

HANSARD

03RD SEPTEMBER 2009

**VERBATIM REPORT OF
PROCEEDINGS OF THE COMMITTEE OF
EXPERTS ON CONSTITUTIONAL REVIEW
CONSULTATIVE FORUM WITH POLITICAL
PARTIES HELD ON 3RD SEPTEMBER 2009
AT LEISURE LODGE RESORT, MOMBASA**

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EXPERTS ON CONSTITUTIONAL REVIEW CONSULTATIVE FORUM
WITH POLITICAL PARTIES, HELD ON 03RD SEPTEMBER 2009 AT
LEISURE LODGE RESORT, MOMBASA**

Present:

Mr. Nzamba Kitonga, S.C.	Chairperson
Ms. Atsango Chesoni	Vice-Chairperson
Mr. Abdirashid Abdullahi	Member
Mr. Bobby Mkangi	Member
Dr. Chaloka Beyani	Member
Prof. Christina Murray	Member
Prof. Frederick Ssempebwa	Member
Ms. Njoki Ndung'u	Member
Mr. Amollo Otiende	Member
Dr. Ekuru Aukot	Director, Ex-Officio

Apologies:

Hon. Amos Wako, A.G.	Member, Ex-Officio
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In Attendance:

Ms. Veronica Nduva	Deputy Director, Civic Education, Mobilization and Outreach
Mr. Vitalis Musebe	Deputy Director, Public Information and Media
Dr. Michael Chelogoy	Deputy Director, Research, Drafting & Technical Support
Mr. Ibrahim Ahmed	Programme Officer, Civic Education, Mobilization and Outreach
Mr. David Seurei	Programme Officer, Civic Education, Mobilization and Outreach
Ms. Mary Njoroge	Senior Secretary, Civic Education, Mobilization and Outreach
Ms. Hellen Kimari	Hansard Reporter
Ms. Susan Kimiti	Hansard Reporter
Mr. John Koross	Office Assistant
Mr. Vincent Mbuka	Office Assistant
Ms. Zahra Haji	Assistant Programme Officer, Public Information and Media
Mr. Elijah Girimani	Assistant Programme Officer, Public Information and Media

Meeting was called to order at 9.03 a.m. with Mr. Nzamba Kitonga in the Chair.

Ms. Veronica Nduva: For those who are outside, we are going to start the meeting. I would like to call the meeting to order, High Table. Thank you. Good morning once again, ladies and gentlemen, welcome to the second of our retreat on; Ensuring Political Consensus towards a harmonized Constitution, Political Parties Retreat of all the registered Political Parties, it is a pressure to have all of you once again this morning. For those who have joined us today, you are most welcome and you will catch up with the proceedings. Just to start us off, we are just going to have again a short word of prayer so I am going to call upon two volunteers, one Christian and one Muslim. Please state your name on the microphone even as you offer the prayers.

(Christian Prayer): Let us pray. Our God and our Father we want to bow before you, the Creator of the Heavens and the earth. The earth is yours, the day is yours. We bow to you for health; we pray in the name of the Lord Jesus for help upon the Constitutional Experts and the Constitutional Parties, for without you, we can do nothing. Lord we thank you because you are more interested, you have more interest for the Nations to create justice and righteousness. Today as we deliberate for the way forward and other matters, we look to you for help. I pray you will help the Chairman, the Vice Chairman of the Constitutional Experts and all the other Experts. Your hand is stronger than our hand. We thank you because you love us. We pray that as we continue, you will bless everyone. In Jesus Name we Pray, Amen.

Mr. Abdi Ali: *(Muslim Prayer in Arabic)*

Ms. Veronica Nduva: Thank you, you may all take your seats. Welcome again to the proceedings, just a short announcement, someone lost this, *(flash disk)* so you claim it from me.

A Participant: What is it?

Ms. Veronica Nduva: I am not going to say what it is, it is the owner who has to come and say what it is. I would like to welcome this morning, the Chair of the session, Prof. Frederick Ssempebwa. Prof. Ssempebwa is a Ugandan Lawyer, before he was appointed to the Committee of Experts by the Panel of Eminent Persons, Prof. Ssempebwa has served as a cabinet Minister in Uganda, he steered the Constitutional Review Process in Uganda as its Chairman and also currently serves as the Chairman to the East African Law Society. Welcome, Prof. Ssempebwa. He was the President, sorry, of the East African Law Society.

Prof. Frederick Ssempebwa: Morning everyone, I hope we are all refreshed after yesterday's eats and drinks and the exercises that followed. Now, before we start the session this morning, there was a feeling yesterday that we did not emphasize the two extremes, someone called them two extremes, the difference between the Presidential and the Parliamentary system. So we thought we would take off very few minutes to remind ourselves about the major differences between these two systems of government.

Beginning with the Presidential System as you see, the main features are that the President who is the Head of State and Head of Government is directly elected by the people, so his or her mandate emanates from the people. The Head of Government and Head of State is normally elected for a fixed term, it could be four years as in the U.S or five years as mostly elsewhere. This system is built on separation of functions, therefore the Head of the Executive has the executive functions and exercises them through a Cabinet which he or she appoints and this is separate drawn outside of Parliament so that the separation is emphasized.

In this system, accountability is to the people through elections and the purpose of this separation is for checks and balances. How are these checks and balances exercised? There are three organs of government, that is the Head of State who has been elected, then side by side a separate legislature, also directly elected and its mandate therefore is from the people.

The other important organ of State is the Judiciary, which normally is appointed by the Executive and the variations of how this could be done. Finally, there are the newer institutions

of democracy which also provide for checks and balances; Independent Electoral Commissions, Ombudsman and so on.

The checks and balances through the Legislature are normally the Legislature has got to discuss the policies presented by the Executive, pass legislation and approve important executive functions such as appointments of Constitutional officer holders that is the Cabinet, Judges and so on. Then in this system, because the President is directly elected, he or she cannot be removed by Parliament but there is a provision for impeachment incase the President has violated the Constitution or the Law. Those are some of the checks and balances. For the Judiciary it also comes in because it also checks the excesses of the Executive as well as the Legislature through pronouncements on validity of those actions.

Now we go to the Parliamentary System. In this system, normally the Executive is headed by a Prime Minister who is drawn from Parliament, there is provision for a separate Head of State, but sometimes that is not provided for. The Head of Government could be the Head of State as well. So you could have a Parliamentary System in which the President is drawn from Parliament and therefore accountable to Parliament with a possible check here with a vote of no confidence incase Parliament disapproves of what the Government is doing. There are no term limits here because even the Executive itself, either the Prime Minister or the President, could decide on dissolving Parliament before the term of office ends. This as you heard is done in England if the Prime Minister sees that there is a need for early election, he or she could dissolve Parliament.

So, the checks here , could be about the same but the additional checks and balance here is the threat of a vote of no confidence on the Executive on the one hand and then on the other, the same threat of dissolution of Parliament in case things are not going on properly.

Now, when we discuss Constitutions for our States, we do not have to choose any of these, we could of course, but it may not function very well because either of them is susceptible to our views and we in African States that includes Kenya, we have gone through experiences of dictatorship. So, we are looking at these systems with an eye to what loopholes could be used by someone who wants to abuse the system.

I remember I was in a gathering somewhere when we were plotting to overthrow Amin and someone came up with a statement which has always been on my mind. He said that the seeds of dictatorship are with all of us. He was referring to our group and I think that could apply to every member of humankind. So in Constitution making, we want to have a system where these seeds will not germinate and thrive and also we have to look at those we have gone through. In my community, we have a saying that if you see an insect that looks like the one which stung you before, you run away from it. So we are also looking at what we have gone through. The system we have gone through is one that we do not want, so how do we change it?

When you look at the Presidential System, the potential for checks and balances are very high. But also on the other side, there is a potential for friction and ultimately a possible deadlock. In some countries like the States, this is managed very well because their democracies have matured, but in ours, we have to be careful whether governments can live through these frictions where Parliament and the Executive fails to agree and the ultimate is of course when the Executive and Parliament come from separate parties.

In the Parliamentary System on the other hand provides for small relationships between the Executives and the Legislature but on the other hand because normally this is dominated by a Party that has won, there is also some potential for dictatorship.

Now, the reason why we concentrated on Hybrid yesterday is because you can hardly find these days a system that is pure Presidential or Pure Parliamentary because each country has modified these systems to suit their circumstances taking into account the merits and demerits of both systems. Thank you, very much, let us have this in mind as we discuss. (*Clapping*). \

Now we are ready to start, you recall yesterday we had people who had been chosen to speak but because we had to end the session, they did not have the opportunity so if they are here we shall begin with them and the first one is Dr. Kariba Muniu, National Alliance of Kenya, is he here?

Dr. Kariba Muniu: Thank you, very much, Mr. Chairman. First of all I want to thank the Committee of Experts for having organized this Conference and we do appreciate as members of Political Parties. My name is Kariba Muniu from the National Alliance Party of Kenya. Before I present our Party's recommendations, I just want to mention a few observations I made since we came here. There is consensus as far as the Committee is concerned and the process of coming up with Constitution is highly important and this will come about through Civic Education and you are fortunate to have the Political Parties that you can use in this civic education.

The other observation I made and this actually started sometimes back because of what we read in the Media is that you as the Committee of Experts have to be very, very careful and especially the Chairman, of the two principles in the coalition Government and also the two major correspondence Parties with these principles and it follows that with their agents whom some of them are here, you have to be very, very careful because they have already started to prejudice the people through the Media, calling the Media. I was very surprised when I read one of them saying that the Committee has already become partisan and has decided on a system and I have not heard any system that the Committee has come up with because we asked and you told us you still do not have a draft. So you have to be very, very careful.

The other one is that on the Kadhi's Courts--

(Power blackout).

Dr. Kariba Muniu: As far as the Kadhi Courts are concerned, we have lived with them for over 40 years and we have not had any conflicts. It is our feeling in our Party that the Christians, especially the Evangelical Christian Parties have been excited by some of the agents who want to derail the Constitutional making process and especially from the United States where they want the Christians (*clapping*) the Muslims to start fighting. We do not have to fight and there is no discrimination of the Christians by the Muslims when they have Kadhi Courts because they are not depriving the Christians of anything. We are saying as a Party, National Alliance Party of Kenya that we should continue with the Kadhi Courts the way they were in the old Constitution.

We have not spent very much time on the contentious issues, all of them but the major ones we have spent time on is the system of government or system of governance and we have rejected-- By the way, Mr. Chairman, I had a feeling, even though you made another presentation this morning, I have a feeling the Committee was tending to sell the Hybrid to us and the National Alliance of Kenya has rejected the Hybrid simply because there is going to be conflict of power sharing and there is not going to be complete separation of power which is needed to run a country where you have the Executive meaning the President and the Prime Minister sharing power also having the Executive, which is supposed to implement what the Legislature passes, being part of the Legislature at the same time it is going to create conflict. So, we have rejected the Hybrid. We are saying if we are going to go Parliamentary, let us go complete purely Parliamentary. If we are going to go Presidential, let us have pure strictly Presidential System.

On the other hand, we as the National Alliance Party of Kenya have also not recommended the Parliamentary system because we see a danger in a country like Kenya where a lot of the Political Parties today are based on tribal basis and you are going to end up with a Prime Minister simply because his Party has the majority of MPs and they might come from one region or from a minority of the Kenyan citizens. Now, if he is going to have the Executive power to run the county, it is not fair, we are going to have conflict. At the same time, we are recommending and I repeat, recommending strictly Presidential system but with the Presidential system, it is essential to have separation of powers--

(Black out)

Mr. Kariba Muniu: Separation of powers, checks and balances, whereby the Executive, the President is not going to be a member of Parliament, he is going to be directly elected by the people, his cabinet is going to be people selected-- He is going to appoint people who are not MPs, they do not necessarily have to be experts in their field as long as they are vetted by Parliament and accepted. That way, you are going to have a complete separation of the Executive from the Legislature as well as separation of Executive from the Judiciary. By the way, we are recommending the Judiciary we have a Supreme Court which is going to be vetting

the Act and the Laws coming from Parliament whether they are Constitutional so the Parliament is not going to be another dictatorship.

Prof. Frederick Ssempebwa: You should wind up now.

Dr. Kariba Muniu: I am almost winding up. The checks and balances on this system are going to be very, very important, where there is no mix up, there is no confusion who has the power and by the way, the Legislature is not going to have a Prime Minister, it is going to be like the State where you have a Speaker, the majority have a leader of the majority and leader of the minority. There is not going to be a leader of government business because in the Parliament there is not going to be government business, it is going to be House business so he is going to be the leader of House Business.

On Devolution, we are recommending that we keep the local authorities, the civic authorities but give them the power by having the Mayors and the Town Council Chairmen elected directly by the people, you remove the local Government Ministry because that is another interference from the Executive with the Local Government. You remove that, let the Finance Ministry directly finance the latif money that goes to the Local Authority. That we do not need Regional Assemblies which are going to divide our people further. Let us look at this Constitution which is coming and I believe it is going to come, not for us, but for posterity and to be there serving our people even forty years to come when we are not around. Thank you, very much.

Prof. Frederick Ssempebwa: Thank you. The next on the list of those who did not speak is Mr. Makanga, Green Party.

Mr. Ngorongo Makanga: Thank you, Chairman. My name is Makanga from Mazingira Greens Party. Mr. Chairman, this has been a long journey and it is very important we do not forget. As we walk along this journey, the real owners of this country are the communities of this country who have been here, when there were boundaries and when there were no boundaries they were still the owners. If you look at the presentation of Amollo, on page 11 and 12, he talks about Section 4 of the Act that empowers the Committee of Experts and the

principles, you realize we really should not lose track of the people of this country. You also must know, Mr. Chairman, that as you walk on, we have to know that every single article of this Constitution will be contentious because whatever is not contentious to you, is contentious to me. So every single Act will be contentious. The most important thing to the Committee of Experts is how they balance those interests so that the people of this country will really feel that this is our Constitution and this Constitution we must protect it; it is very important Mr. Chairman.

The other thing Mr. Chairman is-- Now I want to talk about our recommendations as a party and it is very important because maybe I am going to touch on something nobody has talked about. About the devolved government; when we all agree in this country and our party agrees that we need a devolved government, then Mr. Chairman, we should put a full stop and ask ourselves, what does that mean? Because it means we have to make a Constitution that is national and a Constitution that is regional. Hence the Preamble and the Bill of Rights becomes the beacon of the National Constitution.

We should have another Chapter, Mr. Chairman, which will guide the Regional Government as to how they are going to create their own Constitution that will conform with the National Constitution. Because some of the things Mr. Chairman we are thinking of and saying they are contentious, probably at the National level they are not contentious. For example, Land, probably land we can put it to the Regional Constitution, let it be handed over the Regional Constitution and the Regional Constitution sought out that problem. It is not an issue of the National Constitution. Hence Mr. Chairman, the Committee of Experts will deal with very few Chapters. They will probably deal with about seven to eight chapters of the National Constitution. So then ourselves we should not be carrying the issues of the Regional Constitution to the National Constitution. We must separate that and probably the Experts then will be drawn in to try to empower people or to have Civic Education to educate people of every region which responsibilities they are going to take because most people do not understand that when you talk of a region, it comes with its own responsibility.

By so doing, Mr. Chairman, your job, the Committee of Experts probably dealing with the National Constitution will be far much less and a lot of contentious issues Mr. Chairman, will be taken back to where actually they belong.

The second recommendation is on the Executive. Every single time, and I go back again to page 12 of the Committee of Experts, Amollo's presentation which talks about the principles. The aim is actually, how do you harmonize this country? How do you harmonize now the regions of this country? How do you harmonize the communities of this country? This is one of the major problems for the last 40 years, mind you we have lived for millions of years in this country without any problem. This problem has come up actually the last 120 years, the kind of system of government that we have taken and more so the last forty years. Why do we want to change? How do we change to make sure that all of us, we feel that we own this government and this country. That is the key thing.

We feel Mr. Chairman, when people say that we cannot reduce the powers of the Executive because one, we are creating two centres of power or two, the party policies, how do we push the party policies. We have forgotten really where the power belongs. These people have done an application and if you remember yesterday, when all the Committee of Experts presented their presentations, they talked about the Act that gives them that power. I do not understand where the President and the Prime Minister who gives them power? They are looking for a job, we as the voters of this country are the ones giving them power. If you do not want that power please go home. Let those people who want to govern this country through the power of the people go and plead with the people and the people of this country will give them powers.

So, when we as a people give those people power and then we say that we are creating two centres of power, I do not understand, it is a mockery, it is demeaning the intelligence of the people of Kenya. We have the power, we are the employers, we have the right to employ and we have the right to create an Act that protects them just like the Chairman was saying yesterday. Please, go back again to the Act, that is where our power comes from. The President, the Prime Minister, we must make sure that they come back to us and tell us, *"you know, there is a lacuna on that section, that is why we have a conflict. Please create a Committee of Experts who really*

can look at that lacuna and so that we can manage to move this country from where we are to another level.”

As our recommendation, there are several options but one of the options that I think is very important is what was created in Bomas but was mutilated on the last day. Where we said the President is the Head of State, Commander in Chief, he will chair the Cabinet and we said the Prime Minister will be--

Prof. Frederick Ssempebwa: You have one minute.

Mr. Ngorongo Makanga: --the Head of Government and will be in the Cabinet. Sorry Mr. Chairman. The last one, is the representation; that one has not been touched by anybody. When we sat in the multi-sectoral sector forum we had, we said this country may not be having a lot of money to go round trying to create more constituencies. So we said, we have a House that is 210 seats, why don't we make that House a House of 300 members and the imbalance of votes that are cast and are not represented, we said the 90 seats, we set aside 60 seats for Affirmative Action. And that is where the gender imbalance will come in, they can be nominated in a way that now really, they are really active members and we say, let us leave about 20 or 30 for the party members for what we call the party parents.

Prof. Frederick Ssempebwa: Can you wind up now, time is over.

Mr. Ngorongo Makanga: So please, Mr. Chairman, I would request the honourable members and our countrymen, that time has come, we must change and we cannot wait for change to change us; we must adjust and conform ourselves to the free world, we must vote towards that, thank you.

Prof. Frederick Ssempebwa: Thank you, very much. The third is Mr. Mghanga Mwandawiro.

Mr. Mwandawiro Mghanga: *Asante sana, Bwana Mwenyekiti, na yafuatayo ni mapendekezo ya Social Democratic Party. Nasema mapendekezo sio msimamo kwa sababu bado*

tunajadiliana. Kwanza Kamati ya wataalam kuhusu Katiba ifanye kazi kitaalam na kuongozwa na maadili ya kutaka kuleta Katiba mpya na ubora wa kitaifa bila uoga ama kuiyumbishwa na upande wowote kama tunavyoona.

Pia, kamati ya wataalam, izingatie maoni ya wakenya yaliyokusanywa na tume ya urekebishaji katiba ambayo ilielekea huko Bomas. (c) Wakenya ambo tuko hapa, tunauwezo wa kukubaliana. Mimi ninaimani hiyo na ndiyo kwa maana tunajadiliana kwa amani. Pia, nafikiri tutaongozwa tupambane kuleta katiba bora itakayokubalika na wakenya wengi na ambayo inasaidia kuwaunganisha lakini, tusingoje katiba ya kimalaika, hili haliwezekani kwani katiba si Bibilia ama Qoran tukufu. Katiba itabadilishwa kulingana na hali halifu hata siku za usoni. Kwa hivyo tuiseme kwamba tunaleta katiba ya kimalaika.

Mapendekezo yetu kuhusu mfumo wa uongozi. SDP inapendelea mfumo ambao utajenga democracy na mfumo wa vyama vingi na kufanya viongozi waajibike kwa wananchi. Kwa hivyo SDP inapendelea mfumo wa ubunge ambapo chama chenye wabunge wengi zaidi kitaunda sekerkali itakayosimamiwa na waziri mkuu mwenye mamlaka ya kikatiba. Raisi awe karagosi ambaye atachaguliwa na bunge. Chama cha kisiasa chenye wabunge wengi zaidi kinastahili kupewa fursha ya kutekeleza sera zake kwa muda uliowekwa na katiba.

Mfumo wa uchaguzi uwe wa uhuwiano, yaani proportional representation ambapo kila kura inahesabika na kupewa umuhimu wake. Tena, mawaziri wachaguliwe na waziri mkuu, kisha wahidhinishwe na bunge. Nchi hii inaongozwa na watu wenye mamlaka. Yaani kuna watu wengu sana wenye mamlaka makubwa katika hii nchi ambao hawachaguliwi na watu. Alafu tuseme wale wachache ambao tunasema nimawaziri, pia watoke kutoka nje watachaguliwa, tutazidisha watu wengi zaidi ambao hawajibiki kwa watu.

Vile vile tuko na mapendekezo badala. Ikiwa watu hapa nyumba hii itakataa mfumo wa ubunge kabisa, sisi pia vile vile tunasema, tunaweza kuwa na mfumo badawa, yaani Rais aliyechaguliwa moja kwa moja na mwenye mamlaka halisi ya kusimamia dola kama vile ndungu Makanga alivyosema. Yaani tumpe kazi hapa. Halafu vile vile, kuwe na waziri mkuu ambaye anaelezwa kabisa kwamba waziri mkuu anasimamia serekali na rais anasimamia dola.

Mamlaka; lengo nikupeleka uongozi, yaani usambazaji wa mamlaka, devolution. Lengo nikupeleka uongozi mashinani, karibu na watu. Ndiyo tunasema na ninakubaliana na yale yameelezwa na ndungu Makanga wa Green Party, na yale yalioelezwa na Shirikisho Party jana na vile vile NARC Kenya, ikielezwa na Mungatana. Mimi nakubaliana nayo haswa kuhusu usambazaji. Yaani watu kutoka mashinani warudishiwe uwezo wa kusimamia mambo yao na rasilimali zao.

Viongozi wa sub-location, location, taarafa, wilaya, wote kama vile Mtumishi Kathangu wa FORD Asili alivyosema, wachaguliwe na watu. Yaani kutoka mashinani, sasa tusiwe na ma-sub chief, na ma chief ama na mtu ambaye atasimamia wilaya ama atasimamia majimbo ambaye hajachaguliwa. Tumesema tena, msingi wa usambazaji uwe ni katika wilaya, na tuvunje tuawala wa mikoa, Provincial Administration, tuitowe kabisa pamoja na Administration Police. (Laughter).

Halafu vile vile tumesema, ili mtu kuchaguliwa kwa ngazi yeyote ya kisiasa, kuwe mbunge, ama waziri mkuu ama rais, mtu huyo asishiriki biashara kwa kipindi ambacho atakuwa waziri mkuu, kwa kipindi ambacho atakuwa bunge kwa sababu tumejua hiyo ndiyo imeleta ufisadi katika hii nchi. Tunaongozwa na wafanyi biashara, rais mfanyi biashara, makamu wa rais ni mfanyi biashara, waziri mkuu ni mfanyi biashara, mawaziri wengi ni wafanyi biashara na wabunge wengi ni wafanyi biashara na hii inaleta conflict of interest na ndiyo kwa maana hii nchi tunaongozwa na ufisadi mkubwa kabisa. Na ili kuuondoa, lazima ukiingia siasa ufanye kazi ya siasa.

Kuhusu mambo ya mpito, kile ambacho tumesema ni kwamba, mpito wa utekelezaji wa katiba. Tumesema, tume zinazohusika, yaani, tume ya kuhesabu watu na tume ya mipaka na tume ya usimamizi wa katiba, hii yenyu, na vile vile, hii tume ya usimamizi wa kura, zifanye kazi zao haraka iwezekanavyo, kuhakikisha uchaguzi mpya unafanyika kabla ya mwaka elfu mbili na kumi na mbili. Maanake tuna hofu kwamba sasa tunaweza kuchelewa na tukichelewa, tutakuwa na shida. Wacha ndungu yangu amalizie maanake tuna dakika chache kidogo.

Prof. Frederick Ssempebwa: You have one minute.

Mr. Joseph Makoha: One minute, okay. My names are Makoha Joseph, SDP. What we are saying as a Party is that we came here for consensus building and we have no grand standing position. What should inform the Constitution is fair play in accumulation and distribution of resources, national unit and representativeness in the sense that people should be allowed to participate fully in the governance systems that we develop.

Two, is that we want to extend the same to the political parties here that when we leave this hall, we should come out with a statement of hope to the Nation. While we may not have struck a consensus, we are in the process, not grand standing. That is why we are saying, ours are proportional; it is not the party position but those are the proposals of the system we want governance. Thank you.

Prof. Frederick Ssempebwa: Thank you, very much. Next one is Mr. Dick Kamau.

Mr. Dick Kamau: Thank you, Chair, greetings to all of you. I beg to sit because I am reading from my laptop. I am the Secretary General of Chama cha Mwananchi, CCM. We as a socialist party recommend a total overhaul of the entire political system in this dear country and therefore, we propose a proportional representative model of government, which is a parliamentary system with a three level administration; national, regional and local. In this model, there shall be no President to avoid power struggles associated with two centres of power.

The Prime Minister shall be the Head of State. In this model, Parliament shall be the supreme political decision making body. Through this new and effective tested model, local and regional self government shall be an important element in the democratic system of a new Kenya. Local and regional self government shall provide a lifeline to the marginalized millions of Kenyans. Parliamentary, municipality and County Council elections shall be held every four years. In this representative model, voters shall elect patriotic Kenyans with a very sound mind and a clean record from corrupt practices.

Here is a short insight as to how the new model of decision making and governing process shall function at different levels. At the national level, the Kenyan people are to be represented by a Parliament so called Kenya Parliament which shall have legislative powers. Proposals for new laws are then presented by the Government which also implements decisions taken by the Parliament. The government shall be assisted in its work by the government offices, comprising a number of Ministries and some central government agencies and public administrations. In this model, there shall be no Parliamentary Constituencies for members of the Kenya Parliament. Therefore, every member of this Parliament shall serve the entire nation and not his tribe or her clan.

Elections shall be held every four years during school holidays. This is to give a chance for all children to decide which women and men are to represent them in Parliament. In this model, Kenyan citizens who have reached the age of 18 by Election Day are entitled to vote. To be eligible to become a Member of Parliament, candidates must be entitled to vote and (b), nominated by a Political Party.

The Proportional representation electoral system shall be designed to distribute the seats as fairly as possible between the parties on the basis of the numbers of votes each party receives. In principle, all votes shall be of equal value but seats are only awarded to parties attaining a certain level of electoral support. Unlike today, party affiliations shall be important because votes in an election shall be distributed between the parties. Small parties will have considerable leverage and strength enough to fell a giant party during the actual formation of government or when the government fails to deliver.

The Kenyan constitution shall contain provisions defining the relationship between decision making and executive power. For example, a new Local Government Act shall regulate division into Municipalities, the organization and powers of Municipalities and County Councils. The Act shall also contain rules for elected representatives, Municipal Councils, executive boards and committees. At regional level, Kenya shall be divided into counties. Political tasks at this level are undertaken on the one hand by the County Council whose decision makers are directly elected by the people of the County and on the other, by the County Administration board which

are government bodies in the counties. Some public authorities shall operate at regional and local levels, for example through county boards.

At local levels, Municipalities and Councils and Regions shall be divided into “X X” Municipalities “X X” County Councils and “X X” regions. There shall be no hierarchal relation between municipalities, County Councils and Regions since all will have their own self governing Local Authorities with responsibility for different activities. The only exemption here shall be Coast region, Mombasa, an island in the India Ocean where the municipality also shall have the responsibilities and tasks normally associated with a county council.

Each municipality shall have an elected assembly that shall be the municipal council which takes decisions on municipal matters. The municipal council then appoints the municipal executive board which leads and coordinates municipal work. The government shall appoint a Parliamentary Committee, the Committee on Public Sector responsibilities, which shall be instructed to look into the vision of responsibility between different levels of government.

The democratic rules of the game, for Municipalities and County Councils shall be laid down in the Local Government Act. The right of Municipalities and County Councils to levy own taxes among their citizens shall be lawfully established. After collection of municipalities and county councils taxes--

Prof. Frederick Ssempebwa: You have one minute, please wind up.

Mr. Dick Kamau: Okay. Due to lack of more time to elaborate more on this wonderful model, I will now briefly confine myself on some of the issues CCM considers to be contentions issues. (*Laughter*). Number one among many other issues is land ownership. Based on the experience from the last year’s post election violence and having had a careful look at how land distribution from 1963 was distributed, we have come to believe all land should belong to the entire Nation and be placed under government care. This means, the State should recall all title deeds and issue leased deed to all current land owners. From then on, any of us owing land shall be aware that all land belongs to the State and that one is only leasing it at particular time.

On the Kadhi's Court or any other would-be religious courts, CCM believes that Kenya remains a secular State--

Prof. Frederick Ssempebwa: Your time is up, please.

Mr. Dick Kamau: Can I finish this, is important. Kenya remains a secular State where laws of the land apply to all equally, religious or non religious Kenyans. As a party, we therefore shall not support any other court outside the Kenyan National Law Courts. We in CCM as a Political Party do not mind whether one worships any daisy or not. But we care of freedom of not being bound by any form of religious, fundamentalism practices or prejudices, detrimental to National cohesion of Kenya. To avoid religious animosity amongst religious organizations, one law for all citizens must be the order of the day. Law and order must be maintained by all--

Prof. Frederick Ssempebwa: Really, I have to stop you.

Mr. Dick Kamau: Thank you.

Prof. Frederick Ssempebwa: Next is Mr. Biwott, National Visional Party.

Hon. Nicholas Biwott: Mr. Chairman, first of all, let me congratulate the Committee of Experts first, on your being appointed and two, on the work you are doing at the moment. Unfortunately, the Act limits you to collecting information from us, is another forum and at the time when you have not actually identified the specific contentious issues and the merits and demerits which are the preserve of the Parliamentary Select Committee. So, as it is, you are asking us under the invitation for proposals to contentious issues to merely comment which one or which of this, in other words, you want us to assist you to arrive at delineating what is contentious and what is not contentious and any possible solution for you to forward to Parliamentary Select Committee. In that case, we will never be effective. I think this Act was defective, it should have actually given us more teeth and it should have given you more room to identify and articulate the contentious issues and possible solutions, since you are Experts. But because the Act is what it is, I will just

go straight into the main issues. First, I served in the Bomas Forum and we were more serious in our Committees. I was in the Devolution Committee and as you can see from the produce of that Committee, everything is articulated and we put in thoughts that today, I will confine myself to what is possible under the circumstances.

First, I would like to comment on the reason why we are having problems, for example, in the case of Kadhi's Courts. In the case of Kadhi's Courts, we are having problems because we are lacking historical perspective. I think we should go back to Kenya as it was before Independence, because Kenya before Independence was a colony and protectorate. The colony was 10 miles from the Coast here up to Uganda Border and the protectorate was 10 miles up to the sea and in the protectorate, it was ruled by the Sultan of Zanzibar and he had a lot of Liwalis and all those things. The Laws existed which were Muslim and that is why you have those Courts today and for the last 46 years, Kadhi's Courts have been operating. It does not hurt anybody, so what we would have liked to know is, who is complaining about the Kadhi's Courts? What harm has it done, so that we can correct at how it should be done?

Two, we are looking at our Constitution when we have a Constitution which has served us for 46 years. We should have undertaken a critic of the existing Constitution to say, what is lacking and what needs to be improved, so that we can improve on it, because it has served us well or we want a completely new one and why. South African needed it because it was shifted from apartheid system to a democratic system. We overcame that position ourselves in 1963 and we have been ruling ourselves since then. So, coming back to what you are asking us, the Executive, I would recommend that the Executive, because we were used to. I think we should stick to what were used to a Presidential System which we have now. It works and our people know how it works. It's how to improve it and how to make it responsive to the wishes of the people. So, the President-- Let the President be elected by the people, because Kenyans want to know who to hold responsible or accountable for the running of our country and let that decision be the individuals themselves and not the Kenyans. But the way it operates at the moment, that when someone is elected a President, he is elected as a Member of Parliament, first of all, in his constituency and then secondly, to Presidency. When he assumes Presidency, he goes and stays

in State House, he does not come to Parliament and therefore, there may be need for a President, once he is elected to relinquish his constituency and to serve as Head of State from State House.

In that case, you need to somebody to implement party policies in Parliament and in which case you will have-- We will need to have a Prime Minister. You will find that if the people are electing a President and they are electing Political Parties, they will be more or less the same results. The majority in Parliament will also be the majority-- The majority which elected the President will be the ones also who will elect the majority of Members to Parliament. It is only in few occasions that the two do not coincide, in which case, we will have the French System to learn from. The Constitution should allow the President to choose his Ministers from elected Members and also from outside Parliament, because in most cases, there are nominated Members who do not have any other responsibility. Unless the Parliament operate effectively to provide checks and balances through committees because committees are very, very active, they have more time to scrutinize and more time to change.

On the question of Devolution, I would suggest that we have a devolved government, with three tiers, the district, the region and the national, the Central Government. Because there is need to share resources equitably and to share fairly, we need a neutral body, we need an institution which moderates the excesses of the majority which his reflected in Parliament, because in Parliament you will get the majority being reflected through the Members of Parliament. The greater a community-- No, the larger the community--

Prof. Frederick Ssempebwa: Now, less than a minute.

Hon. Nicholas Biwott: Okay. The larger the community, the more Members of Parliament who will come, in which case, we need a Senate, so we will also recommend a Senate to do the moderation an authority which will be used to moderate and apportion resource. Finally, the question of transition, I think we need to have a transition that you need time to be able to midwife the new Constitution and the transitional provision which were actually drafted even in the Bomas were okay. So, with these few remarks and with the limitation, I would like to recommend that in addition to having formal meetings like this, we should have informal

meetings. We should get few individuals to assist in actually articulating and drafting something which can be placed before the people, because in the end there will be need for you to come with two or three forms of Government for the people to decided which one they want, so that it is very clear and more so we need education. Education again is provided after you have finished with the Parliamentary Select Committee. I think Civic Education on this matter should be a continuous process, so that your work is seen and followed by the people and allowed maximum debates because it is a very, very important thing. Thank you.

Prof. Frederick Ssempebwa: Thank you. Yes, before the next speaker, Chair has got a comment.

Mr. Nzamba Kitonga: I thank Honourable Biwott for that presentation. He has raised the issue of districts in the three tier proposed system. I would like delegates maybe to direct their minds to what kind of districts we are talking about. As you know, there are now 254 districts. In the Bomas Draft, we talked of 74 districts. Originally, Kenya had 42 or 41 districts. So, maybe you could direct your minds into what kind of district we are referring to.

Prof. Frederick Ssempebwa: There is another comment from here.

Prof. Christina Murray: Just following up from the Chair's comment, the other question that has hardly been addressed here, I think is, when you propose different tiers of Government, what do you think each one of them should do. We know what the National Government would do usually. But there is very little clarity on what say, regional or a district would other tiers should actually do.

Hon. Nicholas Biwott: Do you want me to answer?

Prof. Christina Murray: Yeah.

Mr. Nzamba Kitonga: No, it's okay.

Prof. Frederick Ssempebwa: It is just a comment inviting others to elaborate on it. Well, just excuse me, the last in this round will be Mr. Miguna Miguna, then we shall have a selection.

Mr. Miguna Miguna: Yeah, good morning everyone.

Participants: Good morning.

Mr. Miguna Miguna: I am also going to-- I can be heard, eh! I am also going to thank the Committee of Experts for holding this consultative meeting--

Mr. Nzamba Kitonga: Your name?

Mr. Miguna Miguna: --I know that the last time-- My name is Miguna Miguna, he has already introduced me. I am from the Office of the Prime Minister. The last time we had consultations were in June and those were the reproductive exercises. I am not going to speak on behalf of ODM because we have two capable counsels here, holding brief for the party. I will make observations on behalf of the Prime Minister. First of all, it is imperative that the Committee of Experts conduct its mandate as a Committee of Experts, not as a Commission of Inquiry. They were selected as Experts, as Technicians in Constitutional Drafting. I think it is imperative to note that the collection and collation of views of Kenyans have largely been done and this process ended largely in 2005. So, we are not starting from a completely new ground. We know what Kenyans want. Kenyans want an inclusive Constitution, a Constitution that represents the desires and aspirations of Kenyans, since Independence. Kenyans want equity. So, whatever Draft we come with as Technicians we must make sure that there is equity from the Lake to the Coast, from the North to the South. Kenyans would like a system that is representative, that is transparent and that is very democratic. What we have had and why we are here, is because the system we have had has not been representative, democratic and transparent. Kenyans have gone through a history of reparation and it is because of the mongrel system that we have today, where a Head of State is a Head of Government and is also the Commander-in-Chief and is like a God. That must end.

I have gone very carefully through what was presented yesterday, which has been characterized as a Hybrid. It is actually not a Hybrid, it is a mongrel. There is nothing here which is Hybrid, from the first system to the last. If you read very carefully you will find, in every single scenario, the Head of State is the Head of Government, even where it is stated that the Prime Minister has to be elected. We are not married to titles here, but it is very important that we separate roles. The role of a Head of State and the role of a Head of Government: the functions of Government do not necessarily correspond to functions of running a State. This distinction must be maintained in our next Constitution so that we have proper checks. Parliament cannot just be a shopping ground for a Chief Executive, which is what is happening now. It is less than a rubberstamp. In fact, the scenarios that are here, that have been presented as Hybrid are worse than the Wako Draft that was rejected in 2005. We do not want a Constitution that is going to be rejected again by Kenyans.

Participants: Mr. Chairman

(Inaudible).

Mr. Miguna Miguna: Please no interruption.

(Inaudible murmuring on the floor).

Prof. Frederick Ssempebwa: I think the mood is that you better let him continue.

(Inaudible murmuring on the floor).

A Participant: Point of order, Mr. Chairman.

Prof. Frederick Ssempebwa: Let the Presenter continue, please.

A Participant: Order.

Mr. Miguna Miguna: Mr. Chairman--

Prof. Frederick Ssempebwa: Please continue.

Mr. Miguna Miguna: Mr. Chairman, I would rather have the courtesy and the respect that I have accorded everything. I have not interrupted anyone when they are speaking and people have said what they have come here to say. So, please let me finish.

(Inaudible comments on the floor).

Mr. Miguna Miguna: Now, I was encouraged yesterday, when the Chairman said, quoting Njoki Ndung'u, that we should be able to make a Constitution that even if your enemy was the one that was going to exercise Executive power, you would have confidence that the institutions of State and the levels of power will be exercised in such a way that you would not feel compromised. That your security, your integrity, your rights would be upheld and would be protected. That is the Constitution we want. In fact, I would go further that I want a Constitution that even if a mad man took power, I would be confident that the institutions of Government and State will be able to restrain the mad man, so as not to repress and oppress the citizens of this country, so that the emphasis should not be on individuals, it cannot be. You cannot craft a Constitution that just says, President, and Prime Minister. You should address institutions of governance. We want an institutional governed society. We need Constitutionalism not personality cult. If you emphasize so much on this thing called direct election, you are trying to create a situation where we are going to look at individuals as representing ideals of society, they do not. Morals and aspirations cannot be captured in individual, what if they die. They can die tomorrow. But cultural institutions continue forever. This is what we want. We want to build a society governed by institutions, so that when we talk of the Judiciary, we know what it represents. When we talk of our Parliamentary System we know what that represents. When we talk of the Executive, we are not talking of Raila Odinga or President Kibaki, we are talking of the two offices and how they relate in order to provide services and entrench and promote rights for Kenyans.

A Participant: Order, Mr. Chairman.

(Inaudible comments on the floor).

Prof. Frederick Ssempebwa: Please, please let the presenter complete.

A Participant: Mr. Chairman, now--

Prof. Frederick Ssempebwa: He has barely a minute.

(Inaudible murmuring on the floor).

Mr. Miguna Miguna: Now, regarding the Kadhi's Courts, I want to say this.

Prof. Frederick Ssempebwa: Mr. Miguna, you have less than a minute.

Mr. Miguna Miguna: No, because I am being interrupted.

Prof. Frederick Ssempebwa: Yes, I have added only a minute.

Mr. Miguna Miguna: I am going to finish. On the Kadhi's Courts I am going to make this submission. A lot of people do not realize and I am a lawyer, that the current legal system is based on Judicial Christian Laws and Morals. These are actually Christian Courts. That is my submission. The Common Law is based on Judicial Christian Culture and Religious Practices *(Laughter)* and, therefore--

(Inaudible comments on the floor)

Mr. Miguna Miguna --please--

Prof. Frederick Ssempebwa: Please, please--

A Participant: Yeah.

Prof. Frederick Ssempebwa: --let us have order. Let us have order, please.

(Inaudible murmuring on the floor).

Prof. Fredrick Ssempebwa: Let us have order. Please let us have order.

Mr. Miguna Miguna: We would like--

Prof. Frederick Ssempebwa: Please let us have order. Let him continue.

(Inaudible murmuring on the floor).

Prof. Frederick Ssempebwa: That is his own opinion. That is his opinion, let him complete. You have a different opinion. So, please Mr. Miguna, wind up. Wind up.

Mr. Miguna Miguna: It is important that we construct--

Mr. Nzamba Kitonga: Order, order please. Let the speaker complete his *ninii*.

Mr. Miguna Miguna: --a Constitution that is going to encourage tolerance, that is going to uphold the rights of everyone, that is not going to be exclusive, that is going to be inclusive and that is why I would support what Honourable Biwott said with, no. A gentleman here said with respect to the Bill of Rights. Maybe Honourable Biwott, we need a Bill of Rights that is enshrined--

Prof. Frederick Ssempebwa: The time is over.

Mr. Miguna Miguna: --and that is the centre piece of the Constitution.

Prof. Frederick Ssempebwa: Mr. Miguna, time is over.

Mr. Miguna Miguna: Those are my observations.

(Clapping & murmuring).

Prof. Frederick Ssempebwa: Can we have order please? There is no one who is on the floor, so there is no need for a point of order.

(Inaudible comments on the floor).

Prof. Frederick Ssempebwa: Okay, let me select the next--

(Inaudible comments on the floor).

Prof. Frederick Ssempebwa: Let me select the next--

(Inaudible comments on the floor).

Prof. Frederick Ssempebwa: Okay, in the interest of order--

(Inaudible comments on the floor).

An Expert: *(inaudible)* because they are saying it will appear on ODM.

Prof. Frederick Ssempebwa: Okay.

(Inaudible comments on the floor).

Mr. Nzamba Kitonga: Order.

Prof. Frederick Ssempebwa: Please let us continue, I want to select the next speakers. I want to select the next five speakers.

Mr. Nzamba Kitonga: Point of order, please.

(Inaudible comments on the floor).

Prof. Frederick Ssempebwa: No, everyone will speak.

(Inaudible comments on the floor).

A Participant:

(Inaudible).

Mr. Nzamba Kitonga: May I have order. May I have order, please? May I have order?

Participants: Yes.

Mr. Nzamba Kitonga: Can everybody sit down? Can everybody sit down, please? Sit down. Please let me have your attention. Do not be either overjoyed or be moved by the submission of one person. You have to wait for your opportunity and if you need to respond, you will respond at that particular time, because if we are a system where one speaker rises and you are very excited by his submissions or very offended by them and you want to respond immediately, we will spend the whole day here. So, let us please proceed in the manner that we had agreed, let us have the next speakers. When your turn comes, you will have time to respond to whatever you like or they do not like in respect of a particular speaker. *(Clapping)*.

Prof. Frederick Ssempebwa: Okay, I am going to select two from this side and two from this side. The one waving as-- We have said that there is no point of order.

(Inaudible comments on the floor).

Mr. Nzamba Kitonga: Let him speak.

A Participant:

(Inaudible).

Prof. Frederick Ssempebwa: Okay, we can give you your right to speak. So, you will be the second one.

Hon. George Nyamweya: Mr. speaker.

Prof. Frederick Ssempebwa: You will be the second one to speak.

A Participant: I have a point of order.

(Inaudible comments on the floor).

Mr. Nzamba Kitonga: Okay, let us hear Honourable Nyamweya's point of order.

Hon. George Nyamweya: Thank you, Mr. Chairman, first and foremost--

Mr. Nzamba Kitonga: This is a point of order.

Hon. George Nyamweya: --I must invite you.

A Participant: Your name please.

Hon. George Nyamweya: My name is George Omari Nyamweya, PNU. But I am rising not as a PNU person, I am rising on a point of order. You have invited us here as Political Party Leaders. First and foremost, please, please clear from your table and your minds, remove President Mwai Kibaki from your table, remove Prime Minister Raila Odinga from your table. They are not Political Parties (*clapping*). Those are individuals. Please remove them. Kenya cannot work on the basis of two individuals, that one we cannot accept and I am here and I must say that, it cannot be allowed, you cannot be allowed to be intimidated by representatives of those two gentlemen. You must not be allowed. You must allow us to come here as Political

Party Leaders to say our views (*clapping*) and therefore, my point of order is you have no business listening to a representative of Raila Odinga. You have no business listening representatives of Mwai Kibaki. You have every reason to listen to us as representatives of Political Parties. That is my point of order and therefore, there is no business you allowing anybody to go all over the world, telling us what is right or what is wrong about what their own lives. Let that come from that Political Party.

Mr. Nzamba Kitonga: Okay, I have understood your point of order, George.

Hon. George Nyamweya: *(Inaudible).*

Mr. Nzamba Kitonga: Hello, I have understood your point of order, George.

Hon. George Nyamweya: Yes.

Mr. Nzamba Kitonga: The point is that, in addition to Political Parties we invited the two gentlemen--

Hon. George Nyamweya: And that is the point of order I am making--

Mr. Nzamba Kitonga: And the point is this George.

Hon. George Nyamweya: --that we do not wish to have those two represented here. That is the cause of the problem of Kenya, by personalizing things. In fact, in my submission, when I come to get the opportunity as PNU, I will be telling you that I do not represent Mwai Kibaki, I represent PNU as a party and what we believe in the future--

Mr. Nzamba Kitonga: George.

Hon. George Nyamweya: --is not about the individual's interest.

Mr. Nzamba Kitonga: Yeah. Now, we have understood your point or order, but we would like to clarify that we invited the two gentlemen and I do not think that the mere title that somebody speaks of a Prime Minister or the President should be taken that it will intimidate the Committee or this House. *Sisi ni chuma ambao haitishiki.*

A Participant: Yes. *(Clapping).*

Mr. Nzamba Kitonga: Okay, now let us have the next speakers.

Prof. Frederick Ssempebwa: Okay, just hold on. Just hold on.

A Participant: Why?

Prof. Frederick Ssempebwa: Just hold on. We want to select others who are going to speak. From this side, okay Mr. Nyamweya, then this side you were the third and yeah, you will be fourth. Yes. So, those four then we shall continue.

Mr. Alfayo Agufana : Okay, I believe it is my turn to speak. My names are Alfayo Agufana--

Mr. Nzamba Kitonga: *(Inaudible).*

Prof. Frederick Ssempebwa: Okay, just hold on there is some comment being made. Just hold on. Just be cool. No, no, just hold on.

Mr. Amollo Otiende: *Mheshimiwa* just one minute. I would just like us to be clear. We have been noting all the parties that have spoken. We do not want any party that has spoken to raise their hand to speak again.

Participants: Yes.

Mr. Amollo Otiende: So, I just want to leave the parties that have spoken, so that we do not get to give them another opportunity.

Mr. Alfayo Agufana: Those were the original rules and I believe it is my time now to talk.

Mr. Amollo Otiende: No, no, no, no, that is fine, but just hold on.

(Inaudible comments on the floor).

Mr. Amollo Otiende: No, no, let me just read the parties that have spoken first.

Mr. Nzamba Kitonga: Which parties *(inaudible)*.

Mr. Amollo Otiende: Okay, fine.

Participants: There are some parties that have not spoken.

Prof. Frederick Ssempebwa: Yeah, we have a list. We have a list. It can be read out.

A Participant: People like that, please, please establish a list. Let us know in what order we are going to speak, so that we do not have to go through this process of competing to speak. Thank you.

Mr. Amollo Otiende: *Mheshimiwa*, that is the point I wanted to make. Just have a seat first. I think the turn is yours. Let us be very clear. The parties that have not spoken one, is the Party of Independent Candidates of Kenya, (2) The Democratic Party of Kenya, (3) The Orange Democratic Movement (ODM) Kenya, Kenya National Democratic Alliance, Mkenya Solidarity Movement, Kenya National Congress, Kenya African Democratic Development Union (KADDU), Kenya African National Union (KANU), ODM, National Patriotic Party of Kenya, United Democratic Movement, Peoples Democratic Party, Party of National Unity (PNU), National Rainbow Coalition, New Democrats, Nuru Party, Peoples Party of Kenya, Chama Cha

Uzalendo, Alliance for the Restoration of Democracy in Kenya, A FORD – Kenya, Progressive Party of Kenya, National Party of Kenya, National Labour Party, Muungano Development Movement Party of Kenya, VIPA, KADU-ASILI, National Agenda Party of Kenya, People’s Patriotic Party of Kenya and Farmers Party and of course, the representatives of the President. Those are the people who have not spoken. So, perhaps the Chairman will guide whether now we go by the list or we continue.

Participants: Go by the list.

Prof. Frederick Ssempebwa: Well, I hear the consensus now is that we go by the list--

Participants: Yes.

Prof. Frederick Ssempebwa: --of the parties that have not spoken.

Participants: Yes.

Prof. Frederick Ssempebwa: So, we shall follow that list.

Participants: Yes.

(Inaudible comments on the floor).

Prof. Frederick Ssempebwa: Okay, the first one is Party of Independent Candidate of Kenya. Who is speaking for it?

Mr. Michael Oliewo: I shall.

Prof. Frederick Ssempebwa: Please note that if you agree with what has been said before, you do not have to speak for the sake of speaking (*laughter*), because your Party has not spoken. Continue please.

Mr. Michael Oliewo: Thank you Chair. My name is Oliewo Mike, I am the Chief Executive Officer of PICK.

Staff: Name?

Mr. Michael Oliewo: Pardon?

Staff: Name?

Mr. Michael Oliewo: Oliewo Mike and I represent PICK here. Mr. Chairman, we have been through this process for many years. I was at Bomas, Bomas I, II, III. We came out with a Draft. We went to the Referendum, we are back. There is a lot of work that has gone into this process, so that Kenyans can realize a new Constitution, but there are challenges. There are challenges because first of all, there is something called political goodwill. In our opinion, it has been lacking before and that is why it has taken us this long to enact a new Constitution. Basically because when we want to write a new Constitution, we have tended to think in terms of personalities, who will rule and after that person, who will rule after him and who next and the other. Mr. Chairman, I think that a good Constitution should be able to secure the rights of everybody regardless of who rules, whether it is your brother or your enemy. Our party is clear in the kind of system we want. We want a Parliamentary System. We would rather have 200 dictators instead of one dictator. We would rather have a house like this one, checking each other than one person making decisions outside. As we are now, our present Constitution, if you do a critic of it, you will realize that the Chief Executive has some very latent powers, abstract powers that are not clearly discernable within the Law.

We want to empower the people's representatives. If we elect Members of Parliament, let them take charge and govern directly. Again, there is the issue of direct election of President. I heard yesterday, the worthy contribution of Hon. Eugene Wamalwa, in his constituency there are some villages which were wiped out during the post-election violence and when he visited them, they asked him, please why don't you allow us just to elect our Councillor and our MP. This one of

electing the President brought us so much trouble, we do not want to go through it again. It is food for thought, Mr. Chairman. It is serious food for thought, because come to think of it, what if in 2007, we only had elections for Councillors and MPs, would we still have gone to war? That would still be a question to deal with. Mr. Chairman, we are fully for a devolved government. Thoroughly devolved government up to the district level and we want to submit here, that part of the reason why we cannot agree on a new Constitution is because of distribution of resources. As we are talking now, Nick Salat was telling me yesterday that the 2%, the CDF right now is 2%, is it not.

A Participant: 2.5.

Mr. Michael Oliewo: 2.5. People still feel that is very little and he was asking about the 98%. Let us devolve completely, let us make people feel that they are part of this country, in terms of resources, in terms of governance and so that they can know that their rights are protected in their own country. Mr. Chairman, we all have equal stakes here. I want to talk about land. In my opinion, land itself should be treated carefully. If we live in a country where you cannot change settlement at will that shows that either there is a weak Government or no Government at all, that I cannot move from Nairobi and be in Mombasa today, because I was not born here. That probably shows either there is a weak Government or no Government at all. We must have a Government that can secure the right of the human being and the rights of property in any corner of the country. In any corner of the country and the rules should be very clear. If you buy property, you should be able to enjoy the proceeds of that property, but if you grab it, the Law should be able to deal with you. If we do not deal with the issues of land effectively, then this Constitutional writing process again will fail, because there is an article somebody will pick and say, you see, now this time round this is how they are going to deal with your land. The only common thing between the peasant in Lokichogio and Kwale and Kakamega is land. It is the basic resource and it is where they derive their livelihood. We must come out clearly with proper Land Policy in this new Constitution to govern and secure the rights of the owners of land.

Mr. Chairman, I have looked at the Transitional provisions of a new Constitution. In 1992, when Section 2(a) was repealed, there was a lacuna in the transitional provision of that time, that allowed the incumbent to start afresh for 10 years, is it not? Are we going to allow that window of opportunity again? So, that the incumbent can start afresh when a new Constitution comes in place or are we going to say, now you know, you have ruled, even though you are ruling under another Constitution but you are ruling the same country. So, you have already finished your term, go home gentleman, have a rest and let us talk next time. Thank you, Mr. Chairman. Unless you have a question for me. (*Laughter*).

Prof. Frederick Ssempebwa: Thank you for being so short. Next is National Agenda Party of Kenya.

Mr. Alfayo Agufana: Thank you very much Honourable Chair. My names are Alfayo Agufana, I am the National Chairman of the National Agenda Party of Kenya and as a party I would want to start by saying that, we would want to see people addressing agenda issues and we have so many issues that we need to tackle as a nation and therefore I would want to say, in terms of leadership we would want to see the Political Parties, our Political Leaders reflecting a level of maturity, understanding that as Political Parties, we ought to form Government and the Governments ought to homogenize the differing needs of our communities and therefore, we need to see a level of tolerance whenever we are having discussions on national issues and that this should not be the cause of us having emotive feelings that eventually you know, translates to the communities and this can continue to cause division instead of healing in our nation. Therefore, starting with my recommendations, I would like to say that we as a party feel that we need to put in a word of caution to the Committee of Experts, that we have had a long journey trying to get a new Constitutional order, but due to various reasons, we have failed to achieve this. We recommend that one, you as Committee of Experts should avoid intellectual dishonesty.

We have seen so many Committees going round, we have seen so many Commissions going round, I would want with all due respect to make reference to the Prof. Saitoti Commission, which went round trying to find out whether Kenyans wanted to have Section 2(a) changed or

not, to our shock they came and gave the opposite of what was the feeling of the people. We know you are Honourable Members, we have full confidence in you, many of you are younger people, we know we have great hope and you are the last beacon for this country. Please make sure that whatever you capture as Technicians, will be to solve the problems that you know exist. Therefore, to guide you we would like to see you asking the question, what is a Constitution? Without me repeating what already other people have said, I want to emphasize the fact that the people are calling for a new Constitution because people's freedoms and people's rights have been trampled upon.

There are so many issues that I think cannot be addressed even in a presentation of 10 minutes. The historical injustices and so many of those kind of things, therefore we, for instance we were a bit shocked to see you saying that the issue of land is not a contentious issue. To us, as a word of caution, we would want to recommend that please do not bring out a document that does not recognize some of the contentious issues. Do not sweep some of the most serious issues under the carpet, because that is what has already happened with the current regimes that we have had. They believe that there are problems but the problems will sort themselves by themselves. We would want you to address yourself to the real issues, the real problems that are causing people to call out for a new Constitution. In this case, we would want the Committee of Experts to address even part of the conflicts that have been identified under Agenda No.4.

In terms of Representation, we propose a proportional representation with gender parity of one-third in favour of women and other Thematic Groups, like the youth, the disabled and others that maybe identified. In terms of the Kadhi's Courts, I heard someone state that-- I mean, make some statements implying that the Kadhi's Courts are being imposed on us by the Americans. I know the historical, you know, the recent thing that has happened after September 11, but I would want to say that even President Obama himself has some Muslim relatives and he is proud of them. I know, of course, the ideological difference and the fear that probably Islam will take over communism. But we as a nation, must understand – even what President Obama himself said in his acceptance speech that we have been dominated by dogmas which are worn out, we need to develop a level of tolerance in terms of religion, because religion is something people value.

If you as a national leader want to take a hard-line stand, you will actually be pushing this country to the brink of conflict. As the Commission already said, we have already a lot of our own problems in terms of ethnicity. If you allow and probably I am doing advocacy here, please as political leaders, do not go out there and start contributing to some myopic views, that are being expressed sometimes by even our responsible you know, Christian leaders. They know fully the danger of bringing in the issue of religion as a conflict issue. We agree as a party that we have had the Kadhi's Courts for this long and so long as whatever they practice is consistent with the rest of the Constitution, we as the National Agenda Party of Kenya, I am even proud to say that my Secretary General is a Muslim and we have never had a problem. So, this should not be a reason for us to have conflicts whatsoever. In addition to that as I have said, it is a very important thing in terms of national security. We need to look at it critically from that level.

The Environment: We need to see issues of environment being addressed critically in the Constitution. We would want to see you coming up with legal frameworks or institutions that can tackle--

Prof. Frederick Ssempebwa: You have less than a minute.

Mr. Alfayo Agufana: That can tackle our climatic conditions. We have seen the Government send people with guns to go and fight cattle rustling instead of going to dig boreholes. We also go for the devolved government, whereby we are saying that we need to replace the provincial administration with an elected structure. Then we go for a pure Parliamentary System. Basically, I would support the presentation by Dr. Kariba in that regard and the reason why we go for a Parliamentary System is to avoid polarization of people feeling that we need to put our own, so that when we get there, we can have our time of eating. Thank you very much.

Prof. Frederick Ssempebwa: Thank you. Who is the next party?

Mr. Amollo Otiende: Next should be the Democratic Party of Kenya.

Hon. Joseph Munyao: Thank you Chairman. My name is Joseph Konzolo Munyao, I represent Democratic Party of Kenya. I will thank you, the panel like everybody else has done. Mr. Chairman, Democratic Party's views and paper was presented to your Committee on the 20th July. For purposes of other parties who have not seen our copy, our legal and constitutional secretary, *Bwana* C.N. Kihara is going to read our points and I would request you finally, when it is about two minutes to warn us, so that the Secretary General would have a very important topic to cover. Mr. Chairman, the issues raised in this forum and any other forum, every party here comes with expectation. DP came with the expectation that we all agree and I will plead with everybody in this forum, that as we walk out today or any other day we make history that today we agreed, not to give topics to the media that we were fighting, we were all doing that, we have done this Constitution for 19 years. Those who were born 19 years ago, some are married, others are in Universities and Mr. Chairman, I would plead with this forum that we come out with the end of it, because we now know the narrowed differences which are there and I am sure we can do it. With those little remarks, I will request that C.N. Kihara to read, but as I said, Constitution-- In fact, I do not know why we are bothering to so much, because even the current Constitution it has never been followed. President Kenyatta, President Moi and now Kibaki, they never even followed. One wonders why are we bothering on a Constitution which will never be followed anyway. But with those few remarks, Mr. Chairman (*laugher*) let the Secretary General.

Mr. C.N. Kihara: Thank you, thank you. Thank you, Party Leader. My names are C.N. Kihara, I am the Secretary for Legal and International Affairs--

Ms. Atsango Chesoni: Of?

Mr. C.N. Kihara: --of the Democratic Party and I practice Law in this country. Now, I will very, very fast. One, I will deal with the Executive. The Democratic Party is proposing a President who is directly elected by universal suffrage. By an absolute majority of all the votes cast and we have gone further to recommend that he should have at least 50% + 1 of all the votes cast on the first ballot. In the event that there is not candidate getting a 50% + 1, then we should have a second ballot where the two top candidates should be candidates within fourteen days of

determination on the first result. In the event again we do not have 50 + 1 percent, we recommend that then the candidate with the largest number of votes cast or the highest is declare the winner. We recommend that the President should not be a Member of Parliament, so that we do not have this problem of the President having to resign or by-elections in a particular constituency. We also recommend that the President should have veto power over legislation and for Parliament to overcome that veto power, it should pass a resolution or a legislation supported by 65% of all the Members. We also recommend that all Constitutional Office Holders that are made by the President - we will not go through them because of the time and most of them have been covered before all the ones done by the President should be subject to Parliamentary approval.

Now, we have also recommended that there should be provisions how to impeach a President for a felony or breach of any of the constitutional provisions and that the Judicial Process should not be involved and that it should be done by Parliament with an affirmative resolution of at least 75% of the Members supporting the impeachment. Then we have also recommended a Vice President who should be a running mate and should not be a Member of Parliament. We have gone further to recommend that of course, the duties of the Vice President, those ones we have not touched, we have left them. Now, the only issue then, we go to the issue of a Prime Minister. We have recommended that there be a Prime Minister appointed by the President but with the approval of Members of the National Assembly and the Prime Minister must be a Member of Parliament from the party with the largest number of seats. The duties of the Prime Minister should include, that he should be the Leader of Government Business in Parliament, he should also perform any of the functions that maybe conferred by the Constitution or other duties that maybe directly by the President.

As concerns the Cabinet, we have recommended that the Cabinet should not be appointed from Members--

Prof. Frederick Ssempebwa: Now, the two minutes you requested for the other presentation have begun to run.

Mr. C.N. Kihara: Thank you, thank you. I will cut short and skip and get to something I think has not been covered, so that you can permit me at least to discuss that area. Now, the issue of Transition, we have recommended that all Constitutional Officeholders be required to retire or to take early retirement on the implementation of the new Constitution, so that we can have replacement under the new Constitution. But we are further recommending that perhaps they should be implemented by a Commission, so that they are staggered retirement like in regard to the Judiciary. So, there is staggered retirement. Those who think they can meet the new criteria can then reapply and be processed and then they resume their offices. We have further recommended a Supreme Court, it is critical, Mr. Chairman because this has not been covered also. We have also recommended the Supreme Court, which should be higher than the Court of Appeal and the Supreme Court should have the mandate of interpreting the Constitution and the Bill of Rights and should be headed by a Chief Justice. Thank you.

Prof. Frederick Ssempebwa: Yeah, according to the programme, now we have to break for--

Mr. C.N. Kihara: Our minute, Mr. Secretary.

Prof. Frederick Ssempebwa: Oh, I thought you have finished.

Mr. C.N. Kihara: No, he has not finished.

Mr. Chris Murungaru: This is my two minutes which you fore-warned us about. Thank you, Chair.

Prof. Frederick Ssempebwa: I thought the other presenter was going to complete.

Mr. Chris Murungaru: We agreed, two minutes.

Prof. Frederick Ssempebwa: Just one minute.

Mr. Chris Murungaru: Okay, Chair, I would like to draw the attention of this *Kongomano* and more particularly yourselves as a Committee of Experts about an issue which is bothering a lot of us.

Mr. Nzamba Kitonga: Have you stated your names, please?

Mr. Chris Murungaru: Sorry, my names are Chris Murungaru, I am the Secretary General of the Democratic Party of Kenya. I can add many other titles, but will save you the-- Chair, as we are sitting here there are other committees which were created through a similar process or from-- Indeed, let us say from the National Accord as yourselves. One of those committees is the Electoral Commission and the other one is the Boundaries Commission, but all of them are doing work of a constitutional nature. Mr. Chairman, as we are sitting here as politicians, we cannot lie to ourselves that we did not think about politics and elections. Elections are about voters and that is where, that is the fountain of everything else that we are talking about really.

Now, Mr. Chairman, there is the question of suffrage, the power of the vote and that is what is being addressed by the Electoral Boundaries Commission and Mr. Chair, I am wondering and perhaps you might want to guide us on this, which will come first, you determining how many constituencies for example we need to have, the basis of determining that number of constituencies, *yaani* the upper limits and the lower limits of voters in each constituency. Perhaps, there are others who will give better details than I have. But Mr. Chair, until you determine that because you are the Constitutional Experts as far as this process is concerned, I do not think the Boundaries Commission can be able to effectively carry out its duties and even us sitting here, we will not be able to make coherent proposals about even the system of Government we want or otherwise, because if we are talking about going Parliamentary, then we must talk about every vote that is cast--

Prof. Frederick Ssempebwa: Please wind up.

Mr. Chris Murungaru: -- is being put into effect. It must. So, Chair, may I propose that even as we wind up this *Kongomano*, that that issue is addressed and if you do not have sufficient time--

Mr. Nzamba Kitonga: We have heard.

Mr. Chris Murungaru: --to address those issues.

Mr. Nzamba Kitonga: Yes, we have heard.

Mr. Chris Murungaru: May I further propose that we ask the Parliamentary Select Committee to pass the necessary amendments to harmonize the work of the three Committees. Thank you, Mr. Chairman.

Prof. Frederick Ssempebwa: Thank you very much. According to the programme we have to go for a tea-break and--

Mr. Nzamba Kitonga: *(Inaudible)*.

Prof. Frederick Ssempebwa: --my chairing ends here. I would like to thank you for the peaceful *(laughter)* session. I saw no disagreement on issues of substance. There were minor disagreements on procedure and opinions, so I really thank you for having conducted yourself in an orderly manner.

Mr. Nzamba Kitonga: Now, just before we break--

Prof. Frederick Ssempebwa: Before we stop the Chair has something to say.

Mr. Nzamba Kitonga: Just before we break, I need you to understand the challenge ahead there are 24 Political Parties remaining, that have not had their chance to address this gathering. So, I think the way forward is I will not reduce the time, because that will be unfair. I think the way

forward is, if you agree with the Parliamentary System of Government for example, you do not have to start reciting again. Just say you support a pure Parliamentary or a pure Presidential and we understand that point.

Participants: Yes.

Mr. Nzamba Kitonga: If it comes to like the Devolution, say you support either a two tier or a three tier, without reciting. But also if you have a new point like C.N. Kihara had and unfortunately instead of going to the new point, he started repeating what had been said earlier, then came to the very important point at the end when his time was really over. If you have a new point concentrate on it first and that way, we will have the input. The other matter is that some people have spoken about the disbandment of the provincial administration, but there is no clarity. I want the other speakers maybe to concentrate, do you want the whole of it disbanded or-- No, no, wait or do you want the chief to remain. Some people are talking about a chief getting elected, so is he a law enforcer or is he a Councillor. You have to actually go into those details. In relation to what Hon. Chris Murungaru has said, we are fortunate that the Vice Chairman of the Parliamentary Select Committee on the Constitution, Hon. Ababu Namwamba - please could you stand up - is here with us and he will at some stage enlighten us on how they had structured the committees to work. So, let us take a very short 10 minutes break and come back. Thank you.

A Participant: What time do we come back?

Mr. Nzamba Kitonga: 10 minutes break. Yeah.

Hon. Nick Salat: You have the document like from our party, KANU. You know our position on most of the issues, so I just find-- I am going to repeat what you are already in possession of.

Mr. Nzamba Kitonga: No, it is trying to highlight and if there is agreement between the document and others, say we agree to this and this system.

Meeting adjourned at 10.57 a.m.

The meeting resumed at 11.20 a.m.

Mr. Bobby Mkangi: Ladies and gentlemen, I would like to call the meeting to order. I think we can carry on with the meeting. If we could have the presenter for Orange Democratic Movement, Kenya – ODM Kenya, please. They are yet to come in? ODM Kenya are not here? Can we have KENDA then, Kenya National Democratic Alliance? Let us put our hand on the plough so that we can save on time please. KENDA? As KENDA takes its time or its place, let us remember the rules we agreed on before we went for our health break that if a point has been mentioned or a position and you are in support with simply mention that but kindly highlight on the new issues that you are bringing forth or the issues you feel that have not been adequately tackled. So, KENDA *karibu*.

Mr. Ephraim Murigo: Thank you, Mr. Chairman. This is Murigo Ephraim; I am the National Organizing Secretary, Kenya National Democratic Alliance. Mr. Chairman, it is important we who have the opportunity to gather in this place try to make sure that we leave this country better than we found it.

The Kenya National Democratic Alliance will have a few proposals. I will take maybe less than five minutes. First, Mr. Chairman, I want to thank you for yesterday the Citizen TV went on to state that the forum at Mombasa was not reaching anywhere and shortly Mr. Chairman, you were live on TV and you clarified that issue. We need to thank you. As a party, Bwana Chairman, our party proposes to have the direct election of the President of the Republic of Kenya with executive power but we are proposing to have the Presidential powers checked by at least asking the President to address Kenyans every month on national issues. Many a times, Bwana Chairman, you will find Kenyans being rattled by snakes and Mr. President will go on keeping quiet. He will keep quiet for six months and Kenyans will never know why they are rattled by the snake. We would want the President of this country to address the national issues once every month.

Number two, *Bwana* Chairman, the Kenya National Democratic Alliance do not find issues to fight with the Muslim. The principle objective of Christians states that you must love and indeed love your neighbor as you love yourself. The people in this country who are trying to bring in crises between Christians and Muslims are simply doing this country no service. So, the party has indeed no issues with our Muslim brothers and we find Kadhi courts and the related Muslim customs not contentious at all.

Mr. Chairman, the new constitution must clearly give the size of our Cabinet. After every election we are waiting or we wait for the President to award those who helped him campaign and if you do not get the post of a Cabinet Minister then fights start from that day and we stop building the country we start fighting and the fights start from the second day after the elections. So, we propose the Cabinet be recognized by the constitution properly, the Cabinet will be given its details and majorly we have nobody, not the President, not even the Parliament with powers to change the details of that Cabinet. So, we propose that if there must be a change, then Kenyans should be asked to go for a referendum and vote for that matter then Kenyans will decide whether we should have a Cabinet of 45 of 49 according to the conditions of the memoranda that go against it or we simply keep the cabinet that the constitution has given us.

Fourthly, *Bwana* Chairman, all our constitutional offices we need to get a list. We talk about judges of this country. A few people in the judiciary will sit down and recommend a judge. Even lawyers who have matters in court, the other day you find them seated properly because we do not even have the Law Society of Kenya recommending these people to the offices of judges. We recommend the body that recommends persons to the offices of High Court judges, Court of Appeal and indeed the Supreme Court to be vetted; first of all to be selected by an expanded constitutional office and thereafter before they are named they should be vetted by Parliament, *Bwana* Chairman.

Lastly, *Bwana Mwenyekiti*, there is a big problem in this country and with the manner of devolved government; our party proposes to have two levels of elections. In Kenya today, *Bwana* Chairman, a general election is almost if not completely a situation of life and death. What we saw yesterday, of course you may not want to see such a thing again in Kenya, came

out of a general election that reads the 'suit programme'. Those who are trying to be MPs, Councilors or the President must have noticed in this case the country has a big problem because we want the President, the MPs, the councilors and with the new constitution, the governors, all in one day and I think that is our main problem. If we could separate the two such that the elections of the councilors, the MPs, the governors are done on one day, then those in Western Province who want to support the President will not have to fight then.

Mr. Bobby Mkangi: You have one minute please.

Mr. Ephraim Murigo: I will take half an hour. (*Laughter*)

Mr. Bobby Mkangi: Half a minute alone.

Mr. Ephraim Murigo: Sorry, Mr. Chairman, I will take half a minute. For that thing, Bwana Chairman, our party proposes to have two levels of elections such that we have the councilors, the MPs and the governors elected in one day and then we will have another one year to prepare for the elections of the president. That way we will even reduce the number of those who want to be the president before they become MPs by making sure you are elected as an MP before you say you want to be the president. Bwana Chairman, with those few remarks I want to thank you.

Mr. Bobby Mkangi: *Asante sana.* Let us have ODM-Kenya please.

Mr. Ben Momanyi: I am Ben Momanyi, Secretary for legal affairs, ODM-Kenya. I also join my colleagues in thanking the Committee for organizing this meeting so that as political parties we can express our views in regards to the constitutional change.

The Chair, indeed as some of my colleagues have said, unless we divorce personalities from this constitutional process making, I do not think indeed we will go very far. We should instead of thinking of individuals think very seriously of institutions and strengthen those institutions. That is the only way through which we can realize a new constitution. As a party, Mr. Chairman, we tend to agree with most of the Kenyans as you did confirm to us yesterday that when you went

round, most of them were of the opinion that they should be allowed to elect directly the chief executive of this country. It is our proposal, Mr. Chairman, that we should have, we do intend to agree with the second part of the Hybrid System that you gave us yesterday whereby, Mr. Chairman, we should have the President as the Chief Executive who should be elected directly by the people. It is my submission that every Kenyan should participate in electing a person who should take control and discharge the duties of the State.

Mr. Chairman, we should have a Deputy President who should carry out the duties of the President in the absence of the President. We should also, Mr. Chairman, have a Prime Minister and one Deputy Prime Minister which Deputy Prime Minister should carry out the duties of the Prime Minister in the absence of the Prime Minister. It is also our wish, Mr. Chairman, that we should have Cabinet Ministers who should not be Members of Parliament. We should have professionals who should run various Ministries. Mr. Chairman, you realize that at times there are a lot of inequalities when some members of parliament are appointed as Ministers. We all come from constituencies. I happen to come from a constituency in Kisii which has never seen a Cabinet Minister since independence and we feel that all Members of Parliament should be equal in that Cabinet Ministers should come out of Parliament so that all constituencies are treated at par. You realize, Mr. Chairman, that once one is appointed as a Minister that person will always try as much as possible to please the appointing authority. In this regard, Mr. Chairman, that is why we seriously feel that we should have professionals running the ministries instead of politicians who end up being psychopaths to the appointing authority.

Mr. Chairman, also in regard to the distribution of resources, it is our humble submission Mr. Chairman that the country's resources should be channeled directly to the people at the grassroots level and indeed it is our submission that these funds should have a manager who is directly answerable to the Central Government on how these resources are utilized and this manager should have the authority and be given guidelines on how to spend the money from the Central Government.

On Judiciary, Mr. Chairman, I tend to agree with one of the speakers who has just left the arena, that indeed since independence we have always had on news that so and so has been appointed a

judge. It is our submission, Mr. Chairman, that indeed we should have a competitive exercise in terms of appointing people to those high offices. It is a pity, Mr. Chairman, that we have magistrates who are always in court and do not even earn even a quarter of what the judges earn and yet they are the people who do bulk of the work. So, indeed it is our submission that those officers should also be considered as and when judges are required.

Mr. Chairman, it is our humble submissions that as regards the Kadhis courts, indeed as some of the speakers have said we have had it for quite a long time. It is our humble submission that the same should be as it is today in the constitution, Mr. Chairman.

On representation, Mr. Chairman, we know we have had the number of constituencies that we have had today for quite some time. We have the census exercise which took place the other day and we realized that the number of people has since doubled and if that is the case, then it is important that we should also double the number of constituencies so that we have better representation in parliament. It is our humble submission that at least we should have a minimum of 300 constituencies in the next parliament.

Mr. Bobby Mkangi: One minute Mr. Momanyi.

Mr. Ben Momanyi: That is alright. In that regard, Mr. Chairman, before my one minute is over it is our humble submission that as much as we are running up and down trying to see that we have a new constitution, we should address very importantly the issue of impunity. As we are seated here today, we know we have a constitution, we know we have the rules and we know people are going against these rules over and over again. So, it is our humble submission, Mr. Chairman, that this issue of impunity must be addressed and we should have a proper way on how this issue should be tackled.

Mr. Bobby Mkangi: Wind up please.

Mr. Ben Momanyi: To finish, Mr. Chairman, we suggest that we should have 18 months to 2 years transitional period before the constitution takes effect. That is all, Mr. Chairman.

Mr. Bobby Mkangi: *Asante sana.* Can we have Mkenya Solidarity Movement?

Mr. James Mungai: Thank you, Mr. Chairman. My names are James Ndung'u Mungai. I am the Secretary General of Mkenya Solidarity Movement. May I start by congratulating the Committee of Experts in the first case and again I also call upon the Committee of Experts to encourage Kenyans and tell them this time around, it is possible that we get or we must get the constitution. Just like to echo the feelings of my colleague, Mghanga Mwandawiro who actually said there has never in the world been a very, very, very perfect constitution and Kenyans should do away with the notion that we are working on the most perfect constitution. So, it is important to note that even the constitution of America which was adopted in 1787, you will be surprised that four years later in 1791 it was amended ten times and between 1787 and 1950 recently, it had suffered 21 amendments. From 1950 up to now I do not know whether it has been amended in any part.

But let me put it this way that the beliefs that any constitution must be subject to what we call continuous improvement for the sake of the welfare of the people because we are living in a changing world. Tomorrow you do not know what will happen. Nevertheless, I would want first to start my-- Even before I come to the proposals, I am always impressed because already 45 years down the line from the time we got our independence we have already produced a system whether it is too bad, whether it is too good, we still have things which we can say this one is good and that one is bad. Even when Americans were so bitter fighting for their independence from King George III, they still had something inside them that checked their bitterness and on one party they stated within the declaration, *'prudence indeed will dictate that government long established should not be changed for light and transient courses and accordingly, all experience has shown that mankind are disposed to suffer while evils are sufferable than to like themselves by abolishing the forms to which they are accustomed'*.

Having said this, gentlemen, it is always important to see where we are coming from and in particular when Jabriel Dee Hussein has written, he was actually trying to write about the background of different constitutions Ghana's constitution, Nigeria's constitution, Sierra Leone

constitution, Malaysian constitution and this is what he had to say about Kenyan constitution because seem to be going round a problem which was seen and which also was discussed in February to March in 1963 in London. I got surprised when I read this thing and when I saw it because I just believe that it could have been-- I just come to my proposal.

This is what he had to say, *'The present constitution of Kenya is based on an agreement reached at a conference held in London in April 1962. A major problem...'* get this, *'A major problem to be solved was how to ensure a strong central government together with as much decentralization of powers'* – get the truth, *'strong central government together with as much decentralization of powers as possible to the regional authorities. The key features of the constitution as promulgated in 1963 are bicameral legislature called the National Assembly comprising a senate of 41 and a House of Representatives of 129, 117 directly; 12 indirect, and then external affairs, defense, customs, external loans and major economic developments were the responsibility of the central government. Seven regions together with the special Nairobi area have assemblies with the legislative powers and also executive powers exercised through committees in their areas. The regions have public health and most other local government services among others'*. Let me not go to the nitty-gritty of the discussion in London but you must have noted the problem that--

What we are discussing had been discussed earlier and if you have recently listened to most deliberations, one thing is in principle agreed: devolution. It is not a question any more but you still find something very interesting that it is just what was left in 1962 that we are going back to get it. All the efforts of the constitution making--

Mr. Bobby Mkangi: Mr. Ndung'u, you have one minute.

Mr. James Mungai: Wow, wow, wow! Let me now suggest the kind of-- (*Laughter*). We are proposing therefore a regional government which is bound by national and regional statutes in regard to equal treatment on all residents within its boundaries in regards to rule of law, individual protection, opportunities, civil and political liberties and taxation. Each regional assembly shall plan, finance, administer and govern its own development programme among

other internal dynamics on regional governance especially-- In the regions judicial dispensation, no person shall undermine, intimidate, threaten, demonstrate tribal hatred either by coercion, actions or any other way which suggest discriminative efforts which undermine democratic liberties either in economic, political, cultural or social life in general. An offence committed on any regional area shall attract--

Mr. Bobby Mkangi: Half a minute, just wind up please, Mr. Ndung'u.

Mr. James Mungai: --shall attract a death or life penalty or both. There shall be a national President who shall be elected by universal suffrage and proposed by 50% of the regional assemblies, that is, half of the total number of all the regional assemblies must propose that President. Therefore, the members of the Upper House in that case in total disregard to their political affiliation shall elect for the, note that, shall elect for the president the Prime Minister whose appointment is from the National President of the Republic of Kenya. The Prime Minister shall have authority--

Mr. Bobby Mkangi: Mr. Ndung'u--

Mr. James Mungai: Let me finish this one please. The Prime Minister shall have authority to perform any duty in the government either directly or indirectly provided that the duties shall not interfere or contradict the interest of the President and the State, that is, the President shall be at liberty to indicate the areas he would be interested in terms of control.

Mr. Bobby Mkangi: *Asante sana.* Kenya African National Union, KANU.

Hon. Nick Salat: My names are Nick Salat, KANU Secretary General. Thank you, Chair. I represent the oldest party in the republic, the one which gave birth to everybody here. *(Laughter)*. Chair, we have a very detailed report and I am here with my partner with whom we will split our time into four minutes each. So, you will warn me when my four minutes have gone.

Chair, KANU being the oldest party we know what is ailing this particular constitution and we want to give a remedy that is good for everybody. There is an English saying; ‘whoever pays the piper calls the tunes’. I think the simple problem that is ailing this country is not about what we are about to do. I did hear a colleague here say about devolution and that is where I am going to go because once these powers have been devolved and KANU we believe in the three-tier system of devolution, if we devolve the resources within the three, you will find that a lot of emphasis will be put on the Prime Minister, the President will not be of interest to anybody because Kenyans will have been or would be earning or getting resources distributed equally amongst people because as long as the majority of Kenyans remain mere observers in the decision-making process and in the mobilization of resources, our nation will not achieve fast social-economic development which really is the primary goal of every State. So, Chair, I do want to put across that once we have resources being distributed equally, we will have because I have the old constitution here and I do not see why we are – it is a good constitution and I do not know why we have never taken time to really look into it.

Mr. Chairman, I do also want to say that KANU does not oppose the Kadhis court. Instead we propose we need to have a Kadhis’ appeals court for fairness. Chair, we do not see anything wrong with the Kadhis’ court being it the constitution because we have never had and it has been there for as long as this constitution we are operating on is there. So, I do not see anything wrong with it.

We did also touch on the Attorney General. The Attorney General in our system, and I am sure you have our document, should be delinked from the Cabinet and Parliament because the legal issues that – and a Minister which is actually in what is happening today - so we delink because you find most of the cases like the cases that are happening at Anti Corruption, maybe it is not Ringera’s fault but because of the loyalty that the Attorney General has is why we are not able to prosecute those who have been--

Mr. Bobby Mkangi: Bwana Salat, one minute to your fourth minute.

Hon. Nick Salat: It was actually four-four. This is the oldest party; you should give us more time. Thank you.

Mr. Bobby Mkangi: You have one minute.

Hon. Nick Salat: One minute to me?

Mr. Bobby Mkangi: Yes.

Hon. Nick Salat: On the creation of the Public Service Commission, that shall be responsible for appointment of national civil service where the chairman shall be appointed by the Prime Minister. We also have the creation of the National Defense Commission which shall be responsible for appointments, promotion and discipline in the armed forces namely the Army, Air Force and the Navy. We also have creation of the National Police Commission and also the creation of the National Intelligence organization and we retain the provincial administration because this institution comprises of assistant chiefs who can actually help the national government in administering the services.

Mr. Bobby Mkangi: You are on your fourth minute now, may be you can hand over.

Hon. Nick Salat: I will gladly hand over to my able partner here.

Hon. Justin Muturi: Thank you, Chair. My name is Justin Muturi, National Organizing Secretary of *hiyo, hiyo tu, hakuna ingine mnajua*. Chair, I have some proposals to make. As you have heard my colleague present, he has mentioned something like the Prime Minister. So, what we want to say is that since there is mention of that, I was to discuss the issue of representation and I want to make a request that I be allowed to present a written a document because I am aware, as you know positions have been changing over time. I be allowed to present a small written submission because I know you are in receipt of another one and it is good that you acknowledge that. I be allowed to give you one because the one you have was drafted sometimes back by somebody who is actually an ODM minister in government today so that

what I present is merely to improve on what you have because we have also been changing as you can understand. Then allow me to donate my time to Dr. Mukhisa Kituyi to address us on the topic of representation, if I am allowed. (*Clapping*). It is just to assist this process.

Mr. Bobby Mkangi: So you want to speak to the issue first then donate some time to--

Hon. Justin Muturi: No, no.

Mr. Bobby Mkangi: You want to do it immediately?

Hon. Justin Muturi: I want to do it immediately and also give you this written document.

Mr. Nzamba Kitonga: Let us receive the document. It is our understanding that it has overtaken the existing one? JB, it is our understanding that this document you are presenting overtakes the existing one on points where they are raised?

Hon. Justin Muturi: May I look at it and then we will discuss?

(*Laughter*).

Mr. Nzamba Kitonga: Fine, fine, fine.

Hon. Justin Muturi: As the Secretary General, may I look at it and then I will give it to you?

Mr. Nzamba Kitonga: Agreed.

Hon. Justin Muturi: *Na mtingize.* I will look at it and then I will submit.

Mr. Nzamba Kitonga: Okay, let us continue. *Mambo ya jogoo ni mengi.*

Mr. Bobby Mkangi: *Mheshimiwa Kituyi.*

Hon. Mukhisa Kituyi: Thank you very much Justin Muturi. Mr. Chairman, I will grave your indulgence that in the presentation, the Secretary General of New Ford Kenya used four minutes. I request it was our understanding that I will have the balance of that time if I may add on to this if my contribution is not boring. If it gets boring you can stop me.

Mr. Chairman, I stand before you as leaders of this country.

Mr. Bobby Mkangi: Just a moment, I think the microphone is not clear. If we could have another please.

Hon. Mukhisa Kituyi: Thank you very much. Mr. Chairman, my names are Dr. Mukhisa Kituyi, New Ford Kenya. I am very relieved to notice that there is no radical difference in the positions that political leaders have been taking in this meeting which gives us hope that we might be able to find a consensus compromise and move forward. But as we do that, Mr. Chairman, I have noted with substantial concern that while we are pitching our tents on Parliamentary System, Presidential System, a more fundamental principle; the principle of fairness of representation has only been touched at the tangent. Two or three persons have spoken about it briefly, my friend Miguna Miguna did mention it a bit and I think I want to bring to the attention of the leaders gathered here one or two things that should bring this into focus why it is so fundamental at the basis of making a constitution whether it is Parliamentary or Presidential System that we embrace the principle of fairness of representation.

In article 21 of the Universal Declaration of Human Rights, it is set out that the will of the people expressed through genuine elections which shall be by universal and equal suffrage shall be the basis of the authority of government. In Kenya we have some problems that are fundamental and we are not talking about them sufficiently.

Mr. Nzamba Kitonga: I think you need to make use of that mic.

Hon. Mukhisa Kituyi: Alright. I am actually a fairly loud person. I will try to be louder now. In a very lucid article written by my friend and comrade, Raila Odinga, in 1995 he was shocked to express how in the elections of 1992 KANU got 36% of the votes and got a 100 seats and the combined opposition got 64% of the votes and got 88 seats. He continued to argue that we need to address this problem if we are going to have fair representation in Kenya. Similarly, Mr. Chairman, at independence elections KANU got 66% of the votes and got 19 seats; KADU got 33% of the votes and got 12 seats. Now, look at the structure of the country today.

On the basis of work done by the much discredited Kivuitu Commission which was tallying area and population of all the constituencies of Kenya, I do not have the time to go into it in details, but numbers of this came out very fundamentally. Mvita constituency with 7sq km and 88,000 people is one constituency in the same district as Kisauni with 311,000 people. It is the same district. There is no geographical difference; it is the same area. Similarly, Mr. Chairman, you go to places like Samburu and Isiolo and find neighbouring constituencies in the same ecological conditions with a variance of 1:3 people per constituency. When you raise these matters, people raise the question of geography but let us pretend that geography was a major factor. How do you explain this? If you take Western Province, Nyanza Province and Central Province and put them together, they will measure 33,600 sq km. Turkana Northern is 35,000sqkm with a population of 256,000 people. How do you explain that that is one constituency and Kacheliba is one-tenth of the size of Turkana North with 74,000, it is another constituency and 80% of devolved funds are equally given to Turkana North and Kacheliba.

Mr. Bobby Mkangi: Two minutes.

Hon. Mukhisa Kituyi: We have a situation, Mr. Chairman, that we must address. No justice can be done to the people of Eldoret North, 309,000 of them when they share the same amount of money as 29,000 people of Lamu East Constituency. Narok South which has more people than Taita Taveta district put together or Embakasi constituency which is the same size as Mombasa district and it has 550,000 people. What am I saying? We as leaders should ascend to a statement of principle that justice in a democratic constitution is only possible when as much as possible, of course discounting for unique circumstances between urban and rural, densely

populated pastoral areas and agricultural areas, but within a set limit of elasticity in order to approximate the principle of equal suffrage that the delegates of Saboti constituency with 312,000 people cannot send one delegate to parliament called an MP to go and choose a Prime Minister with the same mandate as 29,000 people of Lamu East. That justice has no drive, has no region, it is just the fairness of maturing a democratic culture in our country.

Finally, Mr. Chairman, this I want to besiege you as leaders. I was very happy when I heard yesterday that you have had only five received memoranda from political parties. I liked it because, and the circus of KANU was actually amplifying that very nicely. Political party leaders here are the make-it-all or break-it-all of constitution making. But when they come with constructed boundaries around their party positions, egos are put on the walls of those boundaries. When they come as political party leaders and say, 'we share certain values that are so fundamental to Kenya as the political party we want to make this contribution', it helps to reduce the binary competition that so much dictates the ill-will that has fueled animosity in our country.

Mr. Bobby Mkangi: Wind up please.

Hon. Mukhisa Kituyi: It is in that spirit that I appreciate the time donated to me by my friend from KANU. Thank you very much.

Mr. Bobby Mkangi: Thank you very much, *Mheshimiwa*.

(Clapping)

Mr. Bobby Mkangi: May we have *Mheshimiwa* Kibwana please then after *Mheshimiwa* Kibwana we will have Kenya National Congress. So, get ready.

Hon. Kivutha Kibwana: Thank you very much, the Chair. I want to start by really appreciating this gathering in a very tremendous way. My name is Kivutha Kibwana and said I want to start by really appreciating this gathering in a very fundamental way.

Participant:

(Inaudible).

Mr. Nzamba Kitonga: Noted. Now continue.

Mr. Bobby Mkangi: Professor, *tafadhali endelea*.

Hon. Kivutha Kibwana: I was formally invited by the Committee of Experts--

Mr. Nzamba Kitonga: Please, get into the substantive issues of your contribution.

Hon. Kivutha Kibwana: I need to clarify certain things even as I get into the substance.

Mr. Nzamba Kitonga: No, no, no, we have already stated that. Just get into the substantive issues of your contribution.

Hon. Kivutha Kibwana: Chair, please let me also have the democracy to be able to present and I am getting disoriented because of these interventions. *Mtu anaweza kupotea*. First of all, I have engaged the Committee of Experts as an expert as a constitutional lawyer and the Committee of Experts will appreciate that some of the work that I have brought to the Committee and to the Select Committee and to the Speaker of the National Assembly regarded actually the amendment of the Constitution of Kenya Review Act and there were some changes that we suggested which were found necessary even with the Ababu's Committee and there was assistance there of amending the law to make it better for this process and this has been a consistent thing that I have done for the last twenty or so years. When I wrote to the Committee of Experts the last time, there was some bit of controversy, I want this meeting to know that I never wrote to anybody else except to the Committee of Experts and I was surprised to be replied by some other quarters but maybe that is not a big point.

I want to start or continue by saying that the amendments to the Constitution of Kenya Review Act which were done through the Miscellaneous Statute Amendment have a problem which you

will have to address with the ex-officio member, the Attorney General and since this is technical advice, you will still give me my real minutes. If you look at section 28 of the Constitution of Kenya Review, it was supposed to have been amended by saying delete the words, '*from the date of commencement of this Act appearing in sub section 1*'. There are no such words. So, there was a problem because in section 28 (1) there is no, '*from the date of commencement of this Act*'. I do not know why something that does not exist was supposed to be deleted. So, you will have to look at that carefully because you do not have the time that you think you have from the date of your appointment. So, that has to be looked at carefully.

Then also if you look at section 45 of the same law where it is said, *delete 45(1) and substitute thereof with the following new section*, it is actually supposed to be to delete both 45 (1) and (2) and again there are implications for that not being done properly. Therefore, you may need to consult with the Attorney General so that that is done in a better way and at some point someone does not go to court saying that you do not have the time that you thought you had and this is in the spirit of kind of being friend of the Committee and being able to suggest these things.

Now my substantive contribution, I think one thing that has not happened, the Chair, is when you look at section 30 of the Review Law, you will discover that you are mandated, (31); *The Committee of Experts shall study all existing drafts, draft constitutions and such other materials it may consider appropriate and prepare a report which shall identify the issues that are not contentious and are agreed upon and the issues that are contentious and not agreed upon..* So, as you have meetings of this kind, it will be necessary and helpful to have that particular report which says what issues are not contentious and which ones are contentious so that people can interact properly with the Committee because (32) says; *The Committee of Experts shall invite representation from the public, interest groups and experts on the contentious issues as identified above within the report and prepare a harmonized draft constitution with issues that are not contentious identified as agreed and closed and the issues that are contentious, identified as outstanding.* I am saying the primacy of the report is necessary so that we do not keep on talking about things that are actually non-contentious and we continue talking without actually now beginning to agree and to say that this is accepted and this is to be worked upon.

Mr. Bobby Mkangi: One minute.

Hon. Kivutha Kibwana: I helped you by pinpointing some of the technical points. Having listened to this meeting, it is clear that actually we are very much within reach of a constitution and I think there is a lot of agreement by the political parties who represent people on the ground and I think it will be very, very important if in the spirit of this meeting there is perhaps a further meeting where now there is more agreement in terms of what we are saying in terms of positions being now arrived at so that direction can be given to the people of Kenya. I think this will be very necessary so that we can conclude because of the time factor.

In terms of civic education which has been talked a lot about and we have seen some issues that are problematic because of civic education; again the law was amended so that civic education must be continuous. Even now within the mandate of the law, you are supposed to have mounted a civic education programme because we know without this education; some issues are going to be problematic. So, please when people talk to you like I will continue doing especially as a constitutional lawyer and as a teacher of law, we are helping you. We are not necessarily trying to influence you negatively or stuff like that and please therefore understand us in a proper light and I think be careful, please as I finish, be careful so that it does not appear as if you have any positions because sometimes some people will resist you if they unfairly or otherwise think that you have a position. As midwives, try to kind of listen to everybody and then take all these positions and try to find-- Actually Amollo had written on, I think, page 10 of his contribution, he had written that you will vote--

Mr. Bobby Mkangi: As you wind up please.

Hon. Kivutha Kibwana: As I wind up, yes. On page 10 he had said, '*Internal discussions and agreements by consensus failure to which members resolve the same by way of a vote*'. Please desist from having to vote yourselves on these issues because there is a lot of contention so that you get more and more whatever and I think even finally (31) says that the Reference Group; *A Reference Group of 30 representatives chosen by the interest groups identified in the Fourth Schedule to facilitate the consultations*' and I think if you bring it on board quicker because they

are supposed to help you facilitate consultations like this one, later they will not resist you by saying that you have made many decisions and we have not been part of the process. I thank you very much and I really thank the leaders present here and you have a major role, and I say this very honestly, in terms of helping your country to deliver this constitution this time around so that some of us can retire. Thank you very much.

Mr. Bobby Mkangi: Thank you very much. The Chairperson has a comment before we take the Kenya National Congress.

Mr. Nzamba Kitonga: Thank you, Professor. Maybe I may take this opportunity now that Professor has raised this point to inform this meeting that the Reference Group was constituted and we have actually had meetings with them. So, they are already on board and they are constituted and we are working with them.

Mr. Bobby Mkangi: Kenya National Congress.

Mr. Ogembo Masese: Thank you, Chair. My name is Ogembo Masese, Secretary Kenya National Congress. I will take the shortest time, I think, and I donate to the next speaker the balance. Maybe I will take two or three minutes. One, I want to start by saying this, I was at the Bomas and I was at the Executive Committee and what made Bomas not succeed was opposing interests, opposing that one group was for Presidential, the other one was for Parliamentary. These are two very new words that time. The idea was those who were for presidential were having the then sitting president in mind and those who were for parliamentary were having the then undeclared prime minister in mind and there was a quiet MOU which was not made public. So, when we went to Bomas, there was a kind of jostling over power. Why don't we sign so that we create this constitution so that I am in this position? It never worked and so we had a disagreement. This disagreement made us not get anywhere with that constitution.

Now, Kenya National Congress has kind of tried to answer the contentious issues one by one and number one is to say that we in Kenya National Congress are for presidential system. The president should be elected as per the Bomas and having a running mate, that is the vice

president or deputy president. There should be a prime minister-- Sorry, the president should be the Head of State, Commander in Chief and the Chairperson of National Security. The President should appoint a prime minister from the majority party in parliament who should be the head of government. That is the recommendation of Kenya National Congress. If there is any impeachment of a vote of no confidence, this prime minister or the president in case of impeachment goes alone, not with the cabinet. We do not have to go back to elections. If a president is impeached, he goes alone. If there is a vote of no confidence in the prime minister, he goes alone.

Both the president and the vice president should not be members of parliament. This will discourage the many numbers we have seen of everybody wanting to be president when actually they want to be elected as members of parliament. If we tell them, if you are going for presidency, you are going for presidency you are not going to be voted in as a member of parliament. So, that will now discourage many people from standing for presidency.

Mr. Bobby Mkangi: *Bwana* Masese, just to advise you because I think you said you wanted to donate your time--

Mr. Ogembo Masese: I will donate but I did not say how many minutes I want to donate and I do not think you want to take it. I will donate the balance and there is no balance yet.

Mr. Bobby Mkangi: You have two more minutes.

Mr. Ogembo Masese: No, no, no I have not even taken three minutes and I do not think you want to grab some minutes from me, Mr. Chairman, with respect. So, on this executive the way forward is to strengthen checks and balances to make sure the cause of impeachment on the president or any other constitutional office is upheld and the vote of no confidence in case of the prime minister is also upheld.

We come to Devolution. Kenya National Congress proposes a two tier System. On Devolution to the Districts, we are proposing a District governance to replace Local Authorities.

Transitional arrangements, there should be proper-- After the General Elections, there should be proper handing over and taking over and we are proposing in case of a President's to have thirty days, once a President is elected, there should be thirty days to prepare for handing over and taking over.

Others, we want to come to land. Mr. Chairman, land is the most sensitive thing in this country and as per the last General Elections you saw Kenyans rising up against one another and those who were being killed were small scale land owners. There are true landlords, people who have grabbed land, who own land in Nyanza, large tracks of land and the same people, a big parcel of land in Nyanza Province, the same person owning hundreds of acres in Rift Valley, the same person owning hundreds of acres of land in Nairobi and the same person in Eastern Province and Coast Province. These people are not affected by the land clashes.

Mr. Bobby Mkangi: One minute.

Mr. Ogembo Masese: Yeah. One minute is good enough. So these land grabbers should be discouraged. How do we do it? National Land Policy and proper land use. If a person has land, agricultural land which they are not using, this land should be repossessed and given to the needy cases.

On Kadhi's Courts. There have been many, many mistakes in the current Constitution among them is the one putting the Kadhi's Courts in the Constitution. If we are correcting this anomaly I think we should consider seriously without offending anybody removing the Kadhi's Courts from the Constitution. That is the submission of the Kenya National Congress and I have a small write up which I want to hand over to you. Thank you very much.

Mr. Bobby Mkangi: Thank you very much, *Bwana* Masese.

Mr. Ogembo Masese: My balance of the minute, you can give it to somebody else.

Mr. Bobby Mkangi: (*Laughter*). Unfortunately, there is no balance. So, may we have Orange Democratic Movement (ODM) *Tafadhali*. Then KADDU, that is Kenya African Democratic Development Union (KADDU), be ready after ODM.

Mr. Mutakha Kangu: Thank you. My name is Mutakha Kangu. I am not an official of ODM. I am a Constitutional lawyer and as such ODM has briefed me to argue their case before this forum.

Now, we hold the view that we must recognize the problems we are coming from, the System that has given us problems which Kenyans want to run away from. That System as we were told yesterday started as a Mixed System which eventually developed into an imperial Presidency lacking any checks and balances and so the System we develop must be a System that runs away from that imperial Presidency and puts in place checks and balances.

Now, ODM recognizes that a successful System must combine a good Electoral System and you have heard Members complaining about the unfairness in the Electoral System, with a good System of Government which has good checks and balances and with a good measure of Devolution of Powers. It has looked at various examples across the world, the American System combines a Presidential System with Federalism and with a Second Chamber of Parliament. The German System combines a Parliamentary System with Federalism and with a Second Chamber of Parliament. The South African System combines a Parliamentary System with Federalism and with a Second Chamber of Parliament. If you go for only one, you will not put in place sufficient checks and balances. So, ODM is proposing a combination of checks and balances that will reduce or take away the problems that we were suffering under the imperial Presidency.

Now, on the Electoral System, we have heard the concerns people have raised and we would like to point out that the mistake we may make is to think that there is only way through which we can sort out the unfairness in the representation and that, that way in only redoing the Constituencies. We would like to say that, although the document we had presented had said that ODM would be standing by the representation arrangement in the Bomas Draft, the Party will be open to look at other options of doing away with the unfairness in the representation System and

you can do that by changing the Electoral System say to pure Proportional Representation which will not require you to go through the difficult process of redesigning Constituencies or go for a Mixed Member Proportional Representation which again can reduce the problems of redoing the Constituencies but at least address the question of unfairness in representation. So ODM would be saying that, that is a subject that they will be willing to discuss further with Members so that we get a fair System.

Now, on the issue of the Executive, ODM recognizes that the current System, the imperial President System is actually a Hybrid. From 1964, we went for what looked like a Presidential System but maintained there is a Parliamentary aspect of Cabinet arising from the Parliament. So it is a Mixed System. It is a Hybrid so to speak and one would therefore want to say, if we have suffered from a Hybrid, do we want to stick with a Hybrid and ODM holds the view that perhaps we need to make a choice between Presidential and Parliamentary and ODM has chosen the Parliamentary System. It argues that there are two types of Parliamentary Systems, one Parliamentary System fuses the office of the Head of State and Head of Government into one and a good example is the South African one where the President is both Head of State and Head of Government. But another Parliamentary type is the one that separates the two offices. You have one person holding the office of Head of State and another one holding the office of Head of Government and good examples are the British where you have the Monarch as Head of State and the Prime Minister as Head of Government. Another example is the German system where you have a President as Head of State and a Chancellor as Head of Government. ODM proposes that they would like to go for a Parliamentary System that separates the two offices where you have two people at the top, a President as Head of State and a Prime Minister as Head of Government.

Now it also then addresses the issue of the sharing of functions between the two and says that, that has to be done by identifying and separating what would be defined as State functions from what would be defined as Government functions so that State functions be for the Head of State and Government functions be for the Head of Government and the document that was presented has looked at that.

Mr. Bobby Mkangi: Two minutes.

Mr. Mutakha Kangu: It then also looks at how you elect these two people and it notes that in the traditional Parliamentary System, the British one, the Head of State who is the Queen is hereditary and is not elected. But in other Systems, the Head of State like the Germany, the President is elected by an Electoral College that bring together Parliament and Representatives of the Regional Governments to elect the Head of State. ODM proposes that the President should be elected in a manner similar to that where you have the National Assembly sitting with an equal number of representatives from the Regions to elect a President but the Head of Government in many Systems, you will find it is automatically the leader of the majority Party who in other Systems is endorsed by Parliament. So effectively that person is elected by the people because when the Party comes to the people asking for votes, it has a leader and when you are electing that Party, you are electing the leader of that Party to form the Government.

Mr. Bobby Mkangi: Kindly wind up.

Mr. Mutakha Kangu: ODM proposes that-- I am winding up. ODM proposes that, that System be followed and then it moves on to say that on Devolution, which is crucial to checks and balances, that power should be devolved to three levels of Government, National, Regional and Local Government. Now, at the Regional Level, ODM holds the view that the fourteen Regions in the Bomas Draft were delicately negotiated and that it will be unreasonable to disturb that consensus so that we go by those fourteen Regions. The Local Government, ODM holds the view that it should be located at the current Constituency level so that you can merge CDF and LATF into one fund at Local Government level and so we have up to about two hundred and ten Local Governments to deal with matters at that lower level.

Finally, on the Second Chamber of Parliament, ODM holds the view that it is very crucial to the success of Devolution and to the success of the entire system because it bring in checks and balances in terms of the regions controlling the centre particularly in the sharing of resources so that there should be a Senate they proposed and they say that Senate like in many Federal Systems, should be representing Regions and if we have fourteen regions--

Mr. Bobby Mkangi: *Daktari*, I will have to cut you short.

Mr. Mutakha Kangu: --they propose--

Mr. Bobby Mkangi: I have to cut you short.

Mr. Mutakha Kangu: Just a minute. If there are fourteen Regions, each Region should produce three Senators one of whom must be of either gender, so, if you have fourteen you have a total of fourteen times three which makes a Senate of about forty-two and they will be involved even in distribution of funds so that the centre is not the one giving out funds to the Regions at will.

Mr. Bobby Mkangi: Okay.

Mr. Mutakha Kangu: The sharing of resources is consultative. Thank you.

Mr. Bobby Mkangi: Thank you very much. (*Clapping*).

Mr. Bobby Mkangi: KADDU. Kenya African Democratic Development Union. Are they not here?

Participants: They are not. Next.

Mr. Bobby Mkangi: Okay. Next, let us have National Patriotic Party of Kenya (NPPK) and after NPPK, UDM

Mr. Benjamin Kitoi: Thank you, Mr. Chairman. My name is Benjamin Kitoi of the National Patriotic Party of Kenya. Ladies and gentlemen I would like to state our position to this Committee of Experts on the Constitution.

Mr. Nzamba Kitonga: Please hold that microphone properly.

Mr. Benjamin Kitoi: Our position as a Party, we want to begin by stating what we feel on the Bill of Rights. As a National Patriotic Party we support the Right to Life and number two, on the Bill of Rights, we also want to support the right to vote. As you are aware in our country, just this moment although it is not contentious, we have no voters' card so we have no opportunity to vote. This is our right and it should be a continuous process. So, I am proposing as a Party that on our rights as Kenyans and as citizens of this country let it be a proof of citizenship to vote and not a voter's card. If you have been born in this country, or you have been awarded citizenship in this country, you have a right to vote if you have attained that age which is required so that it can be a continuous process and your right is not denied at any moment in life till death.

Number 2, on the System of Governance: Our Party supports Presidential System where we have Members of the Cabinet selected from outside Parliament and to progress on that I also support on the same Party, many Parties have given the same position but we also heard that the Recall Clause on the Members of Parliament be included. We have heard impunity because once a Member of Parliament has been elected to Parliament, there is immunity and impunity develops. So let the Kenyan voters have the right to recall their Members of Parliament at a time of need.

Number 3, on Devolution of Power: Our Party the National Patriotic Party also supports Devolution on three Levels, the National, Regional and the District as may evolve. As you are seeing we have many districts now which is turning out to be like the Constituency. Maybe we will have it at that level at the Constituency Level as the lowest limit of Devolution of power.

Mr. Chairman, I agree with the Committee of Experts that land and environment indeed is not contentious but it is killer to this Process. It has been proven that during the last Referendum nobody said that land was a contentious issue until the Referendum time. It can be used to kill just like HIV. It does not have to be contentious. So we have to be very careful on this Chapter. Therefore my Party proposes that there is need to have the National Land Policy in place. As you are aware, we do not have a proper National Land Policy but there has been progress of which I have been working on, that Committee of National Land Reform, and we are waiting for it to be taken to Parliament. I appeal to Members of Parliament of this country to save this

country time because if we continue ignoring the issue of the National Land Policy which is going to guide us on how we are going to settle the IDP's, on how we are going to settle the arbitrarily evictions likely to evolve from the Mau. So there is no point of evicting people from the Mau without having a proper mechanism which can be found on the National Land Policy.

Mr. Chairman, also on the National Land Policy, we would like to have it, that if you want to be elected to the highest office in this country, you should have less than one hundred acres of land. It is a moral responsibility as a President of this country; you do not have to be a farmer again. It is a moral responsibility if you aspire to get the highest office, to own less than a hundred acres so that the IDP's can be settled, the people in the slums can have somewhere to live and the youth can have jobs to do because if you are leading us and you are a farmer, you are the President, where do you expect the youth of this country to get jobs. So should be able to relinquish the acreage of land and the leaseholds, the nine hundred and ninety-nine, the one thousand and whatever, years, should be abolished. We need leasehold of less than ninety-nine years.

Mr. Bobby Mkangi: Two minutes.

Mr. Benjamin Kitoi: I can be able to cover my-- This can kill the Process. I have to concentrate on this Chapter on Land. Also, Mr. Chairman, on the Land Chapter, we also propose that the issues dealing with environment must be taken into seriousness because of the changing climate. We need the environmental rights put in place so that we can be able to secure our country. So, I am proposing that the environment rights and the Land rights be entrenched in the coming up Constitution. Thank you very much, Mr. Chairman. I would not like to take most of your time and I would like to donate to my Chairman-- Oh! How many minutes do I have left?

Mr. Bobby Mkangi: Exactly one minute. Sixty seconds.

Mr. Benjamin Kitoi: Thank you. I would like to donate it to the next speaker. My Chairman has conceded. Thank you very much.

Mr. Bobby Mkangi: Thank you very much. The next speaker will be the Chairperson. He has one issue to deliberate with you and then after we agree on that, we will see how to go forward. Thank you. Chair?

Mr. Nzamba Kitonga: We are now about to break for lunch and as you know we have extended the time for this Session to continue into the afternoon but there is still a challenge because we still have about eighteen Political Parties that have not made their presentations. Maybe, when we come back, I would plead with the delegates to agree that we reduce the time to six minutes which gives us some time to have some small discussions at the end.

Mr. George Nyamweya: What about those of us who have not been given time and you have given others eight or ten minutes? Surely what sort of Katiba are you going to write when you are going to say that the rest of us now are going to be-- No. *Hapana. (laughter)* Or alternatively tell us that we do not have a right.

Mr. Nzamba Kitonga: Well, no. no. I am just trying by the way to manage the time in a manner that affords us an afternoon--

Mr. George Nyamweya: *(Inaudible)*

Mr. Nzamba Kitonga: George, if you could hear me out it might help.

Mr. George Nyamweya: *(Inaudible)*

Mr. Nzamba Kitonga: Yeah, I am trying to manage the time in such a manner that it affords an opportunity at the end to have discussions. Let us say that the Political Parties try as much as possible to speak within six minutes but those who feel strongly like George Nyamweya and others--

Mr. George Nyamweya: No, it is not a matter of feeling strongly--

Mr. Nzamba Kitonga: Those who feel strongly-- No. No.

Mr. George Nyamweya:

(Inaudible)

Mr. Nzamba Kitonga: I am saying that those who feel strongly that they must utilize their full time of ten minutes, we will accommodate them.

Participants: Yes.

Mr. Nzamba Kitonga: So, I thank you very much--

Participant: Your proposal is ten minutes?

Mr. Nzamba Kitonga: Yes.

Mr. Bobby Mkangi: Let us hear *Mtumishi* and the proposal and then--

Mtumishi Njeru Kathangu: *Asante sana. Ningelipendekeza sababu hio kwamba na sababu ya umuhimu ya mkutano huu, badala ya kumaliza na kufunga mkutana saa kumi na moja, kama tulivyo fanya jana, tunaweza kuongeza muda sababu ya vyama ambazo hawaja zungumuza kwa saa mmjo ama mmoja na nusu. Asante sana.*

Mr. Bobby Mkangi:

(Inaudible)

Mr. Nzamba Kitonga: Yeah. Yeah. Okay, we will break for lunch and we will--

Mr. Bobby Mkangi: Chair.

Mr. Nzamba Kitonga: Hmm? Hmm?

Mr. Bobby Mkangi: We break for lunch now so that we come back at exactly 2 o'clock so that UDM will be the first Party to speak. So, General Koech, we will have you straight after lunch. So, *bon appetite*.

Participants: (*Inaudible*)

Mr. Bobby Mkangi: 2 p.m. exactly. *Asanteni sana*.

Meeting adjourned for lunch at 12.44 p.m.

Meeting resumed at 2.00 p.m.

Dr. Ekuru Aukot: I have an announcement for those people who are outside, if you could kindly walk in. We are ready to start. Bobby may I make one quick announcement please before we start.

Mr. Bobby Mkangi: Yes.

Dr. Ekuru Aukot: Just for the information of everybody, please we will need your flight details if you can record them just at the reception desk just outside the hall so that the hotel needs to plan about the transportation and the connection to the Airport and I am told that the departure because of the Ferry services will have to be like two and half hours before your flight time and also noting that tomorrow is actually a working day. So, very busy. So we will need those times indicated please. The other final announcement is that, I think some Media Houses still have not been able to speak to each and every Political Party attending this Conference, so please afford them at least an opportunity to talk to you about your Party positions or whatever else you may want to communicate to them. Thank you.

Mr. Bobby Mkangi: Good afternoon, Ladies and gentlemen. Yes Dick. The microphones please. Just one second. Then UDM, are you ready General?

Mr. Dick Kamau:

(Inaudible)

Mr. Bobby Mkangi: Okay. You can come and use this one.

Mr. Dick Kamau: My proposal is that--

Ms. Atsango Chesoni: State your name.

Mr. Dick Kamau: My name is Dick Kamau from Chama Cha Mwananchi (CCM), Katibu Mkuu. I would like to propose that due to limit of time we have here, as proposed earlier, I would like us to add some two more hours. The food we have eaten is quite enough for three days and I think these fellows can wait until maybe 8 p.m. because we want to exhaust our presence here.

Mr. Bobby Mkangi: I think we had agreed that we will carry on until we finalize-- Yeah? So, UDM? Just wait for the microphone.

Mr. Nzamba Kitonga: Susan.

Ms. Susan Kimiti: Yes.

Mr. Nzamba Kitonga: Where is Koros and the people who are handling the microphone?

Ms. Susan Kimiti: I have called them and they are coming.

Mr. Bobby Mkangi: Kindly bear with us as we wait for the microphone.

Ms. Susan Kimiti: *Haki harakisheni tafadhali na mukuje na hawa watu wa system.*

General John Koech: Thank you, Mr. Chairman. My name is John Koech. I am a retired General, retired *bona fide* and I am the Chairman of the United Democratic Movement. Let me

thank the team of Experts for this great initiative to bring us here and I think for the last two days a lot of useful ideas have been generated which definitely will be able to shape our future Constitution and as you will all appreciate the Constitution really is everything to us. It is about governance and the management of State including its resources. So it is a very important document and I think really the attempt is to try and build a Constitution because our faith is in the institutions and therefore the stronger the institutions, of course the better the management of State affairs.

Without really belaboring what has been said by other Parties, ours is really to-- We see one problem and the problem really is the notion of political power. To a lot of people, I think really it has got different meanings and you have all heard in the last three years or so, some people were saying, the Kikuyus have eaten, the Kalenjins have eaten and now it is our turn to eat and one thing which is obvious is that people do not know what to do with power. They want power for the wrong reasons and I think really our faith and our future lies in a sound Constitution and basically like *Bwana* Biwott was saying earlier, we do not really have to re-invent the wheel. We have had a Constitution for the last fifty years which has served us well despite its shortcomings. So ours really is to look at, how have we performed and what are the real issues that we need to kind of streamline or reform to be able to ,you know, to make the way forward. I think to us, there are two things which are really crucial in this exercise. One is attitudinal, the attitudes and the other one is structure, attitude in the sense that, like I said before, people want power for the wrong reasons. They want power to go and enrich themselves, whereas really power should be for making a difference in the lives of the people of this Nation and as you did say, Chairman, yesterday currently there is a big challenge. There is a challenge of suspicions. There is a challenge of fear and there is even the challenge that could probably end up in destabilizing this Nation and therefore those must be addressed and the job of the Constitution really is to create certain confidence and building measures and as someone said this morning, you can even have a mad man occupying the big position but our faith and our protection should be in the Constitution. Therefore the Constitution must give everybody-- Must carry those confidence building measures so that if a Muslim sits as the Head of State we should have no fear about that Muslim. If a Kisii sits as the President of this Nation, he should be able to work maybe with a CGS from the Coast so that we have those confidence building measures. So there is a lot that

can be done towards attitudes, towards people really respecting the laws, respecting those fundamental principles, like the rule of law, like the human rights, like the democratic principles, liberties and we saw this morning, we almost got into an acrimonious position simply because we could not tolerate each other and I think as part of the tenets of democracy, tolerance I think is the thing. You have every right to say what you want to say and I do not have to agree with it like somebody said but you have that right to say it and I should listen to you.

The other one, of course, is the issue of structures and like we have said again and again, we have had an imperial Presidency. What can we do then? Maybe the best thing to do is to weed out some of those powers, share out some of those powers at the centre and in our view, we think we share out the powers between the President and maybe with the Parliament. Even, you know, for the Parliament, we have seen and a lot of people think that Parliament sometimes can abuse its powers. Parliament can even be dictatorial. So maybe Parliament also need to share out their power with a second body so that Parliament--

Mr. Bobby Mkangi: Two more minutes.

General John Koech: Thank you. So, really what we are saying is deal with the imperial Presidency. There is too much concentration of powers in the centre. Devolve those powers. Part of the reason why people scramble and almost kill to get to the centre is because those powers are held in the centre.

So, the other issues like the issues of representation, I totally agree with Minister Mukhisa Kituyi but we need to also-- We do not have to-- We need to consider geography to a certain extent but I totally agree with the principle.

The issue of Transition, I was the Vice-SGS in the Armed Forces of Kenya, I was the Vice-SGS and we saw the confusion there was in 2003, eh? It is us the Military who decided to design that white flag for Kibaki. We decided because we knew every President will have his or her own colours, but because there was no communication, the centre had lost kind of control and they were not giving any instructions. So we took the liberty to design that white flag. Why we chose

that white flag was because we thought it was the most neutral and we are happy that even after we designed it, and it was only decided within twenty-four hours. It was done on Saturday and by Monday it was ready and Kibaki had it and I am very proud about it that, you know, we did that.

However, the question of Transition is very, very important. I am not talking about the transition from this Constitution to the other. I am talking about, you know, the Constitution must say, when the power should be handed over. Currently I think the Constitution does not say and that is why we were under pressure as Military from Saturday when the results were coming out, we only had twenty-four hours and by Monday, we were swearing in President Kibaki and you can appreciate the amount of confusion. There should be no confusion. There should be a steady hand-over.

So, with those few remarks, if I still have a minute, let me give a small chance to my Secretary-General to also say something.

Mr. Bobby Mkangi: Thirty seconds (*laughter*).

Mr. Martin ole Kamwaro: Mr. Chairman, my names are Martin ole Kamwaro, Secretary-General, UDM. I do not want to go into the issues that have been touched by other Parties but what I want to say is this. It is better for us to sweat in this Process than the Nation to bleed again in 2012. So, kindly take the remarks that have been said. But I also want to say this, that the UDM's position is this, that whether the Presidential, whether the Parliamentary System, I want to say that the Presidential System we have is a logical improvement of the Parliamentary System. The USA improved on the UK Monarchy. Therefore what we are crying for is that we must have a System where the powers of the President or the Executive powers are checked by a body that is answerable to Parliament. That is one.

Mr. Bobby Mkangi: Just a minute. We will only unfortunately have to take that one point, Bwana Chairperson.

Mr. Martin ole Kamwaro: You do not even want to give me-- For Transition: I have got two proposals. One is that at the expiry of this Grand Coalition Government; let the Constitution come into effect because it is an embarrassment that after twenty years looking for the Constitution, we do not have a way of bringing it into effect. Or two, we do it peace meal with a Calendar for Parliament to pass Legislation to give effect to the Constitution and finally make this Constitution as simple as possible just as the Ten Commandments are simple. *Thou shalt* not steal--

Mr. Bobby Mkangi: Thank you.

Mr. Martin ole Kamwaro: Thank you, Sir.

Mr. Bobby Mkangi: Thank you, keeping it very simple as you suggested. PNU, Party of National Unity and then we have communication that KADDU is back in the room. So after PNU, we will have KADDU.

Hon. George Nyamweya: Thank you Mr. Chairman. I am informed reliably that ninety-five percent of Kenyans are either Christians or Muslims and the Christians of course derive their authority from the Ten Commandments from Moses inspired presumably by God. The Muslims derive their authority from the Prophet Mohammed and in fact even gives the way of life even when to pray and so on.

Now if that is the case and we are then God fearing, but we do not respect or adhere to those laws given by God and we have a current Constitution which we do not respect or adhere to, why do you think the one you are going to write is going to be respected or adhered to? The point I am making Mr. Chairman, is this, do not let Kenyans have the mistake and impression that a new Constitution will solve their problems. In your course of Civic Education, let us start by telling them that, you know there are laws in Kenya now, there is the rule of law which of course we are very keen about ignoring. You can see there is uproar in the Country right now. Why? Because there is a law which says, this is how we should have done this thing and we are not doing it that way. A simple thing like getting into an overcrowded *matatu* and you know it is against the law

but you still do it. So, let us first start by telling Kenyans, ‘respect the laws that are there now’ before we can even begin thinking that Nzamba Kitonga is going to come with a big *fimbo* like Moses and the Red Sea will depart and they can pass, *basi, Halleluiya. Itakuwa hivyo.*

Now, Mr. Chairman, we are actually, what we wanted to say, if you will allow us to give you a written form but I will summarize very quickly on what you told us.

The structure of Government: We are in favour, of course, that whoever our Chief Executive is, whether you call him President, Prime Minister, Chief Prefect, whatever you want to call him, that person must be elected by the people and must derive that authority from the people and there is no going around it. Yourselves, you told us yesterday, that Kenyans told you that they want to elect their Chief Executive. So that must guide us in the direction we are going. So, we must ensure we do not get ourselves into the mess that we did in 2007. So, let us make it mandatory, let us put fifty percent plus one plus twenty-five percent in at least sixty percent in the Provinces because we are advocating for additional Provinces. Why, because we want that person also not to gang up just a few tribes, a few Kikuyus, Luos, Luhyas, Kambas and *basi, unasema inatosha*. So it must be by popular mandate. So that person derives that authority. Therefore, and we are also saying, let us have a Prime Minister to carry out the day to day functions of Government. So that person, obviously therefore will be subordinate to the President, a person who has got the mandate from the people. So, we really do not have to-- Therefore I am in favour of what was given as your number two, Hybrid number two. I think that is probably with-- I am particularly very keen about the appointments being from other parts of the country so that we do not have a situation where the President is from Central Kenya, Deputy Prime Minister is from Central Kenya and then you get all sorts of excitement because people are dissatisfied. Let us deal with that problem. Whatever we do, let us solve that problem of how you acquire political power and how you distribute it.

Secondly, we are also quite clear that Ministers should not be Members of Parliament and that is not to say that you cannot appoint a Member of Parliament. But if you do, then that person should vacate being a Member of Parliament so that Parliament remains exclusively what it is supposed to do. Oversight, Legislation and what is the other one it does?

Participants: Representation.

Hon. George Nyamweya: Representation and we are also saying, let us have a Second Chamber to represent the various additional Provinces, so that we have Provincial Councils which can implement or coordinate activities which cannot be carried by the Districts which we propose should be the centre of our Devolved System but there are certain things which we require a cluster of Districts to be able to manage properly, so then we want a three tier in that sense.

Now, Mr. Chairman, the other thing we must do and it need not wait until you are ready with the *Katiba*, is, let us have a Supreme Court. We should not be at the subject of the mercy of the Chief Justice setting an ad hoc Constitutional Reference Court. Let us have a proper Supreme Court where Constitutional matters are resolved and let us make sure that Presidential disputes or petitions are resolved by that Court so that nobody can again ever in Kenya say, oh, you know we do not rush this, we will look for somebody from somewhere to try and solve our problems. So, let us be clear on these ones.

Now, Mr. Chairman, we also recommend that the Vice-President he becomes the Deputy President and be a running mate, to continue and serve and fulfill the term of the President in case of a vacancy arising there.

Now on the question of Devolution, I think I have already more or less stated what we believe on that one.

Mr. Bobby Mkangi: Two minutes.

Hon. George Nyamweya: Yes. The other question, Mr. Chairman which we must really resolve is that if we could resolve two things from here, System of Government and the question of representation, you know, we will have actually solved the problem. Now, we propose we have a Mixed System, Constituency based, First past the Post and then have Proportional Representation based on the votes that a Party garners throughout the country rather than the

case where now, nominated Members are based on a little bit, expand that so that at least two thirds of the Members of Parliament are Constituency based and the other third are by Proportional Representation so that no vote is wasted. The case here now, the despondency we have is that you have a Party where you have six million votes and I am quoting very reliably and you get only eighty seven Members of Parliament and another Party gets three million and they have a hundred and one. Why would you expect people to be very happy with that? So, let us improve and work immediately on the Constituencies so that we do not depart so much where Embakasi has two hundred thousand and somewhere else has seven thousand and yet in Parliament each vote there is one/one. Do you not think that is a source of problems?

Mr. Bobby Mkangi: Hmm.

Hon. George Nyamweya: So, if we sort this one out, we will have gone a long way to solving our problems.

Mr. Bobby Mkangi: Wind up please.

Hon. George Nyamweya: Terms of Transition, I think that is what you had asked us to do. Transition, Mr. Chairman, we will propose that the coming into effect of a new Constitution, all Constitutional office holders be re-appointed subject to the approval of Parliament. So the President can nominate and recommend but Parliament must approve. That really is a way of checking so that even if I am your best friend or even you are my best friend and I am the President, I do not just appoint you because you are my friend. Let the people of Kenya also confirm that you are worthy of that position. Thank you, Mr. Chairman.

Mr. Bobby Mkangi: Thank you very much. KADDU, you had communicated that you are back in the room? There is a clarification before KADDU for PNU. There is a clarification from Abdirashid.

Mr. Abdirashid Abdullahi: *Mheshimiwa* George, you said that Ministers or the Cabinet be appointed from outside of Parliament and they should not be Members of Parliament. You find

that, what happens if twenty Ministers are appointed from Parliament, should we have re-elections for their Constituencies and what happens if, let say the second or the number two person in that Constituency who is from a different Party than the one who has been appointed because definitely number two will not be of the same Party as number one. What happens? Will that Party not lose their majority or whatever? I mean, what is the--

Hon. George Nyamweya: Thank you, Mr. Chairman. What we are saying is that, whoever is serving us--

Mr. Bobby Mkangi: Just a minute, the microphone is not on. Sorry about that.

Hon. George Nyamweya: Thank you. What we are saying is that whoever is appointed to the Cabinet will not continue serving as a Member of Parliament. Now, whatever else happens, let us never, ever try and take away the will of the people. So, if somebody has chosen you as a Minister, then the people have the right to chose your replacement because whatever else, never, ever deny Kenyans the right to decide who their representative is.

Mr. Abdirashid Abdullahi:

(Inaudible)

Mr. Bobby Mkangi: Thank you very much. So, KADDU.

Hon. Eugene Wamalwa: Thank you Mr. Chairman. Mr. Chairman, my name is Eugene Wamalwa from FORD Kenya but I have been requested to hold brief for Honourable Cyrus Jirongo of KADDU due to some pressing business. He had to leave town but he has left me with his brief and with your permission, Mr. Chairman, I would request that since he will be putting in a written Memorandum, I would only take four minutes and yesterday, Mr. Chairman, I had moved a Motion during my allocated time for FORD Kenya and I had spared some of my minutes during my presentation and I would kindly request that you allow me the next four minutes to also allow my Chairman, to present the FORD Kenya position. So, I will take four minutes to present Honourable Jirongo's KADDU position.

Mr. Chairman, what KADDU is saying is that we must start first of all by addressing this issue of whether Kenya is a Republic or not and we must be very clear in the definition of our Constitution before we even talk of the System of Government.

On defining what a Republic is and actually defining what makes Kenya a Republic and the sovereign power of the people of Kenya, Mr. Chairman rests in the people themselves. But looking at what is happening in Kenya today, according to KADDU, indeed we have an imperial Presidency that is, the President is almost a Monarch and you find that where there issues touching on the people, you find that not much interrogation had been done on behalf of the people, the President has huge monstrous powers under the current Constitution and we must do something to ensure that we dismantle this imperial presidency and take the power back to the people so that Kenya is truly a Republic where the sovereignty of the Nation lies in the people. That is the position of KADDU.

On the System of Government, KADDU proposes that we should have a Presidential System of Government. Mr. Chairman, KADDU believes that indeed once we have a Presidential System in place we should not have two centres of power. We should have a President who has all the powers to appoint Ministers who will be answerable to him and indeed apart from that we should have Devolution of funds to the Districts and the Constituencies. This is the position of KADDU and Mr. Chairman, they will emphasize on the issues in their Memorandum. I wish not to take up a lot of time.

KADDU also believes that the issue of land is a contentious issue and it must be addressed accordingly particularly on the issue of land use to ensure that we have a clear land policy that will ensure that we do not have idle land that is not productive, we have clear policies guiding the use of that land.

Mr. Chairman, the other issue that KADDU has highlighted in the Memorandum and I am just doing it in summary, Mr. Chairman is that we do have the issue of land ownership apart from land use where we have peasants actually owning less than two acres of land and we find that we

must have a clear land policy that will allow economical use of land where production is ensured and we do not have division of land below two acres that will affect production.

Mr. Chairman, I wish not to take up a lot of time since the written Memorandum will be presented to you and I would like now to give my remaining, I think we have five minutes--

Mr. Bobby Mkangi: You have four minutes now.

Hon. Eugene Wamalwa: --four minutes now, Mr. Chairman, to my Chairman to present the Party position of Ford Kenya. Thank you very much.

Mr. Bobby Mkangi: Thank you. (*Laughter*)

Hon. Musikari Kombo: Thank you, Mr. Chairman. I think I have eight minutes because he left four minutes yesterday and then I have the KADDU's four minutes (*laughter*). Anyway, that is-

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Mr. Bobby Mkangi: (*Laughter*). You will donate the other four minutes (*laughter*).

Hon. Musikari Kombo: (*Laughter*). That is with a light touch, Mr. Chairman. First I want to thank you for bringing us here, Mr. Chairman and also to say something that I should have said yesterday that you as Experts have a mandate and I do not think anybody should take away that mandate from you people and you should not be shy to carry out your mandate. In fact I had expected that when we came here, you would have analyzed what has been done and what you have seen and so on and you would be actually giving us various scenarios, Presidential etcetera, etcetera but I think you shied away because you listened that people who were making noise politically and you are afraid to offend so and so. I do not think that is the right thing to do.

I just want to say that to you as a Committee of Experts and Mr. Chairman, my name is Musikari Kombo, Ford Kenya and I want to say at the--- (?) at Ford Kenya's position, we believe in a Parliamentary System as opposed to the Presidential System. We believe in a

Parliamentary System because we think that it is whether you are talking about Devolution or the tribal problems that we have in this country we think through a Parliamentary System, we would have less problems and our founding fathers at Independence they actually came up with a Parliamentary System in their wisdom. They saw much, much ahead than ourselves but in the course of time through various amendments, we turned our system into neither Presidential nor Parliamentary but at the same time created this Imperial Presidency that we are talking about.

Now, Constitution making Mr. Chairman, and I will be giving you a document so that is why I am not going to say anything that we have done but Constitution making is about consensus and if we are talking about consensus, I also want to appeal to my colleagues political leaders that in this process do not go in boxed in with a fixed mind that is either this or that and appeal to them that they should be able to listen to those of us who believe in Parliamentary. We also listen to those who believe in Presidential and even those who believe in Hybrid and according to Kenyans because they have for 40 years plus been going through sort of this Hybrid, they think that having a Presidency is the right thing. If we take that route, then we must make sure that that Presidency is striped off this imperial powers completely. In Kenya we also need to take a bold decision and say either we are Presidential or Parliamentary. If you go for the Presidential System then Ministers should come from outside Parliament so that you give the legislature enough room to be able to represent the people and check on the Presidency. Today, we have problems in Parliament. When a motion of censure is moved against a Minister, some of his colleagues will sit and say, this is a colleague, how do we do this and so on? However, if there is a complete separation, then I think it will be much easier for us to move along those roads.

On Devolution, you know Ford Kenya has been at it right from inception but we also believe that there should not be too many layers. We think that the national layer and the local authorities or county or whatever you call it, I think two layers will be simply enough for us not to-- Because when you start talking of regions and we saw it at Bomas, Mr. Chairman, we had problems where tribes now started looking where is the boundary of tribe so and so and how can we put them in this region so that they are all together. Mr. Chairman, I think we do not want to see that kind of problem and so the local authority will be a better idea.

Actually whether we are talking about Presidential or Parliamentary and what Mukhisa Kituyi raised the question of Representation--

Mr. Bobby Mkangi: Kindly wind up.

Hon. Musikari Kombo: --is absolutely essential. Representation is absolutely essential as I am winding up, Mr. Chairman. It is important that you are talking about representing people. You know sometimes you talk about geography, yes, geography should be taken note of but if we think outside the box, we can see how to help a representative of North Horr to look after his areas. Maybe instead of giving him money to buy a four wheel, buy him a helicopter so that he can hop from one place to another, you know, but let us think outside the box.

In terms of Transition, lastly, Mr. Chairman, as I wind up, I think the office holders should be allowed to hold their positions until the end of the term because in any case, there will be a lot of legislation to be carried out in order to make sure that the new Constitution is domesticated. Thank you.

Mr. Bobby Mkangi: Thank you very much. Now we will have People's Democratic Party (PDP). Are we ready? PDP. People's Democratic Party, not DP. You are holding brief for PDP?

Mr. C.N. Kihara: Yes.

Mr. Bobby Mkangi: For Mr. Charles Oyara Mogere?

Mr. C.N. Kihara: Yes.

Mr. Bobby Mkangi: And Mr. Stephen Nyarangi Onsomo.

Mr. C.N. Kihara: Yes, he requested me to hold brief for him and Mr. Chairman, my names are C.N. Kihara. I am the Secretary for Legal Affairs for the Democratic Party of Kenya and I am

holding brief for the PDP and with your permission we had made arrangements with PDP that I take half of the time and I donate half of the time to *Mheshimiwa* Mukhisa Kituyi. Mr. Chairman, I will go very fast I might even take 2 minutes.

First, Mr. Chairman, I will visit again the issue of proportionate representation. I agree entirely with the proposal by the PNU whereby the votes cast should be the criteria on which we should decide the seats for the nomination slots but we wish to add that the nomination slots should be made up of at least one-third of the elected places. One-third of the elected places so that they take care of all the other things like special interests, etc.

I will also visit again very briefly the issue of the Judiciary and the Supreme Court. Mr. Chairman, it is good that we appreciate that our judges are constitutional office holders and that our judges do not retire at 55 or 65; they retire at 75 years. So, if we have to put into effect a new Constitution which addresses this particular and very important Arm of the Government, because we have the Executive, we have the Legislature and we have now the Judiciary, I propose or we propose that the appointments to the Judiciary first should be done by a re-organized Judicial Service Commission which is more representative of all the branches that relate to the profession; legal practice, judges, magistrates, lawyers, the Attorney General's office and, at least, one more member or a ten percent membership from the private sector. Mr. Chairman, we also propose that Judicial Service Commission should be responsible for the recruitment and administration of the personnel running the lower judiciary like the magistracy, etc.

Mr. Chairman, we propose - and I think I stand to be corrected and I appear to be repeating but I feel it is important to emphasize - that we retain the magistracy level, the High Court, the Court of Appeal but we have the additional court; the Supreme Court. The Supreme Court should have jurisdiction to entertain matters regarding the interpretation of the Constitution and this is additional, the enforcement of the Bill of Rights and it should be headed by the Chief Justice who should be the head of the Judiciary.

Mr. Chairman, in regard to the Transitional Provisions, we take into account, Mr. Chairman, that if we were to wait for some institutions to run their full tenure, like in the case of the Judiciary, this country would not have had a break from the past. Part of why we had the problems of 2008 is because – and with respect I would ask those who are passionate about what I may be saying to fasten their seat belts-- First the problem was that it was easy for an excuse to be there that we cannot go to the Judiciary to resolve our political differences or the outcome of the results.

Mr. Bobby Mkangi: Four minutes now.

Mr. C.N. Kihara: Just one minute I conclude on that because it is a critical one. Mr. Chairman, I propose that we have very, very clear provisions regarding the Supreme Court and its interpretation of the Constitution and that the Constitution carries penal sanctions that are very clear on any breach of the Constitutional Provisions because we do not have them at the moment and any breach that relates to right to life whether by any excuse should also be clearly addressed on how to function or how to implement the Constitution so that we penalize through the Constitution or the Supreme Court.

Finally, Mr. Chairman, on the Transition Provisions, I just want to emphasize that I think, because I agree we cannot have all constitutional office holders leaving office on the same day, we need to retire all of them but we need a Commission to implement the Constitution in regard to the constitutional office holder so that it can be staggered. Thank you, Mr. Chairman.

Dr. Mukhisa Kituyi: Mr. Chairman, I just wanted to add a little bit I have not said on Devolution. This is guided by two considerations: one, that unless the country is coming out of a major revolution, a major departure from its traditional political culture, the process of reform and evolution should create institutions that are fairly proximate to the political culture of the people. What do I mean? That Kenya should change but we should not create such a new monster that we cannot tell whether it is the Kenya we were trying to create and therefore, even in its structuring Devolution, let us uphold Government at a level that is list disruptive. How can that be? First, I propose the constituency and district becomes basically the same geographical unit. Each constituency of Kenya is a district. Number two, the primary locus of devolved

political authority and executive power after the national level be that district where the current process of devolving funds constituency, CDF and so on are consolidated into the District Treasury that County Councils be abolished and each area that, otherwise, is represented by a County Councilor elect a representative to the District Assembly and the Chairman of the District Assembly be a directly elected person from within the District. The Executive Arm of the District Government is the current Executive of the District that sits in the DDC or DED or District Executive of the Committee.

There is another co-ordinational role to be created for the regions spreading the country into about 20 regions and I am not rigid about numbers. That is a committee with two representatives from each District/Constituency and the Members of Parliament from those Districts which coordinates activities that are cross-border, activities that are of national nature like conservation of forest and water ways, the management of natural resources and coordination of the quality of performance of the Inter-District activity. This locus does not have Executive power, something similar to the current provision monitoring unit. However, this level chooses two representatives for the region to sit in the second House that is equivalent of South African Council of the Provinces like the council of--

Mr. Bobby Mkangi: One minute.

Dr. Mukhisa Kituyi: It is important that we do not create Executive power at the regional level because we have seen recently anxiety about ethnic grouping in regions. Once you give it significant power, we will be unraveling the mosaic that we have been trying to repair in the recent past. Thank you.

Mr. Bobby Mkangi: Thank you very much.

Mr. Nzamba Kitonga: Now, in that formulation, *Daktari*, where do you locate the Provincial Administration?

Dr. Mukhisa Kituyi: To my mind there are components of Provincial Administration which run out of duty but others retain some significance. The component that still retains some significance and I disagree with those who say that we abolish chiefs or totally re-elect chiefs. I think you still have a chief as the main player in Provincial Administration for law and order at the lowest level but the Executive functions that (?) by the DCs are now to be transferred to the elected Chairman of the District Government.

Mr. Bobby Mkangi: Point of procedure from *Bwana* Masese. Just wait for the microphone. As Masese speaks Nuru Party you will be next then NARC, National Rainbow Coalition Party.

Mr. Ogembo Masese: Thank you, Chair. I just wanted to bring to your notice that as a matter of procedure those representatives who are here and who have not submitted their presentations be allowed to complete. Those who are standing brief which I am sure most of it is not true should do so later and I want to mention one PDP actually did not want to present. He wanted to donate his time to George Nyamweya but then he did but you can see we do not want to hijack time like that. Thank you, Chairman.

Mr. Bobby Mkangi: Thank you. Nuru Party.

Mr. Geoffrey Mbogo: Thank you so much the Committee of Experts. I believe most of our ideas or what we wanted to propose, have been said and I do not want to go back to that. My name is Geoffrey Mbogo, I am the Secretary General, Nuru Party. In the mode of governance, we stand with the elected President by the People and I do not want to go into details because it has already been spoken about and what we were proposing is that when a party is presenting its people for Elections, it should be able to present at least 3 candidates, 1 for the Presidency, second for the Prime Minister and the 3rd one for the Vice President or the Deputy President. So, that, I think, was a bit different from what the people have been speaking because we do not want to see tensions that we are seeing, maybe, because 3 of them are coming from different parties, that is our position.

On the levels of Government, we are suggesting two levels of Government: there is the National Level and then we are insisting of strengthening the local authorities. We want them to be strengthened that the mayors are directly elected by the people, that is one of our proposals. We want them to be given a good budgetary allocation; not the way the LATF fund is run so that they can be able to do projects within the Constituency.

I want to spend more time to talk about another issue that I have seen raising of eyebrows and making people raise tempers and that is the issue of the Kadhi's Court. This thing is not as simple as many of you think because what I have seen, many of you are talking out of, maybe-- Let me use the right word, I do not want to use a strong term out of lack of knowledge about it. If you understand, there are so many things that the Christians know concerning the Kadhi's Court and the Muslims know about them that is why they are in conflict. So, if we start handling the way we are saying, oh we want even to see even Court of Appeals made, you know. People are talking because they do not have information. First of all, let us go to the back to the reason: why are we reviewing, why are we making a new Constitution? That is the fundamental question. It is because we have realized there are some areas whereby, maybe, there are some injustices. There are some people who have been marginalized and we said we want to make sure that every person is equal within the law and we said these courts have been there, yes. Honourable Biwott tried to explain why they were formed. If you go to history, they were supposed to operate within the 10 miles stripe from the Coastal Strip. Now the Muslims have grown it is good and they are everywhere in Kenya so you have to have a Kadhi Court in Kakamega you have to have it everywhere. So we are asking, why do we have those Kadhi Courts in all those places and yet they are using the tax payers money and the work they are doing it can be done with the other courts. We should be level in thinking about this issue and not just push ideas.

I also want to tell our brothers the Muslims that not to rush us the way I have seen them talk in the-- I was watching the news over lunch hour and I saw them saying that 42 parties have accepted that they are going for the Kadhi Courts which I think most of them have not spoken which is very wrong. Do not mis-inform, we came here so that everybody can speak and do not rush to give information.

Finally, I will want you also to know that we are not fighting them. What we are saying is that the Muslims are not a minority in Kenya neither are they a majority. We have Hindus they should be complaining. Why is it that when we have a divorce case of Hindus, it is taken to the High Court but when it comes to Muslims, we want them to handle that? So we are saying, let all Christians, Muslims even those religious traditional courts, all those people be handled separately not in the Constitution, that is where we are arguing that case.

Finally, we have got many models of Constitution and they have spoken there and they have given us some of the good models. Why do we not have the Kadhi's Court in all those countries? Why Kenya alone? There must be a hidden agenda. As I sit down, I want to, maybe, address the Committee of Experts because the way you are handling this issue, you are using the wrong approach because it is like you took a stand a long time ago that you are going to put these Kadhi's Court there and now as the Christians try to talk to you, you are very hostile. You are not giving them an opportunity even to speak, I am very sure you have not even read this because if you understand what they are saying, you will not be brushing them off and I would want to suggest to you that the way Otiende Amollo said, there are those issues that are resolvable but you cannot resolve an issue if you are brushing off one of the aggrieved parties. You cannot be a referee and at the same time a player. So, what we are saying is, can you get all these people, sit down and change your approach to the issue; people are viewing you with suspicion because of the way you are handling the whole thing. That is why they are complaining about you, if I get an opportunity in the media *nitasema hii kuhusu nyinyi* and at the end of the day *mnaonekana ni kama* you are not making progress and if you continue like that, at the end of the day you will fail. The other people who have been before you they failed because of the same approach. You are taking sides too early.

Mr. Bobby Mkangi: One minute.

Mr. Geoffrey Mbogo: Yes, one minute left and that is a long time for me. Now, if you take sides right now, these people down the line - I am not saying we are going to do that - some group is going to come from somewhere else say we are not going to that and they are going to

compile to make a big group and it will be very hard for you to sell the whole idea even if it is very good and the Constitution will not go through because of some small, small things because you ignored people. So I am suggesting, look for some time, call those people, sit them down, not the way you are calling them in public; allocate time the way you have allocated for us. Sit down with them listen to them even if you do not feel like; listen to them because they have something they want to say. Listen to them and give them an ear and bring them now to consensus. Why are they saying “no” and why are these ones saying “yes”? Thank you.

Mr. Bobby Mkangi: Thank you very much. Just a clarification Geoffrey from the Vice Chairperson.

Ms. Atsango Chesoni: Thank you. Mr. Geoffrey.

Mr. Geoffrey Mbogo: Yes.

Ms. Atsango Chesoni: What would help us is for you to tell us who you mean by those people. When you say those people that is a very general term, it is unspecific. It would help us to know which group of people it is that you think need to be sat down, if you could just be specific.

Mr. Geoffrey Mbogo: Thank you. I am referring to the Christian leaders who have been coming to you with some memoranda. I saw it, we saw it even the-- I was at KICC when they were coming, we had also come so we saw what was happening and it was chaos. So, we are talking about the Christian leaders; those who are saying “no” Kadhi’s Court. You should have time, sit down with them and know why they are saying “no” to the Kadhi’s Court not brushing them off.

Ms. Atsango Chesoni: Which specific Christian leaders? There are many Christian leaders. There are the NCCK, for example, they are Christian leaders; there is the Episcopal Conference, they are Christian leaders, there are the Lutheran, they are Christian leaders. It would help if we knew specifically which Christian leaders because like you said, you were at KICC.

Mr. Geoffrey Mbogo: Yes and they were so many.

Ms. Atsango Chesoni: I am fascinated that you describe it as chaos. I do not recollect chaos. I think there is Television footage of that KICC meeting. So, it would be good if you again were very specific and told us which specific Christian leaders it is, which group so that we are not milling around. If there is a group that is feeling particularly aggrieved, it is good to be very specific. Thank you.

Mr. Geoffrey Mbogo: Okay. Let me be very specific. I am talking about all those Christian groups that have come together and they are saying no to Kadhi's Court in the Constitution. I believe by your position, they have already presented even memoranda to you, some of which I have. So, if you want them I can still give them to you, I can print them from my laptop and bring them to you. I presume you know them who have said no to Kadhi's-- If you do not know you can ask Mr. Nzamba, he knows them actually. I have all of them, I have even their memorandum they have brought before you and that is why I am saying you have even not read those memoranda; if you have read them, you would know who they are. So, talk to your people, talk to Mr. Nzamba, he knows them and he will be able, maybe, to explain to you who they are.

Ms. Atsango Chesoni: Okay. If you could just share with us that document and list without getting agitated please, Sir. I am authentically asking you a question so if you share with us that list of the specific group of people that you are-- Because I understand you to be authentically concerned about a particular group of people that you feel would like to share information. So, if you could please provide us with that information. Thank you.

Mr. Geoffrey Mbogo: Okay. I am saying they are so many, I will print for you all those memoranda because I have all of them and I can bring them to you. Would that be okay with you?

Ms. Atsango Chesoni: Thank you.

Mr. Bobby Mkangi: Amollo.

Mr. Amollo Otiende: I am not asking you any question Geoffrey. I just want us to be clear on this as we go along. First of all, it is true that we received submissions from KICC and we have a lot of them and it is true that we are open to receiving any further submissions. Secondly, I think as we agreed when we started the meeting, it is open for us to discuss what we identified as the Contentious Issues and any other issue which you as a party think it is important. Therefore, I think it is quite right for you, Geoffrey, to talk about the Kadhi's Court. However, what we want to benefit more from is not just saying it is contentious but rather what is your proposal? You see, as you say that we should meet the Christian groups and that is a good idea and we are actually continuing to meet them, we have met the NCKK, we have met at KICC and we are continuing. Of course, our Muslim brothers also want to engage in the same manner. However, it is not just going to the Christian brothers to tell us they do not want the Kadhi's Court or to go to our Muslim brothers who tell us we must have the Kadhi's Court. Our role is to find what is acceptable to all. So, what you must help us with is what in your opinion, I am not asking you to respond Geoffrey, just the other speakers, what is the narrow path that we can walk that is acceptable to all? That is what really helps us but I take your point and advisement. Thank you.

Mr. Bobby Mkangi: Thank you very much, Amollo. Let us have National Rainbow Coalition (NARC).

Mr. Alex Ng'ang'a: Thank you very much. My name is Alex Ng'ang'a, I represent the National Rainbow Coalition. First, thank you, *Bwana* Chair, and I would like also to say, we pray and believe this is the final process that will give this country a Constitution and just going straight to the point, *Bwana* Chairman, on the System of Government, the National Rainbow Coalition proposes Hybrid System as described in Presidential Hybrid 3 with a few amendments and additions. Part of those amendments and additions, *Bwana* Chairman, include that the functions of the Deputy President be defined and if the definition of those functions will only stop at saying, as assigned by the President or in an event when the President dies, then let that position be scrapped. We cannot have an office bearer at such a level whose work is to sit in an

office and imagine about the death of another so that he can ascend to power. That one we do not want as a Political Party.

In a situation whereby those functions are defined, *Bwana* Chairman we would like Political Parties to be called upon to nominate their Presidential, Deputy President and Prime Minister candidates prior to a General Election. *Bwana* Chairman, you will also note in this Hybrid System, you have said the composition of the National Executive, shall reflect regional, ethnic diversity of the people of Kenya and also will take into account gender equity. In that line, *Bwana* Chairman, we propose that one of the three, the President, the Prime Minister or the Deputy President should be of either gender. *Bwana* Chairman, about the appointment of the Cabinet, we would like to say we do not agree with the proposal under that Hybrid System and would like an improvement to capture this that the Cabinet will be appointed by the President in consultation with the Prime Minister and only 30% of the Cabinet Ministers can be appointed outside Parliament and that those in Parliament appointed to the Cabinet positions do not have to resign.

On the issue of the number of Cabinet slots or Ministries, we are saying that Parliament to enact a law defining and limiting number of the Ministries and Ministers appointed to those positions be vetted by Parliament.

Chairman, on the issue of Devolution, we are proposing two levels of Government: a National Government and a Regional Government. Elections to the Regional Government should be Constituency based and, Chairman, when we talk about regions here, we are talking about regions as created by a Boundary Review Commission not a President or a Prime Minister and the focus of the Regional Government should be more economic based and the National Government can play the other role.

Bwana Chairman, something else we also wanted to chip in is about the issue of the Kadhi's Court. As a Political Party, we are for the position that Kadhi's Court should be retained the way they are in the current Constitution and, Chairman, by saying that, we are also saying-- As a person I am a Christian and we would not want people to go around and masquerade that we are

representing views of the Christians, please they should be very specific. Which Christians and how many and where are they because as a Christian, I will not let myself be bound by an individual. You can write memoranda and call you all sort of names but we should also be able to know the membership of that denomination in Christianity so that we are not balkanized as Christians and said to be opposed to the Kadhi's Court as per the wishes of our Muslim brothers.

Bwana Chairman something else is about Land. Land is a Contentious Issue. Probably it did not appear in the memoranda you got or you will allow me to express my fears and my fears are that for this Draft to see light of the day, there are specific individuals in this country who must be quoted to support it. The same individuals are the individuals who own the biggest chunks of land in this country. Let it not be a way of pleasing those individuals saying that this is not a Contentious Issue, you can own your land. *Bwana* Chairman, an issue might not be contentious today but we foresee it being contentious in times to come and I do not believe we are making a Constitution with a time frame. So, the issue of Land needs to be addressed. We propose that there be a ceiling on the acreage of land an individual can own because, *Bwana* Chairman, also the people who have lost their land and, especially, to the rich allow me to say to the rich because we have got some poor families who have educated their children through the selling of this land but when these children get their education, get their jobs they do not have a way of accessing that land because the rich man is not willing. My proposal is that upon determination of this ceiling through a national land policy, the acreage an individual can own-- The Government should take a lead role to purchase land, I am not saying to reposes because some people have genuine title deeds, to purchase this land at a rate determined by the Government--

Mr. Bobby Mkangi: One minute.

Mr. Alex Ng'ang'a: --and let those who do not have land access that land by purchasing it also from the Government.

The other thing is about coming to effect of this Constitution. This Constitution must come to effect, *Bwana* Chairman, and we want age categories specified in the referendum so that we can know which age category in this country is opposed to a new Constitution because we believe

the young people in this country want a new Constitution and we cannot be held hostage by a sunset group. Thank you.

Mr. Bobby Mkangi: Thank you very much. Let us have New Democrat. Are you in the room, New Democrat? Thank you. Then PPK, Peoples Party of Kenya be getting ready and then *Chama Cha Uzalendo*.

Hon. David Sudi: Thank you, Mr. Chair. My name is Honourable David Sudi, Party President New Democrats. Mr. Chairman, Chair, Vice Chair, Committee Directors and my Honourable Party Leaders here good afternoon? We have walked a long route to this Constitution; into making this Constitution a success. We should have done it earlier on but as you know, there is always time for everything. It was not possible then but it will be possible now. Mr. Chairman, just for your information, I wish from the past because I participated in Bomas and in putting this Constitution to being, I wish we had the Attorney General with us because he is the cause of all this problems and I am speaking this with experience, Mr. Chairman, because we better sweat now and have a better Kenya than we bleed tomorrow because if we do not take these things into consideration, we will really bleed because Kenyans outside are getting tired and tired every day as they wait for this Constitution.

I would like to suggest the following, Chairman, before we hand over what we have written down. We need a fair representation based on geographical-- We have to take care of every area in Kenya because we need to address the distribution of resources which has really caused all these problems. The problem that is making us fight is distribution of resources. We need even that fellow at the far end of Kenya, in Turkana, to get his fair share of the resources. When we were distributing representation, even that one person is a Kenyan, he should be represented equally like anybody else who is in Nairobi because that child who is in the remotest part of Kenya cannot get access to anything. He cannot get access to radio, television etc any information and yet you are subjecting that child to do the same examination as a child in Nairobi. That is where we become unfair.

At times, Mr. Chairman, we react on crisis. You find that there are so many crises all over in Kenya, national disasters, famine, etc. We are now reaching a stage where we will declare a national disaster on the Constitution (?). Thank God because the Committee of Experts for the first time they are here and they are going to give us this Constitution. Do not be misled by the Executive. Do not be misled by having the AG in your Committee. I can advise you because one time Honourable William Ruto was the Chairman--

Mr. Bobby Mkangi: Two minutes.

Hon. David Sudi: -- of the Parliamentary Select Committee and he spoke with the AG and he said, "If I give you this Constitution, if I go my way I will be fired. I need tenure of office". Ruto came to convince us and *Mheshimiwa* Biwott can bear me witness he was here, he came to convince the group of Kalenjin MPs let us give this man tenure of office so that we can get this Constitution. I can tell you this is the source of problems; why we do not have a Constitution because we said since Moi, who is our child is coming from our community, we do not want to shame Kenyans by not giving them the Constitution and we said, let us give the Constitution to Kenyans so that they do not say Kalenjins are selfish people and I can tell you the AG's office is the cause of all this problem. We would have gotten a Constitution a long time ago but I think this was the day which was planned by God that the Committee of Experts will give us the Constitution.

Mr. Bobby Mkangi: Wind up please.

Hon. David Sudi: So, let us support this-- Sorry for taking too long for my explanation but let me give my Chairman one minute only to summarize.

Mr. Bobby Mkangi: Your time is over, Sir. Your time is over. The next party please.

Mr. Daniel Musembi: Hello. Thank you, Mr. Chairman. I want to thank your Committee for giving us this chance. My name is Daniel Musembi, I am the National Chairman, New Democrats. I have seen that delegates here know what we want and we need a new Constitution

today and it is good. I have noted that most of the members are proposing the Presidential System. New Democrats actually support that system. We believe the President should be elected direct by the people and he should be given the mandate to choose his Ministers and the rest of the constitutional office bearers.

Mr. Bobby Mkangi: Thank you sir. Maybe we can also take that point. *Bwana* Chairperson, we have to give time to the other parties. *Asante sana*.

Mr. Daniel Musembi: Okay. Thank you.

Mr. Bobby Mkangi: The next one was Peoples Party of Kenya (PPK).

Ms. Rose Mutiso: My name is Rose Mutiso, Chair, PPK. We appreciate the time you have given us as Political Parties to sit here and as Members of Political Parties, and the people who are here we should not lose track of the fact that the Constitution building process, the Constitution making process is based on trust so it is very important that people trust us that the people trust the leadership, their leaders as Political Parties to make a new Constitution.

Now, based on that and really putting that into account, the position of PPK is that we support the Presidential System where we have the Executive President directly elected, Prime Minister, a Vice President and this is quite well illustrated in the one of the documents we got as the Presidential Hybrid 2. With that there is the issue of course of strengthening the institutions so that we do away with what has been in the past which is personalized rule and the checks and balances must be there including impeachment of the President in case things do not work out as expected by the people.

On Devolution of Power, we are proposing two levels, where we have the National and District levels and we have quite some control of power in terms of the District level being empowered not only in terms of finances but in terms of making important decisions.

The PPK is very concerned about the land policy and we hope that as this is an on-going process, issues that have been addressed in the land policy will be taken into account and especially we are very much concerned with the issue of what some people have referred to as a ceiling or an average for individual ownership of land and this is to ensure that we do not have idle land and all land is put into productive use so the benefit of all the people.

On the issue of the Kadhi's Court, we think that there has been a lot of mis-perception as far as this is concerned and mainly out of ignorance because a lot of people even as they are discussing these issues and not very much aware of what is said about the Kadhi's Court and some of the historical background, I am not talking about you as Political Leaders but many of the people who we are interacting with have got a lot of mis-perception. So, there is need like has been said for continuous engagement with all the groups concerned so as to build not only consensus but understanding of the issues but we support it as it is in the Constitution; we do not think that there has been any harm as far as the court is concerned and for us there is no reason to really remove it.

The other issue we have is concerning Civic Education as well as engaging the other stakeholders, not only at this level but also at the grass root level. We think it is very important in terms of this process, in terms of creating ownership and in terms of creating consensus. Thank you.

Mr. Bobby Mkangi: Thank you very much. Ms. Lilian Mukami or Antony Kaara for *Chama Cha Uzalendo*.

Mr. Antony Kaara: Thank you. My name is Antony Kaara representing Chama Cha Uzalendo. First, let me start by congratulating the Committee of Experts for convening this gathering of Political Parties and also let me start by saying that the reason we have not been able to give Kenyans a constitution for almost twenty years is as a result of lack of political will and it is my hope that this time round things will be different and we give Kenyans the Constitution that they have been yearning for.

Chama Cha Uzalendo supports a Parliamentary System of Government where the Prime Minister is the leader of Government and comes from the party or a coalition of parties with the majority of Members in Parliament. This means that, of course, he is directly elected by the people. The party also believes, I have not heard many people say this, but the party believes that the president who will of course be head of State should be elected by Parliament. The Prime Minister will have powers, of course, to appoint the Cabinet, we believe from within or without a Parliament that means that a cabinet minister is not necessarily a Member of Parliament. These appointees or names of people who are proposed for these particular positions of Cabinet should be vetted by Parliament.

Chama Cha Uzalendo believes that the Prime Minister, the President and all Members of Cabinet whether they be MPs or from outside Parliament should be cleared by the Anti-Corruption Authority before they run for office. We also believe that once the President is elected by Members of Parliament, he or she should relinquish his seat as a Member of Parliament so that he serves his role as a the Head of State. Chama Cha Uzalendo also suggests that, at least, a third of the Members of Parliament should be women. We have always heard about affirmative action but we have always been paying lip service to this.

On issues of Devolution of power, Chama Cha Uzalendo supports a two-tier Government, that is, the National and Regional. We believe that the Local Government as it is on the Provincial Administration should be amalgamated to form the Regional Governments whose head will be elected directly by the people of that particular region. We also believe in a two-chamber Parliament and the first chamber, whichever name you give it, whether it be the Senate or whichever name we shall feel suits our situation, should consist of all Members of Parliament elected from the Constituencies and the second house should consist of regional heads and, of course, representatives of minority groups. We also feel that Regional Governments should be empowered to come up with policies that meet the specific needs of that particular region as much as we believe they should be given power, not executive really but powers to be able to come up with the policies that meet the needs of their areas. For instance, when you talk about issues such as water policy or even land policy, we believe that surely the water policy for North

Eastern Province cannot be equated to that of Central, Western or Nyanza, same with issues of land in these areas.

The party believes that, and here I want to concur with *Mheshimiwa*, I cannot remember the name really-- However, when it comes to Constituencies, surely you cannot have a constituency where 4,000 people elect a Member of Parliament and you have another member of parliament who is elected by over 70,000 and when they go to parliament their vote is counted as the same. I believe it was *Mheshimiwa* Mukhisa Kituyi.

On the issues of the Kadhi's Court, Chama Cha Uzalendo does not consider the Kadhi Court issue as contentious. We believe that our Muslim brothers and sisters should be allowed to solve their issues on culture, I believe, and the family as they have always done. Also I would like to concur with my friend Kanga from NARC that I am also a Christian, so the groups or the people saying that they are representing Christians should really come out clear and say which Christians because it is not all Christians that are against the Kadhi's Court and they should tell us why.

On the issue of the Transitional clauses, Chama Cha Uzalendo, of course, believes that it is important that the constitutional office bearers should continue holding office until the new constitution comes into effect and we should have a mechanism that allow that.

I have heard a few of my colleagues asking for what we call piecemeal reforms. Chama Cha Uzalendo rejects calls for piecemeal reforms. Our position is that we need a new Constitution and we need it like yesterday.

Mr. Bobby Mkangi: Wind up please.

Mr. Antony Kaara: Yes, I am winding up. We need a new Constitution and we need it yesterday. Thank you very much. That is the position of Chama Cha Uzalendo.

Mr. Bobby Mkangi: *Asante sana.* Mr. Anisi Omukanda, Alliance for the Restoration of Democracy in Kenya.

Mr. Anisi Omukanda: Thank you, Mr. Chairman. I would like to thank your entire team for the better job they are doing now. I am the party leader of AFORD in Kenya, the next president in 2012. My name is Anisi Omukanda. Actually we are for direct election of the President and propose that age limit be put in place; we cannot just allow somebody over 100 years, 85 years to become a President. So, you should note that. When we are making a Constitution it should come clear. As most of my colleagues are for Local Authorities, people are saying the mayor must be elected directly by the people; the Chairman should be elected directly by the people. Yes, I agree with them and it should not be the Parliament to decide on the Presidential. I have a well (?) secretary general who will take exactly six minutes to finish with our presentation. Can you come?

Mr. Alex Amusakha: My name is Alex Amusakha, I am the Secretary General AFORD Kenya. These are the proposals of AFORD Kenya. On the System of Governance, we agree with the other people who are for the Presidential System with the usual impeachment provisions. The difference here is with regard to devolution of powers.

On Devolution of powers, we have four levels, the four-tier; location, district, provincial and national. We were proposing that the units of Local Government should be pegged on the population, for instance, if you are talking of the Municipal or Town Councils or the District Assembly should either be a city with a population of over one million or a Municipal Town Council with a population of over 500,000. We were submitting that you as Experts consider defining the principles of devolution in the constitution and these principles among many other things should dwell on ensuring that power stems from people who should participate at all levels in the exercise of State power. We also consider the character of the Kenyan people, their cultural diversities with a view to having unity in that diversity. There should be principles addressing gender parity, there should be principles addressing minorities and this should be well defined in the Constitution. We also want to emphasis decentralization of power right from the Location up to the National level. At the National level, we have submitted that we prefer a

Bicameral Parliament which will have Upper and Lower and in the Upper Parliament, we can have regional representation.

As regards constitutional office holders, we take the position taken by PNU that they should be vetted preferably in the upper chamber or upper parliament and the constitution should define or establish commissions which deal with critical issues like environment, land and education so that, for instance, with land matters, never again should it be the prerogative of the President to dish out land. There should be a clear policy. Environmental issues should be addressed and the commission of education, for instance, should ensure that civic education and the issues of constitutions--

Mr. Bobby Mkangi: Two minutes.

Mr. Alex Amusakha: --are taught right from the primary stage.

On Transition, we agree with the provision that we should have a very clear definition of how power should be handed over, when elections should be held, how election disputes should be solved and a Supreme Court. That is basically the position of AFORD Kenya. Thank you.

Mr. Bobby Mkangi: Thank you very much. Just as a point of clarification, Mr. Omukanda and Mr. Amusakha represent AFORD Kenya, Alliance For the Restoration of Democracy in Kenya – A F O R D I N K and not Ford Kenya. I think some people wanted that clarified.

Mr. Anisi Amukanda: In short it is AFORD In Kenya but Ford Kenya is our father.

(Laughter)

Mr. Bobby Mkangi: Thank you very much. PPK, Progressive Party of Kenya. Bwana Koech wants to know the parties which are remaining, they are about seven after PPK.

Mr. Robert Chutha: Thank you, Mr. Chairman. My name is Robert Chutha together with my Chairman, Evans Misati. We represent the only Progressive Party of Kenya. Mr. Chairman, our party is very particular about the issue of impunity because we believe that it is neither the Presidential nor the Parliamentary System that is to blame or that has brought us to this end but rather the exercise of impunity that has permeated the whole society. Therefore, at the 9th minute, my Chairman will stand up and explain more about impunity.

In the meantime, we support the Presidential System with the following qualifications. We want a robust way of holding the CEO to account including a protracted system of impeachment around his or her conduct in the office. However, holding the CEO to account is not a license enough to harass him or his office, trivialize it or in any way malign that very, very important office. We, like other presenters before us, support that there should be a minimum and maximum age as well as other important qualifications for somebody to assume the office of the CEO including a very thorough medical examination. The minimum age, we believe, should be 35 years, maximum 70 years.

Thirdly, PPK believes that the PM should actually be the running for the CEO and in that case, there may not be need for a deputy president or a vice president. There should be very, very clear way in the constitution how the CEO vacates or is dismissed from office. Again, commencement and end dates for the CEO should be clearly stipulated. It is X day of Y month of Z year in whatever time frame but it should be provided very, very clearly in the constitution.

Parliament, like proposed by PNU, we believe should actually comprise both elected and special or mixed representation and I do not want to belabor that. So, we are saying that we need to overhaul the representation system so as to bring equity. PPK has also been toying with the idea of requiring that actually aspirants to Parliamentary offices should actually not seek to be voted in their native areas and here we define native as where you are born or where your mother tongue is the dominant language. This we are saying will make Mwandawiro go and seek votes in Nyatike and at the same time, *Mtumishi* Kathangu here will also go to Taveta to seek representation. Therefore, he cannot whip ethnic sentiments when he is there, he will bring issues and we are serious about that proposition.

We are proposing that we cap the number cabinet at 25 inclusive of the president and the last ministry. Therefore, we believe that the cabinet should come from outside parliament or if the MPs become the cabinet ministers, they should vacate their role as MPs and here we have a proviso, Mr. Chairman, that the terms of service for Cabinet position should not be significantly different from that of MPs so that if you are crossing over from the Legislature to the Executive, it will not be for remunerative purposes but rather in search of service.

Let me go to Devolution. PPK supports Devolution in its fullest sense including Financial Devolution. In fact, the Luos have a very interesting way of putting it; devolution *pand pieri*; that means “bottoms up” and we are saying that whereas a lot of us put a lot of emphasis on distribution of resources, actually our vision of devolution should be emphasizing on increasing the cake not necessarily just sharing that cake. Therefore, when we are arguing for bigger resources for our regions, PPK believes that we should also have the conscious to ask ourselves what our regions are contributing to the kitty.

Regional governance should be--

Ms. Atsango Chesoni: Excuse me?

Mr. Robert Chutha: Yes, please.

Ms. Atsango Chesoni: I would like the definition of the phrase that you used in Dholuo and I would like to know whether it is an offensive term.

Mr. Robert Chutha: It is not.

Ms. Atsango Chesoni: All right, thank you.

Mr. Robert Chutha: It means bottoms up, from bottom – up.

Ms. Atsango Chesoni: Yeah, I think we should be sensitive to the fact that there is diversity in the room and we should not use obscene language. Thank you.

Mr. Robert Chutha: I take that with respect but I do not know where it came from.

On Transition, Mr. Chairman, we are saying that the elective office holders; those who hold elective offices should commence after the next election. This is because the current Members of Parliament use a lot of resources within five years and, therefore, their earnings stream should not be cut short.

Secondly, the constitution or office holders, the ones that are appointive, should be given six months within which to prove themselves within the due dispensation. It, therefore, means that there should be a special purpose vehicle for drafting laws and regulations that will put new constitution into effect.

Mr. Bobby Mkangi: Wind up please.

Mr. Robert Chutha: Mr. Chairman, you can imagine-- Give me some dispensation, I was interrupted. Finally, and with all due respect, this is to the Members of the Committee of Experts, when I saw the lawyers arguing in the morning, I actually said a silent prayer for the high table. There are too lawyers assembled there and we are proposing that as PPK that actually members sitting in the COE should actually disqualify themselves from holding positions that are created by the constitution for at least ten years. This we have in mind a revelation made recently in a political rally that some of you actually were beneficiaries of political savers and so as to disabuse yourselves from that, we believe that you should not benefit from any positions created for, at least, ten years. Let me then for that moment that I was interrupted hand over to my Chairman to explain this impunity thing. Thank you very much, Mr. Chairman.

Mr. Bobby Mkangi: No Sir, unfortunately we cannot have that because I already accorded you an extra minute and a half. So, for today we will not hear from your Chairperson, we will move to the next party.

Mr. Evans Misati: I can make one statement because it will not be fair for you to deny me this chance. Since we have been talking here--

Mr. Bobby Mkangi: State your name please.

Mr. Evans Misati: My name is Evans Misati, I am the Chairman Progressive Party of Kenya. I want to look at the impeachment of the President and when we look at the Bomas of Kenya Draft, it was very elaborative that it stated the 67% of majority vote to remove the president. However, when you look at the Wako Draft, it gave it at 75% and I thought it will be in order for us even by the time we leave here we talk about specifics in terms of impeachment because when we are talking about abuse of office, abuse of power, that is a very crucial issues that we should have specifics so that we do not just leave the word impeachment. You know Kenyans even if you talk about impeachment and somebody has got the numbers then he can still again--

Mr. Bobby Mkangi: What do you propose Bwana Misati, very fast so that we can move?

Mr. Evans Misati: I propose a percentage of around 60% for the President to be impeached.

Mr. Bobby Mkangi: Thank you very much.

Mr. Evans Misati: Thanks so much.

Mr. Bobby Mkangi: National Party of Kenya.

Mr. Joe Kithyaka: Thank you, Mr. Chair. My name is Joe Kithyaka of National Party of Kenya and, I think, I will not bore you with all the systems that we were proposing. I will straight to what has not been discussed but in terms of what system that we prefer, we have the same views with NARC, which proposes the Hybrid System 3.

The issues that I thought I would also address are: one, the harmonization of your Committee together with the Boundary Committee and the new Electoral Committee; that we should be able to harmonize them, I think, that was said, and be able to have same kind of forum before the Referendum and also support what *Mheshimiwa* Mungatana had said that we should have a people's assembly similar with all the kind of people that you met. You met the political parties, you need to meet the Muslim brothers, the Christians and all so that you can be able to have the same kind of forum and take us through the whole Constitution because what is coming out of this meeting is that a lot of us may not know the Constitution. I think 80% of Kenyans do not know the constitution and the ones who know are actually manipulating the ones who do not know. I think before the Referendum we should have gone step by step and seen what areas we need to change and what areas can remain the way they are. This, I do not know whether it is within your mandate, but I think it is important that in such a session we should be able to have something that is televised so that people who you are going to later meet in the Referendum are informed of what they will be voting for.

The other issue I thought we would also bring into consideration is after we have implemented the new Constitution. It should go down to the schools whereby schools-- I support one of my brothers who said that schools should actually start teaching the Constitution from lower education level so that people grow up understanding what are our rights and what is the law and what the Constitution says so that we are able to control the rule of law in this country so that we do not have impunity becoming the order of the day.

Lastly, I would like to also recommend that during the Referendum as they did during the census that we have a day or two that is compulsory for everyone to go to the Referendum because we could sit here and talk all these but the time you come to the Referendum only 20% participates and surely it is not a representation of what we are thinking. Also when the time comes for elections, we also do the same. The bars are closed the night before, people sleep when sober and they go and vote and we make it compulsory that every Kenyan votes because it is our right and I think the representation in this country can only be stabilized when every Kenyan voter who is eligible actually casts his vote. Thank you very much.

Mr. Bobby Mkangi: Thank you very much for also taking a short time. We will now have National Labour Party.

Mr. Jackson Musembi: Good evening everybody. My name is Jackson Maingi Musembi, National Labour Party, Deputy--

Mr. Nzamba Kitonga: You are not being heard.

Mr. Bobby Mkangi: If you could just move the microphone closer to you.

Mr. Jackson Musembi: Like that? Is that okay?

Mr. Bobby Mkangi: Yeah.

Mr. Jackson Musembi: Deputy Organizing Secretary, National Labour Party. I believe most of the issues that we had prepared to deliberate on have been touched on in details particularly the area of the Executive. We take the direction of DP, Democratic Party and PNU that is, we are going Presidential apart from adding some few inputs like the limits on the number of the Members of the Cabinet; they should be between 20 to 25 and that should be reflected totally in the Constitution.

The other issue is that the President and the Vice President should relinquish their position immediately they are elected and their positions taken over by the people who were their runner's up. The President must select or appoint his Vice President prior to the General Elections so that people can, at least, know the positions.

Devolution: I think that is one area that we need to look into in details because it was not captured by the Committee of Experts seriously the way they did on the Executive and the Legislature. Devolution, we believe, has got to go to the roots and we are actually suggesting two tiers or levels of government, that is, the South African direction, where we abolish the Councilors and we get the Ward leaders who are elected within that level. From there they

congregate within the Constituency assuming Ligale Commission is going to accept that each Constituency will be a District. Then from there immediately they gather, they appoint one leader who will represent them in the Regional Level and this is where the Commission is going to have a lot of problems. This issue was seriously captured in the Bomas Draft as far as what a region is. Somebody suggested about having 42 tribes, each tribe being represented in the Upper House. I believe that will be so overwhelming; those people will be too many. I would suggest we go Regional where Bomas Draft suggested 14 Regions and I am advising the Committee of Experts, please, my brothers and sisters do not open that box, it is a can of worms because we will have to go back again and start negotiating do we put the Pokots with the Kalenjins, do we put Wakambas with the Merus and the Embians for you to end up with 14 regions because you are looking at representing every person and every community within this country. The only problem we might have is the people like the Oromos. Those people might never see the light of day when it comes to the leadership of this country. Maybe you need to address that issue and look at it as to how you can cater for the minority.

The other issue that I believe I might touch *kidogo* or a little bit is bringing in the constitution into effect. We are suggesting, immediately you finish drafting your constitution because you talked of 2nd of March 2010 or something like that if I heard you very well, let us focus on 2013. We adopt this Constitution after the 2012 General Elections but people must be aware that we are going for elections and immediately I resume the office, this is the Constitution that I am going to follow or that we will govern the country with. Immediately the President and the vice president are sworn in, the holders of Constitutional Offices be given approximately six months and they should be phased out systematically such that this time we say have a commission-- Somebody suggested of a commission that should be formed to phase out these people so that we can bring in a new breed of leaders to the country.

The last one, because I want to spare one or two minutes for my brother here to contribute, is the issue of sensitization and, I think, this is dear to all of us political parties. Everybody here has roots down to the people. I would advise you Committee of Experts, kindly use these people. Your Executive Director said currently you have enough money for the job. You have got 47 political parties each party being represented to the grassroots. Why can you not just connect

with the registrar of political parties, empower these people, give each party something like Ksh. 5 million shillings--

Mr. Bobby Mkangi: Two minutes.

Mr. Jackson Musembi: --tell them, when you are going down there to popularize your party, sell this agenda to the people. Send your people there, let them see and supervise what these people are doing. Please, we only require half a billion shillings for 47 Political Parties and we are talking of Ksh. 470 million, Ksh. 10 million per each political party and we sell this agenda proper.

Mr. Bobby Mkangi: Maybe you need to hand over the microphone now so that you save time.

Mr. Jackson Musembi: Thank you very much, I beg to stop there gentlemen let me hand over to my brother.

Mr. Bobby Mkangi: For one minute.

Dr. Sadjah Philippe: I am Dr. Sadjah Phillipe, Secretary General of National Labour Party. I have got something very little but very touchy. Committee of Experts, Political Party Leaders, dear countrymen, I am here to say that since yesterday when we came here, the country is looking at us, they are very expectant and they are going to be very sad if we do not come with a positive draft from here. In Constitution making, it is a give and take, let us not stiffen our necks on the obvious.

About the Kadhi's Court, I am a *Kristo-Islamic* person. I do not see why the Christians refuse me or the Muslims refuse me. So, let it be as it was. Thank you very much.

Mr. Bobby Mkangi: Thank you very much. Muungano Development Movement Party of Kenya, as we come to the tail end of this session. After Muungano we will have four more.

Mr. Titus Muunda: Thank you, Chairman. My name is Titus Muunda, the National Chairman, Muungano Development Movement Party of Kenya. I think I should start by apologizing to the commission for boring you because most of the issues that we are saying have been addressed. However, I have a number of observations or points here to raise. I think when we started yesterday we proposed as a party that we kind of zero in on the systems that we were taken through by the Committee, that is, the Presidential System, the Parliamentary System and the Hybrid. I think majority of us have zeroed in on those issues. It is very unfortunate, I want also to echo the words of *Daktari* here, that some of us are result oriented and it would be very unfortunate if we came out of this meeting and we cannot in real sense say the 47 Political Parties agreed on one, two, three things. I believe as a person, I think, our Secretary General is going to take you through what we have resolved as a party-- We believe the strength of the chain is the weaker link and with this I mean whichever system of governance that we are going to adopt or that is going to be adopted in the country, the most important thing here is checks and balances. That is what I am calling the weaker link, checks and balances of the Executive. That is the issue that is supposed to be addressed according to me. So, I think I do not want to repeat what has been said. So many things have been discussed here. My concern is, is that going to just disappear? That is my concern. All those good comments and observations by all these political parties, do we have real time to resolve before we leave this conference? Thank you.

Mr. Lawrence Nzunga: Alright. Thank you. My name is Lawrence Nzunga, Secretary General, Muungano Development Movement Party of Kenya. I will not repeat what my Chairman has said but as a party, we have other contentious issues other than what we have tackled. However, before I do that, let me make an observation, Mr. Chairman. One of the learned people told me during lunch time that during the French Revolution when they were making a constitution they said somewhere, and I do not know what came up after that, before we have a good constitution let us kill all the lawyers. That is what he said and the one who told me that is a lawyer but we are Christians, let us not go that way. I am saying that because of one thing, these people, Mr. Chairman, are the ones you gave recognition the first time and they are not here except one or two. That is why we need to make this recognition because they are the legal advisors to the parties, they are the legal advisors to the Executive but this echoes what Mr. Amollo taught us yesterday. Thirteen of them are the only ones who had read the draft

Constitution at that time. Let them take this serious and, at least, we represent the interest of the country.

We have an issue with the Land Policy and one of our members as party is an IDP as we talk and he had these sentiments to be represented in this forum that you as the Committee of Experts, you call all the IDPs and the pastoralists and listen to their views in a hotel like this not in the tents they belong to so that at least you know what land means to them. I do not want to dwell on that very much.

As a party we also have a problem with the Public Service Commission as it might be put in the Constitution. We are talking of a situation where we have the tenure of office clearly defined and if one attains the retirement age, they should not be is not reappointed in any office of Government at whatever level. That is the problem we have because of the KACC issue.

Mr. Bobby Mkangi: Two minutes.

Mr. Lawrence Nzunga: Then there is another thing that we feel should be handled with a lot of care and it should be introduced in the Constitution, a copyright policy and a copy right policy where we are guarding production and manufacturers and entrepreneurs because that is what has killed Rivatex, that is what has killed Raymond, that is what has killed so many and still we are talking of so many other companies coming down because of copyright policy. So, we need to define that and we do that. Then we propose an Independent Judiciary which is not appointed by the executive. Thank you.

Mr. Bobby Mkangi: Thank you very much Bwana Nzunga. VIPA Progressive Alliance.

Mr. Antony Kibagendi: Good evening. I am Antony Kibagendi, I am the National Chairman VIPA Progressive Alliance. I am with my party leader here, Saadad Muhindi. Other parties have actually echoed almost everything we wanted to say and the few proposals we have are that the party proposes that we adopt the Hybrid 2 with the Executive President and we want it edited to have a Deputy President, Prime Minister and Deputy Prime Ministers. What Eugene told us

earlier about some constituencies where people would wish to vote for only the councilor and the Member of Parliament, I think that is a very small percentage particularly in the cosmopolitan areas in the upcountry and hence people should vote for their President.

On Devolution, we look at two-tiers: the Central Government and the Local Government. However, we should improve on supervision and accountability. On the age of the President, like right now I am very interested to run for that seat. I think I have all the qualities except the age. So, I would suggest we change the age to 30 years and the age of the Premier and Vice President as well needs to be stated in the constitution. You realize it is former President Kenyatta and his boys who decided to put it at 35 because they knew what Mboya would probably do. We are looking at a system that will be representative and democratic.

On the Kadhis Court, you realize it is provided in the current constitution, section 66 just like secular courts are provided for under section 60 and 64. Furthermore, in section 5 of the Kadhis courts, it only talks of jurisdiction being that of personal status in relation to marriage and inheritance. So, we advocate for the Kadhis courts to remain in the Constitution with the same, same powers. What we would like to urge the Commission is, we should improve on the Civic Education because if you do not do Civic Education we will go round and spread rumours and that is what our people will take as the truth.

Finally, this is not about the constitution but it is something I have been seeing everywhere on TV, on radio and everywhere and even here today. We would like to urge some of our leaders to demonstrate a bit of discipline. The contestation between ODM and PNU everywhere we go is becoming irritating, just get out of your smelly party issues and walk with the nation in purity, kindly. Thank you so much.

(Clapping)

Mr. Bobby Mkangi: Thank you very much. Kenya African Democratic Union Asili – KADU Asili.

Mr. Jimmy Ngala: I am Jimmy Ngala representing KADU Asili. *Ningependa kwanza kabisa nishukuru kama wenzangu walivyoshukuru Kamati hii ya Wataalamu ya mambo ya Katiba kwa kuweza kutuita hapa vyama vya siasa tuweze kutoa maoni yetu kuhusu Katiba. Elimu, kama wengi walivyosema, Civic Education, ni jambo muhimu sana. Tuwe tunaweza kuendelea na kupata hiyo elimu zaidi ili tuweze kuelimika na tuelewe majukumu yetu kama Wakenya ni mambo gani kwa sababu tunaona kwamba attitudes zetu za wakenya bado zinatajikana kujaribu kurekebishwa ili turudi pale tulikuwa tukifikiria tukiwa kama Kenya moja, taifa moja. Tusigawanyike turudi kufikiria on ethnic lines. We think as one nation, one people tusahau ili tusijiingize katika hali hii ambayo tulikuwa nayo hivi majuzi. Kwa hivyo, mengi yamesemwa hapa Bwana Mwenyekiti na yanafanana na yale yale ambayo chama chetu cha KADU Asili kingesema lakini hata hivyo, all that notwithstanding, tuko na mawili matatu nasi tuongeze katika msururu huu wa maoni ya vyama.*

On the issue of land, land to us, KADU Asili, has been a contentious issue. Land as a resource was one of the factors which contributed to the clashes we experienced recently. A national land policy as has been said should be put in place; a land policy which would seriously address illegally grabbed land which should be returned to the rightful owners. The issue of absentee landlords and squatters should be seriously addressed in that National Land Policy. The issues of ad hoc allocation of land to the so called ‘foreigners’ at the expense of the indigenous communities should be addressed and abolished possibly.

The issue of Kadhi’s Court: we have had this is an issue we have been with for many years, it has not caused any damages as far as KADU Asili is concerned and we should just leave it to stay the way it is as per the current Constitution. We have no issue with the Kadhi’s court in the Constitution.

On Transitional Issues, I think we will echo the same sentiments as already raised that the phasing out of people who are already in some of these offices should be done after the new Constitution is in place. On the issue of Judiciary, I think, as a party we feel that Parliament should be left to do the vetting of the Judiciary. Mr. Chairman, if I have done probably six minutes or so, please alert me so that I hand over to my colleague to summarize.

Mr. Bobby Mkangi: In fact you have done more than six minutes so you can hand over now.

Mr. Jimmy Ngala: I have already more? Okay, let me then-- We need a Constitution which will state maximum number of Cabinet Ministers, a constitution which will have a clause of impeachment to the President in the event of breach of the laws of the land and a constitution also stating the maximum age that both the President and Prime Minister are supposed to attain to qualify.

Mr. Bobby Mkangi: Two minutes.

Mr. Jimmy Ngala: So, the president who is elected directly by a universal suffrage to appoint the Prime Minister who will be in charge of the Parliament. We want a president who will be the head of State, Commander-in-chief and also heading the National Security Committee. The PM will be the head of Government. The constitution should come out very, very clearly to define laws or roles.

On Devolution, we are for a three-tier system; National Government, Regional Government and the Local Authority, maybe, at the District level and this we are advocating seriously because the issue of resource distribution has been one of the most contentious issues in this case. I hand over to my friend, please half a minute for him to wind up.

Mr. Bobby Mkangi: Unfortunately *muda umetulemea na umekwisha, eh?*

Mr. Jimmy Ngala: *Haya, asante sana hata hivyo. Asante.*

Mr. Bobby Mkangi: The People Patriotic Party of Kenya.

Mr. Samuel Kariuki: *Asante sana Mwenyekiti, Kamati ya Experts kwa sababu kwanza wakati nilipolia asubuhi na nikaja* on the floor, you have demonstrated to be very good parents and you

heard what we said and you are holding the protocol of everyone. Justice has been done, thank you very much.

People's Patriotic Party of Kenya--

Mr. Bobby Mkangi: Kindly state your name.

Mr. Samuel Kariuki: My name is Samuel Mburu Kariuki, National Chairman People's Patriotic Party of Kenya. Our party, People's Patriotic Party of Kenya stands for the doctrine of political responsibility and every (?) process is guided by respect for the principles of human rights, equality and affirmative action, gender equality and democracy. People's Patriotic Party of Kenya is of the view that for the process of Constitution making to be properly complete and for democracy to work and not to be seen as working, there must be proper and equal representation of Kenyans. This will enhance proper sharing of our resources from constituency level to Local Authority. For instance, within the Constituencies where an MP is elected by only a number of 4,000 people and another MP is elected with a number of 100,000, these people are called the same, MPs when they go to Parliament and they share the same resources. So, the number of voting should, at least, be equal. As earlier said, the reviewing of our Constituency boundaries should go hand in hand with the Constitution making process. All Constituencies should, at least, have the same number of voters.

On the type of government, People's Patriotic Party of Kenya stands for a President who is elected through adult suffrage, one vote one man with the first President, also president with powers who will be the Commander-in-Chief of the Armed Forces. Prime Minister; the leader of a political party with the majority in Parliament shall be the Prime Minister. He shall appoint ministers among the MPs. It is not a must that the Prime Minister should belong to the same party with the President. This will allow different parties with different ideologies to have a chance to lead the government. The Prime Minister is answerable to the President and can be voted out by Members of Parliament. In case of a Prime Minister being voted out, the President should ask the party with the majority in Parliament to form a Government.

On Devolution of power, there should be two levels of Government and this is the proposal of People's Patriotic Party of Kenya: Central Government and District Government. The Central Government shall have powers over the District Government and the District should be the unit of devolution. The District Government should have Representatives elected and nominated by Political Parties. The Central Government should have powers to dissolve the District Government if found not to be accountable.

Bringing the constitution into effect: one, for the holders of constitutional positions, this should be allowed to continue and also those elected should be allowed to continue and after their contract ends then others be put on. On the issues of land, People's Patriotic Party see a lot of manipulation within the land issue. We propose that not even a single person should own more than 1,000 acres of land while people are living in shanties. That is all what I have waited for all those hours to present and it should be on record. Thank you very much.

Mr. Bobby Mkangi: *Asante sana Bwana Kariuki* for your patience.

Mr. Francis Kinuthia: Thank you, *Bwana* Chairman. I too want to thank you all for your patience and you have demonstrated to be Kenyan, truly Kenyan. Thank you, Chair and your Committee of Experts on Constitutional Review and we thank you all because you are patient. Thank you very much. I am Kinuthia Francis, Secretary General, People's Patriotic Party of Kenya.

Mr. Bobby Mkangi: Thank you very much and last but not least, we have the Farmers Party.

Mr. Jackson Kieye: Good afternoon.

Participants: Good afternoon.

Mr. Jackson Kieye: My Name is Jackson Kieye, representing Farmers Party. Now, I think we have exhausted all the issues that we wanted to discuss. At this juncture, I can only hope that those suggestions will be supplemented with the first knowledge of the Committee of Experts to

make this Constitution a reality. I will go a point further and donate my seven minutes to the Committee to do the summary, because I think everybody is exhausted and the only thing I can do, I do not want to be a politician who is very selfish. However, before I finish, I was in Germany the other day and we are promoting Kenya as the land of impunity, please change that to a land of prosperity. Thank you. *(Clapping)*.

Mr. Bobby Mkangi: Thank you very much, *Bwana Kieye*. I think there is no party that has not been heard according to Nad. Thank you very much. *Kwa hivyo mabibi na mabwana tukimalizia kikao hiki ningependa kutoa shukurani kwenu, mmekuwa watulivu--*

Mr. Nzamba Kitonga: Just go on.

Ms. Atsango Chesoni: Go on.

Mr. Nzamba Kitonga: Go on.

Mr. Bobby Mkangi: Procedure.

Mr. Nzamba Kitonga: No, -- (?).

Mr. Bobby Mkangi: You will be heard in a minute. Okay. *Nilikuwa nasema mmekuwa watulivu na pia tumejadiliana kwa hekima. Kwa hivyo nikijing'atua kutoka kiti hiki cha enzi, nasema muendeleo na moyo huo huo ili tuweze kufanikisha kazi hii ya kupata Katiba mpya kwa nchi yetu. Ningependa kumpisha ama kumpa nafasi mwenye kiti wetu ili atuongoze katika sehemu hii nyingine ya ratiba yetu. Asanteni sana. (Clapping)*.

Mr. Nzamba Kitonga: Thank you very much. As I pointed out to you, the Statute that creates us and other bodies like the Independent Interim Electoral Commission, the Interim Boundaries Commission and so forth-- Also, our own Committee or rather the Constitutional Review Process involves other organs. One of the organs as I told you earlier is the Reference Group which I told you we have started engagement with. Of course, the other organ is Parliament and

the final organ is the Referendum. However, there is also another organ called the Parliamentary Select Committee on the Constitution and this organ is headed by Hon. Abdikadir and the Vice Chairman is Hon. Ababu Namwamba and it is now my privilege to ask him to make a few comments, particularly on some of the matters that you have raised, the inter-relationship of the Committees and the Commissions and so forth. I had advised him earlier on what the delegates would want to hear as matters of clarification. Hon. Namwamba.

Hon. Ababu Namwamba: Mr. Chairman, let me thank you for this meeting. Let me also thank the delegates of all Political Parties, I have sat through since morning and I must say that this has been one very useful interaction and I came here on behalf of the Parliamentary Select Committee which is the link between the Committee of Experts and this whole process with the National Assembly and really I did not expect to speak here. I actually came to listen and to report back to the Parliamentary Select Committee on this whole process of consultation and consensus building. Nonetheless, thank you for according me this privilege to share with you a few thoughts and, perhaps, I should start with a fundamental issue that was raised in the morning regarding the interaction and the linkage between the Committee of Experts and the work you are doing and the other organs which we have also had the privilege to put in place as the Select Committee and that is the Interim Independent Electoral Commission and the Interim Independent Boundaries Review Commission. Of course, looking at the Constitution of Kenya Review Act that establishes the Committee of Experts and the Constitution of Kenya Amendment Act 2008, that creates both the IIEC and the IIBRC, you will notice that there is a very fundamental confluence of mandate and tasks between those two organs and the Committee of Experts.

Perhaps, I will just mention two which are relevant for purposes of demonstrating that confluence of mandate and tasks and the first one of course is, the fact that this Committee in drafting its constitutional proposals must determine the ceiling of constituencies or electoral units as it is in the current Constitution. Of course this will come under Section 3 of the Statute that outlines the functions which include preparing constitutional proposals. Of course, the first thing that comes to mind is that if the Committee of Experts must determine for us the ceiling of electoral units as it is in the Constitution today, at what stage should that be done. Should it be

done after the Interim Independent Boundaries Review Commission has concluded its work and made its proposals, in terms of the number of electoral units we must have or should the Committee of Experts set that ceiling and then that ceiling will guide the IIBRC in its work of reviewing electoral units. That is a matter that needs to be determined.

The second point of confluence for demonstration is the Referendum, which is another very, very specific task that this Committee is vested with under Sections 23 and 37 to 42 of the statute and that Referendum includes certain tasks that have a direct bearing on the mandate and the work of both the IIEC and IIBRC. Issues like units of representation because voting in the Referendum will be on the basis of units of representation, which at the moment are constituencies, which will be under review by the IIBRC. There is the question of registration of voters, a matter that the IIEC must determine because the Law creating the IIEC also requires that it reconstructs the electoral register and that the register that this Committee of Experts would rely on in any Referendum on the Draft Constitution. The same statute, the Constitution of Kenya Review Act, Section 42, makes reference to the National Assembly and Presidential Election's Act, which provides the framework for conducting elections for both the National Assembly and the Presidency and which then means that the Committee of Experts will work within an established framework, the framework of electoral units and the voters register under the Electoral Commission.

There is also the question of timeframe. The timeframe within which the Committee of Experts and that in which the two other bodies operate and when you look at both the Constitution of Kenya Review Act and the Constitution of Kenya Amendment Act 2008, you will realize that the timeframe for all the three organs is concurrent, rather than subsequent, which of course, quickly tells you that the manner in which these statutes were constructed was not very neat legislating. The legislation was not very neat, because one would have expected that the mandate, the timeframe would have run consequently and not concurrently, such that one task would precede the other and, of course, the Parliamentary Select Committee had the privilege of putting all these organs together which we did at the beginning of this year and each of these organs has been very eager to hit the ground running.

The Committee of Experts is already running, the IIEC is already running, the IIBRC is so eager to get off the blocks and hit the ground running and straight from the top of my head, I have already noticed that we cannot avoid certain basic amendments, both to the Constitution of Kenya Review Act 2008 and the Constitution of Kenya Amendment Act 2008 to deal with questions of concurrency or subsequence of the mandate and timeframe and which should precede the other in terms of the task of these three organs. Of course, those amendments will also touch on the Constitution, because whereas the Committee of Experts is created by statute, the IIEC and the IIBRC are creatures of the Constitution; they were created by Constitutional Amendment, which means that Parliament will have to amend both the statutes and the Constitution of Kenya Amendment Act, which is a Constitutional base. I will report back to the Parliamentary Select Committee that this is a matter that has been noted in this meeting as a matter that requires urgent attention and I do believe that the Select Committee will duly consider this and make an appropriate decision.

One of the things we will have to consider is how to stagger the responsibilities, the tasks of the three organs. Mr. Chairman, now that I have the floor, please, permit me to share a couple of thoughts, a few thoughts, having sat here and listened to very thought provoking ideas from the Political Parties. On behalf of the Parliamentary Select Committee, I want to urge the Committee of Experts and the Political Leadership to do the best we can to insulate this process from any distractive influences, from any political brinkmanship, any individual illusions of grandeur and emotional or loyalty disorders that we may have. I want to plead that we give the Committee of Experts the full support they need to conclude this task, because we really must conclude this task.

I mean, there are people who have made careers out of this Constitution making process, there are people who have actually retired from careers in this process, because of the length of time it has taken for it to happen. I just want to remind the Committee of Experts a point that they must be well aware of, but I want to belabour nonetheless, that the Law is fully behind you and you are fully covered by the Law in the execution of your mandate. Section 16 of the Statute that creates you is absolutely clear that in the exercise of your mandate in conducting your responsibilities you will be under the direction of no authority in this country. You have

absolute independence and in conducting, of course, your functions, may I also again remind you of the objects of this whole exercise that are well set out in Section 4 of the same statute and which, if you look at, is really all about giving this country an opportunity for a fresh start and let us do exactly that.

At the Parliamentary Select Committee, I am glad to report to you that even though we represent different Political Parties we have struck an excellent working relationship. There were several Members of the Committee here, I can see *Mheshimiwa* Nyamweya is still here. We have struck an excellent working relationship, we have woken up to the realization that if we miss it this time, we may not get another excellent opportunity similar to the one we have today. Mr. Chairman, please also allow me to plead with us to be good students of history. One of the reasons we have stumbled so repeatedly in this exercise is that we have deliberately refused to be good students of history and so we have refused to learn even from the most obvious of incidents of stumbling and hiccupping that should never have been, at least, not on the second occasion. We need to remind ourselves why Bomas failed, we need to remind ourselves why the 2005 November, 21st Referendum was lost and when we remind ourselves, we will avoid so many petty pitfalls like I witnessed here earlier this morning. We need to know that had we been more honest with one another, had we been more humble with one another in this exercise in the past, had we been more tolerate with one another, had we been more conscious of our own fallibility that we are so fallible, we would not have repeated the same mistakes we have repeated every time we attempted this exercise. We must also realize, ladies and gentlemen, that Constitution making in this country must stop being about personalities. The Constitution we are seeking today is not about one, Mwai Kibaki, it must not be about Mwai Kibaki. The Constitution we are seeking is not about one, Raila Odinga, it must not be about one, Raila Odinga; this Constitution cannot be about ODM and it cannot be about PNU; this Constitution is not about the Committee of Experts, it is not even about the Parliamentary Select Committee. This Constitution is about Kenya; it is about our history, it is about our present and it is about the posterity of our land.

In Bomas, we reduced the Constitution making process to a Raila-Kibaki, NARC, NAK, LDP contest and we lost the plots. Please, let us not repeat that pitfall, let us be good students of

history and let us also draw a distinction as we engage in these discussions, in these consultations. Let us draw a distinction between a clash of ideas and a clash of personalities because often we have wasted so much energy on a clash of personalities and a clash of transient interests. Indeed, those of you who are students of Constitution making, you know that Constitution making are not wedding ceremonies, they are not church services, they are heated exercises, but they must be heated out of clashing of ideas, not clashing of personalities, not clashing of egos. If we focus our minds on clashing of ideas, we will clash, we will generate heat and that heat will give us light and we will get it there.

When I watch my eminent Constitutional Law teacher, Professor Kibwana, I acknowledge you *Mwalimu*, exchanging communication and I got your clarification this morning, Professor, about the exchange or the purported exchange between yourself and my good and Learned Senior, Miguna Miguna, I tell myself that I wish this kind of exchange was in the nature of the famous federalist papers, that informed the construction of the U. S. Constitution, the Great American Constitution. That I wish the exchanges were at the same level with the kind of thinking, provocative thinking of James Madison and John Adams, that triggered serious thought - provoked thoughts that led to the American Constitution and not an exchange as to who is more loyal to his Principal. An exchange, a demonstration of who is more loyal to the other, because Constitution making can never be about individuals, Constitution making cannot be about-- We suffer from loyalty disorders in this country and we must be clear enough to look at that.

Mr. Chairman, I also want to say that we need to be bold enough, to tell each other the truth, to look each other in the eye and be honest with one another and by doing that, we will avoid doing what *Mheshimiwa* Wamalwa once called, playing dangerous cards under the table. We must also not be afraid to take bold measures. One Irish Poet, I believe she is called Hannah Moore once said, that do not be afraid to take one mighty meat if it is obvious to you that you cannot cross the chasm in two small steps, because if you attempted to take two small steps, you will drop in the abyss. A time has come when we must take a mighty leap because we know we have taken too many little steps that have never taken us there.

Finally, Mr. Chairman, whether we like it or not, whether you like the shape of my nose or not, whether you like the ideology of my Party or not, whether I like you or not, we have no choice, we must walk together, we must travel this journey together, whether you like it or not. We have attempted walking separately; it has never got us anywhere. It reminds me of an African Proverb, that if you want to go first, you walk alone, but if you want to go far, you walk with others. At Bomas, some imagined they could walk faster than others, but it did not get them anywhere. We want to go the farthest ever by delivering a new Constitution to this country and that means that we must walk together and in this journey, as we walk together, let us, of course, be realistic and let us respect the views of everybody.

Mr. Chairman, I have had an excellent experience here, I do not regret missing the Parliamentary Session this afternoon and I want to wish you and your Committee as you proceed on to meet other interest groups, I want to wish you that you will carry this process to a logical conclusion. Mr. Chairman, there is a lot of skepticism out there and our Learned Brother and Sister, Professor Chaloka, Professor Murray, you may not know this, I now speak as a politician, I interact with Kenyans on a daily basis, there is a lot of skepticism out there. Kenyans believe we will not give them a new Constitution, that this is just the latest round in our cat and mouse, *mbio za sakafuni ambazo zitaishia ukingoni hivi karibuni*. Please let us give Kenyans a pleasant surprise. Let us give them a pleasant surprise by completing this journey and giving them a new Constitution. Thank you Mr. Chairman. (*Clapping*).

Prof. Frederick Ssempebwa: Now, we will have--

A Participant:

(*Inaudible*).

Mr. Nzamba Kitonga: But you cannot comment before I have spoken. (*Laughter*). You cannot, that is what I am telling you. I need to speak first. (*Laughter*). Now, I want to thank Hon. Ababu Namwamba for that very pleasant presentation. The next thing is that we are going to have an open session, where we will make a few comments here and there on all our proceedings including the speech by Hon. Namwamba. Thereafter we will call our Expert, Professor Christina Murray here to give us a wrap-up. It will not be possible, I am advised by

the some of the delegates, to actually make concrete formal resolutions because some of them have received new ideas and they feel they need to go and consult with their party office bearers. Others have already left, but we will, of course, be able to gauge what we have achieved so far. Personally-- I will advise you later; I will speak to you later. Personally, I am convinced that we have achieved a lot and I am going to try and identify what we have achieved. So, can I now have comments? Yes, I will start with you, then you.

Participant:

(Inaudible)

Mr. Nzamba Kitonga: Two from this side, then I will take two from this side.

Hon. Mwanicha Okioma: Thank you very much, Mr. Chairman. I want to agree with all those--
- My name is Mwanicha Okioma, I represent FORD People. I want to agree with all those--

Mr. Nzamba Kitonga: If you could speak into the mic, please, because people are not hearing there.

Hon. Mwanicha Okioma: I want to agree with all those who said we made strides and unlike it was expected there were no flare-ups during our contribution; we have had an extremely successful deliberation. We have learnt from each and I believe pretty soon, we will be having a new Constitution. As we make this Constitution, I would like to urge everyone to learn from Gabon experience. I think there are serious problems in Gabon and we could easily go to full blown war; civil wars in Gabon, I believe, because of the Constitution that does not say how you declare the winner and everybody comes, starting declaring themselves the winners. I believe as you write the final Draft, we will need to say the winner will be declared not necessarily by the first-past-the-post. However, the reason I stood Mr. Chairman is this, and this is to Ababu Namwamba. The skepticism about not having a Constitution is not from the Political Parties, because the Political Parties have demonstrated, at least, today, that we can discuss as Kenyan brothers and come to a conclusion.

You should have been here when Mwandawiro Mghanga was submitting. He submitted the Party position but also said, should this be not acceptable to Kenyans, we will be willing to go along with what is acceptable by most Kenyans. The problem we have and where the greatest skepticism lie is in Parliament. I was in Bomas, I was in Kilifi, I was in the Referendum. The problem came from the politicians themselves. You should have heard what the Chairman, Nzamba Kitonga said, politicians can always say one thing, eat up those words, unfortunately they do not have any constipation. We have learnt a lot even from these Experts here. Mr. Chairman and Mr. Ababu Namwamba, I was a Member of Parliament, I even intend to come back to Parliament, but I do not even know how to describe our Members of Parliament. Can you imagine, it is very clear in that Constitution. It was very clear--

Mr. Nzamba Kitonga: Please, please, please. Please.

Hon. Mwanicha Okioma: I am giving Ababu Nambwamba something--

Mr. Nzamba Kitonga: Please, you need to--

Hon. Mwanicha Okioma: -- to take to Parliament. It was very clear Honourable Ababu that the Constitution did not allow same sex marriages but just to fill the Constitution for banana or orange, Members of Parliament would say blatant lies, *ati akina mama hii Katiba inasema ya kwamba, wanaume wataowana. Ati Katiba inasema wanawake ambao wameolewa watakuja kurudi kwao ili kuchukuwa mashamba*, blatant lies. Our problem, let me finish is with Parliamentarians. We are going to bring something to Parliament but I know Parliament will be the problem. Thank you.

Mr. Nzamba Kitonga: Who was the next commentator whom I had picked? Yes, Prof.

Prof. Kivutha Kibwana: Thank you very much, the Chair. First of all, I want to start by reacting to some of the issues Ababu has raised and at some point in my life I had the privilege of being his teacher. This question of the congruence of the mandate and tasks between the organs of the Constitutional reforms, the Electoral Commission and the Boundaries Commission,

I think that is a very, very important matter and there are some issues that he has also not focused on because ultimately the Boundaries Commission is supposed to recommend to Parliament whether it is Constituencies, whether it is Districts so that Parliament itself makes a decision. So, there is also that extra role for the Boundaries Commission to submit its work to Parliament so that Parliament takes the decision and one must also take that into account in terms of the time frame.

Also, the Independent Electoral Commission is supposed to generate Electoral reforms which you will also require for purposes of that part of the Constitution that relates to Electoral reforms. So, again, there is that linkage between your work and the work of the Independent Electoral Commission. Then also by the time the Independent Electoral Commission finishes its work, it will be almost time for the next elections and so the question will arise, should there be another Electoral Commission or should the existing Commission be promoted to become the substantive Commission. So, that is something that also the country wants to think ahead of time so that we do not get into a situation where there is quarrelling about that and the elections are kind of kept at bay and I am not surprised that some of the players already are thinking of packing the Independent Electoral Commission with people in the bureaucracy who are sympathetic to them because they, perhaps, think that it will be the Commission that will even do the 2012 elections. So, I thought it was important to also enlarge Ababu's discussion in terms of the congruence of the doors of the organs.

However, finally to say, I think, people need to also become fair to others because if you talk about honesty and you talk about those very laudable things and so on, it is completely unfair to criticize somebody on something that you have not read so that you can really make a determination whether it is of federalist level or whatever level it is because I wrote a letter to the Committee of Experts because as a Kenyan I saw that there were some issues that I needed to address and as we said, all of us must be checked and all of us must be told what, you know, somebody thinks and the fact that I say anything to the Committee or say anything to anybody, it does not mean that I am right because I simply say that, this is my view and, therefore, please, consider it.

As I had said earlier, even the Committee of the Parliamentary Select Committee, I was able to address it and say that, the Review Act had many problems and that Select Committee was able to agree with me and say, yes, and some of the amendments that came through were because of suggestions that we put across. So, please, Ababu, when you talk about big-manship and when you talk about all those very good things, please also drink water when you talk about water so that you do not drink wine. Thank you.

Participants:

(Laughter)

Mr. Nzamba Kitonga: We will have Honourable Biwott and this gentleman here.

Hon. Nicholas Biwott: Well, I thank you Mr. Chairman. I think as we close this meeting we should bear in mind one thing that the document you are trying to formulate is a National document which will bring about unity and, therefore, we should look at it in terms of that unity which we need later on as bound by the Constitution which in my mind is indivisible and, therefore, it cannot be partisan; it has to come through consensus the way you have written there, ‘*Consensus towards a harmonized Constitution*’. I think that is brilliant.

So to that extent I would also like to encourage you to be bold because as Experts you should actually come out with that harmonized Constitution as you see it as a Menu for any other forums that you will have. I say this because I have seen this Constitution making from the beginning and at the beginning when the former President Moi started it, he started with experts who drafted the Constitution and that Constitution was brought to Parliament and it went through the first reading. At the second reading it was found necessary to take it to Bomas. We took it to Bomas and when we got to Bomas it did not work. Things became unruly and then we went to the Attorney-General’s office and we started to develop it there and we could not do it and we had to take it again to *wananchi*. So we took it to--

Participants: *Ufungamano.*

Hon. Nicholas Biwott: --to Ufungamano, *tulikuwa huko*, I think my friend Professor Kivutha Kibwana was one of those very active ones but that Conference in Kasarani--

Participant:

(Inaudible)

Hon. Nicholas Biwott: --yeah, we took it to Safari Park and then at Safari Park in fact this where we met and agreed with (?) one with the Commissioners because it was also very ferocious but we eventually agreed. We agreed on getting an automated Constitutional making process because they did not trust the Government. They did not trust the Attorney-General, they did not trust the President and they did not trust anybody. They only trusted automation. When it came to automation, there were segments which had to be gone through, a trigger mechanism. First, the date of commencement was to be announced by the President which went on fine. Secondly, the Attorney-General was to name the composition. When that second trigger was triggered, there were only two hurdles that went through, the Muslims and the Catholics because they were able to produce their own delegates, the rest, including Parliament failed and that necessitated us to form the PSC (Parliamentary Select Committee) which is still going on under--

Mr. Nzamba Kitonga: Please Honourable Biwott, if you could wind up quickly--

Hon. Nicholas Biwott: So I would like to--

Mr. Nzamba Kitonga: --there are other people who want to speak.

Hon. Nicholas Biwott: Sorry. So, I am saying that has brought about this skepticism. So, in order to avoid that skepticism, I agree with Honourable Ababu Namwamba that let us all commit ourselves and support you and for you to be bold in order to lead us so that we can give *wananchi* a Constitution.

Let me take this opportunity to just say one or two things which I would have wanted to say before. On the question of representation, I would like to emphasize the fact that we should not indulge so much on population but we should also deal with geographical distribution. On

succession, if we settle on the President, then we should have a Vice-President as a Running mate because that gives you a guaranteed transitional phenomenal in case something happens. There will be somebody to, you know, to take over as opposed to having many other people who you will bring.

Finally, I would like to impress upon Honourable Ababu Nambwamba, that at the PSC, they should also make use of IPPG, they should also involve the other group as a whole to, you know, hammer out the consensus because it is actually possible to get consensus in order to help you.

I thank you very much and I think you have done a wonderful job and Kenyans, I believe, are looking up to you to produce a Draft at least. The minimum you need to do is to bring Draft harmonized Constitutional options so that we have one or two for the Kenyans to choose from and if it is possible, I would like you to see if you can get one or two, or a group of, maybe, up to seven or ten people from this group who can sit with you sometimes informally and see if you could bounce your own ideas with them and see if they can be helpful in the actual Draft. I thank you.

Mr. Nzamba Kitonga: I will have this gentleman. Now, I need to explain that we are just making a few comments before the closure and please do not mistake this as another opportunity to submit (*laughter*).

Kamau: My name is Kamau from Chama cha Mwananchi. Honourable Namwamba, do you not agree that the Committee of Experts should have come first before the Boundaries Commission because this would allow Kenyans to decide which mode of representation they want and then the Boundary Commission would be guided by the outcome of the Committee of Experts' mandate? To me it appears that Parliament has put the cart before the horse intentionally having no intention of accommodating new representation recommendations from the outcome of the CoE. Thank you.

Mr. Nzamba Kitonga: I will take Honourable Mwandawiro Mghanga, Abubakar and then I will take Steve Njiru and you.

Hon. Mwandawiro Mghanga: *Asante sana Mwenyekiti. Wakati tunaendelea kufika ukingoni mwa Kongomano hili ningetaka kuwashukuru kwanza Kamati ya Wataalam kuhusu Katiba kwa huu mkutano ambao umekutanisha vyama vingi na mimi nasema kwamba naona kuna mwanga kabisa; kwa kweli tunaweza kusikilizana kutokana na kwamba tumeketi na tumezungumuza kwa amani kabisa. Pili, ni kushukuru kwa ajili ya ushauri ambao umetolewa na Mheshimiwa Namwamba; ni ushauri mzuri. Naamini tutapata Katiba mpya tukifikiria kwamba tunataka Katiba ambayo itatuunganisha zaidi kama Wakenya. Vile vile, tufikirie kwamba Katiba si Bibilia takatifu au Koran takatifu; tunatengeneza kile chombo ambacho kitatuunganisha pamoja zaidi hata kama masuala mengine tunasema ati ni nyeti, kwa kweli ni masuala nyeti lakini hayatengamani sana; tunaweza pata maafikiano njiani. Jambo lingine ambalo ningomba, kwa kweli, na sisi tunaomba watu wote wa vyama vya Kisiasa, tukienda huko kuzungumuza na watu nje, tuwafundishe hali ya kusikilizana. Tusilete utengano zaidi. Hii mambo ya Court ya Kadhi, tusifungue mzinga wa nyuki (**laughter**), kwa watu. Tusifungue kwa sababu umefungua. Kwa nini sisi vyama vya kisiasa tuifungue? Watu wanaishi kwa nini? Kwa amani. Wacha mambo yakae vivyo hivyo na mambo hayo tuyazungumuzie watoto hasa tukitoka kwa vyama vya kisiasa.*

Na mwisho naoma kwamba - na ninakubaliana na Mheshimiwa Biwott - kwa sababu tunatengeneza Katiba ambayo inataka kuunganisha Kenya zaidi, tusifikirie zaidi peke yake idadi ya watu; tufikirie kwamba tuna utamaduni, tumetoka kwa makabila mbali mbali na yote yanataka kuhusishwa. Kwa hivyo tupate njia ambayo itahakikisha kwamba kunakuwa na uwakilishi lakini ambayo pia inaunganisha watu na ndio kwa maana tunaweza kwenda njia ya uwiano. Asante.

Mr. Nzamba Kitonga: Abubakar.

Mr. Abubakar Yusuf: Thank you Mr. Chairman. I would wish to thank the Committee of Experts, my fellow Party leaders and Honourable Ababu Namwamba. Mr. Chairman, mine is to appreciate that when we started we had two issues and, I think, we agreed that we let the Parties give their proposals and then we decide on the issue of consensus building. I do believe, Mr. Chairman, that we have had a very informed consultation and even Political Parties have had

informal discussions outside this Hall and in my view, we have had some consensus building informally. Mine is just to seek for direction from your side on how to conclude this Process of consensus building amongst the Political Parties. So, my request, Mr. Chairman, is that at least you should give us direction so that the Political Parties will have come out from this Process with consensus on all the Contentious Issues so that the Experts can come up with the Draft with the Political Parties leadership harmoniously believing that they have made their contributions and the Experts have taken them and the document is a reflection of their consultation. Thank you, Mr. Chairman.

Mr. Nzamba Kitonga: I have told you Abubakar that the problem is that I was told by some of the Party leaders that they have heard new ideas from their previous positions and they feel that they have to consult with other office bearers of the Parties before they make any changes. Others left but I have been advised also that there is going to be a meeting amongst yourselves--

(Inaudible consultations amongst the Experts)

Dr. Ekuru Aukot: Okay, if I could, maybe, add to what the Chairman said, I was supposed to make an announcement that was going to invite all the forty-seven Political Parties to meet at the 680 Hotel in Nairobi from 10.00 a.m. and this is an invitation from Alfayo Alfonte Albufana and David Wahiga of the Agano Party, they are the Conveners of this meeting and if you like-- Can I read the Agenda? The Agenda is a brief one: one will be to discuss Political Party funding and distribution by the Registrar of Political Parties. Agenda number two: how further we can be of assistance to the Committee of Experts in its work or to make its work easier and the Conveners are Alfayo Albufana, as I have said, Chair of the National Agenda Party of Kenya and David Wahiga and his contacts are--

Participants: Where is it?

Dr. Ekuru Aukot: I said it is at the 680 Hotel, Nairobi from 10.00 a.m. on Wednesday--

Participants:

(Inaudible)

Dr. Ekuru Aukot: Yeah?

Mr. Nzamba Kitonga: Let us have then Steve Njiru.

Mr. Steve Njiru: Thank you Chair. Now it is clear, it is actually abundantly clear that Kenyans do want a new Constitution and there is general consensus. Mr. Chairman, I just want to say it is a herculean task but we are sure that you will rise to it and we have utmost confidence in your team as the Committee of Experts.

Procedural questions, Mr. Chairman, which I just wanted to raise, we wanted to ask whether you could share the record of these proceedings and indeed other proceedings or forums like this because of our desire to keep abreast with the Committee of Expert's proceedings and if at all possible, if we could have a Website and a Data Base where we can download and be kept abreast with the proceedings of the Committee of Experts and especially as well at the earliest possible convenience under Section 30 a report on the non-Contentious issues and the other question as well which we wanted to ask from the Chair, is for opportunities for consultation in between this time and the time that you will be providing us with the Draft Constitution.

The last, Mr. Chairman, we also wanted to find out whether we can submit further and better particulars with regards to the submissions which have already been provided and if we could as well start engaging at the earliest possible convenience. So, directions are from the Chair. Thank you, Chairman.

Mr. Nzamba Kitonga: Yes, you had not finished. I will take you and then I will come to JB and then Mtumishi and then I will get to you. Please wait.

Ogembo Masese: *Asante sana Bwana Mwenyekiti.* My name is Ogembo Masese, Kenya National Congress. Mr. Chairman, mine is to thank you for the patience and the leadership that you have shown throughout the Sittings of yesterday and today.

When we are meeting here as Political Party leaders and we know there other groups which have also met earlier and others that you will meet, each one group will be wondering, who is going to take the lead for the consensus? I want to urge Political Party leaders here, that we as the Political Party leaders and the Constitution being something to do with the Political leadership, I am urging that we be the first ones to take the lead because after all the Contentious issues are not many. If we can take the lead to show the direction that at least we have not come out of here divided but we come out of here united and wanting to get that Constitution, it will be, I think, one of the best things that we will have done for this country. Otherwise, if every one of us will be wondering why they should take a lead and probably if they go wrong they will be criticized-- At the KICC, you remember some Expert said, you must be brave so long as you know you are right. So, let us be brave all of us and support the Committee of Experts and lead the way to the Constitution. Thank you very much.

Mr. Nzamba Kitonga: J.B.

Mr. J.B. Muturi: Thank you Chair. When we arrived yesterday, Mr. Chairman, you remember I was a bit worried about whether you had called us to actually make meaningful input to the Process. Let me say, I congratulate your wisdom for calling us here. I am one person that is convinced that these deliberations of the last two days will go a long way in enriching the final product in this Process.

Mr. Chairman, we have been talking about impunity and other issues, bad manners and the rest. I think I would just want to appeal to ourselves that to demonstrate that we have all been speaking against impunity and in order to avoid the pitfalls that were narrated by my brother Okioma, let us start when we leave this place by not going to give positions. Let us not go out there and start saying, you know, there was this, the Kadhi's Courts, you know is something which was reported here because then if we are talking about impunity and we, ourselves are dashing out there to say, you know, *hiyo*, forty-two or forty-three-- I treat that as a rumour. We will be poisoning the Process and, Mr. Chairman, I think it will be really unfair for us to have spent two days here; it is costly to spend two days here and then be the same people to poison this process.

Mr. Chairman, I would also want to urge you, just like Otiende did yesterday, that these are the issues you identified as Contentious but the others you think are somewhere there but, you know, they are resolvable-- Mr. Chairman and your Committee, be bold, publish the non-Contentious ones and I believe it is contemplated in Section 30 of the Statute. Let other Kenyans begin to know, this had been resolved. Oh! *Kumbe hii hata haina shida*. That will enrich the process and it will greatly help you in actually finding that some of the things that appear to divide us, you know, they are so thin.

Mr. Chairman, finally, I would also want to propose to you and your colleagues, that because you have been put there as the Committee of Experts, try as much as possible to avoid appearing to take any particular position on any of these issues. You are merely reporting that the law told us to look at this Draft, the other and the other. We have done that and this is what we telling you. We have found out that this on given percentages were the Contentious issues. Mr. Chairman, forget about the rest. We have been here for two days discussing these things and you can see, Mr. Chairman, that it is possible to resolve them and, therefore, be bold but also avoid a situation whereby-- We do not want to stumble again. Avoid appearing like there is a specific position you should take. No. No. No. You are going to give us a report. It will go to Parliament.

I would also like to add that at Parliament, and it is good hearing from Ababu that they have noticed that there are certain areas that will require urgent attention. I just plead with them that, because it is possible under the new Standing Orders to actually run through those areas of concern very, very fast, because I believe these are not things that are going to be as Contentious as the issue of the thing of the Tribunal. This is something that I believe that we should all give you support so that you push it to ensure the work that is being done by this Committee clearly gives us the document that Kenyans have yearned for, for close to twenty years. Thank you very much, Mr. Chairman.

Mr. Nzamba Kitonga: Mwema and then Mwaura.

Participants:

(Inaudible)

Mr. Nzamba Kitonga: No, I think instead of Mwaura-- Is he your colleague or you?

Participants:

(Inaudible)

Mr. Nzamba Kitonga: Sorry. Let us start with *Mheshimiwa* Gathangu and then we come to Col. Mwema and then Mwaura. Now, that is two (?). Stop there. Hmm.

Hon. Njeru Kathangu: *Nashukuru sana Mwenyekiti--*

Mr. Nzamba Kitonga: From there, wait Honourable Kathangu.

Hon. Njeru Kathangu: As I said--

Mr. Nzamba Kitonga: From there, I think, I will take-- Excuse me, please.

Hon. Njeru Kathangu: Yes, Sir.

Mr. Nzamba Kitonga: Yeah, please. From there I will take two more and then, I think, maybe, Professor Christina Murray can wrap up for us and we conclude.

Hon. Njeru Kathangu: Thank you very much, Mr. Chairman. Mr. Chairman, the first thing I want to associate myself with as with all those who have spoken, is to thank you and congratulate you for the two days that we have been here and the way you have carried out this business.

Second thing, Bwana Chairman, is to say that, *na ni mtu mmoja aliniuliza hapa. Ni mambo gani mnazungumuza na Biwott? Na nikajua kwamba kumbe kweli kuna historia. Miaka mingi hatujasema na Biwott, hatujaketi pamoja, leo tunaketi pamoja* and I now believe that there is a new spirit. *(Laughter)*.

It is because of that, Mr. Chairman, that I think *kama tunaweza kufuatilia mambo ambayo tunazungumuza hapa na vyama vya Siasa viweze kujua kwamba* this is their core business, then it will be possible to come out with a new Constitution. Three things therefore, Mr. Chairman, I want to remind my friends here: every time we are discussing serious business, we have seen people very busy trying to create bends and curves on the route to our successes. It starts with Parliament and sometimes starts in the same Seminars like here whereby a few people walk out and start announcing funny things. I am, therefore, opposed by the way, opposed to the announcement that I have just heard here that we are going to have Political Parties' meeting to look at in the next one week or three days before you have told us what you thought about this particular Seminar because in that meeting, something else is going to develop that you may not be able, Mr. Chairman, to control and this is the way things start and in the end the ideas are killed. The people that have announced this Workshop or next week's Workshop are people I know, they are my very good friends and they may have beautiful intentions, very beautiful intentions, but what will develop in that meeting, they also may not be able to control. I want to pray and request them to please give the Committee of Experts another opportunity to call us before you can call us to Workshops and Seminars so that they can tell us what they have done with all the ideas that we have given here today and/or the Draft they may have drafted out of this Workshop.

Number Two, Mr. Chairman, is that, yes, Members of Parliament are very loose with their tongues, very loose and those Members of Parliament are children and creatures of these Political Parties and when the Members of Parliament speak there and they hurt the processes and systems that we start and Members of these Political Parties do not make any comments, then it means that they take you as toothless. Therefore, while we are telling the Committee of Experts to be bold, then you must start with creating that boldness in you to tell the Parliamentarians that whatever they say there is not what we agreed on and, therefore, they have to keep quiet and wait for whatever you people have proposed.

Lastly, Mr. Chairman, is that there is the proposal about either creating a small group out of this *Kongomano* or having this whole group to be your debating forum, Mr. Chairman and this is

what I proposed yesterday. Why is it that you cannot call us every month, once or twice for only three hours, from nine o'clock to mid-day, Mr. Chairman, if you cannot afford lunch, surely you can afford tea and these people will make some kind of proposal and discussions which you are going to digest and bring to the public? That is what I would want to propose, Mr. Chairman and in that way you will not be creating groups outside the Statute, I believe it is also under your mandate that you can be able to form a group like this one and formalize it. May God bless you, Mr. Chairman, as you lead this Committee and let us say that this is the last group that is going to bring the Constitution to Kenyans. *Asante sana.*

Participants:

(Clapping)

Mr. Nzamba Kitonga: Thank you. There are going to be announcements about your travelling schedules. So, please, do not go out until the end of the Session when the Director will advise you on how to travel. Okay, Colonel Muema.

Col. Benjamin Muema: Thank you, Mr. Chairman. I want to associate myself with all the other speakers who have thanked you and your Committee for inviting us to this very important meeting. Now, since yesterday, I am overwhelmed by the kind of goodwill that has come out of this meeting apart from a few squabbles here and there, we have been very peaceful, we have listened to each other, we have not talked at each other, you have listened to us and we have said what we wanted to say. Everybody has had their time and we have told you what we think and what our Parties think.

Now, it is incumbent upon the Committee to take over this goodwill and take this Process further. We have said but we have not debated. We need to debate what we have said; we need to caucus, we need to dialogue and we need to make a decision together so that that decision can be owned by all the Political Parties. If we can do that, then your work will be very easy and I propose that you take over this Process and make sure that we can meet, debate, agree and move forward. Thank you.

Mr. Nzamba Kitonga: Yes, Mwaura. Then I will take two more from this side and then we go into Professor Christina's wrap up.

Mr. George Waihiga: Thank you, Mr. Chairman, I will be very brief because most of what I would have wanted to say have already been said but let me take this opportunity to thank you, you have shown leadership and I join with those who have thanked you and also thank my fellow Party members even from across opposing and dissenting views for listening to each other and for listening to me and listening to you. Outside this Hall, we are good friends and we will continue to do that and we will do that and to dialogue. I agree with Mtumishi that no meeting should take place whatsoever outside your guidance and leadership to discuss the way this Process goes forward. My understanding about the meeting that my brother and I and we had consulted others and we were thinking was to discuss our funding. You know, we are still waiting for our funding but even that, I think it needs a little more consultation and I think my brother and I should not even purport to convene one until we have all consulted. So, we were not trying to take over the Process. So, if there is a way forward, and there should be as my brother Abubakar has proposed, let us hear from you and for those others, we had suggested from the outset that, maybe, you need to meet. We leave it to you whether you want to meet the Religious Sector one more time, that is also up to you but this was very useful. Thank you for listening.

Mr. Nzamba Kitonga: Yeah, I will take two from this side. Okay, I will take you, it seems there is no other one and you then and that will be it.

Geoffrey Makwaro: Mine is also just to appreciate you for giving us time to talk and I want to agree with what J.B. Muturi said that we be careful with what we say about what has come from this place and also urge our Convener, the Committee of Experts, that it should not stop here. There should be always room for us to, maybe, engage you and you can narrow down to specific points like, for example, what I was passing across about the Kadhi's Courts. You can narrow down, meet us and like now I have made those presentations ready to give you. You can call if you think there is some people you need to--

Mr. Nzamba Kitonga: Your name please?

Geoffrey Makwaro: My name is Geoffrey from NURU. We can narrow down to meet with us and also those people that have agreed as Mr. Otiende asked me, you can always meet with them separately, listen to them and also call them together and organize a well structured meeting. I think those problems are resolvable if we use the right approach. Otherwise, thank you so much for even convening the meeting.

Mr. Nzamba Kitonga: No. It is not you.

Expert:

(Inaudible)

Mr. Nzamba Kitonga: Oh! Sorry, I am told it was you. It was this gentleman. That is my recollection. Yes.

Mr. Abdi Ali Abdi: My name is Abdi Ali Abdi. I am the Secretary-General of the National Agenda Party of Kenya. First, I would like to appreciate all the Members of the Committee of Experts for convening such a wonderful meeting and I hope this is the most critical component that is very difficult to handle or to manage but I am happy the kind of political will or the political maturity that all the Political Parties have shown. To me, I see it is a step ahead.

Now, if I can quote Abraham Lincoln, he said that ‘those who deny freedom to others, deserve it not for themselves’. So if we deny a new Constitution for Kenyans, actually we also do not deserve to get that. So, please we need to be very optimistic, never be pessimistic. This is a new group and I am happy with the way the Political Parties cooperated and let us not close our eyes from the reality. This is a reality. Let us not assume. Even now and then we cannot just stand there to satisfy an individual or a group or a clan. What I am saying and also what I am requesting from all of you is that the country is currently divided on tribal lines. Please, let us not bring the issue of religion. If we bring in the issue of religion, the country will be paralyzed. That is the request I am putting across to the Political Parties and I look forward that, at least, the Process be good as much as we can. Thank you very much.

Participants:

(Clapping)

Mr. Nzamba Kitonga: Okay, we now invite Professor Christina Murray to lead us in the wrap up.

Prof. Christina Murray: Thank you Chair and thank you for still being here at the end of two very long days. I have had personally extraordinarily stimulating days and I think they have also been extremely constructive days. I am not going to try and summarize all that we have heard over the last two days, I am sure you will be relieved at that and it is late in the afternoon. I instead just want to really talk about three specific issues. First of all, a little bit about Process. Secondly, a little bit about the substance that we dealt with and then thirdly, I just want to add a point really about consensus building.

On the Process, I think that when we came together yesterday morning, some of us and some of you were very ambitious and looking for ways in which this forum could actually reach consensus on the big issues that face Kenya. Others were really very skeptical and asked, what could actually be produced from such a meeting.

I think the goals of our meeting, however, were quite modest. As a Committee we did not really expect we could reach consensus on all the issues in a meeting such as this and moreover under the Review Act under which we operate, this Process should be one in which we listen, in which we hear what people have to say. So, our main goal in this Process was for us as a Committee to hear your views and as far as possible to engage with you on them and, I think, on that we have succeeded beyond our expectations. I think I speak for my colleagues here in saying that for us this has been a wonderfully successful meeting.

However, of course, we always also have at the back of our minds, perhaps not so far at the back of our minds, on our minds, the importance of consensus building. So, we did intend this meeting to be, at least, a first small step towards consensus building. We hoped that it would give you all a chance to hear each other, to exchange views, to understand what your differences are and most

importantly, to understand why you disagree or why you have differences because it is the only when you understand the reasons or the basis for different proposals that you can start reaching consensus; that you can start understanding what your goals are and, I think, that this meeting succeeded on that front too. You have listened extremely attentively for a very long time to different views and different proposals and many of you have concluded, as I understand from talking to you outside, from hearing your comments over the last half hour, that the differences are not as great as they are sometimes made out to be. Moreover, as you have confirmed in the last half hour very strongly your engagement here suggests support for the Process as well as the belief that differences can be resolved and that the Process can succeed. So, this modest attempt at starting a Process of consensus building, I think, has also been successful. So much for the Process.

Secondly, I wanted to talk very briefly about some of the substantive issues that have been raised at this meeting. You have discussed many important things, Devolution, Systems of Government, of course, the Central Contentious issues, also the Kadhi's Courts, people have made detailed recommendations about specific aspects of the Constitution, the Attorney-General, Judges, the Public Service, the issue of Representation and Electoral Systems has been raised and the question of Land. I wanted to touch on only two of those mainly for reasons of time.

Firstly, on the Land issue, Land is clearly a Contentious Issue in Kenya, there can be no doubt about that. However, the question that faces us as a Committee looking at the Constitution is not whether Land is Contentious but whether the way it has been dealt with in the Draft Constitutions with which we must work is contentious or not. Now, the Bomas Draft and the Wako Draft Constitutions are almost identical on the issue of land; the variations are very, very minor. In our view they provide that Draft which is to all intents and purposes provides a framework for the resolution of Land issues in Kenya. That far we have not heard any views to the contrary. If someone thinks that, that framework is not adequate, we must hear and you must tell us urgently and you can make submissions, I think, that next week is, probably, the deadline.

However, the point really is to look at whether what was negotiated or discussed in Bomas and carried through in the Wako Draft and the Draft that was put to the Referendum provides that

framework that you need and as I said, we think it does and we have not heard that it does not and that is why we have not called Land a Contentious Issue and, I think, Amollo touched on this yesterday as well.

On the issue of structure of System of Government and I talk about this not because it is more important than the other issues but because it is the one that has received most attention in the last two days, on that issue, I think, two points of clarification needs to be made. Firstly, as a number of you in fact pointed out directly or indirectly in your presentations, in the set of four Models of Hybrids that we distributed to you all, there was actually a mistake in the-- Perhaps, more mistakes because they were really very rough working Drafts to give you a sense of what we have been thinking about. On the fourth Model in Clause 2 Sub 2, for those of you who are attentive to detail, I think there was a reference to the President in what is a Parliamentary Hybrid being both Head of State and Head of Government. That was not intended to be there. It was intended to be a Model in which the President was Head of State and the nuanced relationship with the Government is clarified further. So, that Model is really not particularly well presented and we apologize for that in the version we handed out.

Secondly on clarification, I happen to watch the news last night, I am not sure how the rest of you were watching the news or were sitting on the beach (*laughter*), but it was the Citizen News, I think at about what would have been ten o'clock of so, that news programme suggested that we had narrowed down our investigation or our consideration of Systems of Government to just the four Models that you got on that hand-out yesterday. That, as the Chair made clear yesterday, is completely incorrect. We are not at this point restricted to those four Models. Chaloka chose to talk about those Models particularly because in our experience Hybrid Models and the variations of Hybrid Models are the one people understand least and get most confused with and that was partly why his presentation towards the end focused on those Models but we would be grateful if you would be clear when you engage with the Press and your Constituents and so on, that you correct the impression that the news gave that those are the four Models we are now sort of committed to working through. It is incorrect.

Chaloka's talk, I think, did emphasize and, I think, correctly emphasized how there is really not a pure Model of anything; how every System have slight variations. As a South African, of course, to me the South System is a very good example of that. South Africa has, as a number of speakers said yesterday and today, a Parliamentary System in essence because we have a Head of the Executive drawn from Parliament, chosen by Parliament and accountable to Parliament and that is why as many of you know, Thabo Mbeki lost his position as President some eighteen months ago. He had lost the confidence of Parliament and so he was required to resign. Maggy Thatcher, Tony Blair similarly lost the confidence of their Parties and so could no longer lead their Governments in Parliament. So, we are a Parliamentary System but our President once chosen, leaves Parliament. He is no longer a Member of Parliament and our President is not only Head of the Executive but also Head of State and that is just an example of how a Parliamentary System can be a little bit different from the one you have in Britain, Canada etcetera and I think this point has been made very clear in many other presentations today. Many of them were very nuanced and very varied attempting to respond to problems you have perceived in Government here.

As I said, I am not going to review all of these proposals. We heard very succinct proposals in any case but I do want to emphasize what many of you have also emphasized and that is the major point of agreement amongst you on Systems of Government and it seems clear. Most of you, if not all of you, in your presentations emphasized that any new System of Government must avoid the possibility of the concentration of power that you have experienced up to now. Some of you have proposed that power can be restrained or controlled in a Presidential System, some have suggested a Parliamentary System and others have worked with many, in fact, I have worked with some form of Hybrid but there does seem to be a very clear consensus that controlled, limited Government is what Kenya wants and that of course is a conclusion that was also drawn by the CKRC.

Now, having heard, I am not, as you can see from turning the pages, I am not going to run through all the Systems, but having heard all the views on Systems of Government and other issues and we heard views in other forums, we are in a much better position to continue our work. I heard someone, I think, this morning or this afternoon, comment that, perhaps, the

Presidential System was more favoured here than the Parliamentary one. I am not sure about that. I have not counted that and I do not know if my colleagues have counted. The point really is that our job is not primarily to do a head count. I think Amollo explained this morning, we are constrained in the work we do but the set of principles set out in Article 4 of the Review Act. That sets out a framework for the kind of Constitution that Kenyans want and that framework requires us, as Amollo said, to take account of issues of accountable Government, of diversity, of human rights, respect for persons and so on. So, what we are to do now is to design a System that we believe will best accommodate the principles and values which all Kenyans espouse and which is informed by the arguments for different approaches that we have heard here, in other Sectoral Hearings and in our Regional Hearings. I think the Chair will, perhaps, comment briefly in a moment about the Process we imagine unfolding from now.

I want to make now just one small additional point if my colleagues will permit me. This is not in fact a re-cap. It is a little bit more perspective but from hearing the rich ideas coming from this group and understanding that many of you are Members of very small Parties, one of the questions that must arise is what is the role of a small Party in a Process like this and speaking from my experience of the South African Constitutional Assembly, well I want to speak from that experience because I am reminded of the role of one very small Party in the South African Process. That Party used to be jokingly or derisively referred to as a one point seven percent Party (1.7%) and the major Parties which were much, much bigger teased them about this, and sometimes scorned them for being so small. That Party had to make a decision at the beginning of the Process. What was it to do? The decision is really one between being noisy or being influential, are you just going to be a bit of a spoiler, get a lot of Press, make a lot of noise or are you actually going to engage with the Process and influence the Process in constructive ways? Of course, different Parties for different reasons decide different things. The 1.7% Party with the 1.7% of the votes, tiny in South African terms decided to be influential and, in fact, it became hugely influential. It did what I think you might call, '*punching above its way*', what is that expression? I think you say, '*punching above your weight*'. Of course, it could not influence the big decisions. In a democracy a tiny Party is not going to be the big decision maker but this Party, once all the decision have been made, engaged on the issues and in doing so enriched the Constitution immeasurably. It took the Process seriously and it contributed from its experience

and from the experience of its Constituents in an incredible way to structure and detail of the South African Constitution. At the same time, it engaged with the public and talked to the public about contributing to a new Constitution for what we called a 'New South Africa' and, of course, it was not happy with everything in the Constitution. It did not agree with everything in our Constitution but no South African agrees with all the provisions in our Constitution, not the big Parties, not the small Parties and so on. What was important in our Process really was that everyone tried to work out a role for themselves and this seems to be also a part of the Process that started here over the last two days.

So I could go on talking about these things because the South African Process is one that I am particularly, I suppose, committed to but my sense here is that the Process today and yesterday, has demonstrated that people with different views and ideas can talk to each and listen to each other. One of the last speakers commented on the overwhelming amount of goodwill that emerged from this meeting despite odd moments of noise.

The Act gives us as a Committee responsibility for consensus building. It is clear we cannot do that alone. We cannot. One side in any case cannot build consensus. So we, I think, and again I assume I speak for my colleagues from the Committee, look forward to a partnership in which we all work in our respective Sectors towards a successful Referendum and a new Constitution. So, thank you for two really rich days and I wish you luck.

Participants:

(Clapping)

Mr. Nzamba Kitonga: Dr. Ekuru.

Dr. Ekuru Aukot: I do not have much to say other than to try and answer a question that a couple of you have asked, whether there is something that we can take out of here. Like Christina, I am also very happy and especially from the Secretariat perspective, because this is also other than the fact that you are very important in Constitution making process, you are also

really part of our programmatic work, because as we said, one of the programme areas for us is trying to build consensus and there a lot of activities that we have designed towards that end. Somebody asked me whether there is some communication that we can make after this two wonderful days and I thought we could craft some brief communication that if you agree, maybe, you can endorse and I think we can share it with you at a later stage, if you like or even immediately. And I just want to read through it and see whether you agree with me or not.

Participant:

(Inaudible).

Dr. Ekuru Aukot: Yeah. Can I, please?

Participant:

(Inaudible).

Dr. Ekuru Aukot: You want it cast.

Participant: Hmm!

Dr. Ekuru Aukot: Mm! Let me just read it because it will be faster. I think this is what I am saying, a communiqué of the Political Parties and the Committee of Experts, that whereas the Constitution of Kenya Review Act lays out a framework for preparing a new Constitution for Kenya, recognizing the objects of the Constitution of Kenya or Constitutional making process as defined in Section 4 of the Constitution of Kenya Review Act 2008 aware that the Constitutional Review process in Kenya has nearly taken 20 years. Thus far, appreciating the important role played by Political Parties in the Constitutional Review Process unconscious of the important of ensuring political consensus and agreement towards a Harmonized new Constitution for Kenya with Members of the 47 Political Parties here in present at the Political Parties Retreat with the Committee of Experts declare as follows:-

(1) That we express our willingness to engage with each other positively during this process

Participants: Yes.

Dr. Ekuru Aukot: (2) That we are committed to the inclusion of all Kenyans in the Constitutional Review Process.

Participants: Yes.

Dr. Ekuru Aukot: (3) That we will work tirelessly towards the adoption of a new Constitution.

Participants: Yes.

Dr. Ekuru Aukot: (4) That we are committed to the harmonization of our views on the Contentions Issues in the Constitution making process.

Participants: Yes.

Dr. Ekuru Aukot: (5) That we all undertake to send our parties position through Memoranda to the Committee to form part of the record.

Participants: Yes.

Dr. Ekuru Aukot: Because you remember yesterday we said only, I think, eight out of the 47 had submitted and I there was a request whether we can still submit.

(6) That we are committed to a Constitution that will focus on institutions rather than individuals.

Participants: Yes.

Dr. Ekuru Aukot: Very lastly, (7) That we assure Kenyans that we are committee to the finalization of the process of Constitutional in Kenya.

Participants: Yes.

Dr. Ekuru Aukot: Delivered on the 3rd day of September, 2009 by all the Political Parties' Representatives present at the Retreat and I have just cut and paste the list of all the 47 Political Parties, as part of your signatures and then I need a decision whether you want this document also signed. Okay, of course, there are representatives from the offices of the President and the Prime Minister, that is Professor Kivutha Kibwana, Office of the President and Mr. Miguna Miguna from the Office of the Prime Minister.

Participants: Those are out.

Dr. Ekuru Aukot: Those are out. Okay, so we remove the representative from the Office of the President and then other Political representatives--

Participants: *(Inaudible).*

Dr. Ekuru Aukot: Of course. *(Clapping)*. Okay, hold on a second.

Mr. Nzamba Kitonga: I think *Daktari* they have agreed now, so we will forward to them their copies.

Hon. Njeru Kathangu: And the two of them--

Dr. Ekuru Aukot: Yeah.

Hon. Njeru Kathangu: --we have major problems. One, if any of them came--

Mr. Nzamba Kitonga: We have agreed.

Hon. Njeru Kathangu: --and said that-- You have agreed it will be there.

Mr. Nzamba Kitonga: That they will not be there.

Hon. Njeru Kathangu: No, I want to propose they be there, Mr. Chairman.

Participants: No.

Hon. Njeru Kathangu: Let me argue it, please. Listen.

Mr. Nzamba Kitonga: Please I never intended this to become a debate.

Hon. Njeru Kathangu: No, Mr. Chairman, it is important that the two of them are there. First and foremost, Mr. Chairman, is that it is likely that one of the offices will say, no sometimes to this meeting and because they were here and they talked to Mr. Chairman, it is good that you put their names whether as observers or whatever it is, so that we do not have those politics in future.

Mr. Nzamba Kitonga: Okay, so, *Daktari*, if you could announce the travel now.

Dr. Ekuru Aukot: Okay and then--

A Participant: On the statement.

Mr. David Waihiga: Just again when we say we are committed to a harmonization or Contentious Issues, can I take that it includes those identified by you and the five which though they are not among the four, but they are considered resolvable.

Dr. Ekuru Aukot: I think I will take directions from the Chair.

Participant: *(Inaudible)*.

Dr. Ekuru Aukot: Yeah.

(Inaudible consultations on the floor).

Dr. Ekuru Aukot: You are saying.

Mr. David Waihiga: If you say it includes--

Mr. Amollo Otiende: Mwaura, I think there is really no harm. We can say all contentious and other issues.

Participants: Yes.

Mr. Amollo Otiende: I mean.

Dr. Ekuru Aukot: So, I add the word "other issues".

Mr. Amollo Otiende: Please, if you could.

Dr. Ekuru Aukot: Okay, I will do that. I also want direction on the fact that there are two politicians who spoke, Dr. Chris Murungaru and--

Mr. Nzamba Kitonga: I think we will take care of that *Daktari*.

Dr. Ekuru Aukot: Okay.

Mr. Nzamba Kitonga: Now, what we could do is, perhaps, the travel--

Dr. Ekuru Aukot: Okay, fine.

(Inaudible discussions on the floor).

Dr. Ekuru Aukot: Okay, now for logistical reason, this is very important for you, because we must go back to Nairobi.

A Participant:

(Inaudible).

Dr. Ekuru Aukot: Yes.

A Participant: *Endelea.*

Dr. Ekuru Aukot: Okay, now there are--

Flight No.KQ601 departs at 8.20 hours, that is, at 8.00 o'clock in the morning. Your departure time from the hotel is 5.30 in the morning. So, please note this, KQ601, departing 08.20 hours from Moi International Airport. Your departure time from the hotel is 5.30 in the morning.

Participant:

(Inaudible).

Dr. Ekuru Aukot: Yes, you will be taken care of. KQ603, that is, flight time 10.15 hours from the airport. You should be leaving the hotel at 7.00 in the morning. Can I repeat that?

A Participant: Yeah.

Dr. Ekuru Aukot: KQ607, 11.50 hours. You must leave the hotel by 8.00 o'clock in the morning. KQ609, 14.25 hours, you must leave the hotel at 11.00 hours. KQ611 departing 15.20 hrs, you must leave the hotel at 12.30 hours. Then KQ613, departing 18.50 hours, you must leave the hotel at 16.00 hours. Yeah, I think this information will also be available at the Secretariat at the office, feel free please to confirm. I am also just requesting if, I do not know whether we have all your contacts, that includes e-mail communication and telephone contacts. Yeah.

Mr. Nzamba Kitonga: You know, there are-- Sorry.

Hon. George Nyamweya:

(Inaudible).

Dr. Ekuru Aukot: And then the last one, please Hon. Nyamweya *kidogo*. Please before you leave the hotel make sure that you clear with your own personal bills. You are on full-board but any extras, please, are borne by yourselves. Thank you.

Hon. George Nyamweya: Chairman, I am just making a request that if you could provide us with a summarized copy of our contributions, because we are not necessarily keeping a record of what we were all saying, it would be very useful to us when we go back to really know that, this party is like this way, that way. So, it will help us in our own merging of the issues.

Mr. Nzamba Kitonga: Okay. Yes, Honourable Biwott.

Hon. Nicholas Biwott: Thank you, Mr. Chairman. I thought we better not leave the matter of Kivutha Kibwana in the-- You know, hanging, because I believe--

Mr. Nzamba Kitonga: No, I thought it has been agreed that there will be recorded as present.

Hon. Nicholas Biwott: Yeah, as in attendance.

Mr. Nzamba Kitonga: Yes.

Hon. Nicholas Biwott: In attendance and then the Political Parties you will have Nyamweya, who will take care of Kivutha Kibwana. (*Laughter*). Yeah, because--

Mr. Nzamba Kitonga: Do not provoke Professor Kibwana. I plead with you Professor not to respond. (*Laughter*). You do not need to respond Prof.

Prof. Kivutha Kibwana: Please Chair, in meetings of this kind and we have said that this is a very, very important meeting and indeed there has been a lot of good will and there have been very fantastic discussions. Actually, today I kind of believe that it is possible to get consensus for this Constitution, if we are faithful to the discussion that people have gone through here. So,

I think let us respect *Mzee sana*. However, let us not trivialize people and I am not saying it is him. However, when I take two days here, it means that is a serious thing or when Miguna takes two days here, whatever. So, please let us be respected when we come to meetings like this so that we can come again, because if I feel that there is no respect for meetings of this kind, even if I am told by who to come, I will not come because sometimes also as a person, I can be quite stubborn. So, please, let us respect each other, let us respect the contributions of each other.

As we have said, there are things that we do which I think assist these processes and, therefore, in terms of you know, whether our names are there or not, that is not really a major issue and let us not-- We should not be made issues and as I tried to say, actually, I have only communicated with the Committee, with the Parliamentary Select Committee, you know, that is what I do. So, even this business of that we have been quarrelling with somebody else, because if I have not written to somebody else, how can I quarrel with them. So, please, also, Chair, protect us in terms of saying the true things when there are communications to you. Finally, I wish in the, you know, statements by this great people, apart from saying that they will bring – what are they called – that they will bring written presentations, I think it is important to also acknowledge the Hansard of their meeting here, because they have said many things which are already covered in the Hansard so, that it does not appear as if they came to this meeting unprepared and they did not say anything of substance whatsoever, because that is something that can come out in the public domain.

Mr. Nzamba Kitonga: Thank you very much.

Participants:

(Inaudible).

Mr. Nzamba Kitonga: No, no, no. *Siwezi kubali.*

(Inaudible comments on the floor).

Mr. Nzamba Kitonga: Yes. Yeah, I need to make my remarks then. I am not going to allow.

A Participant:

(Inaudible).

Mr. Nzamba Kitonga: I am telling you I am not going to allow.

A Participant:

(Inaudible).

Mr. Nzamba Kitonga: Yes. So, Honourable Delegates, ladies and gentlemen, we have come to the end of these proceedings. Maybe, I can start by giving you an example, a personal example. I once acted for a client in court, then there was a break in the case, we took a short break, we went for tea with the lawyer for the other side and as we went my client asked me, *sasa unawezaje kutembea na mtu kama huyo na yeye ndiye anapinga kesi yetu*. So, by the time he came from tea, he was a very, very annoyed man. Unknown to him, during the tea proceedings a settlement was being discussed and his case was then very quickly settled and he was paid. So, that is what has happened here, maybe some Political Parties had said, *msimamo wetu ni huu na hata hatuwezi kuzungumza na hawa wengine*. However, you came, you had the opportunity to listen to your opponent and you realized maybe, oh, I thought our differences were very huge, only to realize maybe they are not. You also realize something else, that for us to get a settlement, you have to concede some ground and he has to concede some ground.

So, this has been an engagement where you are not talking at other, but you are talking to each other, where you are able to appreciate what your opponents and where he or she is able to understand what you are saying. We also, like Professor Christina said, pick some issues that you share in common. For example, the meeting is unanimous that whatever system we accept, there must be a very elaborate system of checks and balances. That is something that is common to all of you, that if it is a President there must be an impeachment procedure to stop cases of abuse of office; that there must be provision for votes of no confidence, maybe, even against individual Ministers so that a vote of no confidence acquires some status which it does not have under the current Constitution. So, these are the various ideas which bounce from your heads and we have taken them aboard. We will now go and consider them and we will continue to engage with you until this process is complete. I want to thank you very much. Let me now just ask one Committee Member to make a formal vote of thanks and we conclude. Abdirashid.

Mr. Abdirashid Abdullahi: *Habari zenu kila mtu, mabibi na mabwana.*

Participants: *Nzuri.*

Mr. Abdirashid Abdullahi: I think *tumechoka, si ndio*. It has been a long, long day. For two days we have talked to one another. On behalf of the CoE, I would like to thank you profusely for coming, for honouring our invitation. As the Chair said, it was an opportunity for all of us to listen to one another, to talk to one another, to give space to one another, to respect one another, because we are all Kenyans. By listening we accommodated each other, you know, we are human beings, we are flexible, we change positions, you can convince me, you know, and I can convince you. That is the bottom line and a Constitution is about compromises. It is an agreement; it is not, you know something that is cast in stone. So, somebody said and our Chairman continuously reminds us. I said our Chairman continuously reminds us that a Constitution is not meant to take us to Heaven, but to save us from Hell. We almost went to the gates of Hell early last year. Please let us not go back there inside, because to come out, it might take us, maybe, another how. So, let Kenya as a country come first before your party, before our selfish interest, before our communities, because there is no other Kenya. If anyone here knows of another country called Kenya, please take us there and we will all live there we destroy this, but *tuishi pamoja* because we have no choice. We have seen any country that does not change, Somalia refused to change in the late 80s, early 90s, DRC the same, Rwanda and you see what happened. Please let us avoid that path and thank you so much for your attendance and this is the beginning of the journey and it is not a long journey; we just have you know, certain short period to have the Constitution worked out with the support of every Kenyan. Thank you and thank you and thank you so much. (*Laughter*).

Mr. Nzamba Kitonga: That brings to a close these proceedings. Thank you.

A Participant: Prayer.

Mr. Nzamba Kitonga: Sorry, excuse me please.

Prayer by Simonne Nyongesa.

Meeting adjourned at 6.00 p.m.

