

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

DISSEMINATION OF REPORT AND DRAFT BILL

**KISUMU RURAL CONSTITUENCY AT MASENO UNIVERSITY
MILLENNIUM HALL**

ON

16TH OCTOBER 2002.

Transcribed by Chepkemai Catherine

Final Copy

**DISSEMINATION OF REPORT AND DRAFT BILL, KISUMU RURAL CONSTITUENCY, MASENO
UNIVERSITY MILLENNIUM HALL ON 16TH OCTOBER 2002.**

Present:

Com. Prof. Okoth Ogendo - Chairing.

Secretariat Staff in attendance:

Jacqueline Obiero	Assistant Programme Officer
Abigael Nyakundi	Verbatim Recorder
Austine Odiko	District Coordinator

The meeting started at 11:17 A.M.

Austin Odiko: To embark on the first item, I would like to ask Mrs. Rosa Orondo to lead us in Prayers. Mrs. Orondo please.

Rosa Orondo: (Prayer) ---- (Luo Dialect)

Mr. Odiko: Thank you very much Mrs. Orondo for that brief prayers. The next thing ladies and gentlemen, I would like to take this opportunity to introduce you to the members of our Constituency Constitutional Committee. Maybe you have heard about them, maybe you do not know them. I have got some of them who have arrived, who are in charge of this Constituency, that is Kisumu Rural; can you please stand up so that.... Already you have known Mrs. Rosa Orondo from this Constituency. The next one is Mr. James Omolo Kaila, also a 3C member, thank you James.

The other one is George Orude, also from this Constituency, from the Seme side, thank you George. The others are still on the

way. Of course speaking to you my name is Odiko; I am the Review Coordinator for Kisumu District. When other members come, I will also introduce you to them.

I sent copies of the draft earlier on to the University library and also to other parts of this Constituency. We also brought along additional copies, maybe they will be enough, may be they will not be enough. In case you miss a copy, please share and I hope that everybody will be able to have access to a copy.

I have a copy of the last proceedings when the Commission was here; what you said, I have it here but unfortunately we do not have enough copies to distribute but I had sent one earlier to the university library through the VC's office. I hope some of you have had access to it because it is going to be very important to tell us what is there is reflected in the Draft Constitution that you are having before you. Maybe I now have the privilege to ask Professor Okoth Ogendo, the Commissioner, to continue with the next leg of the proceedings.

Com. Prof. Okoth Ogendo: Good morning Ladies and Gentlemen.

Audience: Good morning.

Com. Prof. Okoth Ogendo: My name is Okoth Ogendo, I am a Professor of Public Law at the University of Nairobi and I am also a Commissioner of the Constitution Review Commission. With me is Jacqueline Obiero who is a Programme Officer with the Commission and will be helping me in conducting these proceedings. I also have Abigael Nyakundi who is the Verbatim Recorder and will be assisting in recording your views and reactions to the Draft. Professor Okello is sitting here next to me, he is not a Commissioner but I was feeling pretty lonely up here so I asked to keep us company up here.

What we have come here to do is to receive your reaction, your responses, your criticism and any additional information you can give us on the draft, which we have circulated. Now, because this is a predominantly university audience, I want to proceed differently from the way that we have been proceeding in other Constituencies. I want to start by assuming, as I have always done with my students that you have read the draft. I do not think I am entitled to make any other assumption. I want to start by assuming that you have read the draft and what I want to do is to give you some organizing principles that will allow you to understand the draft and then I want to spend most of the time today on questions, answers and comments and at that point Jacqueline and I will share the answers that you may want from us. Are we clear on how I want to proceed?

I am not going to take you from Article 1 on the Preamble to Article 298; that is a very tedious process but I want to give you a number of organizing principles and I want to start this way; most Constitutions do three things.

First of all, they constitute the state and that is why we are that is why we are talking of a Constitution; they constitute the state. Secondly, they define the rights and duties of individuals and communities in society and thirdly they prescribe what I call a

power map of the state. When you look at a Constitution, it should be able to tell you how power is allocated, how power is to be exercised and how power is to be transferred from one group of people to another. In other words, a Constitution is essentially a road map, which tells you what the political system, the polity is, who runs it and the rights and duties of individuals who constitute the state.

The draft you have in front of you is concerned with five things;

First, it reconstitutes the state, it does not constitute the state, it reconstitutes it because Kenya as a republic has existed since 1963 but Kenyans as people have existed from time immemorial. So that draft reconstitutes it and I will say a little more about it in a minute.

Secondly, the draft establishes the citizenry of the state and the rights and obligations of citizens and any person who finds himself or herself in this republic.

Thirdly, the draft sets out in some detail the power map of the state. Those are the first three things that the Constitution does.

Four, the draft regulates the manner in which the primary resources of the state may be held, controlled and managed.

Five, the draft then sets out a framework for transition from the old Constitution to the new Constitution.

Let me go back on those five things and try to indicate exactly how the draft does it. The first thing I said the draft reconstitutes the Kenyan state. It does so first by establishing a basis for the legitimacy of the state and the legitimacy of the Constitution and this is done in the preamble. The preamble basically says that we are Kenyans, we are diverse in our cultures, language and religions but we are determined to live as Kenyans and therefore we are giving to ourselves a new Constitution.

The independence Constitution was given by the British and we did not participate in creating that Constitution. There were a number of people who went there to represent political parties and some of them refused to sign the independence constitutional agreement, for example, the Maasai refused to sign it because the land question was not sorted out at that time. This draft is saying that we are giving to ourselves a new Constitution and therefore the basis of legitimacy of the new Constitution when enacted is the people, not the British government and not Parliament. It is the people.

Secondly, in Chapter one of that draft, we identify the people as the constituent power of the state, all power derives from the people and that is clearly defined in Chapter one and that chapter one says that because the people cannot exercise power directly, they have allocated the exercise of that power amongst four branches of government; the Legislature, the Executive, the

Judiciary and Constitutional Commissions and offices. The Draft says that the sovereignty of the state derives and derives only from the people but that the people exercise it by allocating power to those branches and therefore they are saying that the power to legislate is power that is derived from the people, the power to administer the republic; the Executive power is derived from the people. The power of the Judiciary is derived from the people. You read in the papers that one Justice Hayanga issued an order stopping Kenyans from discussing the Constitution and one wonders where he got that power from. This draft is saying that the power comes from the people and therefore the Judiciary would have no power to stop the people from exercising their sovereign authority.

Then, the draft establishes a framework for the exercise of the constituent power through a process of representation by political parties and through regular and transparent elections and that is set out very clearly in chapter six.

Fourthly, the draft recognizes the supremacy of the Constitution, that is also in Chapter 1,18 and 19; the supremacy of the Constitution. At the moment, under the current Constitution, Parliament is supreme. The Parliament of the republic of Kenya, under the present Constitution can pass any law except a law that says it cannot pass law. Are you following me? In other words the present Constitution is talking about the supremacy of Parliament. This Constitution is talking about the supremacy of the Constitution and not of Parliament and therefore there are certain parts of this document that prohibit Parliament from passing certain kinds of legislation. For example, if you look at chapter 18, which is dealing with amendments to the Constitution, that Chapter is saying that there are certain provisions of the draft that cannot be amended without the participation of the people; there must be a referendum and if the people agree at the referendum, then some of those provisions can be amended e.g. if you wanted to transfer any part of this Republic...Please hurry up and Odiko don't bring any more of those copies in now.

I am saying that the draft that you have is concerned that the Constitution should be supreme and not Parliament and therefore there are certain parts of that draft that would not be amended without the participation of the people. Provisions relating to the boundaries of Kenya, provisions relating to the Bill of Rights, provisions relating to the principles of devolution of power cannot be amended except with the participation of the people.

Number five, the draft proclaims the integrity of the Republic; it says that Kenya is a sovereign Republic and therefore Kenya does not owe allegiance to any other authority or agency. It defines the boundaries of the republic of Kenya, the present Constitution does not define the boundaries of Kenya but we have done that in schedule one. We have also said Kenya is divided into 8 provinces and 70 districts and we have named them. If this Constitution is enacted, it will not be possible for anybody, the President or anybody to stand up and create a district. The creation of a District or a new Province will have to be done by way of a constitutional amendment; it cannot be done under a tree or anywhere else.

Number six, the draft lays down the ethical, social, economic and political values of the state and we have done that in chapter

three, which is called national goals, values and principles. That chapter is basically saying these are the principles by which we want to live as a Country and it obligates the President every year to address the nation and address Parliament and to tell the nation what progress has been achieved in the implementation of those principles. In other words, chapter three has defined the road map for the future, the kind of future we are looking for politically, socially and economically.

Finally, under the reconstitution of the state, the draft establishes a framework for defence and security of the state and that is what you will find in chapter fifteen. Chapter fifteen for the first time creates the defence forces, it creates a national security council, it creates a national defence council and it basically says that these are matters in which the state should have clear rules. It creates the provision of Chief of General Staff, it creates the Army, it creates the Navy, it creates the Air force. What it is saying is that nobody can get up and abolish any of those forces. Many of you will remember that after the attempted coup, the Air force was quote and quote abolished and a new Air force called the '82 Air force was created. Now, we heard when it was created but you did not hear when the '82 Air force itself was abolished and the reason was that the President had no power to abolish the Air force and that particular action was illegal. This time we are saying, if it happens, it will not only be illegal, it will be unconstitutional so we have raised defence and security to the level of constitutional concern and that is the first thing which that draft does in reconstituting the state.

The second thing I have said is that the draft establishes the citizenry and then sets out the rights and obligations of individuals and communities in the state and the draft has done that by having in chapter 4 elaborate provisions for acquisition of citizenship.

What that chapter is doing is telling you who are Kenyan citizens, how may citizenship be acquired or abolished and what is the status of people who are not citizens but who are residents in Kenya.

Chapter 5 has an extremely elaborate Bill of rights that sets out a framework, it does not just define the Bill of rights but also a framework for the exercise of those rights. We have gone much further in Chapter five than was done in the present Constitution. Incidentally the Bill of rights in the present Constitution is also Chapter 5. It used to be Chapter 2 in the independence Constitution and then it was shunted to chapter 5 and the reason why it is still chapter 5 is that we thought it is important to proclaim the sovereignty of the people first and the values of the state. We have covered what are normally called civil and political rights, social-economic, cultural and other rights and they are all set out very clearly in chapter five. The third thing that I said the draft does is to give an idea of what the power map of the state is. Remember the power is exercised by these bodies on behalf of the people and the people who have allocated that power.

In chapter seven, we have provided for a legislature. It is a legislature that is different from the present legislature and it is different in the following ways; first of all we have separated the Legislature from the Executive. At the moment, the President is part of Parliament. Not only because the President is also a Member of Parliament, but because the process of legislation is not complete until the National Assembly has sent the Bill to the President and then it becomes law. So, under the present Constitution, when you are talking Parliament, you mean the National Assembly plus the president. We are saying in the draft

that Parliament consists of the National Council and the National Assembly; Parliament is a two-chamber house, the President is not part of Parliament even though the President has legislative functions but he is not part of Parliament or she is not part of Parliament.

The two Houses, we have provided for an Upper House, the National Council, consisting of one hundred members, seventy of them elected from the seventy districts and thirty of them elected from the provinces and the thirty who are elected from the provinces are women seats. Thirty women seats, four from seven provinces and two from Nairobi, to make a total of thirty and that gives you a house of one hundred. The National Assembly will consist of the present two hundred and ten constituencies plus ninety proportional seats. Those ninety seats are not nominated seats. I have read in the press that some people are saying that we are asking for ninety people to be nominated, they are not nominated seats because we have abolished nominated members. They are indirectly elected and they are indirectly elected as follows:

We are saying that single member representation sometimes does not reflect the voting pattern in this republic. Some of you will remember, many of the students were not alive at that time, but in 1966, we had something called a little general election, which was caused by the resignation of Oginga Odinga from KANU. At the end of that election, the KPU won more votes countrywide than KANU but the KPU got much fewer seats than KANU, are you with me?

Audience: Yes.

Com. Prof. Ogendo: In other words, the people gave Odinga a lot of votes, they gave Kenyatta fewer votes than Odinga but Kenyatta ended up with more seats in Parliament than Odinga. How do you deal with that problem? In other words, there was no correspondence between the popular votes and the translation of that popular vote into seats. There was no proportionality, do you follow me? There was no proportionality between the popular votes and the number of seats that you gain in Parliament. We have decided that this ought to be corrected and it should be corrected as follow;

Elect your Members of Parliament from 210 seats and then look at the pattern of representation in Parliament, look at the number of votes that parties have got and then compensate them so as to reflect that pattern of popular voting. Why should KANU, which won slightly more than one third of the total votes in this Country have more than half of the Members of Parliament? So what we are asking political parties to do is that every political party participating in elections will have to provide the Electoral Commission with a list of 90 people they would want to see in Parliament if they won one hundred percent of the votes. It is possible that you can hold elections and one hundred per cent of the votes go to one party; that has happened in Madagascar and in some other places.

So, you set out the ninety people in the order in which you want to see them in Parliament and you do that in advance so the public knows that if KANU wins thirty percent, these are the thirty additional members that KANU will get in the following

order. So you do not finish the elections and then you go back to your boardroom and then you fish out thirty names; you must advertise in advance so that the public knows.

Number two, you must zip them, meaning that you alternate them between men and women. If your number one is a woman, number two must be a man and number three a woman etc. Because if you do not do that, you might find that the first forty-five are men and the last forty-five are women and then when you are entitled to twenty seats you only have the first twenty and they will all be men and we don't think that should happen because we think that in society, the fundamental division is a sex division between men and women and the women are not asking for fifty per cent, which really is what they are entitled to because they are more than fifty per cent of the population, they are only asking for one third.

In the case of proportional representation, we are saying that the number of women on the party list should equal the number of men so when you go to vote, you will have two votes. One vote is for the candidate; the other vote is for the party. If Okoth Ogendo is standing in Nyakach on an LDP party ticket, and you like me but you do not like the LDP, you can vote for me and refuse to vote for the LDP, you vote for KANU or whatever or if you do not like the candidate but you like the party, you can vote for another candidate from a different party and vote for the party that you like, in other words, you can split your vote.

Audience: (Applause)

Com. Prof. Okoth Ogendo: So, at the end of the day, we look at the number of seats won by a political party but we also look at the total number of votes Country wide won by that party and we work out the percentages and we say according to the proportion of votes that you got, you are entitled to so many others from the ninety and you compensate in that form. What it means is that a political may fail to win a single seat in Parliament but it will be entitled to a Member of Parliament from the proportional list if it wins say more than five percent of the votes. That is what it means to have a system that we are calling the MMP- the Mixed Member Proportional representation system and you will agree with me that that is not nomination, it is indirect election. The draft is saying that the authority to legislate, the power to legislate which comes from the people, will be exercised by a legislature that consists of two chambers; the National Council and the national assembly and both together will be called Parliament.

When Parliament meets to pass law, it will still be necessary for the law to be signed before it comes into effect, not for the law to be signed before it becomes law. At the moment, if the President does not sign it, it is not law. We are saying that the President will sign it so that it comes into effect, it will be law but it will not come into effect until the President signs it. What has been provided is that when a Bill, any law passed by Parliament is presented to the President, the President has three options. Option number one is to sign it, then there is no trouble.

If the President thinks that Parliament has passed a Bill which offends any provision of the Constitution, the President can refer that Bill to the Supreme Court; we have created a new Court called a Supreme Court and the Supreme Court is a constitutional court and it must deliver judgment within 14 days, advising the President on what their view is. If the Supreme Court says that the law that has been passed by Parliament is consistent with the Constitution, then the President must sign. If the Supreme Court says it is not consistent with the Constitution, or certain parts of the Constitution, then the President must send it back to Parliament with the judgment of the Supreme Court and Parliament then must revise that law in accordance with the judgment of the Supreme Court and when Parliament has done so and sent it back to the President, the President must sign it. He cannot send it back again.

Number three, the President might decide that he is not going to go to the Supreme Court, he is not going to sign the Bill, he is going to send it back to Parliament with his comments like he did with the Donde Bill. If the President takes that option, Parliament may decide to revise that law in accordance with the comments of the President but if Parliament says to the President, we disagree with you, we don't think we are going to accept your comments, we are not going to revise the Bill and they re-enact it in the same form and send it back to the President, if they do that, the President must sign the second time around. That is what is called overriding the veto of the President. In other words, you must find a mechanism for breaking the deadlock and the way we have done it is to say if the President sends the Bill back to Parliament and Parliament disagrees with the President and sends it back in the same form, the President has no option, he has to sign so that at the end of the day there is a law signed by the President.

The law of Succession Act was passed in 1972. Jomo did not sign it until about before he died because Jomo did not want that law to apply to him. Now, there will be no opportunity for that under this draft. There is a specific period within which Bills must be sent to the President, there is a specific period within which he must sign it or refuse to sign it so that all those processes go through.

The second organ of government in the power map equation is the Executive and the Executive is set up in chapter 8. We have created an Executive that consists of the President, the Vice President and the cabinet headed by the Prime Minister. What we have done there is to create the position of an executive President and an Executive Prime Minister. In other words we have split the current powers of the President, left some with the President and given some to the Prime Minister and we have provided several things there:

One; that whenever a candidate is running for the Presidency, that candidate must nominate a person qualified to be President to run with him or with her and that other person will become the Vice President. So, again, the Country will be entitled to know who the Vice President is going to be in advance; you do not get sworn in as President and then people are anxious as to who the Vice President is going to be. That will be known in advance.

Then, the President nominates a Prime Minister. The Prime Minister must be the leader of the majority party in Parliament or coalition of parties. The Prime Minister then identifies a maximum of fifteen people. Now, let me add that the President nominates the Prime Minister and two Deputy Prime Ministers and then the Prime Minister identifies not more than fifteen Ministers and Deputy Ministers from outside Parliament not from elected Members of Parliament.

The argument here is that people who run government, the Executive, should be Executive, the Legislature should be the Legislature. If you went to Parliament to pass law, go there and make that your business, don't go there hoping that you will be given a flag to fly. But if the Prime Minister thinks that somebody who is elected in Parliament should be a Minister and Parliament approves that person as Minister, you must resign your seat so that a professional legislator can come in.

Audience: (Applause)

Com. Prof. Okoth Ogendo: So in the system that we have here, it is semi-Parliamentary; a Parliamentary system requires that the Prime Minister should serve at the pleasure of Parliament but it is also semi-Presidential meaning that the Cabinet is separate from the Legislature; they come from outside the Legislature and we have limited them to fifteen. The only people in that Cabinet who are also Members of Parliament and the two Deputy Prime Ministers, every body else is expected to come from outside. I can tell you that Members of Parliament are not very happy with this provision.

Audience: (Laughter)

Com. Prof. Okoth Ogendo: That is chapter 8, then we have the Judiciary in chapter 9. The only change we made in the side of the Judiciary is that we have created the Supreme Court headed by a Chief Justice. The Chief Justice and all Judges of the Supreme Court will be appointed by the President with the approval of Parliament so you do not just wake up one day and you find that you are the Chief Justice. He or she must be approved by Parliament. The Court of Appeal already exists and the only change we have made is that we have created the position of President of the Court of Appeal. The High Court already exists and the only change we have made is that we have created the position of Principal Judge of the High Court. So the High Court will have its own presiding Judge, the Court of Appeal and the Chief Justice in the Supreme Court will also be the head of the Judiciary.

In chapter 10, we have decongested the Central government by creating devolved units of government. We have created Provincial Councils, District Councils, Locational Councils and Village Councils. These Councils are governments on their own.

They have legislative powers, they have Executive powers and we are separating the Council from the Executive of the District or of the Province. In other words, the District Administrator is not an employee of the Council; the District Administrator will be elected directly by the people and he will form his own Cabinet, if you like, run it and the Councils will pass law to guide him in doing that.

We wanted to remove this notion which Chairmen of County Councils and Mayors have that they are Executive; they are supposed to legislate, they are not supposed to run government. It is like Parliament that they want to run the Country. So if we are able to elect the President to run the Country and Parliament to pass law, we are saying that Provinces should also have their provincial administrators elected by the people to run the matters of the Province and so the District and the Location and the Village and that the Councils should be legislative authorities.

The question that most people ask me is, at the Locational and Village level, are these people going to be volunteers. My answer is that having created them as constitutional offices, there will have to be a budget for them and they will have to be paid at that level. That is chapter 10.

The draft goes on to set out the principles and in chapter 14 we have set out the Public Service and we are saying that the Public service must be independent of the Executive. It will be run, disciplined, supervised by an independent Public Service Commission. The power to create and abolish offices will be exercised by the Public Service Commission and not the President. Under the present Constitution, the President creates and abolishes offices. You know, if they want to sack you and they don't want to say so, they simply abolish your position.

I remember in 1970, when the University of Nairobi was being established, David Wasao held the position of Deputy Principal from some guy called Porter. Wasao was the leading Kenyan in the University of Nairobi but the date creating the University; they abolished the position of Deputy Principal and then created the Position of Vice Chancellor and appointed some junior historian from the Kenya Mission in London as the Vice Chancellor.

Now, the powers to create and abolish offices has been taken from the Executive and given to the Public Service and we are saying that the Public Service then will appoint all people in the Public Service except teachers. We have created a separate Commission for teachers because we think it is a very important group of professionals that ought to be run....

Audience: (Applause)

Com. Prof. Okoth Ogendo: ...by an independent Commission and that Commission again has been de-linked from the Executive. It will employ, it will pay, it will discipline and it will sack teachers and the Ministry of Education would have nothing to do with it.

Audience: (Applause)

Com. Prof. Okoth Ogendo: And then we have created, in chapter 17, what we are calling Constitutional Commissions. The

purpose of those Constitutional Commissions is to ensure that power is properly exercised and we have created a number of them; the Human Rights and Administrative Justice, the Ethics and Integrity Commission, the Constitutional Commission, that is where you also find the Teachers Service Commission and there are other Commissions also in the legislation which we have created. The point I want to make here is that the power map of the State, which is set out in Chapters 7,8,9 and 10 function in accordance with principles that are set out in chapters 14,16, schedule 5 and chapter 17.

Number four, I have said that the draft regulates the manner in which the primary resources of the state may be held, controlled and managed and we have in particular made provision for land and property in chapter 11. We are saying that all land belongs to the people of Kenya. At the moment the law says the land belongs to the State and the state exercises its ownership through the President; we have said that that is not appropriate, land belongs to the people of Kenya

Audience: (Applause)

Com. Prof. Okoth Ogendo: and that the people of Kenya hold that land either as individuals or as communities or if the land is truly public land, it will be held on behalf of the public as a whole. We have also said that minerals found on public land will belong to the public, if they are found on community land it will belong to the community and if minerals are found on individual land it will belong to the individual.

Audience: (Applause)

Com. Prof. Okoth Ogendo: That of course is going to create problems but we will discuss it at the National Constitutional Conference. That is chapter 11. Let me add something on chapter 11; Property. Chapter 11 protects property as long as that property is lawfully acquired. So if property is not lawfully acquired, it will not be protected under this draft. Grabbers beware.

Chapter 12 is dealing with the environment and natural resources and provides a framework for the protection of the environment and also the protection of natural resources.

Chapter 13 is dealing with public finances and revenue and the most important thing about public finances and revenue is that under this draft, the government will have no power to incur any debt internal or external without the express approval of Parliament. Already government cannot tax you unless Parliament approves it and we have emphasized that fact. We have split the office of the Controller and Auditor General into two offices of Auditor General and Controller of the Budget and we provided that these two offices will have to be audited like anybody else by an auditor appointed by Parliament so you don't have a situation where the auditor general is auditing everybody except himself or herself.

Then we have said that all public officers, all public officers; Judges, the Attorney General, Auditor General, Controller, the whole lot, retire at the age of 65. I am told that GG Njoroge is nearly seventy-eight years old; he should have retired long time ago if we had this Constitution. You will perhaps recall that one of the reasons why the Judges are taking us to court is because we are saying that everybody should retire at the age of 65 since at the moment they retire at the age of 74. Fortunately for this draft, that 74 is not in the current Constitution and so now we want to create in the Constitution what the retirement age for public servants are.

Finally, the draft gives you a framework for transition; transition is important because when you have a new Constitution coming into effect, there are certain things under the old Constitution that must continue. The obligations of the state, external and internal, must continue, the laws must continue as long as they are consistent with the new draft, people who are holding offices must continue to hold those offices unless those offices have been abolished by the Constitution, proceedings in court must continue and basically there should be minimum disruptions to social and civil order by reason of the enactment of the new Constitution.

We have said in chapter 20, read together with schedule eight, what will have to happen when the new Constitution is enacted and the old one is gone. We have also provided in schedule seven a detailed list of the legislative agenda of Parliament, what will be necessary for Parliament to do in order to make sure that the Constitution fully comes into effect. That is what the draft does and that is all I want to say at the moment and I think we should spend the rest of our time accepting your questions and your comments.

Thank you very much Ladies and Gentlemen.

Audience: (Applause)

Mr. Odiko: Ladies and Gentlemen, why don't you give more heartier claps to Professor Ogendo for that wonderful presentation? One,

Audience: (Clap)

Mr. Odiko: Two.

Audience: (Clap)

Mr. Odiko: Three.

Audience: (Clap)

Mr. Odiko: Asante. The ball is from Professor Ogendo and it is thrown back to the floor. Now you will have to raise questions, make comments and this will be accepted in groups of five and of course after you have done that one, we have the procedure here whereby you will be writing your name again, the organization and everything. After you have done that, I will put this somewhere down here so that you come and write down your name the way you registered there. It is very important that we get clearly what your question is, what your comment is and also the response from here. You put up your hand and I will give you numbers and please don't forget your number. I will come back to you then I will give you the microphone.

I will start with number one, you will please tell us your name after which you will of course record it here.

Jeremiah Ochieng Raburu: My names are Jeremiah Ochieng Raburu and I come from Nyabera and my main question is why is the CKRC rendered a toothless barking dog in the sense that there are no people to teach even the old grandmothers from our place. I haven't seen anybody from CKRC. That is the only question and I am very grateful.

Adea Kenneth: First I want to appreciate the effort on property ownership but I feel that there were some loose notes. I am Adea Kenneth, Education student, third year. I wanted to make an observation on property ownership based on resources and the community. Looking at the draft, very little has been pointed out about the community. For instance, you realize that the community living around Lake Victoria may have very little benefit from the waters, from the Lake as such. You get people from very far coming to benefit. I thought something ought to have been mentioned. Or a situation like Samburu where we have tourist spots, we have hyper hotels but the most interesting thing is that you may not get a Samburu working in that tourist hotel and therefore the community as such is not benefiting and it may not be able to protect the resources. Within the draft I expected something to be pointed towards that direction. Thank you.

Julius Ondoro: I have three areas that I want to talk about. One, we are being made aware that... my name is Julius Ondoro, Education Science Student, Maseno University. We have been made aware that we will have ninety extra Members of Parliament from various parties. Currently we have two hundred and ten and we are aware of the huge sums of money that these Parliamentarians require and we know how it may be much. When we have an extra ninety, don't you think that this might have serious negative impacts on the economic status of the Country? That is one problem I have.

Another problem concerns the Commission of the teachers. We have said that we will have a different Commission appointing teachers. Now, there are no laid down rules and maybe regulations and even the procedures that will be used in the appointment of these teachers. As we are aware right now, the rules for appointing teachers is not anywhere maybe in the Constitution and therefore people just wake up and say that today we want the BOGs to appoint the teachers, we want this

part of the Commission to appoint the teachers. Therefore, I would rather propose that there should be an added clause for the regulations in which teachers can be appointed.

Another proposal I wanted to make is that the language of the draft should be made in such a way that almost everybody understands. We realize that some Kenyans may not understand Kiswahili or English and that is a fact. Therefore I would rather propose that the draft be translated into our ethnic languages so that all of us are capable of knowing what will come when the Constitution is ready. Thank you.

Onyango Odayo Franklin: Thank you. I am Onyango Odayo Franklin, Bachelor of Education Science student. I have a problem with some three articles. The first one is article 108 clause 1 (b) and this one is dealing with the qualifications of the Members of Parliament. The clause says that Members of Parliament should have attained an education qualification of at least four and above. I am feeling this is a bit low for the people we are going to entrust with our laws. I think, if I am not so far from the point, Members of Parliament should have at least attained a degree or diploma level.

The next problem is in article 133, it is a simple article which deals with the quorum of the House; Parliament. You notice that the article says that the quorum should be attained when there are thirty per cent of members present. I am feeling this is a bit low since we have agreed that the Members of Parliament will not be in the Executive. I am feeling that a situation will arise when a law will be passed by the quorum, the thirty per cent, but the seventy per cent who are absent can come back and overturn this. I am feeling that the quorum should be around eighty per cent but since we are human beings we bring it down to around sixty per cent, but not thirty percent, to give the majority rule; the sixty per cent, the guarantee.

The last one is article 55 clause 2 (d) and it deals with the rights of a worker. It says that somebody who is an employee has the right to strike. I think this one is going to affect us negatively because if somebody has a right to strike, we should give more definition and under which circumstances does this person have the right to strike because if you just say somebody has a right to strike, surely there is a loose end there. Thank you very much.

Joseph Ochieng Agutu: My name is Joseph Ochieng Agutu and I am going to comment on page 5, chapter 4 paragraph 18 on acquisition of citizenship. Here it is indicated that there are only three and I am inquiring as to how have you given the status of a Kenyan born abroad because he is a Kenyan not born in Kenya. Maybe one is born in the United Kingdom or Zambia. I think such a person should have been given the status as being a Kenyan by descent, which means that he is a Kenyan but not born in Kenya because even the birth certificate will not be given in Kenya, it will be given abroad. That is my only comment at this juncture. Thank you.

Mr. Odiko: We have heard five questions/ comments and before we take another batch of five, I am going to ask Professor Okoth to respond. Professor Okoth please? Oh, Jacqueline.

Jacqueline Obiero: Thank you. I want to respond to the question by Adea Kenneth who was inquiring as to what the draft Bill provides concerning the benefits or may be if there is a resource in a certain area, how are the local people going to benefit from such resources. That was your question.

What I want to say is that the answer of your question is in chapter 10, if you are going to read the draft, concerning devolution of power. In article 226, we are talking about share of national resources and what we are saying here is, and I will read “district shall be entitled to a substantial share of the national revenue from local resources and for the allocation of a fixed percentage to the communities in those areas, in whose area the resources are generated” I hope I have answered your question.

What we are trying to say is that there is going to be a certain percentage whereby if there are resources in a particular area, then that community will be entitled to a certain percentage and then there is the other percentage that will be remitted to the national revenue.

Julius Ondoro, you were concerned about if you are going to have ninety members it is going to be like a big number and you know with the present situation whereby MPs just fix their own salaries at their own time and at their own pleasure, so you were wondering that it is going to have an adverse effect on our economy. To answer this question I would like to say that the Salary and the Remuneration Commission that has been established, if you are going to read under Constitutional Commissions and offices, the Remuneration Commission has been given the power to determine the salaries of even Members of Parliament. So we are not going to have a situation whereby MPs wake up one morning and they say that today we are earning one million.

That has been regulated and if this draft Bill is going to be enacted, what we are saying is that the salaries of the MPs are going to be reviewed by this body which is independent and they are the ones who are going to be solely entitled to determining the salaries of MPs.

You also asked about the Teachers Commission and you felt that there are no laid-down rules and regulations for the appointment of teachers. What we have just said is a guideline. If you read over and over, there are clauses or there are some articles that are talking about Parliament enacting laws to that effect. What we are trying to say is that we cannot say everything in the draft but it is just a guideline so that what the draft does is that it just gives Parliament a direction and will leave all those issues about laying down of laws and everything to Parliament. That is why maybe you may not be able to get a detailed report on that but the Parliament is going to enact law to that effect.

We have also taken your comment on the language, that it should be simplified. You felt that the Constitution should be made available in our ethnic languages. If you have talked about the language that is recognized by the Constitution, we said that every official document will be made available in English and Kiswahili but concerning the ethnic languages, maybe that will be a

matter of a certain community coming up with a proposal, maybe you can bring the proposal to the Commission's office and we see how we can be able to help that if there are people who can be able to interpret and come up with this draft in our ethnic languages. What I would say is that if I were you, I would wait until we have the final document because this is just a draft, which is still going to be debated upon. That has also been taken into consideration.

Onyango, you talked about article 108 and you felt that the qualification for Members of Parliament just going to be form four is too low and we have taken that into consideration and we are not saying that this is the final copy or the final document because it is still subject to changes, that is why we are here to take your comments and to take your views concerning the draft.

We have also taken your comment on the quorum being raised to sixty and this is still subject to debate. We are still going for the National Conference about article 55, talking about strike, that it should be specified that under what circumstance should strike be allowed. We have also taken that and we are going to make the necessary changes where possible.

Joseph Agutu you asked about what the status of a Kenyan born abroad is and you felt that we also should make a provision for a Kenyan by virtue of descent. I think that this has been taken care of by the fact that with this draft we are proposing for dual citizenship, the fact that you can be a Kenyan and you can be a citizen of another Country. Professor will add any more comments.

Com. Prof. Okoth Ogendo: I think Jacqueline has covered most of it but we should remind ourselves that Kenya is very variegated place; we differ not only in terms of culture and language and so on but also in terms of levels of education.

I have traveled very widely in this Country; all the way from the Lemic triangle in the North down to Vanga in the South and there are places where you will not find people with education higher than CPE and if you said that Members of Parliament should have degrees, there will be places where either one person will always be running unopposed or they will have to import somebody else to come and represent them.

My argument was, and I argued this before the Commission and I lost the argument, let Kenyans govern themselves the way they are. If people think that the person who is their leader, with or without education, is the person they want to lead them in Parliament, my argument was let them send that person to Parliament but Commissioners said no, this is the 21st Century, let educated people go in there, so we settled for '0', but degrees will cut out a lot of people.

We said clearly that for the Presidency, we are only electing one President and the President must have a degree from a recognized university and that one we agreed on.

Audience: (Applause)

Com. Prof. Okoth Ogendo: We also said that the President must be a person who is above the age of 35 and below the age of 70. We also said that for purposes of the first election under this Constitution, the academic and age requirements will be waived. Thank you.

Mr. Odiko: Ladies and gentlemen, what we are saying is that this document is a draft and that is why we are listening to your views, that is why we have singled the National Constitution Conference in Nairobi and as you have heard Jacqueline say, your views are very important and you can see we are recording everything you are telling us so that all that you tell us here we present them to a bigger audience in Nairobi. If need be, of course, some of these things will be looked into in accordance with the rules and the regulations that are already there. I want to thank the first five.

I am going to ask the next batch of five.

Speaker: ----(not clear).

Com. Prof. Okoth Ogendo: We are here to comment on the draft and if you are asking us to make sure that there are civic educators on the draft at the grassroot level, we will carry that information to Nairobi and we will see that something is done about it. Thank you.

Mr. Odiko: So, Ladies and Gentlemen, can I have another group of five and you have seen our document here, we are very particular about Ladies. You heard Professor talking about zipping when we talk about the 90 names. That first group of five did not have a lady and I think I will be biased now and the lady there will be number one, number two is this gentleman in front and is now zipping and number three is the lady there, number four will be a man and number five will be a lady because it is zipping as we said, ladies will not complain because they are not there, so gentleman, you will be number five.

Please let me have number one starting?

Christine Ochieng: Thank you very much. My names are Christine Ochieng, third year, Education student. I have some two suggestions, first, I suggest Ministers though appointed by the Prime Minister should be made to undergo in-service orientation as to what their jobs entail, in relation to the nature of their appointment in order to avoid situations where Ministries are virtually run by the Permanent Secretaries.

My point number two; I suggest that all persons so appointed to the chairs of the Judiciary, Executive and the Legislature and also all senior civil servants oblige to publicly declare their wealth for the sake of transparency and accountability. Thank you very much.

Audience: (Applause)

Kenneth Kuboka: Thank you very much. My name is Kenneth Kuboka, third year, Education student. My question is; we are very happy that Professor Ghai has promised us that the new Constitution may be ready around or before 12th December and we are confident that the next election will be held under the new Constitution. My question is how are our revered Commissioners preparing the Kenyans for the transition because we know that when we enter into the new era of a new Constitution, there may be problems because of the change in leadership, change in powers. We see that we have got the President, we have the Cabinet, we have the Upper House, we have the Lower House and we have many other things. I would like to ask how is the Commission preparing Kenyans maybe to avoid some form of confusion because of the changes? Thank you.

Maria Mwaura: Thank you very much. My name is Maria Mwaura, I am a student of special education and I have two questions. You have said that the Provincial officers will be elected by the people instead of the Central Government but don't you think that by having the Provincial officials elected by the people you are propagating the idea of Majimboism?

We have the issue of property ownership and I would like to know what the new Constitution's provision is for the already stolen property and any property that may be stolen during the tenure of the Constitution.

Eustin Odul: I am Eustin Odul, second year student in the Faculty of Science. Now, I am picking a quarrel with the Constitution Review Commission over this issue of age and the Presidency. Now it is good, when somebody is young he cannot be trusted with a higher office but I do not see the wisdom in telling us that we cannot have a President who is beyond 71 years of age. We have had such Presidents, the first two, and of course if this Constitution is to be wavered, then we are likely to have another President who will be above seventy years of age. Now, there should be no question over the age limit and the Presidency and instead the question of the upper limit should be changed to read as "and must be somebody of a sound mind" and not seventy-one years at that.

Audience: (Applause)

Speaker: (Not clear)

Eustin Odul: The lower limit should even be reduced to thirty, somebody is saying that. I fear a case where I may want to be the President at 71. I may be healthy because I have led a good life all along but because the Constitution or some letter somewhere think that at 71 I may not be of my sound mind, they say I can not be President, now that should not be there. We

should have a President, maybe start at 35 but let there not be an upper limit for the presidency. As the Constitution stipulates that such a president can go for two terms, let them go for two terms but don't let them retire at 71. What if a President goes at the age of 69, must he retire after 71 years of age or after ruling for three years? The Constitution should take care of that.

Com. Prof. Okoth Ogendo: Let me respond to you immediately on that point. The upper age limit is at the time of nomination. What it means is that if at the time of nomination you are sixty-nine, you can only serve one term, you cannot go for two terms. The requirement that you must be of sound mind applies to every body whether they are 36 years old or not. You will lose your Presidency, you can be removed from being a President, if you are adjudged to be of unsound mind. That is taken for granted.

The point you are making that there should be no upper age limit, we agonized over it but I think we settled for... experience indicates that once you are passing seventy-five and so on, things become rather difficult.

Eustin Odul: Now, we should have a learned President and that one we accept but why don't we make it a requirement that these must be men and women who have learned in any of the institutions of our Country? If we talk of any known or recognized institutions then it must be one of the six public Universities that we have. That would, at the end of the day, ensure that we do not have some people who led some good life in Boston only to come and lead some people who did not even qualify for their loans within the Country.

Audience: (Laughter)

Eustin Odul: I again have another problem on the issue of land; now, we know of some very good families who own parcels of land which are the equivalent of almost an entire district. They could own them, yes they bought them legally, we don't care. The question is, why should somebody own such a parcel of land when somebody else does not even have a one-acre piece of land? In as much as people should own property and that the Constitution must guarantee us to own such property ad infinitum, without limit, now land should be brought to question and that is, nobody must own land that can be equated or can be owned by, let me say, a hundred people or so. Therefore, the parcels of land owned by such rich families should be brought to question; they should give those to others.

Then we have got political parties and funding; why should we fund parties that are only there to make money?

Mr. Odiko: Please summarize so that we can give a chance to a wider spectrum of the audience.

Eustin Odul: I am finishing. Let me say the last. We have often heard like our President going public and then saying or misinterpreting certain sections of the draft. Why don't you make it public that anybody who misinterprets that with the intent of

giving the public a very bad impression can be prosecuted so that we don't get politicians saying that wrong thing on the good Constitution that you have made. Thank you.

Mr. Odiko: That was number four, but as I have just said we would be happy if we gave a chance to a wider spectrum of the audience so be very concise and to the point.

Fredrick Onyango: I am Fredrick Onyango and I am a BBA student Maseno University. The first issue that I would like to raise is about the political parties. This draft allows as many political parties as possible or as can be registered and as of now, as you can see, we have so many political parties and it is very evident that these parties are the organs which are increasing tribalism. Each tribe has its own party so I believe that tribalism is one of our main problems in Kenya today. If we can abolish tribalism by ensuring that we only have two political parties, no more to be registered but only two which represent the majority of the people in Kenya, I believe that this will be a uniting factor for Kenya.

About representation of women, political parties have to present or a third of the candidates should be women. It is not bad for women to represent us but this Constitution should ensure that the people are represented, not women, all the people and not only women. Even now when I was raising my hand, I was being asked where the women are. I am also equal, we are all equal so if it is representing, let the people to choose. We do not have to be dictated to that it has to be a third of women or it has to be this number or what. Let it just be the people who decide according to the leadership qualities.

Audience: (Applause)

Franklin Onyango: Also, the financial implication of this draft, we do not know, as in we have not been told about the financial implications. As in free education, there is a time we heard that it has been passed as law but right up to now there is no free education and we do not know what is going on. Will it be possible to have this? Can Kenyans afford this free education among other things?

About social welfare; I believe the important facts as human beings, the basic needs of a human being are food and shelter, maybe and clothing, but this Constitution does not go deep into food or shelter, as in there is no provision for ensuring that every Kenyan gets sufficient food or obtains sufficient shelter. I believe that this should be of prior importance.

First, let us ensure that everyone has the access to food through the Constitution; it must be a right that we must have access to food and to shelter too, at least where to live because it is very important; in fact they should be the main thing that we look at in this Constitution.

About the transition, we are hearing mara somebody is saying that the next election will be with the old Constitution, we are not

being told specifically, we do not know, we are floating, we are hearing the Parliament cannot enact the Constitution, I do not know what, there is so much confusion. Why can't we just have a specific date and say by this day we will have the Constitution ready and it should be like this and by the next elections we will have the new Constitution because I know if somebody somewhere to call for elections now, it means we will have the old Constitution but even if it is passed after the next election, will it be possible to have the Constitution enacted because we already will be having a new government. Will it be possible to enact this Constitution?

The last comment; somebody was saying about this CKRC being a toothless dog. Personally, I have never attended a single civic education session. The last time CKRC was in Maseno I was out of session. This is the first time I am seeing your faces and I do not know who you are by the way, it is the first time I am seeing you so I believe that you should put more emphasis on ensuring that every one...even right now I had to miss two lectures to be here. I was told about this meeting by somebody else and I did not even know about it. I believe that CKRC should improve or ensure that the people involved, maybe the administration of the university should ensure that all the students get access to these kinds of meetings and we don't have to forego like classes because most of us here have already gone, they have had to go for the lectures because they know that they will miss their lectures. So I believe CKRC should have some kind of power. Thank you very much.

Audience: (Applause)

Mr. Odiko: That was number five and maybe before I hand over to Commissioner Okoth and Jacqueline, with their permission maybe I could handle the last bit. No, we have had five and we want to respond to the five and then we take another batch of five but we are going to respond first to our friend's concern that perhaps you did not know they were coming.

First, our link with the university is Professor Bethuel Ogot so when we said we were coming, first of all it was in the papers and I personally talked to the VC, not only about the coming but about informing the student community, the university community that we would be here the whole day and I am happy that he gave us a go ahead. Similarly, Professor Ogot gave us an okay.

Additionally we even visited Professor Serem in his office in order to alert everybody and he gave us a blessing because that day the VC was not in. So, from the Commission's perspective, that is what we could do because since we have a linkage with this University, they said they would pick it from there. I wanted that one very clear so that there is no misconception that the Commission just walked in here without making sufficient arrangement for everybody to know we were coming. Now I will hand over to Professor Okoth.

Com. Prof. Okoth Oendo: Thank you very much for your very informative questions. Some of the answers to the questions that you fielded are actually in the draft, for example Christine, your two questions about the in-service training for Ministers and the declaration of wealth are answered in the following form;

All ministers will have to be approved by Parliament and in the process of approving those appointments, they clearly must explain to Parliament why they think that they are qualified to perform those kinds of functions. If you went to Parliament with a retired General of the Army and you want him to be the Minister for Health, I doubt whether Parliament will approve that person again. So, so those will be taken care of.

For the declaration of wealth, we have a very elaborate system in the draft on leadership and integrity and we have a Leadership and Integrity Code, we have an Ethics and Integrity Commission, all public officers must declare their wealth before they can take up their appointments. That is going to be taken care of. Now, I just want to make one other very general point and Jacqueline will address the specific question.

Do not look for specific answers in the draft. The Constitution is a road map that tells you where this country wants to go in the future; it is a road map into the future so don't look for the potholes, the bends, the bridges, the rivers and so on because you will not find them in the Constitution. You can only find those if you start walking along that road map and we are saying that the people of Kenya should walk along that road map, build those bridges, patch up those potholes, straighten up those bends and that is the only way in which the Constitution is going to come to life and that is why schedule seven has a long list of things that we want Parliament to do.

For every obligation created in the Constitution, specific laws must be passed to ensure that the rights created by the Constitution are in fact enjoyed by the people. When we talk about the right to strike, there must be a Trade Disputes Act that sets out exactly the circumstances under which strikes may be held, the benefits of the people who are on strike and how they can be protected from harassment. We cannot have all of that in the Constitution so if you think that the general principles, the obligations and the rights and the framework set out in the Constitution is adequate, then we can talk about how to operationalize that framework by specific legislation and I think if we look at it in that form, then it may not be necessary to respond to the very specific questions that are coming from here but since those questions have come, I will ask Jacqueline to address some of those specific questions.

Jacqueline Obiero: Thank you. I will go back to Kenneth, and you asked how the Commission was preparing Kenyans because you feel that if the draft of the Constitution is going to be enacted then there is going to be a lot of confusion and I think that is the main reason why we are here. We are preparing you as a person, you as a community by the virtue of a fact that we are informing you of what the draft bill is all about and I believe that as we have traveled all over in different constituencies, it is an act of informing the Kenyans about the Constitution. I believe that if we as Kenyans are going to participate in giving our views concerning the draft Bill and participate also in the National Conference, then I think Kenyans will be made aware of what is happening and concerning the new Constitution.

I don't think there is much of that confusion because we have talked about...in the transitional and consequential, in chapter 20,

that basically explains how things are going to be done, the order in which things are going to be done. We are not going to just wake up one day and we are saying that because we have a new Constitution so if you are married then you stop being married, no, there is some procedure and there is a transition that will have to take place.

I also want to respond, there is a lady, I think you are the one, she asked about what will happen concerning the property if somebody had confiscated some property, and what would be the position of this property. What I can say is that with the enactment of the new Constitution, whatever had been grabbed or land illegally acquired or property that maybe had been stolen and if this property is surrendered it could and it will be public property, it will be rendered state property, it will not be an individual's property any more.

There is somebody who asked about political parties and funding; this gentleman felt there were so many political parties and according to the draft bill, we have not made specific provision that says that we will have maybe one political party or maybe we are going to have a specified number of political parties. What I can tell you is that the Electoral Commission which we are proposing that is going to an independent Commission, has the mandate to supervise and will be the registrar of political parties.

We are saying that the Electoral Commission is going to set up rules and regulations on which political parties are going to be registered. According to the rules and regulations that the Electoral Commission is going to set, we believe that they are tough enough to eliminate some of these political parties that we have such that by the end of the day, I think that what we are going to have is only qualified political parties, the ones that have met the required conditions and we are not going to have a situation whereby we have so many political parties.

To also answer your question is that not all political parties will be funded but we are talking about the registered political parties, these are the ones which are going to be funded and they are going to be funded equally by the state. If you read on representation, that chapter talks about a political fund that will be set aside and this will be managed by the Electoral Commission and this will fund the political parties and when the political parties are also going to be funded, you find that if they are going to be funded by the state, that money that is given by the state will be used for specific purposes.

We have a topic on the purpose of the fund if you can read on representation so I do not think we are going to have a situation whereby we have so many political parties being funded. We believe that with whatever we have recommended, if is enacted then we are going to have very few political parties.

There is somebody who also asked about the representation of women and the fact that it has been said that a third of the women are going to have representation in Parliament. The primary division or the main division that we were using was the fact that we have men and women and so when we are talking about men and women, we are also considering the fact that in this

broad category there are the disabled, there are children, there are youth and all these. Women made their presentation and gave their views and they also requested and also wanted that they should be given some form of representation and so we did not give them half of the representation, which I think is fair enough, a third of it is much much fair considering even with the women we have the disabled, we have all these other diversities so I really don't think that that should really be an issue.

On the issue of free education, if you are going to read the Bill of rights, we have made provision for free basic education under the rights of children so please read on that. On social welfare, you asked about food and shelter and that it has not been specified whether the government is going to obligate itself on that and I would answer you just as what Professor said, that this is not the final and this is just a road map. It is just giving Parliament the direction for whatever has been put in the Bill then Parliament will come up with laws that will bring that to effect.

If we say that you have a right to food, or you have a right to housing, then Parliament will come up with specific laws to ensure that that right is met. I hope I have answered your questions.

Com. Prof Okoth Obedo: I will take the next five.

Mr. Odiko: We will take the next five and this time I will have a bias because we have got Wazee ambao walikuja na hatujawapatia time at all, it should be fair and are they there ama wameenda? Once more I am asking you to be very brief and to the point.

Joseph Nditi: My name is Joseph Nditi. My first comment is that the Commission for Higher Education should be clearly included in the new Constitution.

Two, I will request for clarification in this item on page 28 of the land which is on land tenure, 4(viii), the establishment of a land fund to enable the Kenyans to own land on equitable basis. I would like to have clarification on that part's implementation level.

Lastly, when the draft was giving voice on let us say Judiciary, did it talk about the retirement age for all other public servants? Thank you.

Jethron Ayuba: I am Jethron Ayuba, a first year student. My question is; what does the Constitution give or highlight on the Members of Parliament since we have had Members of Parliament not attending the House and thereby very important motions not making it through. I would like you to elaborate this to make sure that they attend the House proceedings and will only be exempted on serious matters.

John Maina: My name is John Maina and I am a first year. My question is; we have been reading from the papers that the

KANU government may call elections any time from now and this we know it can happen because right now the president has the power to dissolve the Parliament and call for the General Election. Now my question is, suppose this happens, what will happen to the opposition because in their planned government which is to come, they have created posts for the Prime Ministers and Deputy Ministers, which is not constitutionally provided for by the current Constitution.

My second question is; if elections are to be conducted under the new Constitution, which in fact we are praying will go through its various stages and succeed, to what degree do you assure us as Kenyans that the Constitution will be ready before the general election?

My third question is; you have said that for somebody to contest for the seat of President, he must be in the bracket of age 35-70. We know that right now we have been hearing Kibaki will contest for the presidency and he is above that age. What comments do you have on that? Thank you.

Omondi Steve Otieno: I have around three questions to ask. My name is Omondi Steve Otieno, third year Environmental student. The first is in land ownership and that is Chapter 11, 233 clause 3, and it is “non citizens of Kenya may hold or use land on the basis of lease hold tenure only and such leases however granted shall not exceed ninety nine years. Now, citing the case of Del Monte and Delamere, I tend to think ninety nine is too much because if a Kenyan is born now when the lease has just been given, this guy will die even at the age of seventy when the lease is still in force and by the way, land value appreciates.

What happens to the other leases that had been given to people like the Del monte who were given leases that are over a hundred years. Shall it be revoked?

Two, Kenya is always first or rather at the forefront in signing treaties and protocols and in fact that is why the UNEP headquarters are in Kenya. Unfortunately they do nothing about these protocols; no implementation takes place and I therefore suggest a law that obliges them or forces Kenya to implement signed protocols.

Three, you were saying about the ethnicity and changing the Constitution to our ethnic languages. Maseno University has a linguistic department which can help you, as they had said the first time you were here, to translate the Constitution to ethnic languages like Luo.

Four, about women representation; If a woman qualifies, let her go to Parliament and represent a Constituency but if trounced by a man, we will not leave the man behind so as to make a third for the women in Parliament and if at all men go to Parliament and you discover that just a fifth are women, are you going to create more constituencies for the women or are there going to be more nominated women MPs?

That is all I had, thank you.

Wilson Cheburet: Kenya's backbone is basically agriculture. Now the pastoralists and those who practice agriculture like farming, unfortunately the pastoralists are marginalized in such a way that when there is a drought, their cattle or whatever they have, the livestock perish because of the drought and the famine. Now what happens? I think the government should make a mechanism in a way that they should compensate these people who have been affected because they have their dependants, the children and education so I think the government should create a kind of a compensation scheme such that these people be compensated.

At the same time, they should be given a way that a marketing board should be created in such a way to help them in the marketing of their cattle and their livestock. Thank you.

Mr. Odiko: Thank you very much, before we proceed maybe we will have to respond to the issues and questions that have been raised by the last five speakers.

Com. Prof. Okoth Ogendo: Joseph, on the Commission for Higher Education; we thought about the Commission for Higher Education but the policy issue has not been properly argued and I think we still have an opportunity to address the management of education squarely in the Constitution. What we have done is basically to provide for education as a right, to provide for the infusion of science and technology and information technology in the Constitution but not how it is going to be managed. That is an issue we will take up at the National Constitutional Conference.

Now, the land fund; the idea there is that people who need access to land but cannot afford the money to buy it should be given access to funding. This is what the Agricultural Finance Corporation was supposed to do but the Agricultural Finance has been hijacked by the rich and is therefore no longer serving that purpose. We are asking for the creation of a land fund for the ordinary wananchi so that they can have access to land.

What does the Constitution say about Members of Parliament? First of all the Constitution contemplates that being a Member of Parliament will be a full time job and it is also providing for wananchi to recall their Members of Parliament if they are not performing and we have detailed provisions in the draft on the procedure for recalling a Member of Parliament; you need to collect signatures from thirty per cent of the electorate and the Speaker then will have the Electoral Commission to investigate the complaint and if the complaint is justified, the seat shall be declared vacant and a by-election called in.

As I said earlier, we do not contemplate that Members of Parliament should also double up as government ministers because that is also how that their constituencies lose them. We would like Parliament to be a chamber of legislators not of government and legislators.

John Maina, your worry about the Kibakis and the Nyachaes of this world are taken care of in the transitional provisions that

we have made. We expected that this Constitution might be used for the next election, we did not think it would be just and fair to bar everybody who would otherwise have been qualified to run for the office of President under the new Constitution. We have provided in the transitional provisions that if the next elections, the very next elections, are held under this Constitution, then the age and the academic qualification requirements will not apply but if the next elections are held under the old Constitution and then the second elections after this are held under this Constitution, that waiver will not apply because there would have been sufficient notice to everybody who wants to stand. So, that is dealt with in the transitional provisions of this Constitution.

Now, of course, if the President calls elections under the old Constitution, the process of approving and enacting this Constitution will be suspended until a new Parliament is sworn in and then we will take up that question with the new Parliament and of course at that point we will then have to consider how the new Constitution will come into effect. It does not mean that if we hold elections under the present Constitution then the new Constitution can only come into effect in the year 2007. Certain parts of the new Constitution can come into effect immediately but others may have to come into effect later, but that is a matter that we will consider.

Omondi Otieno, you are worried about the 99-year lease. That is standard and remember that we have said not exceeding, we have not said that any citizen who comes here to ask for a lease must get 99, we are saying not exceeding and that is standard procedure. If you look at the transitional procedures, we are converting anything that exceeds ninety-nine years to a ninety-nine year lease. In other words, the Del monte and others who may have more than 99 years, like Nyali Limited has 9,999 year lease, there are a lot of people who have 999 but Nyali has 9,999 and those ones will automatically be converted to a ninety nine year lease. That has been provided for in the transitional provisions.

With respect to international treaties and protocols and so on, we have now provided that treaties must be approved by Parliament before the government signs them and when they are signed they will be part of the laws of Kenya. It will no longer be necessary to worry about the implementation of those treaties.

The question of women representation I know is worrying people but I think we understand that there is need for Affirmative Action with respect to women. The fact that women are the majority voters and they do not elect other women surely should tell you that there is a problem and the fact that Parliament consistently has never had more than ten women must tell you that there is a problem. Why should 51% of the population not be substantially represented in Parliament? This is an issue which has been dealt with by many constitutions.

In Uganda, they have even created women-only constituencies with the result that now they have close to 40 women in the Ugandan Parliament. In Europe, they have gone further than that. We have started in this country by demanding in the Constitution that one third of the representatives in Parliament should be women and then we have said in article 109 that

Parliament must argue that point and pass a law that will make that a reality. The matter is still open for debate but we think there is a problem; there is a problem of marginalization, there is a problem of lack of threshold capacity, there is need for Affirmative Action not just for women but for minorities and pastoralists and so on and we have taken care of all of those things.

The point that has been made about pastoralists and marketing and so on, and I think we have taken care of it first of all by creating rights and then expecting that Parliament will pass legislation to deal with it. When I was in Ileret, Ileret is in a corner of Lake Turkana near the Ethiopian border, it is in North Horr Constituency and the people there were saying they do not understand why there should be a Kenya Meat Commission in Athi River and then they have to ship and pack goats all the way from up there to Athi River and it is a very important point. We must ensure that the services and the resources of this Republic are equitably distributed and used by the people. What we have done in the Draft is to create a framework and an environment that should enable these things to happen. The Constitution alone will not give you a Kenya Meat Commission but if the rule and the structures and the decision making processes contemplated in the draft are followed to the letter and if the people demand that those rights and obligations should be a reality, then it will be possible to make that kind of decision.

We have said again, for example, that although the seat of government is Nairobi, we expect that important government departments will be equitably distributed throughout the Country. It is only when the people demand it that we are going to have the Ministry of Fisheries moved to Kisumu for example and the Ministry of Livestock to Wajir rather than in Nairobi so it is really between you and your government. The people must demand it, the people must appropriate it, and the people are the ones who are going to make the Constitution a reality. Jacqueline do you want to add anything?

Mr. Odiko: There is a contentious issue which is coming up, about women representation and of course we have already dealt with it but one thing that I wanted to add is this; you know that the draft we have is on the basis of the views that came from all over the place, throughout the country and the question that arises is whether this issue of women representation came from the Commission or from the people and specifically did it come from you here, that is Kisumu Rural? I have with me here the report of the public hearings that we had here in June and in this report, am sorry earlier I mentioned that we do not have enough copies for all of you but I made a number of copies available in the University library, still we are trying to make more copies but as of now we haven't but what I was driving at is one thing, that in this report and in this hall a number of people said and I read "the Constitution should provide that thirty percent of the Parliament seats shall be reserved for women" Another one, "the Constitution should provide that 20% of the Parliament seats shall be reserved for women." Another speaker still, "the Constitution should provide that 33 per cent of the Parliament seats shall be reserved for women." Yet another view, "the Constitution should provide that Affirmative Action should be entrenched in the Constitution."

What I am trying to say is that your views were taken care of when the Commission was making this draft and I don't see whether it is proper for us to reopen the debate on that when it came from you. All the same, as we have said, this is a draft and

we still have avenues to revisit certain articles and when we reach the National Constitutional Conference, maybe this thing will still be dealt with.

Having said that, I am going to give the last group of five a chance to ask questions. I can see four of them are there, can you just say one, two, three, four and we don't want to be... the last person there, you are the last in this row. Please be brief and to the point, whether it is a question or a comment, be brief. Thank you.

Kinyua Gathuri: My names are Kinyua Gathuri, Mass Communication and Media student. I want to draw our attention to the National defence security system. With the upsurge of terrorism and multinational drug trafficking, is it possible that in the Constitution we could have something that could tell us how the government is going to be dealing with terrorist attacks, like a little explanation on the vicarious responsibility law and original responsibility law so that we can have a clear definition of how the terrorists are going to be dealt with.

The second question is on some of the jobs given to some of the institutions, parastatal jobs, for example that of Vice Chancellors. Formerly we have been having, out of my own assumption, that the President chooses some of the Vice Chancellors out of qualification, one, but there is an under-current that is probably tribal calculations. Is it possible that it will only stick to qualifications? Thank you.

Kevin Orora: I am Kevin Orora, second year BBA student. My first question is on devolving of power. I think it is good that we are... the issue of devolution has been overdone and it is like having a referee for goals, fouls, and another one for off sides. I think maybe we should just reduce it kidogo.

Then we have this issue that, I have noticed that most of the court orders are not followed whereby you know like a town clerk might just decide to ignore an order, evict people or something like that and nothing happens, the worst that can happen to him is to go to civic jail for a day. I think may be we should have something in the Constitution dealing with such ignorance of laws.

We also have this thing that at the moment in the present criminal law, when somebody does something to you, he can pay a fine to the state but there is nothing that happens to you, you have to start another case again for compensation from him. Can't we have just one law whereby when somebody is found guilty, let us say he stole from you, he simply compensates you as well as paying the fine to the state, instead of him paying the fine and then you start again another case for him to pay you back.

Then we have also the issue, I think somebody mentioned it but I wanted to ask something. The issue of parastatal jobs, you know whereby like we have now somebody who is a director in 42 of the government bodies and as well as having another job also. Why can't we have it that if you are a representative of the government in one body, jobs are scarce, somebody else can also be given another job instead of having somebody being a director in 42. Thank you.

Eliud Maina: I am Eliud Maina, textile student first year. I would like to make one comment on the presidential age; I think it is very unfair to say that a president should be above thirty-five. Us guys are coming out of University and some of us would like to be Presidents so I think it should be pushed down to 21 or maybe 18.

Something else is about political parties; you have not specified how political parties will be nominating their presidential candidates. I think it is very fair that we have a laid down procedure whereby all political parties will follow, for example, what we have been seeing around for Rainbow, KANU whatever is not the best example. Maybe we can say all political parties should be having primaries, you go to the Coast province and you try to find out what is there for various leaders and throughout the country.

The other thing I would talk about is something that has been said on job appointments, let me talk about Members of Parliament and how they elect the Prime Minister and how they pass motions. Will there be a check of balance as in within Members of Parliament being bribed to vote for something and you obtain to that for something that is very evil. So, who will be regulating this? Something is passed and it is not good. Is there a way that we can revoke that thing as citizens of this country? Thanks.

Caleb Omino: I am Caleb Omino from Maseno Disabled group. We the disabled have commended the work done by the Review Commission concerning the proposals for the disabled persons and we appreciate the work.

Now, my request is that the disabled persons should also be given free education the way the orphans are given or there should be some institutions for them because there are some parents who cannot provide for the education of their children.

In some cases, the disabled persons are being discriminated in court cases because they cannot pay the legal to fee for the lawyers so we now request this Commission to consider the disabled concerning legal cases, they should be given free lawyers in case they go to court. That is all I have, thank you.

Mr. Odiko: I think that was the fifth one or fourth.

Eliud Lelelai: I am Eliud Lelelai, third year applied statistics student. Mine is about the honourable Members of Parliament; many a time our honorable Members are elected, they go to Parliament fill their big tummies, hire themselves in circles of affluence yet their constituents languish in poverty. They do nothing knowing their constituents have no power to remove them. Now I am asking, does the new Constitution empower the constituents to remove their MP if he does not do as expected of him or her?

Mr. Odiko: Are you through?

Eliud Lelelai: No. Another issue is about the pastoralists who are living in the areas where the British soldiers are practicing their marksmanship there. We are seeing in papers and heard in the news of pastoralists who have been affected by the undetonated bombs especially in Laikipia and Isiolo districts. Many victims have died and some of them are permanently disabled and their relatives are psychologically affected therefore they sued the government for that and that case was done in Britain. Now I am asking, why was that case not done in Kenya? Does it mean that the current Constitution has no room for that? Does the new Constitution protect the pastoralists in such kind of cases?

Another question is what does the Constitution propose to do in order to prevent MPs from deleting important clauses in the Constitution to them?

Mr. Odiko: Thank you very much for raising those very important questions. I think I will hand over to Professor Okoth.

Com. Prof. Okoth Ogendo: Jacqueline will take those questions.

Jacqueline Obiero: Okay. To answer the question of Kinyua, you wanted to know how the government will deal with the question of terrorist attacks in the case of national defence and security system. What I can say is that, and I will repeat because I think I have said it before, is that the Constitution cannot deal with every detail especially even in the defence. What we have just laid down is a framework and now it is upon the Parliament to be able to come up with laws that are going to ensure that the defence and the security system is in place in accordance to what the Constitution is proposing.

You are also asking about the Vice Chancellors; that recently we have been having Vice Chancellors being appointed on the basis of tribe and not on qualification. One of the things that the Draft Bill has done is to reduce the power of the President; he will only appoint some of these holders of the constitutional offices and institutions. He will have the power to appoint but Parliament will have to approve. If that person maybe has been appointed on the basis of tribe or such qualifications, then I believe that if Parliament passes it, then I don't think we will have such cases where people are just appointed because they come from a certain tribe.

Kevin, you felt that this issue about devolution of power has been overdone and it should be reduced, we have taken that into consideration and it is still subject to debate at the National Conference. You also talked about civil cases and that there has to be a way of instead of taking the case further, then we should have a way of compensation. I think one of the provisions that is being made is the provision of local courts or the locational courts or tribunals whereby you as an individual if you have a problem, then you can be able to settle the thing at the locational courts and many people had proposed that we should have

such courts at the village level and I believe that when the principle of devolution of power will be completed, that will be taken care of so there will be an easier way of settling such disputes.

There is a person who also asked that the presidential age should be reduced to 21. We have taken that though many Kenyans felt the presidential age should start from 35 and so that is what we were able to settle for in the draft but this is still subject to debate.

You also felt that there should be some laid down procedures that all political parties should follow and I believe that the Electoral Commission which will be mandated to supervise the political parties in conjunction with Parliament will come up with laws that will regulate all political parties.

Caleb Omino, you felt that the disabled persons should be given free education or an institution should be put in place for them. What we are saying is that right now at the moment we have the disability Bill that is still pending in Parliament and we believe that if this Constitution comes into force, then some of these Bills are going to be passed and it will be an answer to so many of these questions that maybe the disabled people have been asking. So right now it can not be like everything mentioned in the draft bill but with this new Constitution coming into force, and maybe with the Bills that are still pending like the Disability Bill that is pending in Parliament, then I believe that some of these things will be taken care of.

You also said that there should be a legal fee given to the disabled people and we have made a provision, if you go to the chapter on Public Service, there is a provision we have made for a public defender and this public defender will be in charge of offering and giving legal assistance to those that are not able. I believe the disabled are included here and that has been taken care of.

Eliud, you asked about the conduct of MPs and I would still refer you back to the draft. It has been expressly mentioned and laid down that the people or the electorate will have the power to recall their MPs. That one should not be a problem that if you local MP has gone and deserted and maybe he is earning big money, that has already been taken care of.

I will leave the rest for Professor to answer.

Com. Prof. Okoth Ogendo: I think you have dealt with most of the questions that were asked. I sympathize with the position of Mr. Maina that anybody who is of age should be able to vie for any position. Kenyans do think that age is an important issue especially for the presidency and you will remember in the draft you will notice that for the National Council we are also requiring that people should be above the age of 35 but for the National assembly you can vie anytime after the age of 21. There are several other age limits within the draft but this is a matter, which you can carry to the National Constitution Conference.

What I would urge anyone of us here to do is that if there are issues you feel strongly about, please reduce them into writing, give them either to the District Coordinator or to the representative of the district who is coming to the National Constitutional Conference or any other delegate that you know of who will be at the National Constitution Conference so that these matters can be discussed thoroughly because after the National Constitutional Conference, the Bill then goes to Parliament for enactment.

Let me thank you very much Ladies and Gentlemen for this very lively session and I hope the debate will continue in the District and within the Constituency. Thank you very much.

Mr. Odiko: Thank you very much Professor Okoth, Jacqueline and all other colleagues from the Commission headquarters for that very thorough briefing this morning. I also want to thank the students, lecturers, Professors from the University and also Wazee.

I will call upon somebody to give a formal vote of thanks and you will allow me, Sir, to introduce to you two very important people. As you know, Ladies and Gentlemen, the National Constitutional Conference is scheduled to start on the 28th of this month and you know that in that Conference, every district is supposed to send three delegates. This is as per the Constitution of Kenya Review Act and that Act also stipulates that out of the three, at least one must be a woman and that is why I fear for my friend there who said it is not proper that women are given their due positions.

I want to introduce the two of them who are here and please, I will ask them to stand up. The two delegates to the National Constitutional Conference, please can you stand up so that I introduce you?

Audience: (Applause)

Mr. Odiko: The two are Mrs. Phoebe Atieno Ochola, a delegate for the district and then of course Mama Rose Orondo is a member of 3Cs. Thank you. Another delegate is Mr. James Omolo Kayila and James is here.

Sir, before I invite somebody to close it with prayers, I will ask James just to say a few words as a vote of thanks to you Sir. James?

Mr. James Kayila: Professor Okoth Ogendo and your team from Nairobi, Ladies and Gentlemen, mine is to move a vote of thanks. I think your presence with us here today has helped to throw a lot of light on some of those things we were reading in the papers but which we could not get very good explanations for.

Mine is to say the Review Commission has done its work and between now and the Conference time it is for us to continue debating these issues. I don't think the debate has ended with our discussions here today, the debate continues and even those who have spoken here will continue to present their views and other recommendations on how to improve on the Bill that you have drafted. I think it is the responsibility of all the Kenyans and this is what your Commission has been trying to say all along.

If we do that, then the Constitution shall be ours and then we will have little problems with the enforcement of the provisions of the Constitution. Once again we wish to thank you very much for coming to Kisumu Rural to hear our views but as you can see, this was a predominantly University community and that was expected and you have had a lot of input from the students and also from the few leaders who joined them here.

We wish also to thank the University of Maseno who have allowed us the use of this facility; we know they use this hall for a lot of lectures and I have seen a lot of scrambles at the back there because the hall was in use today for this very important thing that Kenyans are looking forward to. Once again thank you and may God bless you.

Mr. Odiko: I will request Mr. Philip Mbichi to offer the closing prayer.

Philip Mbichi: *If we love ourselves, we love others and we love God, the problems will be solved. Oh lord, our leaders have guided us with tremendous wisdom, protect them as they go through the country working to make people own their land; if this happens and the struggle goes through, through your blessings, we shall be consoled. Please, God, oh God, grant us wisdom and protection. All these we pray in the name of Jesus Christ our Lord. Amen.*

Thank you.

The Meeting ended at 2.00 P.M.
