

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT AND DRAFT BILL,**

**KHWISERO CONSTITUENCY AT KHWISERO PRIMARY SCHOOL.**

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

**DISSEMINATION OF REPORT AND DRAFT BILL, KHWISERO CONSTITUENCY AT KHWISERO  
PRIMARY SCHOOL, 9<sup>TH</sup> OCTOBER 2002.**

**Present:**

1. Com. Mutakha Kangu.

**Secretariat Staff in attendance:**

1. Leah Symekher      Assistant Program Officer.
2. Flora Wafula      Verbatim Recorder.
3. Mrs. Anne Nambiro      District Co-coordinator.

**Others:**

1. D.O Mr. Khator Harun.

**The meeting started at 10.05 a.m with Commissioner Kangu in the chair.**

**Prayer was said by Rev. Jackson Ambetsa.**

**District Coordinator (Anne Nambiro):** Ladies and gentlemen, *Mlembe mwesi?*

**People:** *Mlembe.*

**Anne Nambiro:** *Mlembe khandi? Milembe chye ifula? I am happy to see you this morning. Khubangorurwe baliwo kweli? Lakini ni baba baliwo, embara mwamanya. Esie bananganga mama Anna. Mala nge mbakho nnenyu tofauti tofauti, here and there. Ne inyanga ino shaingan mumanyire, khwalikho hano mwesi kwo munane, ne mukhuwa maoni kenyu. Maoni kefu ka khwakhwasinja nende Civic Education Providers, nende Constituency Constitutional Committee, ne lano kakasibwe mumalako shingana khwekomba. Kho amalako kefu kene kano, kashiri khuba Final ta. Kakalushe kahandi khuechesibwekho mbu kafuana karie, shingana nga abandu bainia. Kwa mfano. Constituency ya Khwisero shi khwawana? Khandi ba Mumias bosu bawana. Khandi ba Mandera bosu bawana. Lano ni kaba ni likhuwa kwa mfano shinga elie elimu, mulamanya mbo babolilekho shi makuwa kene ako. Libe lio omukunda, mulamanya kalafuanakho karie. Kho niko khwenyanga inyanga ino khuechesibwa, kho khandi nanyi khandi mumete khuana maoni. ni shichira*

*khuli na khakaratasi khano, ni shichira khuli alala inyanga ino.* Unless there is somebody who doesn't understand Luhya. *Alikhwowo?* Thank you. So I'll be using three languages; Luhya, Kiswahili and English. *Nomisakho* here, you will get it elsewhere. Are we together?

So, we are here for that purpose, disseminating the Report and getting to know more about what is in the Draft Constitution, so that we can further have amendment by adding or subtracting. So before we have this session begin officially, I will request that we begin it by a word of prayer, and for the purpose of recording, any time a speaker speaks, he must say his names. Even if it's three times. Reverend, kindly please, lead us in a word of prayer; Thank you.

**Reverend Jackson Ambetsa:** Na tutaomba. Jina langu mimi ni Jackson Ambetsa, muzaliwa wa Kisa North, Mundoberwa Sub-Location. na tutaomba. Mwenyezi Mungu, baba wa uwezo, ni shukurani kubwa mbele yako wakati huu. Tunakuja hapa kukusanyika, ili kutengeneza maneno ya kutengeneza hii Kenya yetu. Na Mwenyezi Mungu, tunakuomba tafadhali sana, hawa watoto wako, -wewe mwenyewe uliwaumba kwa mkono wako, wakisanyika, utawaongoza kila kitu chochote. na tunakuomba wewe mwenyewe uje ukalie kiti, kila jambo lolote likitoka, litoke kama umeshatangulia kulitengeneza. Nimekuuliza mwenyezi Mungu tafadhali sana, utakase haya maombi, uweke chini kwa kitabu chako safi; kwa jina la Yesu Kristo aliye mkombozi wetu, Amina.

**Anne Nambiro:** Thank you Reverend Ambetsa. I am sure most of you are familiar with our guest who is seated in front here. *No omwana wefu omwene, yakhaba* in this particular hall where I am. Today, I think he is seated here for the third time. If I am wrong, you are free to correct. So Commissioner Mutakha will be with us today, and he has also walked with his team. Later on he will introduce his team to us.

Commissioner, I have a Constituency Constitutional Committee, which has assisted me very much, together with Civic Education Providers, in making the draft that you are going to disseminate to us today, have at least the views of people from Khwisero Constituency. And I just take this opportunity to just extend my appreciation to the Constituency Committee, and Civic Education Providers for the sacrifice they made. So many good and bad things were said about them, but the bad things always carry weight. E.g. they were earning a lot of money like five thousand sitting allowance, each time we met; but I can only share that they were sacrificing Mr. Commissioner Sir. And this sacrifice was also seen among Civic Education Providers, and the entire Community of Khwisero. So, it is just my appreciation that we are really together as a Commission, and as Kenyans in making our Constitution be even better, for posterity. Please receive my appreciation, and Commissioner, if you can extend the same to the head office.

At this juncture, we only have one Constituency Committee Member who has arrived, and I will request him just to say a word of "Jambo" before we proceed. Karibu.

**Edward Lazarus Were -CCC Member:** Commissioner, our leader Mrs. Nambiro, and the members who have come, I say good morning? Good morning again? I welcome you to our area, this is my area, and I wish you well. Thank you. My names are Edward Lazarus Were.

**Anne Nambiro:** Thank you Mr. Were, Commissioner Mutakha we also have Civic Education Providers, -if you can stand where you are please, so that he sees those who assisted the Community at least in knowing; we needed to know that *amalako kefu kabere kakalukhasibungwa*. Just stand where you are kindly. Mama *ekhulolanga, khubolanga khubushe*. Thank you very much, those are the few who have arrived, and they really spearheaded the process. Please just have a sit; thank you.

So, Commissioner, we also de-centralized a documentation center from Mumias, and kept some material in Khwisero here, where one volunteer accepted to give us space. People have been using that facility to access information, and that assisted in they coming up with the kind of views that are in the draft you are just about to disseminate to us in a short while. So I will request him to say “jambo”.

**Zadock Mbinji:** Commissioner, and those who have come to participate in today’s review, my names are Zadock Mbinji, I am the director of an NGO, called NEBA in development services. Thank you very much.

**Mrs. Nambiro:** Thank you. Commissioner sir, it is not possible for me to single out everybody, but, the community that is seated before you really took their time and participated wholly; and you can see they have actually managed to walk over long distances, in difficult terrain, to be here this morning. Even though we are a few hours late, we expected to have began at nine, - those who have the time keeping facility, it is slightly after ten, and I just wish not to continue further, but we begin. So, Commissioner if you could kindly introduce to us your team from Nairobi, and proceed until we end. Thank you very much.

**Com. Kangu:** *Bandu be shisa, mlembe mwesi?*

**People:** *Mlembe!*

**Com. Kangu:** *Mlembe khandi?*

**People:** *Mlembe!*

**Com. Kangu:** Leo nimeambatana na ma-officer wa Commission wawili. Nakumbuka siku nilikuwa hapa nilikuwa pekee yangu. Siku ya kwanza nilikuwa Muira, next time tukawa hapa. Lakini leo nimekuja na hawa wawili kunisaidia, ndio tuone maneno tunayosema yanaenda namna gani. Pale tuko na Leah Symekher, ni Program Officer; atakuwa ana-record zile comments munapeana, anaandikisha. Na huyo ni Flora Wafula, naye ndiye anahusika na hii mambo ya kunasa sauti. Sababu tunanasa

maneno munayosema ni kwamba, wakati tulikuwa hapa mara ya kwanza, niliwaeleza tunafuata utaratibu uliyowekwa chini ya sheria fulani. Na hii sheria wakati huo ilikuwa imesema, tukimaliza kuchukua maoni yenu, kutengenea Report, kutengeneza Draft Bill, turudishe hizo kwenu, mupatiwe sixty days za kuweza kusoma, kujadiliana, na baada ya hiyo turudi kwenu mupeane comments.

Munakumbuka kulikuwa na mfurugano wakati huo kuhusu whether or not we could complete the work in time. Wakati huo muda ulikuwa umesema tumalize on fourth October, na mimi niliwaambia, na nikasema wazi Wakenya wakisikia, it will not be possible, we need some more time. And even so, that we will need to amend this Act, if we can finish in December. But if we don't, we will not be able to finish in December.

Eventually, Bunge waliweza ku-amend hii sheria, na some of the things that were changed ilikuwa kwamba, we now don't give you sixty days ya kusoma, instead, huo muda ulipunguzwa ikawa thirty days. Those amendments also say that hatutaweza kurudi kwenu baada ya hizo siku thelathini kuchukua maoni yenu. Mutasoma tu, na kujadiliana, na siku thelathini zikiisha, tunaenda kwa National Constitutional Conference. Ndio nasi tumesema, we must find a way to improvise, so that at least tuweze kupata some comments from the people, kuhusu mapendekezo hii tulitengeneza. Ndio tumesema, during this thirty days, tukikuja kwenu, vile nimekuja ku-disseminate the report and draft Bill, wale wanaweza ku- make some comments, waweze kupeana hizo commenta, we record them, tutaweza kuziangalia wakati tunaenda kwa conference, ndio tuone kama tunaweza rekebisha some of the things tume-recomend.

Sababu hiyo ndio tunakuja na hawa wafanye the records of what we are saying. Na nataka kuongeza kwamba, kwa sababu ya muda, na pengine tena sababu kwamba wengi hamujaweza kupata nafasi ya ku-study those documents thoroughly, so that you can make informed comments, mutapatiwa ruhusa wale wanaweza, you go and study the document, if you can make written comments, utapeana kwa District Coordinator, they will pass them over to us. Na pia mumeshachagua the delegates wenye wataenda to the National Constitutional Conference; Butere Mumias Constituency has already appointed delegates watatu, you also can pass those comments to them. So that wakati watakuwa kwa conference wanajadiliana maneno, wanaweza beba hayo mambo yenu, so that they can agree about some of those things at the conference.

Na nataka kuongeza kwamba, mukienda conference, even though the Commissioners are members of the Conference, sheria inasema, sisi hatutaruhusiwa kupiga Kura wakati maneno yanaamuliwa. We will be able to debate, to participate in the discussion to try and make the delegates understand how we arrived at certain recommendations, but when it comes to decision making, the Commissioners hawataruhusiwa ku- participate in voting and making decisions. Ni wale delegates wengine ndio wataamua.

It is for that reason that munatakikana, -wale delegates wamechaguliwa, you need to know them, you need to sit down with them and discuss this documents thoroughly; we want to be sure that when they set off to go there, they thoroughly understand

the document and your comments. Kwa sababu hao ndio wataamua maneno. So, today, shughuli yetu ni kujaribu kuwaeleza juu juu, the key issues zenye tumeweka kwa ile draft tumetengeneza.

Nataka niongeze, hii draft tumetengeneza, they are only recommendations. Ni mapendekezo tu. uamuzi utatolewa na Wakenya wenyewe. Do they like those proposals or not? Kama wanaona ni nzuri, watapitisha at the Conference. Kama wanaona kuna jambo fulani linataka lirekebishwe, they will discuss it, watabadilisha. So that after that, ndio itaweza kupitia bunge, iwe Katiba ya Wakenya. So we are only making proposals, we are human beings, they may be proposals that are not very good, they may not be perfect, and we want input from you people so that they can be refined and become good, and become what the Kenyans want.

Tuliposikiza maoni yenu, the first thing we were supposed to do ni kutengeneza a Report. Na mulisikia tulienda tukakaa huko Mombasa for one month, tukichunguza maneno mulipeana, na tukatengeneza Report. The main Report is a huge document that goes into about a thousand pages. It is still being edited so that ikitoka watu waweze kusoma the details, the arguments, the reasoning, that led to certain issues. But we have extracted a summary of that report. What we call 'The Short Report,' hii ndio tunaita 'The report of the Constitution of Kenya Review Commission Short version;' yenye tumeita 'The People's Choice-Chaguo la Watu.' Hii ndio tulitoa wakati tulikiwa bado in Mombasa, I think that was on the 18<sup>th</sup> of last month. We published it, ilikuwa published in various newspapers yote, na baadaye we have printed it in a book form, this is the short report.

Lakini the big one which is several volumes is still being edited, na ikimalizika itatengenezwa. This one has been translated in Kiswahili, so, iko copies ya English na Kiswahili, na wale wanaweza kusoma wataweza kusoma. In fact, wakati ilikuwa published in the newspapers, hata Taifa Leo, also carried the whole of it in Kiswahili, watu waweze kusoma wajue inasema namna gani. so this is the Report that has formed the foundation of the Draft.

Tuliita 'The People's Choice,' mwanzo walikuwa wamesema 'The People's Design.' Lakini wakati tulipeleka kwa translators wakasema 'People's Design' doesn't translate into Kiswahili well, ndio tukasema 'The People's Choice.' So that in Kiswahili inakuwa 'Chaguo la Watu.' Now we are putting the People at the center of everything we are doing. Ndio tunasema 'The People's Choice.' Na baada ya kutengeneza hii, we had to prepare, baada ya hiyo, a Draft Bill; a Draft Constitution, based on these recommendations, na hiyo pia tuka-release, na ndio hizo mumeapatiwa hizo zote ndio the Draft Bill Constitution.

All the Clauses we are proposing, the articles that are supposed to be in the Constitution, ziko kwa hiyo gazeti mumeapatiwa yote. From article one, mpaka ile ya mwisho. Na hiyo ndio tunataka tujaribu kuwaeleza what is contained there, and what we were taking into account, ndio muweze kujua ni kitu munafurahia ama hapana. So, hiyo ndio siku tutakuwa nayo leo, na tuweze kujua tunaenda wapi.

Mukiangalia mwanzo, mutapata, we have proposed a Constitution that has up to 20 chapters. 20 chapters; chapter one, - if you

check your table of contents, is what we are saying, the Preamble, -no we first start with the Preamble, and then we go to chapter one, ile tunasema is dealing with the sovereignty of the people, and the supremacy of the Constitution. Chapter two, nayo ina- deal na ile tunaita 'The Republic', The Republic of Kenya, and under that we have tackled a number of things. Chapter three, nayo inahusu the National goals, Values and Principles. Yaani tukitengeneza Katiba, ni mabmo gani ya muhimu tuko nayo kwa mafikira yetu. What are the goals we are setting for ourselves? what are the values that we want to guide our society? And the governance of our affairs, and we have set them out under chapter three.

Chapter four deals with the citizenship of the Kenya people. Who are the Kenya? Who are the citizens? Na tume-deal na hiyo. Five, ndio the bill of rights, chapter six is the Representation of the people, under that we are dealing with elections and how they should be conducted, and the role of political parties and so on, the Electoral Commission and so on.

Then chapter seven deals with the Legislature, Parliament, -how it is composed, how it is elected, and so on. Chapter eight is the Executive, -how it is composed and how it is recruited. Then nine is the Judiciary, which you have heard about making a lot of noise. Then chapter ten is the devolution of power, you need to know how power is going to be devolved to the people, so that they can exercise themselves from here. Eleven deals with the Land and Property.

Twelve is the Environment and Natural Resources. Thirteen is Public Finances and Revenue management, Fourteen is the Public Service, Fifteen deals with Defense and National Security, sixteen we have leadership and Integrity, seventeen, the Constitutional Conditions and then eighteen deals with the amendments of the Constitution, and Nineteen is the Interpretation of the Constitution and twenty are the Transitional arrangements.

You will notice that we are putting amendments towards the end, because we are saying we are making a Constitution we do not expect to be easily amended, or we will not start thinking about soon after making it. So, hiyo ni mambo inaweza wekwa huko nyuma. We don't have to bring them forward to create the impression that we want to start amending immediately. That is why we are putting the procedures of amendments towards the end.

Now, when we were here last time, nilijaribu kuzungumzia kuhusu umaana wa Katiba, and the purpose of the Constitution. Na today, I will be saying that the Constitution does a number of things in given society. And I would like us to look at the Draft we are proposing on the basis of those things that the Constitution is supposed to do.

Now, one, a Constitution can be used to constitute a state. To constitute a People into a given society known as a State, and decide on how that particular State is supposed to be governed. Now, in constituting a State, you need to know that a State is supposed to have a number of things. One, a State is supposed to have a Territory, a fixed Territory. So the Constitution seeks to define the Territory of Kenya. I'll come back to that. A State is supposed to have a People that constitute that State, and we have attempted in the chapter dealing with citizenship, to define who are the people that constitute the Kenyan State. Who are

the Citizens? Who is entitled to be a Kenyan citizen? Of course the Kenyan State must have a people and we need to know, who constitutes the Kenyan people.

Then the Constitution must also, in constituting the people on the State, declare the source of power in that State. And here we are saying, the source power is the people, and so we discussed sovereignty of the people as the source of power. A State must also have a Government that runs the affairs. So, a Constitution becomes a power map that structures and shows a roadmap on how power is going to be exercised, power is going to be defined, power is going to be shared, and for what purpose that power is being exercised.

I emphasized this when we were here when I said, the Constitution is that law that deals with the definition, distribution, and sharing of the common power. And the law that ensures that that common power is exercised for the benefit of the people. So the Constitution is supposed to be a roadmap of power, showing you, this particular aspect of power is exercised by this particular organ, and ought to be exercised in this manner, and this is how it can be controlled. And this other one is exercised by this particular arm, and this is how it is supposed to be controlled. So, it is a power map, which we should be able to use to exercise power.

So now, going back to the Constitution of the State, I said that first, we must constitute a State. And we are saying, in constituting a state, we are not starting from nothing. We already had the State of Kenya, The Republic of Kenya. So, in this particular effort, we were not going to declare Kenya a Republic, because it is already a Republic.

The current Constitution says Kenya is a Sovereign Republic. And as we said we are going to maintain that position. Ndio ukiangalia chapter two, article six -we are saying Kenya is a Sovereign Republic. Ile Katiba tuko nayo saa hii, it also says we are a Republic. So, in our efforts to constitute the State, we didn't have to do much in declaring Kenya a State, because it was already a State. We could not constitute it, because the colonialists had already constituted us as a State. Walichukua wakachota Wakikuyu huku, Wamasai upande huu, Waluhya huku, tukawekwa pamoja tukaambiwa we are Kenyans. So we are a State as a people and so on. But we are saying that although kwa wakati huu we say we are a Republic, very few people seem to know what is meant by being a Republic. What are the Principles that constitute, or are entailed in the concept of a Republic. So, we are saying this time round, we need to make it clear, watu wajue tukisema we are a Republic maana yake ni nini? So in article 6(2) we are trying to give some of the values that are entailed in a Republic, and I'll come back to that later when I am talking about the values by which we are supposed to be Governed, the values that we have decided to underline in this Constitution.

Kwa hivyo, tume-declare we will continue as a Republic, so we are saying Kenya is a Sovereign Republic, and under sub-article 2, we are saying “ The Republic of Kenya is founded, on Republican Principles of good Governance, through multiparty democracy, participatory governance, transparency and accountability, separation of powers, respect for human



rights and fundamental freedom, and the rule of law. Those are some of the republican principles we are making, but I'll discuss them in details at a later stage.

Baada ya ku-declare that we are a Republic, this Draft is also proposing that vile tumesema a State must have a territory, a defined territory, tumejaribu to define the territory of Kenya. Article 7 is trying to define the territory of Kenya. Nyinyi watu wa Kisa, *shimumanyirekho* the need to define a territory *tawe*. *Mwekhala butswa hano*, you don't suffer any problem form, you don't neighbor any country. So you don't see why you should define a territory. Lakini *notsia Busia eiyo, abandu ba Busia*, They know, the meaning of knowing *wo olukaka lulwe luuliranga*. They are suffering there.

They have said, " we do not have a clear defination of the Kenyan territory, particularly I the Lake Victoria, so that when the Luhyas and Luos go to fish into the deep waters of lake Victoria, *banyolanga Baganda iyo bekhale babolanga*, "You are trespassing into our territory. You are fishing into our territorial waters." *Mana beereba, now, nakhufwane khurie?khulimanya khuli abaganda, nomba khuli abakenya?* Because we have not clearly defined our territory.

When Uganda made its Constitution in 1995, they defined the Ugandan territory in the Constitution. Unfortunately in the process, they took some of the parts that were supposed to be Kenyan, and defined them as Ugandan territory, and the Kenyan Government sat back and did nothing. So, the people there are crying. *Notsia Sio Port iria, notsia Port Victoria khutsia Osiego iyo, abaluhya balirangayo. Tsinyeni*, -they are bred where the rivers pour into the lake. Most of these rivers come from Kenya, they pour into the lake. Where they pour into the lake there *tsinyeni tsiibulanira*. But to fatten, they go into deeper waters. When the Samias follow to go and fish in the deeper waters, they are being told this is Uganda; you are fishing in Ugandan waters. And the security guards are there from Uganda harassing them. The Kenyan Government has sat on its Laurels doing nothing about it. We are saying we must define the Kenyan territory in the Constitution. So, article 7, is seeking, in the process of constituting the Kenyan Republic, to define the Kenyan territory, and in that definition, we are referred to schedule one, at the back. It is the one that has tried to give the details of the Kenyan territory. *Olukaka lwefu lwene olu lwanziranga alia, mana lwekotera alia, mana lutsia luri*.

We need to know. I know the Busia people have already looked at this definition, and they are still complaining that we haven't properly defined the territory, because some of the parts they were complaining about are still in this definition, being regarded as part of Uganda. And I told them, they should go and prepare details they give us proper comments, so that we raise this issue and the Kenya Government is able to sort it out once and for all. So that the Kenyans do not find themselves in Limbo *bakorurwe*, whether they are Kenyans, or Ugandans and they need to be protected.

So we have sought to define the territory, there are a lot of details in schedule one; *abamanyire, bakhola survey*, the language is very technical, they can help you to understand what they mean by, when they say from, Northerly to what, which end and so on. You will be able to understand. It is very technical language, I could not my-self even understand it properly, but that is

what we have been given by the department of survey, as the definition. So we want people to look at and see whether it captures their concerns or not; so that watuambie, kama inataka kurekebishwa, we see what arrangements to make with the Government, so that that is that.

In defining the territory, we have also sought to identify the capital city of that territory, of that Republic. And at article eight, we are saying that the capital city of Kenyan Republic is Nairobi. And we are saying that the Parliament shall make laws on how Nairobi shall be governed as the capital city of the State. And we are at article three we are saying, although Nairobi is the capital city of the State, it shall be the policy of the State to ensure that Government headquarters and departments, and other public Institutions are de-centralized so that they are located in almost all the Provinces of this country. So that tusiwe na kila kitu yote in Nairobi just because Nairobi is the capital.

We want to get people to feel the Government is close to them, and they can be able to access Government services at lesser costs than when they are required to go to Nairobi. We have also sought to define the language of this particular Republic, and we are saying the official language shall be Kiswahili, that is article 9; and the national language shall be Kiswahili, and the official languages shall be Kiswahili and English. So we are putting Kiswahili ahead. It should be the national language. Ndio lugha ya nchi. Lakini zile za kutumika kwa maofisi, itakuwa Kiswahili na English. Wakati we were discussing this, I had myself proposed that under the arrangements of devolution, lazima tuseme in the districts, the official languages shall be Kiswahili, English, and one of the local languages, or more of the local languages. So that wamama wazee wakienda kwa maofisi, *babola butswa oluluhya. Makaratasi kaliyo ako kokhufila keshipande*, you should be able to get at least a copy *yoluluhya, nolanyala okhusoma olusungu nomba oluswahili ta, no jaza tsa mululuhya*. But my friends resisted it very much, *ni babolanga*- those districts that have minority groups, the minority groups will be marginalized, particularly, *ababukusu aba Mt. Elgon baboola*, the Sabaoths will marginalize them. So I had to lose that argument, but personally I had thought that at the local level, you should be allowed to discuss things, even in Government meetings, in your mother tongue if it is possible. But that is the proposal we have made.

We have also said that, that Republic of Kenya shall not have a State religion. We shall be a secular society. Hatutasema ati *efwe khuli abakatolika*. Kenya is a Catholic State. The others will feel bad. Or we say, we are a Muslim State, the Christians will feel bad. But we are saying you are free to follow any religion you want, but there will be no specific State religion. So that the Government is run on a secular basis, bila kupendelea ati hii ndio religion ya state. So hiyo tumesema under article ten, and so on.

And then we have National Symbols, at under article 11, and under article 13, we have National holidays. Na tumesema hapo, we want only three holidays:

- 1<sup>st</sup> June, Madaraka Day.
- 12<sup>th</sup> December, Jamuhuri Day.

- The third one itakuwa ile siku hii Katiba itapitishwa kama Katiba ya Wakenya, what we call ‘Katiba Day.’

No other holiday. That is what we have put there as the position of our state, halafu tuwachie hapo. When we were discussing this, there are those who had proposed that let us say that tutakuwa na ...-Parliament can have power to increase the number of holidays, and we said ‘No, lets leave it silent.’ Then we said, “Why don’t we say all the others are abolished?” then we said we would get into turbulent waters with certain politicians about the holiday that is coming tomorrow. And then we said let us just state those we want to have. That means, those that are not stated are not there.

So, that is about the territories and the languages and so on. Then I said, another thing that is involved in constituting the State, is that the State must have a people who constitute that State. Lazima mujue ni fulani na fulani ndio wanaitwa Wakenya. So we have a chapter on citizenship, yenye inajaribu to define who are Kenyans who constitute this Republic we are referring to. And this starts at article 16, chapter four. Article 16, it runs through article 17,18,19,20,21,22, it goes all the way up to article 28, under which we are establishing a citizenship registration board. Ndio yule mtu anataka kuitisha kuwa registered as a Kenyan citizen, sana sana wale wanatoka nchi zingine, iwe na proper procedure, tusiwe na hii maneno tuko nayo saa hii, *Muindi yenjiranga butswa, na akonire khabiri, munyola mbu* he is a Kenyan Citizen. We have stated there. *Makhuwa ka bakhaye bareisa baboolanga* about discrimination in citizenship, we have addressed all of them here.

Tunasema, now, Mukenya mwanamke akiolewa na a man from another country, that man can become a Kenyan citizen. Ama akizaa mtoto na mtu wa kutoka nje, huyo mtoto can be a Kenyan citizen. But we are saying, - hata sheria tuko nayo saa hii inasema, mukiwana leo, you must finish three years before you can attempt to divorce each other. Ukienda hata kortini useme you want to divorce your wife, the court cannot allow you, unless you have been married at least for three years. Sababu ni kwamba wanajua *abana bano kho baakanire, bashiri kata khumanyana tawe*, they need a little time. This quarrels they are having may be just part of adjustment. So you don’t rush them to divorce.

After three years, *ne munyola mbu* they can’t actually agree, *ne mumanya kweli* it can’t work. They can be allowed to divorce. Now, we are saying here, for a person to acquire citizenship through marriage, that marriage must have lasted at least three years, *kho khumanye kweli*, this husband or this wife apatiwe citizenship. That is what we are proposing. We have also proposed dual citizenship.

Tumekubali, you can be a Kenyan citizen, and also a Ugandan citizen, if Uganda accepts dual citizenship. That we have provided for. So that *abana ni batsia America iyo, ne banyolayo emirimo*, if they can become citizens, they can also be citizens in Kenya, they can earn some money there and bring here, and so on. And we are saying, because of that, there are some other people who had already lost their citizenship, because we didn’t have dual citizenship. So, wakati waliamua they want to become citizens in Germany, ikawa they have to relinquish the Kenyan citizenship. And we are saying, such a people will be allowed to recover the Kenyan citizenship they had lost. And many other things; you will read through yourselves. Ndio

mujue namna gani, mujue who is a Kenyan and how do you go about it and so on. So we have defined there clearly, who is a Kenyan citizen.

We have also, - in the process of declaring the state, we said the Constitution will also after constituting the State, it must set out the values by which those people are supposed to be governed. It must also state the source of power. So, in our proposal, we are saying, the source of power are the people. And that is the central value that governs the Constitution we are proposing.

The people are the source of power. That is why if you look at the Preamble, we have started by saying, 'We the people of Kenya,' and then we conclude by saying, 'Do adopt, enact, and give to ourselves and our future generation, this Constitution. It is the Kenyan people themselves, who are exercising their power, and in so doing, they have decided to give to themselves, this proposed Constitution. So when we pass it, it will be a Constitution by the Kenyan people themselves. Because power derives from the people. And we are saying, at chapter one, which deals with the sovereignty of the people, article 1, we are saying, all sovereign authority belongs to the people of Kenya, and may be exercised only in accordance with this Constitution.

It is the people who are conferring power on others to exercise it for them. And that power must only be exercised, in accordance with this Constitution. We go further at sub article 2 of 1, and say that, the people shall exercise their sovereign power, either directly, or through their democratically elected representatives. So power comes from the people, and not from anybody else. *Kho mwikhale mumanyire, mundu undi nayetse yanze khumubolera: "Hii serikali yangu," Serikali si yake.* It is for the people. Is that correct? We don't want the language ya watu kusema "yangu, yangu," it belongs to the people. Power comes from the? The people. Those other people are merely servants of the people.

So, we are emphasizing that the source of authority in constituting our State, we are saying are the people. The people are the source of authority. And the people are saying they want to be governed following certain values. They want a society that respects certain values. We want to guide our lives, to channel our lives and behavior in a certain direction; following certain set out values, and not any other manner. So if you go to the Preamble, we are recognizing as a Kenyan people:

- That we are aware that we have ethnic cultural and religious diversity in our society. Tuko makabila nyingi, tuko na cultures nyingi, tuko na religions nyingi, lakini tunasema, we recognize all those differences as a Kenyan people; lakini we are determined to live together, as an indivisible sovereign denomination. Tuko tofauti, tuko makabila tofauti tofauti, but we are saying, as Kenyan people, we want to live together united as one nation. That is the first thing we are stating in our Preamble. Then we are saying, having recognized this diversity, we are committed to ensuring that we nature our ....

...The family and the community within our nation. So, niliwaambia wakati nilikuwa hapa, kazi ya Serikali ni kuhakikisha masilahi ya watu. And we are saying here, as a Kenyan people, having constituted ourselves into a nation that is composed of various communities and religions and so on, we are committed to ensuring the well being of all the people; starting at the individual level, coming at the family level and going at the community level, and finally the entire nation level. So when we say

the well being of the people, we must recognize when one of us has his well being neglected, then we have a problem. So we are saying, we want the well being of the individual, of the family, of the community and of the entire nation. Kila mtu his welfare must be taken care of. so the first and most important value we are putting in this Constitution, is the well being of the Kenyan people.

And then we are saying, even as we are together, we recognize that amongst us, there are those marginalized groups who must be assisted to come forward with the rest. And we are saying at paragraph 3, recognizing the aspirations of our women and men, for a Government based, or the essential values of freedom, democracy and social justice, and the rule of law. Tunataka Serikali yenye iko based on democracy, is based on freedom, is based on rule of law, and men and women must be treated almost on an equal basis. And then we said, “ we exercise our sovereign and inalienable rights, to determine the form of Government we want. Because we said, authority comes from the people. So, it is the people who will determine, Serikali aina gani we are going to have?”

Institutions of what kind are we going to have. We are going to reconstruct our institutions in which manner. Ndio tulisema juzi, when wengine wanaenda kortini kulalamika, that we are trying to reconstruct the judiciary, they don't know what they are talking about. The people are saying, they are the ones who will determine the kind of Government they want to have. The kind of institutions they want to have. So the people are free to reconstruct the judiciary in any other manner they want. That is the Preamble; it has set out certain values.

But then when you move further to what we call the National goals and values and principles, we have again emphasized more values there. Most of them touch on the well being of the Kenyan people, for example if you look at well being of the Kenyan people and good Government and so on, if you look at article 14, sub article 4, we are saying, the Republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power. The people are determining the kind of Government they want. They are saying they want a democratic Government, they want a participatory Government, they want devolution of power.

If you look at sub article 5, we are saying, “ The Republic shall ensure open and transparent Government and the accountability of State officials and Public Authorities. The people are determining the kind of Government they want.” If you go to sub article 11, we are saying, “ The Republic shall ensure the fullest participation of women, the disabled, and the marginalized communities and sectors of society in the political social and economic life of the country. I said earlier, we are aware amongst us, there those who are marginalized. But still we are saying, we are determined to nurture the well being of the Kenyan people, first at the individual, and second at the family level, and then community level, we are saying we must find out within our society, who are those that are left behind? Whose well being is not being well catered for, and we have identified women, we have identified the disabled, we have identified the marginalized communities, and we are saying, we are going to live together as a Kenyan people, we must assist them to come along. Those are some of the values we are putting down.

We are saying at sub article 14, that the Republic shall be committed to social justice, and through appropriate policies and measures to providing for all Kenyans, the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment and security, so that they lead a life of dignity and comfort, and can fulfill their potential. That is one value we are saying, the Government we are going to have must focus itself on putting in place policies and measures that can enable Kenyans to have these basic needs as an important value. Because we are saying the well being of the people is very important.

At article 14 sub article 15, we are saying, “ The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society, and manage national resources fairly and efficiently for the welfare of the people. We are saying we do not want this squid manner of development, so that when you have one of your own as President, munachukua vitu vyote munapeleka kwenu, and you leave other regions with nothing.

We want development that ensures that all the regions of the country are catered for. That is what the Government should focus on as a value. We are saying if you seek to be President, you know that the Constitution requires you to develop the whole country, and not just to pocket a tribal corner and you think other people will be happy. That is a value that must be understood clearly, and Kenyans must fight for it.

The Government we will put in place, we will be telling it, “ These are the values we said must be followed. They are many of them, if you go on, you will find we are also saying, “ in pursuing these values, the citizen does not only have rights, he also has duties in making sure these values are well taken care of.” The citizen must participate, he must bear certain duties. And if you do that, you will see things changing in a good way. But when the citizens sit back, then the leaders, can just play around, they ignore them, they think they can do what they want and nothing will happen. The citizens must stand up.

If you read through about the supremacy of the Constitution, you will see we are saying the citizen has a duty to defend the Constitution; and nobody should play around with it. So the citizen has various duties, which we have stated under article 15. One of them is payment of taxes, - I know that was left out in the time being, but we had discussed that the citizen has a duty to pay taxes when they are laid down. And there are several other duties we have stated here, the citizen must perform them. Even voting, we are saying it will not be just a right, it is also a duty; you must go and vote. Saa hii watu wanalia, munaletewa mtu, “chagua huyu, chagua huyu,” some of you will sit at home, and you think someone else will vote against that person for you. You must go and vote. Isn't it?

**People:** Yes.



**Com. Kangu:** You have a duty to decide who are going to be in office on your behalf. So these are the values we are setting out, which we must enforce. If you look through these values, I will take you back to the Republic, where we are saying we are a Republic. And I said earlier, many times Kenyans do not know what we mean by a Republic. And this time round, we need to understand what are the values that are inherent in the so-called Republican system of Government. And we have said at sub article 2, some of them, but I want to take into History, when the Americans were making their Constitution, they went to Philadelphia; there were several delegates there, they discussed and prepared a Report such as we have prepared, and they took to the people. And of course, just like it is happening here, they were tossed in America, who went on a crusade of criticizing what the Philadelphia conference had proposed. And certain delegates, decided to write papers to persuade the Americans to see sense in what they had proposed.

People like Alexander Hamilton and James Madison, started writing what they called the Federalist papers. 85 of them, and using them to appeal to the Americans to see how the proposals they had made were good. And in one of the papers, James Madison appealed and said, look, you don't just criticize what we have proposed. The Americans are like a patient; they are sick, they want treatment, they are dying. We as the doctors who were asked, we have diagnosed the disease. We have prescribed this as the medicine. And you are telling us, our diagnosis is bad, our medicine is wrong. But you are not telling us yourselves, what is your diagnosis, and what is your medicine. Because the patient is sick, and he wants treatment. So you don't just say, hiyo Katiba wameleta, it foreign ideas. Tell Kenyans which one do you think is good. Isn't it?

**People:** Yes.

**Com. Kangu:** So they don't just say, " Foreign ideas, foreign ideas," and when they didn't attend the hearings, they don't know what the people told us. Now, James Madison, in one of the Federalist papers number 39, attempted to define what he called Republican Principles. When you talk of a Republic, what do you mean? And James Madison said, " A Republic is that kind of a system of Government, in which authority derives from the people. Sovereign authority, all powers derive from the people; either directly, or indirectly." And he went further and said, "When power derives from the people, and it is handed over to others to exercise that power on behalf of the people," he said, "those who exercise power on behalf of the people, in a Republican system, are required to exercise power for a limited period of time." Not to stick in office for life.

They are supposed to exercise power for a limited period of time. Then he went further and said, "those who exercise power, in addition to exercising that power for a limited period of time, they exercised that power during the pleasure of people. Not the pleasure of an individual, but the pleasure of the people." Then he went further and said, "They exercise that power during the pleasure of the people, and during their good behavior." So that, if they misbehave, they are removed from office. So that even if we have given you a limited time of say five years, we must have power to remove you from office before those five years end if you misbehave. Those are the Republican Principles as stated by James Madison in Federalist paper number 39. He said, power or authority in a Republican system derives from the people. Not from anybody else. It comes from the people. And that

power is exercised by a few on behalf of the others for a limited period of time, and during the pleasure of the people and during their good behavior. So, three major principles, important ones.

If you look through those principles, you will find that they encompass, they carry with them concept of democracy. They carry with them the concept of transparency and accountability. They carry with them the concept of separation of powers. They carry with them the concept of checks and balances. They carry with them all participatory Governance. All these things are incorporated in the Republican principles. And we are saying, if authority derives from the people, and it is delegated to the others, Madison says, it can be so delegated directly or indirectly. And therefore, where it is delegated directly, it pre supposes a democratic system of recruiting the representatives.

So democracy is incorporated. In fact James Madison said through a great body, majority rule, democracy. People must be able to participate in the recruitment, of those who are going to exercise power on their behalf, for a limited period. That is why you find, the concept of periodic elections is based on Republican Principles. Unachaguliwa tu, for five years. Limited period. For five years you finish, you go and another one is tried. If you go to other places, you find even the judiciary or many other offices, which are not elected by the people directly, they struggle to limit the periods. You are given a term of office; five years, renewable for another five years, then you go. Then another person comes in. So that you adhere to the concept of a limited time or a limited period.

If you read through the Constitution, we are proposing, -I have already said here power derives from the people. We are seeking -and this Act said that we should try and put in place mechanisms of elections, that will ensure free and fair democratic elections. We have attempted in this Proposals to capture all these things, so that we can say we are a Republic. Now, we are being told, there certain departments, the Executive is elected for a limited period, the legislature is elected for a limited period. The judiciary is the one that is never elected, and their term is not limited.

At the moment we are told they can retire at 74; we are proposing, to try and come nearer the concept of a limited period of time, we should reduce that period to 65, to enhance Republican principles. Because we are not going to say we are a Republic, when we are operating as if we are a monarch. And we are saying, we must try as much as possible, to create mechanisms that can enable us to limit the terms office of various people who exercise public power. No body should be allowed to exercise public power forever. We must be able to limit the term. And the people must themselves participate in the recruitment of those who should exercise power on their behalf. Ndio munasikia watu wanasema, -hii maneno munaambiwa, “huyu ndiye niliangalia nikachagulia nyinyi,” that is against Republican Principles. You should be able to decide yourself whom you want. Don’t just sit there. Republican Principles entails democracy, wacha watu wachague wenyewe. Because we are not going to say we are a Republic and then someone is choosing for us.

When Maoni ilikuwa inachukuliwa hapa, *ndalinji Busia eyi, nemboleranga abandu ba Busia,*



*“bulano, mwamanya eshindu shilangungwa nyababa. Shi mwamanya? ‘Nyababa’, - watu walikuwa wanaanza kupiga kelele, wanasema, “Eshishieno shitsie mumbo.” Bwana D.O, there was something here in luhya land wanaita nyababa. Nafikiria umeisikia. Saa ingine jioni unasikia tu kelele inaanza all over. It is called Nyababa. Babolire eshishieno shitsie mumbo. Ne shialinjinji auwo nolakhupa tawe, na shikwame auwo. Na neshikhuirire abana. Mala nerebanga abandu Busia, bulano abandu mbabo, bakhupanga nyababa, eshishieno shairirwe ebunyolo, bakhupanga nyababa, nenyu maholere? Nashikwame awenyu hano, nashiire owenyu. Si ni kweli? Babolanga eshishieno awefu hano tawe! So we have to be very very careful on what we are talking about. Murule mukhupe. La mwakoyana pole pole shieerire owefu, bulano khuli tsa mmuse eshikhaya. Nyababa. Mundu achesinjia narusia hano na asutia eria, no walera, auwo na abakwamira. No ouwo afwa.*

So you have to choose yourselves. *Mana ndabolere abandu, basiani baluwo bakwa butwa muno baluwo bekhale. Naserera uno, na amubolera “iwe niwa nendeshie.” Mukamba nasuta khu uno, “iwe niwa nendeshie.” Lwa khataru, uno, mana boole bakhana bataru, bane barano. Nyanga iserere itukha okhuula, ne baakanira mukanisa bosu. Bulano yaanza okhuiunaunia. Ne nolachungire tawe, abakhana balia batirana musimba muno, baboola omusatsa uno akhubairakhwo, khumukhupe. Iwe niwakalire ne bakhupane, bulano batirana nabo oburafiki, ne bakhunywekha. Baatirane, shimulolanga lero?*

*Shonyala butswa okhuserera uno omulaka, oserera uno omulaka, mpaka saa ngapi? That is the reality on the ground. The Constitution is about politics and Governance. And we must talk about them; I want these things to sink in your heads properly. You understand them clearly. Ne noli omusiani we imera iyo, okurungwa bise bindi no reranga munzu, omukhana uno nachinjire orusahani na irire mujikoni, na abola nende omushire obulayi, no omushiere amanya “uno nio uerire awanje hano.” Atsiakho mumuchera, nyanga Lundi la nawitse nde oundi, mana omushiere asinjire abole mbu, “Esie woorera uyu, emanyire arulanga mwitala lie liloko, awanje hano shatekhao tawe.” Mao yamala yabola ario, kata banyakhusenje ni betas babola uno niutekha hano. Mao akanire. That is all. Ne shimwaulire kakanirwe Eldoret? Bulano nyina na kanire, nenyu banyakhusenje ninywe ba namufuchirire omukhana we liloko?*

So, democracy lazima iweko. Now, we are saying, Republican Systems, those who exercise power, they exercise power during the pleasure of the people. Not an individual. Saa hii, our Constitution says every public officer holds office during the pleasure of the President. When it displeases the President, you are fired, and it goes. We are saying we don't want that kind of system any more, we want a Republican system. People must hold office during the pleasure of the people. And we have tried in these proposals to make sure that most of these people are allowed, - there is a way, a mechanism through which people can participate, in removing some of these people from office. That is why we are saying; most appointments must be vetted by Parliament. And even removal from office, - the President will not just wake up and remove someone, he will have to follow a certain procedure; so that the people can be able to have an opportunity to express their pleasure or displeasure in a person before he is put in office, or before he is removed. So that people have some stability; not an individual putting and removing the

way he wants. We must ensure, and we are trying mechanisms of that kind to ensure that this is put in place.

We have proposed that there will be a power of recall. If MPs don't serve Wananchi, Wananchi can recall them. So that, that is a mechanism through which the people can express their displeasure. You are supposed to hold office during the pleasure of the people; so if you don't perform, the people must have a mechanism through which they can remove you from office. So for MPs, we are proposing a power of recall; you can remove them if we pass this Constitution.

We say we don't want to continue with anybody who is not serving you. So we are putting that. And we are also saying, when you say you hold office during the pleasure of the people and for a limited period, we are saying that is, you are talking of a transparent and accountable Government. Accountability. So that, when elections come at the end of five years, that is the period of rendering accounts. They are supposed to come back to you, you account for what they have done, and to show why they deserve to be given more time. If they are not able, you fire them. We are saying, when you talk of pleasure of the people, you can recall an MP, that is the period of account. We are talking of accountable Government, so that these leaders are accountable to the people. They are supposed to serve the people. So if they don't serve, you remove them. Accountability, transparency. And we are saying, they must operate in openness; so that you are able to see "are they performing or not?" so that you can remove them from office.

We are saying they hold office during their good behavior. They must be open for you to be able to judge their behavior, so that you see they are performing well. And we have proposed in this Constitution, a leadership code of conduct, which sets out the values leaders must have. Which sets out the good behavior that depicts a leader. And if one does not comply with that code of conduct, we are saying he can be removed from office. And we have established an ethics and integrity Commission that is supposed to vet these people, investigate them, and if they find you are not of the behavior that is consistent with the leadership code of conduct, you are removed from office.

Respectively, what I am saying is that, in this draft tumejaribu kabisa to bring out the mechanisms of ensuring a Republican system of Government. Ile yenye iko answerable to the people, can be installed by the people, can be removed by the people, can be made to serve the people. The people are at the center of everything we are talking about. We have mentioned the people in the Preamble, we have mentioned the people in the chapter dealing with the sovereignty of the people, we have said power derives from the people. Na ukiangalia hata chapter, if you look at the chapter dealing with the representation of the people, and you go to the one dealing with Parliament, at article 102, we are saying that "Parliament exercises its powers on behalf of the people." article 102, we said,

- Parliament represents the cultural diversity of the people, symbolizes the unity of the Nation, and determines the policy of the republic.
- In order to ensure that the State functions according to the will of the people, Parliament has authority to exercise the Sovereignty of the people.

So we are saying parliament derives power from the people, and it must exercise it as representing the will of the people and not in any other manner. If you look at the chapter dealing with the Executive, article 148, we are saying the powers of the Executive are to be exercised for the well-being and benefit of the people and the republic of Kenya. So, the Executive is supposed to exercise its power for the benefit of the people, for the well being of the people. Not the benefit of a few individuals. And we go further at sub article two, we go further at sub article 2 we said, Executive authority, assigned to an office bearer, by or in terms of this Constitution, vests in that office bearer the power to serve the people, rather than to rule the people; and shall be exercised in a manner consistent with the purpose and object of this Constitution. That is what we are saying about the Executive. The people are put at the center. Their welfare is put at the center of everything.

If you go to the chapter dealing with the judiciary, article 184, we are again bringing in the people, and we are saying judicial power is derived from the people and shall be exercised by the courts, in the name of the people, in conformity with the Constitution and the law, and in conformity with the values, norms and aspirations of the people. So we are putting the people at the center of everything. *Ni inywa abene*. And I said you have duties. *La khukasie khwalekha butswa mana mwikhale*, you don't protect this, the people will go back to the old habits. *Ne munyola khandi munyakhananga*. But, I am here today to make sure, *muikushe amarwi, mwikhale mumanyire ninywe abali nende power*. And these other people are merely your servants, and you must make them serve you, and not serve themselves. So, the people are at the center of everything. So when you talk about Republican values, when we say we are a Republic, we must be able to sit back and ask ourselves, are we serving the people? For us to be able to say we are a Republic. Or are we serving a few individuals? We must serve the people. And we are saying, in serving the people, you start with serving the individual, the family, and then you go to the community, and finally the Nation.

That is why chapter five, which deals with the bill of rights, is focused on the individual. It provides for the rights of the individual. Because we are saying, it is the individual that makes the whole. When the individual is comfortable, the whole community is comfortable. *Kama mtu mmoja ako vizuri, mwingine, na mwingine hivyo, wote watakuwa vizuri*. Then you will say the community is peaceful, things will run on properly. *Lakini tukisema just a few can enjoy, and others get nothing, a time reaches when people say 'enough is enough.'* And I have said before, that time has come for Kenya; *niliambia wale wana oppose this, wajue, this is the time for negotiation*. Those who have vested interest, *wakifikiria they will retain all their vested interests, they are mistaken*. They must negotiate with the interest of the larger society, so that they may retain something little. But if they want to retain everything, they will retain nothing. People will take away everything.

That is where we have reached; and I said, Kenyans have been very patient, they want change, and if anybody is going to stand in their way, they will not allow it. And I must say at this point, we have been very happy with the reaction of the people over what we have drafted, and we are showing anybody who tries to interfere, they will deal with them. They have been

patient, and I said patient people are very bad people. when they finally lose their patience, you will be shocked. That is what happened *na abaluya*. *Baluya* have been very patient people, *mana bandi babola butswa* “hao unapeleka gorogoro moja tu, utapata mambo yako.” *Na lero babolire* No. Isn't it?

**Audience:** Yes.

**Com. Kangu:** So the bill of rights ...focuses on the individual. We have tried to provide rights of individuals, we have tried to provide rights of individuals, we have tried to provide rights of women, rights of disabled people of children, rights of prisoners, rights of the elderly, they are all in chapter five. If you read through, you will be able to see how we have provided for those rights; to make sure that we have constituted a State, which comprises a people, and State is constituted for the purpose of maintaining the welfare of those people. So, the institutions that are put in place including Government are only instruments that are supposed to be used to satisfy the welfare of the people.

The other issue I said that the Constitution does is, to give a power map. A map, which should be followed in defining power, and showing how that power is supposed to be exercised. And we said that power derives from the people; and we said that power derives from the people; and is given to a few to exercise it on behalf of the people. And it is for that reason that the Constitution seeks to draw, to demarcate boundaries within which that power is supposed to be exercised, to define that power in different terms. So that you don't mix different types of power in one hand. So the concept of separation of powers comes in. we have in trying to draw the power map, tried to construct and reconstruct certain institutions that can be used to exercise this power.

We have constructed institutions of two types. One type are those institutions that are actually allocated certain power to exercise on behalf of the people. And under that we have the traditional three organs of State. We have the Executive, the Legislature, and the judiciary. They are allocated powers to exercise on behalf of the people. Legislative powers are allocated to a Legislative institution. To exercise them on behalf of the people, and for the benefit of the people. Executive powers are allocated to another institution, to exercise on behalf of the people and for the benefit of the people. Judicial powers are allocated to another institution to exercise on behalf of the people, and for the benefit of the people.

Then we have also constructed other institutions, that do not themselves exercise power, but in fact, they supervise these other institutions when they are exercising the powers allocated to them. What we call supervisory institutions. And you will look through; we have proposed a number of Commissions, whose main function will be to supervise the Constitution and constitutionality, the management of constitutionality, to ensure that the other institutions are actually performing to the expectation of the people. so we have listed them, you will go through them and you see. Then those institutions we have constructed, are constructed at two different levels once again.

The first level, is that level of institutions that have been existing even under the current Constitution, but which we have sought to reconstruct and restructure. Then there are other institutions which have not been existing under the current Constitution, but which we have constructed afresh, which we have introduced as new institutions. So, we need to look at these institutions, and see in which manner we constructed them or reconstructed them, so that you understand how they will be performing their functions.

The first institution we have to deal with is Parliament; the Legislature. We have reconstructed the Legislature from what it is today, to something else. We are proposing, -and if you people approve, that Legislature will be reconstructed and composed in that manner we have proposed. We are saying

1) To enhance Republican Principles, we want to avoid abuse of power. And in most cases, when power is concentrated in the hands of one person, or one institution, the tendency to abuse it becomes very high. So we are saying, we do not want to have legislative power, concentrated in the hands of one legislative institution. So, we are proposing the creation of a Bi-cameral system as a mechanism of checks and balances, to ensure that legislative power is not abused. And we are proposing that our Parliament should comprise two Houses. One House- a Lower House, which we shall call the National Assembly. And another House, the Upper House, which we are proposing should be called The National Council. These are the two Houses that are supposed to comprise Parliament, and exercise legislative functions, checking on each other to ensure that legislative responsibilities are discharged in a good way, and in a manner that serves the interests of the people.

The National Assembly will comprise three hundred members. Currently, we have a Parliament of two hundred and ten Members -Constituencies. They go to two hundred and twenty two, when you add there nominated members of Parliament. But the Constituencies we have are two hundred and ten. So we are saying we are going to retain the 210 Constituencies, and add there 90 Members, who shall come in through proportional representation. We have been accused that we are increasing the number of nominated Members to 90, and we are saying that is not true. Those who are saying that haven't read this, they have not understood, or if they have read and understood, they are being dishonest; because those people will be elected -I will come back to that when I am talking about the representation of the people and their recruitment, for you to know how the electoral system will be in electing these people.

On the other hand, we have a National council, which we are proposing should have 100 Members. These members will represent districts and provinces. We are saying, 70 Members of the National Council will represent Districts. 69 districts, plus one member representing Nairobi as a district, and we get 70. So that the people of Butere-Mumias will go to elections to elect one person to represent Butere Mumias district in the National Council.

Then we are saying, the remaining 30 members will have to be women. We have proposed in this Constitution that efforts must be made to ensure that at least one third of members in various representative bodies are women. So we are saying, the national council, 30 people should be women. And we are saying those 30 will be elected in the provinces. We divide and say each

Province will have four women. And then Nairobi will have 2; then that will make a total of 30, and it takes us to 100. So the entire Western Province will also elect 4 women. You will go to elections and elect four women to represent the Province in the National Council. And that Council will be performing legislative functions jointly with the National Assembly. We will come to further details when we are talking about the representation of the people. We have reconstructed the Legislature in that manner.

We are saying, Parliament, in performing its functions will have various Committees. Its functions have also been enhanced, we are restructuring its participation in the budgetary arrangements, so that they are effective in proposing or handling budgets, so that the budgets are properly done. If you look at the chapter on public finances and management of revenue, you will be able to see what we are saying about the role of Parliament in the budgetary system. We are also saying, Parliament will have various Committees. And there is one important Committee we are proposing known as the Committee on good Governance, and public participation. So that when legislation is being debated in Parliament, that committee must facilitate the participation of the public in debating those proposed legislations, before they are passed into law. Wananchi wawe wanaweza kujua what laws are Parliament passing? And how do they affect us? Do we like them or not?

The Committee on good Governance and public participation itatakikana iwe ina-publicize all proposed bills, so that Wananchi wanajua they can start reading through, probably copies can be made available in various places, so that Wananchi can access them, and know the policy direction Parliament is taking us to, na kama ni mbaya ni mbaya waseme ni mbaya, we don't want that direction. So we are insisting that committee must be there, to enhance the Republican principle of participation by the people in legislation. That is how we have proposed to restructure the Parliament or the Legislature.

The other institution we have sought to reconstruct is the Executive. Currently, we have an Executive that comprises the President, the Vice President, the Ministers, the Deputy Ministers, and the public service. Now, we are reconstructing the Executive, and the reason again is to ensure that power is not concentrated in the hands of one institution and hence abused. We want the sharing of power, dispersal of power; so that the various institutions could act as checks and balances on each other. So in doing that we are hoping we are enhancing the Republican Principles that require accountability to the people, transparency and so on, that people hold office during the pleasure of the people. Now, we are proposing that we should have an Executive that comprises of the President, the Vice President, The Prime Minister, two deputy Prime Ministers, and 15 Ministers, and 15 deputy Ministers. We have been very emphatic, that we will have 15 Ministries and 15 Ministers. So that we don't have a situation where we are being told we have 15 ministries, but 30 Ministers. We are specific; there should be only fifteen Ministers, and 15 deputy Ministers.

We are proposing that the President shall be having certain functions, and his most important function is the Protection of the Constitution and constitutionality. For that reason, we are saying all the supervisory Commissions will be appointed through the President, with approval of Parliament, they will be reporting to the President and Parliament annually, so that the President can



be able to see that the Prime Minister and his Cabinet are not performing their Executive functions properly, and he can take up the issue, because a Commission has reported that. We are saying, that way, the President will, be a check on the Prime Minister, and on the other hand the Prime Minister will be a check on the President. We have been accused of creating a ceremonial President and we are saying that is not true.

The President we have created is not ceremonial. He has very good powers. The Prime Minister we have created is also not ceremonial; he also has very good powers. So that power can be shared, people can negotiate and get the affairs of Wananchi being conducted in a proper manner. But what we are making sure is that the President we are going to have can never again be the kind of Presidency that Kenyatta had or Moi has had. It will be totally different. It is not as powerful as they have been. Certainly, that I can tell you, we are clear in our minds. We don't want the kind of Presidency that Kenyatta had or Moi has had. It will have to be different, and those vying for it must that it is not what they think it will be if this Constitution goes through. But it is not ceremonial; that is one fact you must note. We want these people to negotiate. And quite often you may find that they may not even be friends; because the President is supposed to appoint a Prime Minister from the party that has the majority in Parliament. And Parliament is supposed to approve that appointment. If it doesn't approve, he will be required to identify yet another person. And we are saying, if he continues doing that, and thirty days from the time he appointed the first one ends before he secures the approval of Parliament of a particular person, then he will be saying he has been unable to put in place a Government, we dissolve Parliament, and they go back to elections afresh, even the President goes back to elections because he has been unable to form a Government.

That is what we are proposing, they must negotiate. And they should be warned. That is why you hear some of them are scared about this Constitution coming into force before we go to elections. Because they know, if they continue the way they are doing, they can rig that project of theirs into office, but the party may have no MPs. and so they will be unable to form a Government.

That is why some of them are scared. But we are saying, Kenyans are coming from somewhere, they are tired, they want change, and nobody should stop them. *Ndabolire, kata notubula amatsi, abali nende obulo, nabanywe kata katubushe.* They want change. And if you think you will stop, you can only delay. But they are determined, we have gone across the country, and we know, the Kenyans know what they want. And we are serious this time round. And anybody trying to stand in their way, *iri nga lolanga ifula ikwire ikuluiyo inyinji yene, mana itukha ikhula irulayo ibura bitswa okhurula mmwalo ikwa butswa iyo niitsa.* And those who will try to stand on the way, they will be swept by the currents and things will move on. So we are reconstructing the Executive.

We are also saying, The Prime Minister, after have has been appointed by the President with approval of Parliament, he will have to consult with the President and then appoint Ministers from outside Parliament. And those Ministers must again be approved by Parliament. Now, we are saying, no MP shall become a Minister. Ministers must be appointed from out side Parliament. And the reasons we are proposing that are various. One is that, we know as a matter of fact that we want proper

separation of powers. We don't want a situation kama ile tuko nayo saa hii, munaweza kuwa na Ministers and Assistant Ministers put together, they are a half of the House. So the Parliament becomes unable to check the Executive. Because when they want to vote, to censor the Executive, they find a great number of their own members are part of the Executive. So they become unwilling to vote against that Executive. So we are saying we want to separate the Executive completely so that Parliament can sit and look the Executive in the eye, and tell them you are wrong, we are voting no confidence and they be able to do that.

Currently, it is difficult. That is why they create so many ministries and assistant ministers so that the House is full of people who are part of the Executive. You get the nominated MPs are added there. You cannot push anything through Parliament. Because Parliament is totally compromised by the Executive. Now, we are saying we want a Parliament that will be able to stand firm against the Executive and ensure things are being run properly. Separation of powers checks and balances.

Secondly, we are saying, when people are -Members of Parliament are appointed Ministers, sometimes they convert the ministry into the property of their Constituency. When it is supposed to be a ministry that serves the entire nation, it is a property of the entire nation; they start handling it as if it belongs to the Constituency. *Mana mwesi khandi mumalanga mubola, "iwe la wabere Minister, wakhukholera shina?"* You forget that it was a Ministry for the entire nation. *Mwenya mbu naerwe abukule bulishindu narera Isero ino, ne mwishowe* the rest of the nation is crumpled. We are saying that should not be the case. We want people who are appointed Ministers who will not feel, because they want to be re-elected, they must take everything to their Constituency so that they are re-elected. They should not be Members of Parliament.

**Speaker:** A question; if one becomes nominated, do they become part of the Cabinet?

**Com. Kangu:** I'm continuing, just be patient. We are saying, these people, currently if you go to many offices, *nonyola butswa iofisi nail Minister wo okhurula ena, onyola tsa yetsula abandu be ebwene iyo. Shonyolakhokho mwo abandu be ikabila indi ta.* Imekeuwa kama their property. *Mana omukofu mwene kata amalanga abola,* "Si nimepatia nyinyi Ministry hii na hii," as if it is property being dished around, when it is supposed to be national asset to be used for the entire nation. We want that separation.

We are also aware, when people become Ministers when they are MPs, sometimes they become too busy with National issues, and they forget their Constituents. Others who are tricky, they may not even be busy, but because they are avoiding their Constituents, *bekatia,* "*omanyire* we are busy with national issues; I am a Minister." When in fact they are not busy there. We do not want to give them that excuse. You are elected to serve people, you must be there to represent them, then Ministers are other people. We are also saying, when people are appointed Ministers-MPs, they go back to their districts and Provinces, and they start loading over the other MPs, as if they are their bosses, when MPs are supposed to be on an equal level. We say we don't want that; this separation must be there.



Coming to what mzee was asking, we are saying, the Ministers and Assistant Ministers, once appointed, they will become ex-officio Members of Parliament, they can attend to answer questions, to listen to the debate so that they can understand the Legislative policy, so that when an Act is finally passed, they can understand what Parliament had in mind, so that implementation is made effective. But, they are not supposed to participate in legislative processes, when Parliament is voting on issues, they want to pass laws, these Ministers will not be allowed to vote. It is only the Members of Parliament who will vote. That is the distinction we have put.

That is the kind of Executive we are trying to restructure. *Nekhuumanyire* on that one, even some opposition people are not comfortable. Because, *oundi yabolire mbu* “ *omanyire* when you are na MP, your highest ambition is that when your party becomes the ruling party, you can become a Minister. And they may want to object to this. You should advise your delegates who are not members of Parliament, if you are comfortable with our proposals, they should have opposed that. Because I know the MPs, at the Conference would want to change some of those things. Because they are hoping, when their parties become ruling, they become Ministers and it is up to you to decide whether our proposal is good or not, and fight for it to go on. So that is how we have proposed to restructure the Executive.

We have also proposed to restructure and reconstruct the Judiciary. A very important organ, which if we do not properly restructure, you need to know *hii kazi yote tunafanya*, will be a waste of time. The Judiciary is very important. If we get a proper Judiciary in place, it will help us to instill discipline in politics, to instill discipline in economics, to instill discipline in all other spheres of our social life, so that people behave well. When politicians start thuggery, beating people around, if they know they can go to court, and the court will look them in the eye and tell them, *Bwana so and so, you are a criminal, I have found you guilty, you are going in*, they will stop all these non-sense you are seeing around. But they are doing what they are doing because they know, when they are taken to the courts, the courts tremble around and they let them Scot free, and Wananchi continue suffering. So we are saying the Judiciary is very Key to the proposed reforms we are making.

If we reform the Judiciary properly, and we get it moving properly, these other people will not play around. So we are saying, we want to introduce a new court known as ‘Supreme Court.’ if you look at the Judiciary at article 184, the supreme court will be the highest court in the land. It will have both appellate and original jurisdiction. It will be the final court of appeal, but there will be other matters can be taken to that court at the level of original jurisdiction without going through any other court.

For example, we are saying, when Parliament has passed legislation, it will be required to hand it over to the President to give his ascent. If the President, as the protector of the Constitution is of the view, or is in doubt that the bill does not, or is not Consistent with the Constitution, the President may refer such a matter to the Supreme court for an advisory opinion before he can give his ascent, to ensure that Parliament is passing laws that are consistent with the Constitution. So, you can see, the President is very powerful. He still has powers to ascent to laws, and if Parliament plays around, he can say No. You are not

going to pass laws that are going against the Constitution. And he can be assisted in this business by the Supreme Court. He can refer to them for an opinion, and if the Supreme Court says it is not consistent, the President can refuse to ascent to it and parliament will be told, your proposed law is not consistent with the Constitution.

When we go to elections, if you want to file a petition against the election of the President, then you file in the Supreme Court. The reason is because we want matters to be determined once and for all. Quickly, because the state must continue running. We don't want the President to be kept in the courts for five years, so that the term elapses before he has served you. Because he started with the magistrates court, an appeal was taken to the high court; from there another appeal went to the Court of Appeal, then from there, another one went to the Supreme Court. That way, five years may lapse before he serves the country. So we are saying in such cases, you go straight to the Supreme Court, a decision is made, and matters end at that; so that he can continue with the business of running the State, and several other matters.

The Supreme Court will be supposed to have Seven Judges; one of them will be the Chief Justice. We have set the qualifications for those judges, and how they will be appointed, through the Judicial Service Commission. Now, we are saying, for transitional measures, that the judges we have today in the high court and in the court of appeal, will not qualify to go to that court. Because we want to start with the highest court that has fresh people who will instill discipline downwards. And that can explain why you see they are hammering us left and right, because Chunga knows, he is not going to be Chief Justice, because we have said the Chief Justice will be a guy from the Supreme Court.

And we are saying, there will be a court of appeal, which will be headed by the President of the court of appeal. So we are again dividing the powers. The powers that the Chief Justice exercises now are massive. And we are saying now we want to divide them so that, the Chief Justice, although he is the head of the entire Judiciary, he heads the Supreme Court, and he sits in the Supreme Court. But some of the administrative powers he had will now be taken to the President of the court of Appeal, who will deal with matters concerning the Court of Appeal. Then we are also saying, the High Court will be headed by a Principle judge, who will also share in this administrative powers. So, effectively, we are reducing the powers of the office of the Chief Justice, so that we are not abused.

Currently, we are very seriously abused; and you have seen for your selves what it can mean. So we are doing the restructuring. I will give more details on why they are very jittery, when I come to the transitional arrangements. We are also restructuring the Kadhi's Court- reconstructing it; we are going to have Kadhi's Courts at the District level, Kadhi's Courts at the Provincial level and we shall have a Kadhi's Court of Appeal presided over by the Chief Kadhi, and two senior Kadhis. And then appeals from that Kadhi's Court will go to the Supreme Court on matters of the Law and the Constitution. That is how we propose to reconstruct the Judiciary.

We are reconstructing even the processes of appointing the Judiciary, particularly, the Supervisory institution called the Judicial

service Commission. I'll come to it when I come to the Commissions that supervise. Now, that is how we have proposed to reconstruct the institutions that exercise power on behalf of the people.

Going to the institutions that are supposed to supervise these other institutions, -can you just hold on, you will have time for questions. I will, finish and then you will give your questions, or comments-. The institutions that supervise these other institutions are quite a number. Some of them have been inexistent; we have sought to reconstruct them, the same way we have done with the other organs of State. The others, we are introducing them afresh. And the first one is, the Electoral Commission. That is the one that deals with management and administration of elections. We are seeking to reconstruct that particular Commission so that it can perform its functions well. You will need to know that if we are saying power derives from the people, the recruitment, the process of recruitment of the representatives of the people must be done in a proper way, if we are going to get proper representatives of the people who can serve the welfare of the people. For that reason, the management and administration of the process of recruitment of the representatives becomes very important. And so, the body that manages that process, is supervisory, and therefore must be self constructed in a good way.

So we are saying, the Electoral Commission is being reconstructed; we are trying to reduce it from 22 members, to about 11 members. And we have set the qualifications they must have; they will hold office for a limited period of time-we are saying five years, renewable once, and they must be independent, first in terms of their appointment, and second in terms of their operations, we are saying, they are only answerable to the Constitution. They must operate in terms of the Constitution; they cannot be controlled by anybody else, except the Constitution. And we are saying, to make them more independent, we must give them financial independence; so they get their finances direct from the consolidated funds. Parliament must vote funds direct to the Commission, so that they can operate independently. And I said, our own Commission is a good example of what independent Commissions or institutions can do. You know, the process through which we were appointed was such that the President played a very minimal role. We applied to Parliament, we were interviewed, we were taken, and the names were submitted to the President to simply formally appoint. So he had no say in deciding who should come, and who should not come. Secondly, once we are appointed, if any member has to be removed from office, the President has no power. It is the Commission itself, which can remove. And you people can remember the experience we went through, when we were trying to remove the secretary; it was a difficult process.

Thirdly, when a vacancy occurs in the office of a Commissioner, - and we have had to deal with two vacancies, one arising from the removal of that Secretary, and another one from the death of Ombaka. When that vacancy occurs, again the President plays a very minimal role in the replacement. The law says, we ourselves as a Commission advertise, we receive applications, we shortlist people, we call the for interview, and then we take three. If there is one vacancy, we take three people. We submit those three names to the Parliamentary select Committee, the Parliamentary select Committee peruses, and itself may decide to also call them for interview or not, it then drops one name and remains with two. Then it submits two names to the President; and the President is required by law to drop one, and pick one. So you can get a situation where you are taking two names to

him, of people he doesn't like at all; but he has no choice, but to pick one of them. He has no choice; he must take one of them.

Four, we have financial independence. We receive our money direct from Parliament, when they are doing the budget, they allocate us our own vote, then we follow for it from the Treasury, it comes, the Secretary puts in the Constitutional review file. So expenditure, we get from there. And you can be sure, from what you have heard happening, if the President had power to dissolve this Commission, or remove anybody from this Commission, we would have been dissolved, or Professor Ghai would have been removed a long time ago. But we are there because the law has tied its hands. If we were receiving money from the Ministry or from the office of the President, you can be sure the taps would have been turned off a long time ago, and we would be telling Kenyans, we have no finances to operate. But the law has made sure he does not have such powers. And it is for that reason that we are standing before you, telling you all these things, even as you have heard him saying he doesn't like what we have drafted. You see? So that shows you, how important independent institutions can be in checking power. They are very very important. So if we can create independent institutions, that cannot be played around by an individual, this country shall run, regardless of who is President. It shall move on, people will be happy, they will not bother, the leaders may be unhappy with what is going on, but they have nothing they can do about it.

So we re trying as much as possible, that we must create an independent electoral Commission. We are saying that Commission, in addition to the management of elections, will also be the one mandated, to register Political Parties. And Political Parties shall be required to satisfy certain Conditions; -I'll come to them when we are talking about the representation of the people, so that we understand what that means. So the electoral Commission is one of the institutions that supervise, which we have sought to reconstruct. The other Commission which exists and we are seeking to reconstruct, is the Judicial Service Commission. And we are saying that we shall have a Judicial Service Commission, which must also be independent in terms of what I have said; it must be appointed in a way that is not subject to an individual, it must be given financial independence so that it can be able to operate without interference; and it is the one that will be charged with the responsibility of recommending persons who should be appointed Judges of the Supreme Court, of the Court of Appeal, of the High Court, Magistrates, and disciplining, to ensure that they are performing their functions properly.

That Judicial Service Commission should –currently it is the Chief Justice who chairs Judicial Service Commission-. We are now saying there must be a substantive chairperson of the Judicial Service Commission. A person of high integrity, a person who qualifies to be appointed a Judge to the Supreme Court. This person shall hold office for a term of five years, renewable once. This Judicial Service Commission will have a Muslim woman to represent the interests of Muslim women, and this person shall be appointed by Muslim women Organizations in the country.

This Commission should have the Attorney General -Ex-officio, the Supreme Court wanatakikana kuchagua one of their Judges, they will elect themselves -the Judges of the Supreme Court will elect one of their own to sit on the JAC. The Court of

Appeal will also elect one of their own; the High Court will also elect one of their own to sit there. The Magistrates will be allowed to elect two Magistrates to sit there on their behalf. The Law Society will appoint two Advocates to represent them there. The Law faculties, the Universities which teach Law, -currently it is Nairobi and Moi University-, they will be allowed, each one of them to produce one person. So two people Law teachers will sit on that Commission. Then we shall have one representative of the Council for Legal education, and then the chairman of the public service Commission, and then three laypersons; one of whom shall be a woman appointed by the Civil Society. These are the people who will constitute the Judicial Service Commission. And in appointing Judges, they will be able to advertise, so that these things are done in open.

Today, people just wake up and they find someone is being sworn in as a Judge, you don't know how he was appointed, even Magistrates who are longing to be promoted to become Judges, they themselves don't know, because it involves lobbying through Politicians. We are saying this time round, these jobs will have to be advertised in the Media, and those who are interested can apply, they will be interviewed, and if they qualify, they get appointed; the names are recommended to the President, the President forwards them to Parliament for approval in the National Council. If the National Council rejects, too bad.

When your name is recommended, there are several stages of vetting which you will go through. So that is how we are proposing to reconstruct the judicial service Commission so that it can supervise the running of the Judiciary, participate in the recruitment of officers in the Judiciary on behalf of the people. Of course we said the people might recruit these representatives directly or indirectly. And the reason we are saying that the Judicial Service Commission should be these representatives, is because we want to allow the people to feel they are participating in the running of these affairs, but we are also saying the Commission only recommends, the representatives of the people will have to approve the people proposed so that the people participate.

We are proposing to reconstruct the Public Service Commission, and if you look at article 258, we are giving the values that should guide the Public Service Commission in performing its functions. We are reconstructing it to ensure that we get the appointment of public officers done in a fair way, in a manner that pays respect to competence and so on. That is where we are dealing with it, the functions are provided for under article 160, and it runs through to other article. We are also proposing, -making some mention on the Police Service. We now do not want to have Police Force, we should have a Police Service, and it shall be headed by a Police Commissioner who shall be a graduate, and shall hold office for a term of five years renewable once, and this appointment processes are also made very stringent so that he serves the people. We are proposing that the prisons should be called Correctional Services. The Kenya Correctional Services, which will be headed by a Director of Correctional Services, and so on.

The other Commission we have Proposed, -you need to go to article 278-, we have introduced new Commissions there, which have not been existing, and which we have given certain functions. And we have stated the rules, on how they are appointed,

and how they should be independent financially and all other matters are stated there. Now we are saying that that the first Commission we are proposing should be established, is what we call the Commission on Human Rights and Administrative Justice. this one is a broad based Commission, it is supposed to have branches or divisions of others which otherwise would have been independent Commissions; but we decided we don't want to have too many of them. So, we have put under the Commission on Human Rights and Administrative Justice a division that deals with Human Rights, a division with what you would have called Ombudsman. ...Who is supposed to be a person to whom people can seek protection and complain about mul-administration and so on. It is the equivalent of the oftenly talked about Ombudsman. We will have a division on gender matters, we will have a division on basic needs, we will have a division on Children's matters, and matters of the disabled. That is the Commission on Human Rights and administrative Justice, and they are supposed to perform certain functions that will ensure that Human Rights are promoted and protected.

We are also proposing the establishment of another very important Commission we call The Ethics and Integrity Commission. The Ethics and Integrity Commission will deal with matters of corruption, will deal with matters of ethics in leadership, integrity in leadership, and in the values, when we were talking, I said we are proposing a leadership code of conduct, if you look at your document, you will see a leadership code of conduct, you will see what we have called, -if you look at article 276, we are talking about leadership and integrity. And we are setting out who are the people that fall in the category of leaders, and who must therefore comply with certain values and standards expected from leaders, then if you go into the schedules, you will see schedule five, which we have titled leadership and integrity code of conduct; it lays down the standards that we expect from leaders, and if the don't meet those standard, they do not qualify to be leaders. And we are saying the Ethics and Integrity Commission is the Commission that will be the custodian of the leadership code of conduct. And it is this Commission to which all the people that are subject to the leadership code of conduct will be required to go to and make certain declarations, when they want to assume office, or when they have already assumed certain leadership offices. We are saying one of the declaration will be about your wealth, and how you acquired it. Your liabilities and so on. And this Commission will have power, if they suspect that you have not made honest declaration, they will investigate. And if they find that you have been lying, they will recommend your removal from office, as being a person who does not have the necessary values that befits the high office you would have been given. So, leaders, we are now saying we must supervise those who become leaders in certain offices to exercise power on behalf of the people, so that we get the right people exercising power to serve them. So the Ethics and Integrity Commission will be there.

Members of Parliament, the President, the Prime Minister, Ministers Judges, Members of these other Commissions, they will be required to make declarations to the Ethics and integrity Commission. And if that Commission finds that they are not fit to hold office, they will be told to go back home. Even Permanent Secretaries, they will have to make declarations to this Commission. Matters of Corruption will be investigated by the Ethics and Integrity Commission to ensure that things are running well.

We are also proposing a salaries and remunerations Commission; many Kenyans Complained, "why should the MPs decide



their own salaries?” and we are saying, surely it is wrong, there must be someone else to determine. So we are saying, there will be a Salaries and Remunerations Commission. This one will be a periodic Commission. It will not be permanent. It will be appointed up to a certain period, it looks at the salaries, reviews them, and then it is disbanded; then after another period again, we appoint one. So we are saying, the salaries of the President, the Prime Minister, MPs, Ministers, everybody including the Commissioners, will be determined by this Commission, So that people are satisfied.

We are proposing to retain the Teachers’ Service Commission as a Constitutional Commission, and we are also proposing another very important Commission, known as the Constitution Commission. Initially it was conceived as a Constitution implementation Commission. We said, at independence, we got a Constitution, but which was messed up because there was nobody to supervise implementation; to ensure that the things provided for in the Constitution are followed and properly done. There was nobody to ensure that Parliament moves to refill the colonial laws, and replace them with those laws that were consistent with the Constitution; so we are saying, this time round, we do not want to repeat that mistake. We shall have to put in place a Constitution Commission whose main mandate would be to ensure the implementation of the things we are proposing in this Constitution. So they will be supposed to do research, and advise the other organ on what needs to be done. If you look at schedule 6, you will see that we have attempted to provide, to mention some of the sections that require that Parliament must enact laws that will enable what we have provided in this Constitution to be effected. If we were to leave it to Parliament and sit back, nothing may be done. So we are saying it will be the duty of the Constitution Commission to look through, -you don’t have it here? There is something, ... it is here. Yeah it is there.

Now, we saying that this Commission will have a responsibility to sit down, to look through the documents of the current Commission, to look through our report to see when the Review Commission recommended this, what did they have in mind? And we have to propose a law to implement this, how do we put it? How should it look like? And they may even draft some of the Bills and hand them over to Parliament to enact into law; so that we get laws that can effect the Constitution we are proposing. If the Constitution has said, within a number of years certain things should be done, it is this Commission that will follow up and keep reminding those who are supposed to do those things, that “ you haven’t done a, b, c, d, can you do it to comply with the Constitution”. So the Constitution Commission will deal with that.

We have also sought to restructure a number of offices; the office of the Attorney General has been restructured to separate it from the Director of Public Prosecutions, which has been established as a separate office, - a Constitutional office that is not answerable to the Attorney General, but that it operates separately under the Constitution to deal with prosecutions. We have also restructured the office of the Controller and Auditor General, and created two offices, one, known as the Auditor General and the other one the Controller General. The Controller of budgets.

We are trying to make sure that we are going to the current situation under which, we have a Controller and Auditor General, but who only does audit, and brings his report, sometimes too late after the fact. After the money has been wasted, has been

stolen; he is not in a position to control expenditure, to stop certain expenditure, before it is done, if he knows that the money is being extended in the wrong way. So we are saying, now we want a body that can actually stop certain expenditures before they go too far, so that we don't lose a lot of money, if it is noted that the expenditure is being done in the wrong way. So we have separated the two offices, to create two independent ones. And I have already mentioned the director of the correctional services, we have proposed a Director of Central Bureau of Statistics, we have proposed a Director of, - a Governor of Central bank, and then the Public defender. All those are new offices we have proposed.

Going back to the representation of the people, the management of the process of recruitment of elections. That is at page, it is starting at article... the representation of the people-, which is article 76. Elections, how should they be held? And we have proposed here various mechanisms. There are several systems of elections; three of them prominent, one, what we call 'The First passed the Post' system of election. That is the one we use today. It is based on single Members Constituencies. A person represents a particular geographical unit as a Constituency. And he is elected on basis of simple majority. Yule mwenye ako na kura ya kushinda wengine ndiye ameshinda, hata kama ni moja above the rest.

The end result has been that in that system, we end up with minority Members of Parliament. Unapata mtu alipata Kura ya elfu tano, another person followed him with 4,500, another one follows with 4,200, another one had 4,000; if you add the votes of the losers, they are more than those of the winners. But the first passed the post system says, whoever has the highest is the winner. So even if this one was leading by one vote, he becomes the winner. Now, people have complained that is not of system. Now, this system has also raised complains in terms of proper representation; some areas area are saying, the way Constituencies are demarcated is bad, so that some areas have large populations, yet others have very less and so on. So we have looked at that, and said that is the system we have.

We have also considered what they call the proportional representation system. It has advantages and disadvantages. That one, you do not vote for a specific person in a Constituency as your MP; you vote for the party. So parties present lists. You vote for the party, and if the party that wins certain percent gets that percentage of the seats in the House. This one helps to give representation even to minority groups, like women, like the disabled, because you will look at the list and if you see that this particular Political party has not put any women on their list, then you can say, this is not a Party for women, they can go and seek for their votes from men. Women can choose not to vote for them. Or if a Party brings a list that has people from one tribe, other tribes can say that is a tribal Party, we cannot vote for them. Many Politicians will see that to survive in such a system, you must put a mixture of people on your list, if you are going to attract votes from various Communities and sectors of the society. So that is a bit helpful, smaller groups can get represented. But it also has problems, because it disconnects the people from the representatives. You will not be able, as the people of Khwisero to say, so and so is our MP. Because we do not elect MPs in Constituencies. People are put on the list; and the Party can actually put people from one region and forget the rest. So you can have an entire Parliament with MPs from just one corner of the country and the rest have nothing. So that disconnection is there, and people feel that is not good. People want someone they can go to and say this is our specific



representative. That system also has the problem of giving Political Parties a lot of powers. Political Parties become very powerful and dictatorial. Because they know they are the ones who prepare the list. If you do not dance to their tune, they will not put your name on the list. So you must sing their song. So those problems are there.

Then there is the third system, which is called 'The Mixed Member Proportional Representation system.' That one borrows from the other two. It borrows from the first and borrows from the second. The effort is to try and maximize the advantages from both sides, and create a high breed system. So you have Constituencies with specific MPs, then you have other members who come to Parliament on the basis of a list of proportional representation. That is the system we are proposing for Kenya. You have heard us being accused that we are proposing 90 nominated Members of Parliament. The truth is that, that is not the case. We are proposing a mixed Member proportional representation National Assembly.

So the National Assembly will have three hundred Members, 210, will be the current MPs. So will go and elect someone as the MP for Khwisero. But when you are casting the vote, you will cast two votes. One for the MP, and another one for the Party. Because Parties will be required to present lists of 90 people. So when we go to elections, they go to the Electoral Commission and present, and say for the proportional representation, this is our list. And you will be able to look at that list and say, " *Omuluhya alikhwokhwokhwo, nombatawe?*" Ama hii chama ni chama ya kabila moja. Are there women? Are there youth? Are there disabled? You look at the list. So when you go to cast your votes, you can be able to say, this Party is tribal. It doesn't care about our tribe, so I cannot vote for it. Then you vote for the one you choose. And circumstances have always occurred when you find, you go to vote, you like someone, but you say, "He is in the wrong Party. Now, what do I do?" so we are saying, you should be able to go and say, for the MP Khwisero, even though he is in the wrong Party, I like him, I will vote for him. But for the Party, I will vote for this other Party. At the end of the elections, the Party vote will be counted, and if a Party has got 50% of that vote nationally, that Party will be entitled to 50% of the 90 MPs. So they will be entitled to 45. They will go to their list, and start with the top, up to number 45 and say those ones at the top are the MPs on the basis of proportional representation. They are going to be Members of Parliament of this particular Party. So, if you had gotten in the Constituencies, say about 20 seats, you would have gotten another 45, you add on, you end up with 65 MPs in the House. Now, we are saying, this is not nomination, these are people you will elect, because you will look at the list before you cast the vote for the Party. And we are saying, this is what we should use to assist the marginalized groups to come to Parliament.

We have proposed, -at the general level-, that one third of all these representative bodies, we should try as much as possible to make sure they are women. And we said Parliament shall enact laws to effect that. But we realized that if we leave everything to Parliament, we may not get back. So we said, when we are preparing these lists, every Political Party will be required to bring fifty percent of its list, to be women. Those 90 people, 45 should be men, 45 should be women.

Every Political Party, when presenting its list they must make sure 45 of them are women. And we are also saying, knowing these men what they are, they might go and put women down on the list. So we are proposing in this Constitution, they will have

to use the alternate system. If number one is a man, number two is a woman. Number three is a man, number four is a woman to the end. That is going to be for all Political Parties. So that when we finish the elections, if a Party has won 20 seats of those seats, we shall know 10 will be women, 10 will be men. If another Party has won 30 seats, we shall know, 15 are men, 15 are women. At the end of the day, 45 women will be guaranteed seats in the National Assembly. That is the system that we have proposed for elections in the National Assembly, and we are also saying, when we go to those elections, apart from that list arrangement, all Political Parties shall be required to nominate for the Constituency seat at least one third women. So, if a Political Party is going to Present 210 candidates in the entire country, in the 210 Constituencies, they must make sure, at least one third of them are women. So that we can bring more women to Parliament.

We are also saying, when you are dealing with that list, after you have divided 45 men, 45 women, we must also take into account these other diversities. The disabled, the marginalized communities. So that you could have 45 women, but 10 of them are disabled. You could have 45 men, but 20 of them are disabled. So that the disabled are also taken into account, and they can get representation in the House.

Elections; the National Assembly shall have a fixed term of 5 years. Elections are held 45 days before the end of the term. And when elections are being held, those Members of Parliament will continue as Members of Parliament until their term lapses. The reason we are saying that is that, the current situation is that the Judiciary remains, the Executive remains, but Parliament is normally dissolved when people go to elections. And the consequence is that if something were to occur, which requires urgent legislation, we would have no Parliament to legislate, because it would have been dissolved. So we are saying, we don't want to create any such vacuums, we are saying Members of Parliament can be in office for five years, elections must be held at least forty five days before the end of the term, which means these MPs their term has not ended, they are still MPs even as they are in the field campaigning; but after they have been elected, if the 45 days have not ended, they will still be MPs, their term will end, and the day it is ending, that is the day the new MPs are being sworn in to take over. That is what we are proposing.

The National Council; we said it is a hundred Members, 70 for the districts, 30 women, distributed to the provinces. They will be elected in that manner. Those from the districts will be elected by the entire district to represent the district. Those for the Provinces as women, they will be elected by the Provinces. And we are saying the term of office for the National Council will be four years. They also must go to elections 45 days before the lapse of their term so that they remain in office. The qualifications we are saying, for the National Assembly, you must be at least 21 years, you must be of form four level, and you must of course meet the other integrity things under the Ethics and Integrity Commission.

For the National Council, we are saying you must be at least 35 years before you can contest to go to the National Council, and so on. The President will be elected directly by the people, and we are saying he Must Get at least 51% of the votes, in addition to 20% of votes in five Provinces. We have reduced from 25 to 20% in five Provinces. You must combine the two to win if nobody succeeds we go to a run off. And we are saying, the President must be 35 years and above, 70 years and below.

When you are presenting yourself as a candidate, we are saying you must be 70 years and below. Because we are saying we don't at any given time, to have a President in office, who is over 75 years. So that we are saying, if at the time of election you are seventy, we know, by the time your five year term is ending, you are just 75. So if we allow you to contest when you are 72, we know, you shall reach 75 before your term lapses, and we don't want to go back to elections. So we are saying, at the time of elections 70 and below, 35 and above.

When we go to transitional arrangements, we have put some exceptions on the rule about the age, on the rule about the academic qualifications; because the President again we are saying must have a degree from a recognized university, we have put exceptions, we are saying, if the next elections are going to be under this Constitution, a person who has been a Member of Parliament, shall qualify to contest the next elections even if he doesn't meet these qualifications; the elections for Presidency, even if he doesn't meet. We are aware, People like Kibaki are now above 70, we are aware People like Nyachae do not have University degrees, and so on. We are saying, Members of Parliament, if you have been a Member of Parliament before, even if you do not have form four you will be exempted for these elections.

We are saying, at the devolved Council, those who will go to the district Councils they will also be exempted if they don't have form four, if they have been councilors in the previous Local Authorities. Perhaps you want to know why we are saying that. We are saying that because we are not in bad yards with the Political arrangements in our country. We are not oblivious. We are aware that if some of these people know that we are going to bar them, and they are going to be members of the National Constitutional Conference, they can run people against our proposals. So this is just a sweetener to get them approve these things. And we are saying, that is for these elections, if they will be held under the new Constitution, and we are saying we will be giving you notice of five years. The next elections will not be exempted on that basis. You have notice; if you want to go to school, you go to school. If you want to reduce your age, you do so. That is what we are saying.

Now, the Prime Minister, I had indicated. We are saying, when you are seeking election, you can be nominated by a Political Party, or you can come as an independent candidate. Coming to Political Parties, many told us to limit Political Parties. We said we are not going to state the number in the Constitution. But we said, we must lay conditions that will be sufficient to reduce the numbers. So first, when we said you can be an independent candidate, we are trying to reduce the Numbers of Political Parties because we know so many people seek to form Parties, because they know, if you do not have a Party to nominate you as a candidate, you cannot contest elections. So once people know you can contest without a Party, they will not bother with some of these Parties; because after all they are expensive to run and maintain them. That will reduce the number.

We are also setting conditions, they must satisfy before they are registered; and they will be registered by the electoral Commission. You must meet those conditions. The details will be put in an Act of Parliament, -some are in the Report, but some are stated here on Political Parties. If in the course of your operations, you lose some of these conditions, you get deregistered. So you must behave to continue being registered. Those that are violent and whatever, you can be deregistered

because your Party or the Members are being violent; you will be deregistered.

We are saying, Political Parties shall be given funding by the State. 0.3% of the National budget will go into a Political Party's fund, managed by the Electoral Commission. And for a Party to be entitled to share in that fund, that Party must have secured AT least 5% of the National vote in the last Elections. So if your Party doesn't reach there, you should not come with your bowl, because you will not get a share. Parties that get 5% and above of the votes, they will be entitled to an equal share of 50% of the 0.3 funds that have come. Then the remaining 50% of the money will be shared out on the basis of the strength of each Party. The one that got more votes will get more money.

We are also saying, in sharing that remaining amount, we will also look at which Party has brought more women to Parliament. So that when we say Political Parties should nominate at least one third of their candidates in the Constituencies women, we don't Parties to just go and nominate women where they know they wont win. For example, KANU going to nominate a woman in Othaya, when they know very well that Othaya people will elect Kibaki, or D.P going to nominate a woman in Baringo Central, when they know they are going to elect Moi. We are saying, they must struggle to nominate women, where they can actually win. And they must campaign for them to win to come to Parliament. If they do so, they get more money. And we argued and said, we know most of these Parties don't like women, but they like money. So because of money, they might be ready to bring women. That is what we are proposing.

If in two consecutive elections, a Political Party has not been able to win any seat in Parliament or at the Local Authorities, that Party should be deregistered. That is what we are proposing. Now, we are saying, when we go to elections, -and that will be the transitional arrangement, the existing Political Parties will be allowed to participate. But they will be given one year, within which they should regularize their registration with the Electoral Commission. If they are found not satisfying the conditions, at the end of 12 months, they will stand to be dissolved; and the people elected on the basis of that Party will be converted into independent candidates, they retain their seats as independent candidates, and there after their Party is dissolved. Those are the proposals we are making.

That finishes with elections, now I go to the second last and important issue: Devolution of power, which starts at article 213, and 214; we are laying down the principles of devolution, and if you go through those principles, you will see that we are trying to capture the republican principles we talked about at the beginning. That we want to use devolution to enhance some of these republican principles that we mentioned, to allow people to participate in their Governance, the running of their affairs, to ensure democratic and accountable exercise of power, to increase checks and balances, and to ensure equitable distribution of resources and so on. We have stated them there.

Devolution of power just means power sharing. You share power amongst different levels of Government. You have a higher level and lower levels of Government. So you distribute functions and responsibilities. And we are saying we must devolve

power from the central Government, or the National Government to lower levels. And we are saying in this arrangement, there will be five levels of Government. First, the central level, then the Provincial level, the district level, the locational level and the village level.

The village, we are saying will be the equivalent of the current sub-location. That is what we are going to call the Village. Although there are five levels of Government, there are four levels of devolution of power. Because we are starting with the central level, which is the one that is devolving power downwards. So, the levels to which power is being devolved are four: the Province, the District, the Location and the Village. And we are saying power is not devolved direct from the center to the Province; it is devolved from the center to the District. And then from the District to the Location, and then from the Location to the Village. How the Province comes in is that, once power has been devolved to the District, the District in a given Province will meet at the Provincial level for coordinating purposes. So they converge, power that goes to the Province kind of comes from down to the Province where they meet and coordinate the affairs in the Province.

In Devolution of power, it involves the sharing of responsibilities and functions. So we distribute the functions. And we have attempted to do so. And in distributing functions, there are two different approaches that are used. One approach, will distribute functions that are purely for the center, and those that are pure for the lower levels, and they leave it at that. Other approaches will say, they will have certain functions that are purely for the central level, and those that are purely for the lower levels, and then those that are concurrent; that are exercised by both levels concurrently together.

We have gone for the second approach, and if you look at schedule seven, we are trying to show which functions will be exercised by the central level, which one by the district, and which ones are concurrent; and we have stated them there. In dividing the functions, the Principle that is used is what they call 'The Doctrine of Subsidiarity.' The Doctrine of Subsidiarity says, "Functions or responsibilities should be performed or discharged by the lowest level, at which they can appropriately be performed." So that if the District can do a certain thing, there is no reason why that thing should be left for the center. It should be left for the District. Only those things that cannot be performed at the District level are the ones that should be left to the next level of Government where they can appropriately be performed. So, in distributing those functions, we were bearing that in mind. And if you look at our list, you will see therefore that the districts have quite a large number of functions that they are supposed to perform.

Two, once you have distributed the functions or the responsibilities, the next step is for you to provide the means to those levels, that will enable them to perform those functions, or to discharge those functions. So that then involves the distribution of the power to raise revenue. Revenue is raised either through taxes, or borrowing. So you need to ask yourself which level should have which power to raise revenue. The ideal situation would be, in distributing the power to raise revenue you must be guided or informed by the 'Needs Principle,' which says, you must give, -because we said you must provide the means for performing these functions. So you must look at the functions. If one level has more functions than the others, then it means it needs more

means than the others. So in distributing the power to raise revenue, you must look at that. But if at the end of the day, you put more power to raise revenue at the central level than you put at the lower level, and yet the lower levels have more functions to perform, then it follows that you are placing a responsibility on the central level to give higher grand of money to the lower level, so that they are enabled to perform their functions as stated in the Constitution. So, in distributing those powers, or the revenue raising functions, we will be looking at those distributional functions to see whether the districts need more finances or not. So the needs principle comes in.

Then there is also the Principle of Equalization. The districts that have been left behind may need more money for equalization purposes, so that they can rise and compete with the rest on an equal basis. We are still trying to refine some of those things and see what can be done. The districts will have powers to recruit their own staff to run their own affairs at the local level. The central Government will also have power to recruit staff to run their own affairs. But because the affairs of the central, some of them are supposed to be run at the district level, the center will be allowed to post some of its officials to the districts. But we are proposing that when doing that, the center will be required to consult with the districts. So that you are not brought here thieves who will come and steal your money. You will be in a position to consult with the center and say, “we don’t like so and so, we have investigated, he used to work in Machakos, he has been removed because he has been stealing, we don’t want him here. So that you control the people who will be serving you at the local level, to ensure that they respond to our needs, and they serve the welfare of the people. So that is how we have dealt with devolution, the details are there.

Finally, Transition, -time is running, because we have to go elsewhere, this thing we are saying, the rights and ....

Two, we are saying that the President, a person who has held the office of President before the coming into force of this Constitution for at least two terms, shall not be eligible for elections as President, and vice President, as Prime Minister, as Deputy Prime Minister, as Minister, as Deputy Minister, or even as a Member of Parliament. We have decided to be very clear, we don’t want happened in 1992, when you amended the Constitution and said President shall hold office for two terms, and the President started saying, this law does not operate retrospectively, so my term now starts running when the law starts.

This time round we are saying, for the avoidance of doubt, he shall not be allowed to hold any of these offices. That has been made clear, because people have been crying, “Supposing he said he is not going to be President, but he wants to be Prime Minister, what do we do?” we have said here clearly. He shall not be Prime Minister. Even Deputy Minister. We are prosing that elections, if held under the new Constitution, we are proposing, they should be held within 60 of the coming into force of this Constitution; they shall be conducted by the existing electoral Commission, pending the appointment of the new Commission, and once that Commission finishes, we are saying, that Commission shall have 90 days within which to wind up and hand over to the new Electoral Commission.

Nao appointment to the new offices we are proposing here, or to the reconstructed offices shall be done until the elections have



been held, and the National Assembly and the National Council have been elected, and a new Government has been put in place. Because we are saying, we don't want to say we want a new system, then we create new offices, and then we allow the existing President and the existing Parliament to fill those offices before they quit. We are saying those offices will be filled after the elections have been held and a new Government has been put in place.

For the Judiciary, we shall constitute the Judicial Service Commission on an interim basis. We are saying, immediately after elections, the first Commission to be appointed should be the Ethics and Integrity Commission, because it must start vetting people to other offices. And there after we go to other Commissions starting with the Judicial Service Commission, which shall be constituted on an interim basis, excluding the representatives of the Supreme Court, the representative of the Court of Appeal and the representative of the High Court. Because one: the Supreme Court would not have been appointed, two: the Court of Appeal will require first to be reconstituted before they can appoint their representative and the same with the High Court, they will require to be reconstituted. And once the interim Commission is established, we are saying it will commence the process of appointing the Supreme Court, it will commence the process of vetting the other judges. And those judges, those who are in the Court of Appeal and the High Court, we are reducing the retirement age from 74 to 65, and we are saying therefore, when this Constitution comes into force, any Judge who is already 65 and above will have to retire and be given his benefits.

If any Judge is 55 and is not 65, he will have an option to retire, voluntary early retirement, and he will be given his benefits, and in calculating the benefits, he will be added five years to his years of service and then he goes. If one is not 65 and one has not accepted early retirement, at the end of the 30 days of accepting, those who remain and are pending against them with the anti-corruption unit, with the AG's Chambers, with Law Society Disciplinary Committee, any complaints, those complaints shall be handed over to the interim Judiciary Service Commission, which shall look through, and if it is satisfied that they have some substance, they shall send that Judge on compulsory leave, and commence investigations of the allegations, and if they are proved, then the Judge shall be relieved of his office. Those who do not opt to retire, and those who do not have any complains against them, shall be required to go to the Ethics and Integrity Commission and declare their wealth, and how they acquired it, their liabilities, and if the Ethics and Integrity Commission reports to the J. A. C, that they are not fitting to be Judges, they will be removed form office. Once we have finished that, we shall start filling the vacancies created in those offices, and there after, have the Court of Appeal and the High Court appoint their representatives to the J. A. C.

The new constitution has outlawed the death penalty, and therefore we are saying that any people who have been sentenced to death and have not suffered death yet, their sentences will be commuted to life imprisonment, upon the coming into force of this Constitution.

Land in this country shall only be owned on a freehold basis by Kenya. Non-citizens shall only own land on a leasehold basis. For transitional arrangements, if there is any non-citizen who owns land that is more than a 99-year-old lease, that tenure shall

automatically be converted into a lease of 99 years. And when it elapses, the land reverts to the Government and the people of Kenya. That is what I ought to tell you; it covers the entire document, that is what we have proposed, we want your comments about that. The time has run we may not take many Comments, but as I said, at the beginning, you will be free to go and study the document thoroughly, and write down your comments, and pass them over to your district coordinator, who will be able to forward them, so that they are taken into account when the National Conference is discussing the matters. So, that is all I want to say.

**Mrs. Nambiro:** This is a very good and well-attended meeting. Thank you very much; please clap for yourselves. Commissioner I wish to recognize the presence of few personalities, who came in when you were already into your delivery of this very good dissemination report; we have the 3Cs, I request you stand again please. I know Edward Were had already introduced himself; anyone I have not seen? Kindly, 3Cs Khwisero, we are recognizing your presence, Edward please sit down; madam, your name, just to the Commissioner; thank you Martha, thank you Rhoda, and Rhoda was Secretary to the civic education sir. We formed a sub Committee within the Constituency Committee. We also have the pleasure to inform the Audience that we have a district delegate, who will be going to the Conference from this particular Constituency. Are some of you aware?

**Audience:** We are not.

**Mrs. Nambiro:** Okay. I will request him to stand please say Jambo. He knows his name.

**Cllr. Sammy Aswani:** Commissioner Mutakha, and District Coordinator, and those who have come today, my name is Councillor Sammy Aswani; I am among the three people who will be representing you at the National Constitutional Conference in Nairobi. I am ready because I have been studying the document, and the issue of Constitutional review, I did not start it from Butere Mumias. We are the people who started it at Bomas of Kenya. We came to Safari Park; whatever draft we gave to Parliament is what has been helping the Constitutional Commission. Therefore you are in safe hands, you are in good hands. I shall represent you, but what I wanted, there are other issues like Provincial Administration which when we were here at Khwisero, we said we wanted some amendment to be done. But from what I am seeing, you have decided to abolish it. So, that is another area, which I do not know what you were thinking about as people of Khwisero.

**Mrs. Nambiro:** Thank you Councillor. We also have the Chairman to the Council – Butere Mumias, Councillor Lawrence Oyando, jambo Councillor. Ukipunga mkono nitafurahia. Thank you very much. I will deliberately suspend continuing to recognize other personalities to be recognized later. Do we have anybody with a pressing issue or question to the Commissioner? Keeping in mind we have a session at two. One, any other person? Two, right behind, three, four, Councillor, and five, Councillor. Please one, can you be brief to the question, we have recognized all these presence, don't recognize them again.



**Hillary Akula Lipesa:** I want to begin by telling you my name; I'm Hillary Akula Lipesa. I want to begin by saying that it has been proved that behind every argument, lies somebody's ignorance. As I have gone through the draft, I have realized that those of us who have been arguing about the same, may be they have been expressing some kind of ignorance because this is a very noble document, and most of the issues that were raised, I am happy to know that are there. I want to say that, now that it has gone this far to have a Draft Constitution, and in the transition measures we are saying that we can have the legislation placed before the next Government takes over, I do not see why we should not vote under this new Constitution because such provisions are already done in it. I also want to say that there were people who were saying that the Provincial Administration has been abolished, but as I have gone through the abolishment. I see re-definement. And lastly, I would wish to urge all of you to support this new Draft Constitution so that we can have effective Government in this country. Thank you.

**Francis Amwai:** My name is Francis Amwai, I happen to be the Chairman of the Kenya Union of the Blind. I'm very sorry that I came in rather late, may be what I want to touch on has been mentioned; I was still struggling with these hills coming from down there. The disabled sometimes feel that we are sort of pushed behind. I have heard the Commissioner stating clearly that might be for the political parties, they will be given more money if they selected or nominated women. I don't know whether the Constitution touches on this one, whether they will also be given more money still, if they nominated, if it is not the percentage, but at least one or two members of the disabled society? And secondly, in the National Constitution Conference, I don't know whether there is any person from this district who is going to represent the disabled in the district? Thank you.

**Dennis Oyango:** I am Dennis Oyango, I just want an explanation, this review did not start work immediately because a lot of obstacles were put in the way. I dot know what you have done so that in case we have future Constitutional reviews, immediately they are recognized, the can start work without these impediments that were put on the way. Kindly also, enlighten me on these independent candidates. We had one last time, I though t he was independent; but then again it was called 'Party of Independent candidates.' So it becomes a Party, and not an indepedent candidate. Thank you.

**Mrs. Nambiro:** (From the background). The fourth one was the delegate.

**Cllr. Aswani:** Mine is about chapter ten, when we look at 223, clause 1; it is talking about the employment at the District Council level. I am wondering, because when we look at clause 2, -Districts may employ its own staff. Devolution of power, if the districts have been given the authority, and now, we use the word 'May,' that means that they don't have that authority. So, -and you have not told us, because we had suggested, we would like to have District Public Service Commission; here, we are only being told we may. Another one on the same, we are being told that in case of any problem, in given District Council, the investigation should be carried, and then it should go to the President. Now, why not go to Parliament, so that Parliament can be able to discuss? Not the President. When we are talking of multi-partysm, that President may not for that Particular District of that party. So that he may decide now to say, no, no, no, lets do away with that particular District council because it does not belong to my Party.

Another one is on the schedule 7, where I have seen the functions for the national or the center and then the district. I have seen development planning. That is number eight. And then again, when you come to the district again, we have also district planning. And then I have seen implementation. That means that the district planning, and National planning are two separate things. So, if we were to be given power, why don't we plan, and then we are given resources we carry on with whatever we want to do?

**Mrs. Nambiro:** Thank you very much. Lawrence please, Sunguti is the final one, thank you.

**Clr. Lawrence Oyando:** Thank you. Mine is only, I want to be enlightened on a few items. My name is Lawrence Oyando, Chairman of Butere Mumias County Council. First is education. The draft did not touch on education, and yet education is the Prime mover of any kind of development. In one word, we want to be ensured in the Constitution that education for our children in the primary school shall be free, without paying a penny for any other activities that are swarmed there.

Then there is that second issue of health. There are diseases like Malaria, epidemics are coming –HIV, also, it has to be clear that Kenyan citizens shall be assessed to free medicine, so that at least we can eliminate these diseases.

Finally Commissioner Mutakha, recruitment of the Police Force, recruitment of Police Force. We have come to learn and it is happening, whenever there is recruitment of the Police Force, it has been being done unfairly at the district levels. And you find that other tribe come in, form various districts to be recruited. It were good if at all the Constitution provided that the recruitment of the Forces shall be done at the locational level, so that interest of all Kenyans is taken care of in the Forces. We should not have a situation whereby at least one particular district has got the bigger share in the forces. Thank you.

**Mrs. Nambiro:** Thank you chairman. Sunguti finally.

**Stephen Sunguti Okoko:** Yeah, in fact mine is very short. My name, I am Stephen Sunguti Okoko. In the draft that we have had this morning, or this afternoon, you didn't say anything on security. Please could you clarify that. What does the current draft talk about security? Thank you.

**Com. Kangu:** You will notice, I was dealing with a long document within a very short time; we have tried to reconstruct the security arrangement in our country, we have provided for the establishment of a Security Council. If you look at chapter 15, we are talking about the Defense Forces and National Security; we have provide at article 272, for the establishment of a National Security Council, which is very broad based, then at article 274, we have also provided for the establishment of a Defense Forces Council, which is also very broad based. Details are there, you can look at them.

Going upwards, the recruitment to the Police Force. You will notice that on the devolution of power, there are a lot of details

we have not put, we have put first general statements. Because one, we were trying to beat those who were trying to scuttle the process. Because we were saying, we must get something into the public debate, to stop them from saying, “You see the Commission hasn’t produced, we can go to elections with the old Constitution. But, we have established a Thematic task force, which I am personally convening, that is supposed to deal with the details on devolution; and when I presented to Plenary last week, the terms of preference, - because they asked me to go and work out the terms of preference-, one of the questions I put to them is that, we must address the question of training and preparation of human resources, both at the national level, and the local level. Education, which level will be left to the center, and which level will be left to the district. Then I told them, we must address the question of the proper relationships between the districts and the center in terms of recruitment of staff. That question you were raising of the Public Service Commission for the district, it had actually featured in the debate. And it disappeared somewhere, but we want it back there; that there ought to be a Public Service Commission for the recruitment of officers at the district level, which will be liaising with the center to ensure that the recruitment is properly done.

I also remember putting a question to my colleagues that said that, given the unemployment situation in our country, would it be important for us to provide for quarters in the recruitment of officers serving in the national Government? Because we do not want the national Government, the central Government level having officers from one community and leaving the others behind. And I clearly stated that for instance, recruitment to the Armed Forces, the Defense Forces, the Police, shouldn’t we provide for quarters for every district? Those are questions I have put to my colleagues, which are supposed to fall within the terms of reference that are giving details on matters of devolution, and we will be discussing them.

We are going to consult with a number of experts, economists, accountants, to look at the costs involved, and we are bringing in some Canadian man who had assisted us when we had a workshop on devolution, Professor Wards, he has been dealing in matters of devolution. Two weeks ago he was advising Pakistan, on how they are going to distribute functions and implement devolution of power in Pakistan. And we are hoping when we finish this process next week, I will be going back to Nairobi, and we will have him in to see how to work out this thing.

Personally, what I am very concerned about, and that is why I emphasize, that the distribution of the means to perform those functions is what is very important. The money, it is extremely important. Then I raised the question of, “How do we go about to enhance and improve the quality of leadership in the districts?” and you remember the other time, I argued that the idea of putting everything in Nairobi, sucks the brains from the villages to Nairobi. How do we create jobs in the districts, that will make some of your brothers and sisters, who are well informed and are staying out there, to feel happy to stay here, working here because there are jobs here they can do, So that they can participate in the improvement of the Governance matters at the local level? Those are questions we are addressing, and you will notice, when we were talking about the capital, we said that it shall be the policy of the state, to decentralize the institutions from Government and departments from the capital territory to the other areas. And we are hoping, when that is done, some of those people will now be working down here, and the quality will be improved.

Education, we mentioned some things on education under the bill of rights, but of course, it is something we still need to put more emphasis on, so that we are very clear. If you go into the values, we also mentioned the question of encouraging science and technology and so on. But we are ready to think a little more on that. Even health, is mentioned in the Bill of Rights, but it can be improved.

Planning and so on, you need to study that distribution of functions properly, and I must admit that we are still doing a lot more, we will be ready to do more panel beating on it, to make sure that things are running well. What you will notice is that, there are certain things that will be planned at the center, there are others that will be planned at the district, and there are others on which the two levels meet. In other situations, you will find, the center may plan, but it asks the district to implement on its behalf. Those are some of the concurrent functions that we were talking about, so that the implementation is done by the people at the local level themselves.

Independent candidates; the position is that the Constitution we have today, does not allow independent candidates. And it is because of that reason, that John Harun Mwau was forced to register something called a party, because he wanted to contest as an independent. And when he was told the law does not permit, he became funny and registered a party called, the 'Party of Independent candidates of Kenya.' So, PICK, is a Party. But now we are saying in future, we will want independent candidates to be allowed to contest the seats.

There was the question about the future and why this process took long. We were coming from a difficult situation, and we hope the future will be different. You know when you are coming from a real dictatorial system; the resistance is normally very high. The other day I was reading another book called 'The forty eight Laws of Power.' If you read, you will see how people who have power exercise it. one of the most important rule, law of power, is that "crush your enemy!" *Kata ili nga inzokha omanyeye okhupanga mpaka omurwe kutubushe.* You just continue crushing. So, the past we have been coming from, is that past that has been such that those with vested interests were trying to resist, and we are hoping that if these things get in place, in future it will be easy to handle some of these things.

The question of the disabled, the angle that has been introduced is an interesting one, and I will be happy to pick it up and see what the rest of the Members will say, if we are going to give more money to Political Parties to encourage them to bring women, why don't we do the same even for the disabled? Probably, it is something we will incorporate when we discuss. And I think the delegate has heard, you can do more details and give to him.

Then, there is elections, and the Constitution we are proposing, again, I said earlier, those who have vested interest in the current Constitution are the ones who don't want to go to elections with the new Constitution, But Kenyans will have to do a lot to fight to get things moving. Provincial Administration, it is true there are a number of places in which we were told, they would want

the higher levels of Provincial administration to be abolished, but they retain the low levels of the Chiefs and sub-Chiefs. But we are saying, when making these decisions we said, the most important driving factor is that people want leaders that have themselves elected. And we are hoping in this devolution arrangements, there are going to be proper security arrangements, so that people can still have security, even when they do not have Chiefs and Assistant Chiefs.

In the transitional arrangements, we have also provided that pending the Constitution of the devolved councils and other functions or other bodies, that the central Government shall continue performing the functions that would otherwise be performed by these devolved councils. And we are saying, that before these things are put in place, there are a lot of little things chiefs and sub-chiefs do here, which will need to continue. So if we say, the central Government shall continue performing them, the central Government can decide to delegate. It can decide, we will maintain the Chiefs for a while as we still are putting in place the mechanism for the new system. Or they may say, we will delegate these functions to the existing local authorities to perform them for us while these other things are still being put in place.

We are aware of a vacuum that can easily be created and lead to anarchy, and that is why we are putting these Transitional arrangements. Otherwise thank you very much, and you must release us to move on to another place. There is another question, that in case Parliament is dissolved, shall the elections be carried out under the new Constitution? if not, what is the way forward? Now, that is a question that is very difficult but we must address, because we have set out as Kenyans to deal with them. If you look at our transitional arrangements, we are saying, in the event that elections are held under this new Constitution; if they are held under the current Constitution, then we shall be forced to go back to the drawing board, particularly on the transitional arrangements. And we are saying, I said earlier, *mbu kata notubula amatsi, aboobulo nabanywe kata katubushe. Bainia butswa eshitambaya mumufuko, ne bara khumatsi ukhwo, bakhomba*. The Kenyans now want change.

Dissolving Parliament and calling for elections before we finish this process, is not going to help anybody. They will fight on. For one, the Commission under this Act shall not be dissolved until a new Constitution is enacted. This law says that. So that *kata December ya bakhuesia iyo niyula*, before we finish, Parliament will be obliged to give us more time. Because this law says, we shall stand dissolved the moment the new Constitution is enacted. So, if they dissolve Parliament now, the truth is that we will not be able to convene the National Constitutional Conference, because Members of Parliament are supposed to be part of it, so, we shall have to wait for elections, but in the mean time, we shall continue other work we have, this research I am telling you about refining things, we shall continue doing them as we wait for Parliament.

Two, my approach is that I hope that President will be reasonable enough, to read the moods of the Kenyans, and wait for this process to be completed. I am also hoping that when he said he is going to dissolve Parliament any time from now, he is not serious. In fact I suspect, it is his other way of saying he wants extension of time. So that people may be pushed to the wall and say “No. We really want this new Constitution. Mzee, even if it means extending the time of the Commission and Parliament for

a little while, let us finish.” So that he will be able to say “basi, vile mumesema munataka Kura chini ya Katiba na hawa watu hawawezi kumaliza December, basi ngojeeni, lets extend the life of Parliament.”

I suspect that that is what he has in mind. If that is the case, well and good, that is a noble idea. Because we must get this Constitution before we go to elections. But in the event that reason does not prevail, and he dissolves Parliament, our strategy has been, and thank God, you remember civic education was being opposed, and I think they knew what civic education can do. *La khwachenda mukari muno, khuchenda, lero mwamanya amakhuwa; musinjira ne mubola tsa amakhuwa. Shi kali kario?* And you can be able to stand up very firm. *Ndabolire olwabere baluhya mbaabo baalulire, babolungwa, Baluhya naboolumbe, ikorokoro butswa, lero shi baabolire?* The patience of the people can run out, and it can be very dangerous if it does run out.

But my proposal is, if Parliament is dissolved, it will be unreasonable for the Kenyan people to say they want to boycott elections. That would be an unreasonable thing to do. Go to elections, but make sure those who are seeking for votes from you, you are telling them, we are electing you on the platform of review. That when you get into office, the review shall continue. If it doesn't we lynch you. So that people get elected knowing, the people want me to continue this process. And I am sure, *owaira emisii wa tinya ni Moi. Lakini abandani benyanga okhwitsao bano, nashiinjira, narube orusi rushitendee butswa, nimuinia imoni*, they will listen to you. They will have to continue with this thing. And then that will mean we go back to the transitional arrangements, and re-think them, and see how else to move forward, so that we can complete this process. Thank you.

**Mrs. Nambiro:** Thank you very much Commissioner Mutakha. Mine is a word of appreciation to the management and community of Khwisero, for putting up this facility, which has been enabling us to have it readily, any time we want to have either public lecture, or public hearing in this particular area. I am very very grateful for enabling me use this facility from time to time. Mwalimu, thank you very much. I take this opportunity to make some few announcements, one: the CCC Members you see Edward after this. Two: the draft Constitution will be in Mbinji's place, where we've been reading those other reports, that is NEDS center, time from the 15<sup>th</sup>. So from 15<sup>th</sup> you are free, I am sure I will drop them there on 15<sup>th</sup>. Tuesday next week that is. If you don't have a copy, it will be there, or in my office in Kakamega, or you contact your CCC Member, because each location is represented.

As Mama Caro you wait to pray, I will now call upon one presence that I did not recognize, to say the final word, and then Mama Caro can pray for us; this is our District officer.

**D.O, Mr. Khator Harun:** Thank you. May be before I say something, there was an announcement from the education office, then I will say something.



**Elijah Owiti:** Thank you very much. My names are Elijah Owiti, the area Education officer, Khwisero Division. I would like to take this opportunity with your presence, that I may announce a few crucial information concerning the education system. Right now you are aware the teachers are on strike, and the examination has to take place. These are KCPE, and KCSE. Already the KCSE had started its practical papers, and it has to commence the normal papers on 20<sup>th</sup> of this month. We are therefore asking the stakeholders, the school Committees and the Board of Governors to attend a briefing session on 16<sup>th</sup> Wednesday, for KCSE, at Butere boys' high school. And then for KCPE, on 5<sup>th</sup> November, at the Cathedral in Butere. This time, if the head teacher has gone on strike and is not with you, the Chairman and Treasurer of that school, or the BOG Member and the other stake holder Member shall then attend that meeting, and will be provided with the nominal roles, including other instructions and the time tables, and they will manage the examinations with the students.

This is so because; the Examination council is an independent body, away from the Teachers Service Commission. Because, the candidate paid the money for exams and that exam has been set, and it must be done in the year 2002. The Exam cannot be postponed to next year. That announcement gives us the opportunity that head teachers surely should not part with their candidates, when they have been their own students or pupils for the last eight years. I would wish may be, for those who will come back for the next session during the bursary information funds, I will give you more information on education matters. Thank you very much Commissioners for today, for availing the opportunity to talk to the members of the public. Because this is the only way I can communicate to the head teachers, the students, and any other person, because all the schools are closed. Thank you very much.

**D.O, Mr. Khator:** Okay, thank you very Much Mr. Owiti, thank you very much madam Anne Nambiro, I want to take this opportunity to thank our Commissioner, Commissioner Mutakha for enlightening us so much about the draft Constitution. At the same time I want to thank him and congratulate him for keeping time. He was here just five minutes before nine. And as usual, he caught us completely unawares; it is like we didn't know. There is so much we have learned today and I would request, that when we go out we still go back through the draft; you see what you would like to put as suggestions, or even if you want to criticize, put it in writing as we have been informed. So, this discussion does not end here. There is so much we have learned, but I also want to say on one saying, 'Changes will not come, until we change our attitudes.' You hear so many beautiful words written in the draft, but they will not make any sense, if as Kenyans we are not willing to change.

You hear like, I think it is article 14 of chapter 3 which talks of the Government providing food, water, sanitation, people were smiling. It won't come that easy. You must remember our obligations and duties as citizens. If we have to be better in the community of nations, we must work hard. And we must be the ones to counter check each other. Let us not complain the Police are corrupt, other offices are corrupt, and yet it is us who actually are creating that opportunity for corruption to take place. Askaris take money on the way, in a fully boarded matatu, and you are one of those people who is standing in that matatu. So, you create that environment, and then you complain. Let us stop complaining and start going to action. I think that is the much I want to say, but changes have to start from ourselves. If we can be able to manage time, believe me, what has been



said here in one hour and a half, would have been covered from nine to twelve, and we would have had so many questions to ask, and so many suggestions to put across. But we are always lugging behind. Let us change, and let us wish that we will always work together, and let us do things because we want to succeed as a Nation. Not as a tribe or as certain grouping of people.

So, Commissioner Mutakha thank you for coming around, we will be having the other one in Eshinutsa on the afternoon of 14<sup>th</sup> October at two. Let us try to make sure we are there before two, because with our whether patterns and mode of communication, if we go there in good time, we can be able to cover more, or what we did not cover today. I also take this opportunity to let you know that our leaders meeting which was scheduled for 1:30, will now be there at 2:30. so those who are leaders, you received letters or you have had any kind of information. Please come so that we deliberate on other issues. Thank you very much madam Anne, thank you Commissioner Mutakha, and God bless you.

**Carolyn Obeli Awori:** Kwa majina ni Carolyn Obeli Awori, tuombe. Munug Baba, tunakushukuru kwa hii siku njema Umekuwa umetuwekea leo, Mungu Baba tumefika hapa na tumejifunza Mengi. A yale tumejifunza tuyatie maanani, ifanye kazi. Mungu Baba, nabeba driver wa Commissioner wetu pale wanaenda, Mungu Baba wewe uwe driver, naye akufuate nyuma afike huko, tena afundishe wale wengine atapata huko kama sisi. Naomba haya machache kwa jina la Yesu Kristo Mkombozi wetu, Amen.

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