

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT AND DRAFT BILL,**

**KISUMU TOWN WEST CONSTITUENCY HELD AT KISUMU  
SOCIAL CENTRE,**

ON

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

*Transcribed by Lillian Bango*

**DISSEMINATION OF REPORT AND DRAFT BILL NYANZA PROVINCE KISUMU T. WEST  
CONSTITUENCY, AT KISUMU SOCIAL CENTRE ON 17-10-2002**

**Commissioners Present:**

Com. Prof. Okoth Ogendo - Commissioner

**Secretariat Staff in Attendance**

1. Jacklyn Obiero - Ass. Programme Officer
2. Abigael Nyakundi - Verbatim Recorder.
3. Mr. Augustine Odiko - District Coordinator

The meeting started at 10.17 a.m with Commissioner Prof. Okoth Ogendo on the chair.

**Mr. Odiko:** Good morning, morning once again, ladies and gentlemen I have the pleasure and the privilege to introduce you to Prof. and Commissioner Okoth Ogendo who is here with us from Nairobi working from the Constitution of Kenya Review Commission. Commissioner Ogendo is accompanied by near him there Jackline Obiero and the extreme left there is Abigael Nyakundi. My name is Austin Odiko I am the Constitutional Review Coordinator for Kisumu district. Because we continue ladies and gentlemen I would like to ask one old man to lead us in prayers, Mzee Ogone please.

**Prayer by Mzee Ogone:** Let's stand for a word of prayer. Almighty and everlasting father, we are gathered here to listen and hear the views for this very important document, we request you oh Father to give us the ideas, so that we can come up a

workable solution for this republic. Please give us the strength to do that, we ask you shortly in Jesus name. Amen.

**Mr. Odiko:** Ladies and gentlemen, thank you Mr. Ogone for leading us in prayers. Today ladies and gentlemen we have the commission in this hall at the same time we have the Commission at Pandpieri Catholic Centre and the two meetings will be parallel, that is as we continue here the other meeting is also in progress the other side.

Now, may be when other visitors come ... (Inaudible) some of them have not come we will take the chance to introduce them to you, but as from now I hope each one of you has got the document, that is the draft. So far we have received three documents, first is the draft itself which I can see almost each one of you has in his hands.

Two, we received very few copies of the constituency report, that is the report that was compiled the last time you were here, we have the copy to is here and you may want to refer to it, at the same time that is report is in our documentation centre and you are welcome to refer to it in order to confirm whether what you said is in it and also to compare it with what is in the draft.

Finally we have a shorter version of the National Report we only have the few copies, but we have others in the documentation centres you may also want to look at it at your own time. I think after having said that one, it is my pleasure to hand over to Prof. Ogendero so that he can proceed. There is a lady there I didn't introduce Hellen, Hellen, Hellen, Hellen is my assistant although she is in the crowd, I see some running between Pandpieri and here, if you have anything you need, she will be able to assist you. Thank you.

**Prof. Com. Okoth Ogendero:** Good morning ladies and gentlemen, *Oyawore uru jo Kisumo.*

**Audience:** *Oyawore.*

**Prof. Com. Okoth Ogendero:** *Ee kawuono to wabiro kaendi mondo wago mbaka e draft bill manyincha okel ni, mane wandiko kolingana gi weche mane umiyowa.* We recorded your views along with the view of the other 209 constituencies in the republic and we have analyzed those views we have developed a draft constitution which is intended to replace the current constitution and we want your first reaction on them, on the proposal that we made we also, we also would like this draft to be discussed as a national constitutional conference, which we are calling for the 28<sup>th</sup> of this month. Our plan is to start the national constitutional conference from the 28<sup>th</sup> of this month; we do not know what is going to happen in the next week or so. There is every indication that Parliament may be dissolved, if Parliament is dissolve that National Constitution Conference will have to wait until a new Parliament is inaugurated, the views of Kenyans across the country has been that we should be able to hold National Constitutional Conference, enact a new constitution and then go for election. That may not happen, if it doesn't happen, all is not lost we simply would have to wait for election to be over and then the commission will convene the National Constitutional Conference there is a new Parliament because 1/3 of the Members of the National Constitutional Conference must be Members of Parliament. And we cannot hold the Conference if there no Members of Parliament.

Now, what I want to do this morning, I am here with Jackline Obiero who is going to help me in discussing this draft. First of all I want to make some general remarks about the draft and then we are going to go through the draft chapter by chapter, not clause by clause, chapter by chapter to clarify some of the new things, which we have included in the draft. And then we are going to spend most of the time discussing with you, what your reactions are, taking your questions clarifying them, noting the points that you are making and basically trying to understand from you whether we have incorporated your own views.

By way of general comment, I want to draw your attention to the following important questions, the drafty the draft is concerned with five important things about the constitution. The first one is that it declares the legitimacy of the state, it constitute the state, it establishes a basis for the legitimacy of the constitution and that is strictly in the preamble, you will know that the independent constitution was given to us by the British, Parliament, it was not a Kenyan document. We are now saying in the draft that Kenyan in all other diversities, in all our language diversity, ethnics diversity, religion diversity, cultural diversity, we are giving to ourselves a new constitution that is stated in the preamble.

We have also identified the people we are pronouncing in this draft, that all power and all sovereignty derives from the people and we have said that in chapter one. We have also established a framework through which the people will exercise their sovereign authority and the people do it through Parliament, through the system of election, through political parties and we have said that in chapter six.

We have also recognized that the constitution is supreme not Parliament, but the constitution is supreme and therefore all law must conform to the constitution all administrative action must conform to the constitution. In other words the people are sovereign the constitution is to blame and we have made that clear in chapter one, chapter 18 and chapter 19 we have also proclaimed clearly what the republic of Kenya is, we have defined the boundaries of the republic of Kenya, this was not always the case. The present constitution does not define the boundaries of the republic, we have done that. We have also stated that the republic of Kenya is divided into eight provinces and seventy districts. That means that it will no longer be possible to create districts without amending the constitution, the power to create district now is the power can only be exercised by Parliament and the with the concurrent of the people through a constitutional amendment.

We have laid out clearly that the boundaries of Kenya you will find the integrity of the state you will find in chapter two and in schedule one of the constitution of the draft. We have set out what I want to call the ethical social, economic and political road map for the republic. This is not only a sovereign republic, but it is a republic that believes in the principals of equality, democracy, constitutionalism, the rule of law. And we have set out in chapter III the goal, the value and the principles, which the republic hopes to leave by. Those dual and principals indicate to you where we want to go as a country and where the future for this country lies.

And then we have established in chapter 15, a frame work for the defense and security of the republic. And in that chapter we have established a national security council, we have established a national defense council, we have established the army, the navy and the air force. And therefore it will no longer be possible to abolish an army or an air force as the 82 air force was created in 1982 by abolishing the existing air force. All those things now become constitutional organ and therefore can only be created with the consent of Parliament or abolished with the consent Parliament.

We have gone further and defined who a Kenya citizen is, and how citizenship can be acquired or lost, and we have done that in chapter 4, we have then in chapter 5 indicated exactly what the rights and obligations of citizens are. And it is a very elaborate bill of rights one of the longest perhaps in any country but one that is important for good Governance to this country. In that bill of rights as we will indicate in a minute, we have dealt with social political economic civil and cultural rights as well, many of which were not available in the present constitution.

Then we have set out in some detail how power is to be shared in this country, you will remember that the most important complaint that people raised during hearings was the concentration of power back in the central Government and second in the President.

Now we have stated in chapter 7, 8, 9, and 10 how power is to be shared. We have stated in chapter seven, how legislative power is to be exercised, between the legislature at the centre and legislative authorities below the centre.

In chapter 8, we have indicated how executive authority is to be shared, and we will be able to explain to you that legislative authority will now be shared by the President and the Prime Minister. So we have states that power, we have created the position of an executive President and an executive Prime Minister. And powers which are currently being exercised by the President will now be shared with the Prime Minister. We have also created the Judiciary indicated clearly that the Judiciary works or exercises the power on behalf of the people be responsible to the people and is under the supremacy of the constitution, so the Judiciary cannot operate out by the constitution frame work. They cannot set themselves up, as if they were an organ outside the framework of the constitution.

And in chapter 10, we have indicated how power is going to be shared between the centre and the provinces, the districts, the locations and the villages. We are creating a system of devolution of power that goes all the way down to the village.

Then we have indicated the principles that govern the exercise of power and the organs, which are used to exercise that power. And we have state out the public service, we have set out a very detailed leadership and integrity code which must consider with by all public servants. We have also set out a number of constitutional commission, independent constitutional commissions which are suppose to operate without any control from either Parliament or from the executive. And one of the commissions you will notice that we have put in there is the teachers service commission, because we think that the teaching profession is so important that a commission dealing with teachers ought to be independent of the executive and also the

legislature.

We have then set out how the primary resources of this country may be held conserved and managed and we have state particular tension to questions of land and property, the environment, natural resources and public finances and revenue. The basic principle here, is that those resources must be managed and controlled subtenedly and efficiently and for the good of the people of Kenya.

And the finally, we have established in chapter 20, and schedule 8, a framework of transition from the old constitution to the new constitution, because it is important to indicate how we are going to cross the river from the old to the new. And that schedule gives you in very great details how that process has to happen.

Basically, that is the overview of the draft. We now want to go through the draft chapter by chapter explaining in some details some of the issue that we have included and I am going to ask Jackline to start with the first six chapters.

**Jackline Obiero:** Thank you Prof. Ogendo, now I want us to just take a quick walk into these first six chapters and I just want to draw your attention to page two in the draft bill. We have page two on the table of contents we have what we call the preamble and as you have just been told our current constitution does not have a preamble and so according to the submissions and what many Kenyans said they wanted a preamble included in our constitution and this is what it reads. “That we the people of Kenya, aware of our ethnic, cultural and religious diversity and determined to leave in peace and unity as one indivisible sovereign nation, committed to naturing and protecting the well being of the individual, the family and the community within our nation.

Recognizing the aspiration of our women, and men for a Government based on the essential values of freedom, democracy, social justice and the rule of law, exercising our sovereign and inalienable right to determine the form of governances of our country and having fully participated in the constitution making process, do adopt enact and give to ourselves and through our future generations this constitution.” So, that is what we have in our preamble.

Then I want us to go to chapter one, chapter one talks about sovereignty of the people and supremacy of the constitution. If you realize that this constitution or the draft bill that is you have before you, recognizes the sovereignty of the people of Kenya and we are saying that all sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the constitution. So we are not going to have a situation where by power has been vested on only one person and we are not going to have a situation where by there is somebody or one individual is above the law. What we are saying is that all the people of Kenya are sovereign and this sovereignty has been may be exercised only in a accordance with the constitution.

And we are also saying this sovereignty, you as an individual cannot just stand and decide to you know to live according to what you want to, just because you are sovereign or because of the sovereignty that has been vested on the individual of the people of Kenya. What we are saying is that, this sovereignty authority has been obligated to different arms of the Government

and so if you go to article one, sub article three, it says in the same page that the sovereign authority of the people is allocated separately among:-

- a) The legislature to whom the people entrust the legislative authority of the republic and to be exercised in accordance to chapter seven, we are going to go to that.
- b) The executive.
- c) We have the Judiciary.
- d) The constitutional commissions and offices established I think by chapter 17.

What we are saying is that, this sovereign authority has been allocated to different arms of the Government. Initially in the current constitution we have the three arms of the Government, but we find that the two arms of a Government, that is the Judiciary and the legislature seem like they don't have any power because all the power has been vested in the executive. But what we are saying that in this constitution, these powers shall be vested in the three arms of the Government and they will be guided by the constitution, which is the supreme law.

Then when you go to the supremacy of the constitution in article two, I read, "Kenya is founded on the supremacy of the constitution and the rule of law as shall be governed in accordance with the constitution" What we are saying is that the constitution is the supreme law of Kenya and any other law that is not consistent with the constitution cannot be regarded as a law and cannot be followed. What we are saying is that once this document has been adopted or enacted then it's the supreme law of Kenya and all the other arms of the Government are obligated to do what the constitution says.

So we are not going to have a situation whereby there is somebody who is above the law. I want to draw your attention to article five that talks about the law of Kenya, and the laws of Kenya comprise:-

- a) The constitution, acts of Parliament enacted under the Constitution, African customary law, Islamic and Hindu personal law, the rule of law generally known as the common law and the rule of law generally known as the doctrines of equity as they relate to the practice and procedures of the court of Kenya, the East African community law and the customary international law and international agreement applicable to Kenya. So these other laws that shall be recognized in our constitution as the laws of Kenya.

And in the same article five, sub section two, says that Parliament shall within two years of the coming into force of the Constitution by an act of Parliament make the amendment that are necessary or expedient to bringing the existing laws into conformity with the constitution. What we are saying is that once this document has been passed and has been adopted as the supreme law of Kenya, then Parliament within two years will make laws or will make the necessary changes in the existing laws to conform with the constitution.

Then let's go to chapter two, talks about the republic. And what we saying here is that Kenya is a sovereign republic, we have heard instances whereby you know many people were proclaiming and they are saying this is my country you know, I can do what I want to do and we have been in situations where by we are ruled not according to the constitution and people just making laws to suit themselves. But what we are saying here is that, Kenya is a sovereign republic and so no one can just come up with any laws that are contravening the constitution and say that those are the laws and pass them at any time.

We are saying Kenya being a sovereign republic has territories and we have also defined this territories in the first schedule, we have defined our boundaries, we have also defined the provinces and the districts that we have, so as Professor I had told you earlier, we will not have a situation whereby a district is just created, you know overnight we have you know just some districts coming up.

We have realized that in our present constitution we do not have our territories defined, so in our constitution the one that we are proposing, we are saying that the territories of Kenya have been defined we know where our boundaries are and we will go to that in the first schedule, much much latter.

Then we are talking about the capital, and we recognized that the capital of Kenya is Nairobi and we are saying that Parliament shall enact legislation to provide for the status and the Government of Nairobi. In the past we have heard situations whereby you know, people coming and claiming and saying that Nairobi is our land, we have heard the Maasai's you know at one point or another they just come and they say Nairobi is their land and they just want to take and to grab the whole city. But what we are saying is that Nairobi and being the capital city, Parliament shall enact laws on how it's going to be governed. It's not just going to be a place where by anyone can just come and say, this is my land. Parliament would come up with laws on how it is going to be governed.

We are also recognizing that the official languages of Kenya are going to be Kiswahili and English, and any document shall be made available in this two languages. So, if you have been going through you realized our draft is in English but we also published one last week, the Kiswahili version of it called the msuada, I hope you have come across it. So what we are saying is that every official document would be made available in English and Kiswahili.

We also recognized Kiswahili as being the national language of Kenya. And the state also respects and will promote the diversity of language of the people of Kenya. And shall promote and develop and use the use Kiswahili, indigenous language, sign language and Braille. So we are saying that the state will recognize, respect and promote the development of such languages, so the people, the persons with disabilities have also not been left behind. The state recognize them and will do what it can to make and promote these sign language and Braille.



I also want to draw your attention to national symbols, we are recognizing that our national symbols are going to be the national flag, the national anthem, the court arms and the public seals of Kenya that are prescribed in the patch schedule.

We also have the national oath and affirmation those are found in the fourth schedule. Another that I also want to draw to your attention is the national days. When you went through we travel through Kenya into the different constituencies, many people gave their views and they say that Kenya too many holidays, some that they did not understand. Other people felt that they were just promoting personal values and goals, they were not really recognized. Any many people in their views said that the national holidays should be reduced and so we have recognized the national days being first June which is Madaraka day, we are also proposing that 12<sup>th</sup> December which is Jamhuri day be a national day. And then we are also proposing a third national day which we are calling the Katiba day and this is the date of the enactment of the constitution, so we are proposing that we are going to have three national days. That doesn't mean that we are not going to recognize other days, but they are not going to be constitutional, they can be holidays, days that people don't go to work, but that doesn't mean that they are going to be recognized in the constitution.

I want us to go to chapter three that talks about the national goals, values and principals. Article 14 reads that the national goals, values and principals contained in this chapter applies to the executive, Parliament, the Judiciary, local authority and all other state organs and official citizens and private bodies whenever any of them: -

- a) Applies and interprets the constitution in any other law.
- b) Applies, makes and implements policy decisions.

What we are saying is that the Government or the different arms of the Government have a guiding principal on how they are going to govern our country as Kenya and what we are saying is that one of the things that the Government should do or the republic will recognize is to promote the diversities and promote cultures or the communities. We are also saying that the republic shall ensure open and transparency in the Government and it shall be accountable.

And the other thing we are saying is the republic shall take effective measure to eradicate all forms of corruption. Our country is in a real problem because of corruption, we find that corruption is a disease but it is killing and eating you know our public sector, it is everywhere and what we are saying is that the republic or the Government will take the necessary measures to ensure that corruption is, ah, persons desist from corruption or to ensure that corruption is no longer part of our country.

We are also saying that the republic shall also promote the rule of the civil society in governance. We are also saying that the republic is fully committed to respect, promote and protect the human right and the fundamental freedom that we are going to go to in the bill of rights.

The republic shall ensure the fullest participation of women, the disabled and the marginalized communities and centres of society in the political, social, economic likes of the country.

The other thing we are saying is that the republic shall recognize the special responsibility that the state, society and parents or to children and shall ensure their material and moral well-being. So basically these are what are going to be guiding principals and the goals that we are going to set as a country and any other body and any other arm of the Government will be obligated to this.

One of the things that we are urging in our constitution is that you as an individual or you as a Kenyan, you are also obligated to do something to the state. And what we are defining there is article system, we are talking about the duties of a citizen and what we are saying is that in order to fulfill the national goals, values and principals all citizens have the duty to:-

- a) Acquaint themselves with the provision of the constitution and propagate it's ideals and objectives. So in this new constitution and in this draft bill that we are proposing, what we are saying is that, as much as the republic or the Government shall be obligated to the people, then the people will also be obligated to the state or to ensuring and promoting their well being. And one of the things that we are proposing you as an individual, you have to acquaint yourself, you have to know what the constitution says. You also have to uphold and defend the constitution, so you cannot uphold and defend the constitution if you don't know what the constitution says. So that is the most important thing that you have to uphold, you will have to know as to acquaint yourself with what the constitution says and what the constitution provides for.

We are saying that you also have the duty of exercising democratic rights by voting and being involved in other forms of political participation. The other thing that you are also obligated to is to engage in work including home making for the support and welfare of themselves and their families for the common good, and to contribute to national development.

The other thing that I want to draw your attention to, is that as much as the Government will do what it takes to ensure that all measures have been put in place to eradicate corruption. You as a Kenyan and you as an individual you have the duty to desist from all forms of corruption. So as much as the Government dug what ah, takes the necessary measures to eradicate corruption, you as an individual you are obligated to desist from all forms of corruptions. So basically what we are talking about and what we are saying in this chapter, is that there the Government is obligated to the people and the people are obligated to the Government and to ensuring that we are properly governed.

Ah, in chapter four about citizenship and what is important here and what I want to bring across is how citizenship can be acquired. When we went to the different constituencies, many people gave their views and when they have talked about citizenship they say that, they were proposing for dual citizenship, they were proposing for women married in foreign countries,

you know should be given a citizenship especially if they are Kenyans and they are married in foreign countries, they should still be able to hold back, to hold the Kenyan citizenship and even the children that they have given birth to should be given citizenship.

And so in article 18 talks about citizenship may be acquired: -

- a. By birth, which is the most important.
- b. Registration
- c. Naturalization.

So when you go to citizenship by birth, we are saying that every person born after the coming into force of the constitution, is a Kenyan citizen if at the day of the person's birth either the mother or the father of the person is a citizen of Kenya. So we say every child born in Kenya by you know, if your mother is a Kenya or your father is a Kenyan then you are entitled to citizenship.

The other thing we are saying is that, citizenship can be acquired by way of marriage and what we are proposing, is that a person who has been married to a citizen of Kenya for a period not less than three years, is entitled on application to be registered as a citizen of Kenya.

And what we are saying again is that citizenship is not lost through marriage or dissolution of marriage. So, once you have acquired that citizenship by way of marriage if this marriage is dissolved, what we are saying is that, that citizenship is still maintained.

The other way in which citizenship can be acquired is by way of naturalization and we are saying that a person who has been locally resident of Kenya in a continuous period of not less than seven years and who satisfies the condition prescribed by an act of Parliament may apply and be naturalized as a citizen of Kenya.

We are also making a provision that children found in Kenya who appear to be less than 8 years of age and whose parents are not known are presumed to be citizens of Kenya.

The other thing we are also saying that a child below the age of 18 years who is not a citizen of Kenya and who is adopted by a citizen of Kenya is entitled on application, to become a citizen of Kenya.

The other provision that we are given is on the dual citizenship and so we realized that and recognize that dual citizenship is permitted under the law of Kenya. So that means you can still be a Kenyan and a whole citizenship of another country.

Basically that is what I really wanted to draw attention to where a citizenship is concerned. Then I want us to go to chapter five that talks about the bill of rights and this is a very wide chapter so what I am going to do is just I am going to mention just a few and I believe since you have the draft you can read at your own convenient time.

So what we are saying, when we went to the different constituencies and when we received the views of Kenyans from all over, what we realized is that different categories or different groups of people get their views and you find that we heard women and women's organization giving their views and we heard children also giving their views, persons with disabilities also get their views. And we found that, this should be taken into consideration and that is why we find that their rights have been defined in different groups, we have the rights for women, women's rights, we have children's right, we have rights of the older Members of the society, we have the family, persons with disability so we have divided them into different categories and I know may be the men are going to ask, how come there is nothing about men's right. So I just want to clarify and say that, you know when is this society or in the human race we only have men and women. So, what we thought and what we were looking at is we have older Members of society, so I don't want the men to feel like you have been left behind, your rights have been taken care of. All we were trying to do is to recognize women, it is not that the men have not been recognized in any sense but women have been recognized in that, the fact that their rights have really been violated and they have been discriminated and we just thought that we should recognize that fact that women also need also to be mentioned. That does not mean that men's right have not been taken into consideration.

Article 32 talks about rights of life and I read, everyone has the right to life and death penalty is abolished. In the present or in the current constitution we have death penalty. And so what we are saying is that death penalty in this constitution, is going to be abolished. The other thing is that, I am just going to read briefly, is that on women's right article 35, women have the right to equal treatment with men including, the right to equal opportunities in political economic and social activities.

Two women are entitled to be accorded the same dignity as the person of men.

And three, men and women have an equal right to inherit, have access to and control property and all what we are saying again is that all law, culture, customs and tradition that undermine the dignity welfare and the interest or status of women is prohibited.

Well this is still subject to debate and that is why we are here to get your views concerning what think and what you feel should be added or should be removed.

Then we are also recognizing the rights of the older members of society and we are saying that the older members of society are entitled to continue to enjoy all the right and freedom set out in the bill of right, including a right to participate fully in the affairs of the society perused their personal development to be free from all forms of discrimination, exploitation or abuse to live with dignity and respect and to retain their autonomy.

Another very special group that we have recognized and we have included in the draft bill are the children. And we are saying that children hold a special place in society. It is the duty of their parent wider family society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment, in an atmosphere of happiness, love, respect and understanding and be able to fulfill their full potential in all respects, physically intellectually, emotionally, spiritually for the benefit of themselves and the society as a whole.

One of the things that I really want to draw your attention to, is that all children whether born within or outside wedlock are equal before the law and have equal rights under this constitution. So, what we are saying is that all children are equal before the law and the rights are equal under this constitution. We are saying that no child is better than the other.

The other thing that I want to draw your attention to, is under article 37, sub section 4 talks about a child mother and father, whether married to each other or not, have an equal duty to protect and provide for a child. If many will remember there is a bill that I believe is still pending it's called the affiliation bill. And so what we are saying is that a child's mother and father whether they are married or not, you have an obligation to ensure that this child is well taken care of, you have an obligation to ensure that this child has the basic needs, you know we are talking about food, clothing and education. So, we are not going to have a situation whereby may be two young people have a child and the girl is left with all the responsibility. According to this constitution both parents, we are talking about the father or the mother, you will have an obligation to take care of that child and to ensure that child has the basic needs.

Then, still under the same sub article five, I am just going to read very fast. "That every child has the right to name a nationality from birth and to their birth registered, they also have a right to parental care and to appropriate alternative care, where the child is separated from his parents. The child also has to free basic education, which shall be compulsory. A child also has a right to be protected from discrimination, harmful cultural rights and practices, exploitation, neglects or abuse. A child also has a right to be protected from all forms of exploitation and any that is likely to be hardize and adverse to their welfare. D says that a child has a right to be free of corporal punishment and other forms of violence or cruel and humane treatment is home and other institution responsible for the care of child. So what we are saying here is that corporal punishment has been abolished. You can read the other bit on child's right.

The other category that has been taken care of is the family; you will read at your own time.

Persons with disabilities, the rights have also been considered.

The other freedom or other rights that we have in constitution are the freedom of religion, belief and opinion, freedom and the security of persons, I will just mention. We also have the freedom of expression and I want to draw your attention to article 45

in page 8, that talks about the freedom of the press and other media. In the past we have heard situations whereby we cannot access to other, we have many many broadcasting or media house but we cannot access to them. We only have one may be one media dominating on the others and you also, the information that you receive sometimes is not the correct information. What we are saying is that under this freedom of expression, you will have access to all other media. I mean if it is KTN and all that other broadcasting houses, then you as an individual have the right to access all that and they will be given that independence, we have the freedom of the press that shall be guaranteed in the constitution.

We also have publication of opinion, access to information, we find that there are so many commission on the enquiry that were established, were created at one point or another if you will remember we have the Ouko inquiry commission, that we have never found his findings up to this moment and what we are saying, you as a Kenyan citizens you will have the right to access the information in the hands of a state. So we will not have a situation where by a commission is established to inquire on a certain issue, we have devil worship commission that was set but we have never been able get its findings up to this moment. We have the Akiwumi's commission. So what we are saying is that the constitution is guaranteeing every citizen of Kenya access to information in the hands of the state.

The other thing the constitution is guaranteeing, is the freedom of association, you can read that. The freedom of assembly, demonstration, picketing and petition you will read that.

We have political rights, freedom of movement and resident, you as a Kenyan citizen you can live, you can decide to reside in any part of the country without any discrimination. You can decide to move around, freedom of movement is guaranteed, and you also have a right to travel in and out of the country as a Kenyan.

The other thing we have also guaranteed in this bill of right is the freedom of trade, occupation and profession, so you have the right to business. And one thing I want to get your attention to is in article 53 page 8, about freedom of trade occupation and profession, sub article two to say that the practice of trade occupation or profession may be regulated by the law, so that doesn't mean that you can just start up a business of trafficking drugs because you have the freedom of trade, no. All these will be regulated by the law.

You also have the right to property and I will article 54 says that every person has the right to acquire and to own property either individually or in an association with others.

And then two says that Parliament shall not enact a law that permit the state or any person or to arbitrary deprive a person of property of any description or deprive a person of any interest in all in right over such property. So we are saying that the Government will ensure and will make it easy for each and a very person to acquire property if you are incapable of acquiring one.

The other thing that we have taken care of is under the labour relationship article 55, talks about the rights of workers and the right of employees.

The other thing that we have also taken into consideration is a social security, health, education, housing, food, water, sanitation, environment, language and culture, consumer rights and all that. What I want to clarify at this point is that, may be you might read and find out and realize that the rights are not be specific, what I had said before is that Parliament within, after the coming into force of this constitution, within two years we will make the necessary laws. So what we are saying and what we are giving at the moment is just a guideline. You might not find the details, I mean you will ask me the right to food, how will, I mean it's not really very clear, it sounds very ambiguous. What we are saying is that, the constitution is just at map, it shows and it gives the Parliament the guideline on how to come up with laws, they will ensure this right has been implemented. So, I know that question will arise, there is somebody saying right for food or right having, but it has not been mentioned how it is going to be done. What we are saying is that we have mentioned it, then it is now upon Parliament to make the necessary laws to ensure that the citizens have access to having, the citizens have access to education, the citizens have access to water, food and all these things that have been mentioned in the draft bill.

The other thing that I want to draw your attention to is the right of the arrested persons. We have had incidences whereby you are arrested by a policeman and because we as Kenyans we do not know our rights and we do not know what may be the constitution says. Then you can find that you will end up may be being in a cell for three months, or two months or sometimes you know for no cause, you are innocent yes, you are implicated that you have done something wrong. What we are saying is that, the constitution is also expressly saying that there are rights for the arrested persons. If you are arrested by a policeman then you also ought to know your rights. And I am just going to just read that every person in article 68 in page 9, says that every person who is arrested for allegedly committing an offence has the right: -

- a. To remain silent.
- b. To be informed promptly in a language they understand.

What we are saying is this, when you are arrested by a policeman, you are not going to be forced to make confession; you have a right as an individual to remain silent. And we are also saying that you also have the right to be informed. If you do not know why you have been arrested and the law that govern that, you have the right to be informed in a language and in the simplest way possible. In a language that you understand, not the mentioning article this this says this and do not understand what that is all about. So what we are saying is that when you are arrested, you have the right to remain silent and you also have the right to be informed in a language they you can be able to understand.

The other thing that we have really put into consideration is the right of persons in custody, what many people would call today

the rights of prisoners. When you went to the different constituencies there is one place that we did not forget to go to and we visited our jails all over the country and we found that even these prisoners even though they are serving a sentence you know they have been put into confinement, they also have a right. And we realized that our Kenyan prisons are in a very pathetic situations. I mean you go to the prisons today and you realize that these people don't have good food, the sanitation is pathetic.

We find that the accommodation or you know facilities are in poor conditions. We also find that even though sometimes they are sick, they cannot access medical facilities and all that. And so if you go to article 70, all that talks about the rights of persons held in custody or what we would call today the rights of prisoners, so they also have a right of an individual or as people who have been put a side or have been set to confine somewhere and what we are saying concerning all these bill of right, we are saying that we have set a human, a human rights an administrative justice commission, now we are going to go to latter and we are saying that if you feel that your rights have been violated, then you have the right to ask to the commission of human rights and administrative justice or the court to up hold the bill of right. So you will come back to this commission much much latter. So basically that is what I wanted to mention where the bill of right is concerned.

Now I wanted to go to chapter six that talks about representation of the people: representation of the people and I want to start with the part one, that talks about the electoral systems and process. So we have outlined some general principals in article 76, one of them is that the electoral system is based on the rights of all citizens to vote and to stand for election to legislate and to legislative and executive bodies.

So, we are also saying that voting is by secrete ballot, and we are also saying that elections are free and fair. And election shall ensure fair representation of the people, and election shall ensure fair representation of women, the disabled and minorities. And elections are conducted by independent body free from political interference. So we will come back to the electoral commission much latter and what I want to mention about this body is what we have proposing is that electoral commission shall be and independent body and this body shall be entrenched into the constitution as a constitutional commission. So that means it will have it's own functions and we will come back the functions latter. And it will not be interfered with by any individual of by any other organ of the Government; it is going to be and independent body in itself under the constitutional commission.

So I want to go to page 12, that talk about qualifications for registration: who qualifies to register as a voter? So for anyone to qualify to be registered as a voter you have to be 18 years of age above, you also have to be an ordinary resident of the republic, at least for the period that has been mentioned there. And then you also have to have a period for a period amounting to the aggregate to not less than 12 months, in 12 months immediately proceedings the date as mentioned down there.

Then we have two, every citizen for you to qualify for registration, the citizen who qualify for registration as a voter shall be registered at one place.



Then we also have disqualification for registration.

Then I want us to go to part two that talks about the electoral commission, so as I had mentioned earlier I was that we are proposing that the electoral commission be entrenched in the constitution as an independent body. And Kenyan in their submission many of them said that the number of electoral commissioners should be reduced and I believe that has been taken care of, currently I believe we have 22 and so we have greatly reduced this number and we only here chairperson and not less than 8 and not more than 10 other members. So what we are saying is that this body is going to be at least consisting of not more than 11 members at most.

The we are saying that the chairman and other members of the commission shall be appointed by the President with the approval of the national assembly. What we are trying to say here is that, we are not going to have a situation whereby the President appoint those people that he feels or he sees that they are qualified in his own capacity. What we are saying is that he will have the power to appoint, but after appointing or on appointing his approval has to be vetted by Parliament. So the national assembly has to vet or has to approve the person that the President has appointed. So, we are not going to have situations whereby I mean this person has been appointed just because of a personal interest or an issue like that.

Then what we are saying again is that, a citizen is qualified to be appointed the chairperson of the commission if the citizen has held or is qualified to hold office his as a judge of a superior code of record. So we are not going to have a situation where by you are just appointing because of the vested interest, what we are saying is that that person who is being appointed must have the right qualifications. And we are saying that person should at least held a position or is a qualified judge of the superior code of record.

Then I want us to go to the functions of the electoral commission and we have outlined very clearly there what the factions of the electoral commission shall be. We are not going to have a situation whereby we have an electoral commission whose functions are not defined. What we are saying is the electoral commission will be responsible for in the continuous registration of voter, the delimitation of electoral constituencies. We have heard a situation whereby constituencies have been curved because may be an individual wanted this person to get to Parliament, so we are taking that power from the President and we are saying this power shall be given to the electoral commission, that will ensure and who will limit the number of constituencies that we have and we will come back to that latter.

The other functions of electoral commission will be to conduct and supervision of election and referendums, promotion of free and fair election and referendums, the supervision of political parties, I will come back to that latter. The management of political party funds, I will also come back to that. The settlement of electoral disputes, promotion of voters education and culture of democracy and the facilitation of the observation, monitoring and evaluation of election.

So what we are saying again the electoral commission is an independent commission that conducts its work in accordance with the constitution. The staff of electoral commission we are proposing that the public service commission after consultation with electoral commission shall appoint officers and other employees of the commission.

Now let me come to the delimitation of constituencies, the electoral commission shall by order determine the name and boundaries of constituencies, so we will not have constituencies mash- rooming you know just from nowhere.

Then two says that in demarcating the boundaries of the constituencies the electoral commissions shall: -

- a. Consult with interested parties and take into account population density and need to ensure adequate representation for urban and sparsely populated rural areas, and population trend, means of communication, geographical features, community of interest, the boundaries of the administrative areas and the latest census of population in accordance with the law. What we are saying here is that for any constituency to be curved, the electoral commission will have to put so many things into consideration and one of the things that they will have to look and they will have to consult with are the interested parties. The people that are asking for the constituency.

And the other things they will have to consider are things like communication, population trend in that particular area, the geographical features. We are also talking about the community of interest and also they will have to consider the latest census of the population in accordance with the law. So we will not have a situation whereby we have this constituency just coming up from nowhere and may be the population there is not balanced. What we trying to come up with is for proportional representation. We are trying to ensure that that will also be taken care of.

Then I want us to go to part three that talks about political parties, article 87 the right to form a political party, what we are saying in accordance with article 50 any citizen may form a political party, so if you feel that you have what it takes and you want to form a political then it is your right as a Kenyan, you have a right to form a political party. A political party is entitled to financial support from the state on the basis prescribed in an act of Parliament, no person may use state resources to support any political party and Parliamentary enact a law providing for the regulation of political parties.

Something that I want to clarify here is the fact that you as an individual may have the right to form a political party, that doesn't mean that we will have so many political parties, just because I think that I mean this political party should be there, then I can just come up and create one political party. What we are saying is that you have a right to form that political party, but they are going to be regulations, there going to be law set by the Parliament that are going to regulate the number of political parties. I know many will wonder and will ask, how come that the number of political parties have not been limited, yet many Kenyans in their submission say that the number of political parties should be limited. What we are saying and we have given the electoral commission as I will explain is that the electoral commission will be the registrar of political parties and the rules and the

regulations that the electoral commission will come up with to regulate political parties and Parliament shall also enact laws that will regulate the registration and will regulate the conduct of political parties.

What we are saying and how we have taken care of the issue of the number political parties is that they are going to be very tough conditions, that if that political party doesn't meet those conditions, then that political party will not be registered and will not be recognized as a political party.

So I just want to go to article 89 that talks about the registration of political parties, 89 it says the electoral commission is the registrar of political parties and for that purpose shall keep and maintain a registrar of political parties.

Then what we are saying again, Parliament shall by an act of Parliament provide for the matters, which the registrar shall contain. Then we are saying for any political party to qualify to be registered there are certain conditions that this political party have to meet and I am just going to read them through in article 90, it says, the electoral commission shall register a political party if that party by its constitution and article of association has a national character with governing bodies which seeks: -

- a) To promote and uphold national unity: so for any political party to be registered number one, it has to have a national outlook. It is not going to be based on tribal lines. It is not going to be based on religious lines; such political parties are not going to be registered.
  1. It has to promote and uphold national unity.
- b) To abide by democratic principles of governance and to promote practice and practice democracy within the party through regular, fair and free election within the party.
- c) It will seek to promote and respect human rights and gender equity and gender equality and equity. So what we are saying is that, women will also have to be represented in any political party, we are not going to have a political party that is dominantly, I mean is dominated by men alone and you are not going to have a political party that is dominated by women alone. What we are saying is that that party should ensure that there equality. Gender representation, the other thing we are saying is that for any political party to be registered, it has to promote the object and the principle of the constitution and the rule of law, that the electoral commission shall not register a political party if that party:-
  - a) Is founded purely on religion, linguistic ratio, ethnic, sex, cooperative or regional basis and seeks or seeks to engage in propaganda based on any of these matters.
  - b) It does not by its constitutional article of association, subscribe to the code of conduct of political parties and does not enjoin itself and its members/some the cord of conduct applicable to political

parties as a legal binding code. That's what we are saying, is that political parties will be there, the number will be limited and the way limiting such political parties will be by setting up this condition and in such political parties don't miss such conditions and there other laws that Parliament shall also enact to this effect. And what we are saying if that political parties doesn't qualify then it wouldn't it would not be registered and what we are saying is that only political parties that have been registered, will be funded by the stated. And that is why I want to go to political parties fund that is article 93.

Article 93 talks about what they are saying there is a establishers fund to known as a political party's' fund. The funds shall be administered by the electoral commission. Then let me go to the sources of funds, the sources of funds are:-

Money provided by Parliament each year equally to not more than .3% of the national budget for the preceding financial year.

Contributions and donation to the funds from any other source. So we will have money that will be provided and these are the money that are going to be in the political party funds which would be administered by the electoral commission.

And what we are saying is that we are also trying to limit how and to regulate the funds that are going to be in the political parties. So what we are saying is that if this political party has to be funded and that money that is given or that money that is given by Parliament that is allocated and that money that is a contribution and donation to be passed from any other source, shall be divided equally to all these political parties, but that money cannot just be used for anything. We have also set a purpose for that money, if this money come from the budget or it's allocated from the budget, then that money has to be used in a specific way. And that is why I am going to read a purpose of the fund in article 95.

Money allocated to a registered political party from the fund shall be used only:-

- a) To cover the election expenses of the political party and broadcasting of the policies of the political parties.
- b) For the organization by the political parties of civic education in democracy and the electoral processes.
- c) Not more than 10% for the administrative expense of the party.

So what we are saying is that this money that has been allocated by Parliament, shall be used only for announcing or for broadcasting their policies, shall also be used for providing civic education to the people and not more than 10% shall be used for administrative purpose.

The other think that I want to bring and to clarify, is that political parties can also receive funds from other sources and other sources in article 96 talked about other sources of funds for political parties. I read, "the source of other funds for the political parties are subscription and contribution from the Members and supporters" and donation to the party by members and supporters. And so the what we are saying here is that you can be a friend to a certain political party and you want to fund this

political party. You are also allowed to fund that political party, but what we are also saying and we are setting is that Parliament shall regulate the amount of money that any contributor or any supporter can give a political party.

While we are trying to cut short or what we are trying to prevent, is a state whereby we have a political parties being funded by foreign bodies. And you could have may be a political party that is being funded by may be an Osama Bin Laden from another country and because they have money they are able to do criminal activities and all that. What we are saying is that that money will be regulated by the Parliament. So if you have to give a certain amount of money to a political party a Parliament shall enact laws to this effect, to set the amount of money that any body or any supporter or any other body can come and contribute to that political party. So we don't want to have an issue where by there is a political party getting foreign aid from other countries and basically is to propagate and to instigate criminal activities in our country.

We are also saying that a political party shall also be supervised by the electoral commission, they will also have to audit their books. So what we are trying is to ensure that people are represented in the right way.

So from there I am going to invite Prof. Ogendo to continue from legislature. *End of tape I.*

**Prof. Okoth Ogendo:** About the legitimacy of the constitution, the sovereignty of the people, the integrity of the republic, the citizenship, the rights and obligation for citizen and the nature of the presentation.

What I want to do is to take you very quickly to the next set or chapters beginning with the legislature. And I only want to point out new things and new ideas in the draft.

Number one, if you look at article 105, article 105 is talking about the structure of the legislature. The suggestion there is that the legislature should have two houses, the Upper house called the national council and the Lower house called the national assembly. The two houses will together form what we are calling Parliament. Under the current constitution, Parliament consist of the national assembly and the President. In the new structure we are suggesting the President will not be part of Parliament, the President will be elected on the constituency for the Presidential election is that the country as a whole, the President will not have a constituency separate from the country and therefore the President will not sit in the national assembly and he will not or she will not form part of Parliament. But the President as we shall see has legislative functions and those legislative functions are separate from what Parliament does.

The national council article 106 consist of 100 hundred members, 70 or whom are elected from single member constituencies which are based on districts, in other words each district and I am using the word district here to include Nairobi, each district will send one member each to the national council. That gives you 70 members. The other 30 members are women's only seats, but they will be elected from the 8 provinces and the 8 provinces include Nairobi again. And the distribution will be that

each, all the provinces except Nairobi will send 4 will elect 4 women representative and Nairobi will elect two to give 30. That means that the National council will roughly have 1/3 of them as women which is an important principal in the draft if you look at article 109, it says that at least 1/3 of members of Parliament ought to be women. We have made sure that in the case of the national council this will happen. We have not quite provided for it in the National Assembly and that is why article 109 says that within 3 years of the first sitting of Parliament, a law must be passed to ensure that women in the national assembly also constitute 1/3 of the membership.

Article 107 talks about the structure of the national assembly and it says that the National assembly will consist of 210 single member constituencies, that is the present 210 and then there will be 90 members elected or proposed on a party list. The 90 are not nominated members, they are indirectly elected on the party list and this is how it will work.

You will elect people as you have always done, for 210 seats, okay, but before the elections are done each political party will provide a list in advance of 90 people, who they would like to be considered when proportional representation is being calculated.

The 90 from each political parties must be given in advance and must be given in the order in which the political party want them to go into Parliament. And the 90 must be listed in a manner that alternate men and women, if the number one in the list woman, number two must be a man and so on.

Now the idea here, is that when you go to the polls you will have two votes, one vote is for the Member of Parliament, the other vote is for the political party that you like and you don't have to vote for a member merely because he is proposed by political party, or you don't have to vote for a political merely because you like the person that they are sponsoring as a member of Parliament. So you can decide that in Kisumu Town West, I am going to vote for honorable Omino, but I don't like his political party, so I will vote for another political party, you follow me. So you have two votes you can split them, you can vote for the MP and also for the party sponsoring the MP. You can vote for the MP but for a different party whose MP you don't like, you can decide you are not even voting for the Member of Parliament, you are only voting for the party. At the end of the election a total this is all the votes one by political parties will be total for the whole country and then we will know that party A has 10% of the national votes, party B has 40% of the national votes, party C has 50% extra. So if you have 50%, 40% and 10% and there are only 3 political parties, the 90 seats will be apportioned in relation to that distribution so the party that has 50% of the national votes will get 45% of those national seats, okay. And the party that has 40% will get 40% of those seats etc.

And then what electoral commission will do, is to go the party, to his party and say you have 50% of the total national votes, you are entitled to another 45 seats and your new members on that list will be the first 45 people on the list, okay. They will not tell you that because you are entitled to another 45 seats go back and tell us whom they are, you must tell the country in

advance who your 45 are going to be and that is why when you are voting for a political party you are also voting for an additional members that may come on that party list and that is why it not a nomination it is an indirect election. So when some politicians tell you that we have proposed 90 nominations that is totally wrong because that is not what you is done here. We have proposed an indirect way of leveling the playing field.

You may remember those of you who can remember in 1966 when there was a little general election which was caused by the resignation of Jaramogi from KANU, nationally the KPU got more votes than KANU okay, but the KPU got very very few members of Parliament, in other words if there had been a Presidential election at that time if Oginga Odinga would have been elected President but KPU would have been a minority in Parliament, are you with me?

**Audience:** Yes.

**Com. Prof. Okoth Ogendo:** Odinga would have been elected President on the basis of the national votes but KPU would have been a minority party in Parliament. What proportional representation is trying to do is to correct that a normony by saying that there is no reason why a political party that receives a popular vote should not get popular representation in Parliament. In other what the people say out there should be reflected in Parliament, that is what proportional representation is about. So now that is clause 107, clause 108 says that to be a member or Parliament you must be at least 21 years old, a Kenyan citizen of sound mind and educated up to at least O level.

Now many people wanted us to make that a University degree, but this country has very different levels of education, if we said the University degree, there are certain parts to this country, which will never find a member of Parliament, or if they is, there will be this one person coming in all the time and no competition. So we lowered that to O'level.

109 I have talked a bout which is representation of women and we have told Parliament to discuss that matter for the next two years and pass legislation on it. 112 is on recall, many people told us that they cannot see their Members of Parliament, once they are elected they disappear in Nairobi and they don't see them. There is a Member of Parliament from I think it is Wajir or something, he left his constituency with a mobile phone number and every time they call, the message they get is that "Mteja wa nambari hapatikani kwa sasa". So somebody came to Nairobi and said one of you put a woman on the phone to tell us that you are not there, we elected you to talk to us not to put the woman on the phone to tell us that you are not there. And you know there are very many members of Parliament that are never seen they disappear ni Nairobi they come back just before election. So people were asking for a mechanism for recalling their Members of Parliament. We have put in article 112, if you want to recall a Member of Parliament you need to collect signatures from 30% of the registered voters. You present it to the speaker; the speaker then takes it to the electoral commission. The electoral commission does an investigation and the investigation discovers that the Member of Parliament as indeed abandons this electorate then the seat can declared vacant.

Now, when the seat is declared vacant, that ex-member of Parliament is also now to stand, just in case there was a conspiracy so that they also have a chance to prove the electoral commission wrong and they can come back and win the election if they can.

120, we have created what we call the position of the leader of the minority party, we do not think it is appropriate to talk about the leader of the opposition. So we are saying that the person whose party is not forming the Government should be given a special position and this will have nothing to do with the number of Members in Parliament even if that person is only one MP and the rest are forming a political party, they will be a leader of minority party in Parliament.

124, 125 are about the legislative functions of the President once a bill has been passed by Parliament it has been taken to the President for signature before it becomes law. Those articles are saying that the President has three options.

Option one, is to sign the bill. Option two is to refer the bill to the supreme court if the President thinks that the bill is unconstitutional, the supreme court will consider and deliver judgment in 14 days and if a supreme court says that the bill presented to the President is constitutional, the President must sign it.

If the Supreme Court says that the bill offends the constitution in some manner, the bill goes back to Parliament and Parliament is required to correct it in accordance in the judgment of the Supreme Court and when Parliament has done that and sends it back to the President, the President must sign it.

The President may also decide to send the bill back directly to Parliament, like the Donde Bill was sent back to Parliament with comments. If it goes back to Parliament and Parliament disagrees with the President, says Mr. President you have sent this bill back but we disagree with you, we are going to send it back to you exactly as it is.

If Parliament does that, the President must sign it, okay, that is what is called overriding the Veto. If Parliament disagrees with the President and sends the bill back in exactly the same form, the President has no option, the President must sign it. Parliament may also decide to consider the President's comment, re- revise the bill in accordance in accordance with comment from the President and when it goes back to the President on second time, the President must sign it.

So under this draft, there will be no situation where there is a complete stand off between the President and Parliament, at the end of the day when it comes to bill Parliament must win over the President.

Now, 128, we are provided for the coming into effect of laws, the most important thing I want find out to you is the sub section to that, that if Parliament passes any law which benefits them, that law will not come into effect until after the dissolution of the Parliament which has passed it. Are you with me?



**Audience:** Yes.

**Prof. Okoth Ogendo:** What it means is that if they want to give themselves big cars and big pensions and so on, that will not come into effect until after that particular Parliament is dissolved. They cannot pass anything that benefits them and then implement it immediately. And you will notice in other parts of the draft that the power to determine the salaries and remuneration of Members of Parliament has been given to a constitutional commission the salaries and remuneration commission not to Parliament itself. So what we have done is to say number one Parliament cannot pass or determine their own salaries and remuneration.

And number two if it passes any bill that benefits them in any manner that will not come into effect until after the resolution of that particular Parliament.

Clause 129, we provided for the public to petition Parliament if you think there is law that ought to be passed and nobody presenting to Parliament as a Member of the public you will now have the right to write to the speaker and say you would like particular legislation to be passed or amended or repealed. Now, this is a very important power which we hope that the public will be able to use so that you don't just wait for the Government to publish a bill, you don't just wait for Oloo Aringo to publish a private member's bill, you can write directly to the speaker and if you are able to get drag people to help you, you can send a full bill complete with the memorandum of object and reasons to the speaker. That is all I want to say about Parliament.

On the executive, article 149 gives us the structure of the executive. The executive consists of the President, the Vice President and the cabinet. The cabinet is headed by a Prime Minister and a cabinet may not have more than 15 cabinet Ministers. So you have a cabinet of a Prime Minister, two Deputy Prime Ministers both those two, the Prime Minister and the Deputy Prime Ministers must be Members of Parliament. The other 15 Ministers we are recommending should not be Members of Parliament, they should come from outside Parliament. So if a Member of Parliament is appointed a cabinet Minister, that Member of Parliament could have to resign and there will be by-elections and he can serve only as Minister. The idea there is to ensure that if you are a Member of Parliament you serve as a Member of Parliament, you are a legislature you work on his full time not just three days in a week. And if you are a Minister you can run Government department without having to go to your constituency and facing the risk of being recalled because the constituency cannot see you. Now, we have stated that the Prime Minister is to be appointed by the President, the Prime Minister, the Deputy Prime Ministers on the cabinets are to be appointed by the President but the cabinet must be approved by Parliament. In other words the President will present his or her Prime Minister and Deputy Prime Ministers and then Parliament will vote on it. If Parliament refuses to approve that cabinet, the President must choose somebody else as Prime Minister and Deputy Prime Ministers. And then send it back to Parliament.

153, is talking about the decisions of the President, we have said there that the President cannot just make a decision; you cannot just have these things we are calling Presidential directives. We are saying that if the President, makes a decision, that decision must be in writing and must be signed by the President so that there is no doubt as to what decision the President has made. We have a lot of circumstances in which directives are given all over the place so and so has been promoted as headmaster, this and this place has become a district and so on and then people wonder how it is going to be implemented there are some directives that are never implemented. Others are implemented before they are even given, this kind of confusion, so we are saying that if the President makes a decision, that decision should be in writing and signed by the President.

154, article 154 it's called curtailment of Presidential power. What that article does, is to prevent any person who is acting as President or who is President between the time voting starts for a new President and the time when a new President is installed for making second appointment. Now what can happen is this, you know that you are leaving an office, so you start making a whole lots of appointment to bind the next Government but this is something that happens very often in the United States. When offices become vacant the President makes very very quick appointment, the day before Clinton left office, he signed over 500 pardons okay, infact the only thing he did that day was signing pardons all kinds of people were pardoned by the President and those ones are for binding.

We are saying that we should not allow an outgoing President to make decisions that binds the new President and therefore that section 154 is limiting the powers of the President in those circumstances, don't make important appointment, don't appoint judges, don't appoint chairman of commission, don't appoint Permanent Secretaries, Ambassadors and so on when you know you are a lamed out President, okay.

156, is about the qualifications of the President and we are provided there: -

- 1) That anybody who wants to be President must on the dates of nomination, as a President be between the age of 35 and 70. In other words if you are 34 you cannot be nominated, if you are 71 you cannot be nominated to stand for Presidency.
- 2) We are saying that you need a University degree or a degree from a recognized University. Yesterday when we were in Maseno, the students were saying that we should say that you must have a degree from a public University and I told them that I went to Oxford University that would exclude me. So we are saying that a President should be between 35 and 70 and must have a University degree. But we have indicated in the transition of provision chapter 20 in schedule 8 that for purposes of the first election under this constitution, those requirement will be with, in other words if you were qualified to stand for President under the present constitution but you would be excluded by this provision if this constitution is used for the next election, those requirements will be waste, okay.

So there are people who would be cut out, their Presidential candidates out there would qualify under this provision. We have said in the transition of commission that they will qualify only for this election, which means that if this

constitution comes into effect they cannot go for a second term. And we are provided further in 160; you see there, that the President can always serve for two terms of five years each. Note that we have not said two consecutive terms, we have said two terms. So if you choose to run for Presidency and you make it now in 2002, and you decide not to contest in 2007, you wait for 2012 and you win, that will be your two terms, you cannot stand again or if you do it consecutively that is your two terms. So is it any two terms even if those terms are separated by a number of years okay. You cannot wait and accumulate four, five terms separated by five years each. And we have said in the transition of provision that any person who before the coming into forth of this constitution has served this country as President for more that two terms is not qualified to stand for elections as President under this constitution. We have gone further and said that such a person is not qualified to run as a Member of Parliament, cannot be appointed a Deputy Minister or a Minister or a Deputy Prime Minister or a Prime Minister. In other words if you have already served this country as President for two terms you are out of politics under this constitution.

161 is immunity, we still think that the President should be protected from criminal proceeding while he or she is in office, it is not a dignified thing to do to have a President and then people are trying to hold him into court sending the policemen and so on.

But we think that if a President is guilty of a civil wrong, of a personal nature the President is taking over your land, the President has impounded your car, whatever we think that you should be able to take him to court, provided that you give the President notice you tell him what you are demanding and you give him an opportunity to settle him out of court. In other words we are allowing limited civil action against the President, something which the present constitution does not allow. The present constitution does not allow you to sue the President even in personal matters, okay.

Now eh, don't ask me this question, can you divorce the President? I know that the President can divorce you, but can you divorce the President while he is in office. This particular draft says you can if you give him 30 days notice.

Now 163 is new, we are providing for the impeachment of the President a position which is not available at the moment if the President is violating the constitution committing misconducts or what have you, the President can be impeached. And impeachment motion starts in the national assembly, when the national assembly has passed a resolution saying that the President not to be impeached, the speaker then invite a chief justice to set up an investigation committee. Once that committee determines that the President ought to be impeached, the matter goes to the national council the Upper house and the Upper house vote for him and if they vote to remove the President, the President will be removed.

And note that if the President is removed Parliament is not dissolved, Parliament will continue you only have Presidential elections.

165 is about the Vice President, it requires that every Presidential candidate will have to nominate a running mate who becomes

the Vice President so that the country is able to know who the Vice President is going to be in advance, so that the President does not have the power to appoint or fire the Vice President, so that we may never have a situation where there is no vice President. Because there can only be no vice President if there is no President but as long as there is a President there must be a Vice President, okay. And we are saying that the person who is nominated as a running mate of the President must himself or herself be qualified to run as President. Now some people told us that we have specified who qualifies to be President but not Vice President, we have, we are saying that the vice President must fulfill the same qualifications as the President before they can be appointed as a running mate.

170, is about the Prime Minister: the Prime Minister under 171, is appointed from the party that has the majority in Parliament or the coalition of parties that has the majority in Parliament. The Prime Minister together with the cabinet must be approved by Parliament, the Prime Minister and the cabinet can be dismissed by Parliament on the vote of no confidence. And it is only on a vote of no confidence that he can be dismissed. If the President wants to dismisses the Prime Minister the President must go to Parliament and tell Parliament that I have no confidence in this fellow do you agree with me? If they don't agree with the President the Prime Minister cannot be dismissed. That is what I want to say about the executive.

On the judiciary: what is new here, is that we have introduced a new court called the supreme court above the court of appeal and the chief justice will be the head of supreme court and also the head of the judiciary as a whole. The court of appeal will be presided over by a President and a high court will be presided over by a principal judge. All of the whole holders these offices chief justice, principal judge, President of the court of appeal and judges of those courts will be appointed by the President by recommendation of judicial service commission and approval by Parliament. So again you will not have a situation where the President simply picks a chief justice only. That name will have to go Parliament and Parliament must deliberate on it and approves it.

We have set up the qualifications for the appointment of judges in 195, we have said in 196 that judges hold office up to the age of 65, infact we have said that all public offices judges the attorney general, director of public constitution, public defender all of them will retire at the age of 65. At the moment the judges retire at the age of 74, they are saying that we had no right to cut down that retirement age, we have told them that we are reducing it to 65, but you will get your entire pension if you want it.

So 197 is talking about how judges will be removed and that procedure is the same as it is now.

208 is on the Attorney General: what we have done with Attorney General is that we have now defined an Attorney General who is only the chief legal adviser to the Government. At the moment the Attorney General is the chief legal adviser to the Government, he is the director of public prosecution, he is a cabinet Minister, he is an ex-officio Member of Parliament. We think that the Attorney General should be a professional and should only be chief legal adviser to the Government. We have therefore created the position to direct of public prosecution in 209 to deal with the prosecutorial functions to the Attorney

General we have now and we have also created in 210 the position of the public defender, who will be person who will provide legal services to Members of the public.

Chapter 10 is dealing with devolution that is how powers of Government legislative and executive function will be shared between the central Government and local Government and we have created to four levels of local Government the province, the district, the location and the village. We have separated councils from executive functions the district the provincial council district council, locational council and the village council will be legislative organs not executive organs. The executive authority of the province, the district, the location and the village will be vested in a administry that elected directly by the people. So if you want to ask me what is going to happen to chiefs and sub chiefs if sub chief and at the village level they will have to be elected by the people and they can be fired by the people. At the district level the district administrator will be elected directly by the people and fired by the people. Under the provincial level the provincial administrator will be elected by the directly by the people, and then they recruit themselves and they run it in accordance with laws and policies made by the village councils, so that there is no confusion between the powers of the chairman of the councils and the power of the town clerk as it is now for example.

We have provided in 225, for the establishment of a commission on local Government finance to deal with this question of budgeting and how much money is going to be shared between local Government authorities and the central Government.

An then in 230, we have said that Parliament will pass details in the legislation to deal with the distribution of powers and functions between the central and local authorities. We have a schedule that gives a list of functions, that schedule is not complete we are still working on it infact today and tomorrow, there is a staff force that is working on that detail and therefore by the time you go for National Constitution Conference, that schedule will have changed and many of the questions that people are asking that the relationship between council whether or not village elders are going to be paid and so all of those things will have been answered.

Chapter 11 is on land and property, so what I want to emphasize there is firstly we think that land should belong to the people of Kenya, not to the Government that is what we have stated in 233. We have stated in 234 that that land can be held either by the people at large if it is public land, it will be held by a land commission on behalf of the people. Land can be community land if it is community land, it will be held by identifiable communities and therefore county councils will no longer have control over trust land. Trust land will become community land and will the communities be identified and the land will be vested to them directly.

Individuals can also hold private title land so your title deeds are also safe. So you can either hold land as an individual or as a community or as a citizenry at large. We are saying that land means the soil, the sub soil, any mineral that is in the soil and a reasonable height in there so if minerals are found in your land and it is under your own private title those minerals belong to

you, if it is in community land it belongs to the community, if it is on public land it belongs to the public.

Chapter 12 is on the environment and the most important thing there is on what we are calling environmental rights, if you have any reason to believe that the environment is being polluted we now say that any individual can go to court and stop that pollution. You will remember the case which Professor Wangari Mathai brought about Uhuru Park to stop KANU from building a I don't know a 40 storey high office block there. She locked the case to be called the Attorney General enter and said she has no interest in it, that only the state could stop it.

Now we are saying that any individual can bring that kind of action, in other words we have introduced what is called is called locus standi the right to sue has now been given not just to the state but also to individuals. Okay I will ask Jackline to walk you through the next set of chapters and then I will come to deal with the chapter on amendment and transition.

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

**Com. Prof. Okoth Ogendo:** Sorry, when we have finished we will take questions.

**Jackline Obiero:** We will give you an opportunity to ask your questions when we finish going to the draft. Thank you Professor, now I want to go to public finance and revenue management and what I want to bring to your attention, here, is on article 251 the Central Bank. So we are saying there is establish the Central Bank of Kenya and remember many people in their submission say that, they don't want a situation whereby with the incoming of a new President then we have the currency keep on being changed and all that. And they felt the currency should not hold the portrait of an individual and so we have given this mandate to the central bank. So the central bank shall be the only authority to issue currency and so that question can be answered here by saying that the central bank could be basically in charge of anything to do with currency. So we will not have and there will be, they have the power to determine what currency we will have, so we will not have a situation where by with the coming in of a new President then we have the currency being changed and you know printing of money, you know just for political reasons we will not have such a situation.

So the other thing that we are proposing is that, the governor of the central bank shall be a constitutional office holder, what we are saying is that this office shall be entrenched into the constitution as a constitutional office, that is the office of the governor of central bank, so we will not have a situation whereby this is a person appointed by the President and you know for his own personal interest, you know and being able to control the Central Bank. What we are proposing is that this is going to be a constitutional office and trains into the constitution and if you read article 252, we have set out the functions of the central bank and another office that we currently have is the office of the controller and Auditor General, but we have divided this office into two and so right now we are introducing the controller of the budget in article 253 and we are saying there shall be a controller of budget who shall be appointed by the President with the approval of the National Assembly and whose office shall be a

constitutional office. So we are saying that the controller of budget who will be in charge of controlling the budgets and ensuring the implementation of the budget as passed by Parliament will be a constitutional office, you will not have a situation whereby this person is just appointed by an individual and he can be manipulated and controlled in any way. What we are saying is going to be an independent constitutional office.

Then we are also proposing for the office of the Auditor General in article 254 and so we have the office of the Auditor General and controller of Auditor General and the controller of Auditor General to audit all the public accounts and to audit all the offices and one of the things that we are also including and adding is that we are going to have another office once the auditor and the controller of budget have audited the books of the accounts for the different ministries for the different departments. Then what we are saying is that we are going to have another body and that is in article 256, we are saying that the accounts of the office of the controller of budget and the Auditor General shall be audited and reported on by an auditor appointed by the National Assembly, so what we are saying is that if these offices have audited their books that there will be another body that has been established or that will be created by the national assembly and this body will be in charge of auditing the Auditor General and the Auditor General and the controller of budget books.

Another thing that we are creating is for the establishment of the Government and Parliament on matters of economic and social concerns to the people of Kenya and also to reconsider and to report to Parliament on all bills and budgetary proposals introduced in Parliament and also its function will be to monitor progress towards achievement towards achievement of the rights of Kenyans affecting the living standards particularly the living standards of the poor and the disadvantaged. So that is another body that we are creating the economic and social council.

But I want us to move to chapter 14, that talks about the public service and so what is important here is we are proposing for an independent public service commission and many people in the proposals really complained and they said that you know they want an independent public service, we have heard situations whereby different persons are appointed or different persons are appointed to different public service offices because of vested interest, you know personal vested interest. And what we are saying here is that we are going to have an independent public service commission that whose functions and powers have been set out in article 260 and we are saying that this is going to be a disciplined public service commission independent and entrenched into the constitution.

Then I want to draw attention to appointment of public officers in article 262 the subject to the provision of this constitution the public service commission shall appoint persons to hold or to act in any office in the public service of Kenya of the rank below that of the Permanent Secretary including confirmation of appointment, exercising of disciplinary control over such persons and their removal from office. So we will not have a situation whereby a chief is imposed on people, it will be the people to like appoint such kind of people and kind of posts and we are saying that there going to be employees of the Public Service Commission.

The other thing in part two: the Kenya Police Service, we realized that currently we have a Kenya Police Force and so we are also proposing a change of name for the police force, we are not going to be calling Police force, we will be calling it the Kenya Police Service because we believe their slogan means that “Utumishi kwa wote” so it’s suppose to be a service body, its not a forcefully body that it is suppose to use on force to impose things on people. And so we are proposing for this Kenya police service to be established and I will read article 265, there is a established service to be known as the Kenya police service, subject to this constitution. The police service shall be organized and administered in a manner and shall have functions in Parliament may prescribe, the police service shall be professional and disciplined, so we are not going to have a case where by police just shoot people you know out of no good reason.

There going to be a disciplined and a professional body, we are also proposing that the police service shall remain a national police force and a division of it’s function shall be organized to take into account the structure of devolution and then the police force shall work closely with communities to ensure security and safety for the citizens through community policing. So we realized that when we went to different constituencies many were saying that the police force has not been diploid in some areas and many areas have been suffering from insecurity, there is a lot of insecurity in so many areas. So what we are proposing is that the police force will work together with the community to enhance the security of the community and of the place.

Then we are also proposing the appointment of a commissioner of the Kenya Police Service, what we currently call the Police Commissioner. So we are saying that there shall be a commissioner of police service. A commissioner shall be appointed by the President with the approval of Parliament for one term of ten years.

Then no persons may be appointed as commissioner unless that person has the degree from a recognized University and have served in the police service for at least 10 years. Then the other thing that we are proposing is a change of name what we call the Kenya prisons currently we are proposing that it’s be called Kenya Correctional Service. Because we believe that the prison is a place where somebody has to go for correction at least for rehabilitation. Its is not a place where you are suppose to be locked up and kept a way from even information and from different kinds of life. We believe it’s a correctional facility and so we are proposing the change of name and we are saying that it shall be established in the constitution. We are also proposing for the appointment of a director of the Kenya correctional service who is also currently the prisons commissioner and this person shall be appointed the President on the advice of the Prime Minister and after approval by Parliament shall appoint the director of Kenya correctional service. And we are saying that Parliament shall enact laws concerning this provision.

Then I want us to go to chapter 15 that talked about the Defense Force and the National Security. In this chapter I want us to look at article 272 that we are proposing for the establishment of a national security council, that will consist of if you read the President, the Vice President, the Prime Minister, the Minister in charge of defense the Chief of General Staff, Army



Commander, Navy Commander, Air Force Commander, Commissioner of Police, Director of Kenya correction of service, Director of National Security Intelligent service, Chairperson of the relevant Parliamentary committee and the Attorney General.

Many Kenyans in the proposals say that that power to even declare war and to all you know anything to do with defense and security should not only be vested in one person, and so that is why we are proposing for the establishment of this council that would be in charge security issues. And if you read, article 273 defines the functions of this person, we are also proposing for a defense force and a defense force council that will consist of the persons mentioned there in article 274-sub article 2.

Then I want to go to chapter 16 that talks about leadership and integrity: leadership and integrity and this chapter applies to every person who is in public office, any person employed in public office, it also applies to the President, it also applies to the Prime Minister, the Deputy Prime Minister, the Ministers and the Deputy Ministers, it applies to the Members of Parliament, it applies to Members of the local council and all constitutional office holders and any other public offices. So what we are saying is that we have a leadership and integrity code that every Member of the public or any offices that are mentioned are suppose to comply to. And what we are saying is that this leadership and integrity code if anyone is appointed in the public office and does not comply to this leadership and integrity code, then that person shall be sacked or shall have to leave that office. So what we are saying is that this, the leadership and integrity code shall be under the commission of integrity and ethics. And what we are saying is that the commission of ethics and integrity will come up with roles and Parliament will also come up will legislate laws that will look into this. Now what we are saying is that under this code is that there is going to be a certain standard and a certain measure that a person has to comply to and if you are not able to comply to such kind leadership code then you cannot be a holder of that office.

The other thing that I want us to look at too is chapter 17 that talks about constitutional commission and constitutional offices. When you went to the different constituencies many people tell their cry and one of the things that many Kenyans proposed was the establishment or creation of a human right commission, others say that they wanted an ombudsman, others said that the agenda commission should be established in the constitution and so what we are proposing in this chapter, is the constitutional commissions and offices that are going to be interdependent, they are not going to be interred with by any other arm of the Government, they are going to ensure that Kenyans live in harmony and one of the things that I want to just read the general functions of this commission so everyone to be able to understand.

In article 282, a constitutional commission shall seek to educate the public on it's role purpose and function and may conduct investigate on it's own initiative or on a complain made by a member of the public, has the power of the high court to issue summons, compel at attendance to give evidence or produce document for the purpose of investigation, has the power necessary for conciliation, mediation and negotiation with the aim of reaching an amicable settlement, may reward compensation and may commit a person or an organization to the high court for contempt. So what we are saying is that this body will be given the power to maybe summon a person if it's a person or a community and carry out investigation incase of human rights and violation.

So I want us to go to the first commission, which is the commission on human rights and administrative justice that is 288. So the commission of human rights and administrative justice shall consist of a chairperson the human rights commission, the people's protector which is also the ombudsman, if many may remember their submission and the gender commissioner. So these commission basically will look into human rights, remember we talked about the bill of rights and incase you feel that maybe these rights have been mentioned and unnecessary action has not been taken then you can report to the human right commission to be able to take up that case and to carry out an investigation. So the human right commission under that will have the human right commissioner and the functions of the human rights commission are outlined in article 288 of article 3. If you read all that that is the functions of the human right, we have the people's protector who is the ombudsman, so incase you have any complain concerning maybe a certain, may be it's the Government or any department in the Government or may with any local Government authority. This is the body or this is the person with whom you can take up your case to so the people's protector will receive complains about abuses of power and fair treatment manifest, injustice and corrupt, lawfull oppression or unfair official conduct. They will also carry out investigation to find out it whatever you laid has been done to you or has not been is true and have the ability to be able to compel the persons may be charge or committer these people to the high court for further maybe judgment.

Then we have ethics and the integrity commission, which I have mentioned earlier and this ethics and integrity commission basically have the functions to receive declaration in accordance with the leadership code. So this is the body that will be in charge of ensuring that the leadership and integrity called has been followed

The other function of this body is: incase any person has been employed in the public service we are talking about the President and all those office holders that I had mentioned earlier. This persons are suppose to file their assets, many Kenyans say that any person before taking any public office should declare their wealth. And so this the commission that will be in charge of carrying out investigation to find out if any office holder has assets or has assets that does not belong to them. So if you are an office holder you are suppose to file your assets with them, they are going to carry out an investigation find out if you got this asset in the right way. If the land you are proclaiming to be yours did you legally acquire it.

And then one of the other things we are going to look into is, if you are an office holder, this is your salary then if your salary say was 20,000 but the assets you have, you know you cannot be able to really explain how you got it, then they are also going to ensure that such persons do not take office or are not in office because people have to be transparent and accountable on how they received their wealth.

Then we also have the salary remuneration commission and many Kenyans in the submission said that the MPs should not have the power to determine their salaries as we have seen in the past, they wake up one morning and they say today we are to be earning a million or half a million of what ever they earning. What we are saying is that and we are proposing is that there be a

salary and remuneration commission and the functions of this commission will be to determine the salaries of MPs, to determine also the salary of any office holder. So we will not have a situation whereby teachers going on strike because the salary increment has not been implemented. This body will determine the salaries and even the pension, we will also look into the issue of pension, we will also determine the allowances of public office holders. So that is basically about the salaries and remuneration commission.

Then we have the teacher service commission which we are proposing it should be a commission entrenched into the constitution and the functions of this commission will be in consultation with the public service commission to recruit and employ teachers. We want an independent body that will be in charge of recruiting, an independent body that will be in charge of deploying teachers to the different areas; promoting and transferring teachers can be making even the employment of teachers.

Then the other commission that we are proposing is a constitution commission: we realized that after the adoption or after the enactment of the constitution, there will be need to have a body that will ensure that whatever has been passed or whatever has been enacted in the constitution is implemented. And so we are proposing that there will be a constitution commission that shall consist of a chairperson and four other members and the functions of this commission will be to ensure the implementation of the provision of the constitution, which requires new legislature and administrative action for pulling implementation. So basically this commission will also report twice a year to Parliament on the progress of implementation because there have to be, you know there would be no use of just hanging up the constitution and writing a very good constitution.

And then ten years down the line that constitution has not been implemented so what we are proposing is that there have to be a body that will ensure the implementation of this constitution. So other constitutional offices that we are proposing that be entrenched into the constitution and many of them we have gone through them I will just read, the Attorney General, the Auditor General, the Controller of budget, the Director of bureau, Director of Central bureaus statistics, the Central and the Director of Kenya correction of service, Director of the Kenya Police Service, the Director of public prostitution, the Governor of Central Bank and the Public Defender.

Now with that will go to chapter 18 and I will give back to Professor to take us through chapter 18 and the rest.

**Prof. Com. Okoth Ogendo:** Thank you very much. Now what we are left to look at are two things. The first thing is on the question of amendment to the constitution, we are aware only centrally aware that the present constitution has been amended so often that it lost meaning. We have had 37 amendments in 39 years when countries like the United States that have been independent for over 200 years have only 27 amendments. And part of the reason was that we were using the constitution as a political influence and trying to use the constitution so solve political problems.

We have provided that the procedure for amendment of this constitution should be of two kinds:-

1. There certain clauses in the constitution which we think should not be amended without the participation of the people at a referendum and we have listed them in 294. We have provided that those are what we call entrenched provision for example provisions relating to the territory of the republic, citizenship, the bill of right, those provisions cannot be amended without the people being involved so even if Parliament passes a bill by more that 100% by 100% of the votes, that amendment will need to be ratified by the people before the President can file that bill. Other provision to the constitution will be amended by a 2/3 majority of both houses of Parliament as it is now. In other words we have made amendment procedure twice more rigid than it was before.

And finally chapter 20 is on translation, when you are translating from one order to the next, there are a number of things that you must take care of. There are certain things that will need to continue, there are others which will have to be faced out and we have provided schedule 8a detailed of those things that will continue and those which will have to be phased out. Now in terms of continuity we say that the obligations of the state of Kenya, treaties which we were filed, loans which we have filed and other agreement that we have entered into the East African Community, COMESA and so on, those obligations will continue under this constitution. In other words they will be treated as if they were made by virtue of authority of this constitution.

We have also provided that the laws of the country, the law of contract, the law of tort then the criminal law all of them will continue as long as they are consistent with this constitution. Those that are not consistent to the constitution will be revised to bring then into conformity with the constitution or they will be refilled or they will otherwise be amended but generally the legal system will continue.

They have also provided that people who are holding offices, by virtue of any legislation will continue to hold those offices unless those offices have been abolished in this constitution. So you don't wake up one day and you find that you don't have an office to go to because there a new constitution, those ones will continue. If you are entitled to pension and granting and so on and it has matured you will continue earning them as if they were created under this new constitution.

Members to the judiciary, the judiciary will continue people who are holding the position in the judiciary the judges on so on will continue to own those position subject to the following conditions: -

- I. If you are over the age of 65, you will have to retire on full pension.
- II. If you are not over 65 but you are above the age of 55, we are providing for early retirement for those judges who wants to take it. And if they take that early retirement we will add another five years and calculate their pension as if they retired at whatever age plus 5 years. If they don't want to take early retirement we are saying that any judge in respect of whom there is a complaint, whether the complaint is to Attorney General, with law society of Kenya, with advocated complaint commissioner, whatever will be suspended on full pay while that

complaint is being investigated. And if it turns out that the complaint is merited then proceedings will be taken for the dismissal of that judge, and then note lots of corruption complaints that are outstanding against many of the judges. And we have said if a judge is not to be investigated is not over 65, is not taking early retirement, there is no complaint against them, then we are going to require them to file a list of their assets with ethics and integrity commission so that they can explain to the public where they got those from. And if any of those assets were corruptly received, proceeding will be taken for the dismissal of those concerned.

No I understand that if you go through that procedure we probably only be left with 3 judges out the about 50 that they have, that is the reason why they have gone to court. Now we have also said that if elections are to be held under this constitution, certain things will have to continue we are providing for the continuation of the present electoral commission for the purposes of managing election under this constitution and once they have that, that electoral commission will have to wind up within 90 days on the conclusion of those election, so that a new electoral commission can be appointed.

We have provided that anybody who is qualified stand for the next elections under the old constitution will continue to be qualified to stand for elections under this constitution, but only if the next elections are under this constitution. If we hold election under the old constitution and then this constitution comes into effect, later next year then the elections held, the first election under this constitution will be held in accordance to the terms of this constitution. So the waiver applies only if the next election is held under this constitution. We are giving political parties 12 months to register with electoral commission to satisfy the commission that they can operate with a national character and we suspect that when political parties come to register if the electoral commission is satisfied, we are probably going to end up with something around 10 or less to political parties. That is the way in which we want to control political parties.

We are saying that before provincial council, district council, locational council etc are established, all the assets presently held by county councils, town council released from council or so on will be public properties and will be held by the national Government until those councils are set up and then they will be transferred. And we are saying that anybody who, imposes of any property belonging to this organization will be investigated and the property will be recovered. We are saying for the avoidance of doubt that the power is going to be devolved to the provinces and district and so on the provincial administration shall be dissolved because they will have no function. The PC will have no function when there a provincial administrator, the DC will have not function when there is a district administrator, the DO will have no function anyway because they are not using the division. At the locational level the chief unless to be elected by the will have no function, so the provincial administration is dissolved and we are providing it the transition of provision that people holding positions in the provincial administration should report to the public service commission for redeployment or retrenchment or whatever.

And we are saying that because we have suggested that the death penalty should be abolished. All people on death row have their sentences converted to life imprisonment. Now we found that in any case in this country nobody has been executed since

1984, so we are even wondering why courts keep on condemning people to death when the President doesn't want to sign those death warrants, so we are saying that those ones should be committed to life imprisonment.

Land, when the country council is faced out of trust land, we are going to have that land held by the national land commission for community until those communities are identified and then the land will be transferred to those communities.

And finally we have put on schedule seven along list of action with Parliament must undertake within 3 years of its first sitting to ensure that the complication is formerly domesticated, so that is where we are. We will now take your questions, your comments, your reservations and the whole of it. Thank you very much ladies and gentlemen. (*Clapping from the audience*). Where is the coordinator or his assistant? *End of tape 2.*

**Mr. Odiko:** ....come up with soliciting and collecting your views from all over the country. Now we would like to throw the ball to you, that is, so that it may raise comments on the draft or maybe you may ask questions. Touching on the draft that you do not understand.

I want to retaliate again .....(?) that we do have your views that is what you said when the commission was here last. Because elsewhere some people like to challenge certain issues not forgetting that we have documented reports on what you said. Now without wasting more time, I will be taking your questions in a batch of five, first five, I will accept the first five. We will respond to those then we go to the second five and so on and so forth. So I will give you numbers, number 1, 2, 3, 4, 5 then we respond to the first five and then we continue like that.

Can I have the first batch please? Five batch is, number 1 is here, number 2 is there, number 3 is there, number 4 is here, let's have number five here. Please you will, we don't have a codeless microphone here so may be I will be happy is you could come forward here. You tell us your name, raise the question or comment. When you are through then you please you go there and sign your name there we have the book, so can I start with number 1 please.

**Nyangau Onuonga:** Thank you very much I have been here almost the whole session and I am very happy that the draft seems to reflect what we intended to have in the constitution.

(Interjection) **Mr. Odiko:** Your name?

**Nyangau Onuonga:** My name is Nyangau Onuonga, I live in Kisumu here am a businessman. I have noted a few things I wanted clarified, one of them is we have been talking of appointments being vetted or approved by the National Assembly, I am wondering why they should not be approved by Parliament. And the problem which we have always noticed is that appointments are done by the President and they take effect immediately, whether you are out of the country you are suppose

to effect office on the same day, on the same hour. Why could it not be possible for the constitution to give time people who have been appointed to take office may be a month after month or even 15 days, so that the people in the office can handover and those who have been appointed can have humble time to take over.

In section 107, no article 107 there is this proportional representation; we talked of a list that will be prepared by parties. Is this list going to contain Parliamentary candidate of the day or it is going to exclude them? Is this list going to be a list from a civil society? Or it is going to include public servants? What is this list? And I am sorry to say that this days we seem to have given a lot room to the parties, we have given a lot of power to the parties to nominate people in this proportional presentation of their own liking, are they going to be vetted?

We were talking of the appointment of a Prime Minister and the cabinet and the presents said that if the national assembly does not approve the appointment of the Prime Minister and deputy with cabinet, then the whole group will have to be re-appointed. Why don't we have these offices confirmed independently, like you confirm the Prime Minister on one occasion and the cabinet in their own time so that you don't really through away everybody may be within this 15 Members or 18 there are good ones in there.

And section 151 were you are protected the President, I am worried of a few things like if there were any cases existing, they should be discontinued. In other words if there was any criminal proceeding going on in court prior to elections it should be discontinued. I don't see the relevancy if you are protecting the President because he is in the office, he should only begin running from the time he comes in the office.

And there was an issue on this act 184 on the chief justice, I have not seen where you have listed the qualifications of the chief justice or I don't know may be they are implied, but we could not like a situation where somebody is appointed from the street to lead the judiciary. Now on section 249 I am just wondering we have always used the word "the Government", who is the Government? That's it, thank you very much.

**Mr. Odiko:** Thank you Mr. Onuonga ladies and gentlemen, we would like that we give a chance to as many as possible, that would not be possible unless you are very concise, very brief and to the point. Can I have number two please?

**Mr. Omolo Kayila:** My names are Omolo Kayila, I come from Seme. I have a few comments and questions to put before the Commissioner.

First of all just something that I felt was missing somewhere, article 76 is a sub article four missing somewhere. Then the issues I wanted to raise are as follows:-

Is it possible for the constitution like all other acts of Parliament to have a section dealing with interpretation? Because I have seen that there are some interpretations given in the various chapters but the interpretations are very restricted in those chapters and does not cover everything.

**Mr. Odiko:** .....(Inaudible).

**Mr. Omolo Kayila:** Sorry, now I said article 76 I was wondering whether.....

**Interjection Mr. Odiko:** .....(?) chapter 76.

**Mr. Omolo Kayila:** Yah but I feel that it didn't cover as much as one would wish because we wanted to make this constitution people friendly, so that they read it and understand what some of these terms means.

On formation of political parties, there is a restriction, there is a requirement that all political parties must have national outlook and that there must not be religious based or something like that, yet in Europe, in Germany and Scandinavian countries we still have Christian democrats going as parties. What is wrong with us also having such religious place parties in our case? Even in the UK we have the Irish, the Scottish and Wales, they have their own units which look like political parties. Why don't we also allow this to be given in this country?

Secondly we may have a pressure group that is confined only to a district or religion like the Maasai may form themselves into a party to protect their rights. Why should we stop the Maasai's from having a party that will protect their rights especially in matters of land or any other society living anywhere in the country having their rights protected by forming their own parties.

My suggestion was why don't we only fund those who are able to make it to Parliament, political parties that are able to make it to Parliament rather than if you see that they are too many the funding may be very difficult.

The other issues that I wanted to raise is with respect to elections. With all these bodies election may become very untidy they cannot all be done like we are doing it now where you the general elections, you have the national assembly elections and you have the local

Government elections. My guess here is that perhaps the constitution anticipated the situations where these elections will not be held together and if this is so I couldn't precisely put in the constitution that this will be held at different time, because it cannot be very difficult where you are voting for a person, you are voting to the party, you are voting for the provincial council, you are voting for the district council, you are voting for the location council, your are voting for the district council, voting for the location council, you are voting for the village council. Can something be done to tidy that up.



The other issue with regard to voting is whether we the constitution does allow for people in hospitals, people in prisons and also people who may be outside the country also to have their votes in that decision making process.

The President: at the moment there has been a lot of talk about the President and the retirement benefits. There is a lot of talk also the President still being a political leader. Why should ma taxes go to pay a President that is the head of political party that I don't like? Because if the public funds are going to be used to pay him, then may money is going to be used to pay that person, why should I pay? They should be above politics; they should be like the Clinton which can be sent out by the country, he should be above politics so that he can be a respected person. If he wants that pension, if he doesn't want it then he should remain in the political party where he wants to head.

You mentioned something about coalitions and alliances, the political parties when it comes to appointing the Prime Minister, alliances and coalition don't seem to have been recognized in the constitution. What kind of coalition or alliances are we going to allow? There is a Rainbow alliance, there was NAK, there maybe other coming, what alliances and how are going to, what will be their legal status if they are not registered as parties as such, such loose alliances.

And, you want me to stop? Yes Mr. Odiko wants me to stop but I want to raise something about the funding between the various levels of Government. I know legislation will be prepared by Parliament, but can Parliament also be given some direction, so that we don't just leave it otherwise everything may still go to the centre and the localities will remain with no funding. And can we have definitions of municipality, cities, and provinces and so on because for the province there is no schedule of their work. Thank you.

**Mr. Odiko:** Thank you very much James for having very strong views on specific areas of the draft. Please can I have number 3? Number 3 please. May be I will be asking you to raise not more than three issues. May be a question and two comments or there may be two questions and one comment? Is that okay?

**Audience:** Yes.

**Samuel Oando:** Okay, thank you I am Samuel Oando from Maseno.

**Interjection Mr. Odiko:** .....(Inaudible)

**Samuel Oando:** Samuel Oando.

**Interjection Mr. Odiko:** .....(Inaudible).

**Samuel Oando:** Oando, Oando. Now my first question comes from article 292, which set out the commissioner the constitution commission. We have the teachers' service commission and we ask why we have left out in the constitution the commission for higher education which may provide for education after any level where the teachers may be employed under the TSC. You will agree with me that University or any other colleges form very big reserve for all profession or other sectors and therefore they should be included under the commission for higher education, management of such kind of institutions and appointment of such kind of their management team.

Number two, is on I don't find any section articulating probably on corruption check, we are devolving powers yes, but from experience we have seen the local authority is being even more corrupt than the Government institutions like the former provincial administration. We have brought back power to the people but there no check .....(inaudible).

Number three: on the part of amendments, we have some cases of national importance, like the Golden burg schedule case which have stayed for more than 10 years. Probably now with implementation of any constitution how shall the court or may the law go through with new constitution or shall they be abandoned?

Number four which may not be very important but of course it is .....(inaudible) we have believed that the President is tied to State House, where will the Prime Minister reside probably or why can't we conclude the resident or offices in the constitution?

And finally you the commissioners are now, our eyes, ears and hands on this issue communicate to the existing Government, that we the people of Kenya as you have written of the preamble are happy with your work and probably they should take it into accord. Currently that this constitution after the conference that will approve it is implemented before we go into the election and we are ready to sacrifice any individual Government or anything for it to go through. Thank you.

**Mr. Odiko:** Thank you very much Samuel for those strong views, you will hear from us shortly. Can I have number four please.

**Tom Ogola:** My name is Tom Ogola, I come from Kisumu. I have got two questions .....(inaudible) questions are a bit of .....(inaudible).

Now the first one is on chapter 8 clause 175, this is on the appointment of the cabinets. Well I agree in likes and ideas that you put up of appointing the cabinet Minister outside the Parliament. I am of the different opinion, other side of opinion that it would be of great honors and important when a Government is appointed from within Parliament. It gives the Prime Minister and opportunity to appoint from within those who are there because as Professor explains that, when a cabinet Minister is appointed

from within Parliament, that particular MP is to resign and there will be a by –election done in his constituency which are going to be a restriction what could have been avoided and waste of funds.

I was of the thought that Ministers be appointed from within Parliament and this would give a competitive and devolution of power within (inaudible), I say this because if you give the MP an obligation to work hard so that there will also be a reshuffle, can you give them a way forward of work.

And then what I was saying in this, after appointing cabinet Minister to avoid un-necessary reshuffle let's give them security of tenure so that they cannot just be fired like what was happening her the other day, let them have security to be appointed from within so that we don't extend and extend a lot (inaudible) outside.

My second one was on section or chapter 10 devolution of power, that is on appointment of , that is the election of leadership in the grassroots that is may be in location to replace the chiefs and assistant chiefs. I was saying this because I trying to foresee something, I am foreseeing a case where, you know like chiefs have a lot of problem with the people who are not well maintained in the .....(?). Those guys who don't feel well with the policemen or may be with the chief getting into may be getting information about them in the society. You know it is because of chiefs you cannot actually remove a chief and that is why they can get in the region. You know they can get and pluck in a criminal without question because they will still be there you will not remove him. But when elections come in where you can remove a chief by election, then chiefs will be handicapped, they will not go for a criminal because they think they will be divided between elections and their job. If you go for him and he is a criminal and he is popular in this section, then you will not get in next time, so something should be done even if we are to elect chiefs and assistant chief which security did you give them. Are you giving any security do that they could see their work in that place.

These are my main two questions so the security should go other way for the elections and for the chiefs. These are few things I have. Thank you so much. Thank you, I recommend for the kind of good job that you are doing, thank you so much.

**Mr. Odiko:** Thank you very much Tom for that recommendation. Can I have number 5 please?

**Okaka Opande:** Thank you the Commissioners and everybody. I wish to recommend the following in the new draft.

**Mr. Odiko:** Your name?

**Okaka Opande:** My names are Okaka Opande I am a teacher and I was also a civic educator. On the national holidays I would also prefer that you put Labour Day for all the workers, because all other holidays seem to be political.

Also I would also wish to recommend that on dual citizenship, these people should not hold senior position in Government because their loyalty is likely to be questionable.

On the children right, the bill or right that is part 37 G, free corporal punishment or other forms of violence or cruel in human treatment in school, I would wish the commission to specify which are these corporal punishment, because currently it is a rule in the schools that we don't cane. And it has been that discipline has really gone down and I don't think any teacher would really wish to beat somebody to kill, so it should also be checked this part of corporal punishment specify which ones.

On this part of political parties, elections where 77 part 2A which specify that at least 1/3 of candidate in the direct elections shall be women. I find it tough to the Kenyan politics and it should state that the female candidate should be encouraged, because I don't see how political parties will go fishing for women and some of them might not even be willing to go for the contest.

On the part of the electoral commission: I would also wish to put that, what is the criteria of appointing the commissioners to the electoral commission? You find that there is no criteria are they going to be appointed by political parties, the President, the Prime Minister or who?

On qualification for registration: you find that if a political party is to be cancelled then I would also wish that let it be published in the Newspaper for some time so that the Members in other places might know, because most of people don't reach Kenya Gazette and you find that these things are just put in the Kenya Gazette.

And then where they were saying that the money is allocated to the political parties, let them be given to the political parties, which are in Parliament and on pro rata basis.

Then there is party discipline where part 98 that is page 13 part four which says that a Member of Parliament or local council who resign from a political party that sponsored the Member who loses the seat. Right now we have several things like merger or verbal defection. Now there is no part where the constitution is saying how these people who keep on defecting or merging unnecessarily are going to be disciplined. So this part it should be reviewed and, which resigning is it by merger, verbal or what?

Then this part of the Members of the National Assembly where 107 part one: election to the national assembly shall be based on mixed member proportional system. I feel that this part be deleted, where it says 90 Members shall be elected on the basis of the list of candidates, submitted by political party, because this one might be used by the population theorists and because of their population some people can vote a particular party and then they will get about 90 Members un-procedurally. I think the national council and the national assembly has given all these people to be well represented. So this part should be replaced by 16 nominated members who shall comprise the cabinet. I am almost through please.

Then this part of reservation recommendation part 26, 3 bills I suggest that if the President shall not assent to the bill within seven days then .....(inaudible) according to me that we shall assume that part will become law if he still has not signed it because there is no way you will punish, he is likely to be punished. And then I am almost through please.

**Mr. Odiko:** .....(Inaudible).

**Okaka Opande:** It is there? Okay thank you.

**Mr. Odiko:** .....(?).

**Okaka Opande:** No I am just through let me just finish something here. I have not seen where it is indicated that Presidential election should be held separately with other elections. So I would also wish that this part be put but the Presidential election should be separate.

And then I don't know whether I was also reading it wrongly, but part 66 two that the nomination and the clause A, shall be in writing and shall be submitted to the speaker of Parliament, you know in Parliament according to the draft I was seeing that we have two speakers of the national council and on the assembly, so I don't know whether...(?).

Then under this part of this local authorities there was no provision of the qualifications for a local authority the chiefs, okay the chiefs have been removed, but there was also no part of how the security of villages would be enhanced because these elected people might be afraid to push some issues because they know they will lose election, so I find this part, otherwise this part also there are some parts where if Parliament does not, if within 30 days the President first proposed the person to be appointed Prime Minister no person has been confirmed by the national assembly then national assembly shall be dissolved, I find it very expensive and the investors will be even afraid to move into the country. And these coalitions some of them might be breaking and might jeopardize let us put it very strict, either the winning party or coalition to stand until the next general election. Otherwise thank you.

**Mr. Odiko:** Thank you very much Bwana Okaka, Bwana Okaka is a very energetic effective teacher and now that he is not teaching he has more energy if I gave some to time he could still continue. So please I think we have heard the first 5 people. It is now the turn from this side; I will have another five when we are through. So before that one, the ball is now in our court, I need to give to the Professor first.

**Prof. Com. Okoth Ogendo:** I want to make some general comments first. Number one is that don't look for answers to every problem in this draft. This is not only discussion draft but it is a frame work within which laws are going to be made. So

don't look for specific answers there are lot of things that people told us which we have not put because they think they either should be in ordinary legislation or they should be part of administrative proactive and principles.

Number two, read the draft as a whole, there certain things which may not be answered in chapter nine which are answered elsewhere. So there are certain comments, which have been made here which are in infact answers in other places. For example the qualification of the members of electoral commission, if you look at the chapter on constitution commission it will tell how all commissions, the composition of all commissions and qualifications for people to hold those positions.

Sometimes qualification for certain offices are combined with others, for example the qualifications of the chief justice is together with the qualifications for judges of the superior courts in article 195. So you have to be very careful before you make a comment that you have gone through the draft thoroughly before you raise the matter. And thirdly we will take your comment to Nairobi we are not here to answered your question, we are here to take your comments and therefore some of the comments that you are making we don't have answers for.

That the specific question, Nyangau Onuonga you are talking about vetting by the national assembly or by the national council, I said when is started that Parliament means the national assembly and the national council. What we have done is that we have divided offices for purposes of vetting. Some of them will only go to the national council and when they go to the National council they will have gone to Parliament, others will only go to the national assembly and when they go to the national assembly they will have gone to Parliament. So don't get confused with the fact that sometimes we say national assembly or national council and we don't say Parliament that is Parliament.

On the fact that appointment should not take effect immediately you know when they make appointment and they say the person is taking effect immediately that is usually a sign of mistrust. You think that if you don't say that then the person who was there before is going take government secretes. I know of people who have been given later to appointment at midnight and the first thing that happens, they report to the office at 6.00 o'clock in the morning and when the old person comes in he find another person sitting on the chair. With the system of vetting, there will be a more orderly process of taking over, because if the vetting process is not something that is going to take one minute, it is going to take several days and after that it happen then the appointment will be made and the process will have a specific date, so there will be order in there.

Now the proportional representation seats, who is going to vet them? Just as we do not have political parties to vet the people they are sponsoring on election, we are not going to have vetting for people on the list provided that they are people who are qualified to be Members of Parliament. You cannot put on that proportional list somebody who is not a citizen of Kenya for example, who does not have an ID, who does not have a vote of card, in other words to get onto that list you must have the same qualifications as the person who would be standing for election.

And the electoral commission will not accept somebody who is standing in constituency X and also appearing on the proportional list, that will be gambling that if you fail to get in to direct election you can come in through proportional representation. They have to be two separate groups of people you take your chance whether you want to be on the proportional list or you want to be on the direct elections list.

Article 249, Government who is Government? In the context of article 249 Government means the executive but the word Government also may mean the judiciary or the legislature. When we talk about arms of Government we are talking about the preamble and in our case we are even including the public service and constitution commissions. But in the context of article 249 the word Government there means the executive.

Ah, Omolo Kayila, article 76 is simply badly vetted numbers there is nothing missing just renumbers them so that instead of 1, 2, 3, and 5, you go 1, 2, 3, 4, 5. What is wrong with religious based parties; I want to remind you that although in Germany there is a party called Christian Democracy they are not Christian parties, that is just the name. Their national party it is not a party that only Christians can join, so let us not be confused with that terminology. They are not parties based on religious organization but again what we are saying is that we should consider the possibility of parties that are registered to champion very specific interest and we will take that point. I know that you are coming to the national constitution conference take your case there.

Staggering of voting: I thought we have provided for that, Presidential elections will be held separately, election for the national assembly and the national council will be held together, elections for provincial districts, locational and village councils will be held separately and what we done is to say that we will Presidential election first, then elections for Parliament that is the national assembly and the national council and then the election for the devolved Government. And the elections starts from the first week of August every 5 years and then the second week of September for the assembly and then the devolved Government call the elections in October, so they are going to be separate. But remember that that in the case of elections for the National Assembly, you still will have two votes on one ballot and that is the vote for the individual and the vote for the party.

The President should not be a leader of a political party we agree with you and I believe we have provided for it if you haven't followed. The President as the nation as a constituency anybody can stand as President you can be sponsored by a political or you can be an indecent candidate. Once you are President you are to delink all association to political parties, when you stop being President you cannot be appointed to a political position.

And if you are on pension by the state, that pension will be available only as long as you are not in politics, if you go back into politics you lose it. So all these matters will be taken if they are not already in the draft.

Coalition you know, all we are saying is that let political parties come together and form a Government. We are not creating a coalition there no sitting as coalition, a coalition is two political parties come together they will have been registered as political parties and therefore you don't have to register as coalition, the coalitions is simply an association. So that need not to be catered for in the constitution.

Schedule 7 will deal with devolution of power is not complete and I said that at the beginning. It is not complete the provinces are not there, there are very many things that I am missing there, that is the one part of the draft which is completely under-developed and I did indicate that today Thursday from 4.00 o'clock there is going to be a task force meeting to deal with that, the whole day tomorrow we will be discussing devolution and that particular schedule. I will ask Jackline to deal with the rest of the questions, from Samuel Oando.

**Jackline Obiero:** Samuel you asked about the constitution of higher education to be included, yah we have taken that and it is still subject to debate. You also asked if the constitution can say where the Prime Minister will reside, which state house? Presently we have the President has a state house which will be the state house of the Prime Minister. We have not indicated in the constitution and I think these are some of the things that will be dealt with much much latter.

Election, you said that this election should be held with the new constitution, well that one is not within our power, we hope it is going to be but it is not within our power.

Tom, you commented on ah, you felt that MPs, Minister should be appointed from within Parliament and they should be given security of tenure. What we felt was that if Ministers just do the Ministerial work then it would give them more focus because we found that many people were really complaining and saying once their MPs go into Parliament and they are appointed Ministers, they tend to forget the legislative functions and so that is why we thought it wise that we should separate MPs from being Ministers. Anyway it's your comment we have taken it and it's still something to further debate, yah.

Elections, you also felt that chiefs should be elected that has already been provided for they will be elected and given security of tenure. Well I would still take you back, the elections of chiefs it still under devolution of power the schedule is not complete, so we cannot give you an appropriate answer right now but with the National Conference I think by that time it would be complete so it could give you a good picture on that.

Mr. Opande, you felt that the Labour Day should be included as a national day. I believe Labour Day is an international. What we are talking about is the national, Labour Day is celebrated all over the world, so what we are talking about is what is within Kenya as a constitution. So Labour Day is still a holiday, that does not change that fact, it's still a holiday that is celebrated internationally not just in Kenya alone.

Then dual citizenship: you felt that persons who holds dual citizenship should not hold senior positions. And I think what we



have indicated is that any person with any constitutional holder should be a Kenya citizen and well this is still subject to debate it's appoint we have taken it and may be it should be more clear in the constitution that any person holding dual citizenship should not hold a senior positions.

Children's right: you felt that the corporal punishment, with abolition of corporal punishment the constitution should be very specific on which corporal punishment. Well the constitution cannot specific as we had told you, it's just a guide line. All the other laws that are going to be legislated, so it cannot give you an answer as to which specific punishments all we have said is corporal punishment then the rest we leave it to Parliament to come up with law to this effect.

You also talked about political parties: and you felt that the female candidates should be encouraged. Women have been sidelined for along time and many of them if we even some of the constituency reports, you know that we came with, you find that women say that most of them say that 30% of the seats should be reserved. But I believe we are being fair enough by, we are not just reserving seats for women, but we are giving them that opportunity for them to also contest. So take note that seats are not being reserved for the female but they are being given that opportunity even as women to contest for it. But we just need to recognize that may be as we had said at least a  $\frac{1}{3}$ rd that doesn't mean that if no  $\frac{1}{3}$ rd of them make it to Parliament then we will have to get other people and you know, what we are saying is that we are giving them that opportunity and we are saying  $\frac{1}{3}$ rd of them, if a  $\frac{1}{3}$ rd cannot make it then well it will be taken by other may be the male in that case.

Okay concerning the criteria for appointing a Electoral Commissioners, I think that has already been provided for it is under the constitutional commission and offices. We have a criteria who qualifies for that and Electoral Commission is part of that.

You also felt that political parties that are going to be registered should be published and I believe that has been made provision for and if you read under that chapter, chapter 6 that talks about a political parties, there is a provision that says that; if any political party is going to be registered it will have to be gazetted. So I believe every person may be who is involved or any member of that political party should be able to know.

You also felt that people who defect or resign have not been, there have to be some disciplinary measures that is going to be taken against those who resign or defect and I believe the electoral commission will come up with such rules and regulations and Parliament will also legislate on this. What I will just want to remind you once again, is that the constitution is not a body in itself so you are not going to be looking for specific answers, it cannot answer all the specific answers. What we are saying is that if that provision has already been made for in the constitutions, then Parliament is obligated to come up with appropriate legislation to ensure that what has been provided for takes effect. So, I would just like to remind that you cannot get specific answers, you know we cannot talk about what will happen incase a member defects or resigns from the political party that we have left for the electoral commission and Parliament to come up with specific laws concerning this. So with that we will take the next five questions.

**Mr. Odiko:** Ladies and gentlemen, the last time the commission was here before I take an additional batch of five questions, we presented our views and those views as I said before were documented. I am happy that when I look at the draft constitution a number of issues that we recommended from this hall have been included, and those once are here and I would like to urge you to get access to this document, this is specifically for Kisumu Town West Constituency. I am sorry they are not very many, they are very few but you can even have photocopying, some of the things that we really recommended. I am only mentioning a few. You recommended that the constitution should provide 35% of Parliamentary seats should be reserved for women, of course already we have signed to what the draft constitution is saying in terms of the position for women.

You also recommended that, DCs to be elected by people, of course the area concerning the devolution of powers already what the draft constitution is saying. You mentioned something about that the constitution should define the duties of the President, of course as of now you know what defection is all over the place and he can do anything and of course he is above the law. The draft this draft defines the duties of the President that you will elect using this constitution. You also recommended that the chiefs should be elected of course that is under devolution. So many things, you recommended that devolution of the provincial administration, of course that is abolished but of course you should be reminded that you cannot abolish what isn't there. We do not have an act of Parliament that establishes the provincial administration as of now, neither do we have this animal called provincial administration in the present constitution. But these are issues that are still debatable.

I am going to ask for another five people, there is a lady their, there can I have the lady to be my number one? You are number one eh? Then can I have number 2, number 3, number 4, number 5 please and be brief. Can I start with number 1 please, please come up please? And be brief so that we can give the chance to others who have pressing issues please.

**Betty Okero:** Good afternoon, my name is Betty Okeyo and I work for the NGO network for Western Kenya.

**Mr. Odiko:** Your name is who?

**Betty Okero:** Betty Okero.

**Mr. Odiko:** .....(inaudible).

**Betty Okero:** Yes. Now mine is probably concerns modern question. I know that Kenya signs a lot of international instruments and we know that most of them are not domestic cases but I want to find out why we sign instruments that infringe on our rights. What can the constitution do to ensure that we have got things that will not affect basic rights that people have, we know about liberalization the word trade organization. How can that be embraced to the kind of constitution?

There was an issue of the share of national resources, and for those of us who come from this region we know about the sugar, we know about the fish, but when we talk about distribution of these resources and we know that the resources are not in the power of the people, what kind of policy are we then talking about and how can that be put into the document.

Now there is also the issue about the boundaries and I would just like to raise a concern particularly for Lake Victoria I have an issue with putting boundaries on a share to (inaudible). We know about marine life and we know that we cannot control the movement of the fish and when we start putting that in, then we are told we cannot cross over from the other side, that has probably been a major course conflict between Kenya, Uganda and Tanzania. Now my concern is that we want in the constitution where you cannot control the movement, how do we then get to address that?

And then there was the issue of budget participation and where the Government make sense has to pay for loans that we are not credit worthy. How can that be also embarrassed within the current draft constitution?

**Mr. Odiko:** Thank you very much Betty Okero for those views. Can I have number please, number two?

**Ochieng Aput:** Thank you, my names are Ochieng Aput.

**Mr. Odiko:** .....(Inaudible).

**Ochieng Aput:** Ochieng Aput. I have a question about a citizenship by marriage, I am wondering whether that is allowed even for men, because if that is the case then most men from outside will come and stay in this country and Kenya will be completely Asians or Europeans. You cannot just come here and marry and become a citizen. So I am really asking whether this country is really going to be safe when anybody can be a citizen just because you have married my daughter.

Two, we have talked of a president having a degree, degree in what? See it's just not any degree can be suitable for a President, so we want that one to be clarified, degree in what?

I am also asking about, you have given us a very tight condition of calling back my MP that I must get I don't know 30% of people registered. Surely if it is 80% then 30% may be I don't know 45,000 people when will I register them to call my MP back. By the time I am going to for these people the MP would have already have been known and have been jailed. So this condition actually cannot allow us to call back our MP.

I have the fourth question, you were talking of, I agree with idea of cabinet Minister being non-MPs. Yes how will the Prime Minister get them? Are they going to apply or you just call your people left and right so that they will become cabinet Minister.

Thank you

**Mr. Odiko:** Thank you Bwana Ochieng. Can I have number 3.

**Bernard Otieno:** Thank you very much. My name is Bernard Otieno I work for Consumer Watch. I first of all give my thanks to the commission on behalf my organization for including most of the point we put in our memorandum to them with regard to consumer right.

I would just want to add in one thing that I feel should be included there. Trade commission the reason I am suggesting this is the impact of Commerce on the consumer is rather negative and not very good needs to have somebody there to oversee how to assimilate especially some regulations that come from the World Trade Organization. So I would suggested that you include trade commission to inform the Government to pass laws regarding trade that impact on consumers negatively. Thank you very much.

**Mr. Odiko:** Thank you Ben, can I have number four please?

**Jonah Onyango:** Thank you very much Bwana Professor, the Coordinator.....(inaudible). I will first and foremost I would like to ....

(Interjection) **Mr. Odiko:** Your name?

**Jonah Onyango:** My names are Jonah Onyango. I would like to thank you very much for or I congratulate you very much for coming up with the draft constitution since it was a very technical exercise. In chapter five of the draft constitution, there is a big gap to me my observation is that it's a big gap and it needs to be addressed. This gap formes almost about 65 or 45% of Kenya's population and there should be put a mechanism to address the issue of this gap may be a planned to re-integrate the school leavers to the community because in article 35 up to article 39 of the same chapter is very clear and very specific. It caters for different kind of people so this group is the youth and I am appealing to the commission to talk or to check more about it. Thank very much.

**Mr. Odiko:** Bwana Councilor.

**Concillor John Owiti:** Thank you very much, I am called councilor John Owiti Ogolo I am a councilor within Kisumu municipality. Most of my views I am going to dwell on the provision in the local authority particularly article 218. My first question is, the district councils are consist of not less than 20 and not more than 30 members. This one takes us with surprise because some councils have 50 members, others have 75. But in your draft you have indicated that they should be 20 to 30, I think some explanation should be made there.

You talked of the district administrator, who is this district administrator? Is it the mayor or the clerk or is it the chief executive, which we call now that town clerk? You were not clear there.

You talked of the election of the district administrator; this one also takes us with the concerns. Because if before you answer it, if he the chief executive cannot campaign within the district and get votes, he is not a politician, but if he is the mayor he can be influenced, he can have money and he will be elected go in through, but one thing if he goes into the administration he will perform so the qualifications of such district administrator should have been included in the draft, so we know whom we are electing and what capability does he have?

And there is talk of executive authority that is about matter of concern. The mayor as a politician if he is selected direct by the people he cannot have an executive authority, but if the draft accepts for him to have that executive authority, will he perform? I think that is all, thank you very much.

**Mr. Odiko:** Thank you very much Mr. Councilor, he revised issues pertaining to the areas that you know best and I hope that it's going to get response from here. Ladies and gentlemen that is another birch and please allow me to ask for responses from up here before I can tell you...

**Com. Prof. Okoth Ogendo:** Betty Okero is asking about international instrument, we are provided that international instrument convention and treaties will become part of the law, of this public but they must go through Parliament before they are signed and when they go through Parliament, Parliament will have to make sure that they are consistent with constitution before they can be approved. They can even indicate which part of it are not going to be approved and will not be passed of the republic of Kenya. What it means with that we are not strictly going to have the executive signing treaties and then those treaties have no application here, so that is how we are dealing with it.

The question of natural resources distribution and the benefits arising from it will be dealt with and the conflict of devolution of power and when we have fully worked out that particular chapter we will be able to deal with the sharing of resources and the sharing of revenue coming from those resources.

Boundaries, we know that the fish will not respect those boundaries, but we must have boundaries in the republic and that one we have stated. And then we are hoping that the Government will then enter into a separate convention on fish and that is already being worked out between Kenya Uganda and Tanzania so that that issue can be dealt with. I was told when I was here that 65% of the breeding grounds of fish are on the Kenyan side, but that they then go when they mature they swim into Uganda and Tanzania and then those people stop us from getting the fish. That is an issue which Government for Government to Government negotiation, we cannot put a boundary that will stop the fish from moving but we can at least use that as a basis for resource sharing on the Lake.

Citizenship by marriage, yes a non Kenyan getting married to a Kenyan can acquire citizenship in Kenya and vice versa, the argument that we have heard that 3 years is too short that may be we should raise it to the same level as resident which is 7 years and we will take that with us.

The President should have a degree, a degree in what? I have been teaching in the University of Nairobi for the last 32 years and I am convinced that any degree is good enough for leadership. Because what we are talking about here is not the degree certificate, we are talking about University education. And please don't think that if you have a degree in political science you will be a better administrator than somebody with a degree in Chemistry. We are talking about University education, we are not talking about specialized training, no body trains to be President. No body trains to be a Member of Parliament. But we want to be sure that you have reached a level of intellectual achievement that is equivalent to a University degree, that is what we are talking about there and that is why we have not said the President should have a degree in soil firms or in gerrymandering or whatever.

The recall rules are tough yes they are tough because we don't want people to abuse them, we don't want a situation in which somebody defeats you in election and the next day you start collecting signatures. And recall rules have been abused elsewhere and that is why we have raised it at that level, if 30% not of the people who voted but of the total number or registered voters, so if the member of parliament went in after only 15% of people voted you still cannot through him out if you don't 30% of poll registered voters. It has to be tough to prevent this.

Vetting of ministers: they will be vetted by the national assembly, it's really it's not important if the Prime Minister went and collected his brothers and his sisters and his wife and so made 15 and went into parliament is foolish to agree with him then we will say they have done that on behalf of the people so the vetting will be done by Parliament itself. And I don't think at that level the Prime Minister is going to make show that it takes the interest of the nation at hands.

A trade commission will be considered that we will look at it in the contest of not only domestic trade but also international trade so we will take that.

Out of school youths, we are concerned with the youth at any level, not just the ones that have dropped out of school and home I know there are a lot of them, but when we talk about youth, youth we cover everybody and we have discussed that rights of the youths in the draft.

Councilor Ogola, we know that there some councils that are very large in North Eastern province some councils are so large, they are larger than the staff that are working for them. There are other places where the councils are smaller than the people who are working for them, we wanted a standard way of dealing with it. What it means, if there are more wards that we are stipulating in the constitution we will have to collapse them, but we want an idea across the country what's the minimum number

of councils and the maximum will be, so it is a standard setting exercise that we that we dealing with there.

The district administrator: the model we are dealing with is like President and the Parliament. You elect the President, he is a politician we selected when they are selected they become the chief executive. We also wanted the district administrator to elected, can be a politician, when he is elected he becomes the chief executive. We are very clear that the chief executive is not the mayor, is not the chairman of the council, the mayor presides of a council, the council is the legislature they pass on, they enact policies those policies are implemented by a chief executive who is also elected by the people. If we can elected a President and chief executive why can we not elect a district administrator as a chief executive. And people told us that they want to elect sub chiefs and sub chiefs because then they have control over them, we elect them for 5 years, if you don't like them you can throw them out five years later. We have been doing that with the President it does seem to me that the President is any less of the President because of the possible that they may be thrown out. So we are simply turning that logic to the local level. That is where we are, let's take the final five.

**Mr. Odiko:** Now I have the final five. Let me repeat the final five questions or comments then we all disperse to other parts of the city. You are number 1, number 2, number 2, you are number 4, just behind there with the yellow shirt, you are number 5. Please can I have number 1.

**Peter Onyango:** Thank you Mr. Chairman I am Peter Onyango Obado, a retired Auditor.

**Mr. Odoko:** Onyango Obado?

**Peter Onyango:** Yes Mr. Chairman. I will go to article 254, Auditor General Corporation, I would like to add something on qualification in a diffident to being a qualified accountant, he should also be a graduate that will give more broader aspect of to being, other than just being a qualified accountant, you can be a qualified accountant without being a graduate like in the police the commissioner now suggested should be a graduate and therefore also proposing that even the Auditor General be a graduate. General office was not mentioned, as it is the current controller Auditor General became controller as Auditor General before Professor Ogendo started teaching that is in 1968. In order to avoid such a situation from happening again I propose that he be given a two term of 5 years each, just like the Police Commissioner after which he left somebody else to do the work.

While under the same section 254, it says that he is going to Audit all Government accounts, I will take a small bit to say that in secondary school today, head teachers are charging people a lot of money and even the Ministers try to stop them, they could not because I don't know for some reasons they have no machinery to do that. But the main problem is that ministry of education has no, these secondary schools and even primary's, primary schools are not audited at all. Secondary schools are supposed to be audited by a group of about 40 people in ministry of education. There is something called audit unit in Jogoo

house, I propose that such a situation be done away with and that the schools audit be brought under the Auditor General so that they can have a separate section auditing schools. School is a very important sector and we cannot let it just go like that. Right now we have 17,500 primary schools and over 4,500 secondary schools.

So let me revisit the Central Bank of Kenya, again in order to prevent what is happening now, it is being audited by joint auditors when report only to the directors of Central Bank. The reports of Central Bank never see the Parliament at all, so I don't know whether it is because the current Auditor General is not technically capable Auditing such a complex being as CBK, but may be it should be enjoined in the constitution so that people don't forget. Thank you.

**Mr. Odiko:** .....(?). Can I have number two please.

**Henry Okano:** Thank you very much Professor, I must sincerely first of all congratulate you people having worked very hard to reach this level, against all odds that all Kenyans know. In chapter 8....

**Interjection Mr. Odiko:** Your name?

**Henry Okano:** Name I am Henry Okano, I am a businessman. Chapter 8 article 160 so many people, so many Kenyans have talked about the executive and they have talked about the President having two terms of 5 years each, I would propose that MPs also should have only 3 terms of five years each, because if they continue you see the longer they stay the longer they become corrupt I mean they take so many things from us, the same should apply to the councilors, so that we don't have a scenario that we have here, they are people who have been MPs since 1963 to date. Second.....

**Interjection Mr. Odiko:** .....(Inaudible).

**Henry Okano:** I think Kibaki is one of them, Olentimama if I have to continue with that. Let me come to the economic point of it, I mean the COMESA region, I would propose .....

**Interjection Mr. Odiko:** .....(Inaudible).

**Henry Okano:** I would propose to this commission that the basic rights of most Kenyans have been violated by say for example we have the COMESA region, right now Kenyan are even importing toilet papers from Egypt, even eggs are being imported into the country and some many others that are best known to Kenyans. I would propose to this commission that the Government must regulate essential commodities, so that the local product can be protected. I am saying that because if for example Professor Ogendo go and check whisky in an hotel various hotel and myself an ordinary take a chang'aa or busaa in this case I would be jailed. I am suggesting this thing should be standardized locally like we have the Waragi in Uganda they



have been standardized so that we don't have the problem with the chief, the problem people have with the chief is that they are arresting people taking chang'aa the busaa.

Finally I would propose that you have suggested I mean MPs to have the minimum qualification to be o' level. Why can't we also have minimum qualification of councilor to be of o'level qualification because for example in Voi we have about 10 councilors, only 8 of them have reached standard 8 and actually they are doing service to the people. Thank you very much.

**Mr. Odiko:** Thank you very much Mr. Okano. Can I have number 3 please?

**Michael Owino:** My names are Michael Owino Ochiel, a teacher. May I on behalf of the people of my sub location, the people of my district and the people of Kenya in general, take this responsibility to thank the constitutional reformists for their good work they have done first and foremost I will take about the constitution itself, the Professor during his speech mentioned the very important words about what we call the formation of the constitutions. Forming constitution alone is not all that simple it took Benjamin Franklin who drafted what we call the Government of the people by the people and for the people many years actually to form such a constitution, which actually let the Americans for what we call it's present independence and up to now the Americans are living better lives because of what we call the constitution. What have you offered so that the Kenyans can defend the best constitutions that you have now constructed.

The constitution is suppose to be supported fully by all the Kenyans and if possible years should be given so that the drafted constitution remain what it is for about 50 years so that we don't have what we call, meddling with constitution so the days of our lives in politics.

Next while still on the constitution, Kenyans have allowed what we call the kind of constitutions that you have adopted and we very much thank Yash Pal Ghai and his compatriots for the kind of the constitution they have adopted. But I would wish to request the commissioners that time should be given so that you appoint some of the Kenyans and if possible you train Kenyans to become the constitutional reformations so that much money is not tent on what we call inviting the political reformations is from outside this one is making our country be deprived a lot of the funds that could be used in other sections of development.

Next I will fall in love with the section of what we call the public service that is the police service. It is true that it should be called the police service whose major objectives and principle is to actually help the Kenyans, but I am asking one thing, what position have we given our counter part the females? The females are being beaten by the police all the day whenever their is a riot you find that the counter part the females are being beaten seriously, some of them are dragged by the police to an extent that they are being raped by the police officers. These things should be identified and if possible spelt out whenever there is a riot or any kind of thing taking place in the country, our counterpart the females should be given their rights but they should not be boated because that is not according to the human rights.

Finally I will talk on the defense: being a student of History and I did read something about the History of the people of West Africa military is what we call the mother of the Government. When the military is not steady then automatically the kind Government people have will always be meddled with or you can be automatically be attached by the foreigners. Let what we call a clear specification of the police forces be put or be identified so that we know the kind of the forces we are using. There are certain forces, which are acting within out of the law of the Kenyans Government, you find that there are certain armies, which are organized by the local people, and these armies are given weapons in order to fight against the people who are not asked the innocent people.

Our Government should make sure that such kind of organizations are done a way with because when we have what call the illegal military or paramilitary organizations, then time will come when people will be murdered and nobody will know how these people are murdered. Those people who become the personnel in the defense forces especially the captains and the majors and the senior military officers, they should have what we call identified positions as leaders in education and people who can promote peace. We do not want people who are being adopted by the leaders because they are brothers and sisters of the rulers or the President. With those few remarks to the commissioner, may I thank you very much, may the Yash Pal Ghai Commission and their adopted constitution live for 50 years. Thank you.

**Mr. Odiko:** Michael we are for more than 50 years please. That is eh, Michael was number 3 and he wishes all the best, I hope each one of you wishes us well. Can I have number 4 please?

**Josiah Olal:** First of all thank you very much for giving me this opportunity to represent the views of the youth. As a youth I am much concerned by the Government act of .....

**(Interjection) Mr. Odiko:** Your name?

**Josiah Olal:** My name is Josiah Olal.

**(Interjection) Mr. Odiko:**.....(?)

**Josiah Olal:** Josiah Olal. My first question goes to our MPs, you see right now our MPs are enacting so many laws, bills currently they could call them bills but in the long run they are not being turned into laws, like the disability bills, the Donde bill and any other such a thing done locally. What can be done such that they can be made into tangible laws?

Secondly, we have MPs who are send to the Parliament to represent us, when it comes to a time when they should be present in the Parliament you find they are not there, they are attending to personal interests or somewhere in town. This more so goes

to the cabinet ministers whereby you find somebody whose question is appearing in the docket is absenting himself, may be because he feel there is something very itchy that is going to be questioned towards his docket, so would you please provide a law whereby you reduce that 8 sitting allowance to some fewer allowances such that somebody just does not absent himself anyhow in Parliament.

Third, the Government itself is seriously talking about the illegal drinks that is provided in the market, but you find the Government itself when we look into drinks for example sapphires and others else you find the Government level that are leveled on them. So we are asking you to enhance a Government that is taking into consideration whatever it says but not contrary to whatever it says.

Fourth, your law, your draft currently did not touch very much on the police harassment to the public. Currently you find that I cannot walk personally by 11.00 o'clock because the police will definitely arrest me and if I don't give something small, I will go in, simply because under the present that narandaranda, narandaranda but may be sometime I am attending a very important business, so this thing should also be addressed.

Then last but not list; I am talking about the rights of the people. For example people in town at least they are sensitive to their rights, but then when it comes to the rural people how do we make them understand that if he does this or that, he is the right way and somebody else should not tamper with him. On that I am very grateful that whatever you have done is at least leading us to the end of tunnel. In the tunnel we have been walking through at least now we can see the light and I bet on it all the youth and any other individual as a Kenyan will stand by you and nobody be it who will stand along your way because they so say whoever tries to stop a flood the flood will swallow him thank you.

**Mr. Odiko:** Number five please.

**Zephaniah Otuko:** Thank you commissioners for giving me this opportunity to give some comments. I just have comments I am Zephaniah Otuko..

**(Interjection) Mr. Odiko:** Onduto?

**Zephania Otuko:** Otuko. Yes first of all I would ask the commissioners to put some laws restrictions on NGOs or rather old registered organizations to have their books audited. This is because we Kenyans sooner or later the whole world will think we are con men. We have churches, we have NGOs which are given funds from outside but the way they are signing this funds nobody else knows, it's just them alone. So if like churches are audited by the Government and even some NGOs even schools and trade unions then transparency will be there.

Secondly, I would like to talk about court cases, I am wondering why a criminal case should take 6 years and one is arrested

because there is evidence that he or she has committed a crime. You are arrested because ulikuwa unarandaranda usiku, the next thing you are taken to court, you are told to plead, you are pleading not guilty, you have to pay some bond you don't have the money or anybody to give out something on your behalf, you are taken into remand, you take some two weeks again. You are prosecuted for a crime you never committed, so at least there should be some period of time that is if it is a criminal case it should be two days and it's finalized. Just a civil case it should take two 6 at least.

Finally, I am taking appointment of Ministers the cabinet, well it's said in the draft that the cabinet is suppose to be appointed from non-elected members, but what if these non-elected members tried to go through elections but they failed, so that this Prime Minister is favoring them because he or she is a friend, you know there are no checks there, you need to put checks and balances there.

Then I will talk about MPs: there is this recalling of MPs, our MPs who disappear in Nairobi they don't come back, I am suggesting that you establish an office within the constituency an office that has a secretary and clerk paid by the Government, such that if at all any constituency has a problem he or she should report there. If the MP is absent for one month then something should be done. Thank you very much Mr. Commissioners.

**Mr. Odiko:** Thank you very much Mr. Otuko may be that is the last, that lady is the last kabisa. The last kabisa, .....(?) please be brief eh very brief.

**Hellen Achieng:** Thank you, thank you Bwana Professor and the Commissioners and everybody at large. I am Hellen Achieng Omolo; I work with the Constitution Review. I have a few comments to make. On the issue of the President, we know that we are Africans and we in as much as we would like to make our laws so refined we don't move away from our values.

In the African context, we find that, long ago you would be elected a chief because of your family background, the moral stand in the society and today we find that we are able to elect a President regardless of his or her moral background in the society. I think as you go along on rectifying this issue of Presidential election, then you shouldn't include a moral chance of somebody in the society before he qualifies to be elected as a President.

And another thing our youths are really qualified outside here, but you find that you told us there is no employment, when you come around two days later you find so many people have been employed behind you. This is because the public service commission though powerful but has not done to us any good. You are there when you hear of a vacancy and the commissioner; you only look around for your relatives. When you find that your relatives are all occupied, you start looking for a few friends you met early. This is very bad, so I think what we should do here, let us have an employment bureau, which is independent of the public service commission where we will have our people may be communicating through the websites, the

internet and you launch your application through the internet or personally to their table and they will communicate to you directly not referring you to the public service commission. Thank you.

**Mr. Odiko:** Ladies and gentlemen, in the commission office some of your gender equity 50%, Hellen is my assistant those are her very strong views and as I said that was the last batch and from now we are going to give chance to the table up here to respond to the issues you have raised. I will give it to Professor Ogendo please.

**Prof. Com. Okoth Ogendo:** Jackline will take the questions.

**Jacklyne Obiero:** Thank you I would like to respond to your questions and some of your recommendations. Peter Onyango you said that in addition to the Auditor General being a qualified accountant, he should be a graduate, we have taken that and it is still subject to more debate.

Concerning the Kenya you found that it wasn't mentioned, maybe I believe this was mentioned earlier and we said that all holders of constitutional office and commissions which include Auditor General and the controller of the budget are going to serve for not more than 3 terms of five years each. So, I know it has been mentioned under the general principals or qualifications for constitutional office holders and commissions.

We have also taken into account your comment that schools should also be audited, should be part of that we will take that forward.

And in Central Bank should also be included and it's office audited, we have also taken that into consideration.

Henry you were concerned about the MPs, you find that their tenure should be 3 terms of five years each and I believe that the tenure of MPs who are the Members of the National Council and the National Assembly has been specified, if we will go back to maybe to the draft we find that there is where we talk about tenure of office for the legislative chapter 7, the tenure of office for Members of Parliament is specified in article 111, so members of the national council will serve two terms of 4 years each and the Members of the National assembly will serve two terms of five years each, so that has been expressly provided for.

Of basic rights: we talked about where basic rights have violated; I believe we have the social and economic councils that has been established in this constitution that we will look into such issues whereby there is violation of such rights and to ensure that everything is put in place.

Then we have the Government the regulation of essential commodities, what we have believed is that if this constitution is turned into full force and everything is done in the way it is suppose to be then some of these questions that we area all asking and so

many things, the specific things, the specific questions are going to be answered. Because Parliament cannot just adopt part of the constitution. Parliament is obligated if this constitution is enacted to adopt the whole document, so we will not have them adopting some parts that are suitable and some that they feel that is not suitable then we are not going to adopt it.

So, you also said that the minimum qualification for councilors should be form IV level of education, I believe this is still under the devolution of power and the 7<sup>th</sup> schedule which is still being worked on it's not complete itself and we believe that Parliament will also legislate laws to this effect.

Then like of, you felt that time should be spent on educating Kenyans on this constitution and basically you were just giving comments so there is nothing more than I can really comment on. Thank you for your comments and for your recommendation.

You also felt that the female should be protected when there is riot and I believe this has been expressly provided for in the bill or rights where we are talking about rights, your rights to security and maybe it wasn't just mentioned that the female you know as a broad vision being protected but I believe that the constitution has expressly provided for this you as an individual you have a right to strike if you go to the labour relations you have a right to strike and right to peaceful demonstration. So we are not going to have a situation whereby you are demonstrating peacefully and the police is deployed to disperse people. You as a Kenyan in this constitution you have the right to peaceful demonstration.

You are also concerned about a clear specification of the police be identified and be defined, I believe these are the things that may be Parliament is going to enact laws to this effect, because the constitution as we have said before can not answer all the questions, and so it will just provide for is just a guide line and that Parliament will enact the specific laws to that effect.

And Josiah, you were concerned about how bill were going to be made into tangible laws, if we remember what we had talked about, we said that any bill that has been brought into Parliament or has been introduced into Parliament and the President is given to sign to it, we said the President can react to it in three ways, and we said that in which ever way he reacts to it, at some point he will still have to sign it, so I think this will answer the question whereby we will not have bills pending. Bills being introduced in Parliament and then just pending there because they have not been passed and that the President has not assented to it. What we are saying is that we are trying to close this loop that has always been there, whereby the President refuses to sign a bill, once a bill has been presented into Parliament and whichever way the President reacts to it and if is amended then it's going to be passed as a law. So such situations are not going to be there.

And then eh, providing eh, you also were concerned about a situation whereby MPs may be just going into Parliament for a few sittings and collecting there allowances, we have expressly provided that MPs will be full time, being an MP will be a full time occupation, so that means you will have to attend all the sessions in Parliament, Monday till Friday.

Police harassment to the public: you felt that that has not been addressed, well to still answer your question in the same form, I

believe laws will be legislated to this effect to answer the specific question because the constitution cannot answer all these questions.

Rights of the people: you felt that the people are may be, the people living in town areas have been informed and they are being sensitized concerning the situation but what is the constitution doing concerning the people that are in the rural area. What I would say is that even in this forum that we are in it is a sensitizing forum whereby people are being explained for and we are informing you concerning the draft, we also believe that it is going to be made available and it has been available in the official languages that we talked about English and Kiswahili. So the one that cannot access to it in English can access to it Kiswahili. We believe that we will go further as time goes by may be to make them available in the ethnic languages, well not right now but may be later.

And Mr. Otuko, you felt that the NGOs, they should be put a restriction of the NGOs and NGOs like churches should be audited, we have taken that into consideration. You also felt that court cases take too long and I think this has been expressly provided for in the bill of rights, where we are talking about you as a Kenyan, you are entitled to a fair trial so just read under bill of rights there is a section on fair trial, whereby you are suppose to be presented before a court, you know within 48 hours, so we believe court cases are not going to take long, the time is going to be short. If this constitution is enacted then court cases are, you as an individual knowing your rights you will also demand that you be brought to court within may be 48 hours.

Cabinet, you felt that the qualifications for cabinet should be defined and what I said is that what I can say concerning this is that, the appointment of cabinet ministers will be based on qualification. We are not going to have a situation whereby the minister of health is somebody who doesn't have the right education, if it is the minister of health, he is going to be a technocrat, what I mean he is going to be a technical person plus a somebody who is conversant with that ministry and what health is all about. So we are not going to have a situation whereby you are a minister you are conversant with agriculture and you are put in health, you those two are two different things. And the other thing is that these appointments are also going to be approved by the Parliament. So Parliament will have to look into that person and find out if this person qualified, so I believe with this we will not have a situation whereby the persons appointed by the Prime Minister is not qualified.

Concerning MPs having offices in the constituencies: what I was saying is that that will be legislated later we cannot expressly provide for it in the constitution, but many Kenyans in their submission have felt that MPs should have offices in the constitution and I believe that if this constitution comes into force, these are some of the things that are going to be put into effect.

Then we have Hellen Acheng' you felt that the constitution should provide for that the presidency morally upright I mean we should set all these qualifications. And I believe that with the ethics, the leadership code, ethic and leadership code that every public office holder is going to comply to, we are not going to have a situation whereby we have President who are who have, I mean who are not morally upright. So with the leadership code that every public office holder including the President is

suppose to comply with I believe this will be taken care of.

Concerning your view on having an employment bureau being established to ensure or to help this problem that we have of unemployment especially among the youths. These are the most specific questions that the constitution cannot answer. But I believe where the constitution comes into force and everything is adopted then we will have everything not falling into place. We will not have a situation whereby we the rampant unemployment as we have it in Kenyan currently. So with those remarks may be I would give Professor may to add to any other thing.

**Prof. Com. Okoth Ogendo:** I think you have dealt with the whole it, let me just draw the attention of Hellen Achieng to article 156 1C, it requires that the President should be somebody of high moral character, so we have taken care of it specifically in addition to the fact that he will have to comply with the leadership and integrity code and also file his wealth with the ethics of integrity commission. So there is a grate deal about morality in there. Thank you very much ladies and gentlemen. Bwana coordinator.

**Mr. Odiko:** Ladies and gentlemen I want to thank the commission up here, specifically Commissioner Professor Okoth Ogendo and his kin Jackline and Abigael for being with us today. I also want to thank you for coming because without coming and interacting with them, then even their visit to Kisumu would have not been successful.

I want to remind you ladies and gentlemen once again that we do have documents in our documentation centre, at the county council offices, I invite you to look at them like now you are seeing my brother here is studying the Constitution Review reports.

Please visit us every week and confirm whether what you have told the commission is inside there. It is from there, use it as a premise by collecting your view with what is in the draft, but we have been discussing this morning.

Two, we also have the national report the short version, some of you saw it in the Newspapers, perhaps if you bought the Newspaper, you have it, if you did not have an access to the Newspaper that day means you don't have it. I invite you to come to our centre there and even find a copy and be able to see if it compares with what is in the draft.

Finally for those who have very strong views, they still have time, sit down write it bring it to us and we will send it to Nairobi before the National Constitutional Conference and certainly your view will be presented during that conference. If you have it please don't delay with it, you can send it to me and send it there or (inaudible) the mayor (inaudible) he does here, may be you have known that the Mayor was elected and one of our representative in from this district the National Constitutional Conference. One other person that was elected to the National Constitutional Conference who is with us today and who I have the pleasure to introduce to you is Mr. James Omolo Kayila, just please stand up so that they see you. James Omolo Kayila is with us here, another one a lady called Mrs. Phoebe Atieno Ocholo is at Pandpieri, as I told you this morning, the commission has paralled sessions in Kisumu today, there is another one at Pandpieri as we speak they are still continuing.



