, eradicating corrupt leaders.

Well as I said before when I finish and I say again a lot depends on you and you are very powerful, we have tried to give you a lot of powers, use that power for the good of the people, for the good of the children, for the good of generation to come and then we can have a good system of government. Thank you. *(clapping)*

I have to go to another meeting so I will say good bye to you. Maybe we shall meet later in this afternoon if I'm free I will drop in but I don't know when you are proposing to close the meeting but I can check with you and if you are still going on when I finish my meeting I will try to come back. Now I wish you goodbye, kwaherini and I hope to see you soon in one of these discussions which we shall continue I'm sure even after the constitution is complete, because we must learn about the constitution, how we can use this process of civic education which must continue even after the constitution is adopted. Thank you. *(clapping)*

Catherine Rimberia: Thank you very much Chairman, Professor Ghai. Now, we still have a meeting on Friday, so if you are not satisfied today we can still meet on Friday and you can raise most of your questions which have not been answered today. However, we have not finished our program, we must say that we are grateful that Professor came around and he was able to answer most of the questions. So now we will proceed with our programme, I beg you to be patient, I know that's the reason you came and therefore I would ask you to really bear with us, we will not take too long.

So, I will start where I stopped, that we were to look at the objectives of the review process and also the structure of the review process. I'm sure you will be able to follow, after that briefing by Professor. Because we need to understand these things, to know where we've come from and where we are headed to, it is very important. Now remember that when our review as a Commission was established, there was an Act that was set up to thank the activities of the review process and this is our Act 3A, most of you I think you have come across it and you've been using a lot of it in the field. Those of you who are here and you are civic education providers, you have come across this our Act 3A that actually guided our activities.

So according to our review act and in this particular point in time, I want to direct you to our article 3 of the review act 3A, you don't have it as yet, I have it here but if you come around our documentation centre then you can actually look at it. Now the objectives of the review process are clearly set in article 3, sub-section A up to K and I will give you a brief of that. So these objectives according to our Act we are appreciating that constitutions are negotiated and therefore we must understand that really constitution must So, what we are saying is that really a constitution should have certain themes and you will find that in the document that you have, there are certain things that have been put there, that is about national unity, democracy, people participation, basic needs to all, human rights, regional and international cooperation. So you have all that even in the draft bill. Now if you check in the draft bill now all that is contained because that is actually the objectives that guided our review process.

The other thing that I would want to mention is that also we need to know the stages that we have followed. Remember we started with civic education, we called you in Charter Hall and you came, and we proceeded with civic education, and then after which we collected views, we collected views from you, and today we are coming back to give you the views which are in form of this draft here, after which for 30 days remember this document was launched last month on the 28th so we have 30 days to discuss about this draft. And that is the reason why we came here so that we can hold our first discussion. We are not saying that the discussions will stop here, this is just a beginning, I have some of you have consulted me that we can proceed on with other discussions and debate in other places. What I'm telling you as your district coordinator is that we are not ending today. Our discussions should continue upto the 30th day and you heard Professor say is that the 28th of this month. So in case you have a forum and you really need me to be there you can consult with me. I'm sure by now each one of you has my number.

Then after the 28th we will go to NCC and after this, at this point in time, I want to tell you in Nairobi, we already have our 3 delegates. Now remember Nairobi is a district and therefore we produced 3 delegates like any other of the 70 districts in the republic. So Nairobi I know for our operations, we've been operating as four districts, Westlands/Starehe being one but then for the delegates, all the four our put as one district and that is why we had to produce 3 delegates. Now I have the names and the contacts for those 3 delegates, the women seat was taken by one in our own district, that is Nancy Rung'ai, she is not with us today but she came from Starehe/Westlands district. So when you talk about representation, the lady who took the women seat is from Starehe/Westlands, our operational district. So, I have their names, I know they have not been intercepted but I don't think this will change because these are the people who were elected. So these are the people who are going to really represent Nairobi district in the NCC.

However, there are other members, for example I have the list here of those members who are going to represent various bodies in the NCC. We have the religious organizations that are going to give 35 delegates, professional bodies, women organization, trade union, NGOs, other interest groups, the district representatives, that is our 3 members, then the Members of Parliament, political parties representatives and the Commissioners. So if you have anything to put forward, you can write it down and then of course we can put it through to our delegates. So that means that our third step is the National Constitutional Conference which I said I must clear because you might be wondering who are the representatives in Nairobi.

With that I think we will move on to the next part of our programme and I will invite Achieng to tell you what happened to your views once you gave us before we produced this document. Okay we seem to have a problem because I think professor when he came in, I think he went through our programme, so she feels that was the covered, so I have no choice but then to move on to the last item in our programme which is actually a forum for discussion, for debate, for questions, for answers and we will not keep you long, if you don't have a lot of questions then of course we will stop at the appropriate time. So we are moving on to

the last point in our programme and that is discussion debate questions and answers if you have any. Thank you so much, and I think I will ask Achieng to lead us in that.

Speaker: Wale waliongea wakati chairman alikuwa hapa tunawaomba waje hapa mbele wajiandikishe kwa hiki kitabu na tunauliza kama kuna watu wengine wana maswali? Wanaweza inua mikono tuwape nafasi. Na yule akiendelea kuongoa, bado tunawaomba wale waliongea wakati chairman alikuwa hapa, waje hapa mbele wajiandikishe majina.

Speaker: Wakati chairman alikuwa, na wakati unaongea na jina lako ndio unaendelea.

Bob Matano: Jina langu ni Bob Matano, wakati chairman alikuwa, nilimuuliza kuhusu hiyo maneno ya court, ya kwamba mtu akishtakiwa, anaweza kuwa ameshtakiwa na kosa ndogo, na hiyo sikuwa namuuliza sana sana kuhusu the sentencing, nilikuwa namuuliza about the criminal record ile inabaki kule ambayo inakufungia maneno yote kwa maisha yako yote. Ukirudi kule, hata kupata certificate of good conduct na pengine ulikuwa umeingia kwa maneno, pengine mlipigana, kitu kidogo. Miaka kumi hata iliyopita, bado huwezi pata a good conduct certificate ingawapo maisha yako baada ya hizo miako zote umeishi na umekaa vizuri. Hiyo inakufungia hata kuweza kuendelea na kupata vitu kama hiyo certificate of good conduct ama kupata kazi kwingine ambapo hiyo certificate inatakikana. Ile nilikuwa sana sana naulizia, kama hiyo ingeweza kubadilishwa kwamba, kama hata uko na criminal record, na police wanaangalia through the criminal record wanaona

Interjection

Speaker: We think tumepata swali lako, tunaweza lijibu.

Bob Otlo: Wakati chairman alikuwa anaongea aligusia juu ya kama umefanya kosa ndogo Serikari itachukua jukumu kuona kwamba ukienda kwa prison hautapewa sentence kubwa ama tunaweza sema hiyo system ikuwe rehabilitative. Na tena ningesema kwamba hayo umezungumzia saa hii ni pendekezo, tutalichukulia Commissioners na tena bado hata hivyo, kwa Bill of Rights una haki usidiscriminatiwe kutoka kwa watu wengine kwa ajili ya mambo kama hayo. Kama umechukua hiyo draft tumekupea usome article 39.

Catherine Rimberia: Ni kama hakuna maswali so do we close the meeting? Ulikuwa na swali?

Mohamed Bishar: Kwa jina ninaitwa Mohammed Isha, nimetoka na Huruma Muslims Academy. Nauliza hivi, ningependelea kwa maoni yangu Chief Kadhi awe na korti ya Waislam ambayo inatupitishia case ya Waislam kulingana na Koran tukufu na

vile tunaamini hiyo Koran. Kwa maoni yangu, ningependelea Chief Kadhi awe na nguvu kama Chief Magistrate kulingana na kitabu cha Koran vile tunavyosoma. Maoni yangu ni hayo tu ndiyo ninauliza, na kama nimewakosea poleni.

Speaker: Tumeelewa hayo umesema, tumechukua na bado unaweza soma hiyo draft uko nayo. Mambo mengine umesema tumeyasema hapo ndani kwa chapter 9.

Julius Mwangi: Jina langu ni Julius Mwangi, nataka kuuliza swali na pia nataka kupendekeza. Kwa sasa ukiangalia hii nchi yetu wakati huwa tunachagua viongozi kama ni president, au kama ni kiongozi yeyote, inaonekana huwa tukiangalia kila mtu akiangalia aongozwe na kabila lake na hilo jambo limeendelea kutugawanya. Kila mtu na njia yake. Nyinyi kama Commissioner sababu mmeliona jambo hili, katika hiyo draft jambo hilo limeshughulikiwa vipi kuona ya kwamba tutakuwa tukimchagua mtu kwa mazuri ambayo anaweza kututendea na kuendesha nchi kuliko vile tunaweza kuangalia kila kabila liongozwe na kabila lake. Hapo kidogo ninauliza kwa nini kusipendekezwe ya kwamba, kama mimi nasimama, na mimi ni Mkikuyu, na ninataka kusimama kwa kiti cha urais, kabila langu lisinichague? Ni hayo tu.

Speaker: Kile katiba inawezafanya na kile itafanya kwa hii draft ni kupea,.... Nanyi mtachagua kwa vile mnaona ni kiongozi mzuri. Na wale wameongea tafadhali kujeni hapa mjiandikishe. Tafadhali kuja.

Lawrence Oulilo: Naitwa Lawrence Oulilo. Niko na kaswali kamoja, nadhali mtanisaidia kujibu. Tukiangalia nchi yetu sana sana tuna slavery still going on upande wa kazi, utapata watu wakifanya kazi mishahara ni ile yaani hata mtu hawezi kujimudu nayo. Mbona hamwezi toa sheria ya kucontrol mishahara? Government itoe mtu akiwa na kampuni, akuwe na kiwango fulani cha mishahara ambacho anafaa alipe mtu, kuwe na minimum level of state salary to employees. As I finish, is the tribalism pahali pa kazi kama ni Mjalu, wenye wananifuata kwa cheo watakuwa Wajalu, kabila zingine ni kwenda kufagia na kazi zingine ndogo ndogo. Hiyo tena nataka ichunguzwe kidogo. Ni hayo tu.

Speaker: Wacha tumjibu yule kwanza, ndio utaongea. Lawrence umeuliza juu ya mishahara, mishahara unasema ni kidogo sana. Hii draft imetungwa katika article 290 ambayo itaangalia hilo jambo. Na hilo jambo la tribalism, uko na uhuru usidiscriminative na hiyo iko kwa Bill of Rights. Utasoma utaelewa hapo chapter 5. Mzee sema jina lako tusikie.

John Mwaura: Jina langu ni John Mwaura. Kuhusu human rights, hizi women rights naona kama ingezungumzwa kidogo kuhusu .. isikaingilie sana maneno ambayo kwa sababu hii women human rights, naona kama inaweza patiana na bible kidogo na kwa hivyo ichunguzwe Kibible kindani. Sijui mngenelea namna gani. Kwa sababu maoni yangu hii women rights ikikataa kuchunguzwa kidogo inaweza leta so many divorces within our country. Tena inaweza toka nje ya Bibilia. Kwa hivyo ningetaka ichunguzwe kamili kulingana na Bible.

Speaker: Una pendekezo lolote kuhusu hilo jambo?

John Mwaura: Ningeomba ichunguzwe Kibible kwa sababu sheria mingi sana zinatumiwa Bible zile ziko wakati huu. Ukiangalia katika Bible, sheria nyingi sana huwa zimetengenezwa ___ hali ya kimtu ambapo unatoa maoni yako na inachukuliwa inakuwa sheria. Kwa hivyo sheria zingine lazima tuangalie tusikapoteze, tuchukue Western culture tupoteze culture yetu ya Mwafrika. Kwa hivyo ningetaka tu ichunguzwe hiyo.

Speaker: Mzee basi kuja ujiandikishe, na Lawrence ulijiandikisha?

Charles Njiru: Kwanza ni kuwarudishia shukrani kwa ile kazi nzuri mmefanya, hasa sisi wale tulianza na civic education miaka mingi. Kwa majina naitwa Charles Njiru. Ni wa CJPC St. Teresa's Parish. Na kwa kweli mmefanya kazi nzuri kulingana na yale mmeweka kwa hii katiba lakini niko na swali lingine ambalo labda jambo hili linanisumbua kwa mawazo. Umesema hapo, delegates wa Nairobi ni wawili, na ukiangalia kulingana na population Nairobi iko na watu wengi sana. Ni kama four districts, bado hakuna njia inaweza fanywa wawe na more representatives katika hiyo Constitutional Conference? Swali langu ni hilo. Asanteni.

Catherine: Mr. Ndung'u swali lako sikuelewa kabisa the last part lakini we are guided by these Acts. Hatuwezi enda nje ya hii. Kwa hivyo Nairobi iliwekwa kama district and legally Nairobi is a district. So ni lazima itoe delegates watatu kama districts zingine. Tuko na 70 districts kwa the republic kwa hivyo tunaenda na our Act. Hatuwezi toa more delegates.

Charles Njiru: Kwa hivyo ni kusema there is no principle of equal votes? Hiyo tu ndio namalizia, katika Nairobi hakuna hiyo? Haki ya kura kuwa sawa kwa sababu ukiangalia kama constituencies zingine ziko na over 114,000 registered voters. Ukiangalia zingine kama rural areas ziko na 750. Sasa ukilinganisha hawa, si kuna tofauti kubwa sana?

Catherine: Unfortunately there is nothing we can do. It's something the Commissioners themselves discussed, we also discussed it as coordinators because we were used to having 4 districts in Nairobi but now Nairobi is legally a district, and it's not the only district with many constituencies. Machakos I think are 6, isn't it? However you have your MP there, so if you have anything your MP can represent you, MP wako atakuwa huko, ni delegate.

Speaker: Tuna watu wangapi wangependa kuongea tena? Wainue mikono. Tutachukua lile swali na tutamalizia hapo.

Njoroge: Hamjamboni? Kwa majina naitwa Njoroge. Nina maswali kadhaa kuhusu hii draft. Ya kwanza ni mambo ya citizenship. Mimi kama citizen wa Kenya sijaenda through the draft vizuri lakini ningetaka kujua kitu cha kwanza the benefits of being a citizen like I being a Kenyan. What are the benefits?

Ya pili kuna wakati tulienda kuchukua mambo ya registration ya birth certificate. Kuna mahali wanauliza kabila lako ambayo

sioni hilo jambo ambalo likiwekwa pale, hivyo ni kudiscriminate. Kwa maana kwa nini unataka kujua kabila langu na mimi ni Mkenya? Kama ni kuuliza umetoka sehemu gani ya Kenya ningefikiri ingekuwa vizuri kwa maana kama ungeniuliza umetoka sehemu gani ya Kenya? Kama mimi ninasema mimi nimetoka Central Province part of Kenya. Hiyo si kumaanisha ya kwamba ni lazima iandikwe mimi ni Mkikuyu. Kwa upande mwingine kama Western, mimi sisemi umetoka Western.

Halafu ingine tuna shida ni mambo ya DDC ambayo DDC kuna watu wanamanupilate the DDC ambao sana sana in Wahindi. For example tukiangalia kama upande ya Makueni, Wahindi ambao huenda kwa DDC ya Makueni ambao (inaudible) there are those DDC ili wapate the tender ya upande ule ambayo tungekubali ya kwamba kama ni DDC, vikudi vya akina mama, vya vijana ndivyo vinafaa viwe represented pale. Kama kuna mambo ya chakula ambayo inafaa kuwa distributed pale, kitu cha kwanza hao ndio nafikiria wangefaa wapewe hiyo tender wawe wakisupply hicho chakula, kuliko hiyo tender inapewa Mhindi anakuja hapa Nairobi tupitisha chakula kutoka Makueni inakuja Nairobi anaendelea kudistribute.

Halafu kitu kingine ni border border. Wale ambao wako border border wengi ambao _____ (inaudible) Okay tulikuwa tunaangalia upande wa Western watu wa border border, wale ambao wanauza spare parts za baiskeli pale ni Mhindi badala ingepewa hicho kikundi cha border border wawe na group yao pale wawe wakiuza hizo spare parts. Sio Mhindi. Upande mwingine mikate kwa estates. Haiwezekani Mhindi ndiye anapika halafu yeye ndiye anadistribute. Kwa nini isiwe groups za area wachukue hiyo kazi ya kudistribute? Haiwezekani yule anapika ndiye anadistribute kile kitu, ili ndio tuweze kupata vacancies nyingi za kazi kwa maana huwezi kuwa wewe ndiwe unatengeneza na bado wewe ni distributor. Sasa tunataka kama ni vile distributor ambao wanafaa ni watu wa area hiyo kulingana na my recommendation.

Sasa kulingana na mambo ya citizenship ndio mimi sijapata kujibiwa, nitangojea kujibiwa.

Speaker: Okay umeongelea juu ya citizenship, umeuliza ni faida gani za kuwa citizen. Hizo zimeelezwa chapter 5 kwa Bill of Rights. Hizo ndizo haki zako. Na kwa hayo ningependa kumpea nafasi district coordinator atatwambia vile tutaendelea ama vile tutamalizia.

Catherine: Ni kama hatuna maswali mengine. Ama kuna mtu ameachwa na swali? Sasa I say thank you very much for coming, remember we said this is just the beginning of our debate. Tutaendelea mpaka 28th. Ukiwa na maswali, ukiwa na anything, kuja documentation centre. Niko hapo, na utasema vile unataka. Na tuko na another meeting on Friday, imeandikwa Charter Hall but we have changed the venue, tuko KICC room 7, on Friday, we will start at 10.00, keep time please. I can see there are still people registering to come in but however you can come for that one on Friday, it will be a similar gathering. So you are most welcome if you are not satisfied, please come on Friday at KICC room 7 and we will be there, Professor the chairman has promised he will be there and we hope to see you. Thank you very much for coming and I will ask now somebody from the congregation to come and close the meeting with a word of prayer.

But the KICC meeting is the same, we will start just like this one. We will start at 10.00 so please keep time. So someone to

