

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

DISSEMINATION OF REPORT AND DRAFT BILL,

NAIVASHA CONSTITUENCY,

HELD AT NAIVASHA TOWN HALL

ON

7TH OCTOBER 2002

DISSEMINATION OF REPORT AND DRAFT BILL, NAIVASHA CONSTITUENCY, HELD AT NAIVASHA TOWN HALL ON 7TH OCTOBER 2002

Present:

1. Com. Dr. Andronico Adede

Secretariat Staff In-Attendance.

1. Esther Mugo - Assistant Program Officer
2. Alice Thuo - Verbatim Reporter
3. John Kirui - District Coordinator

The meeting started at 11.08 a.m.

John Kirui: Ningewaomba wale wako nyuma waje hapa mbele ili tuanze.

Stephen Kariuki: Basi ningewaomba tusimame tuombe.

Maombi:

Baba Mwenyezi tunakushukuru kwa ulinzi wako mwema hadi wakati huu. Tunakushukuru pia kwa ajili ya siku hii njema bwana ambayo umeona ni vyema sisi kufika mahali hapa. Bwana tunakuinua na tunakuabudu kwa maana unastahili. Bwana mwema tunakuita wakati huu ambapo tutajadili mambo katika mkutano huu, mambo ambayo inahusu Katiba yetu ambayo tunaiunda. Kwa maana tunajua hili wazo ni wewe umeleta mfalme wetu wa ajabu. Yetu ni wewe kututumia jinsi unavyopenda. Bwana tunaomba ya kwamba mawazo yetu yote yaongozwe na Roho wako Mtakatifu. Upitie kwa kila mmoja ambaye atazungumza mahali hapa, ili utukufu wako upate kuonekana katika kila jambo. Hayo yote Bwana tunaweka mbele yako maana tunajua ya kwamba wewe una mpango mwema kwetu ili tuwe na mwanzo mwema na mwisho mwema. Tunaomba haya katika jina safi la

Yesu Kristu aliye Bwana na Mwokozi wetu. Amen.

John Kirui: Asante sana. Ningechukua nafasi ya pili kuwakaribisha nyinyi wote. Ningependa kuwakaribisha nyote na ningependa kuwaomba wale wako huko nyuma wakaribie kwa sababu hatuko wengi ili tuanze. Ni wangapi wametoka Naivasha town? Watu wa kutoka Naivasha ni wangapi? Ningependa wale members wa 3 C's waweze kujitambua.

Daniel Ole Kishau: Mimi naitwa Daniel Ole Kishau, nilikuwa mmoja wa the 3 C's.

John Kirui: Sema majina yako.

Joseph Murimi: Mimi ni Joseph Murimi, kutoka Longonot na nilikuwa mmoja wa kufundisha civic education katika upande wa Naivasha.

Obiero Lawrence: Kwa majina ni Obiero Lawrence. I have been working for SIDI International, CKRC civic education, Naivasha Constituency.

John Kirui: Hapa mbele tuko na wageni ambao wamekuja na hata tuko na Commissioner Dr. Adede. Majina yangu ni John Kirui, I am the district coordinator in Nakuru na nasema pole kwa sababu sitapata nafasi ya kupasha habari (inaudible) na naomba sana wamama wenzetu wapate nafasi ya kukuja ili tusikie mambo ya Katiba. Kwa hivyo ningechukua nafasi hii, niite Mayor wetu atusalimie. Mayor, please.

Mayor of Naivasha : Commissioner Adede, na wakaazi wa Constituency hii yetu, hamjamboni. Yangu ni kuwakaribisha Bwana Commissioner hapa Naivasha na kuwaambia ya kwamba karibu sana na karibu, ujisikie uko nyumbani, hapa ni kwako na wakati wote ukiwa hapa, Naivasha town, uwe nyumbani. Kwa hivyo nawakaribisha sana. Kitu ambacho ningetaka kusema ni kwamba naunga mkono kazi ambayo Commission hii imefanya. Imefanya kazi ngumu zaidi, pesa nyingi zimetumika na wale ambao wamechaguliwa, tunaamini ya kwamba kazi ambayo wanafanya ni kazi ya muhimu, kwa sababu ni kazi ambayo itaweza kutusaidia sisi wanakenya kuona yale mambo ambayo tumesema ndiyo ambayo yametolewa. Kwa hivyo nasema ya kwamba tunawaunga mkono na tunaunga mkono eti ya kwamba, kazi ambayo wameanza tunatarajia ya kwamba wataikamilisha. Yaani kwa ufupi nasema ya kwamba sisi watu wa hapa Naivasha tungependa...hasa wakati ambapo kama wakati huu tunaelekea kwa uchaguzi, tufanye uchaguzi kwa Katiba mpya. Kwa hivyo musiwewe na shaka eti ya kwamba hamna watu wa kuwaunga mkono, tunaitambua kazi ambayo mumeufanya. Nilisoma kwa magazeti hata kabla mutuletee na tunafurahia Tutafurahia kabisa watu wote wa Naivasha. Wananchi ndio ambao wanasema wanataka Katiba mpya. Kwa hivyo tutawaunga mkono ili mtupatie Katiba mpya. Isipokuwa tu kitu kidogo naweza kusema ya kwamba (inaudible). Asante sana na karibu sana.

Clapping from the audience.

John Kirui: Basi asante sana Mayor na wale Councillors ambao mko hapa. Leo tutakuwa na Commissioner Dr. Adede ambaye atakuwa akituzungumzia kuhusu Draft Constitution. (inaudible) Karibu sana

Com. Adede: I have with me two ladies assisting me in the process. On my right is Esther Mugo who is an assistant program officer. On my left is Alice Thuo who is recording the proceedings of the meeting. I am very delighted to be here in Naivasha. This is my very first time since I joined the Commission. I joined the Commission on 13th August and since then I have been working for the Commission. (inaudible). So I will the say the rest which is very important to all of us and may be the Mayor has been handy enough to give us an opening speech and I do thank you for coming over.

John Kirui: Asante sana. Lengo letu kubwa sana ni to launch the Constitution. First we are bringing your Constituency report. Your views in Naivasha. Your views are inside here. We don't have enough copies but we will try and distribute them. You can share between two as we don't have enough copies. Secondly, in the newspaper you will see the draft Constitution which we are discussing today. We want to continue discussing the Draft Bill which we have today in order to know what is in the Constitution. All this we can get in the Constitution. I have a few copies here for you. I don't have many copies but they will be available in my office. So, your interest this morning is seeing what is inside the greenbook and also the summary of your views in this Constituency. The drafting of the Constitution involved writing, reporting and drafting of your views. After the Commissioner has discussed the Draft with you, we will be coming back later on, at that time I will organize forums for discussion. I will have dissemination for Longonot and also those other places around Naivasha. With these few remarks I would like to invite Commissioner Adede to discuss the Bill with you. (inaudible)

Com. Adede: Thank you Mr. Kirui. Let me begin by emphasizing on the following: In the green book, which you were given earlier, which was produced by the Commission on 18th September in Mombasa. There was a short summary of another bigger document that had the views that wananchi said as part of their mandate to collect the views from all Kenyans on the basis of which they were proposing their views. We are Kenyans involved in a very very crucial task. Something even people in Europe, they will never have obtained and that is the Constitution. Remember this tells you the answers, you will just look up to what is drafted. There was just a feeling that's about time that we Kenyans have our Constitution that responds to our wishes and culture.

That the Constitution under which we are operating that has been amended so many times was given to us by our colonialists in the 1960's, a Constitution that was written by people not concerned about transfer of power themselves, a Constitution which responds to our wishes, how do we write a Constitution without a asking the people what their wishes are? And this is a procedure which was put in place by the CKRC after they had established to go round the Country and hold seminars and meetings asking wananchi for their contribution. It was a chance to tell the people that this Constitution is not somebody's wife, it is not somebody's friend, it is a document in which the rules and regulations governing our standard are laid out. One of the

earlier requirements was that it must be written in a language that is accessible to everyone. (inaudible).

As the Commission started the process of collecting views, the process of the participation of the Kenyans began some of you took it seriously and attended those meetings, gave views and are here today trying to find out whether it is in the draft. Therefore, as my colleague has mentioned, we have basic documents. One of them is this one which summarizes the main issues that the people of Kenya told the Commissioners that they wanted in the Draft Constitution. It contains the process, it lists the basic issues that people said they wanted. In areas of the nature of the power of the President, the kind of Government structures they wanted. Things that they didn't like, in the old Constitution. Things they wanted changed and so on and so forth. So, what has happened my friends is that the Commission has already included these views in the short version of this draft or the entire Review process. On that basis and upon the Commissioners committing themselves, a draft Bill has also been released that is circulated by all the major papers. I see the one by the Nation which contains the actual draft bill which will take thirty days for Kenyans to go through it. Of course then, these suggestions are made and their provisions are looked at. If you look at it you will see how the views we collected, were summarized into this book and how do they find their way into the draft bill. There is a system in this process once the Commission has started to disseminate this summary report. It will take thirty days for Kenyans to go through the draft bill. The conference will be on the 27th of October. That is exactly nine days following the production of the draft bill. Indicating that as we were producing that report, we have already been working on the Draft Constitution itself, so that we will be able to now reflect the actual draft bill. In the process it stresses that once this draft bill is released, it will take thirty days for Kenyans to go through it to study it.

This is the work of Kenyan Commissioners chaired by Prof. Yash Pal Ghai and the rest of us and nothing will come out of the process except that which has been discussed by us. This is to de-set any notion that this document contains any foreign ideas. What happened in Mombasa let me tell you friends was a lot of work. We the Commissioners divided ourselves into six thematic areas. Six taskforces assigned to work on various areas. So the steps taken in the drafting of this Bill is by the Commission itself, taking the views from the people, looking at suggestions made and coming up with a draft. It is for you to look at it and find out what it is in the draft.

Now let's start. Please go and read it so that when the national conference is convened, you will be knowing what is in the draft. I think we are now going to read through the Chapters so that you can go back and now read it and also study. Because one of the requirements is to read and understand the draft. Usome ujue Katiba imesema nini, haki yako ni nini. Halafu unasema kile unataka kwenye Katiba. Kwa hivyo vile conference itanza utakuwa umeshajua ni nini iko kwenye draft. (inaudible). My friends, to constitute is to define and to define is to name it. This is why in the olden days, we used to call constitutional monarchy, we gave it a name, the House. The House. When we are doing the Constitution we are trying to define the Act. Defining the nature of Government that we would like. Defining the nature of leadership we want. Defining the kind of culture we want here. So in this Draft Constitution my friends, there is a section called a preamble which never existed in the other Constitution. Where we state our aspirations. We start by admitting our diverse culture. If you look at the preamble, then you

will see that we are aware of ethnic cultural and religious diversity but determined to live in peace. We are one indivisible strong nation.

Stephen Kariuki: There is a question I want to ask or a clarification. Views were raised at various Constituency level. But at the end of the day, what is most important is the draft that is what is to be enacted. My question is, people know what is in the Constitution, and already we have looked at this and I have looked at it so that we can get informed. My question is this, I have looked at it, everybody here has also looked at it. The deficiencies which may be here in our Constitution, when will they be received by the Commission?

Com. Adede: That is a very straightforward and important question which I can answer by describing the process. Some of you have been lucky enough to have read it. Others have not. So the process we are trying to do is to put everybody at equal footing. So that other people may also have a chance to atleast be familiar with what is in the Constitution. So the procedure is that we must have one whole month to study and come up with the deficiencies.

Then there will be the national constitutional conference for one whole month to which delegates will be in the conference. That conference will also have all Members of Parliament, all delegates will be coming from districts and elections have now been made. All members of the civil society and observers. The deficiencies will be put through in the conference. That is where we started with the dissemination of the draft so that you will be aware of the things that will take place. All these questions will be discussed at the national conference. The process will take one whole month where everybody will be able to assess the draft bill. So that you can assess whether it reflects successfully, some of the areas you suggested which the Commission have attempted to reflect. Knowing that it may not have been easy to reflect every single view, otherwise we would write a Constitution of upto a thousand pages. (inaudible)

Stephen Kariuki: Thank you, I now understand the process. But still I believe that the process of getting the deficiencies through to the national conference. So I am suggesting that, it will be good actually for the Commission to provide a forum for members of the public. Because I feel it can get to Naivasha easily. It is my opinion that there are quite a number that there are a number of deficiencies that have come up. Apart from the three hundred delegates, will there be a forum, for individuals to present their deficiencies on various issues?

Com. Adede: Yes, we record your observation and we say this is called the draft bill, emphasis is on the draft bill. It is still subject to (inaudible), subject to fine tuning by the wananchi and that's why I am going to go to another part of the preamble where the people of Kenya say that; having fully participated in Constitution making process, that is exercising our sovereign rights, having fully participated in the Constitution making process. We would like to say that the kind of questions you ask will be received and responded to. This is to define our commitment to let you make your proposals. That's a whole philosophy of the preamble. So that one is found in the preamble. We have stated our beliefs and we say that we now give to ourselves this

Constitution and may God bless Kenya. God bless Kenya.

Let me go through the draft Chapter by Chapter. That is what you want? To bring everybody into light so that atleast you have an idea of what this draft is saying. We start with the Preamble. We have Chapter one, sovereignty of the people and the supremacy of the Constitution. Here, we have a statement saying that all sovereign authority belong to the people of Kenya and may be exercised only in accordance with the Constitution. That sovereignty is now dominated in three branches of the Government: The Legislature – you form the legislate. The Executive – you form the Executive authority and the Judiciary and other independent tribunals (inaudible). We have three branches of the government to whom we delegate in order to exercise this sovereignty that belongs to us. The Legislature, the Executive and the Judiciary. We now come to the designation of who is to exercise the sovereignty. So that is where the sovereignty is found.

We move to Chapter two, the Republic itself. We are a Republic of Kenya, but now we need to know that some of the phrases from which we owned that Republic. (inaudible). The Republic of Kenya is founded on the republican principles of good governance through multiparty democracy, participatory governance, transparency and accountability, separation of powers of the three branches and in respect of human rights and fundamentals. These are the principles of which our republicans have as a Country. That is what I wanted to bring to your attention on the Republic.

Secondly, also in leadership, our Country cannot be isolated. Our Country does not live in isolation. It is a member of the international community. It relates to its members and we get together. Now, in this Constitution, for the first time, we have said that; If there are treaties that give rights to children, women, youth, all those treaties are part of our law. (inaudible) Apart from that, it defers from the old one in a number of radical ways. It is the duty of the President to make sure that laws are enacted. One of the functions assigned to the Republic of a country is to make sure that international obligations of Kenya are fully complied with. That's what I am trying to say. The Republic shall take measures of civil society in public sector to ensure accountability of the government.

Chapter three, National goals, values and principles. What are national goals? What are our values and principles? In this chapter, a list of those goals and principles have been listed. But let's just focus on the principles and measures. The Republic shall take effective measures to eradicate (inaudible) in public sector to ensure accountability. The Republic shall ensure aspects of the people to be independent, impartial and competent. The Republic has to mould the laws of civil society in public sector to ensure good governance and facilitate its role in ensuring this. The Republic shall ensure the full participation of women, the disabled and the marginalized groups in the society.

The Republic shall be committed to social justice and recognize responsibility for future generations to provide for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health and clean environment. The Republic shall promote equitable development, recognize and enhance the role of science & technology, eliminate disparities in development between

regions of the Country and manage natural resources fairly and efficiently for the welfare of all the people. Not for the welfare of the Government but for the whole Country. The Republic shall recognize responsibility for future generations of Kenya. In the Constitution what we can say, details are now that and the subsequent activities. The Constitution may not interpret most of all the details of how you can protect your environment. All those are incorporated in policies that lead to the Constitution. Those are the details that the Constitution says so that if you demand it you say, this is my right and we are all going to take part in ensuring that the Constitution is(inaudible) Those eighteen I recommend them to you. Read them and discuss them.

Chapter four, here we have numerous problems particularly on (inaudible) by Kenya citizen. The women (inaudible). The most important thing is that this Draft Constitution will now accept dual citizenship. Make note of that. We have never had it before. The draft also now has citizenship by marriage. Now comes the big word. Parliament will enact a law to make it more precise. Citizens have a right. Once you are married to a Kenyan you are entitled to register to acquire Kenyan citizenship. It is the right of a Kenyan woman to be married to a foreigner and attain dual citizenship. So the Constitution says it is the right of a Kenyan woman to be married to a foreigner and that foreigner to have the right to register. A person who loses citizenship of Kenya as a result of acquiring the citizenship of another Country is entitled, on renunciation of the citizenship of that other Country, to regain the same citizenship status which the person formerly enjoyed.

Chapter five, the Bill of rights, the most comprehensive of all. I think much more (inaudible) We have human rights and fundamental freedom. Chapter five is infact the longest. It talks about human rights and fundamental freedom that Kenyan citizens are going to enjoy. There are symbols and political rights. The right to vote, the right to vote in elections, the right to freedom from discrimination of any kind and the right to life. Death penalty has been abolished under this Chapter. (inaudible) in this Act, there is the so called social and economic Acts. One that would require action by the Government that will (inaudible).

These are the rights that you can find from Articles 57 and 68. The right to health, education, health, food, water, housing and environment. These are some of the categories of bill of rights which the Government will be expected to give. The Bill of rights is expansive. It includes the kind of rights that the Government will be called upon to provide. So you can look at it and understand your rights. The Commission has already started a Commission on human rights where people will be able to complain. The idea of ombudsman is there under the human rights commission. There are various commissions that will come up; some related to gender, some specializing in other things. But there is enough framework provided to allow intelligent actions.

Let's go to Chapter six; Representation of the people. In this Chapter we have political parties, election systems and all that. We have the right to vote, anybody who has attained eighteen years and above. He or she has a right to vote. There will be a new Electoral commission established. Political parties will now register with the electoral commission. They will no longer register with the society of registrar. Any political party that does not perform or meet the standards required for a number of consecutive years will be de-registered, because the political parties are now being funded. We don't just want to have a party

which is not performing. So political parties will be registered by the electoral commission and their performance will be evaluated. (inaudible).

What is here is simple and clear. Votes in all elections will be counted on the spot. No more carrying debes to the counting polling station and the boxes should be transparent. So these are the key things that I would like you to look at when you go for elections trying to elect your leaders and hoping that the electoral commission will do a much better job in making sure that things are in order. That they become responsible for our elections. The right to form political parties, funding, and here again there is an attempt of the review process in trying to encourage participation of women in Parliament, so that political parties will be rewarded financially if we have a 1/3 of the members being women. On that issue, I can refer you to Article 109 which says that in the structure of the government, women must be at least one-third and one of the ways for doing that was to encourage political parties to call for the participation of women so that they will get funded. Power has devolved from the Central Government to the people in the district and all are elected.

Chapter seven, the Legislature. We have the Legislature...I am going to do twenty chapters, chapter by chapter and then you will have a chance of reading it again. Chapter seven, the Legislature. Here in this chapter, are one or two things. In this book, there are proposals that wananchi all over the Country were talking of majimbo and what have you. But the central theme was that power was too much concentrated in the local government. There are two or three areas that there have been attempt to allow this structure, that is representation of various communities.

So the system suggested in the draft bill is a Parliament made up of the national council or Upper House and the Lower House which will be called the national assembly. There will be one hundred members of the national council. Seventy of those, sixty nine districts plus Nairobi, seventy will be elected. Then the thirty seats will be reserved for women. Twenty members will now be one hundred members of the Upper House. Women will be elected through the provincial procedure where each of the provinces will elect four women with Nairobi electing two. That is the formula in electing these members. The Upper House called the national council, enabling equal representation will have one hundred members, seventy from districts. Some women may win the elections among the seventy. Then the thirty will be elected through a provincial procedure.

The Lower House is made up of two hundred and ten members elected from the districts and ninety will be elected from the political parties, where each political party will prepare its list of proposed candidates for elections. In that list according to priority, they alternate, man, woman, man, woman. Again, we have to make sure that political parties which don't fair in elections of the two hundred and ten, will bet a chance of representation in law. So, there is nowhere in the draft where we are talking about nominations. It is not like nominating members. They will be elected according to all the priorities and they will be alternated, woman, man, woman, man. That's the way we will be able to control who is going to be voted and elected to Parliament. It is the time to also tell you that, that.....(inaudible). In this structure, we will have Speakers, deputy speakers . The President is not a member of the Parliament. He will be directly elected by the people but doesnot represent constituents.

He is elected (inaudible). Some of you here will remember Martin Shikuku during the Kenyatta days refused to stand when President Kenyatta entered Parliament on budget day. He said, 'why would I stand, when a member for Gatundu enters the House. At that time he was coming in as a member of Gatundu to hear the budget and he was not coming in as a President. He was a Member of Parliament. We have to be acquainted with the single member district elections. So in this chapter we have the representation of women and how we are going to achieve it. So we have to be acquainted with the systems of proportional representation. We have to be acquainted with the question of(inaudible). But this is what is going to happen.

Chapter eight, Executive. The Executive Chapter is written like the others. There are some principles first of all that govern our Executive branch of the Government. That is where the new system comes to place when we have elected a parliamentary system as opposed to a presidential system. The day to day running of the Government will be headed by the Prime Minister. This Prime Minister must be a Member of Parliament and he is appointed by the President being the leader from the party with majority votes after winning the elections and then approved by the Parliament. The Constitution states what appointments will have to be vetted and approved on this Act of the Parliament. The Prime Minister is appointed by the President but upon the approval of the Parliament. It is no longer something which is just done by the President, the Prime Minister has to be approved by Parliament.

The Prime Minister can appoint his own cabinet. There will be two deputy Prime Ministers appointed by the President. So, on this question you now know that the Prime Minister is appointed by the President and vetted by the Parliament. The Prime Minister constitutes his own cabinet. Secondly, the Prime Minister can appoint his own cabinet. There will also be two deputy Prime Ministers who will be appointed by the President. Prime Minister and deputy Prime Ministers are all Members of Parliament. Then the Prime Minister constitutes his own cabinet. This cabinet we suggested, should be not more than fifteen acting Ministers. These Ministers are to be appointed from outside the party, they are not Members of the Parliament. A lot of people complained, 'we don't see our Members of Parliament, they come one day and they disappear until the next elections.' They only come back when there are elections. They are too busy in the ministries. We have a system in which ministers are busy, able and willing professionals who will be able to take care of the ministries so that MPs will take care of their constituents. Therefore, let's have a Legislature. Let the parliamentarians do nothing but to look after the constituents. The non-performing ones, the ones who go there to do nothing and don't represent their people, there is a power of recall. Pay attention to your work. MPs only job is to represent you. The power to recall an MP is there now. (inaudible). All the MPs if they don't do their jobs, they will be recalled.

The Ministers will be busy doing their work in the Ministries. That cabinet will be headed by a Prime Minister. Let's have professionals running the Ministries supported by Permanent Secretaries who will be appointed and vetted by Parliament. Thus, the cabinet Ministers are going to be appointed by the Prime Minister and vetted by the Parliament. (inaudible). That Prime Minister can only be removed on a 'no confidence motion' brought in the Parliament and supported by fifty percent of the MPs. When a 'no confidence motion' against the Prime Minister succeeds, the Prime Minister resigns immediately. But the

government approves all his dues. The President is given the power within two days to find a new Prime Minister. If he doesn't get a Prime Minister within the days given, the Government does re-election. Understand that. The Prime Minister.....(inaudible). These are the powers that are given to the President. He can initiate a discussion, can refer, can reject, can sign, can refer it and send it back for re-consideration. He presides over the national councils. He addresses the Parliament once every year telling the whole world and Kenyans how we have fared in reaching our national goals and values. How we are promoting and implementing our goals. The President presides over the opening ceremonies and he looks at the day to day running of the Government.

Elections of the President: The Parliament stands prorogued every 30th November of each year. Now we know, and it reconvenes at the beginning of February. The President has two terms in office each of five years and no more. He has to be thirty-five years and above but not more than seventy. He has to have a degree from a recognized university. The Prime Minister and the Member of Parliament only has a secondary education. The age of people being elected to the national council is higher than the age of people being elected to the national assembly. At the end of each term, Presidential elections will be held to elect or re-elect the President. But it will be held every 2nd Tuesday of August. (inaudible). So now it stands official when the election will be held. These were the views of Kenyans.

We go to the Judiciary. The Judicial sector, this is a branch of the Government with a responsibility to making sure that the laws have been properly practiced and applied in Kenya. The new thing is that there is a hierarchy of courts established in the lower courts. There is High court, there is court of appeal and then the Supreme court. There is then Kadhi's court also upto the district Kadhi's court, the provincial and then the village courts. The current Constitution suggests that the Judges should retire at the age of sixty-five instead of seventy four. Now there is a problem of us with the current Judges. (inaudible) and the view was that all we came to note is that if we don't have competent and qualified Judges then there will be an appall to the rule of law. We should make sure that we now have better procedures for appointment of the Judges. That is now here in this draft bill.

The Judges who are now there, at the time of completion of this draft bill, are to be given an option to retire at fifty-five and leave their gratuities will be constituted afterwards. That each of them will have to comply with the new leadership and integrity codes. That any of them will atleast (inaudible). If at the end we found that (inaudible). If he decides to be paid, he will be paid but all those complaints that have been lodged against some of them where lawyers are not.....(inaudible). Those Judges will have to (inaudible). The salaries, allowances, gratuities and the pension payable to the Judges and other staff of the Judiciary are charged on the consolidated fund. The salaries, allowances, privileges and other conditions of service of the Judges and of superior courts or record shall not be varied to the disadvantage of the Judges.

Chapter ten, devolution of powers. This is another important one that responds to the wishes of the people saying that the Government (inaudible). The Government needs to be localized. What people suggested is about majimbo, as an attempt to

devolve the power to the Central Government to the local people. So we now have a situation in which we have a national government. We have situations in which local people have a right to make decisions in the villages and locations. All are elected. There is no more (inaudible) What we need is Government at the national and the district levels being run by officers who have time to discuss issues with the local people. These are now elected. This is to allow the district and provincial councils to have specific powers. They will have control over the councils. The idea is to have a situation in which local people have a right to make decisions on issues that touch them. Instead of somebody coming from (inaudible). Now we have allowed the district councils and the provincial councils to have specific powers which are now listed in the schedules. We have different schedules at the back. Ofcourse we have the powers of the district council and also the provincial council. This is on page seventeen. The important thing is that a lot of fine-tuning is really required and an Act of Parliament later on to check this. But there is a suggestion there, that the Provincial Administration as we used to know it, has been abolished.

On the eve of coming into force of this Constitution, everybody who held a position in this provincial administration will be expected to report to the central government. It is not that the provincial administration has been abolished and nothing put in place for them elsewhere. There is a system which will be followed in the devolution of power. However, the system will take advantage. The Central Government will also have local offices that have supervisors to make sure that the districts councils are doing their work. (inaudible) but it is quite in order to allow the local Government to have (inaudible) as the power will be devolved at the local government. So these are the things that now are part of the devolution of power from the provincial administration. National government, assisted by district council will define qualifications that the (inaudible).

Chapter eleven, Defence and national councils. Establishment of national defence council which is chaired by the President and its functions are now clearly defined under the Article. I am sorry.....yes chapter eleven, land and property. I made a mistake of looking at my watch and apparently skipped a chapter. Chapter eleven, land and property. Here the new ideas are the following: Land has been divided into; private, community land and trustland which now is vested in new Land Commission. Any foreigner who has land over leasehold, longer than ninety nine years, when this Constitution comes to force, those leasehold are hereby.....sorry.....nine hundred and ninety nine years, whatever they are. There is a transition provision which tells you what will be done. Land that was improperly acquired, land that was grabbed, this land will be acquired back. So all that land that is not properly acquired has to be acquired back. (inaudible) So we have a provision provided that there are certain measures to be taken.

Environment and natural resources: Here again is an attempt to organize responsibility to proper policies of sustaining development. The Constitution cannot deal with everything, but I said this chapter calls for the proper protection of our environmental resources. We have to have a procedure under which this environment is sustained. This will be part of all developmental activities. How can we sustain the forests within our desire to protect, to keep the (inaudible) by following the concept of sustainable development. We are reducing the resources to please our needs. For example, forests acts as a source of timber, the home of our diversity. So you cannot destroy all the forests now. Concept as there, the details on how to put

them will actually be now the government activity to appoint Ministers experts. Who know that forest is a source of timber, forest is a source of power to those who cut the branches (inaudible). Forest is an area of procreation, forest is a home of our diversity, bio-diversity, many things and all that. Forest as a carbon seed, that controls the carbon cycle and many more. All this components of what forest is will be understood by the professional Minister. This is then the idea of the chapter on environment and natural resources.

Chapter thirteen, public finance. Again these are provisions that define the Auditor General and the director of the Public Service. The primary object of the public finance and revenue management system of the Republic of Kenya is to; ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well-being of the people of Kenya.

Enhance the participation of people, communities and civil society organizations in public finance management.

Chapter fourteen, Public Service. Public administration. This is the one which will be responsible for vetting all appointments in the categories of senior government officials. So senior government officials will now be vetted by Public Service. That's very very important. The police are under the chapter of public finance. We are trying to get a culture where the police are performing under the public service. So they are no longer part of the (inaudible) security. The police service is established under this chapter of public service. The police are supposed to show you direction where you are lost. But not that when you see a police officer you do what? You run away. So the idea is to create at least a friendly police. It is no longer a police force, but instead we will be calling it correctional services. It has the functions of the police and this is under chapter fourteen. Chapter fifteen, defence forces and national security. Here we have the national security council and the functions of national security council.

Now we have Chapter sixteen there leadership and integrity. Here again our main objective is to have a leadership and integrity code which will apply to all members who provide leadership to the people. Starting from the Executive to the lower levels. We said that there will be different commissions that will be dealing with different matters. We will have constitutional commission established under the Constitution to assist in the Constitution. These are specific commissions that are now established under the Constitution. They include: the Gender Commission, the Constitution Commission, the Ethics and Integrity commission, Teachers Service Commission e.t.c. Then we have composition of the commissions, general functions, their proceedings, removal from office, their funds, annual reports and then the special constitutional commissions. Several constitutional commissions; Commission on Human rights and Administrative Justice, Ethics and Integrity Commission, Salaries and Remuneration Commission, Teachers Service Commission, Constitution Commission and other Commissions described there. These are the new systems to ensure our goals and national values are achieved. For example if you feel that you have not be treated well you can go to the Human Rights and Administrative Justice or Ethics and Integrity Commission. If you are a teacher and you want to present your problems you can go to the Teachers Service Commission. So these are new systems of ensuring that our national goals and values are really taken care of.

Chapter eighteen, amendment of the Constitution. That is amending the Constitution. Chapter nineteen is the interpretation of words used in the draft for the reader and Chapter twenty, transitional and consequential provisions. This is what to do with the current Judges. What to do with devolving jobs e.t.c. what to do with the land that has been acquired illegally. So these transition provisions are very important in order to continue running the Government before the new Constitution applies. There is a list of actions which the Parliament will have to state (inaudible) some of the provisions of the new Constitution. Some have very many already written in the(inaudible) others don't have. Those which don't have such limits, it is suggested that Parliament has to (inaudible)

There are eight schedules of the draft. The first gives the territory of the Republic of Kenya. We have defined what these territories in Kenya comprise of. Years ago somebody said upto here is part of Uganda. You remember that? Now there is a schedule that tells everybody where the boundaries are.

Second schedule, it gives the provinces and districts. We have National Symbols; the National Anthem, the National Flag, the Coat of Arms and the Public Seal of Kenya. National oaths, those people who are taking offices and swear to commit themselves to the work. This is a very important schedule also. The fifth one is Leadership and Integrity Code of Conduct. Six, is actions to be taken by the Parliament. Seven, Power and functions of the national and district governments and eighth is the transitional and consequential provisions. My friends this is the draft. The draft bill, which the Commission has produced and put in the views of all the people of Kenya. Now we need people within the next thirty days to form their opinion and see how it attends to respect the views they expressed. So that the delegates will come and present the ideas in the national conference. To have our people more accountable, to have our leaders more accessible, to have ofcourse better services and so on and so on.

Having gone quickly Article by Article of this, I know there are questions. There was one man there, I think your question has been answered perhaps? Thank you Sir. State your names.

Stanley Karanja: Good Afternoon everybody. Commissioner, my names are Stanley Karanja, an aspirant of Longonot 1. First of all we have to thank the Commissioners for the work they have done. We also thank the people of Kenya for the Constitution that they have come up with. But I think it will be acceptable for us to make several comments here and there. May be.....this Constitutional conference, some of us won't be there and I think that this is the best forum for us to air our views and then may be the Commissioners will assist us to look at the draft. I think that I have some few observations. The first one is about the Parliament Service Commission, that is Article 147, clause 1 and I think that F and G are the same. If you look at that one, they are the same and I thought that one should be reading national council and the other one national assembly. That is one.

Com. Adede: This is not the time to correct the Draft Constitution. Go and read it, keep those good notes. Keep those good notes and find a way because we are now in the process of dissemination. If we are going into the process of everybody making amendments, we will not get anywhere. I have told you once and again that my responsibility is to give you the chance of at least looking at what you have. It is now one month, between now and the time we will hold a constitutional conference. This is not the forum to say G should be this. So unless you have a fundamental observation, we are not receiving views. Make sure that at least you have somebody who will assist you in reading the draft and know what is in it. The drafting, the views were collected and collated to come up with the draft. Take this draft home and carefully share those views with others and find a way of making sure that you understand what is in the draft.

John Kirui: This is time to disseminate the draft and make sure that you understand. It will not be time for questions but for observations. (inaudible). I will also come back. I had said before, we will be having one meeting here and another meeting at Longonot 1.

Stanley Karanja: Thank you very much for correcting me. Therefore I would like to make some few.....not corrections now. But I will first of all say that you have done a very good work and I think that Constitution making is a revolution. This is a revolution that you are making. Therefore, I feel that this is good for us as a facilitator, that if this Constitution is going to be amended, let's have the elections under the new Constitution because that is what we are here for. I feel that it should be done by the people because we are the ones who suggested this. The other point is that; for us to have constitutional order and constitutionalism, we need to have this document. I feel that we are all obliged by natural justice not to be prevented the way you suggested such that we are going to have some leaders in the district. Because we would like to see that all this(inaudible). We can know the data in form of a representative and then what we are saying is that, we appoint.....(interjection)

John Kirui: Let me cut you short. The national delegates were gazetted and they are going to present the district. Let's agree that whatever you have, prepare it and then you bring to my office at any time.

Mr. Chege: My names is Chege and I am chairman of 'Greenbelt' Naivasha. Of course I do appreciate the remarks of Commissioner Adede here because the proceedings or the movements of the Commission actually is subjected to an Act of Parliament. So, I know actually he cannot go out of his way actually to do what he is not supposed to do. But one thing I would want to say is the fundamental principle actually which opens this Constitution. It actually gives the people the power to really come up with the right thing. In this case, the people are the author of the Constitution and the author of a book is more important than the document. So, I request that Commissioner Adede takes to the rest of the Commission in Nairobi this issue. Because a document has been brought before us and we contributed our ideas but there are certain things that we feel they need to be incorporated into the document. The next representation, as delegates will go, we know there will be over two hundred people and Mr. Commissioner Sir remember the next structure of Government. Some of them may not actually be very

happy with it because they will no longer be Ministers in case they go back. So there is that element that during that delegates meeting, some of these Bills we may want them to carry to the national conference. They may not actually be adequately represented through them and I believe even now we are (inaudible). So I feel a quest that the Review Commission addresses this issue of getting some of this....a way to address some of these complications. Personally, I have really come up with quite a number of the problems. I have not printed them but I would like them to be written. Thank you very much.

John Kirui: Thank you for your comments. I want to tell you that there will be three delegates from each district. The MPs will be there and all the professional bodies will be there. So we expect an extra one hundred and forty who are not MPs. So you will see that, that number goes to above seven hundred people. So we expect that number to be big. (inaudible). The next one and please be very brief.

Obiero Lawrence: Thank you Mr. Commissioner and coordinator. What I wanted to comment on is about the eliminations. The Constitution has never addressed the state of the NGO's and any other office of the registrar general under attorney general where civil societies are registered. I am wondering where we shall go when we want to register the NGO's and the civil society. It is not given in the Constitution nor in the Parliamentary Act. Also, we.....(interjection)

Com. Adede: I believe you are now doing what other people have been doing and that which I have been told not to do.

Obiero Lawrence: Thank you very much.

John Kirui: Let's agree that whatever you find in the draft, write it down.

Ndung'u Kamuru: I am Ndung'u Kamuru. Mine is only to thank the Commissioners for coming up with this draft and infact for putting the draft in Kiswahili. I am sure a section of Kenyans managed to get it. But I am (inaudible). So that it can reach any other people. I am sure even if you look at us, we are....infact we are not even ten percent of the residents of Naivasha. So, I was suggesting that the Review Commission should also ensure many other Kenyans know the concept of this draft. I think you can read it in the newspapers, in the radio and I think you can summarize the message for Kenyans who do not even may be understand Kiswahili.

They don't even understand English. So that we can know, at least about the draft. Because I am sure that some people do not know about the draft. So you can even go further and further. Use the media. You know, so that people can be able to know how they present ideas in the conference. So that when they come back they will be able to tell the people, this and this happened and this is what has come out. Because there are people in the shambas, they have no time to come to this meeting. So please do something on that particular area so that Kenyans can do something important. I would also like us to be given an opportunity. I am not sure whether the views I presented are in this document, so I would like to get this Naivasha document

