



**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**VERBATIM REPORT OF**

[Redacted]

**CONSTITUENCY PUBLIC HEARINGS**

**KITUI WEST CONSTITUENCY, HELD**

**AT A.I.C. CHURCH HALL KABATI**

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**ON**

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**21 MAY 2002**

**CONSTITUENCY PUBLIC HEARINGS, KITUI WEST CONSTITUENCY, HELD AT A.I.C. CHURCH HALL**

**KABATI ON 21 MAY 2002**

**Present**

1. Com. Alice Yano - In the Chair
2. Com. Paul M. Wambua
3. Com. Riungu. Raiji
4. Com. Mosonik Arap Korir

**Secretariat Staff in Attendance**

1. Mr. Irungu Ndirangu - Programme Officer
2. Mr. Kiptoo Patrick K. - Assistant Programme Officer
3. Mr. Mutia Julius -
4. Ms Mary Babu - Verbatim Recorder

**The meeting at started 10.00 am with Com. Alice Yano in the chair.**

**Com. Alice Yano:** Kabla kuanza kazi yetu tungemuomba mwombaji mmoja asimame ili atuombee. Tafadhali jitokeze.

**Prayer:** Na tuombe; Baba katika jina la Yesu tunakuja mbele zako asubuhi hii tukitoa shukrani kubwa kwa vile umetulinda usiku uliopita, na kuwepo hapa kwetu ni kulingana na mapenzi yako kuwa umetuwezesha.

Kuna sababu ya kuwa hapa, sisi hatuna ujuzi wa kutosha kutekeleza mambo kama inavyotakikana ili yatimize mapenzi yako. Lakini ukitupatia roho wako mtakatifu, atatuongoza kwa yote ambayo tutanena na ambayo tutatenda katika nyumba hii, ili yawe kulingana na mapenzi yako. Bwana tuwezeshe, tunaomba utusamehe yote ambayo tumekukosea kwa kufikiria, kwa kusema na kwa kutenda na utusafishe na pia utufunike na damu ya mwana wako.

Tunawaomba Commissioners wetu ili uwaongoze, uwaongezee hekima wakiongoza kikao hiki ili yote ambayo tutatenda yawe

ya manufaa kwa nchi yetu na kwa taifa letu la Kenya na kwa sisi sote ambao tumefika. Utuongoze kwa yote, uanze nasi, uendelee nasi na umalize nasi na mwishowe utupe neema ili tukumbuk e kukutolea shukrani na kulitukuza jina lako.

Hayo yote tunaomba katika jina tukufu la Yesu Kristo mwokozi na mwambezi wetu. Amina.

**Com. Alice Yano:** Viongozi wetu mbali mbali, wazee, akina mama, vijana na wenzangu kutoka Tume. Leo ni siku kuu yetu hapa, ni siku ya kusikia na kuchukua maoni ya watu kutoka Kitui West Constituency.

Kabla hatujaendelea, ningependa kuwajulisha wenzangu wenye tuko nao hapa na nitaanzia upande wa kushoto. Ingekuwa afadhali kama wenyewe wangejijulisha kwenu. Tuanze na Mosonik Arap Korir.

**Com. Musonik Arap Korir:** Jina langu ni Mosonik Arap Korir ni Commissioner.

**Com. Paul Musili Wambua:** Paul Musili Wambua – Commissioner.

**Com. Riungu Raiji:** Naitwa Riungu Raiji ni Commissioner – (Mliaseu)

**(Laughter)**

**Com. Alice Yano:** Hiyo ni vizuri umechangamsha watu asubuhi hii. Nami naitwa Commissioner Alice Yano. Pia tuko na wenzetu wenye tumetoka nao kwa Tume, wenye wanatusaidia kwa kazi hii na mmoja wao ni Programme Officer wetu, Bwana Irungu Ndirangu.

**Irungu Ndirangu:** Habari zenu?

**Audience:** Mzuri.

**Com. Alice Yano:** Tuko na Mary Babu pia.

**Mary Babu:** Habari zenu?

**Audience:** Mzuri.

**Com. Alice Yano:** Bwana Kiptoo - recorder wetu na bwana Mutia. Pia tuko na District Coordinator, nafikiria mnamjua vizuri mwenye amefanya kazi na nyinyi hapa. Yeye ndiye anatuwakilisha kutufanyia kazi ya Tume hapa Kitui District, Elizabeth

Mumbi.

**Elizabeth Mumbi:** Hamjambo?

**Com. Alice Yano:** Ingefaa sana kama ningepatia nafasi hii Elizabeth Mumbi ili awajulishe wanakamati wenye wamefanya kazi naye hapa Kitui West Constituency. Tafadhali njoo hapa uwajulishe wenzako.

**Elizabeth Mumbi:** Ningependa kuuliza wanakamati wote wasimame. Hapo tuna Chairman anaitwa Jeremiah Mulu, huyu ndio Chairman wa Kitui West Constituency Committee. Tuko na Francis Nding'o, ndiye Vice Chairman. Halafu tuko na Justus Mutweti. Hapa tuko na Mutisya na side hii tuko na Fred Mwalimu, Erastus Mutuko, Penina na Bibiana Mulwa. Asante.

**Com. Alice Yano:** Kwa hii kazi yetu hasa tukichukua maoni kutoka kwa wananchi, kuna taratibu na masharti tunayofuata. Ya kwanza ni ya kuwa tunakubalika kutumia lugha yoyote yenye Wanakenya wanaelewa hasa lugha ya Kiswahili au Kingereza na kama huelewi hizi lugha mbili, unakubalika kutumia ile lugha unayoelewa. Kama ni Kikamba, tuko na interpretor wetu mwenye atatufafanulia kama Wanatume yale mmetuambia.

Pia ukitoa maoni yako, unakubaliwa kutoa katika ama kutumia memorandum yenye wewe umeandika mwenyewe, unaweza kutupatia hiyo memorandum na tutachukua sisi kama Wanatume tuende tuiangalie na tuisome.

Pia waweza kuongea bila hata kuwa na memorandum. Na ukiwa na memorandum, tafadhali guzia tu yale yenye umeandika. Sio vile utusomee memorandum yako yote kwa sababu kazi yetu tukishamaliza, ni kuenda kuketi na kusoma hiyo memorandum. Kama unatupatia memorandum, tunakukubalia ama tunakupa dakika tano. Na kama hauna memorandum tunakupatia dakika kumi utuelezee yale maneno yote yenye ungetaka kusema kuhusu kurekebisha Katiba.

Pia kuna wenzetu wale hawasikii, tafadhali najua wengi wenu mtaweza kujua ni akina nani ili muweze kutuambia. Tuko na sign language interpretor, yule atafafanua akitumia sign language.

Tumeelewana kwa masharti hayo yote? Na tafadhali tuchunge muda, nafikiria mmeona ya kuwa tuko wengi hapa, na tunataka tuweze kupatia kila mmoja wetu nafasi ya kutoa yale maneno yako rohani mwake na yanayohusu kurekebisha Katiba.

Kuna swali lolote kabla hatujaendelea? Tumeelewana mpaka hapo? Asanteni sana.

Mwenye tunaanza nayetuko na orodha ya kufuata na tutafuata vile mlifanya registration yenu ama kujiandikisha mlipokuwa mnaingia hapa ndani. Tutaanza na Honorable Munyasa, from Kalimani (Organization Kalimani – oral representation).

Na pia ukishatoa maoni yako, unaenda upande huu, nafikiria mnaona vijana washupavu wawili hapa. Kazi yao ni kufanya recording ili mjiandikishe hapo na kuwacha memorandum hapa.

**Hon. Munyasa:** Asante Mwenyekiti. Memorandum ...

**(Interjection)**

No. I do not want to sit.

Mwenyekiti, maneno yangu nimeyaandika kwa Kizungu, sitaongea kwa Kiswahili au Kikamba lakini nitasoma memorandum yenyewe. Mwenyekiti, memorandum yenyewe inasema namna hii:-

Kalimani Location Memorandum towards of proposals to the Constitution Review Commission.

Madam Chairlady, on behalf of Kalimani Location, I beg to briefly name the key proposals as laid down on the document as follows:

Constitutional Supremacy;

1. : We should retain the procedure of amending the Constitution but the percentage should be raised to a majority of 80 %.
2. Land laws and inheritance laws be amended through a national referendum.
3. Citizenship should be by right of birth, by application and should be automatic.

Structure and system of government.

1. We should have a Parliamentary system of government.
2. Creation of a Prime Ministers office, answerable to Parliament.
3. Abolition of Provincial Offices as it drains finances that could develop the districts.
4. Their powers be given to the District Office and constitute a District Finance Board to manage the development in the districts.

## Legislature

1. All appointments such as Judges, Heads of Parastatals, Permanent Secretaries and Constitutional Offices be made by Parliament.
2. Being a Member of Parliament should be a full time occupation and he or she can be re-called by his constituents if he does not perform well.
3. Creation of 2 chambers that is the Lower House and the Senate, the later being the people's watchdog.
4. Pension for Members of Parliaments should be backdated to start from 1963.

**(laughter)**

## Executive

The President and the Prime Minister should be person of good reputation, integrity, married, living with a stable family, morally and ethically upright, of sound mind, aged of 35 to 75 years.

## Judiciary

Should remain as it is with a Parliamentary veto and Judicial Commission.

## Local Government

1. Mayors and Chairmen should be elected directly by the people and should be Form 4 leavers and above.
2. The minimum educational qualifications for the rest of Councilors should be Form 4 leavers.
3. Neither the President nor the Minister for Local Government should have the powers to dissolve Councils.

Now, this one is something which I have done domestic research on, about alcohol. The definition of alcohol should be defined.

What is alcohol? Currently we have 3 different kinds of alcohols. Beer and wines, Kandanda, (currently being brewed, I do not know whether illegally) or legally and native beer because we are natives.



Madam Chairlady, If you were to protect the youngsters from drinking then, we are not doing good because there is no age limit. You find a child who is 15 or 12 years of age drinking beer and he cannot be arrested. Women / girls drinking in a bar cannot be arrested. Now, when we come to “Kandanda”, there is somebody who brews “Kandanda” yet the people drinking “Kandanda” would be arrested but the man who is brewing it is known by the government but he cannot be arrested. Now, when we come to “Kivio”, which is the drink for Africans, you cannot brew beer and therefore, you cannot drink beer. We cannot drink “Kivio”. Why do we discriminate these people, there must be something somewhere to differentiate.

**Com. Alice Yano:** Can you make your point clear now?

**Hon. Munyasa:** To conclude Madam Chairlady, I have the pleasure to hand over a comprehensive draft prepared by Hon. P. Nzuili Munyasa, Mona Kachoka Muthengi, Elijah Muthengi Mwetu, Jose Kasiah Munile Muthengi, Patrick Mwema Nginyo, Benedict Kaumbi Malusi, Rose Kalechi Mutua. Thank you.

**Com. Alice Yano:** Thank you very much. There will be some questions for you, please just be in the same same place. Just here. Hapa tu tafadhali.

**Com. Wambua:** I would like to have clarification on the question of demolishing offices, of the Provincial Administration because it would appear to me that, what you are calling demolishing of offices and transfer, the functions remain the same. All you are saying is that get rid of the offices, let the functions be undertaken by another body or another office. I think you need to come out very clearly so that we can capture this.

**Hon. Munyasa:** What I mean is the administration should remain but this office headed by the Provincial Commissioner, the offices and all other top officers should be abolished and their powers given directly to the District Commissioners, because they are there to gain money. They do not do anything the PC is only getting reports, nothing else. Their work is done at the district level.

**Com. Mosonik:** Madam Chair, yes please. The last point you were making about alcohol. I do not think you made a recommendation. That is one.

**(Interjection)**

**Hon. Munyasa:** Which one?

**Com. Mosonik:** About the native beers?

The second question, you said the Senate to be the people's watchdog but you did not tell us who the senators would be. I take it that the Lower house will be the Members of Parliament

**Hon. Munyasa:** Why I did not state is that, I said I would state briefly because their work is clearly specified. I answered briefly not comprehensively because their work, the Senate and the Lower house, is clearly specified in the memorandum.

**(Interjection)**

**Hon. Munyasa:** You want the answer? O.K.

The creation of a Senate is like this, in each district, there will be one person elected by the people.

**(Interjection) inaudible**

On alcohol, all the laws specified on drinks should be equal. If someone wants to drink alcohol, he should be given a letter by the government. The government should not deny him the chance to brew his alcohol.

**Com. Alice Yano.** Thank you very much Hon. Munyasa. Please, you are requested to record your name here. Yes. When the Commissioners are seeking clarifications from you, kindly just give those clarifications because there may be something a Commissioner may not have understood. May be there is something a Commissioner would like to get and really understand your point. Are we clear on that?

Let us go to the next participant, Patricia Mwalili.

**Patricia Mwalili:** Asante sana. Ningesoma kama nimesimama sijui kama ni vizuri.

Sawa.

Nilisikia tukiambiwa tuongee ile lugha inayosikika na kila mtu. I think I will talk in Kikamba because it is understood by everybody here. Kila mtu anaelewa Kikamba hapa isipokuwa Commissioners wetu. Do we have problems with you?

**(Interjection)**

**Com. Alice Yano:** Mwalili, what we are doing is that we are saying, for those who do not understand the 2 languages.

Otherwise, today you are addressing the Commissioners, you are not addressing these people. We are taking your views. So use any other language if you do not understand Kiswahili and English. Thank you.

**Patricia Mwalili:** I understand both.

Mine is an individual presentation. Yangu ya kwanza ni kuhusu wale retired officers ambao wakiwa-retired wanarudi kuandikwa. Sioni maana wawe wakiandikwa tena, lakini waache hizo kazi kwa watoto wale wanatoka shule, waandikwe huko badala ya wao.

There is no need of experience because even those people were employed without experience and they got the experience through their work. I think it is better for the government to consider the younger ones and leave the older ones to go home when they retire. They should not be employed again.

Disabled People: I think the disabled are very much ignored by the government. I am not afraid to say that because for example now, you see we are building houses, industries, shops and they are all built with stairs.

I have got things to buy on my own, but because I cannot climb the stairs, I have to send somebody to buy for me, which is not the right thing because you may find this thing, whatever you had sent somebody to buy for you, you may want to exchange with something else. You will not be able to do this because you sent somebody who could not get the exact thing you had sent for. I request the government and everybody here, when you are building houses, let it be a house with one sloppy door and the other with stairs, because we are getting a lot of problems.

With toilet facilities the same. We are getting a lot of problems, especially now that we are here. I cannot go to the toilet because I may find out they have these stairs then I will have to suffer. If you have your own wheelchair, you will have to help yourself on the wheel chair because there is no otherwise. I am talking the truth, which I have seen for myself, and I think the other disabled groups have similar problems.

We have harassment by the Police and the Council. You find that when you are looking for your daily bread, maybe you have got a canteen, the Cllrty Council will come and tell you that you should pay for a licence and yet you do not have enough bread for yourself. The government should look into this harassment.

We have got the disabled people, can they be given a free ticket or nomination to the Parliament to talk about their rights? Because other people can walk while campaigning and we the disabled do not have enough strength to walk and campaign like a person who is able. We cannot compete with them. Can we be given a free ticket or nomination to the Parliament?

Single mothers: We have these girls who get children before marriage, if by bad luck the lady dies and leaves behind the children, the children will be taken care of by the parents of the lady. Why not the government? By saying we are going to educate these children free of charge, so that the grand parents do not suffer in paying fees for these children.

Land Ownership: Land titles are written in the names of men for instance Mr so and so. Why not Mr / Mrs, so that incase of the husband's death the widow can have ownership of that land. This becomes very difficult when you go to court to report the death and seek transfer of ownership. It is a lot of work, if they were written in either Mr / Mrs, it would make the work easier and ease cases of inheritance.

Girls and boys in our homes: Boys are always happy because they know they will inherit what is in that home but girls are not considered. We want the girls considered this time. The children should be considered equally whether girls or boys. If you have a small shamba, divide it among them equally.

That us all.

**Com. Alice Yano:** Thank you very much Patricia. There is a question for you from Commissioner Wambua.

**Com. Wambua:** Patricia, I would want you to clarify on the question of retirement. You said retired officers should not be re-employed. People are retiring at a fairly early age for various reasons, either optionally or because they are forced to retire. I think you should tell us what should be the appropriate retirement age for persons such that once they retire they cannot be re-employed.

Secondly, these Council payments which you talked about, can you tell us whether / what is the payment to the Council for? I think you need clarify that.

Thirdly, you talked about tickets to Parliament for the disabled, how many seats do you have in mind?

Lastly, on the question of inheritance of boys and girls, there is this proposal that once a girl has gotten married, she should not inherit because she is supposed to inherit from the place where she has gotten married. Are you proposing that she gets her share whether or not she gets married? I do not know whether you can recollect the issues I have talked about.

**Patricia Mulili:** Yes I can.

**Com. Wambua:** O.K. Can you clarify please.

**Patricia Mulili:** The first question is

**Com. Wambua:** Retirement age.

**Patricia Mulili:** 55 years, not volunteer this time, compulsory retirement.

**Com. Wambua:** The second one is on Council payments.

**(Interjection)** Inaudible

Council of payment, is when we are asked to pay the house rent for your shop. You have built a shop on your own plot and they ask for the yearly rent and the licence and yet whatever I am getting as proceeds is not even enough for my family.

**(Interjection)** Inaudible.

That one will answer it self. I want to know, how many disabled are here? How many disabled people are here? Just 2, why 2 and yet you people are so many. Why? (Laughter) You are so many. That one has answered itself. Since you are so many, why did you call us to be in equal number of a quarter at least, we are very much ignored.

**(Interjection)** Inaudible

When you are married, that is a gone case but when you get about 3 children when you are still in your fathers home, it means you will be there for good. Yes. (Laughter).

**Com. Riungu Raiju:** Just one more question.

Regarding this last issue that the Commissioner has raised. Because you wanted the government to educate the children from these unmarried girls. My problem with that is that, the thing I want you to clarify is that these children surely have their fathers.

There are those who have fathered those children. Would you propose that we make it compulsory for the fathers to maintain these children?

**Patricia Mulili:** That law has always been there and it has not been followed. When girls get children, they leave them to their parents.

**Com. Riungu Raiji:** There used to be an affiliation Act, it used to be there during the time of colonialism, wakati wa Mzungu, lakini iliondolewa. At the moment, there is no law that forces... ..

**Patricia Mulili:** So you as a parent you have seen it?

**Com. Riungu Raiji:** Yes. So I am asking, would you recommend to us that we make it compulsory, we force the fathers to look after these children instead of leaving the responsibility to the government?

**Patricia Mulili:** Yes.

**Com. Alice Yano:** Thank you very much Patricia, kindly register yourself. The third is Monna Muthengi.

**Monna Muthengi:** Madam Chairman and the other Commissioners, members of the 3C's, this is a recommendation brought forward to the Constitution of Kenya Review Commission by WAWESO and Women Groups from Kitui West Constituency.

I am going to read it, it is a written memorandum and I will read it in English.

The Women Groups and WAWESO from Kitui West Constituency hereby affirm that they have identified the following priority issues affecting women's. Women specific issues are:

Land and property rights should be for all.

There should be elimination of violence against women.

There should be recognition, accreditation and compensation of women's unpaid work computed into working hours.

We should get rid of harmful cultural traditional practices like wife inheritance and female genital mutilations.

Both male and female children should inherit property equally from their parents.

There should be provisions of adequate security for women both in public and private sectors. This is because of very many or frequent rape cases.

Women's political participation and representation in other positions of leadership should be encouraged.

Affirmative action in education.

Consulting families before their children are adapted to national defence duties and once agreed, such families should be compensated for their children.

Women should have access and control of resources.

Health facilities and policies should be made for all women.

There should be equality in employment for both genders.

Citizenship should be automatic and we should have dual citizenship for ladies who marry foreigners and for their spouses if possible.

Land registration should bear both spouses names.

The post of Prime Minister and a Ceremonial President should be constituted. If a man is elected President, then the Vice President should be a woman.

Protection of disabled women against rape and the irresponsible men should be made accountable for children born out of such cases.

Establishment of mechanism of enforcement of gender equality e.g. gender Commission.

Separation of powers i.e. non-partisan civil servants.

There should be protection of natural resources by all.

There should be domestication of international conventions and especially those affecting women.

The affiliation Bill should be reinstated.

All the other answers to the questionnaires raised by the Commission are attached herewith.

**Com. Alice Yano:** Thank you very much Monna, just wait there is a question from a Commissioner.

**Com. Wambua:** Just a short clarification, you said that women, the effort or work done by women, which is unaccounted for, should be paid for. I did not get that right, I think you need to clarify because we need to know who is supposed to pay, because normally this arises when there is a divorce proceeding that you have to compute the woman's contributions. Are you suggesting that women should....

**Monna Muthengi:** These should be computed in case of divorce cases and things like that. When there are disputes.

**Com. Wambua:** Only when there are disputes and when there is a divorce. O.K. Thank you.

**Com. Alice Yano:** Thank you very much Monna. Now you can go and register yourself. The fourth one is Steven Sine.

**Steven Sine:** Madam Chairlady and the Honorable Commissioners, I am representing Kauma Locational Leaders Group on a single topic as it appears in with the questionnaire book, pages 9 – 10 on a single topic of Legislature.

Mine contains issues and questions together with their answers.

Legislature

Q1. Should the people have a right to recall their Member of Parliament? If so, what should be the procedure?

**Ans:** Yes. The Member of Parliament should be recalled back. The procedure to be followed, Constituency delegates should sit down and write down the Member of Parliament's shortcomings and then forward this to the Electoral Commission. Alternatively, constituents can stage a mass demonstration to the office of the District Electoral Coordinator demanding for the instant resignation of their Member of Parliament.

As if this one is a vote of No Confidence; it now results in fresh by-election in that constituency.

**Moral and Ethical Qualifications of a Member of Parliament:** The Member of Parliament should be vetted on moral and ethical qualifications. These qualifications should be clearly stipulated in the present Constitution.

**The Members of Parliament's salaries and benefits:** A Commission should be appointed to determine the salaries.



**Coalition Government:** A coalition government should be permitted in the present Constitution and the winning party joins with the other parties of interest.

**Chambers:** There should be more than one Chamber of Parliament comprising the Lower house and the Upper house whose members must be elected by the people.

**Com. Alice Yano:** Are you through?

**Steven Sine:** Yes.

**Com. Alice Yano:** Thank you very much.

**Com. Musonik Arap Korir:** You have said the members of the 2 chambers to be elected by the people. What exactly do you mean?

**Steven Sine:** Hon. Commissioner, I mean in a case where... the independent Constitution which allowed 2 houses, the Lower house and the Upper house. In other words, the Lower house and the Senate, were in the Independent Constitution. According to our group, that should be reviewed and constituted in the Constitution. That is, every district to elect a Senator or one member from the district to represent theus in the Upper house.

**Com. Alice Yano:** Thank you very much Mr. Sine, can you kindly go and register yourself. The next one is Richard Mukia.

**Richard Mukia:** Chairman, Honorable Commissioner, I am presenting a self help group know as Kasemendi from Koma Location. We are going to talk on cultural, ethnic, regional diversity and communal rights, which appears in your questionnaire on page 19.

1. Kenya ethnic and cultural diversity contributes to our national culture and should be protected in your Constitution since it promotes our domestic and external tourism.
2. Our cultural and ethnic diversity should be promoted and also protected in the Constitution.
3. Our tribal clans should be protected and promoted also in the Constitution.
4. Our cultural and ethnic values derived from our collective experience such as clan by-laws should be captured in the Constitution. As a social group, we feel that we want our interest to be catered for in the Constitution. This would

promote our goals and maintain our culture.

5. Our interests as a group should be fully taken care of specifically, the freedom of speech, management of our communities and the government should provide effective services tools and raw materials to groups.
6. Clan by-laws should be addressed by the Constitution.
7. We feel that the law should protect elder's powers in clans
8. We feel that our culture should not be discriminated, it should be given protection so that we can preserve it for our future generations.
9. Communities should be encouraged to maintain and promote their culture by the Constitution.
10. We should have 2 national languages, to have effective communication. The Constitution should recognise and promote local languages from the community level to preserve our culture and promote our culture for the generation to come. That is all.

**Com. Alice Yano:** Just stand there, there will be clarifications from Commissioner Wambua.

**Com. Wambua:** Which are these 2 national languages we should have? You could mention them.

**Richard Mukia:** English and Kiswahili.

**Com. Wambua:** The second one is that, you advocate for blanket protection of cultural values. What do we do with those cultural values which are obviously against modern trends? For example, what do we do with those values which insist on female genital mutilation? Are you saying they should also be preserved?

**Richard Mukia:** Well, while they are some that are harmful, we feel some of them should be done away with but the others can be retained so that the originality can benefit the tourism.

**Com. Mosonik:** Another question is that, you said that the Constitution should recognise and promote indigenous languages but you are not specific about how that can be done.

**Richard Mukia:** By making sure that they are being taught in schools so that our children do not forget their languages.

**Com. Musonik:** Taught in schools like long ago, languages were taught in schools like the so-called vernacular up to standard 3 or 4. So they should be taught up to what level?

**Richard Mukia:** I think they have to continue up to Class 8.

**Com. Alice Yano:** Thank you very much Mr. Mukia. Kindly go and register yourself. Julius Nzovo Malombe.

**Julius Nzovo:** Chairman, Honorable Commissioners, yangu ni maandishi ambayo yameandikwa na wazee wa location hii ya Musengu na sita-ongeza nyingine kwa sababu walinituma nje niwalettee ili nyinyi mkisoma, mtaelewa, walikuwa wakitaka kusema namna gani.

**Com. Alice Yano:** Asante sana Bwana Julius, waweza kuenda kujiandikisha basi. Mwenye anafuata sasa ni Donald Kalima.

**Donald Kalima:** Hon. Chairperson and Commissioners, I stand here to represent Misengo Divisional Office as a whole.

I am going to touch on various parts of the questionnaire that the group has attempted to tackle.

**(Interjection) Inaudible.**

**Com. Wambua:** Taja jina tafadhali.

**Donald Kalima:** 1. Preamble: It should be there in our Constitution or rather recommended. The public should be made aware of any changes that occur any time. Previously, the public has not been made aware of the changes.

2. Directive principles of state policy:

- i. We need it.
- ii. Nobody should be above the law.
- iii. Freedom of speech should be exercised.
- iv. Freedom of praise should also be exercised.

3. Democratic principles should be enforced by law.

4. Constitutional Supremacy:

- i. This should be done by setting an independent body to amend the Constitution.
- ii. The public should be involved in the amendments where necessary.

## 5. Citizenship

- a. This one should apply to natives.
- b. This should be done through the legal system.
- c. Regardless of gender, spouses of Kenyan citizens should be entitled to automatic citizenship so long as they have legal documents to prove the case.
- d. All the rights and obligations that have been previously enforced should apply to all as a Kenyan citizen is a Kenyan citizen.

**Com. Alice Yano:** Mr. Kalima, you have a memorandum, isn't it? Kindly do not read word by word or sentence by sentence. Just touch on those salient factors like on citizenship. Just highlight on it, give us an overview of it do not read everything and move on so that we can save on time.

**Donald Kalima:** Madam, I think they are numbered and I am mentioning the numbers, that is either a, b, or c.

**Com. Alice Yano:** Summarise.

**Donald Kalima:** Summary? O.K. I am in 'e' now.

- e. All the rights and obligations that have been there previously.
- f. A Kenyan citizen is a Kenyan citizen regardless of acquirement of citizenship
- g. There, according to the questionnaire, the answer should have been Yes or No. So the group said No.
- g. The Constitution should not allow dual citizenship.
- h. Only Identity Card.

## 6. Defence / National Security

Defence and national security should not be the responsibility of the President. All the department heads should be responsible for their respective departments. The President should liaise with them in case of emergency.

**Com. Alice Yano:** You are now remaining with 1 and half minutes.

**Donald Kalima:** Political Parties: All political parties should be involved in National development. They should be formed, managed and conducted according to the Constitution politically. There should be 2 parties, that is ruling party and opposition party fairly financed from public funds.

Structure and Systems of Government: We should adopt the Parliamentary system of government in which a Prime Minister is appointed from the party with the majority seats in Parliament and the President remains more or less ceremonial.

Legislature:

- i. Being an MP should be a full time occupation.
- ii. Age and language knowledge should remain the same.

**Com. Alice Yano:** I am sorry your time is over now, just submit your memorandum we will be able to look at it and read ourselves.

**Donald Kalima:** Later!

**Com. Alice Yano:** There is some explanation which I would like Mr. Mulu to give you so that... halafu tuelewena vizuri. Nataka Mulu aongee na nyinyi awaelezee kwa nini tunaitaji pengine kufuata na kutumia yale madakika tunawapatia.

**(Interjection)** Inaudible.

**Mr. Mulu:** What I am trying to say here is ...(I will speak it both in English and Kikamba)

You do not need to repeat what is there in the questionnaire, the Commissioners know exactly what is there in this questionnaire, kind of guidance. The last time we had meetings, and that is why it is very important when we have meetings that you come and hear what views have to be made. Now you are repeating these things while you are supposed to give views.

They are here to listen to your views. The other thing, which we stated very well that, you should be very precise. After all, you have a whole report that you have written. They are going to digest the whole report O.K? You just need to go step by step precisely, just as be precise as possible.

**Vernacular** (Kikamba dialect)

Instead of wasting so much time here, be precise because we have so many people and we cannot finish with them within a day

unless we require another 2 days which we do not have

**Venacular: (Kikamba dialect)**

We just go very fast the way Munyasa did, the way Muthengi did. They were very precise do you get it? The other literature should be left for the Commissioners to digest.

**Com. Alice Yano:** Thank you very much, Mr. Mulu. Can we now have Pastor Jackson Mutisa. Is he there? Please, welcome.

**(Interjection)** Say your name.

**Pastor Jackson:** My name? O.K. Thank you Commissioners, the Committee involved in the organization of this meeting and the people who have come in.

**Interjection:** What is your name please?

**Pastor Jackson:** Pastor Jackson Mutisia.

Before I say what I want to say (because I am going to take only one minute) I want to say that we have a problem with your system here because when we are down here and the Commissioners are asking questions, they are drawing these mic too close to them and is disturbing our hearing. If you can regulate your system please, either have it not too close or reduce the volume.

I have a written suggestion, which is in a form of a report from a Church group in Musenga Location Mutonguni Division and is addressed to the Chairman and the Commissioners of this review process and it is a memorandum. I am not going to read it I would like to pass it on because it is a group proposal. Except I was told to elaborate on just one point, that is a request from the group.

When we come to the structure and system of government, there is something, which raises our concern of distribution of resources in Kenya, and this in fact makes us feel that a rich man becomes having with big vehicles and a poor man becomes poorer with the sandals.

The old man and the old lady who seem to work very hard and yet are not paid. I mean the service, which this person gives, is not met by payment in whichever form. For instance, we have a shamba man or a shamba woman who cultivates beans in the

shamba and one time it happens that he is going to sell these beans. He sells at Kshs. 5/= per Kg and after a period of 3 – 4 months, this shamba man or shamba lady or shamba person comes back to buy his own stock at Kshs. 50/= or 70/= per kilo.

That becomes a concern that whatever distribution that can be made, the poor man should be looked into, his or her affairs should be considered so that when we are selling our produce, we will be able to earn from our sweat. Otherwise we will find so many people coming down here like now, we have a lot vehicles for Kikuyu's. The lorries were coming for beans just to take them to the central part and we go back there to buy at an expensive rate and yet it is from our own shamba.

That becomes a concern. I was just told to mention that. If something can be done, whatever we are doing, a person who is poor should be able to earn or benefit from whatever he is doing. That to us as a Church, would be much more biblical to consider everybody having equal opportunities to live by earning from the in sweat. Thank you.

**Com. Alice Yano:** Thank you very much Pastor. The next one is Boniface Makau.

**Boniface Makau:** My names are Boniface Keli Makau, I want to make 2 presentations. One is on my own behalf and the other one will be on behalf of Kitamwiki Youth.

I will start with my presentation.

**Constitutional Supremacy:** The powers of Parliament to amend any part of the Constitution should be subjected to approval by a Council of Elders after a 65% majority vote in Parliament. Any amendment rejected by the Council of Elders should be void.

**Political Parties:** The number of political parties should be limited to only 2 parties that are self-financed. They should not spend public funds.

The state and political parties should agree on matters of principle and those of public interest. They should be development partners.

**Legislature:** Members of Parliament should act on instructions from their constituent and not on the basis of conscience and conviction on matters of national importance. The new Constitution should permit a coalition government and should support a system that demands multi party representation at all levels of the government.

**Judiciary:** Judicial officers should be appointed by an independent Judicial Service Commission. Members of this Commission would be nominated by Parliamentary parties and vetted by Parliament. It is very expensive for a person to file a case in court. An individual should be able to file a case in court free of charge because this expense denies justice to those who cannot

afford to pay.

**Local Government:** The current 2 year terms for Mayor and Council Chairman is inadequate and should be increased to 5 year terms.

**Electoral Systems and Processes:** Some constituencies are too large like Kitui West and they should be divided into 2, Yatta and Mutunguli, to enable effective representation.

**Basic rights:** The Constitution should provide for compulsory and free education up to Form 4 as a basic right to all Kenyan children. Food, clothing, shelter, health care and provision of water should be included in the Constitution as basic rights.

**Land and Property rights:** The ultimate ownership of land should be by the individual citizen and the government should buy private land to acquire it. I mean, we do not want to be told that the 6 feet is your land and then after that, it is not your land. It should be yours forever. Kenyans should have a right to own land anywhere in the Country.

**Management and use of national resources:** Development funds should be allocated to every location in the Country and should be forwarded to the locational development committee so that it can implement its priorities.

Parliament should retain the powers to authorize the rising and appropriation of public finances. More funds should be set aside....

**Com. Alice Yano:** You have less than 2 minutes to go.

**Boniface Makau:** More funds should be set a side for the provision of water and rural electrification to reduce poverty. National resources should also be managed with transparency and accountability.

That is the first presentation on my own behalf, I am now going to present for the group.

**Kitamwiki Youth of Kawi East Location, Mutunguli division:** Parliament should not have powers to amend the Constitution because they can change laws for their own benefits as opposed to national interest as it has happened in the present Constitution. A Council of elders should subject the 65% house majority rule to approval.

These elders must be professionals in various disciplines with 15 years experience in their areas of specialization. At least 2 elders from each district will be nominated by the Judicial Service Commission.



**Legislature:** The appointment of Permanent Secretaries, Judges, heads of Parastatals and Commissioners should be vetted by Parliament. We do not need nominated Members of Parliament because they do not represent the interest of the ordinary Kenyan as their maintenance is unnecessary expense of public funds.

The Constitution should permit a coalition government. The powers of Parliament to pass a vote of No Confidence on the government is not adequate. A Council of elders should back it. The President should not have powers to veto legislation passed by Parliament and the Council of elders.

Parliament should regulate its calendar. Presidential, Parliamentary and civic elections should not be done on the same day.

**The Executive:** The Constitution should specify Presidential candidate qualifications as a literate Kenyan, a person of high integrity and, of the age between 30 and 60 years. The Presidential tenure should be fixed to 2 terms of 5 years each.

**Local Government:** Mayors and Council chairmen should be elected by fellow Councilors. The current 2-year term for Mayors and Council Chairmen is inadequate and should be increased to 5 year term. Minimum qualifications for Councilors should be Standard 7 and above.

**Land and property right:** The ultimate ownership of land should be according to the title deed, if the title deed is for an individual, government or state, it should be the ultimate owner. The government should buy private land to acquire it. Land transfers should be free. Men and women should have equal access to land.

Kenyans should have a right to own land anywhere.

**Succession and transfer of power:** The Chief Justice should be in charge of executive powers during elections.

**Com. Alice Yano:** Thank you very much. One clarification on this issue of the electoral commission and the electoral boundaries. You said that, you would want maybe this constituency to be divided into 2, on what considerations? We know very well that this time, the consideration is the population. What is it you want, do you want it to be divided into two on consideration of population or is there any other measure you would want to be used?

**Boniface Makau:** One thing, it is on the consideration of the population. The other one is the area coverage. You find that, it is very difficult for the Member of Parliament to manage the whole constituency the way it is.

**Com. Alice Yano:** Thank you very much. Can we have Frederick M. Mwanthi.

**Fredrick M. Mwanthi:** Thank you very much Commissioners. My name is Fredrick M. Mwanthi representing a group of retired civil servants. I will be brief.

The Pensions Act should be entrenched in the Constitution and hence the pension salaries should be reviewed when other civil servant salaries are being reviewed. The pensions should be calculated from the following earnings: -

Salaries, responsibility allowance, house allowance and medical allowance and not as in the past.

The aged people and anybody above 70 years should be given special attention by the government by way of establishing elderly homes or given a special option of buying basic items from special established shops run by the government.

People who have served the public service up to the age of retirement should be accredited special recognition and titles such as senior citizens and should be treated by the government with dignity and decorum. It should be arranged such that when civil servants are due to retire, their benefits should be prepared in advance and hence receive the benefits on the date of the departure from the civil service.

Retired civil servants who excelled should be given opportunities in institutions like, national established commissions as special advisors. Pension Act should be harmonized such that it meets the demands of all the retired people equally and more so from the Public service.

Retired people and the unemployed youth should be given first priority when part time jobs arise such as in election centers and not civil servants to leave their offices when we have unemployed youth and people who are strong enough and they are not doing anything when in it comes to delegation of work in offices. Thank you.

**Com. Alice Yano:** There is some clarification from Commissioner Wambua.

**Com. Wambua:** You said that those who are 70 years and above should be catered for by the government. Is that the only qualification you have been looking at or is there any other because we know there are some people who are 70 years and they are very wealthy, very rich.

So what do we do with that kind of a situation?

**Fredrick Mwandhi:** Well, when I talk of special homes and items, it means people who have not been advantaged, either they do not have people to support them or they are not rich enough to support themselves. Then the government should consider them, otherwise why do you go for laws and yet they cannot be taken care of by the public.

**Com. Alice Yano:** Thank you very much Mr. Mwanthi, kindly register yourself. Shadrack Nzege.

**Shadrack Nzege:** Madam Chairlady, Honourable Commissioners, my name is Yuhadhi Shadrack Nzege and I am presenting my own proposals and recommendations. I wish to present my own submission / personal submission and I have covered the entire questionnaire. I think I will just highlight on a few points and then since it is written, the rest is up to you.

**Constitutional Supremacy:** We should not retain the current Constitutional arrangement whereby Parliament can amend any part of the Constitution by a 65% majority vote. Parliament's powers to amend the Constitution should be limited to make some parts of the Constitution. Some parts of the Constitution should be beyond Parliament's powers to amend, I propose the public be involved through referendums that shall be conducted through Church organizations.

**Citizenship:** Anybody born in Kenya by Kenyan parents should be an automatic citizen of Kenya.

**Defence and National Security:** The President should not be the Commander in Chief of Armed Forces. There should be a clause in the new Constitution to allow use of extraordinary powers in situations such as war, national disaster or breakdown of public order.

The Executive should not have exclusive powers to declare war. Parliament shall have the authority to invoke emergency powers.

**Political Parties:** The number of political parties should be 3 with an extra party for private candidates. The political parties should be financed from public funds because members of political parties are taxpayers.

**Structures and Systems of government:** Kenya's new Constitution should abandon the Presidential system and executive authority left to Parliament. I propose the Prime Minister system, the President remains more or less a ceremonial figure.

**The Legislature:** I will just pick one point there. Language tests are not enough for Parliamentary contestants. A ceiling of academic qualifications at least "O" Level and some working experience especially in community-based projects should be included.

Being a Member of Parliament should be a full time job. The concept of nominated Members of Parliament and Councilors should be done away with.

The new Constitution should permit a coalition government. Parliament powers to remove a President through a vote of no

confidence is not enough.

**Com. Alice Yano:** You have less than a minute.

**Shadrack Nzege:** I propose that referendums be conducted. I think that is all because the rest is written so I would present my memorandum.

**Com. Alice Yano:** There is some clarification from Commissioner Mosonik Arap Korir.

**Com. Musonik A. Korir:** I just wanted to ask you about the systems of government. The issues and questions you are referring to and the questions about the unitary system, federal system and other ways of devolving power to lower levels of government. You did not address that one.

**Shadrack Nzege:** I would propose a unitary system of government and not a federal system.

**Com. Alice Yano:** Thank you very much Shadrack. Now can we have Joseph Kiteme.

**Joseph Kiteme:** Madam Chairlady and Honourable Commissioners, mine are individual views.

1. In the public law court, the section of court brokers (auctioneers) should be completely abolished for lack of humanity when executing their duties and they end up making the affected completely poor. Instead, the Judiciary should look for other ways and means of making payments.

2. In Kenya, a Supreme Court should be established to deal with cases finalized by the court of appeal.

3. The political parties in Kenya should be limited to 3 and be gazetted. The 3 political parties should receive equal and maximum support from the government by way of financing media coverage and security.

4. Kenya should retain the current system of only one Central Government.

5. The cultural laws / values of any ethnic groups / tribes should be provided for in the Constitution

6. Values: To avoid, corruption or abuse of power by the individuals, there should be a neutral body to investigate directives from any individual or person before they are implemented. Thank you Commissioners.

**Com. Alice Yano:** Thank you very much, there is a clarification from Commissioner Riungu Raiji.

**Com. Riungu Raiji:** Umependekeza kwamba tuwapige marufuku hao watu wanaitwa court brokers and auctioneers, na umetuuliza tutafute njia zingine za kupata mali kutoka kwa wale wamekataa kulipa pese za wengine. Je, ungependekeza tutumie njia gani?

**Joseph Kiteme:** Ningependekeza, kwa sababu ni mali ya mtu na inatakikana ilipwe, ningependekeza kuwe na Commission. Sababu nimesema hivyo, kama ungeona hao watu wakiingia katika nyumba ya mtu, utaona hawaheshimu human rights. Kitu wanachofanya ni kuchukua kila kitu.

**(Interjection) Com. Ruingu:** Ni pendekezo tu au.

**Joseph Kiteme:** Napendekeza, maana ile mali ikichukuliwa na ikipelekwa mahala fulani, kwanza angepewa mwenye mali nafasi ya kwanza kununua ile mali. Kwa sababu utaona mbuzi wa Kshs. 1,000/=, akipelekwa kule atauzwa Kshs. 300/= . Na mwenyewe anakuwa maskini wa mwisho.

**Com. Riungu Raiji:** Asante, lakini kuna ile ingine umesema, ya cultural values which should be put in the Constitution. Kama tuliuliza yule mwingine alipendekeza hivyo, na zile zingine, ile mitindo yetu ya kuturudisha nyuma kama kutahiri wanawake, kuhariri akina mama, hata hizo mnataka tupendekeze tu?

**Joseph Kiteme:** Ile ambayo haiheshimu rights ipigwe marufuku. Lakini zile ambazo zinafanya tribes ziende mbele, lazima ziruhusiwe.

**Com. Dr. Mosonik A. Korir:** Madam Chair ngoja kidogo, umependekeza kwamba kuwe na vyama vitatu vya siasa, na pengine ili swala, wale wengine watasema baadaye watajibu. Ni vyama vipi vitatu, kwa ajili sasa Kenya kuna vyama karibu 50. Somebody else was saying, they should be the ruling party and then the opposition. But how will there know they will be the opposition so that they are 2, you see what I mean? So, No 1, the question of political parties, ukisema tatu utueleze ni vipi vitachaguliwa?

Swali la pili, please only two questions is the system of government. When I asked the last person, alisema unitary. Lakini ukiangalia kijikabu on page 8, it asks 3 questions. Should we retain the unitary system? Explain why? Should we adopt a federal system? Explain why? And so on, so every time it is not a question of just saying I love the unitary system, it is not a question of love. Explain to us why so, you said yourself, you want Central Government. Why? Is this the reason people want to review the Constitution, because they have had a very bad Central Government?

**Joseph Kiteme:** Kuhusu hiyo uliyomalizia ya Central Government, ningependa kusema kuna watu wanamaoni katika nchi hii, wanasema Majimbo lakini nchi yetu ni changa sana. Ukiangalia nchi zilizokuwa na Majimbo, tuseme kama Nigeria ni nchi ingekuwa mbali sana. Kwa sababu tukiwa na Majimbo, kila jimbo litakuwa na sheria zake. Wengine watakuja kutuwekea sheria za Kiislamu and so forth. Kwa hivyo, tungependa kuwa na Central Government kama ilioko sasa ambayo ndio inaweza kulete unity katika Kenya na ile keki ya nchi itagawanywa equally katika kila sehemu ya nchi.

**(Interjection) Inaudible**

**Joseph Kiteme:** I beg your pardon.

Katika political parties, nilikuwa nikisema kwa mfano, sasa tuna ruling party. Tuwe na zingine mbili, zote ziwe ni tatu kwa sababu hivi vyama vingi vinaharibu wakati na vinatokana na kiu cha uongozi. Kwa hivyo kama ingewezekana, ingekuwa vizuri sana ikiwa Kenya ina only 3 political parties. Hiyo ingeweza ku-serve wananchi na wananchi wataweza kuwa na watu wachache ambao tutachagua kutokana na maoni yao na the way they are carrying out their duties.

**Com: Alice Yano.** Nafikiria.....

**Com: Wambua:** Sikiza, you see, you are being asked, how we should determine the 3 political parties to have? By registration, those which have 1 Million people? How do we determine these are the 3, because we have 42.

**Joseph Kiteme:** O.K. Ni swali ngumu kwa sababu sikufikiri, lakini nitajibu kwa akili yangu. Ningependa kusema, ni zile tatu zina majority population.

**Com. Alice Yano:** Asante sana, Bwana Kiteme tafadhali nenda, you register yourself.

**(Noise in the background)**

Mwenye sasa anayefuata... Tafadhali tutulie, najua hilo ni swala lenye huwa linaleta kufurahia zaidi. Mwenye anayefuata ni Douglas Mungula.

**Dauglas Mungula:** Chairman, Commissioners, mine is to represent Musengo Location sub group and I have their memorandum. I would like to summarise some of their views.

1. Preamble: In our Constitution, we need to have the preamble to access the capability of our members.

2. Constitutional Supremacy: The Constitution should be amended through a Constitutional Commission.

3. Citizenship: This is acquired by being original inhabitants of Kenya.

4. Political Parties: We should have limited parties, at least 3 in number. These should be equally financed by the government. In financing political parties, we should finance political parties with a majority of at least quarter of the total registered voters. The political parties and the States should be united and cooperate with one another.

5. Legislature: When a Member of Parliament defects, he or she should lose his Parliamentary seat and be prohibited from contesting any seat in the current Parliament.

6. Local Government: We should have a minimum qualification of Standard 8 or KCPE level for Mayors and Local Council Chairmen.

Thank you.

**Com. Wambua:** You said citizenship should be confined to original inhabitants. Who are these? How do you determine the original inhabitants?

**Douglas Mungula:** Here, these are the children born here like my children. They do not need any documentary evidence to show that they are my kids. For example, those children or people from abroad, they have to come here probably with a permit and here in Kenya as a Kenyan, I do not need permit to be here.

**Com. Alice Yano:** Thank you very much Mr. Mungula. Can we have Mr. Simon Kivuti.

**Simon Kivuti:** My name is Simon Kivuti, presenting Matunyani Opinion Providers.

The Constitution should specify qualifications for Presidential candidates and this include:-

A Presidential candidate should be a family man with no previous record of misconduct. A President should not be above the law and should be prosecuted of wrong doings during his office tenure because he is a human being and humanity is still bound.

The President's age should be from 35 to 55 years. The Presidential tenure should be fixed to 2 terms of office each of 5 years.

The Constitution should set limits on Presidential powers and this include, he should not be above the law, he should not

nominate Members of Parliament, he should not appoint parastatal head, they should be appointed by the Public Service Commission and assisted by Parliament if need be.

The Constitution should provide for the removal of a President for misconduct while in office. For example, he should not declare war or dissolve Parliament anyhow. If need be, this should be done by Parliament.

The Constitution should provide that corruption or public funds scandal by the executive should be punishable and recovery of the same as well as.

It is not necessary that a President should be a Member of Parliament because being a Member of Parliament, he would favour his area of representation. In this case, the Electoral Commission of Kenya would invent ways and means of streamlining Presidential candidature.

Government: We need the Provincial Administration. This will work well starting from village elders to Provincial Commissioners because this would meet the common man's need of governance. The Constitution should provide village elders with wages for they provide good will services to the government and are not paid.

Land: Land succession from father to children should be free. Title deeds, a small percentage of cash be paid by the landowner before being issued with the land certificate. All land disputes should be tackled by clan officials for they know their clan better in matters of boundaries than courts.

Health: Free medical attention should be catered by the Constitution as before. The Constitution should provide that corruption in public hospitals should not be practiced and that no doctor or clinical officer would be allowed to run private dispensaries or chemists.

Kenya should be one-man one job.

Employment: All parastatal heads should be appointed by the Public Service Commission assisted by the Parliament and not the President. Employment to our children should be shared equally to all tribes according to their academic qualifications and experience.

Judiciary: Courts should not be corrupt. Courts should be independent without influence of big powered personalities. In Judiciary, Constitutional Law Courts should be provided to listen to the affairs pertaining to Constitutional matters.

Citizenship: Anybody whose great – great – great father's were Kenya born and owned land should be regarded as an



automatic citizen of Kenya. A foreign woman officially married by indigenous Kenyan should also be an automatic citizen. A foreign man married to a Kenyan woman and who decides to reside in Kenya should be given a probation period of 20 years to prove his conduct.

**(Laughter)**

This is because he should not be as ill mannered.

Kenyans should carry ID card as evidence of citizenship.

Local Government: Mayors and Council Chairmen should be directly elected by the people. Two year terms for Mayors and Council Chairmen is not enough, they should serve for 5 years. Their minimum educational qualifications should be standard 8 and above. Vying for Local Authority seats does not require language tests.

People have a right to recall their Councilors, the procedure should be a vote of no confidence. Nominated Councilors should be maintained. The criteria for nomination should be through their respective political parties.

Pregnancies out of wedlock, marriage is still due a Kenyan sacred right. Some people abuse this sacred African right of passage by procreating outside wedlock. The Constitution should provide an Act that, a culprit who would practice this abuse be prosecuted and be penalized to provide food, health care, clothing and education for the sibling procreated.

This will help family planning, maintaining and reducing street children population. Failure to do so the biological father should be prosecuted and imprisoned and his property be attached in aid of the child's upbringing, education and medical care.

Leisure: Finally, leisure is important to all age levels according to status. Today, beer-taking leisure is most welcome to the rich only. The common grass root elderly men cannot meet beer costs and this is why the common man has improvised "kumi kumi" brew which has witnessed many Kenyan deaths.

We therefore do request the Constitutional Review Commission to legalize the native beer "Muratina" brew, for the purpose of the common man's beer leisure. It will also benefit Councils and Municipalities including the government, when beer halls will be licensed. Thank you very much.

**(Applause and laughter in the background)**

**Com. Alice Yano:** Thank you very much Mr. Kivuti.

**Com. Mosonik:** I have 2 questions. When you talked about the President, you told us all the things that the President should not do but you did not tell us what the President should do? Should those functions be defined by the Constitution? In other words, is it a Ceremonial President or an Executive President? You just kept saying he should not do this, he should not do that but you did not say what he or she should do?

Secondly, you said anybody whose great – great grandfather was born here should be a citizen or something like that. How do we prove that a great – great grandfather was born here?

**Simon Kivuti:** The President should be ceremonial. When I talk about great – great – great grandfather, I mean true indigenous Kenyan. For example, I was born by my father, my father was born by his father and so on and then our children too will follow us in that order. That is what I mean, a true Kenyan.

**Com. Mosonik:** Just one last time, when we were in Coast- this is a very serious issue-at the Coast because they have been asked to produce documents proving that their grandfathers were Kenyan. They told us that, you see we people were here at the Coast for the last 2000 years and they have historical records to prove so. While nyinyi wa bara were from Sudan or Ethiopia. That is why I am asking, who are these indigenous Kenyans you are referring to?

**Simon Kivuti:** This is very hard indeed. Now ningependa kusema ya kwamba mzaliwa halisi wa Kenya awe ni wa kabila hili au kabila lile lingine na wazazi wake kutoka zamani walizaliwa hapa, hivyo ndivyo ninavyo-mean.

**Com. Wambua:** Just one more clarification from you. These Constitutional Courts which you recommend, should they be at district level, provincial level, constituency level, can you suggest something?

Secondly, this vote of no confidence against the Councilor, how do you go about it? I mean, how do you pass a vote of no confidence because he is an elected person, there are so many voters who normally vote for the Councilor. How do you go about passing a vote of no confidence? Please try and help us out.

**Simon Kivuti:** Repeat the first question.

**Com. Wambua:** You have already elected a Councilor, he has won by so many votes may be 1000, 2000 or 3000. You are saying that he should be recalled by passing a vote of no confidence. Who should sit to pass that vote of no confidence? How do we go about it? I want your proposal on that.

**Simon Kivuti:** If he any has misconduct and the public feels that he is not doing well, barazas can be organized to pass a vote of no confidence.

**Com. Alice Yano:** Thank you very much Mr. Kivuti. The next one is Benard Musili Katika. If Musili is not there, we move on to Peter Maluki.

**Peter Maluki:** Thank you very much, Madam Chairlady, Commissioners.

These are the proposals of Husiani Location Leaders. They are detailed but I will only mention some.

On Constitutional supremacy, we felt that the Constitution should ....

**(Interjection)**

**Com. Alice Yano:** Taja jina tafadhali.

**Peter Maluki:** My name is Peter Maluki from Husiani. The Constitution should do away with the current provision for Parliament to amend any part of the Constitution by a 65% majority vote. Instead, the percentage should be increased to 75% of all Members of Parliament.

**Citizenship:** The Constitution should allow for dual citizenship. The Constitution should also be reviewed to allow Kenyans to identify themselves with any one of the following:-

National Identity card, passports, driving licences or school leaving certificates. Any one of the above should be enough to identify a Kenyan.

**Defence and National Security:** The Constitution should permit use of extra ordinary powers in emergency situations such as war, national disaster, insurrections or breakdown of public order.

**Political Parties:** Political parties should solicit funding from its members and should not be financed from public funds.

**Structures and systems of government:** We should retain the current Presidential system of government.

**Legislature:** The appointment of senior officers of the government from the ranks of Permanent Secretaries, Judges and heads of parastatals should be vetted by Parliament.

**Language tests required for Parliamentary elections** should be done away with and candidates for Parliament any seats should

be university graduates.

Salaries and other benefits of Members of Parliament should be determined by an independent Parliamentary Service Commission.

The Executive: The Presidential tenure should be fixed to a 2 five-year term.

**Com. Alice Yano:** You have only one minute.

**Peter Maluki:** On Provincial Administration, we should have the Provincial Administration but their powers should be specified and their responsibilities increased.

On land and property rights: The procedure for transfer of land should be simplified, transfer of land should be decentralized either to locational or sub-locational level where all transactions are concluded in one office. Thank you very much.

**Com. Alice Yano:** Thank you very much Mr, Maluki, please go and register yourself. Now, can we have Benard Musili Katika? Is he there?

**Benard Musili Katike:** Nenda kumutheya. Ngethi ila ngumukethya ni ya, na mukethya Amen, thenyu mukasyokya Amen, Amen..

**Translator:** He wants to greet you and he is asking that when he says Amen, you repeat after him.

**Benard Musili:** Amen.

**Audience:** Amen

**Benard Musili:** Haleluya.

**Audience:** Halleluya.

**Benard Musili:** Mwiai ataiwe.

**Translator:** Bwana asifiwe.

**(Interjection) Inaudible**

**Benard Musili:** Wia wakwa ni waweni. Ngai ni wanengje wia usu wa weni

**Translator:** I am a farmer

**(Interjection) Inaudible**

**Benard Musili:** Kwitu ni kwa mwana wa Musyoka Kalonzo na kuu Chuso. Asa wakwa na maitu ni manthuviwe ni Ngai na nambelelye kuma ku 1943. Nanengiwe wia ni Ngai witawa wia wa miunda, weemi.

**Translator:** I come from Chuso, the Constituency of Kalonzo Musyoka and God has given me the opportunity of being a farmer.

**Bernard Musili:** Tata na mwaitu makwie 1970. Na nai kwa musee unaitwa Ndilo Katumo, mbaa Kanyaa.

**Com. Alice Yano:** Can you kindly explain to him why we are here today so that he does not waste a lot of time? Talking about the history. If he can contribute to the views for Constitutional review.

**Translator:** (inaudible)

**Benard Musili:** Nditetheaswa ni makanisa ni kondo kwingi, naendelea na kasi ya miuonda katika wemi. Nendaa kwa DC wa koo akonewe simu, na DC wa Mwingi nake akonewe simu tondu kula nee ndionaa mbesa, niketaa kumbewa nundu wa ula muthoku, kwou, makunanie simu kuvikia Raisi wito avikewe.

**Translator:** He requests that contact be made with the District Commissioner, Kitui and the District Commissioner, Mwingi so that he may receive assistance. He would also like the same message to be passed on to His Excellency the President.

**Com. Wambua:** It appears we have to guide him because it seems either he is in the wrong place or he is saying the wrong thing. So we have to guide him accordingly and I want to talk with him.

**Com. Wambua:** Weyita Musili Kathika?

**Bernard Musili:** Katesya.

**Com. Wambua:** Katesya. Wenda twika ata na kwa ukwi tutavye mituke nikenda twithiwe nitwemina. Tukiite vaa nundu wa kwosa maoni maku, tukaandike Katiba, wenda twike ata, wenda twandike chao katika Katiba? Nitwamantha uvoo wa DC nukukunewa simu. Wenda ata undu ungi?

**Bernard Musili:** Mumbose mwe selikali ya Raisi.

**Com. Wambua:** Tukwose? Ve undu unge.

**Bernard Musili:** Eee. Mundwaye Raisi, nake asisye mavata ala me koo.

**Com. Wambua:** Ve undu unge.

**Bernard Musili:** Navika vau ngethewa nianiwa.

**Com. Wambua:** Withewa weaniwa. Aya enda wandeka endi . Asante, ni useo.

**Com. Alice Yano:** Asante sana bwana Benard Musili. Tumefurahia kwa hayo maoni yako. Before we go on, let us recognise the presence of Honorable Francis Nyenze, the area Member of Parliament and the Minister for Sports. Mheshimiwa, when you are ready to give us your views, kindly just tell us you are ready and we will give you a chance.

Now, we move on to David Malikwi Nzele. Uko tayari? Tafadhali njoo.

**David Nzele:** Madam Chairlady, Honourable Commissioners, my name is David Malikui Nzele, I represent vocational leaders and others. We have got detailed information and I will kindly ask that you allow me to read it all for any questions so that I may clarify.

These are the views of the abovegroup numbering 235. I will start by citizenship.

**Citizenship:** All Kenyans and a child born by a Kenyan National is entitled to automatic citizenship regardless of where he or she was born. Any person who is not a Kenyan can only get Kenyan citizenship by application. Spouses of Kenyan citizens should not get automatic citizenship until the day they will be certified as married. This should only apply to ladies who are married by Kenyans but not foreigners married to Kenyan ladies.

Kenyans should carry as evidence of citizenship, an Identity Card, Kenyan Passport and these should show the manner in which citizenship was acquired.

**Constitutional Supremacy:** The Constitution used to be changed by 75% majority vote, this should not be the case. If any part of the Constitution has to be changed, all Kenyan voters should be involved. Parliament should discuss the part they want to change and then give their recommendations to what it should be changed to. Then it would be brought to the public to vote. The Constitution will then be changed with 70% of majority votes from registered voters.

**Political Parties:** The number of political parties has been increasing every yea. It is the opinion of Katiani Locational Leaders that other than the party that will be in power at the time this Constitution will be amended, the Constitution should provide that

the number of political parties should be limited to 4 only.

By limiting them to 4, this will strengthen our national unity. With every political party, there are some taxpayers behind it and as such political parties should be financed by the government. Any money borrowed by political parties, the government will not be held responsible. A political party can borrow money from anywhere to run its affairs.

Electoral System: Secret balloting should be used for any person or persons to be elected by way of votes or any motion to be passed by way of votes. Any votes cast for whatever the case should be counted at the place where casting was taking place, as soon as the casting is finished. The Constitution should specify the date for elections.

Local Government: A Councilor should all the time be a Kenyan citizen of Kenyan origin. The minimum education for a Councilor for year 2002 elections should be educated up to standard 8 with his certificates showing that he passed the Standard 8 examination.

The Executive: The Constitution should specify qualifications for a Presidential candidate. A Presidential candidate should be a Kenyan citizen of Kenyan origin from the great grandparents. He should be a mature person, aged not above 75 year and not below 50 years. Be happily married with one wife or husband, with a clean record that he has not committed any crime. With a minimum education of Form 4 and to have passed the Form 4 examination.

The Presidential candidate should be a person with a sound mind and not having any mental disorder.

The Presidential candidate should be medically certified that he is a person of good health and he or she does not suffer from epilepsy, cancer, AIDs, amnesia etc.

The Presidential tenure should be fixed. The President should stay in the office for 2 terms. The President should stay in the office for 4 years each term.

The Constitution should set limits to the Presidential powers that the President is not above the law. Limit the Presidential powers to dissolving the Parliament and calling fresh elections at will. This should be the work of the Electoral Commission. It should limit the Presidential powers to appointment of senior government and parastatal officials, these should be appointed by a Commission to be set. Limit the Presidential powers of changing the Kenyan currency. If a need arises to change the currency, this should be passed by Parliament with 70% majority vote.

The Constitution should provide for removal of President from the office for misconduct for example if a President is corrupt, commits a crime, fails to honour and protect the Constitution. The Parliament should meet to discuss the matter and pass a vote

of no confidence on the President.

**Com. Alice Yano:** You have less than a minute.

**David Nzele:** Oh no! Then I will read on retirees. The Constitution should provide a reasonable retirement age. It is our view that people should retire at the age of 65 year since the retirees age at present is being passed at an active age. The time a person retires, the Constitution should provide that such a person should not be appointed to any other public office.

Civil servants who retire do get monthly payment through their pension schemes. The Constitution should provide for retirees increments of their monthly payments once such increments occur in salaries as per the departments they were serving before retire. It may not be possible for every person to be employed but some will be employed in the private sector and others would be self employed. Neither would be no idle but at a certain age, they will age up and not be able to work.

During office time, these people have been contributing to build this Country economically. We then find it in order that the Constitution should provide that the government pays these retirees when they reach the age of 75 old an old age allowance for their up keep.

Employment: Some people in this Country are holding more than one public office. So as to create job opportunities and to increase productivity for our economical stability, the Constitution should provide for one-man one job. Some expatriates do work in this Country with the same qualifications that our citizens have. The Constitution should provide that an expatriate should work in this Country only when there is no Kenyan with the same qualification.

Some members of embassy personnel may be excluded and also exclude when there is a treaty between Kenya and another Country to exchange manpower, at the time of outbreak of war and the time of doing a project and the donor wants to bring its personnel.

Corruption: ...

**Com. Alice Yano:** Mr. Nzele your time is up, so we want you to submit your memorandum, we will look at it.

**David Nzele:** Thank you.

**Com. Mosonik:** You said the President should be happily married with one wife, So I just wanted to ask about those who have taken a vow not to marry, like Church Priests.



**David Nzele:** I have not understood.

**Com. Mosonik:** I am saying wale Makasisi kama wa Katoliki ambao hawaoi, umesema President awe ameo, awe na bibi moja ambaye anafurahi. Je, na kasisi anaweza kuwa President?

Ya pili, unajua kwamba wazee wetu, kwa ajili hakuna sheria ya kuwapiga marufuku polygamists, wana zaidi ya bibi mmoja. Hawa wanapigwa marufuku wasisimame kuwa Rais?

La tatu ni Waislamu ambao kulingana na sheria yao ya Mungu, wanarusiwa kuwa na mabibi wanne. Utawafungia wasiwe Rais wa Kenya?

**David Nzele:** What I may say about Makasisi is that Kenya is a house and a house is led by a man. If you do not have a wife, at least there is something a miss somewhere. You may not lead children when you do not have a child. So automatically those are disqualified in the Kenyan Constitution.

For Muslims, when you have 2 – 3 wives, I may say that the first wife is not happy with you because your love was divided among to the others, the three wives. So they they are not happily married, automatically.

**(Laughter)**

**Com. Alice Yano:** Thank you very much Mr. Nzele kindly go and register yourself. Please, please let us keep quite so that we can go on. Tuendelee tafadhali, mwingine mwenye anayefuata ni Francis Mwangela.

**Francis Mwangela:** Honorable the Minister, Madam Chairlady and the Commissioners, mine is to present Kisereni Sub Location Constitutional Review proposals.

1. Land adjudication laws in Kenya should be reviewed after a given period, after a time of 20 years for those who were young to see that they are provided land in a good way.
2. The government in power should keep on viewing the trust land and arrange settlement for landless citizens from time to time. Such land should not be benefiting individuals.
3. Every Kenyan citizen should be free to own land anywhere in the republic.
4. The Constitution should provide for free education up to the Secondary School level. Loans Schemes should be established

for all University students and other tertiary institutions covering full courses.

5. A Commission should be established to run the affairs of education in the Country and avoid direct interference by individuals.
6. Every able and desiring citizen should be assured of jobs, which should be reasonably paid to eradicate poverty and corruption.
7. Every civil servant in public office should account for his wealth from time to time while in office.
8. The Constitution should provide that all citizens are equal in law and nobody should be above the law.
9. The Constitution should provide the term of office for President should be 2 terms of 5 years each.
10. Presidential elections should be separated from all elections like Parliamentary and civil elections.
11. The Vice President should be elected by the electorate and not appointed.
12. The Constitution of Kenya should limit the political parties to 3. That means, just like in our homes, we have got a mother, a father and the baby then if you join one of the parties you will just feel that you have got another partner even if you do not like the other one.
13. On land issue, husband and wife should have equal rights to possess that land and the title deed should bear the names of both husband and wife. Thank you.

**Com. Alice Yano:** Thank you very much Mr. Mwangela. The next one is Gideon M. Malusi.

**Gideon Malusi:** Honourable Minister, Honourable Commissioners and the audience, I am presenting my personal views which have a reflection and a bearing on where I come from, that is AIC Keatine, Matinyani in Kitui.

First, the Constitution which is the supreme law in the land, should accord full recognition to the Kenyan people, people's rights.

It is a document prepared for the people, the people supremacy should therefore be recognised by that document because it is intended to serve them.

The people should also know from the earliest age possible what the Constitution is and has for them.

The Constitution should very deliberately move to get Kenyans to feel Kenyan and feel patriotic in whatever they do, they feel that they are doing it for themselves and for the Country where they belong.

**Local Authorities:** This is the Cllrty Council or the municipality. The Constitution should spell out what constitutes a local authority, that is the Cllrty Council or a municipality. Municipalities should meet certain set criteria as basis for their establishment. These criteria should be seen to serve certain needs such as services of cleansing, infrustructure and lighting and so on.

Fees and other charges should be to provide or fund the provision of such services because you have known cases where a Municipality or a County Council would just go round collecting rates and fees but when you challenge them as to why they are collecting this, they may not justify because they are not providing any service against which to raise these charges.

Rates on plots and buildings should stop. Taxes should be on business that is being conducted and should be justifiable. There should be set limits and boundaries within which Municipalities should operate and supply services. You find that some of the Municipalites are so large, that I even doubt whether the Mayor knows the exact boundaries.

**Provincial Administration:** This should be retained. It remains a stabilizing influence in the otherwise fluid and capricious leadership offered by the political wing of the government. The duties, powers and responsibilities should however not remain amorphous. The role of Provincial Administration should be well defined.

**National Education:** There should exist one education Ministry, the Ministry of National Education to bring all aspects of education in Kenya that is Nursery, Primary, Secondary, University and even Adult Education. They should all come under one roof.

There should therefore be one policy, which spells out the aims, objectives and goals. The curriculum should also be spelt out. The evolution should include inputs by professionals, that is the curriculum developers as well as parents, teachers and students. This happens not to be the case now.

Emphasis should dwell as much on developing the individual towards self-actualization as on examinations at all levels. I am proposing this because, currently there is a lot of waste. We have many dropouts, some do not even complete primary education, others after that and you find that these people are just forgotten immediately they leave school. And to me, it would be a big waste if we spend money training somebody whom we are not going to use in one way or another.

Scheme of service should provide for growth and advancement for all workers and these should be professional and academic.

Promotion should take recognition of certain merits, like ability, capability, maturity, recognition of talents in others and this one should be turned to their advantage.

Selection to school committees or boards of governors: There should be set some minimum education level as well as certain other merits if the institution wishes to be led by those people is to made headway.

Programmes for children with special needs – handicapped children should be rehabilitative and leading to a career. There should be rehabilitative programmes for the ever increasing HIV Aids victims – the orphans especially and the street children who are also increasing amongst themselves, producing others. These, besides becoming a sore in our midst is a looming national liability.

Agriculture: ...

**Com. Alice Yano:** Mwalimu you have exhausted your time and I think since you have a written memorandum, you should not have really read through it. You should give it to us. Wind up and give us the memorandum.

**Gideon Mulusi:** Thank you. I have said something on agriculture because we feel that there should be some clear policy, which enhances production, cash crop, food crop and animals as opposed to the lack of such a guiding policy.

Last is on freedom: We have been enjoying freedom of assembly, freedom of association, freedom of worship but there are many cases now where in exercising my freedom of worship, I am interfering with others. Nearly every Church has public address system and the like and we are not minding who is paying attention or who is doing what and this one is leading to interference with others' freedom and rights and this should be looked into. Thank you very much.

**Com. Alice Yano:** Monica Nduu, can somebody call her please as we go to the next person. Patrick Mutune.

**Patrick Mutune:** Honorable Minister, Madam Chairlady, Commissioners, ladies and gentlemen, with me hear is a memorandum from Katheka Sub-location, which I am going to read to you now.

1. Let the Constitution of Kenya read that there is nobody above the law.
2. To eliminate corruption among Judges, let the Judiciary be independent by having the Chief Justice and all other judges being vetted before their appointments by the Parliament.
3. Let the Constitution read that the powers of the Constitution depend wholly on the people who created it and not on the

leaders whom the people elected to lead them.

4. The Constitution must not allow dual citizenship and this case will help to curb criminology.
5. To have fair and free elections, let our Electoral Commissioner be independent and the appointment of the Commissioner be vetted by the Parliament.
6. Let our Constitution state very well that Kenya is a democratic government by practice and not by statements.
7. Let our Constitution state very well that our county is a multi party state and no party will merge with another one and let there be no defections during the life of Parliament.
8. To change any part of the Constitution, the Parliament 65% majority votes must be increased to 75%.
9. The Controller and Auditor general should be an independent person appointed and vetted by the Parliament. He should be giving yearly expenditure of the government to the Parliament for debate or rather, comments.
10. Parliament should have unlimited powers to control its own procedure through standing orders.
11. The President should not be an M.P. His Constituency should be the whole nation.
12. In Kenya, let there be only 3 political parties.
13. The state and political parties should be very friendly and work together.
14. The Parliament must have powers to declare emergency and also declare war if possible.
15. The Constitution should provide for a coalition government.
16. The Constitution should provide for removal of a misbehaving President through a vote of no confidence.
17. Let the Constitution provide for anybody seating in public office to be removed or suspended when such a person has a court case in process.

Thank you very much.

**Com. Alice Yano:** Thank you very much Mr. Mutune. We went to some regions the other day na tulipofika sehemu zingine, tulipata ya kuwa akina mama wengi sana hawangeweza kuongea wakiwa na wazee wao katika chumba cha kupatiana maoni. Sijui kama pengine akina mama wa sehemu hii kama mko na hiyo shida. Na kama mna hiyo shida mnaweza kutuelezea halafu tuwatengenezee session yenu peke yenu bila wazee kuwa hapo. Tunakubaliwa kikazi tufanye hivyo. Kama kunalo jambo, tafadhali msemi halafu mtengenezewe sehemu zenu nyinyi wenyewe kwa wenyewe muongee na wana Tume.

Sijui kama tungetaka kusema na Kikamba.

**Translator:** (Venacular dialect)

**Com. Alice Yano:** Kama mnaonelea hivyo, mnaweza kuona coordinator Elizabeth Mumbe ili aje tupange na tuone vile tutaendesha hiyo kazi.

**Translator:** (Venacular dialect)

**Com. Alice Yano:** Kwa hivyo tutaweza kuendelea, mweshimiwa, are you ready now?

**Hon. Nyenze:** May be towards the end of the session.

**Com. Alice Yano:** Towards the end! Thank you very much. The next one is Benedict Nguli.

**Benedict Nguli:** Hon. Minister, Madam Chairlady, Hon. Commissioners, I thank you for giving me this opportunity to present my views. The following are my comments and recommendations on the Constitutional Review.

**President:** The office of the President should be occupied by a well-educated person, probably a degree holder from a recognised university. The term of the President in office should be 2 consecutive terms of 5 years each.

**Councilors:** Councilors should be educated person with minimum qualification of Form 4, certificate holder of the same.

Every Kenyan should be allowed to own land or any other property in any part of Kenya.

Thank you Madam Chairlady, that is all.

**Com. Alice Yano:** Thank you very much Mr. Nguli. We move to the next person, Councilor Shadrack M. Mwakavi.

**Cllr. Shadrack Mwakavi:** Thank you very much Chairlady, Commissioners, Honourable Minister, His Worship the Mayor of Kitui Municipal Council. My views are personal, I am Councilor Shadrack Maluki Mwakavi and these are as follows:

**Supremacy of the Constitution:** Parliament should not be given powers or should not be allowed to amend our Constitution. All citizens of Kenya should be involved in any amendment of our Constitution.

**Legislature:** We should not allow ourselves to have no sitting Members of Parliament at any given time. By so doing I propose that we should set a date in our Constitution, where by after every 5 years, the date of election will be known.

**Land:** We have experienced a problem in this Country whereby we have a lot of people who are landless. Why? There are people who own up to 100,000 acres which some of them are not using. We should set a ceiling of land acquisition and this one I propose, any land, which is not being used, must be taxed according to the acreage. If the land is not for commercial use, it should not be more than 100 acres.

We have proposed and many people have proposed, Mayors and Chairmen of Municipal Council and County Councils to be elected directly by the people but we have not given enough views. What will they be doing, when they are directly elected by the people? Here, I propose that Provincial Administration be done away with and the sitting chairman of the Cllrty Council to do the job or to be the District Chairman to oversee the affairs of the district.

There is a colleague who talked about leisure. Leisure means an activity that somebody can enjoy in one way or another. Either you go for a picnic, another one will go for something to make him enjoy. We have abolished the traditional brew in this Country and yet we have allowed beer to be legal.

It has become very expensive for the common man to drink beer, those who are drunkards (and they are not many in this Country because so many people talk about drinking in this Country). 25% of Kenyans or less are drunkards. About 75% of Kenyans do not drink and if you Cllrt in your family, how many people do drink? If you are 10, you will find 1 or 2 drunkards. So that percentage has to be given its right or their right by allowing or legalizing the local brew.

There is a colleague who mentioned something I wanted to talk about:. Freedom of worship, freedom of speech, freedom of association. Freedom or worship, we have come to know or we have experienced problems of nuisance by some Churches, it is a public nuisance. The public address system, which can be heard 5 kilometres away and this has to be controlled. That freedom of speech should not make me feel uneasy.

With those few views, thank you very much.

**Com. Alice Yano:** A moment for some clarification please.

**Com. Raiji:** Councilor Shadrack, one of the issues that we as Commissioners are required to examine and make recommendations on, is a question of devolution of powers. Some of the suggestions are that the power be devolved to local authorities, others are saying to Majimbo and so forth. Although you have not directly mentioned this issue, we would like to benefit from your experience as a Councilor whether you have any views on devolution of powers?

**Clr. Shadrack:** My views are that we should have a Prime Minister in our Constitution and I prefer the regionism in our system of government.

**Com. Raiji:** What I wanted to know is this, the unit of devolution. Where do we devolve power from the Central Government where it is now concentrated, now where would you want us to deposit that power?

**Clr. Shadrack:** I am for Majimboism

**Com. Mosonik:** You said the ceiling on non-commercial land would be 100 acres. Would there be any ceiling on commercial land?

**Clr. Shadrack:** I do not propose any ceiling for commercial land.

**Com. Alice Yano:** Thank you very much Councilor Shadrack Mwakavi, kindly go and register yourself. The next one is Councilor Sammy Malombe.

**(Interjection)** I do not know who said Councilor, it is former Councilor but anyway, it is O.K.

**Sammy Malombe:** Thank you Madam Chairlady, Hon. Minister, Members of the Commission and his Worship the Mayor. Mine is very little. My name is Mr.Malombe from Matinyani. These are my personal views.

1. The caption or clause that put the President to be above the law ought to be removed. The President should be made or treated like any other ordinary citizen. A clause of impeaching a wayward President should be inserted in the Constitution. Not only should be paid from taxpayers money he should also be accountable for his activities - criminal or civil matters - so as to protect an individual and the Country from anarchy.

2. The role played by the President as Commander in Chief of the Armed Forces should also be removed. The Army and



other armed forces units should be vested not entirely in the hands of one man, the President.

4. The ongoing Constitutional Review Exercise should be treated as a separate unit, divorced from being treated as the reason for not conducting the next general cum Presidential elections. The exercise should be continued until all unsolved issues are thoroughly scrutinized and necessary action properly taken because it is not an overnight job hence it should not be rushed. The USA Constitution was done in 1776, it is 1206 years old Madam Chairlady and still, amendments and loopholes continue to be seen and rectified year in year out to reflect change in day to day life.

Parliament should be extended only when the Country is at war, for the sake of peace, unity and prosperity.

Elections should be held without the need of a new Constitution, this is a separate document. If you want me to explain further Madam Chairlady Sir, I will.

5. Cultural Matters: Clans should be recognised in the new Constitution, which is not there. A Scot is a Scot, an Irish is an Irish. The Scottish cultural values seem to be recognised in Britain because of the way they have a unique cultural dress.

6. Boundaries: Borders or boundaries, during the colonial era, Ukambani Province Madam Chairlady, at one time it included Nairobi and even Taita. But as time went by, some British Colonial masters in Nairobi changed the borders to make Taita part of the Coast Province and Nairobi as part of Central Province before proceeding to be a the separate province of Nairobi.

The point I am driving at is that people ought to be notified well in advance before any change is effected, not like the colonial powers used to make amendments without notifying the public.

**Com. Alice Yano:** You have less than a minute.

**Sammy Malombe:** Thank you Madam. The date for electing the President or conducting election should be planned well in advance and the citizens should be notified accordingly and not be taken by the last minute surprise through short notices especially now that Kenya is a Multi party nation.

This, I think Madam Chairlady you will help me, I am just trying to ask but may be you will clarify. This is regarding the Local Authorities.

7. If a Mayor is to be elected by the people then to whom will he be answerable to? Will this order be rectified in the Constitution or will it be a Parliamentary Act.

I am just trying to put a point across because the way my comrades here have put it, that the Mayor be elected by the people but to whom will he be answerable to? The President or the Councilor, we have to think twice.

8. There should be a clause in the new Constitution to empower, the electorate to remove their Civic and Members of Parliament representatives due to incompetence because the voter is the employer of the representative and every employer must have the powers to hire and to fire in the final analysis. Simply a, b, c.

9. Swahili language should be recognised in the Country as an official language in the new Constitution.

I am almost through Madam Chairlady.

10. Appointment of Local Administration Chiefs should not be political and that the area Member of Parliament should not have a hand in the matter as has been before.

11. The primary and secondary school education and medical care; education was immediately after independence and we would urge education to be free as before.

That is all I have Madam Chairlady and I am Sammy Malombe, the one called Councillor, I was a Councilor sometimes back.

(Laughter)

**Com. Alice Yano:** Thank you very much former Councilor Malombe.

**Cllr. Malombe:** Any questions, I am prepared to answer. I think it is O.K.

**Com. Alice Yano:** We are happy with your presentation.

**Com. Raiji:** I just wanted to clarify, just a point of information that the Chair is Madam Chair.

**Cllr. Malombe:** I beg your pardon. I forgot that one, note that next time or tomorrow I will not address you as Madam Chairlady Sir.

**Com. Alice Yano:** Thank you very much, can we have Mwalili Kizungo, there is this lady Monika Nduu, are you ready to talk? Is she there?

**(Interjection):** She is coming.

**Com. Alice Yano:** O.K. Mwalili!

**Mwalili Kizungo:** My name is Mwalili Kizungo. Nye nundu nugamete vandu va akamba nienda kunena kikamba nundu akamba ni ainge vaa. Mbee nenda kwasya e kuma mwaka wa miongo thanthatu na itatu kufika uu wa maana ile na ile, ithye syataa, utaa, na kituko na yiangi ni sya leilwe kwikiwa kifendelani kila kitawaleta nicho gunenea.

**(Interjection)** Inaudible.

**Mwalili Kizungo:** Syikiwe kila kivendela kite, ve nzao, na ve itumo, akamba maivo niongamete vandu va akamba. Kana exactly akamba community.

**Com. Alice Yano:** Endelea Mzee.

**Mwalili Kizungo:** Kitumi ve mukamba etekilawa nundu musyani, ethiwa na syaka na kituko na uta na yiangi na avika kaoni, syake aitulumanya wikunua usiete uu nikenda aumasye syangi akecha maangi. Na yu ila syana sito twikwa na itithia kwo ikamantha kithio cha mukamba. Nenda yu undu wa mukamba withiwe Katibani, na ukikewa kivedelani kila kitawalete nundu takwa nye ngulaswa ni syana, muitwea nimotawalete na (inaudible) kivendela e, mbona ndiona uta vo? Ndilea kusongea nye yu niongamete vandu va mukamba uu we machako, uu we kitui, ithye twetekelwe kituko withiwe nitukwetikila mundu otongoesye ethewa na kituko. Ona ethiwa ni minister, ukithiwa ena kituko ekia uu twee va yu. Ukithia chama mbwa avetete aimatheka uso ni motongoi na so icha, imuma etina. Ukithiwa nukukiwa aikitwa na ukitwa vu muno. Nye niokitea uu niwo ngwenda ulike Katibani, indi ve undu unge ngwendaa kukulya syama. Onethiwa wii vika. Mukamba ai na nzaeko itatu. Ya kwaika, ya utomba na ya mbavani.

Na yu nundu mbavani niyatililwe nainywe muimese aa mwe vaa, mbavani ni ya kulika kithekani uitwawa ute ngua ukekethwe matuko ikumi na mbili nikenda wasyaka musye withiwe mundu ume, nundu ithye twi wia undu utwona vaa. Indi asu maalikitwe vau ooka nundu ni weekethwa, ndewia. Eka ngweke weuwe Madam Chairlady, Madam Chairlady, kitumi vai nyamu yaitawa ii. Niwise tene nivo sya mbavani itheye ni twaikawa, ona ethiwa nye ndiaekwa ni maikawa yu matwawa kithekani. Ithye twenda tuthikwe syana syokela simantha mundu ni aikawa na asioka eithi kutomba suka kwatha mbusya thamu itawa mbutiava. Nutontha kukeea vau andu maimatha usu ee wia. Ndombe ee ya katikati, nayo ila inge uilikwa vau (inaudible) wikalae wii mwetu ta mukamba. Yu mukamba ti mwetu nundu wa mutelemya, ni wia wa kukuka.

**(Interjection) Laughter**

**Mwalili Kizungo:** Nye ninena uu na ni mwamantha kivendela kitu, syano kei vo, uta ndwe voo, na kituko.

**Com. Wambua:** Kizungo ni ngwenda kukukulya kindo kimwe nikenda aina ku-translate etutavya atutavye undu umwe. Wasya twekea syindo ii mbai sya Kenya ni miongo ina na ile. Syonthe kila mbae ikasya ikiwe vau kivendela kithiwa kielye ata cho twatwika twikia kila kindo nundu mbai ni miongo ena na ile?

**Mwakalili Kizungo:** Syethiawa ii mukamba ethiawa na syaka noo umwe.

**Com. Wambua:** Niokulya mbae. Mbae ya mukamba ni imwe, vee ingi mbingi miongo ina, syonthe maite tukekea vau?

**Mwalili Kizungo:** Ithye twenda kithio cha akamba

## Laughter

**Com. Alice Yano:** It looks like it is very interesting. Mr. Translator can you translate that, do the translation now.

**Translator:** The Commissioner asked whether there being 42 tribes in Kenya, every tribe would come with their regalia and what have you so that all may be reflected in the national flag but Mr. Mwalili says he is not concerned so much about the others, he just wants, (him being a Mkamba) wants to see something belonging and identifying the Wakamba.

**(Interjection)** What did he say before?

The rest of what he said before is that he was concerned, that the implements of war by the Wakamba and these included the bows, arrows, a quiver and a shoulder ornament worn by Warriors should also included in the national flag.

He was also saying or proposing the restoration of the three stages of graduating by a Mkamba youth to maturity and these are the things that are generally termed as “Nzaiko” or circumcision because there is a first, second and third stage where, when you go through all of them, you are mature and hardened so that you can now pass as a warrior.

**Com. Alice Yano:** May be I need some clarification from this. Why does he want these war implements may be considered in the Constitution, does he have any specific reason?

**Translator:** Wenda siendo isu ikana siekiwe katibani na kivendelani. Wenda siekiwe niki?

**Mwalili Kizungo:** Nienda siekiwe nikenda andu aa mesyawa, maimathaa ni sya (*sentence incomplete*)

**Unknown Speaker:** Mzee is requesting that they be restored back because they were there before. I was in Parliament, it was there in the flag. He is asking that the bows and the arrows to be returned. Why were they removed and they were there before? Yes.

**Com. Alice Yano:** Thank you very much I think the clarification has been made. Asante sana Mzee tumeshukuru. Tunataka Robert Muthei, if Robert is not there, let us have Christine Sammy Mbiti, ungetaka kuongea wakati huu au wakati mwingine?

**Christine Sammy Mbiti:** Wakati huu.

**Com. Alice Yano:** Endelea.

**Christine Sammy:** Honourable Minister, Commissioners, Chairperson and the others, hamjamboni? Mimi naitwa Christine Sammy Mbiti, nawakilisha Kidhumla Location. I will go straight to the points. We have answered the questions and I will only read the answers as we have been advised by the Commissioner.

Q 14 & 15. We have answered those 2 questions.

We should practice a representative electoral system.

Q2. We should retain the simple majority rule as the basis of winning elections.

Q3. Yes, we should increase the participation of women in Parliament for the following reasons. Women respond respectively on their duties, they are merciful, social and they are effectively concerned in making future plans.

They are hard working, women dislike corruption, prostitution, they always want equality. They do not practice prostitution like the men.

Q5. We have answered, No. When choosing an MP or Councilor we should not consider party affiliation.

Q6. There should be no defections, nobody should be allocated the resource in corrupt deals.

Q7. No. We should retain absolute majority.

Q8. Yes. Seats should be reserved for specific interest groups. Why? Considering the blind, the disabled and the physically handicapped.

Q9. No. Some were owned politically, the locals should have a say.

Q10. No. We need reviewing of boundaries, constituencies should be divided equally.

Q11. Yes. They should continue to be held simultaneously to avoid time wastage and expenses.

Q12. The electoral process should be simplified using computerized, transparent boxes.

Q14. We have said yes, the election date should be specified.

Q15. The Presidential elections should be conducted directly.

Q16. By using secret ballot voting should be computerized.

Q17. The Electoral Commission should be non partisan.

Q18. An Electoral Commissioner should be a lawyer, graduate with experience of law.

Q19. Not less than 5 years, they should be appointed by Parliament.

Q20. They enjoy security of tenure, serve for 5 years.

Q22. If they are incapable of doing their duties.

Q23. Consolidated funds.

We have only answered the questions alone. I have no other points.

**Com. Alice Yano:** Thank you very much. Christine, we need some clarifications from you. Yes, clarifications. We are grateful for your presentation and you said that you need women participants in Parliament to be increased and you have given reasons why you need an increase. But how do we increase them? Have you thought about it? How do we make women members of Parliament be more than what we have right now.

**Christine Sammy:** We said that we need quarter women representation in Parliament and men three quarters.

**(Interjection)**

**Com. Alice Yano:** Is it through nominations or ...?

**Christine Sammy:** Through nominations.

**Com. Alice Yano.** Through nominations. Thank you very much Christine. Can we have Gregory K. Martin?

**Gregory K. Martin:** Honourable Minister, Dear Commissioners and participants. I am Gregory Martin and I would like to give my individual views on this Constitutional Review Process. I will start with citizenship.

Citizenship: Anybody born in Kenya or outside Kenya whose either parent is a Kenyan citizen should be an automatic citizen. Men and women married to Kenyan citizens should also be given Kenyan citizenship and a citizen should enjoy full rights regardless of how one acquired the citizenship.

The birth certificate, the Kenyan Identity card and the Kenyan passport should each of them be sufficient in identification of Kenyan citizenship.

Defence and National Security: The Armed Forces should be established by the Constitution and martial law used to discipline them. The President should be the Commander in Chief of the Armed Forces but only Parliament should have the authority to declare war or a state of emergency.

Political parties should be limited to about 4 and should be regulated by the Constitution to play the role of political mobilization and participation in development projects. They should be financed from public funds.

Structures and systems of government: We should retain the Presidential system of government where by the President will be both the head of state and of government. The idea of a ceremonial President who is the head of state and a Prime Minister who is the head of government may cause confusion and unnecessary bribery for political influence.

We should retain the unitary system of government in which all affairs of state are controlled by the Central Government. In this way, the government can develop all parts of Kenya to be the home of its citizens.

We should not adopt a Federal system of government because this will promote disunity and can be manipulated by strong regional politicians.

The district focus for rural development strategy is a good step forward in devolving powers to the districts. It should be improved and strengthened.

**Legislature:** We should retain the single chamber legislature to avoid confusion and unnecessary rivalry. The Parliament should vet appointments to senior office and have unlimited powers to control its own procedures through standing orders. Being a Member of Parliament should be a full time occupation and a Member of Parliament should be allowed to serve for unlimited terms to promote professionalism.

The voting age should remain at 18 and the age requirement for contesting an elective post should be from 21 years to 70 years. Nobody should offer himself for election when he is above 70. We should do away with language tests and replace them with academic qualifications.

In a Multi-Party System if the people are allowed to recall their Member of Parliament, that privilege could be open to abuse. It could be used to serve the interest of the political parties rather than the interest of the people.

**Com. Alice Yano:** You have less than a minute.

**Gregory K. Martin:** The Members of Parliament's salaries and the salaries of public servants should be fixed by a public salary review commission after every 5 years.

The Pension Act should be entrenched into the Constitution and the pensions be reviewed so that pensions will be calculated from the employees basic salary, responsibility allowance, house allowance and medical allowance. Whenever there is a salary rise for those in service, pensions should rise by the same percentage for each grade.

We should retain the concept of nominated Members of Parliament and these seats should be given to women and other disadvantaged groups. They should be shared according to party strengths.

We should permit a coalition government in our Constitution, as this will enable us to forge unity through alliances.

**The Provincial Administration:** We need the Provincial Administration to keep law and order in the villages and promote development. The lowest officer in the system who is the village elder should be paid a salary.

**The Judiciary:** The Judicial officers should be appointed by the Judicial Commission.



**Com. Alice Yano:** Mr. Martin, your time is up. Kindly hand to us your memorandum we are going to look at it and read it. The next one is Rev. Michael Kiambia.

**Rev. Michael Kiambia:** Commissioners na wananchi wenzangu hamjambo?

Jina langu ni Rev. Michael Kiambia, nahudumu na Anglican Church of Kenya katika Parish, katika Mutonguni division na nimelete mapendekezo letu kama Kanisa na kama group na nitaongea kwa Kiswahili kwa sababu watu wengi wameongea Kizungu na ninajua kuna watu ambao hawasikii Kizungu vizuri. Nina mapendekezo yangu mwenyewe.

Ningependekeza Katiba mpya ambayo tunatarajia iweze kuzungumzia mambo ya mali ya wananchi ambayo inavunjwa (demolitions). Watu wanavunjiwa vitu vyao na wanakosa kulipwa katika nchi yetu ya Kenya na katika miji mikubwa.

**(Applause)**

Pili, nazungumza kuhusu wafanyikazi wa serikali ambao wanapewa mashirika kusimamia na wanakula pesa yote wanamaliza na watu wanafukuzwa kazi na hao watu wanakosa kushtakiwa. Na badala ya kushtakiwa, wanapewa mashirika mengine na wanaharibu na wanaendelea namna hiyo.

Tatu, nazungumzia watu wanaoitwa landless, watu ambao wanasemekana hawana makao. Ikiwa hao watu wako nchini Kenya na ni wazaliwa wa Kenya mahali walipo na wanakaa na amani katika community ile wako, wapewe hapo mahali wanakaa waishi na wafurahie kuishi katika nchi yao wakiwa na amani.

Nne, Crown land, zile sehemu ambazo zinasemekana ni za Serikali na kuna wananchi wanakaa na serikali haijatumia, na wamekaa kwa muda mrefu hapo mahali, hao watu wapewe hapo mahali na waendeleo kukaa maana ni wananchi wa Kenya.

Rais, yeyote ambaye atakuja kuwa Rais wa nchi yetu ya Kenya, ikiwa atatawala kwa kipindi cha kwanza cha miaka 5, 4 au 10 akisha resign, pia a resign kuwa Mwenyekiti wa chama alichokuwa anaongoza.

Nazungumza juu ya kuongea au kujieleza: kwa vile tuko na nchi yenye vyama vingi, kila mwananchi ana haki ya kusema na kuongea kuhusu ubaya anaona kwa chama hiki na kile na kuhamia chama kile anataka bila kuwa ati ukihama chama hii, ukienda kile unaweza kupigwa au ukachomewa biashara yako ama ukaviziwa na watu njiani wakakupiga na hao watu wakakosa kushikwa. Unakuwa frustrated na kusumbuliwa na haki yako. Kuwe na ulinzi na mambo ya sheria ikiwa wewe umeeleza maoni yako na mapendekezo yako.

Katiba mpya ambayo tunatarajia iwepo ikaweze kuwa na mpango wa kuruhusu elimu kutoka Standard 1, Nursery, Pre-

Nursery, Standard 1 mpaka Form 4 iwe free education na tuwe na free health. Pia kuwe na maji safi kwa kila mji katika nchi ya Kenya. Tuwe na ulinzi wa kutosha kwa kila Mwanakenya.

Tume ambazo zimekuwa zikiundwa ziwe zinatoa report yao baada ya kumaliza kazi yao.

Serikali iregeshe utaratibu wa ku-control bei ili wananchi waache kuumizwa. Maana wakati mwingine watu wengine wanazuia sukari na huku wananchi wanakosa na wengine wanapandisha bei, mpaka common man anapata shida kubwa sana.

Wale watu ambao hawajabahatika kupata kazi na hawana biashara, serikali ifikirie kuwapa kitu kila wakati iwe wana-enjoy vizuri katika nchi hii ya Kenya.

Ma Ministers, ambao wanashindwa kusimamia Ministry yake vizuri, ameimaliza, ashtakiwe na alipe na asipewe nafasi tena ya kuwa Minister katika nchi hii yetu ya Kenya ili wale wengine wakaweze ku-improve na kuwa viongozi waaminifu.

Lastly ni devil worship: Kuna freedom of worship na kumekuwa na waumini wengi wa shetani huku nchini kwetu na tungeomba Katiba mpya ifikirie kuzuia ku-control devel worshipers na ku-control margazines zile zinaonyesha mapenzi, ku-control mambo ya vita, videos, films zile zinaonyesha vita ili the younger generation weweze kuwa watu wa kuweza kutumainiwa na jamii zao na nchi hii yetu. Anti-christ wawe flushed out katika new Constitution. Nafika hapo. Asante.

**Com. Alice Yano:** Asante sana Rev. Michael Kiambia.

**Com. Mosonik:** Ukasema maji upatikane kwa kila mji, uli sema mji haukuseme kijiji.

**Rev. Michael:** Kila mji, kila nyumba, every person to have clean water if possible.

**Com. Wambua:** You mentioned a series of things, which you said free, free health, free education then you said clean water. Should this water be free?

**Rev. Michael:** Ya. Maji iwe bure, ilipwe kutoka consolidated fund.

**Com. Alice Yano:** Asante sana, Rev Michael Kiambia. Tafadhali nenda ukajiandikishe. Pia tuko na Elijah Muthengi Mweto.

**Elijah Muthengi:** Hon. Minister, Madam Chairlady, our distinguished Commissioners and the entire participants, mine is just to add some adjustments to Kalimani Locational Memorandum towards the Constitution. I think there before, our former Member of Parliament Honourable Munyasia had contributed.

First is about the Judiciary on page 12. Clans to be granted over 50% powers of authority to maintain law and order within our Country, simply because our local community clan members 90%, known the origin of every individual from date of birth and as a whole, all the community matters. Therefore, when a dispute arises involving land, family differences and so on, such cases should be left to clan members to solve in order to have peace, love and unity.

Local government: There is a tendency of land to be grabbed by the Councils. If at all the local government wants to expand a certain town, it should inform the surrounding land owners before extending the boundaries and the extended land should be subjected to the owners for sale.

The Council Chairman, Mayors and Councilors should be of Form 4 academic standard. That is to be somebody who can take minutes in a meeting. He should be somebody with a sound mind, somebody who has proper ears and proper voice to address the audience. He should also be a person of high integrity.

Kenyatta day to be renamed to hero's day simply because, he is not the only one who participated towards the struggle, but we want to know and we want them to be recognised. Thank you.

**Com. Alice Yano:** Thank you very much. Now, with these presentations may be we need to take short break. Tunataka tuondoke kidogo ili turudi saa nane na dakika kumi na tano. Pia nilikuwa nimeuliza kama kuna wale akina mama pengine wangetaka wapatiwe privacy wakiongea. Kama wako mtujulishe halafu pengine tupange tuwaone kabla hatujarudi saa nane na dakika kumi na tano.

Asanteni Sana.

### **(Lunch Break)**

**Com. Alice Yano:** Sijui kama Monica Nduu yuko? Robert Muthei, Robert Muthe mara ya mwisho? Julius Karanza, Munyoki Musuha, Christopher Kalingwa. Tafadhali endelea

**Christopher Kalingwa:** Kwa majina mimi naitwa Christopher Eloo Kalingwa, kutoka Matinyani Location, Kunikila Sub-location. Ninapo- simama hapa nawakilisha maoni yangu na ya kikundi changu kidogo ya Mobile Women Group. Maoni ya group ya kutengeneza Katiba ama ya kuigeuza, kumaliza njaa, ujinga, umaskini, ufasidi na uchawi.

1. Serikali ichukue jukumu la kihifadhi maji yote ya mvua, kujenga mabwawa na kufunga mito yote. Hiyo itasaidia wale wasio na kazi kulima kilimo cha kisasa kama kupanda mboga na matunda na Kenya itaendelea mbele.

2. Serikali ikichukua jukumu la kusomesha watoto kutoka Standard 1 hadi Form 4, ujinga utamalizika Kenya.
3. Serikali ichukue jukumu la kutibu watu wote hospitalini bila malipo kwa sababu wengine ni wakongwe, wazee na maskini na hawana pesa za kulipa.
4. Serikali ichukue jukumu la kusaidia maskini, vipofu, vikongwe na wazee. Itawasaidia aje? Watasaidiwa kwa kupewa mokopo isio na malipo ili waendeleze biashara ndogo ndogo. Wazee nao wajengewe nyumba ya wazee. Kila location iwe na nyumba ya kuwatunza.

**(Interjection)**

**Com. Alice Yano:** Tafadhalini hayo ndio maoni yake, wacha aendelee kutuambia.

**Christopher Kalingwa:**

5. Serikali kutoa title deed bure bila malipo kama vile inatoa Kitambulisho.
6. Serikali kuzambaza umeme kote Kenya (inaudible) ....
7. Rais wa Kenya asiwe juu ya mamlaka yote ingawa Kenya inaweza Kuwa na Prime Minister.
8. Sheria iwekwe ili mtu ambaye ana bibi wawili, mmoja aliyelipiwa mahari na mwingine ambaye hakulipiwa, na yule mtu akifa, ni nani atapewa haki hiyo? Ni yule aliyelipiwa mali kihalali.
9. D.O. na Chifu wapewe jukumu la kusuluhisha matatizo ya wananchi sababu hawa ndio wako karibu na wananchi lakini sio Polisi. Polisi wako mbali.
10. Sheria iwekwe ili mtu asifanye zaidi ya kazi mmoja. Kwa mfano, ukiwa daktari usifungue clinic, ukiwa mwalimu usifungue duka.
11. Officers yeyote wa serikali akiiba mali ya serikali au mali ya umma afungwe jela na kufutwa kazi.
12. Sheria iwekwe kwa wanao-kuza majini na wenye kuabudu shetani na uchawi. Mtu akikufanyia madhara kama hayo afikishwe kotini.

**Com. Alice Yano:** Malizia malizia tafadhali.

**Christopher Kalingwa:** Ndio kuna points mbili tu.

13. Sheria iwekwe .....

**(Interjection)**

Unajua sioni vizuri macho yangu ....

**Msomaji:** Sheria iwekwe kwa mila na tamaduni za Mwafrika wa Kenya.

**Christopher Kalingwa:** Sheria iwekwe kwa tamaduni ya Mwafrika wa Kenya ili Chairmen wa ukoo wawe wanapewa mafunzo kwa kutenda haki kwa wote.

Yangu ni hayo.

**Com. Alice Yano:** Asante sana. Denise Ngutsia.

**Denise Ngutsia:** Madam Chairlandy, Honourable Commissioner, I am presenting views for Kiban Location.

1). Legislature:

The Parliament should veto the following appointments: The Attorney General, Controller and Auditor General, Chief Justice, Chairman - Public Service Commission, Chairman - Electoral Commission, Governor – Central Bank, Commissioner of Police, Commissioner of Prisons, Commissioner of Labour, Commissioner of Lands.

Being a Member of Parliament should be a full time occupation.

Changes should be made to age requirements for contesting Parliamentary seats and the Presidency.

Parliamentary candidates should be 25 years old and above. Presidential candidates should be 40 years old, but not exceeding 75 years old.

Persons contesting Parliamentary seats should be university graduates, fluent in both English and Kiswahili.

Parliamentary candidates should have no criminal records, should be development conscious and should refrain from bribing electorates.

Members of Parliament should act on the basis of conscience, conviction and instructions from their constituents.

Parliamentarians in a multi-party state should remain within the party policies.

The Constitution should allow a coalition government.

We should continue with the current multi party system in the legislature with only one party in the Executive.

We should have 2 chambers in our Parliament.

There should be a body to impeach a President. That is why we say two chambers, where the Uppers chamber can impeach the President.

The President should have powers to dissolve Parliament at the end of the life of Parliament.

## 2). The Executive:

Should be married, aged of over 40 years. Should hold a university degree, serve for 2 terms of 5 years each.

The President should have powers to establish ministries and powers to appoint Ministers.

A President can be removed from office due to misuse of office.

The Parliament should be an independent body.

## 3). Judiciary:

Appointment of judges by independent Judicial Commission.

They should be qualified lawyers, holders of university degrees in law.

The tenure should be a lifetime.

There should be an establishment of a judicial disciplinary body.

Judicial powers should not be vested outside the court.

The Constitution should address the right of all people so that all can have access to courts.

#### 4) Local Government

Mayors and Council chairmen should serve the whole term of the Council, 5 years.

The Chief officers should be answerable to the Councilors.

The qualifications should be standard 8 and above.

People vying for Council seats should be tested to ensure that they are fluent in English or Kiswahili.

#### 5. Succession and transfer of powers.

The Speaker of the National Assembly (inaudible) by the Chairman of the Electoral Commission after as the announcement of the results, 48 hours after the declaration of the election results.

He / sher should be sworn in by the Chief Justice, at the time of the transfer of power by formally handing over the system.

The Constitution should make provision for a former President in terms of security and welfare.

**Com. Alice Yano:** Thank you very much.

**Com. Mosonik:** I have got one question please. Ngoja kidogo. Ulisema, we should have 2-chamber legislature and you said there should be an Upper house and a Lower house. Who are the members of the upper house?

**Dennis Ngutsia:** Members of the Lower house are members elected from the constituencies and Upper house should be as it

was practiced soon after independence by electing Senators from the districts.

**Com. Alice Yano:** Thank you very much. Do we have Julius Kamanda back? Munywoki Musuva.

**Munywoki Musuva:** (Venacular) ...

**(Interjection)** Venacular ...

**Com. Alice Yano:** Kindly stop murmuring, let us give him a chance to air his views. Wacha atusemehe pia kwa yale maoni anataka kutupatia kama Wanatume.

**Com. Wambua:** **(Interjection)** Venacular ....

**Munywoki Musuva:** (Venacular) ...

**Com. Wambua:** (Venacular) ..... Talks to the old man.

**Munywoki Musuva:** (Venacular) ...

**Com. Wambua:** (Venacular) ...

**Com. Alice Yano:** Yes can you kindly interpret.

**Munywoki Musuva:** (Venacular) ...

**Translator:** In brief he has narrated some history or some historical events.

**(Interjection)**

**Com. Alice Yano:** Can you stop murmuring?

**Translator:** Historical events dating back to 1963, and then he was citing something that happened in a river near Kitui where a lot of people lost their lives through drowning in a flooded river. He went on to say that the next President of Kenya has already been identified and he is going to be a Mkamba. He has not told us who did the identification but, he says that man would not be going wayward in his leadership. I think in short, that is a story.

Sorry, he was also voicing that the Kamba community has been marginalized and that they have not been treated fairly in a lot of things.



**Com. Alice Yano:** Thank you very much. Do we have Julius M. Karanza, this is the last time I am calling your name. Uko? Tuende kwa Daniel Mutune, tafadhali njoo.

**Daniel Mutune:** Madam Chairlady, Commissioner, ladies and gentlemen, I am standing here to give my proposals from Miwongoni Group and these proposals are in written form so I am going to read what is written here. You can listen to the proposals.

Issues and questions for public hearings:

We need a preamble in our Constitution but it need not to be changed by an individual, a group of people or even the Parliament. This should be done by the wananchi.

The Constitution should be taught in schools from Primary to University.

Constitutional Supremacy

The current Constituion allows Parliament to amend any part of the Constitution by 65% majority vote. This should be increased to 90% majority vote.

Citizenship: Automatic citizenship to a child whose parents are Kenyans. A child of a Kenyan parent regardless of the parent's gender should be entitled to automatic citizenship.

Rights and obligations: Security and equal treatment should be provided to all.

The Contitution should not allow dual citizenship.

A Kenyan should carry an Identity Card as evidence of citizenship.

Legislature

Appointments that should be vetted by Parliament are Commisioners, ambassador, directors, Permanent Secretaries, judges and Chief Justice and so on.

Functions of Parliament should be expanded in control of things like Country's economy and power of questioning the President in case he does wrong. Parliament should have unlimited powers to control its own procedures through its

standing powers.

Being a Member of Parliament should be a part time occupation.

Age requirement should be at least 18 years for voting and 35 years for contesting Parliamentary seat. President should be at the age of 45 and a maximum age of 65.

Oral and written tests are required for Parliamentary candidates and they should have be “O” Level standard of education.

We should introduce moral and ethical qualifications for Parliamentary candidates.

The people should have a right to recall their Member of Parliament.

**Com. Alice Yano:** You have a minute to go.

**Daniel Mutune:**

A vote of No Confidence should be applied after a Member of Parliament has failed in his or her policy or responsibilities while in his or her office.

Members of Parliament should act on the basis of conscience and conviction.

An independent Commission should determine the salaries and benefits of Members of Parliament.

The concept of nominated Members of Parliament should be retained but include all the vulnerable groups like the blind or the crippled.

Special measures should be put in place to increase women’s participation in Parliament. 6 nominated Members of Parliament should include women and others.

**Com. Alice Yano:** Your time is up Mr. Mutune, can you kindly hand us your memorandum. Are you the same Daniel Mutune of Katutu Location?

**Daniel Mutune:** Right.

**Com. Alice Yano:** You recorded your name twice? It is O.K. Thank you very much. Hand over that one. Councilor Pius Mwaka.

**Cllr. Pius Mwaka:** Pendekezo langu. Nitaongea tu kwa Kiswahili, na jina langu ni Pius Mwaka kutoka Mutonga Location, title ni Councilor lakini naongea kwa niaba ya Wanakenya sio kama Councillor. Kwa sababu mimi ni Mwanakenya.

Madam Chairlady nitaanzia na mamlaka ya Rais.

1. Mamlaka ya Rais wa nchi hii yetu ya Kenya, napendekeza aongoze nchi kwa miaka 10. Yaani kwa vipindi viwili, kila vipindi ikiwa na miaka mitano.

2. Rais asiwe mbunge, awe mtu ambaye anaweza kusimama Kenya tumsikie na tumuelewe. Kama mwanamme wa Kenya, aombe kura kutoka kwa sisi tumpe kura kama Rais wa nchi hii, asiwe mbunge. Tuwe na wakati tofauti wa kupiga kura katika uchaguzi wa madiwani, wabunge na Rais, ziwe tofauti.

3. Utawala wa mkoa uimarishwe kwa kutupulia mbali ofisi ya P.C. tubaki na D.C. kwa kiwango cha juu. Tutupilie ofisi ya bwana D.O. Badala yake, jukumu lake lipelekwe kwa Chifu. Chifu awe na msaidizi mmoja badala ya kuwa na manaibu wa Chifu kama ilivyo sasa.

4. Bunge: Idadi ya wabunge ipunguzwe tusiwe na wilaya yenye wabunge zaidi ya 2 au wawili, ndio economy iwe sawa sawa.

5. Baada ya Rais kuchagua mawaziri, apeleke majina yao kwa Bunge ili wachunguzwe kama kuna aliyesusika na ladjfa yoyote aondolewe na Rais achague mwingine badala yake.

6. Serikali za mtaa: Mshahara ya madiwani iwe sawa kote nchini, ikilipwa kutoka kwa serikali kuu kupitia kwa serikali za mtaa na ichunguzwe kila baada ya miaka miwili.

7. Vyama vya kisiasa: Vyama vipunguzwe vibaki viwili tu, yaani kinachotawala na sio KANU, ni chama kitakuwa kikitawala wakati ule. Chama kinachotawala na upinzana vikitumia majina yale watakayoona ni mwafaka.

8. Clan: Clan ipewe jukumu au uwezo ilishughukulikie mizozo ya ardhi, mizozo ya urithi, kukomesha tabia mbaya katika jamii kama ulevi, wizi na zinginezo ili kufanya kesi na kuamua.

9. Elimu katika uchaguzi, wabunge na madiwani: Yule atakapetendwa na watu na apate kura za kumwezesha kuingia Bunge au

kwa Council, yule yule ndiye mwenye elimu ya kutosha.

**(Laughter)**

Na mtiani ni watu. Kuna swali?

**Com. Alice Yano:** Asante sana bwana Councilor Mwaka.

**Com. Wambua:** Ulisema President asiwe Member of Parliament.

**Cllr. Mwaka:** Ndiyo!

**Com. Wambua:** Ukataja awe mwanamume, ukaishia hapo. Hukusema mambo ya wanawake. President pia anaweza kuwa mwanamke. Kwa hivyo?

**Cllr. Mwaka:** Nasema hata akiwa mwanamke lakini ni “ngumbau”?

**(Intejction)**

**Com. Riungu Raiji:** Bwana Councilor, lile pendekezo lako la mwisho ni kama, labda unasema kwamba mtu anaweza kuwa Councilor hata kama hajui kusoma au kuandika lugha yoyote. Hilo ndilo pendekezo lako?

**Cllr. Mwaka:** Ndiyo. Kwa wakati huu hakuna mtu ambaye hawezi kuandika au kusoma chochote, lakini unaweza kuwa huna elimu ya kutosha lakini unaweza kusaidia watu wako kama mimi.

**(Laughter)**

**Com. Alice Yano:** Asante sana Councilor. Tulieni tafadhali, enda ujiandikishe. Halafu Rose Japheth, hayuko. Kama Rose hayuko, Christine Dhedi, halafu Jedidah Wambua yuko?

**Christine:** Honourable Commissioners, my name is Christine.

**(Interjection)**

**Com. Wambua:** Mama, hii views, si tulichukua maoni yako Kitui Central?

**Christine:** I am presenting a memorandum from Kitui West Women's Organization.

We the women from Kitui West Constituency are making the following recommendations to ensure equity and equality among Kenyan men and women. Everyone has right to equal protection, freedom from discrimination, freedom of expression and association, the directive principles of equitable representation of both gender. Equality before the law, the rights of all citizens regardless of gender or status should be entrenched in the Constitution.

Citizenship:

A person born in Kenya after the year 1963 and a person staying in Kenya for a period of more than 5 years are automatic Kenyan citizens.

Persons born in Kenya to citizens within or outside Kenya, regardless of the gender of the Kenyan parent should be an automatic Kenyan citizen.

A woman married to a Kenyan citizen should be entitled to automatic Kenyan citizenship unless they choose otherwise.

A child of less than 18 years whose parents are not Kenyans adopted by a citizen of Kenya should be registered as a Kenyan citizen.

The Kenyan Constitution should allow for dual citizenship to enable Kenyans living abroad to enjoy their rights as Kenyan citizens.

Rights and obligations of a citizen.

**Com. Alice Yano:** Christine, I can see you have a beautiful written memorandum. Why don't you just touch on the most important factors so that you do not get caught up with time.

**Christine:** Rights and Obligations of a citizen: The Kenyan Constitution should provide that all citizens are equal and are entitled to the rights, privileges and benefits of citizenship regardless of gender.

Basic Rights and basic needs: The Constitution should guarantee basic rights which include, health care, water, food, free education up to secondary school, shelter, security and employment for all Kenyan citizens, freedom of association and expression.

And because much has been mentioned about that, I will go to: Land and property rights: Women and children are the the ones to suffer most as victims of calamities, disasters, land conflict, clashes and other issues related in security. It is on this basis that we recommend the following:

Female offspring regardless marital status should be entitled to inherit family property including land without discrimination. There should be equal access to land ownership and control of other resources among men and women.

The Constitution should be supreme to the customary law on issues concerning land and property inheritance.

Kenyans living in trust land should be guaranteed protection or security and should the need arise to move them, they should be properly compensated and resettled elsewhere and given ownership.

I think because it is too long, I can stop there.

**Com. Alice Yano:** Thank you very much Christine, can you register yourself.

Rose Japheth, Jedidah Wambua, Julius Kalanza.

**Julius Kalanza:** Chairlady, Commissioners, Ladies and Gentlemen, I am Julius Musyoka Kalanza and I am here to present my own views to the Constitution Review Commission. First, I would speak on discipline forces because I was once a discipline soldier.

Discipline forces should not be permitted to vote as they are expected to be neutral, because voting will politicize the military forces and it would not be good.

Executive: The Executive should not have exclusive powers to declare war because he or she may do so to suite his or her political or personal needs.

A war Council head by a professional soldier should have the authority to recommend to the Parliament to declare war whenever the need arises. The Executive should not declare an emergency of any type without consulting relevant authorities like Parliament.

Political parties: Only political parties, which are represented in Parliament should be recognised nationally and should request for funds from the treasury. This would minimize the formation of too many political parties which are now existing. I am sorry

to say so.

**Governance:** In order to promote national unity, we should have a government of national unity where by several political parties are represented in the government. In other words a coalition government is needed in our nation.

Parliament should have the powers to vet the appointment of Ministers, senior judicial officer, parastatal heads and all other senior public appointments. This would prevent the executive from appointing his or her tribe's men, relatives and friends or inefficient or unqualified people to run the key offices of our Republic.

The Presidential candidate should have a degree specializing in either one of the following or all of the following: - Political science, public administration, law and economics in order to be able to rule the Country efficiently and without any problems whatsoever.

**Civic and Parliamentary elections:** A Mayor should be elected by the public directly. This would prevent few Councilors from being manipulated by being bribed by fellow Councilors.

**(Interjection)** Inaudible.

There should also be a provision in the Constitution to remove him/ her from the office by the public should he prove to be inefficient. He should stay in the office for the period specified in our Constitution.

There should be provision of independent candidates during any civic or Parliamentary elections. This is because most of the existing political parties are manipulated.

If an elected Member of Parliament or Councilor resigns from Parliament or from the Council he/ she should not be eligible to vie for any seat in any subsequent by-election.

The appointments of women Chiefs and their assistants should be termed irrelevant. This is because a female Chief will not be expected to do her job properly when she is pregnant or when feeding an infant and so many other grounds. Or may be I am her husband, I have come from Nairobi and I will be back in the morning. I will not let my wife who is a Chief to go for night duties, leaving me and expecting me to go back to Nairobi the following day. That is quite impossible. So women Chiefs and Assistants should not be there.

**Com. Alice Yano:** Your time is up. May be there are clarifications to be made.

**Com. Mosonik:** Clarification No. 1 is: Did you say that we should have a government of national unity or a government in which several parties work together, which is a coalition government?

**Julius Kalanza:** Coalition government.

**Com. Mosonik:** Not national unity.

**Julius Kalanza:** That coalition government will promote national unity. If you have got one political party forming a government people would be very much apart but if several parties are forming a government it will be sort of greater unity.

**Com. Mosonik:** Secondly about the President, you said that he or she should be a degree holder meaning a bachelor's degree I suppose. Then you said in political science, public administration, law and economics. I was wondering like myself now, I have a PHD in history and history has been defined as past politics and politics present day history. Do the historians qualify to be President or not?

**Julius Kalanza:** You must add public administration in order to qualify anyway.

**Com. Raiji:** I respect your views but I seek clarification on this last point about women not being appointed as Chiefs because they may get pregnant. You are aware that we have very senior positions like permanent secretaries, we even had a Minsiter from around this constituency who was a woman. Are you by any chance suggesting that women cannot perform simple duties as those of a Chief while they can be Ministers, Commissioners or even pilots.

**Julius Kalanza:** I have only rejected Chiefs and Assitant Chiefs. The rest, they can be able to perform because Chiefs and their assistants deal with the public which is a 24 hour service and she would not be expected to be woken up at mid night, her husband has come from Nairobi and will be going back the next day. You can use your common sense there.

**Com. Alice Yano:** Thank you Kalanza. I can see there are some men who are really feeling a bit low because that has been said. It is good there are men who can support the female Chiefs and their Assistants.

Now let us move to Rose, is Rose there now? Rose Wambia? Jedidah? Justus Mwetu.

**Justus Mwetu:** Thank you Madam Chairlady, Commissioners, Ladies and Gentlemen. Naitwa Justus Mwetu kutoka Mutonguni Location, Midhini Sub Location. I am a retired education officer. Yangu nataka kuongea juu ya retirees.

As you know the retired officers are the architects of this Country economically. Some of them started working during the



colonial time when they were getting very meagre pay and as I said they are the architects of this Country economically. They should be well addressed by this Commission in the Constitution so that they are taken care of very well by the government in terms of remuneration.

After getting the emoluments, the lumpsum, there is a monthly payment and there is no increment at all. The Constitution should include yearly increment for the retirees on top of their monthly salary after their retirement so that they can keep up with the growth of this Country.

In a department like education where I was if , the workers get an increment of any kind, whether house allowance, I should also be affected as well. I should also get an increment because I know the government calculates after 55 years, you have got to live for about 15 years then you die because of this meagre pay which cannot support you very well.

If I give an example and if the Commission allows me, I would reflect this to my friend Bwana Munyasia here who was a Member of Parliament. When he was in Parliament, I think they were getting about Kshs. 10,000/= in a month. They were the architects, building this nation, building this Parliament to that great height. Today, I am sure the Parliamentarian are getting over Kshs. 300,000/= in a month. Why can't Munyasia gets 50,000/= as allowance. Now he is earning some meagre pay, he should be taken care of by this Commission. The Constitution today should take care of the senior citizen officers, who are continuing to build this nation.

Executive powers of the President: It is my view that, we should have a ceremonial President who is not above the law. The President should not be above the law because it is in the current Constitution where he is above the law.

Those who are within the corridors of power are becoming corrupt, they are taken to court and they walk scot free, because even the Judiciary is not free at all. It is as independent as we are told it should be independent. Because most of the judges are appointed by the Executive and you have got to sing the tune of your boss.

That is why some cases have been dragging on for many years, over 10 years and I know some of you are lawyers and I am wondering why such cases should drag for 10 years. It is because somebody is getting what we call hot line not to prosecute I think, forget that case, throw it away. A genuine case and that is why the public is wondering, what is happening to our Judiciary which should be free in handling cases? The big shot always walks scot-free. As somebody said, you ruin this department, you are appointed to another one. Now, where are we heading to?

**Com. Alice Yano:** Justus you have a minute.

**Justus Mwetu:** Thank you very much.

Therefore, as it has been said, the Judiciary and other departmental head should be appointed by the Public Service Commission then approved by Parliament.

The other point I would like to touch on is about political parties. The reason why political parties have become so many is because one finds that he does not have shelter, so he starts his political party. Therefore we should have as many political parties as we can afford and the playground should be level and thereafter there should be an open ground, an open policy for an independent candidate. So that ...

I can quote somebody like Elijah Omolo Agar of Karachuonyo, alifungiwa, akafungiwa lakini akasimama kama independent candidate and he won. right? Hiyo mambo ya kufungiwa, watu wawe free, mtu aingie whether I am self sponsored or sponsored by an organization. If I am able, I should walk into Parliament regardless of the political party affiliation. There should be an open independent entry of candidates.

Kitu kingine nataka kuongea ni juu ya currency, currency yetu.

We are getting confused every now and then about changes, in our currencies. It is my opinion that we can have either the poortrait of the founding father of this nation to remain our national currency portrait or get another symbol and that remains as our national currency symbol. Otherwise, every now and again whoever becomes President – portrait, another one portrait. Na zinaanza kusokotwa sokotwa namna hiyo. That is why our currency is being devalued every now and again.

Why can't we be like Americans? George Washington, ni yeye tu ako katika Dollar. Na kila wakati inakuwa juu tu.

Therefore, ningekuwa ya mengi la kusema lakini I think my time is over.

**Com. Alice Yano:** Thank you very much Mr. Mwetu. Any clarifications?

**Com. Mosonik:** Just a very simple one. Founding father or founding fathers with an “s”, because on the American currency, they have the founding fathers with an “s”, more than one. So we have only one father or several as a nation.

**Justus Mwetu:** No. Founding father is only one here. The Late President Jomo Kenyatta.

**Com. Mosonik:** It is not accurate about America to say they only have Washington.

**Justus Mwetu:** I was only giving an example of that place.

**Com. Mosonik:** But I have said, I am just making a correction that they do not only have Washington on the American currency, they have several others. So do not make that analogy just say our first President.

**Justus Mwetu:** O.K. Let us dwell on our own here. Let us have either the late President on our currency and no changes.

**Com. Alice Yano:** Thank you very much. Daniel Mwaniki. Yuko?

**Daniel Mwaniki:** Honourable Minister, Chairperson, Commissioners and others, my name is Daniel Mwaniki and I am here to present views from Kangi Sub-Location.

1). I am going to start with disabled people:

There should be free education for all categories of disabled people.

They should be directly employed after school.

There should be special training schools for all types of the disabilities.

They should be financed to start their own employment.

If a normal or able person impregnates a disabled lady, he must be forced to marry her.

Law should be independent.

Swahili should remain the common language.

Disabled people should be provided with working facilities, like wheel chairs and walking sticks.

2. Views of women from Kivito Women Group from Kangi Sub-Location: -

Women shall be the only successors to their husbands' property.

Unmarried ladies should have equal rights with boys.

Village elders are the basis of the government and they should be put on the payroll.

Pastors are the peacekeepers in the Country and the government should pay them.

New denominations should be scrutinized before they are registered and they must have a good number of followers.

Divisional office should be scrapped, because Chiefs can do that job.

The President must be a married person.

The President must be of Form 4 level and above,

The President must be a n indigenous citizen.

Political parties should be financed by the government and we should have 2 political parties only.

Second wives should not have equal rights with the first one.

If a Bill is passed by the Parliament, let it become a law straight away.

Life imprisonment should supersede the death penalty.

There should be no retrenchment at an early age because that is promoting poverty.

Shop commodities should be price controlled, to protect small business people.

Wives should have rights to take their husbands to the clan and even to court for misbehaving.

**(Interjection) Laughter.**

**Com. Alice Yano:** Umemaliza?

**Daniel Mwaniki:** Bado.

3) Now, I am presenting the views of Men known as M.D.A. Group.

Kenya should have 2 parties only for the government to run smoothly and to minimize the electoral expenses.

The President should be 45 years of age and above and have the retirement age of 70 years.

Chairperson of the town Council should be elected directly by the public.

Health services should be distributed equally to all districts and locations.

**Com. Alice Yano:** You have less than have a minute.

**Daniel Mwaniki:** Clans should be given powers to manage discipline at an early stage and family disputes like land.

To reduce death rate, there should be free medical care and mortuaries.

Orphans should get free education from standard one up to university level.

Primary education should be free for all people. Secondary school fees should not exceed 30% of the minimum wage of the government scale.

Title deeds should be given freely because 60% cannot afford the present charge and the charges are changing year after year.

Pensionable people should be getting salary increment yearly.

If a wife goes a way from a husband for 2 years, that marriage should be nullified.

**Com. Alice Yano:** Thank you very much Mr. Mwaniki.

**Com. Wambua:** Did you say that to reduce death, you need to increase the mortuaries?

**Daniel Mwaniki:** Mortuary services should be free. Instead of paying money, mortuary services should be free.

**Com. Wambua:** But it is not your proposal that free mortuary services will reduce the deaths.

**Daniels Mwaniki:** I said that the government should give us free medical and mortuary services because if we are paying

money to ...

**Com. Wambua.** Thank you.

**Com. Alice Yano:** Thank you very much Mr. Mwaniki. Can we have Mr. Jackson Mwati.

**Jackson Mwati:** Honourable Minister, lady Chairperson and the Commissioners, my name is Jackson Mwati, representing a group from – Mutunguni Division in Kitui District. I am going to present it in parts because we have divided ourselves in groups-not full, but we all discussed together.

Amendment of the Constitution: This should not retain the current procedure, not the 65%, it should read 2-thirds of the majority votes of elected Members of Parliament, not the nominated.

Powers of Parliament to amend the Constitution should not be limited.

No parts of the Constitution should be beyond the amendment powers of Parliament. The public should be involved through referendums in amending the Constitution if the 2-thirds majority vote is not attained. Referendums should be conducted on neutral bodies that are organizations such as Council of elders or Constitutional Courts.

Citizenship: Automatic citizenship should be granted to indigenous Kenyans and those who are born by indigenous Kenyans, both mother and father. This should be acquired by a person who has been naturalized and registered as a Kenyan.

Spouses of Kenyan citizens should get citizenship after being married for 10 years. Children of a Kenyan parent should be entitled to automatic citizenship.

The Constitution should not allow dual citizenship. Documents to be carried are Identity Cards and passports incase of travelling outside the Country.

Defence and National Security: Discipline forces should be established by the Constitution. Mechanism should be outline in the Constitution, the President should be the Commander in Chief of the Armed forces.

**(Interjection)**

“C” in “C”, whichever way you understand it.

The Executive should have exclusive powers to declare war.

**Com. Alice Yano:** You have got a minute.

**Jackson Mwati:** Thank you.

Head of state should have the authority to invoke these emergency powers.

Political parties should only play political mobilization role.

The Constitution should regulate the formation and management of political parties.

Number of political parties should be limited to not more than 5 preferably 2 or 3. They should not be financed from public fund.

Systems and Structure of government:

Should make some changes depending on what works best.

Having a system with both President and Prime Minister.

Have a system in which the President can dissolve the government.

Should not adopt a federal system of government.

Judiciary:

Present structure is not adequate. Depending on population, there should be court at the provincial, district and divisional level.

There is need to have a Supreme Court.

There is need to have a Constitutional court. This should be formed by an independent body composed by professionals in legal matters. The tenure of office should be 5 years by the appointing body proposed above.

**Com. Alice Yano:** Thank you very much Mr. Mwati you have exhausted your time, record and give out the memorandum. Christopher Ngongo.

**Christopher Ngongo:** Honourable Minister, Chairperson, Commissioners, Ladies and Gentlemen, I am Christopher Ngongo from Kadheka Sub-Location, I have got these views.

To change the Constitution, there should be 75% votes from the Members of Parliament.

There should be 3 political parties funded by the government.

All Members of Parliament should be full time Members of Parliament.

Constituents may recall their Member of Parliament or their Councilors after 2 years of checking whether he or she is doing what (s) he is supposed to be doing.

There should be a coalition government.

The Legislature to have power to veto the Executive in matters of war or foreign policy.

The executive should be a graduate and serve 2 terms of 5 years each and not above the law.

Judiciary:-

All are equal in law.

Judges to be appointed by a Commission that is to be vetted by Parliament

Local Government:-

No service charge should be paid because the Council does not do what the wananchi want.

On Election:-

The last 3 years, no defections.



On land: -

Ultimate ownership by an individual and the procedure should be simplified.

Title deeds should be like any other certificates like school certificate.

Constitution to check on religion, sex and cults.

The government should regulate agricultural products not to leave this to brokers as at now.

The Constitution should address corruption, no transfers of wrong doers but sackings.

Lastly, no death penalty but life imprisonment.

**Com. Alice Yano:** Thank you very much Mr. Ngongo and we are grateful that you really adhered to the time and you were straight to the point. Can we have Michael Ndetema? Followed by Patrick Nzioka

**(Interjection)** Michael Ndetema is not in, but he gave his report.

**Com. Alice Yano:** Mention, say your name.

**Cllr. Dominic Kadhe:** I am Councillor. Dominic Kadhe I am presenting Kau Ward. I was sent by this gentleman Ndetema to present his report, it is written so I do not need to go through it so you can receive it.

**Com. Alice Yano:** Thank you very much. Kindly give it for recording. Patrick Nzoka. Can we also have Joseph Kavua, prepare yourself

**Patrick Nzoka:** Honourable Minister, Commissioners present, my name is Patrick Nzoka from the Catholic Church, representing a Church organization known as Catholic Justice and Peace Commission. The views I have here are from the Catholic faithfuls and non-Catholic faithfuls and they are in a written memorandum which I would like to present to you for your personal reading and computation. Thank you.

**Com. Alice Yano:** Thank you very much. Joseph Kavua, Anderson Mwanini? Can we also have David Nzua preparing himself?

**Anderson Mwaniki:** Thank you very much Madam Chairlady, Honourable Minister and Commissioners in front of you, I will go through a run down of some views given by Chandoni village and I start with.

#### Constitutional Supremacy:

The current Constitution allows the Parliament to be amended by a 65% majority vote and we should retain this.

#### Systems of government:

1). We should retain the Presidential system of government.

#### Legislature:

1). We should retain a single chamber legislature.

2). Minimum education should be Form 4 and above for any Parliamentary candidates.

3). Salaries of Members of Parliament should be determined by an independent Commission.

4). Any Member of Parliament should seek mandate from his electorate before joining any other political party.

5). We should have a coalition system of government.

6). The President should not have powers to veto legislation passed by Parliament unless on a 50% to 50% vote.

7). The President should not have powers to dissolve Parliament because in so doing, he may not serve the interest of all Kenyans.

#### The Executive:

1). The President should not be a Member of Parliament

2). The President should serve for only 2 terms of 5 years each.

3). The President should be disciplined for misconduct that is, he should not be above the laws.

The Local Government:

1). Mayors and Chairmen of Local Council should be elected directly by the people.

2). They should also have a term of 5 years duration.

3). They should have a minimum qualification of Form 4 and above or its equivalent.

4) The Commission which determines the salaries for Members of Parliament should also determine the salaries for Councillor.

5). We should not retain a nominated Council because he may have been favoured due to his incompetence or closeness to the top brass.

6). The President or the Minister in charge of Local Government should not have powers to dissolve any Council.

Lastly but not the least, basic Human Rights:

1). The Constitution should guarantee and protect, security, water, health care, education, shelter and food.

2). The Constitution should provide for free and compulsory education up to secondary level.

Thank you very much.

**Com. Alice Yano:** Thank you very much Mr. Mwaniki and thank you for being straight to the point. David Nzua are you there? Robert Mutua, be ready.

**David Nzua:** Thank you very much Madam Chairlady, Honourable Commissioners and Honourable Minister. In short, way back...

**(Interjection)**

**Com. Alice Yano:** Your name please.

**David Ndua:** My name is David Nzua, I come from Matiani location. Way back in 1981, Civil Servants Trade Union was scrapped because, it was not entrenched in the Constitution. It is my humble submission that, Trade Unionism be entrenched in our Constitution and any employer who willfully and negligently fails to honour any agreement legally arrived at between himself and employees should cease to be a legal entity.

It is my humble submission that we have an independent Electoral Commission, which should be approved by the Parliament. We have seen you people and you are working very and it is because you were subjected by approval by the Parliament. So it is my opinion that the Electoral Commission members be approved by the Parliament and they should also give us a calendar of elections. These provisions which bars public servants from contesting for seats should be waived and then it be that they go for 3 months leave without pay so that they may go campaign and come back.

It is also my humble submission that the Presidential and civic elections should be held separately. Preferably, civic elections should come after every 4 years while the Presidential and Parliamentary elections after every 5 years.

Madam, Chairlady, if I still have time, it is my humble submission that Commissions, which are appointed and they complete their work and hand it over to whoever has established them, since they are funded by the public, they belong to the public and the reports should be made public within may be 3 months time after they have handed over the report.

While the majority have their way, the minority also have the right to be heard. Madam Chairlady, we have had this gender insensitivity and imbalance. It is my humble submission that in all legally constituted assemblies, a third of them be women. Where the top is a man, the second position should be taken up by a woman.

Madam Chairlady, there are key Ministries which in my opinion should be held by professionals. The first on ...

**(Interjection)** Inaudible.

**David Nzua:** I have a minute.

The first one being the Education Ministry, which in my opinion should be, held by somebody who is a professional. The other one are Finance Health Ministry and the last one is Justice. There should be a Justice Minister instead of an Attorney General.

Finally, it is my humble submission that Speakers to the National Assembly be impartial. Anybody who has contested and lost even once in any election should not be allowed to contest for the Speaker's seat.

**Com. Alice Yano:** Thank you very much. Robert Mutua.

**Robert Mutua:** The Minister, Chairlady, Commissioners and the audience, my name is Robert Kave, a Councilor in Kagua, presenting my personal views.

1. Counting of votes should be done at the polling station.
2. Mayors and Chairmen of Local Authorities should be elected by fellow Councilors and not by the community.
3. Members of Parliament and Councilors should have one Commission to review their terms of service and their allowances, this should be funded from the consolidated funds. As of now Councilors total allowance for 5 years is equivalent to a Member of Parliament's allowance for one month, yet they were elected on the same day by the same electorates.
4. 8 4 4 System of education should be abolished and we adapt the old system of 7 4 2 3 and make it free and compulsory from Standard One to Seven.
5. Political parties should be reduced to 5 and be government funded.
6. Councilors should be given language tests when vying for local authority seats.
7. Nominated Councilors and Members of Parliament should be abolished and remain with the elected ones. As of now, they do not serve any purpose since each party has a right to elected its own.
8. Judicial officers should be appointed by the Judicial Service Commission and not the Executive. Thank you.

**Com. Alice Yano:** Thank you very much Mr. Mutua. Now we move to, Daniel Mutune. You had already given your submissions I do not think we are going to give you any more time.

**(Interjection)** Inaudible.

**Com. Alice Yano:** No. No. Just bring that written proposal and hand it over.

**Daniel Mutune:** I would like to say that my proposals were combined with .....(inaudible)

**Com. Alice Yano:** Thank you Isaack Mulyungi.

**(Interjection)**

**Isack Mulyungi: (Blind)** Hon. Minister, Members of the Constitution Review Commission, all the dignitaries present, and ladies and gentlemen. Good afternoon?

**Audience:** Good Afternoon.

My proposals are very few because I do not propose the overhaul of the Constitution because the present Constitution has been working for some time and I think it has been doing a good job for us but I just have a few issues which I feel should be addressed. First of all, I would like to say ... By the way I am a teacher and I love education very much.

My first proposal is free education for all from Nursery or even Kindergarten to “O” Level or KCSE. This is very important because education and knowledge has its own intrinsic value in a person even if it is not economically gainful, it can help in solving problems which we face either socially or economically.

Secondly, I would like a Constitution of Kenya whereby there are 3 Parliamentary seats reserved for the handicapped people. This is because it is the wearer of the shoe who knows where it pinches most. For example, you will agree with me that, let us take Kshs. 100/= note or 1,000/= note, you will give it to me and I cannot read the figure and an unscrupulous business man or woman may tell me that it is Kshs. 200/= when it is actually Kshs. 500/=. I would like to see the currency to have Braille and printed figures so that I am protected as a citizen of this Country because I believe I have the right to all the protection like everyone else.

Thirdly, the problems of the crippled, blind, deaf and mentally handicapped can only be solved by themselves. Therefore, 3 Members of Parliament should be enough representation for us. I am very happy Odira is already there to represent. No, sorry it is Mrs. Sinyo by the way.

Another point, which I want to raise, is about Federal System. Our system has been quite good but it has had its own shortcomings therefore, I would like to see a change from unitary to a Federal System whereby you have Parliaments in Eastern Province, which will be Eastern State or something like that, North Eastern State, Central State and so on. So that the national cake can be equally distributed and then development will be equitably done in the whole Country. This is because, if you have been travelling around the Country, you find that some areas are very highly developed while others are just lagging behind with underdevelopment. I think what has been the problem is because of the Unitary System.

For the President, I suggest that such a Federal State should have an Executive who at the same time should be impeachable. I mean he should be brought to justice if need be. As you see, the American System works very well. I think we do not need to

say much about Bill Clinton, you know the case.

At the same time, I think there should be a Vice President who is more Constitutionally active so that he can help the President in certain areas like, going to visit places when there is need and representing the head of state in all necessary functions if the head of state is not available.

At the same time, I would like to see a Constitution where by the President does not appoint the Judiciary. The Judiciary should be appointed by the Senate. We should also have a two house National Assembly where we have the Senate which will be elected from the districts, according to the size of the population of each district. But each district should have at least one representative there.

The Lower House should be of representatives whereby you can have all the Constituencies represented there.

The last point I want to make is that, I would like to see a Constitution where civil servants and teachers are able to be members of any political party of their own choice. The parties should be minimized because they are too many. Thank you very much.

**Com. Alice Yano:** Please, there are some clarifications we would like you to make, just be where you are.

**Com. Wambua:** This issue of Federalism versus Unitary State has been very emotive. The reason you give for recommending a Federal System is that the national cake should be distributed equally. Would you be happy with a system where we retain the Unitary System of government but the national resources are shared equitably and equally?

**Isaack Mulungi:** It would not work my friend.

**Com. Wambua:** I am just giving you an indication so that you can give us a proposal because you have given the reason for the Federal System as the national cake distribution. I am just putting it to you that if you get the national cake equitably distruted would you be happy with the Unitary System? That is number one.

The second point I want you to clarify is the question of Senators. You said there should be a Lower house and an Upper house.

**(Interjection)** Inaudible.

The Upper house that is the Senators should be elected from the districts according to the population. It is not very clear

because if you are saying there will be one Senator per district, (if I got you right) then the question of population is a little bit confusing. Can you clarify that.

**Isaack Mulyungi:** Let me begin with the second question of Senators. I said that at least each district should elect one Senator, but you know some districts have got very many people, they are very populous. So it would not be fair for 40,000 people to be represented by one person when 10,000 people are being represented by one person.

You will see that this Senator is carrying a heavier load and may not be able to reach his people effectively.

**Com. Wambua:** What would be the basis of election?

**Isaack Mulyungi:** The basis for electing a Senator should be, for every 50,000 people a Senator I think that one would help us.

The second question. You asked was if I would be happy if in a Unitary System we had equitable distribution of development and wealth of the Country.

I would say it might not work very well because we have seen it not working so well. You have been here in Kitui and you have been to other places in the Country and you can see the difference. So why would it work then and not now.

**Com. Mosonik:** I just wanted to ask you as a follow up to the issue of the districts. What difference would it make if you were using population, that you have a Senate as opposed to the Lower house? In other words the constituencies, because it seems to me it is a replication. In the United States, each state whether small like Rhode Island or very large like New York has two Senators each. Just think about that for a while.

Secondly, you said you reduce the number of political parties but you did not give us the criteria.

**Isaack Mulyungi:** For reduction?

**Com. Mosonik:** Finally, I know you will remember because you are a teacher. As a teacher you talked of education but you did not tell us about the disabled in the education system. For example, special education, special institutions mixed or up with the rest and how do we make sure they are not disadvantaged when they are mixed up with the rest.

**Isaak Mulyungi:** For the disabled, I would say today they are doing intergration. Intergrated education through units all over the Country and I think they have not been doing very badly, the only thing I would say is that they should be subsidized. Their



education should be paid for by the government because some parents are not willing to educate their disabled children. But if it is all free then, they should be intergrated because you cannot put a blind child in isolation because he is going to live with other people. Therefore, they should be intergrated may be from Standard 5, when he is able to understand fellow children.

The way it is today, it is not doing badly the only thing I want is that the funding to be done by the government.

You talked about the district population. I gave you the figure of 50,000 as my basis for each Senator. This is hypothetical but anything of 40,000 or 50,000 would be fine.

**Com. Mosonik:** Just one last time. What we are saying is if you have population, what difference would there be between the Senate and the Lower house because it seems like a replication. You are reproducing the constituencies at the district level. Then I gave you the example of America where each state is entitled to 2 Senators irrespective of the population because if you are reproducing the district and the population, constituency and the population, does it really make a difference?

**Isaack Mulyungi:** O.K. Fine may be I would say that the Senators should be half the number of House of Representative. If they are half, the modalities of how this is going to be reached can be done by the Legislature. We are not legislating here, we are only giving broad ideas which can be of use.

**(Laughter)**

**Com. Alice Yano:** Thank you very much Mr. Mulyungi, we are very grateful for your presentation. Can we have Benjamin Ivivi? Gregory Mathi tafadhali jitayarishe pia.

**Benjamin Ivivi:** Honorable Minister, Chairlady, Honorable Commissioners, Ladies and Gentlemen, mine is to talk on basic rights. I would like to say that we formed groups that are discussed a bout the medical treatment in all government clinics, dispensaries, health centers and government hospitals and we suggested there should be free treatment to all Kenyan citizens.

We say medicine should also be given free and Laboratory services to be given free. This has has been mentioned by many that all should be accorded free treatment. Cost sharing makes many people die without being treated in hospitals because they could not afford that cost sharing. Therefore cost sharing should be replaced by free treatment in all stations.

**Public University Education:** Kenyan students should learn freely in our public universities. Loans should be replaced by scholarships. Tuition, which of course a matter of repetition, should be free. Accommodation should also be free, book allowance should be provided freely to the students. This is because poor students do not get room in Universities due to lack of finance.

It has been experienced that some students who get grades of B- (Minus) and C + are denied entry to the University but those who manage to get chances are the working class who are accepted by Universities in the parallel degree programme and those who have got grade B – (Minus), they are enrolled in primary teacher colleges.

This should be streamlined so that the freedom is exercised in all our Universities. Everyone who wants to be educated should be educated because, perhaps a poor person may be a genius but cannot afford and the rich person, the son of a rich person, may get educated because they are wealthy. If the poor could be given a chance to continue with their education, maybe it would be for national building.

When we come to primary education, we always say it is the responsibility of the government, to provide free education.

**(Interjection)** Inaudible.

Secondary school education should also be free.

**Medical Training:** We want the Commission to put this in the Constitution that district medical training colleges should admit candidates with at least D+ for certificate courses in all departments of general hospitals. In the province, those who are having qualifications of C – (Minus) and C (Plain), must be trained in Diploma in all medical departments in a provincial general hospital. They should have a common syllabus in the republic so that they may be trained towards a common goal.

The other one is that in University, now of course KCSE should be C+ and above qualification. We should train the doctors from Bachelor of Science and other Medical departments in the hospitals. This will help in eradicating diseases and assist in introducing self employment as part of getting rid of poverty, as we were promised during the colonial time, when we were heading towards independence.

**Pension:** We said pension after retirement should be a right not a privilege for all Kenyan workers. All pensioners are paid poorly due to the changing economic condition. Those who retired some years back should have their monthly pension reviewed from time to time to keep in pace with changing conditions, especially when civil servants salaries are reviewed.

A Commission should be set up to look into pension for retired workers.

**Com. Alice Yano:** Umebaki na dakika moja.

**Benjamin Ivivi:** Let me go to another very important point which I do not want to leave out.

**(Laughter)**

Now, let us come to the vulnerable groups and I will mention 2 people; the ones in Children Homes. We have many victims of AIDS, many parents are dying and the children are left without parents and without guardians. We have suggested that this Commission should offer or establish an Orphan Care Unit or Orphan's Government Children Homes whereby the government should take care of the orphans who have no guardians to protect them. We also say the government should provide education and free medical care.

Of course if they have this, they should afford shelter, clothing and bed covers. I mean total care entirely by the government or the body, which may be assigned to look after the welfare of the child. Therefore, the government should establish children homes in every location to cater for orphans welfare.

On the same issue, establishment of home for the old from 50 years and above in every community by the government. There are old people whose relatives are poor and they cannot support them with their daily bread. The government should offer or establish homes for the old with all the necessary facilities in life, shelter, food, water, medical care, bed and bed covers.

These old age homes or community camps should start at locational level. There should be a manager with good character, Christian man or God fearing man. The committee should be composed of the Chief (because they will be contributing money), Assistant Chief, Councilor, Members of Parliament, and Chairman of all political bodies including other important leaders.

The Committee will be examining the running of such community or family homes.

**Com. Alice Yano:** Now your time is up.

**Benjamin Ivivi:** They should be separated, old age and orphan groups as these are two camps.

Thank you very much Madam.

**Com. Alice Yano:** Thank you very much, give us your memorandum, we will look at the rest. Thank you.

The next one is Gregory Martin? Ulikuwa umeongea?

**Answer: Inaudible.**

**Com. Alice Yano:** No. No. Just mention your name and then give us the memorandum.

**Gregory Martin:** Supposing there is something small I would like to mention?

**Com. Alice Yano:** No. There are so many people who would want to talk, we need to give everybody time.

**Gregory Martin:** What if I give it to the secretary who passed it to me to read?

**Com. Alice Yano:** It is O.K, read very fast.

**Gregory Martin:** Honorable Minister, Commissioner and fellow participants. I wish to present the views of Mutanda Locational Development Committee to this Commission.

Executive:

A Presidential candidate should be a university graduate aged between 35 and

**(Interjection)**

**Gregory Martin:** My name is Gregory Martin.

A Presidential candidate should be a university graduate aged between 35 and 70 years.

He should serve for a maximum of 2 terms of 5 years and those candidates who contest for the Presidency and unsuccessfully for 2 consecutive times should be barred from contesting a third time. We should have serious candidates.

The President should be a Member of Parliament to give him a base, let him have a base in the constituency.

Electoral System:

The demarcation of constituencies Kitui is not good enough, especially for Kitui East, Kitui Central, and Kitui West. Kitui East should not stretch from the Municipality of Kitui. Kitui West is not a convenient geographical area, communication is difficult and the people are not together.

We suggest that it should be split into two constituencies by creating a new constituency to be known as Kitui North. Kitui

Central should comprise of the Municipality of Kitui and not outside areas.

Land and Property Rights:

Land should be owned by the man who should pass it on to the sons of that family and clan. The daughters are expected to get married and acquire land rights through their husbands. But if a daughter can convince a husband to live with her parents and are willing to become members of the girl's clan, then he can be allowed land rights.

Thank you very much.

**Com. Alice Yano:** Thank you.

**Com. Mosonik:** Clans in Ukambani are exogamous meaning, you do not marry within your clan. So your daughter's husband, how does he become your clan's man?

**Gregory Martin:** If he is willing to join my family, he can.

**Com. Mosoni:** As a clansman or what?

**Gregory Martini:** Through my daughter, he can become a member of my family and clan, if they are willing to settle with us.

**Com. Alice Yano:** Thank you very much. Register yourself. Monica Nduu, I hear you are here now, Monica? Yes, kindly come and present your views. Robert Muthei, are you here? Rose Japheth?

**Monica Nduu:** Thank you. Honorable Minister, Chairperson, Commissioners and everyone who is present today.

I would like to present the views of Kawui Muungano Women Group. Kawui Muungano would mostly like to talk about the specific issues affecting women, children and the disabled persons and these are the vulnerable groups.

Our views are that the new Constitution:

To ensure elimination of violence against women by ensuring human rights for both men and women and discouraging or abolishing all negative cultural beliefs that discriminate against women. Dialogue between man and woman should be encouraged.

To recognise, accounting and compensate women's unpaid work. That is, women's productive and reproductive duties should be recognised.

To provide adequate security for women both in public and private spheres.

To have the Employment Act restructured so as not to discriminate against women on matters of terms and conditions of employment in the public sector.

To ensure women employed in civil service should be given special consideration during retrenchment process because women play a central role in the public. The number of women in employment is small.

To ensure women are not penalized during maternity leave.

To have a provision for a Ministry of Women Affairs should be created and the Ministry to be headed by a lady Minister.

To have quota system of at least 35% female representation in key decision making organs of political bodies, public service and private institutions be provided for in the Constitution.

#### Land and Property Rights:

Facilitate women access and control of family property in all forms by removing negative cultural beliefs that do more harm than good. For example, there should be no wife and property inheritance by relatives.

Ensure equal inheritance also and succession rights to both male and female children.

Protect disabled women against rape and the rapists should take care of the children that are born as a result of acts such and provide for them up to university level or 18 years of age,

Gender Commission be established and empowered to enforce gender equity laws and policies.

The new Constitution to promote positive culture that will gear Kenya towards developing our national culture, a national culture.

Women to be deemed legally married as soon as the clan elders solemnize the marriage That is, once the Wazees agree

and accept the lady as one of their family then the government should give the couple a marriage certificate.

Trial marriages should be deemed illegal and punishable by law after one year if not legalized.

Creation of Ombudsman's office to follow up on women related court cases.

#### The Bill of Rights:

The Constitution to protect the security of women and girls. This should cover all forms of violence against women and girls including election violence, domestic violence and mental violence not forgetting rape in all forms.

Rights for all citizens to access information. Civic education to be entrenched in school curriculum from primary school up to university level.

#### Basic Needs and Basic Rights: -

The new Constitution should guarantee basic education and training for the girl child and women, as well as the disabled persons.

It should also provide for basic health care, food security, shelter and security.

#### Persons with disabilities: -

A Constitutional provision for the election of the disabled persons to Parliament through a quota system. For example, one Member of Parliament per province be a disabled person.

Half of the disabled Members of Parliament to be women.

All nominated Members of Parliament to be the disabled and women.

The Constitution to provide for opportunities for suitable employment for persons with disabilities.

Proportional representation of the disabled within affirmative action to be introduced.

#### Citizenship:

Kenyan women married to foreigners to have the right to pass on citizenship to their husbands and children.

Dual citizenship for Kenyan women married in foreign Countries.

The Executive: -

The President not to be above the law.

Presidential powers to independently appoint or dismiss should be reduced and invested in a Constitutional office.

The Presidential tenure of office of two terms of 5 years to be retained.

A Constitutional provision to prevent manipulation of the political system by an Ex – President and thus retired President ceases to be Party Chairman immediately.

Presidents should be between 40 years to 70 years of age.

Local Government: -

Direct election of Mayors and Chairmen of the Councils.

Commission to be put in place to look at terms and conditions of service for Councilors and Chairmen.

Right to recall the Mayor and the Chairman of the County Councils for non-performance.

Parliament: -

Non-performing Members of Parliament to be recalled after 2 years.

That is all I have. I am sorry I did not say my name I am Monica Nduu.

**Com. Alice Yano:** Thank you very much Monica, we are grateful for the presentation and I think, kwa wakati huu, kuna mmoja wenu alijiandikisha na hakusikia jina lake kabla sijapatia Mweshimiwa?



I think we are through with all of you. Now, Honorable Francis Nyenze, kindly give us your views.

**Hon. Francis Nyenze:** Thank you very much Madam Chair, Commissioner and fellow participants.

I may digress a bit because it is my first time and I have been listening to my constituents, the people who elected me to Parliament, they have to freely given their views and first I want to thank them very very much because I have also been learning a lot from them.

They have made very good presentations, I was very moved and even some Wazees, I did not know they speak such good English, in fact I have learnt a lot and I do not want to say beyond that. I have heard a lot from my people and to the Commissioners, I represent one of the very highly elitist sections of this district of Kitui West. There are very many educated people, informed people and you cannot play around with their minds. If you cheat them they will tell you on the spot, “sema ingine” Ama si hivyo? So this is the cream of Kitui District and that is why even if I did not come early, I knew they would give you what they think without fear or favour. So, they spoke very well.

I just want to say a few things and they do not follow any chronological order but only to comment on a few things, one and related. I think Kitui West Constituency has 3 divisions, there is Mutunguni, Matinyani and Yatta.

Now, we have these two meetings, one here in Kabati, which is in Mutunguni, one in Yatta, which is in Kisiani tomorrow where we will be and now you have left out Matinyani. I am appealing to the Chairman Yash Pal Ghai through these Commissioners that as we go to Mwingi we also take this meeting to Matinyani so that they do not fight me, they will not feel that we have skipped them. I know every constituency was to have two sessions but let us give people equal opportunities to air their views and I am sure if we were in Matinyani there would be very many people from there as well.

Last but not least on those other things beside what I am commenting on. I just wanted also to thank the Commissioners for listening to my Constituents with a lot of patience and I have seen the pain and the concentration you had and my appeal is that the review process should be given more time, the way Commissioners have requested instead of rushing this very expensive exercise and not to try and do things half baked.

You can admit in Kitui West in two days, you will not be able to get all the views. You are only sampling a few for those who are able to attend and I wish you had more time to reach even the smaller villages. But because it is not possible for you to collect all the views collate them, compile them in a presentable form, you need time and I am of the opinion that the Commissioners are given adequate time, because the Constitution lasts for so many years, like the American Constitution of over 200 years and all other Constitutions.

It is not something to play around with and the way Mwangi Maluzi said, 'a Constitution which is people driven, which cares about people, it has the people in the fore front because it is people's Constitution'. That is why we should not rush or play around with it because it is a very important document to govern us.

Let me just go to a few point raised and I agree entirely with my constituents with the points they have raised.

1). Unitary Government: -

Speaker after speaker, and I have listened and I do concur with them that they would want a Unitary Government like the Central Government retained because with Federal Government, the poorer regions like Kitui and others which are arid, do not have resources to run those structures of administration and if we say regional government (Majimbo), those well endowed, agriculturally rich or the ones that have the ports like Mombasa will benefit and then we will lag behind. So I am of the opinion that we retain the unitary kind of Government not the Federal one so that we do not have several governors in some places.

I also wish to say that it is good for a President to retain his powers because in a situation where by there are so many points of authority, like if you have Prime Minister, you have so many people, power will sort of not be very stable because people will be competing for attention to administer and that will cause instability. If the President can retain his powers he will unify the Country together.

Let him be the head of Armed forces, the Commander of Armed Forces and that kind of thing so that there is that solid peak whereby everything flows from. I will not support them on the government but there are some points which were raised, which I also feel, they touch on me and I can emphasize them. Like a coalition government, there was a Mr. Ngugu and other people who have talked about it, I also feel that because of so many political parties that exist in this country, there will come a time when some party will not command a majority to form a government and I think the Constitution should be written in such a way that it allows a coalition so that many parties, or 2 parties can come together and form a government.

There is one point that has been raised by a few members and I noted Ngugu raised about defections. I do disagree on a personal basis because one of the people from Kitui West, we do not agree entirely. I am thinking that, so that we do not deny the people the democracy of choice, it should be left free.

If people think this party has not done them well, it is not being run properly, let them also plan to defect to another one, including the right of a sitting Member of Parliament to defect. If he can feels this party is not doing well, I know the ny-elections costs are expensive but still, let us give people liberty to decamp to the parties of their choice and I think we will be giving them their rights.

On death sentence, it is something that I also feel, like very many civilized Countries of the world, we should do away with death sentence because the bible says you should never kill and I think something should be done to promote the preservation of human life, whatever the crime. There could be some other punishment that can be meted out but not taking someones life because life is sacred, the way we read from the bible.

The other thing I wanted also to talk about and now I am about to finish what I am saying. I still feel the 65% votes required for Members of Parliament to make Constitutional amendment is adequate because now a Constitution may be made which has some flaws here and there and if you require such a big percentage and it is just a minor amendment it may be difficult to do with so many parties. If we retain that we have that section of the percentage in the constitution, I think it has served us well and it can continue serving us well.

On salaries, and that is why I am saying I am going in an haphazard way. I feel the Members of Parliament have very big salaries and I think it is very wrong for Members of Parliament like me to draw such big salaries while Councillors and other people are getting very little salaries. A Commission should be put in place to review these salaries. This is from the bottom of my heart I also fought against any salary increment, anything above what we are getting currently because I know the other civil servants and the Councillors, they get very little and yet Members of Parliament get more. I am for a Commission to review, but Members of Parliament salaries should never be increased beyond the current level because it has to reflect what the other Kenyans are getting.

On Presidency: I think a President should serve a maximum of 2 terms in the new Constitution that we are making and that will give room to other people also to try. I think 2 terms is adequate, but one term is too short, but he or she should retain the powers in the current Constitution so that is he can govern properly.

There is a point that Councilor Maliki Ndungwa raised and I noted about idle land and the ceiling that should be set for acquisition of land. I think Kenya is basically an agricultural Country and we cannot afford to have such big idle land lying without being cultivated or being grazed.

It would be wrong for people to suffer from hunger when there is free land somewhere and I think, though I am not putting the ceiling but I am saying because Kenya is an agricultural Country and in areas like this, we are prone to droughts and shortage of food and so on. I am advocating that all land, whether it is crown land, owned by the County Council, by the government, privately owned or owned by Institutions which is not productive, which is left idle, a big tax should be instituted so that the owners can put it into productive use.

Any idle land regarded as crown land, I think it is high time, it should be distributed to the ever-growing population so that they can become more productive and the incomes of those groups to come up because Kenya is an agricultural country and unless

we get the basic requirements like food, we are not developing. That one. I support it 100% and I appeal for that.

Finally, free primary education if the budget can allow upto Standard 7 and if it can still allow, upto "O" Level because an informed and educated society is more productive, they know their rights and they will be more productive. They will be an asset to the Country.

There should be free and universal education which should be enforced in the Constitution so that parents or guardians who do not take their children to school if it is free, they can be charged in court of law for not taking those children to school because I am sure education would change this country

The biggest resource we have is the human resource. If we can develop our people, they are well trained, well educated there is nothing as good as that because they can bring income to this Country by investing in many other places.

Last but not least is about this question of inheritance. I will not talk about girl child but traditionally in so many African societies, women have very little say when it comes to family property and more so inheritance. If a man dies the land is inherited by the sons and the daughters.

I support Madam Nduu for suggesting that we should be equal, let us say we should not have men taking everything because even women are entitled to these rights and we are equal in the eyes of God. So we should try to allow in our Constitution, for women to inherit equally with men. I think if this is against some traditions, I beg to be forgiven but I would say that is what I feel about that.

There are so many things that have been said and I do not want to go through all of them and I think those are my submissions and tomorrow I will also listen to the other members in Yatta and could be I would talk more about that. But, I am so impressed by the diligence of the people I represent and the freedom to air their views and I wish you could have another extra day. Ama sivyo? Ingekuwa vizuri sana but I know your time, but if you had an extra day it would be good because, you saw most of these people never finished their representations. You know you have been very patient Madam Chair but mtu anaongea anawacha akibakisha one minute sasa anakimbilia ya mwisho, but you listened and you heard their good views, very good suggestions that will help us to govern this country properly. That will help us to make a very good Constitution and could be, besides this, in our Baraza we will ask people to talk the way you have talked today. Sio mambo ya siasa. Muongee, tunaandika tunawapelekea tu waendeleo because if we have meetings like this, I am sure we can sort out most of our problems if not all by giving those very good views.

Thank you very much.

**Com. Wambua:** Waziri, actually there is nothing to clarify because you have been very clear but on a very light note, we heard in one of the places that the salaries (which you say is high) for the Members of Parliament, one of the presenters said it should be slashed by 50% and those who do not want can go home, may be ...

**Hon. Nyenze:** Myself, Bwana Commissioner I would not be for the idea of slashing, you know we are used to this money now.

**(Laughter)**

Besides, what the Members of Parliament get we share with you, you know it, tukikutana kwa joint hapa, Bwana sina fare, sina fees and so on. This money belongs to them but I am only against any further increment because I know the suffering these people go through. They cannot take their children to school, they cannot pay their debts and so on.

I know what they are going through but whatever we get as Members of Parliament, we share. It is not enough but as human beings, whatever I get you know as a person ukiwa na shida unamaliza hiyo shida kabla hujaangalia mambo ya mwingine. That is why I am saying, frankly speaking from the bottom of my heart, I do not want and I will not support any further salary increment for Members of Parliament but let it not be slashed because ikiwa slashed na sasa saa zingine, pengine ulikuwa umeanza kupeleka mtoto shule nyingine ya juu kidogo sasa unaambiwa teremka chini.

Some of us we pay school fees for some children, these Councillors know. In nearly every school, ukienda Kakiani, Matinyani au Mutonguli you will find there are orphans. Someone here talked about AIDs orphans and other orphans. Some of us are carrying very big burdens and before the salaries were increased, we had very big balances because I am paying school fees for over 10 orphans in different schools but when the salary increment came, I said I will not get used to this money but first I will clear the balances in this secondary schools ili walimu wasianze kuangusha shule. In a way, ikirudi chini hawa watoto watarudi nyumbani na baba yao ni Nyenze Mheshimiwa. O.K. Thank you.

**Com. Mosonik:** Just a small one, everywhere we have been I can now say in Ukambani because 2 of us are not from here, we hear the issue of clan and its role potentially in the new Constitutional dispensation.

Could you please comment?

**Hon. Nyenze:** I would say in a way, the clan used to play a good role there before but you know the society is dynamic and we are in changed world. We are becoming global and I would say, if we start going backwards to clanism, to sorting our problems through clans, to those cultural practices that were hindering us from progressing, we will be cut from the other world.

People have gone internet, you know we are interacting with the rest of the world, so I would suggest the present challenges and problems should be tackled using the modern methods because, it would be retrogressive to go back to clans. If a man like Mwangi here decides not to take his children for circumcision and the clan of these two ladies and that man say. “In our clan we do not do that”. They used to invade him, tie him and beat him and that kind of thing. But today you have a right, you cannot be beaten, you will take those people to court.

There has been a lot of conflict now because the clan wants to exercise its position and its rights but now this is a changed world, and if we took them to court they would be fined or imprisoned. I would suggest, because the Kitui West is part of Kenya, is part of the international world, let us shun clanism and move towards the modernization and only the factors that are good for us and that one has reminded me of another suggestion that was brought here about the local brew.

I am on record trying to hustle the the Chiefs, District Officers, District Commissioners and everybody about the local brew, the traditional brew, because it has killed many of our people, made many men impotent, others blind and others have died.

Unakuwa na mtu leo kesho amekufa, he did not show any sign of sickness, because of those brews and I have gone head on to make sure that we stop them. One member here said “lazima tupatie watu raha yao” let it go in record. In the new Constitution, I would rather it is stopped all together, even if it will hurt people, but it will be good.

These people will be able to educate children, they will be able to do so many things. But if we allow the local brew to flourish, women are left alone to do everything and so forth. So, myself I am against legalization of the local brew. If we can do away with it, it will be very very important for us. I do not know whether there is any other question.

**Com. Alice Yano:** Thank you very much Mheshimiwa, we are very happy with the views that you have given out and we assure you that the views of your people and yourself will see the light today. We will take them to our headquarters and collate.

Before I wind up, before I give this chance to the District Coordinator Mumbi, I do not know whether my fellow Commissioners have something to say?

Let us get the District Coordinator so that she can give a vote of thanks and then we can wind up.

**Esther Mumba:** Commisioners, Honourable Minister, D.O. and the general public, Hamjambo?

**Audience:** Hatujambo?

**Esther Mumba:** Hamjambo tena?

**Audience:** Hatujambo.

**Esther Mumba:** Nina furaha nyingi vile mmefika na mkutano wetu umeendelea vizuri, umefaulu, maoni yanu yamechukuliwa, kila mtu aliyefika siku ya leo ataenda akiwa ameridhika. Ama sivyo?

Kwa hivyo kwa Commissioners, tumeshukuru sana kwa vile at least mmekuwa very patient na tume peana maoni yetu.

Kwa watu wa Kitui tumeshukuru Kitui West Constituents, tena tumeshukuru kwa vile Mweshimiwa wetu amekuwa nasi na kwa wale wote wamehudhuria nimesema asante. Kwa hayo, kwaherini.

**(Applause).**

**Com. Alice Yano:** May be also before we wind up, I think we will be unfair to the Provincial Administration who have been very kind and allowed our district coordinator to use the infrastructure when conducting the round up meetings.

We have both the two D. Os here, please just say a word and then we can wind up.

**Francis Bor (DO):** Commissioners na wananchi, hamjambo?

Nafikiri sisi tulichukuwa back seat, tulisema tukae pale nyuma ndio wananchi wakuwe free kusema vile wanataka na tumefurahia vile mmezungumza. Nafikiri ingawa hatukupewa nafasi ya kusema maoni yoyote yetu ni yale mmesema tunaungana na nyinyi. Asanteni.

Naitwa Francis Bor – District Officer – Matinyani.

**Tom Kwasi (D.O):** Kwa jina naitwa Tom Kwasi, hapa pahali mmekuja ni kwangu – Mtonguni, tangu wakati mlifika nilikuwa hapa saa mbili. Nafikiri mlakaribishwa na kujiskia mko nyumbani.

Kwa watu wa Mtonguni, wale wametoka Matinyani, na Mweshimiwa wetu, yangu ni kusema Asante. Nafikiri vile nimeona use yenu, hii hall ilikuwa imejaa na bado imejaa nafikiri Commissioners wetu hata kesho mkifika Yatta hii raha ni ya Kitui West yote na kwa niaba ya wananchi, ningesema asanteni na pahali mnaelekea naomba Mungu awe nanyi. Asante.

**Com. Alice Yano:** Asante sana, Asanteni sana. Kuna kijana wenu nafikiria mlikuwa mkiangalia hapa mbele kila wakata na

mnaona ya kuwa mko na kijana wenu kutoka hapa nyumbani kama Mwanatume na haitakuwa vizuri kama tutaenda kabla hajaongea na nyinyi kuwasalimu. Bwana Wambua.

**Com. Wambua:** Asante sana Madam Chair, mengi yamesemwa nafikiri sitaongezea ila tu kuwashukuru kwa kuja kutupatia maoni yenu. Nataka kuwahakikishia kwamba yale maoni ambayo yametolewa hapa, tutayachunguza halafu tutahakikisha kwamba hayo maoni yataingia kwa Katiba. Kwa hivyo kwa niaba ya Commissioners, nataka kuwashukuru kwa kuja hapa kwa niaba yenu maanake mimi niko nyumbani. Kwa hivyo tutaonana tena, hatujamaliza kazi yetu. Tutaenda kuandika report, tutairudisha kwenu, mtaichunguza mhakikishe ya kwamba maoni mliyoyotoa yako hapo. Halafu tutarudi huko tuipeleke Bunge baada ya ile National Constitutional Conference. Kwa hivyo kama sheria haitabadilishwa, tutakuja hapa tena.

Thank you very much.

**(Applause)**

**Com. Alice Yano:** Asante sana Commissioner Wambua, sasa hivi nafikiria tumefika kiwango ama mwisho wa mkutano wetu na kwa niaba ya ya Wanatume wenye tuko hapa na pia wale wenye wako sehemu zingine, tunawashukuru zaidi na sana kwa kuwezesha kuja hapa ili kuchangia yale maneno mnetaka yaonekane kwa Katiba.

Najua vizuri sana mnaelewa ya kuwa huu ni wakati wa maana sana hasa kwa watu wa hapa, wakaaji wa hapa Kitui kwa sababu ni wakati wenu nyinyi wenyewe kutengeza na kuchangia Katiba mpya ili wakati ukifika hamtasema eti hamkupatiana maoni.

Tumeshukuru sana na vile niliwaambia hapo awali, niliwahakikishia ya kuwa maoni yenu yote tutahakikisha tumeiyaangalia na kuyatengeza yawe kwa Katiba.

Asanteni Sana, nafikiria tungepata mtu atupatie maombi ili tuelekee sehemu zingine.

**Rev. James Mutava Kavunza:** Bwana Asifiwe wale wanatukuza Bwana. I am happy the District Officer is here, the Minsiter is here, he is still our MP and you are welcome home.

I am Rev. James Mutava Kivunza I love everybody except the devil. Devil worship should be stopped and opposed in Katiba. God Bless you. God is here, he has protected us. Let us stand and pray.

**Prayer:** Father in heaven, we thank you. We have been here humbly, because we love our nation, we love you Jesus. You are the King of Kings, you are the Lord of Lords and we are praying for these Commissioners that you bless them. We are



