

**CONSTITUTION OF KENYA REVIEW COMMISSION
(CKRC)**

Verbatim Report Of

**DISSEMINATION OF REPORT AND DRAFT BILL, MATUNGU
CONSTITUENCY, HELD AT MATUNGU PRIMARY SCHOOL**

ON

9TH OCTOBER 2002

**DISSEMINATION OF REPORT AND DRAFT BILL, MATUNGU CONSTITUENCY HELD AT MATUNGU
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Present

1. Com. Mutakha Kangu

Secretariat Staff in Attendance

1. Leah Symekher – Assistant Programme Officer
2. Flora Wafula – Verbatim Recorder
3. Mrs Anne Nambiro – District Co-ordinator

Anne Nambiro: Commissioner, the 3C members, our district delegates, *abalimi bali hano, nende fwe fyesi be matungu*, not forgetting our good civic education providers, ladies and gentlemen, good afternoon?

Response from the audience: Good Afternoon.

Anne Nambiro: *Milembe khandi, milembe chi Matungu, milembe chia Katiba.* Thank you very much. *Embara khumanyire shikhulere hanu* today is for the purpose of discussing the views we gave during the public hearings in the whole nation. *Khwahana maoni tofauti khulondokhana nende amalako Kenya yosi.* Na inatakikana tujadiliane, tujue maoni ambayo tulipendekeza na Katiba ambayo tutatarajia kuita katiba mpya. Wengine walisema vipi kote Kenya nzima. Kama ni maoni ya shamba, kama ni maoni ya uraia, maoni tofauti, tofauti tupate kujua leo ni nini ambacho Kenya na Commissioners wetu wazuri ambao tayari wameandika a draft Constitution wanatueleza ndio inatakikana iwe katiba kama hatutakuwa na pingamizi au kama tutakuwa na kuongeza tupate kuongeza, na kama tutakuwa na kutoa mahali hapa na pale, tupate kutoa.

So, before we begin our session today, I will request that we formally begin this with a word of prayer. Mama Pamela lead us in a word of prayer.

(Interjection from the audience): We have a Bishop.

Anne Nambiro: I wanted to be gender sensitive but I am told if a Bishop is there he will open for us the session. Bishop is that okay?

Rev Salala Akumu: Tuombe. Bwana tunakushukuru kwa sababu tunajua katika moyo ya mwanadamu mipango ni mingi lakini uamuzi ni wako. Asante kwa kutupatia nafasi hii ili tuweze kujadiliana na kutengeneza mwongozo ambao tutatumia kwa shughuli zetu za kitaifa na hata kwa kazi zetu za kila siku. Asante kwa sababu umetupatia amani ya kuweza kukusanyika hapa Bwana.

Na sasa tunapo anza kikao hiki, tunaomba uwe pamoja nasi. Roho wako Mtakatifu atakase mawazo yetu ili yote tutakayo changia yawe yatakayo leta uelewano, umoja na hata upendo miongoni mwa watu wako Bwana. Ili tuweze kutoka hapa tukiwa na mwongozo ambao utakatufaa kwa maamuzi yetu ya nchi hii na kwa utawala wa nchi hii kwa jumla. Tunamkabidhi mtumishi wako John mikononi mwako, umtawale na umwongoze anapoongoza kikao hiki cha majadiliano na wote tutakao changia Bwana tuweze kuwa tunaongozwa na wema wako. Asante Bwana, tunaomba tuanze na wewe, tuendeleo pamoja nawe na tumalize pamoja nawe. Na yote yaweze kuwa ya baraka kwetu na sifa na utukufu ziwe kwako. Kwa maana tumeomba katika jina la Yesu Kristo Bwana wetu. Amina.

Anne Nambiro: Thank you very much Reverend Salala. Commissioner Sir, Matungu Primary has been a venue severally for CKRC on different occasions. You have been here twice before and this particular school, which also has a unit for the mentally handicapped, provided a venue to the public hearings that were concluded in the month of August.

The community worked very hard and gave very good views, some of which are in your draft. I am sure we are going to discuss what came from the people of Kenya, Matungu included, Matungu as a constituency. So it is your views, our views that we are discussing today. *Kano kalakhumeka okhube nde amani akokhujadiliana shinga lwa khwajadiliana khu musikuli noho kata nikhwikhale abandu babili, khandi khulatema khulomalomakhwo baadaye.*

Sir, I also have a Constituency Constitutional Committee here that worked very hard under the chairmanship of Mohammed and I think you know all of us on that Committee. Thank you very much Mohammed, you will introduce them later. I just wish to single out Mohammed, Sir because we were abused here together how we had the wrong Committee. I recall it was in the month of December but it turned out that when we were having the district analysis that there was a very large turnout and what I can call 'good views' came from Matungu as a constituency. So I will request that we please clap for ourselves.

(Clapping from the audience)

Anne Nambiro: We had the highest number of memoranda from this particular constituency in different venues that is the three venues. May I also say that we have this report, that is for the constituency in the district office and soon it will be with Mohammed and his good team for further dissemination if you wish. But we also have the national draft and some of us may be privileged to get a copy today.

Sir, we also have civic education providers. I must say they were very, very patient in their work. Despite the limited funding we had, Matungu C.E's some of whom are here played a key role and helped mobilise the community and ensured that the turn-up became what it was. I must confess Sir that this is the team that was not well paid like the Mumias team. The Matungu 3C's I pinched openly from their kitty because we had administrative hitches related to finances, something I made the office aware of. And when Colonel visited the grounds, sometimes in the month of June, Colonel (Rtd) Gichuhi, we mentioned this to him but so far the refund was not made and if the 3C's may have been thinking that it is the co-ordinator who 'ate' our money if I use the word 'eating', the money was never replaced and I still admit you were under paid in that respect.

However, we are all working for our Constitution and for sure even what I am calling payment, I should use the word sacrifice, because you sacrificed heavily as civic education providers and as the community for Matungu.

Mumias, where I come from, Sir, was really in a hurry to write letters that it didn't have much on the ground to hold and the letters were addressed directly to the head office. But for this particular group in Matungu it was composed of, watu watulivu na mimi ninasema shukurani. If I get any information, I will communicate back to you.

With these few regards, I take this opportunity Sir, to introduce to the community of Matungu our district delegates who will say a word of Jambo. Madam Rita, she will be going to the National Conference to discuss the Constitution further. Say jambo.

Madam Rita: Jambo.

Response from the audience: Jambo

Madam Rita: Yangu ni kusema shukurani na tuongea yale ambayo tutaongea leo halafu tuone vile tutatua maneno yetu ya Katiba. Asanteni.

Anne Nambiro: Thank you very much. Sir, I also wish to recognise the presence, before I go to our good District Officer who has assisted me a lot in mobilization beside the CCC, I also wish to recognise the presence of our Bishop from Mumias Diocese, Bishop Salala. Thank you Bishop. We also have... I still cannot see all the 3C members here, but I will now give the Chairman an opportunity to introduce us to the 3C members before we finalise with the District Officer. Chairman please.

Mohammed Shiundu: Yes, Commissioner wetu, Bwana Kangu, D.O. wetu, Bishop, Co-ordinator, hamjambo nyote?

Response from the audience: Hatujambo.

Mohammed Shiundu: 3C members wote wasimame kwa ajili hatuna nafasi mrefu kwa ajili ya mvua. 3C members ikiwa uko karibu... Hapo tuko na Bathlomew Musumba, Mama Pamela Mbenyo, Mama Getrude Shikuku na mimi Chairman, Mohammed Shiundu. Wengine wako njiani wanakuja kwa ajili wanashuguli nyingine.

Pia ningependa C.E members pia wasimame. Hawa ndio ambao tulisaidiana nao kazi ambayo mliiona. Kazi mliyoiona ilitokana

na nguvu za hawa jamaa. Just say hallo. They are really dedicated members.

Bwana Kangu, *efwe khukalusia orio muno khubel sessions tsia wali natsio nefwe hano, nyele khulomoloma Luluyia kho khube halala fyesi, tsiakhwala natsio nawe tsibili ndala hano, ndala Ikoyonzo nukhumetakhwo mama Nancy nashio shiachila nikhuba nende* the informed views that you heard from Matungu Constituency. Watu sio wengi sana kwa ajili unajua binadamu pia akisikia jambo lingine mbaya baada ya kufanya kazi kwa nguvu na bidii, huwa moyo unajikunga. Kwa hivyo waliposikia kuna ma-judges na lawyers ambao wameenda court kusimamisha haya mambo ya Katiba walihuzunika sana. So they have just kept off in protest. Na hata hawa members walikuwa wananiuliza, Bwana Kangu akija, atatuletea zile yellow ribbons ndio tuwe uniform?

Clapping from the audience

Kwa maana wanataka... they want to show that they are in unison with your team. Kwa hivyo ikiwa ulibeba chache uwapatie hawa wazee ili kwanzia leo wakitembea wawe yellow kwa mifuko yao. Kwa hayo machache ninarudisha programme kwa Co-ordinator. Asante.

Anne Nambiro: Thank you very much, our Chairman for Matungu CCC. I now call upon our District Officer for Matungu Division to say something before I hand over to our Commissioner. Karibu.

Kassim Bosso: Commissioner, District Co-ordinator na wengine wote, hamjambo?

Response from the audience: Hatujambo.

Kassim Bosso: Hamjambo tena?

Response from the audience: Hatujambo.

Kassim Bosso: *Milembe mwezi*

Response from the audience: *Milembe khandi*

Response from the audience: *Milembe*

Kassim Bosso: Mimi ninaitwa Kassim Bosso. Sina maneno mengi sana, tunajua ni kwa nini tumekuja hapa sindio? Na tufanye kazi, sio kazi yako bali ni kazi yako, ya mtoto wako, mjukuu waku na kijukuu wa kijukuu wako, sindio. In other words, we are making a Constitution for the future generation, isn't it? So we want to make something that will last longer than we will see. Sio ile ita-last twenty years halafu inakuwa irrelevant. Let us make a Constitution that will last over one hundred years. Just like America that has a Constitution that has lasted them for so many years sindio?

Kwa hivyo it means that you have to be very careful on what you decide. Don't make a decision, or contributions that

tomorrow or after five years you say sikujua, no. We have to make decisions or contributions that will make a very good Constitution that will last long. I think with those few remarks watu wa Matungu mnajua they are very active and have been active throughout and so I would like to say welcome back, feel welcome here na tuendelee vizuri. Asante.

Anne Nambiro: Thank you Mr Bosso, the District Officer. It is not possible to give all of us a chance, but I appreciate this very good audience and I am sure before we leave more would have turned up. So thank you for being here.

The rules for this particular afternoon session are as follows. I request that if you have your mobile phone on, please put it off. We are recording and we do not want any interference of noise as this will disturb us when we are trying to transcribe the work.

We shall listen to the Commissioner and at the end of the session, we shall have a chance to air our views, ask questions or clarifications here and there. So, unless it is an issue that you cannot avoid, please let us try to give him time bearing in mind that the weather is not favourable. With those few remarks Sir, I kindly request you to please introduce yourself to the community and your team. Thank you.

Com. Mutakha Kangu: *Abandu be Matungu milembe khandi*

Response from the audience : *Milembe*

Com. Mutakha Kangu: Kwangu leo, hii ni mara yangu ya pili kukaa katika hii classroom. Wale walikuwa hapa wakati tulikuwa hapa wanakumbuka yale ambayo tulizungumza. Na leo tumerudi katika sehemu nyingine ya mradi wa kutengeneza Katiba. Leo, nimekuja na ma-officer wawili wa Commission kutoka headquarter, nitawajulisha kwenu. Hapo kuna Leah Symekher, ni Programme Officer, anaandikisha maneno ama comments ambazo mtapeana hapa leo. Mwenzake ni Flora Nafula, yeye ndiye anashughulikia huu mtambo wa ku-record maneno.

Sababu tuko nao ni kwamba yale, ama zile comments ambazo mtapeana tutaweza kuchukua kwa sababu tutasaidia wakati maneno yanaenda to the Conference. Wakati tulianza maneno kufuata hii sheria, mwanzoni ilikuwa imesemekana baada ya kuyasikiza maoni yenu na kutengeneza report na draft bill, mtpatiwa nafasi ya mieze miwili kusoma na kujadiliana.

Baada ya hiyo miezi miwili, tuweze kurudi kwenu kuchukua maoni yenu ama comments zenu. Lakini baadaye hiyo sheria ilibadilishwa kwa sababu nyinyi nyote mlijua wakati tulikuwa na msuko suko kuhusu kumaliza mambo yote vile ilikuwa imepangwa hapa kabla ya kupiga kura. Ama tutataka tupunguze hizo vitu. Kwa hivyo bunge ilifanya amendments ambazo tulisema badala yetu sisi kuwapatia miezi miwili, siku sitini, tuwapatie siku thelathini kusoma na kujadiliana. Hayo marekebisho pia yalisema, tukimaliza hizo siku thelathini, hakutakuwa na mpangilio wa kurudi kwenu kurudi maoni yenu.

Ikawa mtamaliza tu kujadiliana halafu tuende kwa National Constitutional Conference. Lakini kama Commission, tukitilia umuhimu na maana ya watu kuhusika kwa haya maneno, tumesema katika hizi siku thelathini tujaribu tuone kama tunaweza kupata some comments from the people ambayo yatasaidia at the conference kuamua maneno.

So in this session, nitajaribu kuwaeleza ile Katiba tumeandikisha kama mapendekezo ya kuleta kwenu, tumeweka maneno gani.

Na tukimaliza watu wachache watapatiwa nafasi ya kuuliza maswali ama kupeana comments na hizo comments tutaandikisha. Lakini ninawasihi kwamba kwa sababu ya muda na kwa sababu wengi mnapatiwa makaratasii haya saa hii kuyasoma, mtatakikana muende nyumbani, uchukue muda wako, you study the document na ukipata kuna mambo Fulani ambayo ungependa yarekebishwe ama you have certain comments ungependelea kupeana, andikisha chini, peleka kwa District Co-ordinator na atayapitisha yatufikie sisi. Na ukiweza, peana hata kwa huyo delegate ambaye ni mmomaja wa watu watatu ambao wata-represent Butere Mumias District. Akienda huko awe amejua, kulingana na nyinyi ni mambo fulani ambayo hampendelei ambayo mtataka akifika huko azungumzie na kama linaweza kubadilishwa, libadilishwe. So, hiyo ndio sababu tuko hapa.

Tukianza hii kazi, mpangilio tuliokuwa nao hapa kwa hii sheria ilikuwa ni kwamba tuwasikilize halfau tuende tutengeneze report ambayo iko na maneno ambayo mtakuwa mmesema na maneno ambayo sisi pia tutakuwa tumefanya uchunguzi na research ndio tuweze kupeana recommendation kuhusu vile tungependelea maneno yaende namna gani. Na baada ya hiyo tuweze kutengeneza a draft bill ambayo itakuwa Constitution. Kwa hivyo baada ya kuwasikiliza, tulienda tukakaa chini, wakati wenzangu walikuja hapa mwezi wa nane, mimi nilikuwa pande za Busia na kuelekea huko Teso na baadaye nilielekea Bunyore kuyachukua maoni huko. Maoni hayo yote tuliyatilia maanani. Tulienda tukakaa Mombasa mwezi mmoja, kuyachunguza mambo ambayo Wakenya walikuwa wamesema ili tuweze kutengeneza report.

Tumetengeneza report ambayo iko about five volumes, karibu one thousand pages. It is being edited na wakati itakwisha, copies will be made available. Lakini ili tuweze kuenda kwa haraka, tuli-extract a summary, a short version of that report, ndio hii tulitoa tukiwa huko Mombasa, ile tunayoita the Constitution of Kenya Review Commission Short Version, the People's Choice. Yaani Chaguo la watu. Hii ndio report fupi kwa yale mambo mlipeana na ikionyesha mwelekeo wa wananchi.

Hii we launched in Mombasa na baadaye I think several newspapers wali-reproduce yote kwa magazeti na wale waliopata nafasi kununua waliweza kusoma. Hii iko ya Kiingereza na pia ya Kiswahili. Wakati ile nyingine kubwa itakuwa tayari mtaipata. Pia tumetengeneza Constituency Report, ile ambayo inaonyesha vile mlisema wenyewe na hizo zimepeanwa kwa District Co-ordinator. Ukienda huko unaweza kuchunguza uone kama mambo yenu yalichukuliwa ama namna gani.

Baada ya hiyo, tuliweza kutengeneza draft Constitution, yale mapendekezo ikiwa tutapitisha Katiba yenyewe, tunataka ifanane namna gani. Sasa hii ndio tumetengeneza na haya makaratasi mmeapatiwa ni kama hii niko nayo. Iko na vifungu vyote ambavyo tuliweka, all the Articles we are proposing are in those papers you have been given mweze kusoma. And I want to say we all need to know as Kenyans, haya ni mapendekezo, they are proposals. And as human beings tunasema, we are not perfect, we may have made a mistake, we may have misunderstood the people and so we are coming back to you. Kwa sababu sheria inasema we report back to the people wenyewe muangalie muone kama hivi ndio mngpendelea maneno yaende ama mungependelea tubadilishe sehemu fulani.

Sababu ninasema hivyo ni kwamba mmesikia wengine wanaanza kukimbia kimbia wakisema ooh, the whole thing is bad! The

workers rights were not taken there so we reject everything. The thing is full of foreign ideas, we reject everything... I want to say those are dishonest people. This document may not be perfect na kwa hivyo, you point out where it is bad and give your suggestions. Badala ya kusema ni mbaya.

Sababu ninasema hivyo ni kwamba, we are like patients, wagonjwa ambao wameenda kwa daktari, they are sick, they want treatment. Na daktari amechunguza amesema ugojwa ni huu na dawa ni hii. Na ikiwa kuna mwingine anakuja anasema hiyo diagnosis is wrong, that medicine prescription is wrong, na anyamaze. Yeye mwenyewe is not diagnosing, he is not giving the treatment. The patient wants treatment. So we are not going to reject the medicine that is being offered na wewe mwenyewe you are offering nothing.

So criticize and make your proposals. Hapa sio sawa, tungependa iwe hivi na vile. That is what we want, so that we get ile Katiba ambayo itatuwezesha kuendesha meneo yetu sawa sawa. Na tulisema this is only one stage, inasonga mpaka the next stage wakati decision ya muhimu itachukuliwa ya kusema we approve, we reject or we change here and we will do that. Na hiyo itafanywa by the National Constitutional Conference. Na niliwaambia wakati ule every district will send watu watatu na wamekwisha chaguliwa wale wa Butere Mumias, mama is one of them, ndio wataenda huko. Sasa mimi nitakaa kando. As Commissioners, we will debate and participate in the discussions na tutazungumza but when it comes to decisions, we will be ex-officio members of the Conference. Hatutahusika kwa ku-take decision, hawa are the ones who will take the decision.

Sasa mjue kuwa you have put a very heavy responsibility on this mama. Wakienda huko, maneno yakiharibika huko msiniulize mimi, yule ndiye mtamuuliza. They are the ones who are going to make decisions. Na ikifika huko mkisikia this document has been rejected, mjue hao ndio wame-reject. If you hear that it has been changed, they will be the ones who will have argued to propose the changes. That is why I am saying, if you have any changes you may have to pass them over to her, so that wakifika huko when they are arguing, she can raise some of those things.

Lakini mjue hata na yeye akienda ku-raise na pengine arudi na hakufaulu don't just think she did not raise them because she will be operating in a group of others. Hata hapa, there are several things which I personally wanted in a particular way but the majority had to go one way and if you lose as a minority you accept. So that is the position.

Now, mlitupatia kazi ya kutengeneza Katiba. Wakati nilikuwa hapa niliwaeleza umuhimu wa Katiba ni hii na hii, umuhimu wa Serikali ni kazi Fulani kwa mfano kuangalia masilahi ya raia and so on. Now, leo ninataka ni-discuss hii draft on the basis of detailed functions of the Constitution. Na nitasema mara nyingi a Constitution inasemekana it has a lot of functions to perform.

One function inasemekana, a Constitution constitutes a State. It constitutes a people into a particular society called a State. So tutaangalia tujue, hii yetu tuna propose how does it constitute Kenya as a State. Ya pili, tunasema a Constitution is a power road map. Ni map ya kukuonyesha public power itagawanywa kwa njia ipi, itagawanywa kwa njia hii, itatukika kwa njia hii na itakuwa controlled kwa njia hii. I said those things wakati tulikuwa hapa. Hivyo ndivyo vitu muhimu vya a Constitution.

The Constitution tena lays down the values on the basis of which watu wanataka kuongozwa ama kuishi maisha yao. It sets the perimeters within which a society one, conducts its life, its public affairs and so on. It sets the goals, the national goals, the national aspirations. It can be aspirational, so they say. My colleagues said the other day, it does not have to tell us what can be achieved today. A Constitution should allow us to dream of what you would like to have tomorrow. So it sets values, something to aspire to so that we can dream, in our dreams, that we would wish the Kenya of tomorrow to look like this and then we start working towards that direction. So katika hii draft, tumejaribu kufanya hayo mambo yote.

Now, mwanzo tukirudi kwa jambo la constituting the State, tukiangalia jambo hilo, tuko na several chapters ka hii proposal tumepeana. Kitu cha kwanza ambacho tumeanza nacho ni preamble. Tulisema wakati ule, the current Constitution has no preamble. Then we have gone to Chapter one which deals with the sovereignty of the people and the supremacy of the Constitution.

Chapter two ina-deal with the State, the Republic of Kenya. Chapter three ndio ina-deal with the national goals, values and principles. Ni wapi tunataka kuelekea, what are the values tunataka tutumie. Chapter four ina-deal na watu wa Kenya, the citizenship. Chapter five is the Bill of Rights, Chapter six is the representation of the people, elections how they are conducted, who manages them and so on, representation of the people. The political parties, how they relate to elections and so on.

Chapter seven ni Parliament, the legislature, Chapter eight is the executive, Chapter nine is the judiciary, Chapter ten is the devolution of power. Chapter eleven deals with land and property, Chapter twelve is the environment and natural resources, Chapter thirteen, finances and revenue management. Chapter fourteen deals with the public service, Chapter fifteen deals with Defence and National security, sixteen with leadership and integrity, the kind of leadership we want and the kind of integrity we want from the leaders. Chapter seventeen addresses Constitutional Commission, eighteen deals with the amendment of this Constitution, nineteen deals with the interpretation of the Constitution and finally Chapter twenty is dealing with the transitional arrangement.

You will notice that we have put amendment as Chapter eighteen because we are saying our priority is not to amend this Constitution. Hiyo ni kitu kinakuja huko nyuma. We are hoping maybe the first amendments will come baada ya muda mrefu. So we do not have to give priority to provisions dealing with amendments.

If we go to the Constitution of the State, tumesema Katiba constitutes the State. Na swali la kwanza ni What is a State? A State inasemekana it must have a territory, it must have a people, it must have a government and a set of values that it follows. Our proposed Constitution seeks to do that. It seeks to constitute the State of Kenya. And we are saying our history shows that we were already a people called Kenya. We were constituted by the colonialists, hao ndio walituweka pamoja makabila mengi na wakasema hawa wataitwa Kenya.

Kwa hivyo we did not need to constitute Kenya afresh but we recognize the existence of Kenya. Kwa hivyo in Chapter two which deals with the Republic, tumesema at Article six sub-article one, that Kenya is a sovereign republic. Tunasema

tutaendelea vile tulivyo as a republic. Lakini kitu tunahitajika tujue ni kwamba although the current Constitution inasema we are a republic, it never goes further to explain what it means to be a republic. What values are entailed in a republic and this time round we are trying to give a little more details and I will explain when I come to values, what is meant by a republic. Ndio mkisema we are a republic, you know what it means and you can be able to look at the way we run our affairs to see whether tuko a republic ama tuko kitu kingine tofauti.

In our propose Constitution, we are saying if a State must have a territory, we must define that territory. The current Constitution does not define the territory of Kenya. Ile ya independence it had some definition, it had given definitions of district boundaries within the State lakini all those were amended, ikatolewa. Kwa hivyo the current Constitution has no definition of the Kenyan territory. *Noreba Bakenya bano bakorelwekhu butswa mbu olukaka lwene luchendelanga hena lutsia hena*, so that they do not know when they are trespassing into a neighbour's territory.

We are saying this time round we must define the territory of Kenya. *Abawanga yino* you are not on the border, so you do not know the importance of defining a territory. *Lakini notsia Abanyala emwalo yiyo Abasamia yiyo* who border Uganda, they are the ones who bear the brunt of our failure to define our territory. *Nabo bawumiyanga yiyo* because Kenya does not define its territory, but Uganda in 1995, when making their Constitution, they defined their territory. In the process, they defined some parts ambazo zilikuwa zinatakikana ziwe za Kenya as being part of Uganda. *Mana bulano abandu Basamia nende Banyala emwalo yiyo beyinyola* where they used to live as Kenyans, they are now being told ni Uganda. *Notsia emwalo yilia* they are suffering.

There is no proper boundary in the Lake Victoria ya kuonyesha boundary ya Kenya inafika hapa namna hii and those are important things particularly tukifika kwa maneno ya security. Wakenya huko wanalia *emichera chitsukhana munyanza chiosi chirulanga mu Kenya muno* and the fish breed at the point where the rivers pour into the Lake *neho ye tsinyeni tsibulilanga*. Then they go into deeper waters to fatten. When the *Abasamias* follow to go and fish, the Ugandans tell them you are fishing in Ugandan waters, you are trespassing! *Nebabola but tsineni tsino lwakhukhali nifwe babaya hanu tsinetsi yitsi bulano mukhuboolela murie khandi ne tsienyu?* Now the Kenyan government is not there to protect them. The Ugandans are there with security patrolling the waters and are harassing our people and the Kenyan government is not there.

We must define our borders, tujue zinafika wapi, if there is a problem our government must sort out with Uganda wajue this is where the border lies. So that mjue territory yetu inaenda huku na inafika huko. There are other problems with the Ellemi triangle huko juu na kwingine kwingine.

So in this proposed draft, Article seven of Chapter two, we are seeking to define the territory of Kenya and we are referring to schedule... if you go to the schedules huko nyuma ya hiyo draft, utapata ile tunaita schedule one, which seeks to define the territory of Kenya. There is a long definition there, ilitoka kwa watu wa survey. Inaonyesha unaanzia hapa, uanenda hapa unapiga corner hapa, kuna mto hapa *umuchela kundi kuli yaha* namna hiyo, all those details are here. They are technical terms from surveyors *abandu ba Busia bahenjele nibabambolela* you still have not solved our problem, they are saying this

definition is not proper as it still leaves certain parts in Uganda. I told them we want those comments with them, with guidance from them on what would be the proper definition so that we can give it and the Kenyan government can follow up with Uganda.

So we have in this Constitution constituted our state by declaring it a Republic or recognising it as a Republic and by defining the territory of our Republic or our State. Na tumeenda further tukasema we must also, wakati tuna-declare Kenya as a Republic, also identify in the Constitution which place shall be the capital of Kenya.

We have at Article eight stated that Nairobi shall be capital of Kenya. Isipokuwa tunaongeza hapo under a sub-article three that although Nairobi will be the capital, the State must follow a policy that will ensure that we decentralize the headquarters of national, government and departments and national public institutions to all provinces. So that isiwe mnaenda kupata mambo yote Nairobi, some of the things can be brought out here. That is the policy we are saying must be followed, the government must make all efforts to ensure that those are followed.

We are also saying in defining the Kenya territory that the system of government and the system of life shall involve the use of two official languages. One, we are saying Kiswahili shall be the national language ya nchi ya Kenya. Halafu official languages za kutumika kwa maofisi itakuwa Kiswahili na Kiingereza, as the official languages.

Tunasema on state religion, Kenya will not have a State religion, Kenya shall be a secular State. Hakutakuwa na ile dini inasemekana hii ndio ya Serikali. Everybody is free kufuata ile dini anataka lakini hakuna ile ambayo itakuwa ya Serikali. There will be no State religion. Everybody has freedom of worship, kuchagua ni gani anataka kufuata ndio tusiwe na discrimination.

Pia tumesema national symbols tumeweka hapo na mwishowe tukamaliza tukisema as a Republic we shall have a certain number of holidays or national days. Na tumesema hapa, we shall have three national days: ya kwanza ikiwa ni 1st June ambayo ni Madaraka Day, it will be celebrated as a national day. Ya pili ni 12th December kama Jamhuri Day, na ya tatu itakuwa ile tarehe hii Katiba itapitishwa ambayo tumeita Katiba Day. It will be celebrated as a national day, ya kukumbuka kutengeneza Katiba. Only those three, zingine tumezisahau.

Laughing and murmuring from the audience

Tunasema mambo mengine, when declaring or constituting the State, lazima tena a State must have a people. Kwa hivyo tunasema kuwa baada ya kutambua kuwa this is our territory, we are a Republic, this is our capital, these are our national days or whatever, we are saying who are the Kenyans. We must define the people who constitute the State of Kenya. Ukiangalia Chapter four, hapo tume-deal na mambo ya citizenship.

Chapter four inanza with Article 16. tumejaribu ku-define citizenship. Who is a Kenya? Ni nani anayeweza kujiita Meknya? Tukisema we are Kenya, we must have a people who are called Kenyans. So we are defining there citizenship and tumejaribu ku-expand the definition ya kuhakikisha wale ambao walilalamika, kina mama ambao wanasema saa zingine wakiolewa na

wanaume wa kutoka nje, those mend do not become citizens, we are saying now they will acquire citizenship. Wakizaa watoto na watu wa nje we are saying those children will acquire citizenship.

Lakini tunasema there must be a process ya kufuatiwa. Kwa sababu hata saa hii, wale ambao wanaoana kupitia the Marriage Act ama the African/Christian Marriage Act, sheria inasema mkioana, you can never be allowed to divorce until after three years. Sababu ni kwamba *babolanga hahundi abana bano* they just need a little time to understand each other. *Kho kata niba-quarrel- lekho kidogo* those are normal quarrels of adjustment, we just don't hurry them to divorce. *Khuhenjekhwo emihika chitaru nichibwa nikhulola kweli* they can't cope then they can be allowed to be divorced, that is what the law says.

So we are saying, even in this citizenship, that has to be attached to marriage, you will have to stay with your spouse at least for three years. You must remain married for three years before your spouse can claim to be a Kenyan citizen apatiwe citizenship. Lakini ikiwa hiyo tu ya haraka, haraka they don't get citizenship. If you part ways before the end of three years, there is no citizenship in that case. So tumeangailia hiyo na iko.

We have also provided for dual-citizenship. Wale ambao wanataka kuwa citizens wa nchi kadha, tumesema it is possible you can be a citizen of Kenya and yet another country if that country inakubali kwamba you can have dual-citizenship. Na tumesema because of that, there are a number of Kenyans who had lost their citizenship wakati walichukua citizenship ya nchi zingine. We are saying now that we have brought a Constitution or we are proposing a Constitution that allows dual-citizenship such a people will be allowed if they want to recover their Kenya citizenship which they had lost by the fact of accepting the citizenship of another country. All those are there, they run up to Article 28.

We have even provided for permanent residence, the rules for permanent residence. You can be allowed to reside in Kenya permanently without becoming a citizen. And under Article 28, we are proposing the establishment of a Citizenship Registration Board. Ie ambayo itakuwa inahusika na watu ambao wanataka kuwa Wakenya ama to be registered as Wanakenya. So that is what we have done when it comes to defining the people who constitute the State of Kenya.

Jambo lingine ni kwamba, a State must have a government and in such circumstances, it must be know where authority derives from. It must be know where power in that State comes from. And we are saying in the State we are proposing the Kenyan State, power shall be derived from the people. The source of power itakuwa wananchi wenyewe. Nyinyi ndio mtakuwa the source of power. The rest of the people will only be exercising power as agents of the people but the source of power comes from the people. So we are seeking to declare the sovereignty of the people. If you look at the preamble, we are saying 'We the people of Kenya...' and then we go to the end, '...do adopt, enact... [end of tape – side A]

If you go to Chapter one, ambayo ina-deal na the sovereignty of the people and the supremacy of the Constitution. We are declaring that the people are the original source of power. Nguvu zote zinatoka kwa watu, na hao wengine ni agents tu ambao wamepatiwa kazi na wananchi. So, Article 1, hapa tunasema regarding the sovereignty of the people kwamba all sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution. Wale ambao

wanapatiwa power by the people are expected to exercise that power only in accordance with the Constitution. You will not be allowed to pretend to source power from any other source or to exercise any extra Constitutional power. You must exercise power conferred by the Constitution. Where the Constitution does not confer you, you have no authority to exercise that power.

We are saying at sub-article two that the people shall exercise their sovereign power, either directly or through their democratically elected representatives. So the people delegate this power to others to exercise it for them and when they are delegating, they must do so in a democratic way. *Ndio ionekane ni nani amepatiwa nafasi*. So the original source of power are the people and nothing else.

Now, the Constitution must declare the values by which the people want to live, the values by which they want to be governed, the values which the government must follow, the values the people who are given delegated power must follow to serve the people. So, authority lies in the people and as we go on, you will see *tumejaribu sana* to put the people at the centre of everything we are doing. *Elwa ndali hano ndamubolela*, government has no other business other than to serve the welfare of the people. So the people are put at the centre of everything.

When dealing with the values, the first thing we have done is in the preamble. In the preamble we are saying, when we talk about the people of Kenya, we recognize that we are many of different tribes. We have ethnic differences, we have cultural differences and religious differences. *Watu tofauti, tofauti, makabila tofauti, tofauti na madheheb tofauti, tofauti na cultures tofauti, tofauti*. But we are saying we are aware that we are constituted by different ethnic and cultural groups.

If you look at the preamble we are saying, 'we the people of Kenya, aware of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible, sovereign nation.' So we are starting by recognising ourselves as Kenyans but recognising that we are of different types. There are those who belong to different tribes, cultures and religions. But we are saying even though we are different, we are determined to live together in unity and peace as one sovereign nation. So we must respect each other.

And we are saying, knowing that we have those diversities, we are committed, in the preamble, to nurturing and protecting the well being of the individual, the family and the community within our nation. *Ndamubolela hana* sababu watu walikuja pamoja kuishi in societies was because they wanted to pool resources so that they can be able to take care of welfare of each individual in that particular society. So here Kenyans are saying they are as Kenyans belonging to different ethnic communities, different cultural practices, different religious organisations, they are coming together and they are committed to ensure that the welfare of the people regardless of these differences is taken. And they are saying that welfare must start with addressing the individual, then you move to the family and finally the community.

That every single person must have his/her welfare protected. So one and most important value that we are committing ourselves to as a Kenyan people is to serve the welfare of everybody, every individual in our society. Therefore, when we

construct any institution, the purpose is to have those institutions to serve the welfare ya kila mmoja wetu in society. We are committed also to the value of living in unity and peace even though we are different.

Then we go further in the Constitution and say we recognize the aspirations of all members of our society, whether they are women or men. We recognize that they all aspire to having a government based on the essential values of freedom and democracy, social justice and the rule of law. Tunataka kila mtu awe anapata social justice, anapata freedom, na ako na democracy. We are recognizing those as values and we are saying having recognized all these things, tunasema kama Wakenya, we are exercising our sovereign and inalienable right to determine the form of government we would like to have. The form of governance we would like to have which we think can be able to serve these values we are talking about.

The people must themselves determine, decide the form of government they would like to have. The form of institution, the type of institution that they would like to have in place. That is why I am saying *lwakhwabolele amakhuwa kano abandi bakhanza ukhuruka mbu* Judiciary ooh, don't touch the judiciary yet it is the people who are supposed to determine the kind of institutions they are going to have. So the judiciary have no business stopping the people if the people are the source of power in deciding that these are the kinds of institutions we are going to have. *Ndabolela uwundi ibulafu yilia mbu iwe umwana wenyu, musiani wengu niyetsa munzu wuwo khukhukonya elukulu yino, mwana wenyu mutiti witsile khukhukonya mana umanyinye* that is the visitor's bedroom *tsia wilalisie yiyo* two days later your mother-in-law, *yetsa* you can be able to tell him *mwana wefwe*, you will share the other bedroom with my children let my mother-in-law sleep there. Your brother has no business saying I am not moving out of this bedroom, (*Laughing from the audience*) because the house is yours, isn't it? *Nomucheni butswa shikali kario*. So the people of Kenya *nibo bene inzu* they have decided we will have a judiciary, we will have a legislature of this type and the executive of this type. If after two, three days, the people of Kenya decide we want the judiciary to turn left and look like this, the judiciary have no business to tell them that they cannot change. Isn't it?

Response from the audience: Yes.

Com. Mutakha Kangu: So that is what we are saying. The people are the ones who must determine the form of government they want to have and the form of values they want to have. And when they do so, these other agents must just comply, they have no business saying they cannot change. So that is what the preamble says.

Then we go further into the part that deals with the national values and goals, Chapter 3. we have also set out a number of values there, goals and principles which we say must guide the manner we run our affairs and several of them which are touching on the republican nature of our State. *Mana khubolanga* like for example 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. So the government we set up we are saying we want a government or structure that we can recognize a value of that kind.

Five, we are saying the republic shall ensure open and transparent government and the accountability of State officials and public authority to the people. So we want an accountable government. If you look at Article 14, 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 community. We are recognizing that amongst us there are the weaker members of society who must be enabled to also participate. That is stated there.

If you look at sub-article 14, we are saying the republic shall be committed to social justice and through appropriate policies and measures to providing for all Kenyans the basic need of food, shelter, clean water, sanitation, education, health a clean environment and security so that we live a life of dignity and comfort and can fulfil their potential. So we are saying one of the values is that the institutions we establish must make it as their policy to work towards enabling kila mtu kupata na kuwajali masilahi ya maisha, his/her basic needs. Lazima kila mtu awe anaweza kupata ndio waweze kuishi bila shida.

Article 14, sub-article 15, we are talking about the role of science and technology and development. We say 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. Development tunasema tunataka ienee kila mahali sio haya maneno kama President ni wa kwenu anachukua kila kitu na kupeleka kwake na wengine wanaachwa bure. We are saying, we are committed to a value that requires that development must be spread across the country in an even way so that kila sehemu inapata the fruits of our independence. So that hakuna vile wengine wanakula peke yao and so on. That is one of the values we are emphasizing.

Fifteen we are saying, the Republic shall recognize its responsibilities to future generations of Kenyans by pursuing policies for the sustainable management of the environment. Kwamba we said we are adopting this Constitution for ourselves and our future generations. So we are not going to utilize the environment and the resources in a manner that leaves nothing for the future generations. *Mulie nimumanya abana bali imbeli yiyo betsanga, shikali kario?* You don't just waste and plunder as if this is the end of the world, *nemulekhanga abana* we must guard against that. So those are some of the values.

We have even insisted, if you look at Article 15, we are saying these values we are talking about, they do not place obligations only on the government, even mwananchi yourself as a citizen, you also have some duties to perform if these values are to be secured. So we have put article 16, which defines the duties of the citizen.

One of the duties is to vote. We are saying voting is not only going to be a right, it will also be a duty. You must participate. Wakenya ndio wamezoea *abandi unyolanga butswa ikura yene niyakharula shibatsitsanga ukhukhupa ta, niyakhahwa nibanza okhulilia* Ooh, we have wrong leaders, wrong leaders but they do not participate in choosing the leaders. Power comes from the people, *bulano mwachachile okhubolehwa ngwoyu, ngwoyu ndamumanyisie ngwoyu nemubola* we don't want. *Ne lwa ikura niyule* you will not go to vote to say you don't want, you will sit at home, who will vote against him for you?

(Murmuring from the audience)

Com. Mutakha Kangu: You must go and vo...

Response from the audience: Vote!

Com. Mutakha Kangu: *Nubola* we don't want, *mutsie mukhupe ikuru mwikalile, shishieno shitsie mumbo.*

(Laughing and Clapping from the audience)

Com. Mutakha Kangu: So we are putting those as duties, you must perform them as a citizen. If you want these values, if you want a society that will nurture these values you must come out forcefully and perform your part of the deal. That is how things will move. So we are saying those are the values.

IN these values, I want to take you back to the Republic which I said I will come back to. We are saying Kenya is a sovereign Republic and we need to know when we say a Republic maana yake ni nini? When we say we are as Republic, what does it mean? The current Constitution haisemi.

Under Article 6, sub-article 2, we have tried to define some of the elements of a republic na zingine they run through the entire proposal or draft that we are giving to you. But I will try to explain to you what a Republic means. If you look at sub-article 2 of 6, we are saying, the Republic of Kenya is founded on republican principles of good governance through multi-party democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights and fundamental freedom and the rule of law.

We are saying the republican principle of good governance. So the main important principle is good governance. And we are saying this good governance must be secured through some of these things we are mentioning; separation of powers, democratic elections and so on. That is how we secure good governance. *Nindamubolela lwandali hano mbu* good governance is that governance that ensures that public power is used for the purpose for which it was introduced. That purpose is to serve the welfare of the people.

So the Republican government is founded o the people, it puts the people at the centre. The people must have their welfare passed. And we have said in the preamble that the people are saying we must nurture and protect the well being of every individual. So the welfare of the people is fundamental to any republican governance.

When the American were writing their Constitution, *batsia Philadelphia yilia* they had the convention in Philadelphia over two hundred and fifty years ago, when they wrote their Constitution. They invited about forty-two delegates and only about thirty-nine turned up. Just about three, four fellows are the ones who worked very hard in that convention to create the Constitution. The main people were James Madison, Alexander Hamilton and B. Morris. B. Morris is the one who was detailed to write the Constitution, *nomukhono kukwe shibali nende tsi-typewriter lweneyolo ta.* He wrote *mana* the

American are still keeping, the handwritten copy that was done by B. Morris at Philadelphia.

They drafted the document, they came up with it and people started criticising it the way ours is being criticised now. *Mana Madison nalila nabola bani* the patient is sick, *nywe muliranga mubolanga* this is bad, but you are not making your alternative proposals. We have tried, this is what we have given you, give us your alternative. So they started, Madison and Alexander Hamilton, to write papers which were called the Federalist Papers which they used to persuade the people to see the sense in what they had proposed and urge them to adopt those proposals. They wrote up to eight-five papers known as the Federalist Papers. In Federalist Paper number 39, that James Madison attempted to define a republic and the republican principles. *Ni yamalaabole* in that paper that a republic is that system of government in which all authority derives from the people. All authority comes from the people and that those who exercise authority derive it from the people either directly or indirectly. And they said that authority when it is handed over to a few to exercise it on behalf of the others, those others or those few, must exercise that authority for a limited period of time. A republic would require those who exercise public authority on behalf of others to exercise it for a limited period of time.

Then he went further and said, they exercise it during the pleasure of the people. Not during the pleasure of an individual, but during the pleasure of the entire people. Thirdly, that they exercise that authority during their good behaviour. If they misbehave the people must be able to remove them. Those are the principle that Madison laid down, the Republican principles.

You hold office for a limited period of time. *Ma bandu babushilamo nibabola mbu* they want to be life Presidents and whatever, that is going against republican principles. You are supposed to hold office for a limited period of ti...

Response from the audience: Time.

Com. Mutakha Kangu: Because people know power corrupts and absolute power corrupts absolutely! If you leave someone there for a long time he becomes corrupted and ceases to serve the people. So you are required to exercise power for a limited period of time. And that is the basis of periodic elections. *Tunaenda kura baada ya miaka mitano ikiisha*. Your limited period has expired so you go back and reapply. Go back and seek authority afresh from the people to see whether they will allow you *kuendelea au hapana*. For a limited period of time.

Na ukienda to many places, normally two organs of the State are subjected to periodic elections, the legislature and the executive. They are normally subjected to periodic elections so that you emphasise the principle of a limited period of time. Lakini the judiciary in most places ndio unapata it is not recruited directly through elections but rather indirectly through other mechanisms and in most cases they do not finish their time.

Hapa kwetu ndio unasikia wania, the current Constitution says the judges remain in office until they are seventy-four and that is almost for life. And we are saying that is against the republican principles of a limited period. So in many places, they are

trying to ensure those who are not elected directly by the people, mechanisms must be put in place to limit their terms of office. So that if you are given a five-year term renewable once, ten years a limited period is gone you leave and another person comes. Or if you are there for a longer period, the mechanisms that ensure that you hold office during your good behaviour are made very tight. So that if you misbehave, there are mechanisms to remove you.

We are saying in our country we have problems with this. And we are saying if we want to put in place a republican system, if we are saying we are a republic, we must draft a Constitution that can properly put in place some of these principles of republicanism, to ensure that people do not overstay in office and become a burden on the people and stop serving the people and start serving themselves.

So when you look through these three principles that were stated by James Madison, you find a number of elements that come out. One, those principles entail the concept of democracy. If power derives from the people directly, you are saying the people participate in the recruitment of those who exercise power on their behalf and they must participate through a democratic process. So democracy is an element of a republican system of government. And we must draft a Constitution that will enhance our democratic mechanisms so that we can be able to have free and fair elections and other democratic systems of putting other people in offices.

Two, these three principles by Madison also entail the concept of separation of powers, you share out power. So that one organ does not have all the powers in its hands. You do not take the judicial and executive powers all put in one part, you must separate. Otherwise it will not be a republic but a monarch, because it is the monarch or in monarchical systems where the queen or the king exercises all the power. All the power is derived from the king or queen and he/she claims to be the protector of everything. But this time round we are saying power comes from the people, you must separate them you cannot put them in the same hands. So separation of powers, the concept of checks and balances are all aspects of a republican system of government.

Now, there is the question of transparency and accountability, which is a mechanism of a republican government. Because we are saying, people must hold office for a limited period of time during the pleasure of the people or during their good behaviour. So we are saying you must be accountable. When elections come, it is normally a period for rendering account. When you have elected someone, *kura iklifika*, you bring him back here to render account. *Saa zile wanarudi kuwaomba, omba kura, na nyinyi mnauliza what did you do for us?* You are holding them accountable. You are asking them to render account. You are asking us to take you back, what did you do for us? We realize that when you were there you stole this, you did that, you are not worth doing that. So accountability and transparency, openness must be involved.

When you say, someone holds office during the pleasure of the people, not the pleasure of the individual. And we are aware the current Constitution today says, every public officer in Kenya who holds office he does so during the pleasure of the

President. The President can wake up one day and you are busy discharging your functions, *Ematungu yilia uli mu rali na kharadio khali mumutuku khabolanga* you are fired. We are saying we don't want that. People should not hold office during the pleasure of an individual, they must hold office during the pleasure of the people. They are accountable to the people not to an individual.

So accountability is infused like that. People must be open, governance must be open so that the people can be able to scrutinize it and say we are now displeased, you must go. If people are going to express their pleasure or displeasure in the manner you are doing things, there must be openness. They must be able to see how you are doing things, *khobabole* we are not happy. So transparency in governance is important. Secret governance is not republican. *Bindu bia siri siri nibabisabisa, ndalutsi tsipicha Kakamega yiyo nuwikhale nuhenga khutivi nuhuyi nohulila ifula ikwitsanga, nanohenga tsipicha mushikuri abahusinjia kabolungwa nulola bekhale butswa ombasu kwakhanga* these are lies! How does this happen? What is happening is because someone has gone and picked the photographs *tsia bandu bali bekhale mumubasu mukanda omukhongo natsio tsiabaretsaho bakhukate omukanda kwabeleyo mukhongo*. We don't want a system based on lies. You hold office during your good behaviour.

Now, if we say good behaviour, people must have mechanisms through which they can assess your behaviour and be able to remove you from office. We have provided, we are trying to improve mechanisms of elections to make them more democratic, we are trying to improve the Electoral Commission and I will mention it. So that we are improving the Republican principles, democratic elections. People should be able to choose leaders themselves. Not haya maneno mnaambiwa chagua huyu... You are free to choose the leaders yourselves na sio kuchaguliwa. *Bindu bia mufosungwa bino mukaye!*

(Murmuring from the audience)

Com. Mutakha Kangu: *Lwandali Busia yiyi, nikachachile mushikulu yiyi, nembolelanga abandu ba Busia Bulano nyababa njieyo ikhupwa, ikhupwa ne nitsiokhula mwitala lio mundu naye yesi abukula ilabushi heyili na matepe na nywekha. Eshishieno shitsie mumbo munyanza. Nenywe Abaluyia mwaholelele neshikwame hawenyu ne shire owenyu. Nerulayo nesinyikhe sana nembola Abaluyia bano bakhali bandu bafwana barie baholelele butswa, bandu balonda nyababa nabo baholelele. Lelo luno ndalutsi babushile babola tawe hanu*

(Laughing and clapping from the audience)

Com. Mutakha Kangu: So you are supposed to choose leaders yourself. *Hapana omundu khumurera tsa mundu mamurekhwo, ndabolelolenje abanda abasiani bali mumo bakwa aserela huno mukhana amubolela iwe lelo niwe wanindeshie arulayo atsia khu huno lelo ni yibe wanitsie khulera nube mukhasi wanje mana bole bataru, bane, baranu, nyanga lundi baliakanila musimba. No musiani khwakale bulano lwa banzenya bosi balakhupana. Bamalanga bola*

musimba nibabola omusiani wuno yakhubayilekhwa khutsilane khumunywekhe. (Laughing from the audience). Nolali na bana benyu nebanyole nokhupirwe musimba nufwile. Ne lelo nimuhenga nako kekholekhanga March, mwamanyilekho Raila anyala khwikhala nende Saitoti babole khutwanje mundu? Bulano batirane nibabola omusatsa huno yakhubayilekhwo... That is the position. Mumanyenje murio. Ne ndabolile ne nuli omusiani we imera yiyo umalanga uchenda nokala mbu khengatinjia nekhane ohundi niyetsese musimba muno lwahila orusahani na chikoni na amonyana numushiele bulayi inyanga yindi niyetsese yetsakho na khakilo khalala nayilila omushiere no mushiere abola huno niye omukhana wolele hango hanje yaha. Lwa nutushe nuwitsa nohundi no mushiere ahengakhu butsa nakhukania ta mwana wanje huno isie manyile arulanga mwitala lie liloko, shiatekhakho hanje hantu tawe (laughing from the audience). Ne nyina omusiani yamalile khukana mbu huno no womwitala lie liloko kata banyakhusenje omusiani nibetsa nibalira, nyina omusiani abetsanga na kanile, ne shimwahulile nibakanile Eledoret? Kho nyina niyakanile nenywe banyakhusenje mulabola shi?(Laughing and clapping from the audience). So, elections under democratic systems, people choose themselves.

We have proposed here the power of recall. If people hold office during the pleasure of the people and during good behaviour, the people must have a mechanism to remove them. Sasa tumesema wabunge wanaweza kutolewa na wananchi. If umewekwa a limited period of five years na tunafika two years we find you are not behaving well, the people must be able to express their displeasure and remove you from office.

(Clapping from the audience).

So, we are providing for that. We are saying this is a republican principle, people must have a mechanism of removing people from office when they are displeased. There are several other mechanisms like participatory governance, the people must directly give power if we are looking for participatory governance. We want to create mechanisms through which people can participate in the running of their own affairs. Because we are saying the essence of a republican government is that people must run their own affairs. They are the ones who have power and they must participate in the running of their own affairs.

So we are limiting periods, we are creating mechanisms of ensuring removal, of ensuring people of good behaviour and we have even proposed a leadership code of conduct. So that if we are saying we want to run things in a certain manner, and we want certain values to be followed, leaders must be people who meet certain standards. So that if they get into office and we see their behaviour, or even before they get to office we know their behaviour is not consistent with the leadership standards we are looking for then they do not qualify to get into that office.

We are saying the principle of holding office during good behaviour, should start operating even before you get into office. We must be able to assess your behaviour even before you get into office. And if we know your behaviour is bad, you should not even get there. So we are proposing mechanisms of that kind in various places and if you look through the document, we are putting the people at the centre of everything we are saying.

First, government is introduced for the purpose of serving the welfare of the people. Secondly, the power derives from the people. So all the institutions we are structuring, we are trying to make sure that they are institutions that recognize the centrality of the people in everything that you do. So if you look at for instance, the Chapter on parliament that is starting at Article 101. The Chapter on parliament, Article 102, says that parliament represents the cultural diversity of the people, symbolises the unity of the nation and determines the policy of the republic. That is the parliament we are proposing that is based on or it begins on the people.

Sub-article 2, we are saying 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 by:

- (a) Enacting legislation and consulting on the promulgation of regulation.
- (b) Providing a national forum for deliberation on and resolution of issues of concern to the people.
- (c) Approving the expenditures of the State and appropriating funds as required to meet those expenditures.
- (d) Considering and passing amendments and so on.

So people are put at the centre, they are supposed to serve the people and not to serve themselves. And if you look at the Chapter on the executive, which starts, with Article 148, we have also tried to give or to put the people at the centre of the executive we are establishing. Article 148, we are saying that the powers of the executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya.

So, when the executive is making policies, even when it is entering into relationships at the international level with foreign countries, it is the benefit of the Kenyan people that must be put forward first, before you think about anybody else. So we don't want the World Bank and IMF to come here and start pushing us around and we enter into arrangements without pushing the welfare of the Kenyan people forward and other things following.

Sub-article 2, we are saying the 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 the power to rule the people. So they are supposed to serve the people and not to rule the people. That shall be exercised in a manner consistent with the purpose and object of this Constitution. So those values and so on, which we have stated we are saying when you exercise power, you must do so in accordance with those values so that we serve the people rather than rule the people. So the people are at the centre.

If you look again even at the judiciary, when reconstructing the judiciary, we are also putting the people at the centre of

everything that the judiciary is supposed to do. Article 184, we are saying that judicial power is derived from the people and shall be exercised by the court 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 even the judiciary we are proposing, it must know it derives power from the people, it must exercise that power in the name of the people and in conformity with the values and norms that the people have set for themselves as their aspirations. So the people are put at the centre and if you look at that, you can see that we are proposing a Constitution that is based on a republican ideology. *Mundu nakhureba* what is the ideology of Kenya on the basis of this Constitution? *Numubolela* our ideology is a republican ideology.

We do things on the basis of the people. The people are supposed to be at the centre, their welfare is supposed to be served, we recognize that authority comes from them and nobody is allowed to misuse power because power comes from the people. We have put in place mechanisms to ensure that power is not abused and so on. So those are the values these Constitution is trying to put in place so that the system can be run in a proper manner. And I have said those values bind not only the organs of State but even you as a citizen. You are bound by them and you must strive to work towards getting them implemented so that we can be able to get our system moving the way we want.

Now, we go to the other element of the work or the function of the Constitution. I said it is the roadmap for power. It is a power roadmap; it shows how power is to be shared, how it should be used and so on. It allocates it, it defines it in different ways. There is judicial power that is exercised by a particular organ; there is legislative power that is exercised by this other organ and so on. The exercise of public power, the drawing of boundaries of public power, how are we trying to divide this power?

In doing that, we have attempted in this proposal to construct a number of institutions. To construct and reconstruct a number of institutions through which power can be exercised, to which power can be delegated and be exercised on behalf of the people and for the benefit of the people. The institutions we are proposing are of two different types and I am going to address them at two different levels.

The first level deals with those types. There are those institutions, which are allocated certain defined aspects of the public power to exercise that power on behalf of the people. And those are the orthodox, three organs of State which exercise the legislative power, another one the executive power and another one the judicial power. Those are one set of institutions we are constructing and reconstructing.

Then there is another set of institutions which do not exercise those defined elements of public power but which instead supervise these other organs in their exercise of power. *Aba-prefect bokhuhenga abana shibakhupanga obuyoka mu class*

tawe, ta? There are other institutions and their work is to supervise these other ones. Are they acting in accordance with the Constitution or not? And how do we go about to ensure that they perform the way the Constitution wants? Supervisory institutions and we have proposed a number of them. A number of commissions that are supposed to supervise the exercise of power by these other institutions. That is one level.

The second level, we are saying the institutions we are proposing are divided again into two. There are those which already exist under the current Constitution but which we are proposing for them to function properly, they must be re-constructed. We are not constructing them anew, or at first instance, we are simply re-constructing institutions that already exist so that we can capture them in a manner that can meet the welfare of the people.

Then we have another set of institutions which do not exist under the current Constitution and which we are seeking to introduce and therefore we are constructing them anew. Now, we look at those institutions and start with the orthodox three organs of State. The first institution we have sought to reconstruct is the institution of the legislature the one that deals with the representation of the people. We are reconstructing it. *Wahulile Judiciary niyiliranga* and it made it look like it is only the judiciary we sought to reconstruct. That is not true. We have tried to reconstruct all these other institutions. The surgeon's knife has cut all corners of this country; there is no institution that is going to escape that knife. The others are not complaining, it is the judiciary complaining and we understand but we are not going to remain. We will push on until we get this moving.

So the legislature, you all know *ebisa bino* we have a uni-cameral system of parliament, we have one house of parliament. Looking at the republican principles we have been talking about, we argued and said, when you put power in the hands of one institution, it becomes easy to get power concentrated and therefore to have it abused. And we said we need mechanisms of checks and balances. So we must disperse power. We are not going to put legislative power in the hands of one institution, we should create other institutions so that even legislative power is exercised by different institutions that can act as checks and balances on each other.

So for that reason we have proposed a bi-cameral system. We have proposed the introduction of an upper house in addition to the parliament we have which will become the lower house so that we have two houses, the way we had at independence, *khwali nende Senate nende* the house of representatives. Now we are proposing an upper house but this time we are not calling it the senate, we are calling it the National Council.

We are saying we shall have a National Assembly and a National Council. We are saying the National Assembly shall have three hundred Members of Parliament. Two hundred and ten shall come from the constituencies we have today and then another ninety who shall come in by way of proportional representation elected on the basis of party needs. I will give you details when I come to the chapter on the representation of the people.

So we are saying, in addition to this house we have a National Council. The National Council, we are proposing it should have one hundred members. These one hundred members should be constituted by seventy members representing districts. Every district to elect one member to go to the National Council, that gives us sixty-nine districts. Then we add there one person representing Nairobi as a district to make seventy. Then we are left with thirty people.

We are saying these thirty people must be women. And we are saying since they are thirty and we have seventy districts, we cannot divide them on the basis of districts. So we are proposing that the thirty women should be elected on the basis of provinces. Each province to send four women and then Nairobi as a province to produce two, that will make a total of thirty. Seven provinces, four per province you get twenty-eight then you remain with two who are from Nairobi. So as Western Province, *wakha-elect again* four women to represent the province in the National Council in addition to those representing the district in the province. Then they go to the National Council to make decisions at that level. They will be exercising legislative power jointly with the National Assembly.

When a Bill begins in this house, when it passes here it must also be taken into the other house and must pass. So if one house refuses that is the end of the road. We want some balances so that legislation, we don't have a situation where, *witsundushilakhwo butswa* Parliament has passed this and you have nowhere to go and complain. What we are saying is that today if the National Assembly passes this, *nimusundushila munyala khwilukha khutsia khwikalila* when it is still in the National Council. You go and tell the National Council that Bill we are passing we don't like it. The National Council may listen to you and stop it. That is what we are proposing at the level of the National Assembly. We have reconstructed it in that manner.

We have also sought to reconstruct the executive from what we have today. The executive we have today as all of you know is comprised of the President, the Vice President, the Ministers, and the Assistant Ministers. We are saying we want a different type of executive, *abandu balira* there is too much power in the hands of the President, *lazima tupunguze*. So we said *hatuwezi kupunguza* by way of *kukata tu numusukuna yiyo, musukuna yiyo* we will remain with a banana stem which cannot function, which is not effective. We want an effective government but we are saying we don't want it in the hands of one person.

So we said let us create other centres of power to which we will distribute these powers so that they can act as checks and balances on each other while at the same time we have an effective government that can make things move. So we are proposing that we shall have an executive comprising the President, the Vice President, the Prime Minister, two deputy Prime Ministers and Ministers. Ministers we are saying there will be fifteen ministers. Fifteen ministries with fifteen ministers. We do not want the situation we have, *mubolelwa* we have fifteen ministries but thirty ministers. We are saying fifteen ministries, fifteen ministers and fifteen deputy ministers, no more.

We are saying, the President will share power with the Prime Minister. We have already been accused of creating a ceremonial President. The truth of the matter is that *numusoma muno* the President we are proposing is not ceremonial, he is a very powerful President but he is sharing power with the Prime Minister. They must act as checks and balances on each other. We are trying to go to the parliamentary system of government without creating a ceremonial President. We are trying to move away from the Presidential system of government that we have without creating a ceremonial President.

So we have a President with reasonable amount of powers and a Prime Minister with reasonable amount of powers and they check on each other. The President has his own powers, he is elected directly by the people. He is the protector of the Constitution and constitutionalism and for that reason, All those organs I talked about, the institutions that are supposed to supervise these others are supposed to be under the President. They are appointed by the President with approval of parliament, they make annual reports to the President and parliament and if they report as if a commission's report to the President and the Prime Minister and his government are not doing a, b, c, d... the President will be in a position to tell the Prime Minister I want this done. This commission has reported this is not being done. So they act as checks on each other, they have powers.

The President appoints the Prime Minister from the majority party in parliament but parliament must approve the appointment. So if we go to elections, *niyetsa nabola oh Shikanda wuno niye* Prime Minister, we go to parliament and parliament refuses to approve, he will be required to give someone else. If we finish thirty days from the first day you decided to appoint before we get a Prime Minister and a cabinet, that will then be like a vote of no confidence. He himself and the entire parliament *bakalushe mu kura* because they have been unable to produce a government.

Once they are in office, once he has appointed the Prime Minister and he has been approved, the Prime Minister *naye* is supposed to consult with the President when appointing ministers. And these ministers and deputy ministers must be approved by parliament.

We are proposing that those ministers must not be Members of Parliament. They must not! I know there are some people even in the opposition who are very unhappy with that. *Babolere chusi mbu* the ambition of every Member of Parliament, whether in the opposition or wherever, *ibetsanga mbu* when our party wins I should become a minister. And we are saying we don't want that. You either go to parliament or you become a minister.

So you have to make your choice, when people are going to elections, if you have done your lobbying properly and you feel the President will pick your name and it will be approved in parliament then you can forgo the parliamentary seat. But if you are not sure, you would rather run for your seat and know you will not be a minister. Because ministers must be appointed from amongst professionals, outside people who have knowledge in the areas concerned, who can run the affairs.

The reasons we are proposing that is that, we are aware we have talked about republican principles and we said one of the republican principles is separation of powers to enhance checks and balances. And we are aware, *ebisa bino* you end up having a cabinet that takes half of the Members of Parliament. So that Mps are not in a position to check the executive. They cannot counter the executive because when the motion comes to the house, to which you are attaching to the government half of parliament is part of the government so they don't vote for the motion instead they vote against it.

We are saying if the legislature is going to be a proper check on the executive, they must be separate. So ministers must come from outside parliament. We are also saying these ministers, *nibahulwe* from amongst Members of Parliament, they normally convert those ministries into the properties of their own constituencies. This is because *yenyanga nakushe khulira mbu mumwahule amanyile nalena bindu biosi narera iwenyu ino tawe namumubolele lwa wabele minister wakhukholelekhushi? Mwesi mumala mubola murio numusasia amakhuwa ta?*. Now we are saying if you are an MP, you will not be blamed because you are a minister, you will not be a minister.

Secondly, we are saying when they become ministers, some of them become too busy with ministerial matters that they forget their people at the constituency level. *Abandi we know bamala kata bekatia butswa nibalenyele* to look after you or deal with your problems the excuse will be you know I am busy, I am a minister. When in fact he has just been dosing in his office. We are saying, those excuses must be done away with, they just must serve them.

We are also saying when some become ministers, *nibakwa bulano* wherever they come from if it is in the district or a province, they start boosting to the other MPs. They start behaving as if he is the MP for all the constituencies there. And other MPs now start going to them begging as if they are not also elected by the people. We are saying we don't want this, let the MPs be on an equal level so that they handle their matters as MPs and so on.

So ministers must come from outside parliament and we are saying once you are appointed a minister, the Prime Minister proposes your name and parliament approves, you become an ex-officio member of parliament. Whether you are a minister or a deputy minister.

Therefore, you can attend parliament to answer to questions from Members of Parliament. To listen to the debates so that you can be able to understand and follow the logic behind the legislation that is being passed and when it comes to your office as a minister to implement, you will know the basis of the policy. But when it comes to legislating, passing legislation, voting on Bills in parliament, you will not be allowed to vote. It is MPs who vote, as a minister/deputy minister you are only ex-officio.

So that parliament can legislate alone and pass over to the executive to implement without interference. We don't want a situation of the 'Donde Bill', it has been passed lakini *bulano* the parliament. At first the government tried to refuse the passage of the Bill in the house, *nibakhanyalilwe bakhikalilwe ibwene yilia, lwabakhaywa ibwene yilia, bulano bakata tsikona tsindi nibatsila kando ...* We don't want that kind of legislation, so we are trying to make sure that there is separation put in place and if parliament passes legislation and someone refuses to implement parliament should be in a position to sermon that

person to find out why he does not want to implement the legislation that has been passed. So we are reconstructing the executive in that manner.

We have also tried to reconstruct the judiciary which we are saying must also be changed. *Ebisa bino* the highest court is the Court of Appeal which is the highest in the land. However, now we are proposing another court known as the Supreme Court which will be the highest court in the land, the final court of appeal. This court will also have original jurisdiction. The current Court of Appeal has only the appellate jurisdiction. Now we are proposing a Supreme Court that will have both original and appellate jurisdiction. You can appeal to it in certain matters but there are certain matters which can be taken there for the first time without going to any other court.

For example, we are saying in the legislative process, parliament *niyakhabisia makuwa* before the Bill becomes a law. And we are saying when these things go to the President, and we are saying the President is the protector of the Constitution, the President can look at what they have proposed and be able to say I doubt that this things is consistent with the Constitution. And if he is in doubt, he can pass it over to the Supreme Court and ask them for an advisory opinion. Do you think what parliament has passed is consistent or in conflict with the Constitution and the values under the Constitution? The Supreme Court may advise, if it advises the President that the Bill is inconsistent with the Constitution, the President can refuse to assent to it and parliament will have to re-look at the Bill afresh.

We are also saying when presidential elections are held and you may want to challenge the election of a President, you file your case directly to the Supreme Court because *khwenyanga* this process of litigation must end quickly so that the President can start performing his functions as President without being distracted *oh mara ali mukorti, ali mukorti paka saa ngapi* five years may end before the cases are finalised. And the country will have been suffering without someone concentrating on the State affairs that will require the President to perform. So those are some of the things we are saying.

So we are saying from the Supreme Court, we follow by the Court of Appeal and we go to the High Court and then the Magistrates Court. We have also sought to reconstruct the Kadhis Court. The Kadhis Court we are saying they will have to be at the district and the provincial level and then we shall have a Kadhis Court of Appeal comprised of the Chief Kadhi and two senior Kadhis to listen to appeals from the lower Kadhis courts. And if you want to appeal from the decision of the Kadhis Court of Appeal, then you go to the Supreme Court on matters of law and the Constitution. Those are some of the proposals. We have even sought to restructure the Judicial Service Commission, I will come to it when we are dealing with the other institutions and I will tackle it again when we are talking about transitional arrangement.

So those three institutions have all been reconstructed. *Khwatetelenjekhwa shilaka nuhinia yaha nura yaha*, skini crafting, *nuhinia yaha nura yaha* nama hiyo and all of them have been reconstructed but it is only the judiciary which is complaining and we will ignore them as we have done and just go on.

When it comes to the other institutions that supervise these ones, there are those we have reconstructed. The first one is the Electoral Commission. We have sought to reconstruct it so that we can make it truly independent. First, we are reducing the Commissioners from twenty-two to eleven or so. We are saying they must be appointed through a certain process that will ensure independence with approval by parliament. We are also saying they must operate on the basis of the Constitution, they are not under the control of anybody except the Constitution.

We are also saying they will hold office for a term of five years renewable one and there after they vacate office. We are also saying, they will be given financial independence. They have to be given a vote direct from parliament and the consolidated fund so that in their operation they do not have to keep begging a government department to get money. That will make them independent and that is being said about all the other commissions that we are proposing. Lazima ziwe independent, they hold office for five years, renewable once and so on. Qualifications are set out, their duties are set out so that they know how to perform them.

We are saying the Commission that is reviewing the Constitution to which I belong is an example that Kenyans must look at when they want to know what independent institutions can do. The manner in which we were appointed on the basis of this law was such that nobody had control over us. The President played a very minimal role in our appointment. This law said we had to apply, you are interviewed, those who qualified, the Parliamentary Select Committee appoints and decides fulani, fulani and they take the names to the President who simply nominally appoints. He has no say in deciding who comes and who doesn't come.

This law also says, once we are appointed, to be removed from office, you can only be removed by your fellow Commissioners. Parliament can't remove me, Moi cannot remove me, it is only my fellow Commissioners and who must prove certain grounds before they can remove me from office. And you people experienced, you saw when we were trying to remove Owiro from office, the Secretary. It was a very difficult process. This law also says when there is a vacancy, filling it will again follow a certain process, inasema, it is the Commission that will advertise the vacancy, interview people and if there is one vacancy, the Commission should nominate three people, submit to the Parliamentary Select Committee which then looks at them and if it wants to interview them further it does that, it drops one person, remains with two people then takes to the President who then picks one of the two. They may be people he doesn't like but he has no choice but to pick one of the two.

This process has actually been used twice. We have removed a Commissioner once and we have filled vacancies twice. We replaced the Secretary and we replaced Ombaka who died and this process was followed, the President has had no choice, it is us who decide. This process has assisted us to maintain some level of independence in performing our functions. And I want to tell you, *musakhulu niyakhabele butswa mbu anyala khudisolva* this commission *nohomba mbu anyala khuhinia* Commission, *Ghai aba yahinwa khale* Commission *iba yali dissolved khale, lakini ahenganga nanyola isheria yakaya* .

So we can afford to go on in spite of his grumbling.

We go on because the people want us to go on. We are answerable to the people. That is why when we produced this report in Mombasa, we never took it to him *khwatsia khumureba mbu mzee uparanga urienu hano* we never took it to parliament first, *khwabareba muparanga murienu hanu* we just called the Press and said we are reporting to the people. It is only after we had released everything to the public that we had a meeting with the Parliamentary Select Committee and told them these are your copies you can look at them. *Mwahulira kata omusakhulu yali nabolere nayetse khunahana maoni abandi bakhukatia khandi nabola oh*, I am not going there after all, *bakhamala* two years they have not been consulting me. And I am telling you we were so happy, we felt clean because for a long time most of you *mwali mwabilifa butswa* hawa watu lazima they are taking instructions. So when he woke up *nabola oh* they have not been consulting me, *khwatsia tsa nikhusikama nikhubola oh Nyasaye* he has cleansed us. Bulano people will know after all we have not been consulting him. And that is how we have operated.

This Act says we have a fund, we get our money direct from the consolidated fund, parliament votes for us during the budget, then our Secretary follows, gets it and puts it in our fund and we use it. *Nikhwakhabele* we were getting money from a ministry or some other Office of President whatever, *bakhaswichile butswa off the taps nikhumubolela* we have no money to operate. But now we are going on.

I am telling you this to emphasise the fact that there is a lot of value in having independent institutions. If you need an example, look at this Commission that is when you will know if we create independent institutions, we shall be able to change this country. But if we continue with institutions that are dependent on an individual, people who do not hold office during the pleasure of the people but they hold office during the pleasure of an individual, we cannot change this country.

So the Electoral Commission and the other Commissions we are proposing, we are saying they must be independent. They get their money, they spend it in recruiting their staff, they have say, even if they get some from the Public Service Commission, they must choose whom they want to work in that department so that they are not given people who are going to undermine them or cause them problems by the government. In that way, they will be independent.

At the end of the financial year, each Commission will be required to present its statements of account and reports to the Auditor General and eventually to parliament and then an annual report on their activities to the President and to parliament. This should be able to get us moving.

The Electoral Commission, in the transitional arrangement, we are saying the Electoral Commission we have today is the one that will conduct elections if we go to elections with this new Constitution. After that they will have ninety days within which to wind up and hand over to the reconstituted Electoral Commission. We are saying the Electoral Commission we are

establishing, will have more functions than what it has had before. It is the one that will be registering political parties, running the political parties fund from which political parties will get funding and so on. It will have power to de-register political parties if that party fails to comply with certain requirements under the Constitution. So that is the reconstructed Electoral Commission.

We have also sought to reconstruct the Judicial Service Commission so that we get a Commission that can be able to serve the people properly. If you look at Article 204, it is dealing with the reconstituted Judicial service Commission. We are saying that Commission should also be independent. It should have a substantive chairperson who will hold office for a term of five years renewable once. We are saying, this person should be a person of high integrity, a person qualified to be appointed a judge to the Supreme Court. The Supreme Court I told you we are establishing a court of seven judges, one of them will be the Chief Justice people of high integrity.

This Commission will also have a Muslim woman appointed by Muslim organizations to represent the interests of Muslim women. It will have the Attorney General as an ex-officio member. It will have a judge of the Supreme Court, elected by the judges of the Supreme Court themselves. A judge of the Court of Appeal elected by the judges of the Court of Appeal themselves. A judge of the High Court elected by the judges of the High Court themselves. Two magistrates elected by the magistrates in Kenya. Two law teachers from the two law faculties in our country, Nairobi and Moi Universities. The Chairman of the Public service Commission, a representative of the Council for Legal Education, two lawyers appointed by the Law Society of Kenya, and three lay persons appointed by the civil society in the country.

These are the ones who will constitute the Judicial Service Commission and they have the important function of supervising the exercise of judicial power. And this supervision begins at the level of appointing judicial officers because it is this Judicial Service Commission that will be recommending people of good behaviour and high integrity to be appointed judges of the Supreme Court, of the High Court, of the Court of Appeal and even magistrates and disciplining them. So it is an important institution that is supposed to supervise the exercise of judicial power in our country by ensuring proper appointment, proper remuneration and welfare of the members of the judiciary and so on. So that is the Judicial Service Commission. When we come to transitional arrangement, I will inform you how this Commission will for a start be established or constituted on an interim basis before we move on.

We are also proposing the reconstitution of the Public Service Commission and we have provided for a number of principles on which the Public Service is supposed to be based. If you look at Article 258, it deals with the principles that are supposed to guide the Public service in Kenya. So we are reconstituting the Public Service Commission to deal with matters of Public service and so on. And it will also be an independent Commission, it must be fair in recruitment, it should not just recruit people from one place or people who do not merit and so on. That is another Commission we are seeking to reconstitute. We have also decided to retain the Teachers Service Commission so that it can serve the welfare of the teachers.

If you go to Article 278, we are dealing with the institutions we are trying to create afresh, those that have not existed. We are dealing with them there and we have general principles under 278, 279 and 280. And a number of commissions are established which are supposed to assist in the supervision of these other bodies in exercising their functions.

The first commission we are proposing is a Commission on Human Rights and Administrative Justice. This one we are saying is supposed to be a broad based Commission that covers a large area including areas that would have required independent commissions of their own but we thought we do not want to have too many commissions. For instance, under this we shall have a division on Human Rights, a people's protector who is supposed to be the equivalent of the Ombudsman, we shall have a gender division dealing with matters of gender, we shall have a children's division, a basic needs division and a division dealing with disabilities. That is the broad based commission on Human Rights and Administrative Justice and the functions are stated there to supervise how matters of human rights and administration are done.

Then there is another very important commission we are proposing at Article 289, the Ethics and Integrity Commission. This Commission, I told you earlier, we are proposing a leadership code of conduct and if you look at our proposed Bill, if you look at Article 276, we have a chapter that deals with leadership and integrity. That chapter mentions which people fall in the category of leaders captured by this Article, their responsibilities and it refers us to the leadership code of conduct, the behaviour expected of a leader, the standards... they are all there.

We are saying the Ethics and Integrity Commission will be the custodian of the leadership code of conduct and ensure that that leadership code of conduct is being followed. The people who fall under the leaders we have defined here will be required to make certain declarations to the Ethics and Integrity Commission. One of the declarations required is the declaration about your wealth, how you acquired it and your liabilities. Before you assume office or even after you have assumed office, you will be required to declare your wealth and the sources thereof and your liabilities.

The Ethics and Integrity Commission has power to investigate. If it suspects that you have not made truthful declarations and actually proves this, it shall report that you are not of the integrity that should be allowed to hold that high office you are being given. I said earlier, people must hold office during the pleasure of the people and during their good behaviour. So we are putting in place mechanisms of ensuring good behaviour from leaders and ensuring the pleasure of the people.

So the Ethics and Integrity Commission is supposed to assist the people in expressing their displeasure in terms of the leaders and in identifying those who are of bad behaviour that should not be allowed to hold office. So the Ethics and Integrity Commission deals with that. It will also deal with matters of corruption; people who are corrupt will be dealt with here.

If you look at the leadership code of conduct, we are saying a leader of a certain office is not allowed to receive gifts from people. And if you receive a gift because of your office, that gift belongs to the institution you are heading and you must hand it

over immediately. We are hoping that will help us to fight corruption. Kwa sababu humu ndani, ndani tunajua *munyakhana muno oh, lelo omwami niyetse nikhukhanyola akhabusi kha nukhumuhesie* even when you don't have, it is like you are being forced. We are saying now, leaders who hold certain offices under the leadership code of conduct are not allowed to receive gifts in the course of their employment. That is what we are proposing.

We are also proposing the establishment of a Salaries and Remuneration Commission. Mwalira nimubola ababunge bemetanga butswa emishara, bemetanga emishara[*end of side A*]. The President, the Prime Minister, the ministers the MPs, everybody, all other public servants, Commissioners in this Commission, their salaries will be determined by the Salaries and Remuneration Commission. This one will be an *ad hoc* or periodic Commission, it will not be permanent. It can be appointed to review salaries and harmonise them then it is disbanded, then after say five or ten years another one is then appointed to review again. So that there is a periodic review of salaries and pensions and harmonising and trying to put them against the standards of living, the changing costs of living so that they are balanced. We are proposing the Salaries and Remuneration Commission for that.

Then we are proposing another very important Commission we call the Constitution Commission. This is a Commission that I myself started talking about from the day I was appointed to the Commission. *Nimboolanga* the independence Constitution was messed up because there was nobody, nobody with the responsibility of following up to hakikisha that what is in the Constitution is being done, is being followed or is being put in place. *Na kata lwababola Majimbo* the central government was supposed to release money to the Majimbos, *ne batsia nibekhala khandi bachanjia nibabola* no we don't give them money and then they dismantled everything.

We are saying this time round we want a Commission, a Constitution implementation Commission that will have the responsibility from day one to start following up the implementation of this Constitution. Kuangalia what has not been put in place that the Constitution says must be put in place. To advice the executive, the legislature, the judiciary, to make sure all these things that are proposed here are put in place.

If you look through the sixth schedule (page 45) you will see there that we are trying to identify some of the articles of this Constitution which will require legislation, which will require Acts of parliament to give effect to them. So we are saying parliament, once this Constitution comes to place will have to give priority to enacting laws touching on some of these sections so that some of these things we are proposing can start moving. And we are saying the Constitutional Commission may be the Commission that will look at some of these things, study the proposal through our report and be able to even draft some Bills and hand over to parliament and say in this area we need an Act of this kind or that kind. So the Constitution Commission is being proposed.

Then we have also tried to restructure and reconstruct a number of constitutional offices that have been existing. For example the office of the Attorney General. We are proposing it should be reconstructed to create another office to separate it from the

office of the Director of Public Prosecutions. So we are creating a new office, a new constitutional office of Director of Public Prosecutions, separate from the Attorney General that is not answerable to the Attorney General but completely independent to deal with matters of prosecution and leave the Attorney General with other matters.

We are also reconstructing the office of the Controller and Auditor General by dividing it into two. Currently we have a Controller and Auditor General, but that Controller's Auditor General only audits expenditures and sometimes belatedly after the money has been stolen, after the horse has bolted and we can do nothing about it. They hardly control expenditure before money is lost. They deal with expenditure long after and we are saying we need a body that can be able to follow up when money is appropriated by parliament to certain departments, there must be some quick periodic follow-up so that when you see that money is being misused you can stop before they exhaust all the money. So we are separating the two offices, we are creating an office of a controller of the budget and a separate office of the Auditor General.

We are also creating the office of Director of Correctional Services. We are saying the prisons should now be renamed as correctional services so that they will have a director and so on. The Central Bank will be headed by a governor, which will be a constitutional office.

Going back to the representation of the people and the mechanisms of recruitment of the representatives of the people; elections. If you look at Article 76, the representation of the people, we are trying to deal with three things. One, the system of elections, two, the process of elections and three, the institutions that manage elections. We have already dealt with the institutions, the Electoral Commission which manages and administers elections to ensure that they are done in a democratic way. We now look at the system of elections.

We looked at three different systems of elections that are used across the world. One, is that they call the first past the poll system of elections which is based on simple majority and a single member constituency. So you go to a constituency like Matungu, and you elect one person. The person who gets the highest votes, even if he is ahead by one vote becomes the winner. People complained that this system ends up giving us minority MPs, those who do not represent the majority of the constituency.

For example here in Matungu if you had five candidates, one may get five thousand votes, the one following him has four thousand, five hundred votes, the other one has four thousand, four hundred votes, the other one has four thousand, and the last one has four thousand, one hundred votes. Then you find that if you add the votes of the candidates who lost are more than those of the one who won. So, effectively, the winner is representing the minority in the constituency and people are crying about that. People are also crying about some areas that have higher population while others have lesser population and so on. And they are saying this system is not very good. The system of demarcating constituencies, people gerrymandering around with it and they end up creating constituencies where they are not supposed to be and people are saying this is not good. That is the system we have.

The second system is the one they call proportional representation. That one you do not vote for an individual in Matungu, you vote for a party. So when you go for elections, parties present this. If there are two hundred and ten constituencies, a party presents two hundred and ten names. They are saying if we win one hundred per cent of the votes, we take all the seats and these are the people who will be the MPs. If we win fifty per cent, then the first people on the list up to fifty per cent will become the MPs. So you go to vote, not for an individual but for the party. This system has its advantages and disadvantages.

The advantage is that this system can help bring about representation of marginalized groups. This is because women for instance cannot fight with men in the constituencies but the parties can be forced to put their names on the list and they may be able to win under the banner of the party, without them themselves having to go and run up and down out there campaigning. The party will be campaigning for them. Other marginalized groups, the disabled and so on, can be put on the list and get to parliament.

So that system has those advantages of giving an opportunity of representation to all the people. Where there are minorities, they can get represented. When I was in Kajiado, the Matabato Maasais really complained. They say as a community of Matabato Maasai we have been divided into three different constituencies. Some are in Kajiado South, others are in North and so on. And these are things you suffer here, *ngorwa hano babolanga Abashisa bano na bandu shina? Abakolwe, abandi batetwa bahilwa yiyi na bandi batetwa bahilwa yiyi, nimunyola bulano* where they are. Where the Masabatos are in each constituency they cannot form a sufficient majority to elect anyone of their own. They were telling us, give us our own constituency for the Matabatos so that we can elect our own.

If we had proportional representation, even if these Matabatos are in different constituencies, they can be able to agree as Matabatos and say, in terms of the party let us all vote for a particular party because it is the one which has put some Matabatos on their list, and they can be able to get representation. So those are some of the advantages.

However, there are also some disadvantages in that, there is no link between the people and a specific person they call their MP. This is because you will not go to elect someone for Matungu, you will go to choose a party and it might turn out nobody from that list comes from Matungu. So you will not have a specific person you will call your MP. So there is that disconnection. You also find that that give the political parties a lot of power and they become dictatorial. If you don't behave well they cannot put your name on the list. So, party leaders become very dictatorial, very powerful. So those are some of the disadvantages of that system.

Secondly, if it is not well structured, you can find a parliament that has all the MPs from Western Province. This is because if we put a party and we win one hundred per cent votes and the list had all Luhyias, then we will have a parliament that has only Luhyias. All the other tribes will not be represented. So there is that danger.

The third system of elections, one which is called mix-member proportional representation is a system that borrows from the other two. It picks from the first and the second and mixes, so that you have elements of both. It seeks to maximise the advantages involved. So that you retain the constituencies, you can elect someone you call your MP in Matungu and at the same time you have some seats that are elected on the basis of proportional representation. So that you go to the elections, you vote for your MP in Matungu and you also cast another vote for the party you want.

And this helps because, *tsikura tsiakhola* sometimes *omushiere wundi anyala khutsiayo na bandu babola omukhaye wabene wuno nu mundu mulayi khwakhamwahule* lakini, the party *yalimo*, we don't want. Then you fail *mama lolakho*. Now we are saying you will have an opportunity to say, she may be in a wrong party but we want her, we will elect her as our MP but when it comes to the party, we will vote for the other party because it is the one we like. So you cast two votes. That is the system we are proposing to the Kenyans. The mix-member system for the National Assembly.

We are saying for the National Assembly, we shall retain the two hundred and ten constituencies so that *abandu be Matungu batsie bahule mubunge wabo Ematungu*. But when they are doing that, they will also have a list of ninety seats, based on proportional representation. When we go for elections, every political party will be required to submit their list to the Electoral Commission. The Electoral Commission will be required to publicize that list, *abandu basome* all over the country *bamanye eshiamu Kanu shilia shirelekhwo abakhasi khu list yikhwo nohomba tawe, eshiamu DP shilia shirelekhwo abaluyia khu list ilia nohomba na basebe bonyene?* So that when you go to cast your vote, you are aware who cares about you and whom you should vote for in terms of the party.

And we are saying each party shall be required to submit a list with ninety names. *Numubolanga mbu* as a party if we win one hundred per cent of the votes that are cast for the party, we shall be entitled to all the ninety seats and for those seats, these are the people to fill them. So when you go to elections, you are already aware these are the people being offered. *Wahulile abandi nibakhubolelanga mbu* we have created ninety seats of nominated MPs. We have not created that. We have in fact abolished the concept of nominated MPs. These are people that will be elected. You will look at the list before you decide whether to vote for that party or not.

We are saying, to help the women we are proposing generally, all the elective positions we should try as much as possible to make sure that women get at least one-third. And we say parliament should make legislation to effect that but knowing what parliament is, we said let us try and see what we can do in the Constitution to at least start off the women before parliament comes in to help a little further.

So we are saying, in this list every political party shall give fifty percent to women. If you have ninety seats, you bring a list that has forty-five men and forty-five women. That is what we are proposing.

Murmuring from the audience.

Let us continue. They are proposals so they will be passed or rejected. The delegate *ngwo ulia hamuhuyinjia nimbola* and we are saying we know these men, they might even put the women at the tail end of the list. So we are saying in this proposal, you will have to put those names in an alternate manner. Number one *omundu musatsa*, number two *omukhasi*. Three, a man four... until you reach the end.

Clapping from the audience.

That will ensure that if KANU wins twenty seats of these ninety, we will know KANU is bringing ten men and ten women. If D.P. wins thirty seats, we shall know fifteen are men and fifteen are women. At the end of the day, we shall be sure of forty-five women in the National Assembly.

We are also saying, once you have put forty-five men and forty-five women or in the process of putting these people you must also again take into account these other diversities; the disabled and the other groups. So that when you put your forty-five women, you may include among them ten disabled women. When you put your forty-five men you may also put among them twenty disabled men so that we are carrying everybody on board. And the Electoral Commission will be able to look at your list and verify and if some of these things are not certified you will be sent away with your list to correct it.

This will help us to even create national parties to avoid tribal parties because if D.P. cannot win a seat Ebuluyia yino, in a constituency, *nibara mera komuluyia khu list* and they win votes they can be able to have an MP *omuluhya* on a D.P. ticket and they can be able to go around saying we are also a national party. We have brought some MPs to parliament who do not come from our community or from a particular community. And this will help because if they don't do that, you will be having the votes; you will say why should we vote for them *nikali baleretsa ilist ya bandu babo bonyene?* So you will check and know who comes from where and so on.

Those elections are supposed to be held after every five years. This is because the National Assembly will have a fixed term of five years. Elections are supposed to be held forty-five days before the lapse of that term. *Khubolanga* when we go to elections, we do not want to have a legislative vacuum. There should be a parliament, *likhuwa lirulilamwo elienya legislation* that parliament should be able to pass law. So parliament is not dissolved for people to go to elections. Parliament remains in office even as people are campaigning and going to elections. *Mana kata* even after elections, if the forty-five days are not over, they remain in office until their forty-five days are over. And the day they expire, that is the day the new one is sworn in and it takes over.

Right now we have a situation where parliament is dissolved and you leave a vacuum. The executive and the judiciary remain in office. *Likhuwa lirulilamwo elienya* legislation, we have no parliament to deal with that and we are saying we do not want that kind of situation. We must change.

We are saying qualifications for election to the National Assembly are that you must be above twenty one years, and at least of Form IV level to be elected to go to parliament. For the National Council, we said people are elected to represent districts. One person per district and the thirty women for provinces, four per province and they will be elected in those places. Those ones are elected for a term of four years. They also must be elected forty-five days before the expiry of their term. Their qualifications we are saying, you must be above thirty five years because this is supposed to be a more mature house because you are representing a whole district, we want more mature people to discern the interests of the district at that level.

For the president, we are saying he is elected directly by the people. He must be a university graduate, above thirty-five years and below seventy years. So that by the time we are going to elections when you are presenting yourself as a candidate, if you are seventy-one or seventy-two, you do not qualify. You must be below seventy years. The reason is because we are saying we do not want at any given time to have a president who is over seventy-five years of age.

So that if you are elected when you are seventy, we know your five year time will end when you are just getting seventy-five. But if we elect you when you are seventy-two, you will attain seventy-five years before your term lapses and we don't want to go back to the elections. So we are saying you must be below seventy years. You must be a university graduate, a person of high integrity and so on and several other things. Shall serve for a term of five years renewable once and thereafter no more. We have even stated in the transitional arrangement that when we go to elections for the avoidance of doubt, any person who has held the office of president before at least for two terms shall not be eligible to hold the office of president, the office of Prime Minister, the office of Vice President, the office of deputy Prime Minister, the office of minister, the office of assistant minister even the office of a Member of Parliament. We are saying that for the avoidance of doubt. This is because in 1992, *mwakhola amendments ne Moi nabola* the law does not operate with ----- *kho bulano* my term has stated running, *bulano luno khunolanga* for the avoidance of doubt *khubolanga* he is not supposed to hold any of those offices, he cannot even be the MP for Baringo Central.

Laughing and Clapping from the audience

That is what we are proposing. Those people are elected in that manner and they should have those qualifications.

At the devolution level, in these elections we are saying you can be nominated by a political party or you can be an independent candidate. The reason we are saying this is because we were asked to limit the number of political parties and we thought it would not be the best thing to do, to state a number of parties in the Constitution. But that we should look for mechanisms of

setting conditions that will limit the number.

So we said many people want to register parties because they know, *nulali ne shiama shikhunomineta tawe*, you cannot contest. So we are saying now you can even contest even without a party. And because of that, many people will find it very expensive running parties, they will say I do not need the party, I can go without the party. That will reduce the number of parties.

For political parties, we are also laying conditions. They must prove before they can be registered that they must be committed to this Constitution, their manifestos must be consistent with this Constitution, they must avoid violence and so on. A lot of things are here. And we are saying if in two consecutive elections your party is not able to have a single person elected to parliament or even to the local authorities, then that party will be de-registered because it is a nuisance party. It will be de-registered.

We are saying political parties will be funded by the State. 0.3% of the national budget will go into political party's fund which will be run by the Electoral Commission. But it is not every other political party that will be entitled to get a share. A party must have managed to get at least five per cent of the national votes before it can be entitled to get a share in that money.

We are saying, that money will be divided into two. The first fifty per cent of it will be shared among all those qualified parties on an equal basis. Then the remaining fifty per cent will be shared amongst those political parties on the basis of the percentage of the votes they got. Those that had a higher per cent will get more. However, we are also saying, so as to encourage political parties to bring more women to parliament, those parties that have managed to sponsor more women who have been elected to parliament will get more money in that sharing.

Laughing and murmuring from the audience

We are proposing that for the National Assembly, apart from the forty-five women on the list, each political party will be required when nominating candidates for the two hundred and ten constituencies to ensure that at least one-third of their candidates are women. The reason we are putting this reason of money is because we know if you tell them to nominate, they will not find that difficult. D.P. will know they cannot win in Baringo Central for instance, they will go and identify some woman there and say we have nominated a woman. Then KANU will know they cannot win in Othaya, they will go and nominate a woman there to fool people around.

We are saying to encourage political parties to nominate women where they can win and to put in energy and to campaign for those women so that they can win, those parties that manage to bring them to parliament will get a little more money. I told some people these men may not like women but they like money. So we have decided to wave the money maybe that may

make them swallow their pride and say for the sake of the money, *lekha khubareho butswa tu*. *Laughing from the audience*. So that is how the elections are supposed to be done.

Political parties once they are registered and they do not meet certain qualifications they can be de-registered by the Electoral Commission. We are saying that when this Constitution comes into force, the existing political parties, if we go to elections with the new Constitution will be allowed to present candidates for elections even before they have regularized their registration in terms of this Constitution. But they will be given twelve months within which to regularize that.

If the twelve months end and you have not regularized, you have not shown that you satisfy those conditions, you have not been registered, your party will stand dissolved forthwith. If there are any people who have been elected on the ticket of that party, those people will be converted to become independent candidates and they continue in office as independent candidates. That is what we are proposing so you need to note that.

When it comes to devolution of power, elections at the devolved level of government will also be done directly by the people and I will mention that as we go on. We are saying we want to devolve power from the centre to lower levels of government. Power must be shared by different levels of government. We have put under Article 213 and 214, the principles that are supposed to guide the devolution, what we are trying to achieve through devolution. And if you look through those principles, they all try to enhance the republican principles we were talking about.

We are saying power in this arrangement of devolution, there shall be five levels of government. The central or national level of government, the provincial level of government, the district level of government, the locational level of government and the village level of government. In this arrangement we are defining the village as the current sub-location. So we have five levels of government.

However, when it comes to devolution because power is being devolved from one level to other levels, there are four levels of devolution of power. The centre is the one that devolves but those that are devolved to are four: the province, the district, the location and the village. That power does not flow direct from the centre to the province, it is devolved direct to the district. The district is the one that receives power direct from the centre and then sends it down to the location and further to the village.

And then the province nayo it gets its power from down, from the district because the province is supposed to co-ordinate the district in exercising their functions and to ensure that those matters that are of a provincial nature are operated and handled in a proper manner. So powers, responsibilities and functions are shared between the centre, the district and the other lower levels of government.

At the district level, we are proposing that there will be a District Council elected by the people to represent the people as a legislative arm. We are seeking separation of powers, now at the national level, the three organs of State exist: the executive,

the judiciary and the legislature. But at these other lower levels, we have only two organs of State: the legislature and the executive. So at the district we have a District Council elected by the people as the legislature.

Then we have a District Administrator, elected directly by the people in the district as the executive of the district. He is the political head, the executive head of the district. He will form a cabinet from the professionals in the departments in the district who shall be formulating or implementing policies and working in liaison with the Council.

At the provincial level, each District Council shall nominate two of its members to go and sit at the provincial level with nominees from other districts to form a Provincial Council. Then of course there will also be a provincial executive at that level. Then from the district again you go down, there will be a Locational Council that runs the matters of the location. It shall also be elected by the people in the location. Then we shall have a Village Council similarly elected by the people at the village level to run the affairs of the villages.

Clapping from the audience.

Devolution involves power sharing, sharing responsibilities. So we are saying there is a mechanism for distribution of the responsibilities. If you look at schedule seven, it is the one dealing with the distribution of powers and responsibilities. We are saying in distributing those responsibilities, there are two methods. You can decide that matters of the centre are put on the one side and the matters of the districts or other lower levels are put aside and you proceed on that basis.

In another approach you identify matters that are purely for the centre, those that are purely for the lower levels and then matters that are of concurrent jurisdiction. Where both the centre and the lower levels act in the same manner. We have softened that rule and if you look at the schedule we have given, we have identified some matters for the central government, some for the district and those that are concurrent.

We are saying in dividing the functions, the doctrine or the principles that informs that, in dividing the responsibility is what they call the doctrine of subsidiarity. Subsidiarity is a doctrine that is developing in the world today. This doctrine is saying that functions or responsibilities should be performed by the lowest level that can appropriately perform them. So that if the district can perform certain functions, there is no reason why those functions should be left to the centre. They must be left to the district. They know where the shoe pinches, and they can make decisions themselves that are appropriate to their problems.

Only those matters that cannot appropriately performed by the district are the ones that will be left to the next level of government. That is the next level of government. That is the doctrine of subsidiarity and it is what we use in trying to distribute these functions.

Once you distribute these functions, the next step is to distribute the need for discharging those responsibilities, the finances. And we are saying that system of distribution of finances must be informed by the need principle. So if you look at that you find the means will be the power to raise revenue; either through taxes or through borrowing. How do we distribute that power? Should we give more to the centre or more to the lower levels?

If you follow the need principle, then you will find that you must look at the manner of the distribution of the responsibility. If the districts have more responsibilities, then it follows that they should have more power to raise revenue and use it. But in most places, you find that although the districts may have more responsibilities, the need to have equalization requires that it is a higher level of government that should have more powers to raise revenue so that they can distribute it in a manner that can bring about equalization and balancing.

So if we need more powers of raising revenue at the centre, it follows that when distributing that money that the centre has collected to the districts, we go back to the need principle. And say, if the districts have more responsibilities to perform, even though the centre is the one that has collected the money, the centre should be required to give more money to the districts. So that the districts can perform their functions. So the need principle informs the distribution of finances.

Secondly, the need principle can also be looked at from the point of view of equalization. If we are not starting at the same level, some are ahead of the others, the districts that are already left behind must be lifted. So they must be given more equalization finances to enable them to come nearer or reach where the others are so that they can start moving of the same level. We are still doing more detail on that distribution to see how those functions will be performed. So that is how devolution is going to be dealt with.

In handling devolution, there is also the question of inter-governmental relationship. If you have one level and another lower level, how should they relate to each other? So in distributing the powers, sometimes you find there is some intergovernmental relationship. You find there is the question of recruitment of staff. We are saying the districts will have their own powers to recruit their own staff, and the centre will have powers to recruit their own staff. But because the centre performs functions that will go into the territory of other districts, the centre may find that some of its functions are supposed to be performed in the district. The centre may then be forced to post some of its officers to the district and to the provinces.

We are saying, since it is the people we are trying to serve, the people the districts are serving are the same people the centre is trying to serve. When the centre is sending its officers to the district, it must consult with the districts. The districts do not want to be given people who will just come to steal their resources and disappear. So the districts must be consulted and at the level of intergovernmental relationship, the districts have been given power to co-operate with each other.

So Butere, Mumias District can co-operate with Kitui District for instance, so that if the centre wants to send an officer here,

and you know this officer has been serving in Kitui, you can, through co-operation ask Kitui, can we know why that man is being removed from there? Can we know how he was performing when he was there? If he was a thief, you will be able to tell the centre we don't want him here. Because we know he has been stealing wherever he goes. We don't want him here because we are told because of incompetence and we do not want incompetence here. This is a message to the public servants. It is not going to be the Public Service that has been serving you in the past. If you misbehave in one district and you think you will go to your godfather at the centre and you are transferred elsewhere, things are now going to change.

So there is that intergovernmental relationship in the recruitment and hosting of staff and in the management of some of the resources and so on. So that in some cases you may find the centre may pass policies on certain issues in matters that the centre is supposed to do but it may enter into a relationship with the district and tell the district to implement it for them on the ground. We have passed a policy but implement it for us and that relationship is there because we are serving the same people.

So that is the devolution we are talking about and how it is supposed to go on.

Finally, there is the question of transitional arrangement because we are moving from a particular system to another system. And that involves abandoning some of the things we had in the past and picking new ones and it will also involve carrying forward some of the old things to move on with them.

...until elections have been held and a new National Assembly and National Council and government have been put in place. And when they are put in place we are saying the first appointment must be of the Ethics and Integrity Commission because it will be required to participate in the placing of the other appointments.

Once they have been appointed, the Members of Parliament, the President and the Prime Minister will have sixty days within which they should go to the Ethics and Integrity Commission to declare their resources and so on and how they got them. We are saying that the elections shall be conducted by the current Commission and that Commission hands over in ninety days after the elections of the new Commission. Once the Ethics and Integrity Commission is appointed, we go to the other commissions: the Judicial Service Commission, the Constitution Commission and so on so that they can start implementing the other things that we are proposing.

The Judicial Service Commission we are saying it must be for a start constituted on an interim basis to exclude the representative of the Supreme Court, because the Supreme Court will not have been appointed, to exclude the representative of the Court of Appeal because we want to first reconstitute the Court of Appeal before it can appoint its representative and to exclude the representative of the High Court because we must also reconstitute the High Court before they appoint.

We are saying, the Judicial Service Commission on the interim basis will proceed to a point or recommend people to be appointed to the Supreme Court. The Supreme Court shall have seven judges, one of them shall be the Chief Justice. We are

saying on a transitional basis, the judges of the existing Court of Appeal and the High Court shall not qualify to be appointed to the Supreme Court. We want to start with a fresh group of people who can instil discipline downward, and that maybe explains why you hear them hammering us. They are very uncomfortable and if you read what they are saying you can see that effectively we are saying Chunga shall not be the Chief Justice because the Chief Justice is going to be a judge in the Supreme Court and Chunga does not qualify to be a judge in the Supreme Court. That is what we are saying, that is why you will hear he is very bitter. But we are saying we shall face the bull and hold it by the horns.

We are also saying must reduce the retirement age of judges from seventy-four to sixty-five. The reason is because one we said they must hold office for a limited period of time, and two, we said we want to harmonise retirement ages of all constitutional office holders.

So those commissions you heard me mentioning, although we are saying they hold office, they have a term of five years renewable once, they must retire once they reach sixty-five. So if you are appointed when you are sixty-two, you serve for three years and you retire. Your term will not be reduced because you have already reached the retirement age and some one else is appointed. So we are saying we must harmonise the retirement ages of constitutional office holders.

So those who are sixty-five, who are in the Court of Appeal and in the High Court, we are saying immediately this Constitution comes into force they must retire. We are saying if you are not sixty-five, but you are above fifty-five, you will be allowed to take voluntary retirement, early retirement. And you will be paid your retirement benefits and in calculating those benefits, we shall give you an additional five years, so that you can take early retirement and go. And we are saying those who want early retirement will be required to exercise that option within thirty days of this Constitution coming into force.

If thirty days end, then you have opted not to exercise that option. And we are saying if you are not, then the next step will be, those against whom there are any complaints to the anti-corruption unit and you have heard there are some cases which the A.G. has investigated and it has been proved they need to bring criminal charges against some judges but nothing is being done. If there are such complaints at the A.G. chambers, at the Anti-Corruption Unit or at the Law Society disciplinary committee, all those complaints will be taken in the interim Judicial Service Commission which shall look at them. If they find that they have substance, you shall be sent of compulsory leave pending the investigation of those cases and if they are proved, you shall be removed from the office of judge.

If however you are not netted by this, if you survive this and we have no complaints made against you, you will be asked to go to the Ethics and Integrity Commission and declare your wealth, sources of that wealth and liabilities. The Ethics and Integrity Commission will look at your declaration and if they think they are not satisfied or if after you have declared, they investigate and they find you have not made truthful declarations, they shall report to the Judicial Service Commission that you are not of the integrity to hold that office and you shall be removed from office.

It is our belief that this process should assist us to offload quite a number of the High Court and Court of Appeal judges and create vacancies that will enable us to appoint proper people to start exercising judicial power. And we are saying, the judiciary is extremely important. If we do not reform the judiciary and get a proper judiciary, all these other things we are doing will be stillborn. It will be a waste of time. But if we get a serious judiciary, it will help us to instil discipline in politics, economics and in all other spheres of our social life so that people exercising their powers in those other spheres will behave in a proper manner.

If politicians were to know that if they played around and you as a little man or woman walked into court and lost your case, the court will listen to you and take you seriously and sermon those people to court and if they misbehave they are thrown into prison, they will never misbehave around. All these misbehaviour you see is because they know, the courts do not seem to care. In fact they have entered into an alliance with them to harass mwananchi.

So we are saying, the court is the first institution we must streamline and the reason we must go for them is because at least these other institutions, the executive and the legislature, the people have an opportunity to change them after five years through elections. But these other fellows are fixtures and if we do not do something, they will remain in office. Some of the people who are there now, if they remain, they will mess us up for a long time and this Constitution will never take root.

So we are saying, as the risk of being to thrown to jail for contempt of court, we shall press on, we shall look them in the eye and we shall say you are wrong. We must do something about this. They are resisting, we know, but we are fighting on. They have threatened to take us to court. The other time they went and took us through some lawyers and some judges and this Act says, the Commissioners of the Commission or even the Commission itself cannot be sued, nor proceeding whether civil or criminal can be brought against a Commissioner while in the course of his/her work or for anything he has done in the course of his/her work in good faith.

Now, they are suing us for making proposals about the changes on the judiciary, which we are saying they are proposals we are making in the course of our work. So we cannot be sued for that. And we are saying, in spite of what this Act says in clear terms they are proceeding to sue us, then we are correct in what we are saying that most of them are appointed for wrong reasons. They are either incompetent or dishonest because anybody reading this Act will clearly see that this Act says you cannot sue a Commissioner for what he has done in the course of his/her work. But judges, one of the Court of Appeal and another one of the High Court, in spite of those clauses have proceeded to do that. We are saying that we must therefore derive that most of them are appointed for the wrong reasons.

We are saying, because we have proposed the abolition of the death penalty, anybody who has been sentenced to death but that sentence has not been executed, that sentence will be commuted to life imprisonment as a transitional measure. And

thereafter, no court shall sentence anybody to death.

We are also saying, that land in Kenya shall only be owned by Kenyan citizens. Non Kenyan citizens can only own land on a lease hold basis, a lease of ninety nine years and no more. So we are saying that when this Constitution comes into force, if there is any non citizen who owns land, otherwise than on a lease of ninety nine years, who owns land on a tenure that is larger in value than a lease of ninety nine years, that tenure shall be automatically converted into a lease of ninety nine years and the government shall not be required to pay compensation for that conversion. When the lease lapses, the land shall revert to the government and to the people of Kenya.

Those are the transitional arrangements we are proposing. That is the Constitution we are proposing, we are hoping that we have honestly and sincerely discerned the wishes of the Kenyan people and the views of the Kenyan people and that in this draft we have reflected your views. However, it is a proposal in the event that we have made a mistake, you are free to tell us at this particular point you have made a mistake, change it to read like this or that we would like it in this manner.

Time is running out, a few people may be able to make a few comments, but as I said at the beginning, the rest should go and study this document and write comprehensive comments about this. If you are unhappy with anything you want changed, you make a proposal on what change you want, pass those comments to the District Co-ordinator who will pass them over to us to be used in the National Conference. Pass copies to the delegate there; she will use them in arguments when she is attending the Conference so that we get the Constitution we want. That is the proposal we are putting to the people so that they may discuss, debate, approve or reject. Thank you.

Anne Nambiro: Thank you Commissioner Mutakha. If you have any issues, *omundu yesi yesi naba nalikho nende shiokhubola khu makhuwa ka mwakhahulila kano nohomba nende elindi liosi, liosi, nohomba kata okhureba liswali wakati tumepewa. One, two three, four, five. Five is that one. So please number one.*

Sylvester Odongo: My name is Sylvester Odongo. I would like to thank you Commissioner Mutakha for the contributions that you have made. Preferably if I may ask you to maybe enlighten us on this issue that we are looking at. The issue of cases that are actually taking too long, the backlog of cases and things of that nature. Most people are not happy with that such that you find that people who want to seek legal redress or who want justice but because of the nature of our courts, they are not willing to take justice because of the long time that it takes for certain cases to be handled. May be if you could enlighten us on how you have looked at such cases or how you can address such issues in the Constitution that you have just been talking about.

Anne Nambiro: Thank you. Number two?

Musa Hamisi Kefa: Kwa majina ni Musa Hamisi Kefa. Mimi nilibahatika kuipata hii draft katika Nation na nimekaa karibu siku tatu, mne nikisoma usiku kucha. Jambo ambalo ningeweza kupendekeza ni kuishukuru sana Commission yetu na ninafurahi kwamba mlifaribu mwezavyo. Na kama ni marks, mlifanya vile watu walitaka one hundred per cent.

Jambo ambalo tunataka kusisitisha ni kwamba kama chochote, kama hii sala ya *Sefwe uli mwikulu* inaweza kutusaidia, please tungependa kupendekeza kama tunauwezo lakini Constitution ya sasa inasema rais ndio anauwezo. Tungependa, tunahakika na tunafurahi ya kwamba the future generation itakuwa salama na itakuwa vizuri. Tungependa ku-adopt hicho kitu vile kilivyo. Miss Delagate Madam, ukienda, waambie watu wa Matungu hawataki kuondoa hata chembe.

Anne Nambiro: Thank you Musa. Number three?

Geoffrey Mulama: My names are Geoffrey Mulama. Thank you very much for what we have heard from you. Mine was on the Ethics and Integrity office. I would like to know how an ordinary member of society can easily get access to it because you have not told us the accessibility to such an office. Because maybe I would discover a corruption scam going on and I would like to push it forward. So what is the accessibility to such an office for an ordinary person.

Secondly, on the resources. Like Mumias has its resources here. I do not know whether the Mumias people have any restriction to their area of income generating crop like sugarcane, if it is elsewhere, it could be coffee or whatever. So could we best use our resources around here so that it is not that we are poor and yet this area has such resources?

Lastly, the appointment at the district level, devolution level. There are those commissions. Are those commissions just going to be concentrated in the central government or they would also be devolved down here for recruitment and appointment?

Emmanuel Wakuhu: Thank you very much Commissioner Mutakha for your presentation. My names are Emmanuel Wakuhu. I have to observations to bring to you.

One is that this document is quite good, very encouraging. I think on average what is contained here is going to save the ordinary Kenya. But our fear is we do not know what will happen tomorrow if parliament is dissolved, if anything happens so that we do not reach the time when it comes into force what will happen? Where will the hopes of the Kenyans go?

Second, I think there is a lot of emphasis on women representation in the National Council. You know numerically if you go to any place and count the ratio of men to women you find men are more. So let them not share the fifty per cent, let the women take the thirty per cent and give the rest to the men. Thank you.

Anne Nambiro: Number five?

Abel Barasa: I am Abel Barasa. First I would like to congratulate the Commission for what they have done. My questions are, we have this draft Constitution that wants to give the people power. What arrangements have you put in place to make sure of that? Like now a place like Mumias would want to co-ordinate with Kitui for something like a transfer how do we make that public even in the media? We have a case where the present media is restricted to cover only the government in office. What will touch on publicity to make sure that people know each other all over the country?

My next question is that I would like to know the difference between this Commission and others. The reason is because you find that all the other commissions that have always been set up previously, their findings are not made to the public. But this particular Commission on finishing their work, they made public everything. The other commissions have had their findings kept by the government. Why is that?

Anne Nambiro: *Lakini leshe umbolelekhwo, this opportunity is ours, nikhwanza khubolakhu nga khupolioka nekhwitsukhane tsinyanga tsia khwahulile thirty nitsiwele ne khubola eh khali kalitsenje kario, kata lukaratasi luno nuwalasoma ta niwitsulitse mbu likhuwa lialimu* which you would have contributed and you have not taken the opportunity. Thank you. Commissioner please.

Com. Mutakha Kangu: Odongo is asking about speeding justice. We emphasised the service of the people. We say the judiciary is exercising judicial power on behalf of the people. The aim is that, the focus should be the people and so speedy justice has to be given.

We are also hoping that if the reconstituted Judicial Service Commission is going to perform its supervisory function properly to ensure that the judiciary is functioning well arrangements should be put in place to ensure that the magistrates do not delay cases.

The truth of the matter is that although we have many cases in our courts, our magistrates also just do not take their work seriously. They have confused the independence of the judiciary, as if it relates to the process of making their judicial decisions and the discipline of work. So that there is nobody supervising these magistrates on how they do their work. You go to court and you sit until about 11a.m. then he turns up to start doing the mentions, you are told come back for your hearing at 2p.m. he does not come back then he shows up at 3p.m. and all you are told is that your case is adjourned to another day.

I know people suffer and that is a question of simple discipline. If the Judicial Service Commission takes its work seriously these people should be forced to work.

I remember when I started practicing law in Nakuru in 1988, I used to take some cases from Maralal. And to travel from

Maralal to do a case for one day, you needed to set aside three days because there used to be only one matatu from Nyahururu which would leave at about midday or 11 am or 10 am and reach Maralal at about 5 pm in the evening. And it would leave Maralal in the morning at 3 am or 2 am to be able to reach Nyahururu at about 9 am or 10 am. So I would have to set aside three days; I travel one day to Maralal, spend a night, the following day I go to court and sometimes you find the magistrate is not there. Or you go to court the magistrate is there and he is telling you at 9 am your case cannot be heard.

The consequence of that is that if the matatu left at 3 am, you have no work to do from 9 am but you will have to hang around Maralal and spend a night until 3 am the following day to get another matatu to go back to Nyahururu. We are hoping the Judicial Service Commission we are proposing is going to streamline this.

We are also hoping that is why we are not bothering with firing magistrates and whoever, we are going for the 'bulls'. Because we are hoping if we succeed with the 'bulls' in the Court of Appeal and in the High Court, we shall have sent a very clear message down there and they will have to change overnight. You will be surprised. If we implement these proposals and those people see that people have been fired in the Court of Appeal and in the High Court for corruption, laziness, incompetence and so on. People down here will wake up and the judicial service Commission will also be open to the people to receive complaints of laziness by magistrates, of incompetence, of corruption and when they come they are dealt with, those who are fired they are fired. You will see quick changes, people will adjust and things will start moving.

Mulama is asking about access to the Ethics and Integrity Commission. Then there is also the question of the devolution of the Commission. I want to refer you to Article 299, sub-article 3 which says, a Constitutional Commission shall wear appropriate, establish branches at the provincial and district level and offer their services free of charge. So we are saying the Ethics and Integrity Commission may be required to have offices in the provinces, and districts so that wananchi can go there and give the information they have about corruption, leaders and so on. This will also apply to all the other Commissions where appropriate. They shall need offices at the lower level.

Number two, if you go back to Article 8, sub-article 3, the article that deals with the capital of Kenya. We said that it is the policy of the State to decentralize the headquarters of national government departments and national public institutions to all provinces equitably. So we are saying, if we follow this policy, we may be able to say we do not want all these commissions with their headquarters to be in Nairobi.

We can say the Ethics and Integrity Commission can be in Nairobi but the Constitutional Implementation Commission can be in Kakamega for instance. So as you travel to Nairobi to go and make your complaint to the Ethics and Integrity Commission and you are carrying money from Mumias to spend it in Nairobi, benefiting the people around Nairobi, if the people around Nairobi want to follow up issue in the Constitution's Commission that is in Kakamega will carry their money and spend it in Kakamega so that it can also benefit the people around Kakamega. We hope those policies will be implemented.

We also said when we were talking about the national goals, values and principles at Article 14, sub-article 15, we said 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 the national resources fairly and efficiently for the welfare of the people.

So on the basis of these policies, we expect that these commissions may be locate their headquarters in different towns in our country or at least on the basis of the article we read on commissions that they will have offices in the districts and in the provinces so that people can be able to access them.

Another question was about the management of local resources, what Mumias can do with its sugarcane and so on. If you read again, under devolution we have clauses that say that in sharing the resources, emphasis shall be given to the fact that the areas in which those resources are located may get a little higher share than what the rest of the country may get from those resources.

That is there are a number of clauses under devolution which deal with that and I think you will be able to look at that your selves so that you can be able to see what we are saying.

For instance in 213 (1) (g), we are saying devolution should facilitate the decentralization of central government powers and the location of central government institutions and departments away from the capital territory to ensure equitable distribution of resources in all the provinces. That goes to the earlier questions I was answering.

Under (2), we are saying the devolved authorities are entitled to an equitable share of revenue raised nationally to enable them to provide basic services and discharge their other responsibilities. We also say at 3, devolved governments are entitled to the benefit of local resources in order to ensure that these benefit the local community. That is stated there. So if you go through, there are several other clauses which clearly show that we are saying in the sharing of the resources, you can look at the chapter dealing public finances, there is another clause there that deals with the issue you have raised.

Article 243, says that the primary objective of primary finance and revenue management system of the republic of Kenya is to:

(a) Ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well being of the people of Kenya.

(b) We are saying to ensure equitable sharing of national and local resources through the republic, taking into account the special provisions for marginalized areas. That is the equalization.

(c) Ensure the equitable division of revenue raised nationally among nationally among national, provincial and districts and local

levels of government.

(d) Ensure that in allocation and distribution of national revenue, adequate consultation is conducted and recommendation from various levels of government and sectors are considered and so on.

So you can see that we are trying to ensure that the local people have a say and they get their due share of the resources.

Wakuhu said that the women should not be given fifty per cent of the ninety proportional representation because he says when you go around you find lesser women than men. That may not be the truth. It depends on where you go. Here we are now, there are more men and lesser women. What that means is that if you go back to the houses that you left to come here, there are more women there than there are men.

Laughing from the audience

Our population, they say currently we have one man to one point two or point three or point five of women. So women are slightly more than men. Of course the other day I was reading some article about the dangers that are being posed by AIDS and it was suggesting that in the next few years we shall easily have a gender imbalance that is going to tilt the steps towards more men than women.

And the research was saying that the studies in Africa are showing the women who are of a certain age, younger women, there are more younger women that are being infected than there are younger men. The reason being that the girls mature faster than the boys and they start engaging in these things before the boys begin. And they engage in them with older men. So there are younger women being infected than there are younger men.

The consequence is, the study was saying, we are going to reach a stage in Africa when there will be a gender imbalance with more men than women. The study was saying, when we reach that stage, it would be even more dangerous for Africa because then AIDS will spread even faster because women will be forced to deal with more men than they are doing today. So it is going to be very bad. And they gave very many examples in places like Botswana where the situation is terribly bad. Botswana's population is about two million people and 48% of that population is infected. Effectively that is a country that may be eliminated very soon. They are saying they have more cattle than they have human beings. The same situation is in South Africa, Zimbabwe the same. This is very bad. The Southern African countries are in a very precarious situation.

That time will come but today the truth is that we have more women than men. But even so, we are saying even that fifty per cent we are giving them of the ninety seats does not even give them the one-third we are proposing, it still leaves them far. Because if you give them one-third in a house of three hundred members then you are talking about one hundred women and

two hundred men. When we are talking about fifty per cent of ninety, which gives them only forty-five, in a house of three hundred. So we think that it will be wrong for us to go below that fifty per cent.

Now, what happens if parliament is dissolved? We are saying we hope that it is not dissolved, but even if it is dissolved, this process shall not stop. It must go on. *Babolele mbu kata notubulula amatsi abali nobuluhu* if they are determined to drink, *nabanywe kata katubushi*. So the people must stand firm, they must protect this process so that the President does not dissolve parliament. But if he does, you must go to elections telling the candidates that the platform is Constitutional Review. We are electing you on the basis that when you get there you shall continue the review process. If you don't we shall deal with you. So that when they get there we continue and then that will mean we will have to reconsider the transitional arrangement if elections will already have been held.

The media, we hope it will soon be liberalised. If you look through the Bill of Rights, we have given rights about freedom of information and so on and that will be able to liberalize the media.

What is the difference between this Commission and the other commissions? The other Commissions have been Commissions of inquiry. Presidential Commissions of inquiry appointed by the President under the Commissions of Inquiry Act, therefore they report to the President and they can be disbanded by the President.

This Commission, we said is appointed under specific acts of parliament, not by the President but by the people of Kenya through parliament and through the President. So they report not to the President, not to parliament but to the people of Kenya, that is why we release our report to the people of Kenya. And I said earlier that should show us the difference and therefore if you work towards more independent commissions such as this one than to continue with the old ones that could be disbanded by the President at the stroke of his pen. Thank you.

Anne Nambiro: Thank you very much Commissioner. I think it is time we wound up. *Mwakhahulila amakhuwa amalayi na kandi mushily ninako lakini bias shibinyala khukhuchamila khwatsililila sana tawe, khandi akandi, abanyasia okhuba, Jumatatu St. James Bulimbo Girls, khuteme khuleyo* only that we shall begin at 9 am. So if you can be there seated by 8:30am we will begin at 9 am. *Khubela khulaba khutsitsanga* to another venue *ni Khwisero ni rambi yihale yilia numuhanda ngwinjira ha bundu ha khutsitsanga yaho numubi sana*. So we shall leave St. Bedas at least by 1 pm in order for us to make it in the next one hour to that particular session in Khwisero.

With those few remarks, I have just one more announcement concerning the reports. CCC members *nibabekho nende* this draft *lwa mumanyire* your CCC members from Wednesday you may feel free to contact them. We also have decentralized our centre in this constituency to a place known as *Indangalasia* YMCA, we shall have those reports there. We shall also have the report of your views as Matungu Constituency, in *Indangalasia ne yindi nibe muofise yanje ya Mumias, nimwitsayo*

munyala khunyolakho tsiripoti tsienitsi mana mwamanya kakhwabola toto katsia? We have various reports in different volumes, *tsiliho tsili think nende etsindi tsinditi feel free nolikho na mamondo matiti khukholakhwo* photocopy you can carry away a copy or *onyala okhusomelayo nolekhayo*. I now request Dismus Kweyu to please pass a vote of thanks and thereafter Madam Getrude will lead us in our closing prayers.

Dismus Kweyu: My names are Dismus Kweyu, I come from Matungu Constituency. I am very happy and feel honoured to give the vote of thanks. First, I would like to thank our guest of honour, Commissioner Kangu, who is a very highly qualified layer and of high integrity and seems to have almost everything at his fingertips. He also did not seem to mind consulting the document before him in his presentation as we have witnessed him tell us, produce everything right from his own head and we know he has fully participated in formulating this document.

I would also like to thank the District Co-ordinator for being with us, the supportive staff from CKRC, our ACK Bishop who has also been with us up to this time and the rest of the community. I need not go through what Commissioner Kangu has explained to us but I know he has touched on the various aspects of the Constitution and brought them out very well. It is the document that we actually began with and we participated fully in it right from the grassroots and it has come back to us. We have already gone through and seen that there is nothing quite new that we would get perturbed about.

I am sure then that Mr Kangu when you go away you should not get perturbed to get to know that most of the participants here may have actually understood you very well and have wished that if there enough time, they would have liked to stay with you till very late. But because of lack of time we are not able to go further.

Otherwise, you have touched on very relevant parts of the document such as the arms of government – the executive, the legislature, the judiciary, you have pointed out the preamble showing us that the current Constitution did not have one unlike this new one. The preamble has been well defined and everybody here is quite happy about it. You have touched on various aspects of gender, you have been gender sensitive and we are very happy with the whole document. Although members have tried to complain on the percentage quoted but we think the 50% is quite okay.

Otherwise we would like to applause Mr Kangu and his team for what they have brought to us and we are happy that nothing has been altered and that everything has sailed on smoothly.

Clapping from the audience

Getrude Shikuku: Kwa majina ninaitwa Getrude Shikuku, tusimame tuombe.

Prayers: Baba, mfalme Mungu wa juu na chini tunakushukuru kwa hiki kikao cha siku ya leo. Tunakushukuru kwa kazi ya Katiba ambayo imetengenezwa na tunaomba Baba uwabariki wote ambao wameshiriki kwa kazi hiyo. Na waendele

